



**AGENDA**  
**BERKELEY CITY COUNCIL MEETING**  
**Thursday, November 3, 2022**  
**6:00 PM**

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – TERRY TAPLIN  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – RIGEL ROBINSON  
DISTRICT 8 – LORI DROSTE

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

*Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.*

*Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244).*

*To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/84033716377>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.*

*To join by phone: Dial 1-669-900-9128 or 1-877-853-5257 (Toll Free) and enter Meeting ID: 840 3371 6377. If you wish to comment during the public comment portion of the agenda, Press \*9 and wait to be recognized by the Chair.*

*Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.*

*To submit a written communication for the City Council's consideration and inclusion in the public record, email [council@cityofberkeley.info](mailto:council@cityofberkeley.info).*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

## Preliminary Matters

### Roll Call:

**Land Acknowledgement Statement:** *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

**Ceremonial Matters:** *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

**City Manager Comments:** *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

**Public Comment on Non-Agenda Matters:** *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

## Consent Calendar

*The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Three members of the City Council must agree to pull an item from the Consent Calendar or Information Calendar for it to move to Action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".*

*No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.*

*For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.*

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

*Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.*

## Consent Calendar

- 1. Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement**  
**From: Councilmember Harrison (Author), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Adopt second reading of Ordinance No. 7,837-N.S. Amending Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement.  
**First Reading Vote:** All Ayes.  
**Financial Implications:** Staff time  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140
- 2. Referral Response: Amendments to the Zoning Ordinance to clarify and streamline the permit process for Amusement Device Arcades**  
**From: City Manager**  
**Recommendation:** Adopt second reading Ordinance No. 7,838-N.S., Zoning Ordinance amendments to provide consistency for the incidental use of Amusement Devices and regulate Amusement Device Arcades as Commercial Recreation Centers.  
**First Reading Vote:** Ayes – Kesarwani, Taplin, Bartlett, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Hahn.  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Consent Calendar

**3. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)**

**From: City Manager**

**Recommendation:** Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, and September 20, 2022.

**Financial Implications:** To be determined

Contact: Farimah Brown, City Attorney, (510) 981-6950

**4. Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference**

**From: City Manager**

**Recommendation:** Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, May 31, 2022, June 28, 2022, July 26, 2022, August 23, 2022, September 20, 2022, and October 11, 2022.

**Financial Implications:** To be determined

Contact: Farimah Brown, City Attorney, (510) 981-6950

**5. 2022 Annual Commission Attendance and Meeting Frequency Report**

**From: City Manager**

**Recommendation:** Review and accept the 2022 annual commission attendance and meeting frequency report.

**Financial Implications:** None

Contact: Mark Numainville, City Clerk, (510) 981-6900

## Consent Calendar

**6. Contract No. 32200039 Amendment: Townsend Public Affairs, Inc. for Legislative and Funding Advocacy Strategy**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200039 with Townsend Public Affairs, Inc., for an ongoing tailored legislative and funding advocacy strategy, increasing the contract amount by \$72,000, for an amount not-to-exceed \$117,000, and extending the contract from December 31, 2022 to December 31, 2023.

**Financial Implications:** General Fund - \$72,000

Contact: Paul Buddenhagen, City Manager's Office, (510) 981-7000

**7. Contract No. 32100186 Amendment: Mildred Howard Public Art Commission for Adeline Street and Martin Luther King Jr. Way**

**From:**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100186 with artist Mildred Howard in order to increase the size of the public art commission "Untitled" to 11' tall as directed by the Civic Arts Commission. The art work is slated to be installed in the triangular green space on the northern side of the intersection of Adeline Street and Martin Luther King Jr. Way. The artwork budget is to increase by \$144,000 for a total contract amount not to exceed \$354,000.

**Financial Implications:** Cultural Trust Fund - \$144,000

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

**8. Renewal of the Solano Avenue BID for Calendar Year 2023**

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the Solano Avenue Business Improvement District Advisory Board's (hereafter "Solano BID Advisory Board" or "the Advisory Board") recommendation that Council: 1) approve the 2022 Annual Report and preliminary budget on proposed improvements in the District for calendar year 2023; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2023; and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for November 29, 2022.

**Financial Implications:** See report

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

**9. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on November 3, 2022**

**From: City Manager**

**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

**Financial Implications:** Various Funds - \$75,000

Contact: Henry Oyekanmi, Finance, (510) 981-7300

## Consent Calendar

- 10. Contract: Restoration Family Counseling Center for Counseling, Education and Support**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to enter into a contract with Restoration Family Counseling Center Inc. (RFCC) for counseling, education and support, for a total amount not to exceed \$80,000 from December 1, 2022 through November 30, 2024.  
**Financial Implications:** See report  
Contact: David Sprague, Fire, (510) 981-3473
- 11. Contract No. 32200227 Amendment: Fire Aside for Mobile Vegetation Management Inspection Software**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200227 Mobile Vegetation Management Inspection Software for the Fire Department (Department); increasing the contract amount by \$100,000 for an amended total contract amount not to exceed \$260,000.  
**Financial Implications:** See Report  
Contact: David Sprague, Fire, (510) 981-3473
- 12. Contract No. 32200083 Amendment: Ganey Scientific for Project Management & Consulting**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200083 project management and consulting services for the Fire Department (Department); increasing the contract amount by \$500,000 for an amended total contract amount not to exceed \$1.4 million.  
**Financial Implications:** See report  
Contact: David Sprague, Fire, (510) 981-3473
- 13. Purchase Order: Bauer Compressors Inc. for Self-Contained Breathing Apparatus and Related Accessories**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to issue purchase orders with Bauer Compressors Inc. using the General Services Agency's (GSA) contract No. EE08-19 for an amount not to exceed \$1.7 million through July 31, 2023 for the purchase of self-contained breathing apparatus (SCBA) and related accessories.  
**Financial Implications:** UC Settlement Fund - \$1.7 million  
Contact: David Sprague, Fire, (510) 981-3473

## Consent Calendar

### 14. Revenue Contracts: Fiscal Year 2023 Aging Services Programs

**From: City Manager**

**Recommendation:** Adopt five Resolutions authorizing the City Manager or her designee to execute any resultant revenue agreements and amendments with Alameda County to provide congregate and home-delivered meals, family caregiver support, senior center activities and information and assistance services to seniors for the following programs for Fiscal Year 2023 (FY 2023):

- a. Congregate Meals in the amount of \$40,000;
- b. Home Delivered Meals in the amount of \$84,000;
- c. Family Caregiver Support Program in the amount of \$41,383;
- d. Senior Center Activities in the amount of \$30,000; and
- e. Information and Assistance Services in the amount of \$100,000.

**Financial Implications:** See report

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

### 15. Contract No. 32000240 Amendment: Berkeley Unified School District (BUSD) for Mental Health MHSA-Funded Programs

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000240 with Berkeley Unified School District (BUSD) to provide Mental Health Services Act (MHSA) funded programs in local schools through June 30, 2023 in an amount not to exceed \$1,394,167. This amendment will add \$401,389 in funding to the contract in order to continue three mental health programs for an additional year and add a fourth for the same time period.

**Financial Implications:** See report

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

### 16. Greater Bay Area Regional Partnership Workforce, Education and Training Grant – California Mental Health Services Authority

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to enter into a Participation Agreement and any amendments with the California Mental Health Services Authority (CalMHSA) for the Greater Bay Area (GBA) Regional Partnership Workforce, Education and Training (WET) Grant, and to allocate local Mental Health Services Act (MHSA) funds in an amount not to exceed \$42,609, through June 30, 2025.

**Financial Implications:** See report

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

## Consent Calendar

- 17. Fiscal Year 2023 Meals on Wheels of Alameda County Donations for the Berkeley Meals on Wheels Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution accepting donations, totaling approximately \$175,000, for the Berkeley Meals on Wheels Program from the Meals on Wheels of Alameda County (MOWAC) agency, for Fiscal Year 2023 (FY 2023).  
**Financial Implications:** See report  
Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400
- 18. Contract: Robert Half International/Protiviti for Professional Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to increase spending authority with Robert Half International/Protiviti for professional services in support of the following City Departments: Fire (Administration, Prevention, Wildland Urban Interface, Emergency Medical Services and Training), Human Resources, and Information Technology in the Fiscal Year (FY) 2023 using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an annual increase not to exceed \$750,000 through June 30, 2023.  
**Financial Implications:** Various Funds - \$750,000  
Contact: Donald E. Ellison, Human Resources, (510) 981-6800
- 19. Contract No. 32000281 Amendment: ConvergeOne for on-site Avaya Administration, Maintenance and Support**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32000281 to increase the spending authority with ConvergeOne (previously named Integration Partners), for Avaya on-site administration and maintenance, increasing the amount by \$165,000 for a total not to exceed amount of \$892,821, from July 1, 2020 to June 30, 2024.  
**Financial Implications:** IT Cost Allocation Fund - \$165,000  
Contact: Kevin Fong, Information Technology, (510) 981-6500
- 20. Contract No. 32000223 Amendment: Gray Quarter, Inc. for Accela Professional Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32000223 with Gray Quarter, Inc. for professional services, increasing the amount by \$50,000, for a total not-to-exceed amount of \$299,500 through December 31, 2023.  
**Financial Implications:** IT Cost Allocation Fund - \$50,000  
Contact: Kevin Fong, Information Technology, (510) 981-6500



## Consent Calendar

- 21. Adoption of Berkeley Building Codes, including Local Amendments to California Building Standards Code**  
**From: City Manager**  
**Recommendation:**  
1. Adopt first reading of an Ordinance repealing and reenacting the Berkeley Building, Residential, Electrical, Mechanical, Plumbing, Energy, and Green Building Standards Codes in BMC Chapters 19.28, 19.29, 19.30, 19.32, 19.34, 19.36 and 19.37, and adopting related procedural and stricter provisions; and schedule a Public Hearing for the second reading on November 29, 2022 pursuant to state law; and  
2. Adopt a Resolution setting forth findings of local conditions that justify more stringent regulations than those provided by the 2022 California Building Standards Code, and rescinding Resolution No. 69,170-N.S.  
**Financial Implications:** See report  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 22. Re-enactment of the Berkeley Housing Code; Repealing Chapter 12.48 and Repealing and Re-enacting Chapter 19.40**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance repealing Berkeley Municipal Code (BMC) Chapter 12.48 (Residential Rental Housing Safety Program), and repealing and re-enacting BMC 19.40 (Berkeley Housing Code), incorporating BMC Chapter 12.48 into BMC Chapter 19.40; and schedule a Public Hearing for the second reading on November 29, 2022, pursuant to state law.  
**Financial Implications:** None  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 23. Revenue Grant Contract: Fiscal Year 2022-23 Alcoholic Beverage Control Grant**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager and/or Chief of Police, to execute a grant contract and any subsequent amendments with the State of California Department of Alcoholic Beverage Control (ABC) in the amount of \$72,449 for one fiscal year, July 1, 2022 through June 30, 2023.  
**Financial Implications:** Alcoholic Beverage Control Fund - \$72,449 (grant)  
Contact: Jennifer Louis, Police, (510) 981-5900
- 24. Reappointment of Andrea Prichett and Edward Opton to the Mental Health Commission**  
**From: Mental Health Commission**  
**Recommendation:** Adopt a Resolution approving the re-appoint Andrea Prichett to the Mental Health Commission, as representative of the general public interest category, for a second- three-year term beginning November 4, 2022 and ending November 3, 2025. And re-appoint Edward Opton as a representative of the general public interest category, for his first term ending January 21, 2023 and his second-term beginning January 22, 2023 to January 21, 2026.  
**Financial Implications:** None  
Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400

## Council Consent Items

- 25. Referral to Conduct an Automatic Traffic Calming Review for the Area Immediately Surrounding the Project at 1201-1205 San Pablo Avenue**  
**From: Councilmember Kesarwani (Author)**  
**Recommendation:** Refer to the City Manager to conduct an automatic traffic calming review for the area immediately surrounding the streets of the project located at 1201-1205 San Pablo Avenue within six (6) months of the building's occupancy reaching 90 percent of its capacity with the intent of expediting the traffic calming process for neighbors impacted by the development of this project. The traffic calming review should include the following intersections: Gilman and Kains; Gilman and Stannage; Harrison and San Pablo; Harrison and Kains; Harrison and Stannage.  
**Financial Implications:** See report  
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110
- 26. Budget Referral: Down Payment Assistance (DPA) and Closing Cost Assistance Revolving Loan Fund Pilot**  
**From: Councilmember Taplin (Author), Councilmember Harrison (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Refer to the budget process \$500,000 for a local Down Payment Assistance (DPA) and Closing Cost Assistance Revolving Loan Fund Pilot Program, providing third-lien shared appreciation loans (SALs) to cover down payments and closing costs for qualifying applicants in a racial equity and reparative justice framework consistent with regulations for local, state, federal, and nonprofit DPA programs including, but not limited to: California Dream For All (CalHFA), AC Boost (Alameda County), Community Seconds (Fannie Mae), and Black Wealth Builders Fund. The City should aim spend no more than 10-20% on administrative costs if existing resources are insufficient.  
**Financial Implications:** See report  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 27. Budget Referral: No Right on Red Signs**  
**From: Councilmember Taplin (Author), Councilmember Wengraf (Co-Sponsor)**  
**Recommendation:** That the City Council refers to the City Manager the implementation of "No Right on Red" signs to all intersections with traffic lights. Refer the necessary appropriations of \$135,000 to the 2022 November Annual Appropriations Ordinance.  
**Financial Implications:** See report  
Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120
- 28. Budget Referral: Commitment to La Peña Cultural Center**  
**From: Councilmember Bartlett (Author), Mayor Arreguin (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Refer to the AAO#1 Budget Process \$150,000 to support the recovery and renovations of La Peña Cultural Center, a cultural hub and historic community building space within the city of Berkeley.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

## Council Consent Items

- 29. Budget Referral: Commitment to the Completion of Affordable Housing at 1638 Stuart Street**  
**From: Councilmember Bartlett (Author), Mayor Arreguin (Author), Councilmember Harrison (Co-Sponsor), Councilmember Hahn (Co-Sponsor)**  
**Recommendation:** Refer to the AAO#1 Budget Process \$50,000 to support the Completion of Affordable Housing at 1638 Stuart Street so it can complete exterior renovations and continue to provide eight units of permanently affordable housing for households earning less than 80% of area median income.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 30. Resolution and Referral Supporting Local Implementation of SB 379: Online Instant Solar Permitting Process For Residential Solar And Solar-Plus-Storage Energy Systems**  
**From: Councilmember Harrison (Author), Councilmember Hahn (Co-Sponsor), Mayor Arreguin (Co-Sponsor)**  
**Recommendation:**  
1. Adopt Resolution supporting local implementation of SB 379 requiring cities to adopt online instant solar permitting process for residential solar and solar-plus-storage energy systems; and  
2. Refer to the City Manager and Planning Department, consistent with SB 379 and climate goals, to explore and move swiftly to apply for applicable grants and implement automated solar permitting platforms to reduce permit review time for solar energy and battery storage systems.  
**Financial Implications:** See report  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Action Calendar

*The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.*

*The Presiding Officer will request that persons wishing to speak use the "raise hand" function to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

*Action items may be reordered at the discretion of the Chair with the consent of Council.*

## Action Calendar

- 31. Harriet Tubman Terrace Tenant Support** *(Continued from October 11, 2022)*  
**From: Housing Advisory Commission**  
**Recommendation:** Recommend City Council take the following actions:  
-Review the video created by tenants about conditions at Harriet Tubman Terrace that was shown at the July 7, 2022 Housing Advisory Commission meeting;  
-Direct the City Manager to investigate health and safety violations and other grievances identified by tenants at Harriet Tubman Terrace; and  
-City Council request Harriet Tubman Terrace provide tenants with a dedicated tenant advocate to assist with relocation and other needs.  
**Financial Implications:** See report  
Contact: Mike Uberti, Commission Secretary, (510) 981-7400
- 32. Resolution Accepting the Annual Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, Unmanned Aerial Vehicles and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, Unmanned Aerial Vehicles (UAV's) and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code.  
**Financial Implications:** None  
Contact: Jennifer Louis, Police, (510) 981-5900; Liam Garland, Public Works, (510) 981-6300; LaTanya Bellow, City Manager's Office, (510) 981-7000

## Action Calendar – Public Hearings

*Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak use the "raise hand" function to be recognized and to determine the number of persons interested in speaking at that time.*

*Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.*

*Each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.*

- 33. ZAB Appeal: 2018 Blake Street, Use Permit #ZP2021-0095** *(Continued from October 11, 2022)*  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0095 to construct a six-story, multi-family residential building with 12 units (including two Low-Income units), and dismiss the appeal.  
**Financial Implications:** None  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Action Calendar

- 34. ZAB Appeal: 1643-1647 California Street, Use Permit #ZP2021-0001**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0001 to: 1) create a new lower basement level, 2) construct a new second story, and 3) modify the existing duplex layout resulting in a 3,763 square foot duplex on an existing property, and dismiss the appeal.  
**Financial Implications:** None  
Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Action Calendar

- 35. Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**  
*(Continued from October 11, 2022) (Item contains revised material)*  
**From: Commission on Labor**  
**Recommendation:** Adopt first reading of the proposed Fair Workweek Ordinance, adding Berkeley Municipal Code Chapter 13.102.  
**Financial Implications:** See report  
Contact: Margot Ernst, Commission Secretary, (510) 981-5400
- 36. Recommendation on Climate, Building Electrification, and Sustainable Transportation Budget Priorities for Fiscal Year 2023 and 2024** *(Reviewed by the Budget & Finance Committee)*  
**From: Energy Commission**  
**Recommendation:** The Energy Commission recommends that the Berkeley City Council prioritize and include in the City's budget for the Fiscal Years Ending (FYE) 2023 and 2024 several staff positions, pilot projects, investments in electric vehicles and charging infrastructure, and other measures to ensure that the City's budget is aligned with and provides adequate and needed funding to implement the City's adopted Climate Action Plan, Electric Mobility Roadmap, Building Emissions Saving Ordinance, 2019 ban on gas in new construction, and the Existing Buildings Electrification Strategy.  
*Policy Committee Recommendation: No action was taken by the Budget & Finance Committee. Item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.*  
**Financial Implications:** See report  
Contact: Billi Romain, Commission Secretary, (510) 981-7400

## Information Reports

- 37. Fiscal Year (FY) 2023 Civic Arts Grant Awards**  
**From: City Manager**  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

## Information Reports

- 38. Fire Prevention Inspections Audit Status Report**  
**From: City Manager**  
Contact: David Sprague, Fire, (510) 981-3473
- 39. Update: HR Response: Audit Directive(s) for Comprehensive Domestic Violence Policy to Support City Employees**  
**From: City Manager**  
Contact: Donald E. Ellison, Human Resources, (510) 981-6800
- 40. LPO NOD: 2065 Kittredge Street/#LMSAP2021-0004**  
**From: City Manager**  
Contact: Jordan Klein, Planning and Development, (510) 981-7400
- 41. Audit Status Report: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress towards the Year 2020 Zero Waste Goal**  
**From: City Manager**  
Contact: Liam Garland, Public Works, (510) 981-6300
- 42. Audit Status Report: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity**  
**From: City Manager**  
Contact: Liam Garland, Public Works, (510) 981-6300
- 43. Audit Status Report – Lease Audit: Conflicting Directives Hinder Contract Oversight**  
**From: City Manager**  
Contact: Liam Garland, Public Works, (510) 981-6300
- 44. Audit Status Reports: Fleet Replacement Fund Short Millions & Rocky Road: Berkeley Streets At Risk and Significantly Underfunded**  
**From: City Manager**  
Contact: Liam Garland, Public Works, (510) 981-6300
- 45. Audit Recommendation Status -Data Analysis of the City of Berkeley's Police Response**  
**From: City Manager**  
Contact: Jennifer Louis, Police, (510) 981-5900
- 46. Audit Recommendation Status - 911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale**  
**From: City Manager**  
Contact: Jennifer Louis, Police, (510) 981-5900

## Public Comment – Items Not Listed on the Agenda

# Adjournment

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance 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 use permit or variance, 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.*

Archived indexed video streams are available at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the 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 to the City Clerk Department at 2180 Milvia Street. 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 Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <https://berkeleyca.gov/>.

Agendas and agenda reports may be accessed via the Internet at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

and may be read at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor  
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901  
Email: [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info)

Libraries: Main – 2090 Kittredge Street,  
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,  
North Branch – 1170 The Alameda, South Branch – 1901 Russell

## COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.



Captioning services are provided at the meeting, on B-TV, and on the Internet.

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*I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on October 20, 2022.*



Mark Numainville, City Clerk

## **Communications**

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through [Records Online](#).*

### **Item #31: Harriet Tubman Terrance Tenant Support**

1. Darinxoso Oyamasela
2. Elaine Bloom

### **Item #34: ZAB Appeal: 1643-1647 California Street, Use Permit: #ZP2021-0001**

3. Sunny Grewal, on behalf of studio g+s Architects

### **Item #35: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102**

4. Francisco De Sena

### **Measure L**

5. Joel Libove
6. Finance Department

### **Crime**

7. David Lerman (3)
8. Terrence Regan
9. Barbara Gilbert
10. Brian Edquist
11. Bryce Nesbit

### **Pedestrian Safety**

12. David Lerman
13. Naren Dev

### **SPARK RV Site**

14. Diana Bohn (2)

### **Parking and Traffic Issues**

15. Barbara Gilbert



**IKE Kiosks**

- 16. Cielo Rios, on behalf of Emerson Elementary (2)
- 17. Jeffrey Church
- 18. Kieron Slaughter, Chief Strategist, Economic Innovation

**Residential Zoning Changes**

- 19. Bruce Feingold

**1201-1205 San Pablo Development**

- 20. Yvette Bozzini (2)

**Codornices Creek Issue – Homeless Disturbed People**

- 21. Friends of Five Creeks (2)
- 22. Thomas Williams
- 23. Brian Beall

**Thoughts of Global Safety and People's Park**

- 24. Peter Bruce DuMont

**Scooters on Sidewalks**

- 25. Kathleen Krier

**Adeline Redesign**

- 26. Scott Owades
- 27. Igor Tregub
- 28. Teresa Clarke
- 29. John Givens
- 30. Pablo Diaz-Gutierrez
- 31. Aaron Foxworthy

**Parking Rates at City Garages**

- 32. Zipporah Collins

**Finn Hall**

- 33. Phil Allen

**Urban Heat Island, Dark Surfaces, Extreme Heat Events**

- 34. Kelly Hammargren

**City Clean Up Idea**

- 35. Crystal Ngo

**Chinese Berkeleyans and Civic Center Park**

- 36. Richard Schwartz

**Unable to Pay Rent**

- 37. Kenneth Melson

### **Okinawa Requesting Support**

38. Diana Bohn

### **Hopkins Corridor**

39. Alan Jencks

40. Dorothea Dorenz

41. Lauren Moore

42. Mary Lai

### **Berkeley Housing Element Draft Environmental Impact Report**

43. Adolfo Cabral

44. Walter Wood

### **Day to Night Festival Noise Complaint**

45. Heather Way

46. Kelly Zito

47. Cressy

### **People's Park**

48. Chrissy Hoffman

49. Max Ventura

### **Downtown Parking**

50. Kenneth Stein

### **Supplemental Communications and Reports**

*Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.*

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**  
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**  
Available by 5:00 p.m. two days following the meeting.

ORDINANCE NO. 7,837-N.S.

ADDING A NEW CHAPTER 13.09 TO THE BERKELEY MUNICIPAL CODE  
PROHIBITING DISCRIMINATORY REPORTS TO LAW ENFORCEMENT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Berkeley Municipal Code Chapter 13.09 is added to read as follows:

**Chapter 13.09  
Discriminatory Reports to Law Enforcement**

**Sections:**

**13.09.010 Findings and Purpose.**

**13.09.020 Discriminatory Reports to Law Enforcement Prohibited.**

**13.09.030 Civil Cause of Action.**

**13.09.040 Undertaking for the General Welfare.**

**13.09.050 Severability.**

**13.09.010 Findings and Purpose.**

The Council finds and expressly declares as follows:

- A. There have been numerous incidents across the country involving individuals contacting law enforcement to report innocuous behavior as suspicious, or to falsely report alleged criminal behavior, for what appear to be solely discriminatory reasons. Discriminatory law enforcement reports against people of color for racially motivated reasons are common enough that many people of color have experienced one or more incident of being contacted by law enforcement when engaging in normal day-to-day activities. These incidents cause serious harm to the person falsely accused of a crime, cause anxiety and distrust among people of color, and put an unnecessary strain on law enforcement officers responding to frivolous and false calls.
- B. The misuse of law enforcement by members of the public to discriminate against others should not be tolerated and the City should take action to stop such behavior in every way possible. Creating a means for people who suffer this kind of discrimination to seek redress from those who have targeted them through a civil cause of action for damages will discourage this type of behavior and provide a tangible way for these victims to be compensated for this wrong.
- C. This ordinance is not intended to discourage individuals from contacting law enforcement when they are facing real danger or desire to report a crime. It will allow individuals who have been reported to law enforcement for unfair and unnecessary reasons to seek justice and restitution, and will motivate people who contact law enforcement to consider the reasons they are making the report.

**13.09.020 Discriminatory Reports to Law Enforcement Prohibited.**

(a) It shall be unlawful to knowingly make a false or frivolous call to police to cause a peace officer to arrive at a location to contact a person, with the primary intent to cause any of the following to occur, on the basis of the person's actual or perceived Protected Attributes:

- (1) Infringe upon the person's rights under either the California Constitution or the United States Constitution;
- (2) Discriminate against the person;
- (3) Cause the person to feel harassed, humiliated, or embarrassed;
- (4) Cause the person to be expelled from a place in which the person is lawfully located;
- (5) Damage the person's reputation or standing within the community; or
- (6) Damage the person's financial, economic, consumer, or business prospects or interests.

(b) For purposes of this Chapter, "Protected Attributes" include race, color, ancestry, ethnicity, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, weight, or height.

#### **13.09.030 Civil Cause of Action.**

(a) Any aggrieved person may enforce the provisions of this Section by means of a civil action.

(1) A person found to have violated Section 13.09.020 (a) in a cause of action under subsection (a) shall be liable to the aggrieved person for special and general damages, but in no case less than \$1,000 plus attorneys' fees and the costs of the action. In addition, punitive damages may be awarded in a proper case.

(2) Nothing in this Section shall preclude any person from seeking any other remedies, penalties, or procedures provided by law.

#### **13.09.040 Undertaking for the General Welfare.**

In enacting and implementing this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

#### **13.09.050 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on October 11, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.



ORDINANCE NO. 7,838-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 23.302.070, 23.204.020, 23.206.020 AND 23.502.020 TO MODIFY THE DEFINITION OF AMUSEMENT DEVICE ARCADES AND MODIFY PERMIT REQUIREMENTS FOR AMUSEMENT ARCADES IN THE COMMERCIAL ZONING DISTRICT AND WHEN INCIDENTAL TO A PERMITTED USE.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23.302.070 B. Amusement Devices Arcade is amended as follows:

**Section 23.302.070 Use-Specific Regulations**

B. Amusement Devices Arcade.

*Incidental Use.* Amusement Devices up to 25 percent of total net floor area of the primary use are allowed as an incidental use with a Zoning Certificate.

Amusement Devices are prohibited in the M Manufacturing District and MM Mixed Manufacturing District.

Section 2. That the line named Amusement Device Arcade in Table 23.204-1, Allowed Uses in Commercial Districts, within Berkeley Municipal Code Section 23.204.020, Allowed Land Uses, is amended as follows:

**Section 23.204.020 Allowed Land Uses - Table 23.204-1, Allowed Uses in Commercial Districts**

|                         |                  |              |
|-------------------------|------------------|--------------|
| Amusement Device Arcade | See 23.204.040.A | 23.302.070.B |
|-------------------------|------------------|--------------|

Section 3. That the line named Amusement Device Arcade in Table 23.206-1, Allowed Uses in the Manufacturing Districts, within Berkeley Municipal Code Section 23.206.020 Allowed Land Uses and Permit Requirements is amended as follows:

**Chapter 23.206.020 Allowed Land Uses - Table 23.206-1, Allowed Uses in the Manufacturing Districts**

|                         |    |    |    |    |              |
|-------------------------|----|----|----|----|--------------|
| Amusement Device Arcade | NP | NP | ZC | ZC | 23.302.070.B |
|-------------------------|----|----|----|----|--------------|

Section 4. That Berkeley Municipal Code Section 23.502.020.A.17 definition of “Amusement Device Arcade” is amended as follows:

**Chapter 23.502.020 Defined Terms**

A. “A” Terms...

17. *Amusement Device Arcade.* A type of commercial recreation center which contains amusement devices in more than 25 percent of the net floor area of the primary use. An amusement device arcade is a type of commercial recreation center irrespective of whether the amusement devices are the principal commercial activity of the establishment.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on October 11, 2022, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Droste, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: Hahn.





Office of the City Attorney

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Farimah Faiz Brown, City Attorney  
Subject: Resolution Reviewing and Ratifying the Proclamation of Local  
Emergency Due to the Spread of a Severe Acute Respiratory Illness  
Caused by a Novel (New) Coronavirus (COVID-19)

RECOMMENDATION

Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, and September 20, 2022.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88, on March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19), including a confirmed case in the City of Berkeley. As a result of multiple confirmed and presumed cases in Alameda County, the County has declared a local health emergency. The Proclamation of Local Emergency empowers the Director of Emergency Services to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such local emergency. Pursuant to Government Code section 8630(b) and Berkeley Municipal Code section

2.88.040.A.1, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312.

Pursuant to Government Code section 8630(c), the City Council must review the need for continuing the local emergency at least once every sixty (60) days. The Council last reviewed and ratified the Proclamation of Local Emergency on May 10, 2022. The Council therefore must review the continuing need for the local emergency by July 9, 2022.

This item requests that the Council review the continued need for the local emergency and again ratify the Proclamation of Local Emergency issued on March 3, 2020, initially ratified by the Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, and September 20, 2022. If reviewed and ratified on November 3, 2022, the Council will need to again review and ratify the proclamation by January 2, 2023 in order to continue the local emergency.

If at any time the Council determines that the need for continuing the local emergency has ended, state law directs the Council to terminate the local emergency at the earliest possible date that conditions warrant. (Cal. Gov. Code section 8630(d).)

#### **BACKGROUND**

On March 1, 2020, Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 3, 2020, the City's Director of Emergency Services proclaimed a local emergency due to the spread of COVID-19, including a confirmed case in the City of Berkeley and multiple confirmed and presumed cases in Alameda County.

On March 10, 2020, the City Council ratified the Proclamation of Local Emergency. Since that date, there have been over 4,955 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley.

Since April 2021, the highly transmissible SARS-CoV-2 B.1.617.2 ("Delta") variant has been detected in the City of Berkeley and is contributing to substantial levels of community transmission.

The City Council has subsequently reviewed and ratified the Proclamation of Local Emergency on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, and September 20, 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

RATIONALE FOR RECOMMENDATION

The Resolution would enable the Director of Emergency Services to continue to efficiently allocate resources due to the ongoing and imminent threat to public safety.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dee Williams-Ridley, City Manager, City Manager's Office (510) 981-7000

Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998

Attachments:

1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION REVIEWING AND RATIFYING THE PROCLAMATION OF LOCAL EMERGENCY

WHEREAS, the Emergency Services Act, Government Code sections 8558(c) and 8630 authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a city exist; and

WHEREAS, pursuant to Government Code section 8630, such an emergency may be proclaimed by the governing body or by an official designated by ordinance adopted by the governing body; and

WHEREAS, Berkeley Municipal Code section 2.88.040 provides that the City Manager, serving as the Director of Emergency Services, may request that the City Council proclaim the existence of a local emergency; and

WHEREAS, under provision of local law, if the City Council cannot be convened and, in the judgment of the Director of Emergency Services, the circumstances warrant it, a proclamation of local emergency may be issued which must be ratified or nullified by the City Council within seven days of issuance; and

WHEREAS, in accordance with authority granted under the above provisions of state and local law, the Director of Emergency Services beginning on March 3, 2020 did proclaim the existence of a local emergency caused by epidemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (“COVID-19”), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

WHEREAS, Government Code section 8630(c) requires that the City Council review the need for continuing the local emergency at least once every sixty (60) days; and

WHEREAS, the City Council subsequently reviewed the need for continuing the local emergency and again ratified the Proclamation of Local Emergency on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, and September 20, 2022; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include over 13,000 confirmed cases of COVID-19 and at least 61 deaths in the City of Berkeley, thereby warranting and necessitating the continuation of the local emergency; and

WHEREAS, the City Council will need to again review the need for continuing the local emergency and ratify the Proclamation of Local Emergency by August 27, 2022;

WHEREAS, the City Council recognizes that the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease; and

WHEREAS, on July 16, 2021, in light of the apparent increased transmissibility of the Delta variant, the City of Berkeley recommended that all individuals including fully vaccinated persons wear masks in public indoor settings; and

WHEREAS, on July 26, 2021, the California State Health Officer issued an order requiring vaccination or routine testing of all employees working in high-risk health care and congregate settings, in light of the fact that current requirements of staff in health care settings, such as universal mask requirements for all staff are not proving sufficient to prevent transmission of the more transmissible Delta variant; and

WHEREAS, on July 27, 2021, the CDC updated its guidance for fully vaccinated persons to reflect new evidence regarding the Delta variant, noting that “[i]nfections in fully vaccinated people (breakthrough infections) happen in only a small proportion of people who are fully vaccinated, even with the Delta variant”; and

WHEREAS, on August 2, 2021, the Health Officer for the City of Berkeley issued an order requiring all individuals to wear masks in all indoor public settings; and

WHEREAS, on August 5, 2021, the California State Health Officer issued an order requiring that workers in healthcare settings be fully vaccinated by September 30, 2021; and

WHEREAS, on August 11, 2021, the City announced its intention to implement a vaccination policy for City employees to protect the health and safety of the City of Berkeley’s employees and community members from the imminent and substantial threat to public health and safety posed by the Delta variant; and

WHEREAS, on September 14, 2021, given the increased and unforeseen risk posed by the Delta variant, as compared to earlier variants of the COVID-19 virus previously present in the City of Berkeley, the City Council found that a Citywide vaccination policy protects public health and reduces the risk of substantial harm to City staff and community members that could result from workplace outbreaks caused by the Delta variant; and

WHEREAS, on September 14, 2021, given the urgency posed by the highly transmissible nature of the Delta variant, the City Council recognized the variant’s existence as creating an emergency of grave character and as warranting immediate adoption of a Citywide vaccination policy.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that it is hereby proclaimed and ordered that the Proclamation of Local Emergency, issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the City Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, and September 20, 2022, has been reviewed and is hereby again ratified and confirmed.

BE IT FURTHER RESOLVED that during the existence of this local emergency the powers, functions, and duties of the emergency organization of this City shall be those prescribed by state law, and the Charter, ordinances, resolutions and approved plans of the City of Berkeley.



Office of the City Attorney

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council  
Madame City Manager

From: Farimah Faiz Brown, City Attorney

Subject: Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RECOMMENDATION

Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, May 31, 2022, June 28, 2022, July 26, 2022, August 23, 2022, September 20, 2022, and October 11, 2022.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

The City Council made the initial findings required under the Government Code on September 28, 2021. The Council must make the findings every thirty days in order to continue to meet exclusively through video conference or teleconference.

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88.040, on March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19), including a confirmed case in the City of Berkeley. As a result of multiple confirmed and presumed cases in Alameda County, the County has declared a local health emergency. On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19. On March 10, 2020, the City

Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20, which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) related to the holding of teleconferenced meetings by City legislative bodies. Among other things, Executive Order N-29-20 suspended requirements that each location from which an official accesses a teleconferenced meeting be accessible to the public. These changes were necessary to allow teleconferencing to be used as a tool for ensuring social distancing. City legislative bodies have held public meetings via videoconference and teleconference pursuant to these provisions since March 2020. These provisions of Executive Order N-29-20 will expire on September 30, 2021.

COVID-19 continues to pose a serious threat to public health and safety. There are now over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley. Additionally, the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease.

As a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination. Holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time

Assembly Bill 361 (Rivas), signed into law by Governor Newsom on September 16, 2021, amended a portion of the Brown Act (Government Code Section 54953) to authorize the City Council, during the state of emergency, to determine that, due to the spread of COVID-19, holding in-person public meetings would present an imminent risk to the health or safety of attendees, and therefore City legislative bodies must continue to meet via videoconference and teleconference. Assembly Bill 361 requires that the City Council must review and ratify such a determination every thirty (30) days. Therefore, if the Council passes this resolution on November 3, 2022, the Council will need to review and ratify the resolution by December 3, 2022.

This item requests that the Council review the circumstances of the continued state of emergency posed by the spread of COVID-19, and find that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination. This item further requests that the Council determine that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference



and teleconference, and that City legislative bodies shall continue to comply with all provisions of the Brown Act, as amended by SB 361.

#### BACKGROUND

On March 1, 2020, Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 3, 2020, the City's Director of Emergency Services proclaimed a local emergency due to the spread of COVID-19, including a confirmed case in the City of Berkeley and multiple confirmed and presumed cases in Alameda County.

On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19.

On March 10, 2020, the City Council ratified the Proclamation of Local Emergency. Since that date, there have been over 4,700 confirmed cases of COVID-19 and at least 57 deaths in the City of Berkeley.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20 which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) to allow teleconferencing of public meetings to be used as a tool for ensuring social distancing. As a result, City legislative bodies have held public meetings via teleconference throughout the pandemic. The provisions of Executive Order N-29-20 allowing teleconferencing to be used as a tool for social distancing will expire on September 30, 2021.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

#### RATIONALE FOR RECOMMENDATION

The Resolution would enable the City Council and its committees, and City boards and commissions to continue to hold public meetings via videoconference and teleconference in order to continue to socially distance and limit the spread of COVID-19.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998  
Mark Numainville, City Clerk, (510) 981-6908

Attachments:1: Resolution Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RESOLUTION NO. –N.S.

RESOLUTION MAKING THE REQUIRED FINDINGS PURSUANT TO GOVERNMENT CODE SECTION 54953(E)(3) AND DIRECTING CITY LEGISLATIVE BODIES TO CONTINUE TO MEET VIA VIDEOCONFERENCE AND TELECONFERENCE

WHEREAS, in accordance with Berkeley Municipal Code section 2.88.040 and sections 8558(c) and 8630 of the Government Code, which authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a City exist, the City Manager, serving as the Director of Emergency Services, beginning on March 3, 2020, did proclaim the existence of a local emergency caused by epidemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (“COVID-19”), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency pursuant to the California Emergency Services Act, in particular, Government Code section 8625; and

WHEREAS, the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020 continues to be in effect; and

WHEREAS, on September 16, 2021, Governor Newsom signed into law AB 361, which authorizes the City Council to determine that, due to the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley; and

WHEREAS, the City Council recognizes that the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease; and

WHEREAS, as a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination; and

WHEREAS, holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time; and

WHEREAS, the City Council made the initial findings required by the Government Code on September 28, 2021; and

WHEREAS, the City Council made subsequent findings required by the Government Code on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, May 31, 2022, June 28, 2022, July 26, 2022, August 23, 2022, September 20, 2022, and October 11, 2022; and

WHEREAS, the City Council will need to again review the need for the continuing necessity of holding City legislative body meetings via videoconference and teleconference by December 3, 2022.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that, pursuant to Government Code section 54953, the City Council has reviewed the circumstances of the continued state of emergency posed by the spread of COVID-19, and finds that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination.

BE IT FURTHER RESOLVED that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference.

BE IT FURTHER RESOLVED that all City legislative bodies shall comply with the requirements of Government Code section 54953(e)(2) and all applicable laws, regulations and rules when conducting public meetings pursuant to this resolution.





City Clerk Department

CONSENT CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Mark Numainville, City Clerk  
 Subject: 2022 Annual Commission Attendance and Meeting Frequency Report

RECOMMENDATION

Review and accept the 2022 annual commission attendance and meeting frequency report.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Each year, Berkeley's commissions prepare an annual attendance report for submittal to Council. These reports include the number of meetings, meeting cancellations, commissioners in attendance, length of meetings, number of speakers, and members of the public present. The reports also reflect the number of vacant positions on the commission as of August 31, 2022.

Due to the Shelter-in-Place order necessitated by the COVID-19 pandemic, most commissions ceased or greatly scaled back their activities in March of 2020. During the pandemic, commissions met virtually only if they had time-sensitive, legally-mandated business to complete. This policy was adopted on March 17, 2020, by Resolution No. 69,331-N.S., ratifying the City Manager's direction limiting the meetings of city legislative bodies in order to maintain staff resources to address the pandemic.

Resolution No. 69,331-N.S. divided commissions into two categories, depending on their meeting the criteria of having time-sensitive, legally mandated business to complete. The meeting activity for the reporting period of September 1, 2021, through August 31, 2022, has been broken down by category below. Most of those commissions meeting the criteria set by Resolution No. 69,331-N.S. began meeting regularly in the summer of 2020.

Category A

These commissions resumed or began meeting virtually after the initial Shelter-in-Place to meet their legal obligations.

| <b>Commission</b>                  |
|------------------------------------|
| Design Review Committee            |
| Fair Campaign Practices Commission |
| Housing Advisory Commission        |
| Landmarks Preservation Commission  |
| Open Government Commission         |
| Personnel Board                    |
| Planning Commission                |
| Police Accountability Board        |
| Zoning Adjustments Board           |

Category B

Requests by these commissions to meet during the pandemic were accommodated on a case-by-case basis by the City Manager.

| <b>Commission</b>                                 |
|---------------------------------------------------|
| Cannabis Commission                               |
| Civic Arts Commission                             |
| Commission on Aging                               |
| Commission on Disability                          |
| Commission on Labor                               |
| Commission on the Status of Women                 |
| Community Health Commission                       |
| Disaster and Fire Safety Commission               |
| Elmwood BID Advisory Board                        |
| Environment and Climate Commission                |
| Homeless Services Panel of Experts                |
| Human Welfare and Community Action Commission     |
| Loan Administration Board                         |
| Mental Health Commission                          |
| Parks, Recreation and Waterfront Commission       |
| Peace and Justice Commission                      |
| Solano Avenue BID Advisory Board                  |
| Sugar-Sweetened Beverage Product Panel of Experts |
| Transportation and Infrastructure Commission      |
| Youth Commission                                  |
| Zero Waste Commission                             |

## BACKGROUND

On June 14, 2005, the City Council discussed the reduction of commission meetings as a cost-savings measure, and adopted a proposal which created three categories of commission meeting schedules, a process for requesting Council approval of any extra meetings, direction to commission secretaries to submit an information report whenever a commission cancels two consecutive meetings for lack of quorum, and an annual attendance report. Council adopted Resolution No. 63,949–N.S. on January 15, 2008, which updated the commission meeting frequency schedule to include a fourth category of meeting frequency. On December 11, 2018, Council adopted Resolution No. 68,705–N.S., which changed the reporting period from November through October to September through August to allow commissions sufficient time to set their schedules for the following year. On March 17, 2020, Resolution No. 69,331–N.S. ratified the City Manager’s direction limiting the meetings of city legislative bodies in order to maintain staff resources to address the pandemic.

Some of the reports also reflect the reorganization of commissions that occurred in 2021 and 2022.

On September 28, 2021, the Council adopted Ordinance 7,782–N.S. which amended the enabling legislation of the Housing Advisory Commission to include the oversight of Measure O bond-funded housing initiatives.

On December 14, 2021, the Council adopted Ordinance 7,794–N.S. establishing the Parks, Recreation, and Waterfront Commission and dissolving three commissions, the Parks and Waterfront Commission, the Children, Youth, and Recreation Commission, and the Berkeley Animal Care Commission.

On January 18, 2022, the Council adopted Ordinance No. 7,796–N.S. establishing the Environment and Climate Commission and dissolving two commissions, the Berkeley Energy Commission and the Community Environmental Advisory Commission.

On May 31, 2022, the Council adopted Ordinance No. 7,814–N.S. which amended the enabling legislation of the Homeless Services Panel of Experts and dissolved the Homeless Commission.

On June 14, 2022, the Council adopted Resolution No. 70,410–N.S. establishing the Transportation and Infrastructure Commission and dissolving two commissions, the Transportation Commission and the Public Works Commission, effective June 30, 2022.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

Staff availability for board and commission support during the ongoing emergency may be periodically reassessed by the City Manager, the Health Officer, and department heads.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

- 1: 2022 Annual Commission Attendance Reports
  - 1a. Category A Commissions
  - 1b. Category B Commissions
- 2: 2022 Approved Leaves of Absence by Commission Report



# 2021 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>0</u><br>(as of August 31, 2021) |
|---------------------------------------------------|

**Commission:** Design Review Committee

**Commission Secretary:** Anne Burns

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/16/21                |                                      | 6 of 7                | 6              | 6               | 1 hr           |
| 10/21/21               |                                      | 7 of 7                | 11             | 8               | 2.25 hrs       |
| 11/18/21               |                                      | 7 of 7                | 17             | 11              | 2.75 hrs       |
| 12/16/21               |                                      | 7 of 7                | 16             | 7               | 1.75 hrs       |
| 1/20/22                |                                      | 7 of 7                | 15             | 8               | 3.25 hrs       |
| 2/17/22                |                                      | 6 of 7                | 28             | 20              | 3.25 hrs       |
| 3/29/22                |                                      | 5 of 7                | 20             | 16              | 3.25 hrs       |
| 4/21/22                |                                      | 7 of 7                | 21             | 15              | 3.25 hrs       |
| 5/19/22                |                                      | 6 of 7                | 25             | 25              | 4.5 hrs        |
| 6/16/22                |                                      | 6 of 7                | 19             | 8               | 3.25 hrs       |
| 7/21/22                |                                      | 7 of 7                | 7              | 7               | 2.75 hrs       |
| 8/18/22                |                                      | 6 of 7                | 24             | 11              | 2.75 hrs       |
|                        |                                      |                       |                |                 |                |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|                                                           |
|-----------------------------------------------------------|
| Vacant seats: <u>    3    </u><br>(as of August 31, 2022) |
|-----------------------------------------------------------|

**Commission:**     Fair Campaign Practices Commission    

**Commission Secretary:**     Samuel Harvey    

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason   | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|----------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/16/2021              |                                        | 9 of 9                | 2              | 2               | 3 hrs          |
| 10/21/2021             | Yes – slow workflow/no pending matters |                       |                |                 |                |
| 11/18/2021             |                                        | 8 of 9                | 1              | 1               | 1.5 hrs        |
| 1/20/2022              |                                        | 9 of 9                | 1              | 1               | 3.5 hrs        |
| 2/17/2022              | Yes – slow workflow/no pending matters |                       |                |                 |                |
| 3/17/2022              |                                        | 6 of 9                | 1              | 1               | 1.5 hrs        |
| 5/19/2022              | Yes – technical difficulties           |                       |                |                 |                |
| 6/16/2022              |                                        | 6 of 9                | 0              | 0               | 1.5 hrs        |
| 7/21/2022              | Yes – slow workflow                    |                       |                |                 |                |
| 8/25/2022              |                                        | 6 of 7                | 18             | 14              | 2.5 hrs        |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

Vacant seats: \_\_\_\_\_  
(as of August 31, 2022)

**Commission:** Landmarks Preservation Commission

**Commission Secretary:** Fatema Crane

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/2/2021               |                                      | 7 of 9                | 3              | 0               | 1.5 hrs        |
| 10/7/2021              |                                      | 8 of 9                | 14             | 1               | 4 hrs          |
| 11/4/2021              |                                      | 9 of 9                | 23             | 11              | 4.5 hrs        |
| 12/2/2021              |                                      | 8 of 9                | 16             | 19              | 2.75 hrs       |
| 1/6/2022               |                                      | 9 of 9                | 6              | 3               | 3 hrs          |
| 2/3/2022               |                                      | 9 of 9                | 13             | 13              | 3.25 hrs       |
| 3/3/2022               |                                      | 7 of 9                | 12             | 8               | 2.5 hrs        |
| 4/7/2022               |                                      | 8 of 9                | 22             | 7               | 2.5 hrs        |
| 5/5/2022               |                                      | 7 of 8                | 51             | 19              | 3 hrs          |
| 6/2/2022               |                                      | 7 of 9                | 28             | 14              | 4.75 hrs       |
| 7/7/2022               | Yes- staff not available             |                       |                |                 |                |
| 8/4/2022               |                                      | 8 of 9                | 51             | 20              | 4 hrs          |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>3</u><br>(as of August 31, 2022) |
|---------------------------------------------------|

**Commission:** Open Government Commission

**Commission Secretary:** Samuel Harvey

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason   | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|----------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/16/2021              |                                        | 9 of 9                | 2              | 2               | 3 hrs          |
| 10/21/2021             | Yes – slow workflow/no pending matters |                       |                |                 |                |
| 11/18/2021             |                                        | 8 of 9                | 1              | 1               | 1.5 hrs        |
| 1/20/2022              |                                        | 9 of 9                | 1              | 1               | 3.5 hrs        |
| 2/17/2022              | Yes – slow workflow/no pending matters |                       |                |                 |                |
| 3/17/2022              |                                        | 6 of 9                | 1              | 1               | 1.5 hrs        |
| 5/19/2022              | Yes – technical difficulties           |                       |                |                 |                |
| 6/16/2022              |                                        | 6 of 9                | 0              | 0               | 1.5 hrs        |
| 7/21/2022              | Yes – slow workflow/no pending matters |                       |                |                 |                |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>2</u><br>(as of August 31, 2021) |
|---------------------------------------------------|

Commission: PERSONNEL BOARD

Commission Secretary: DONALD ELLISON

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/20                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/21                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 09/07/21               |                                      | 5 of 7                | 10             | 1               | 1.75 hrs       |
| 10/04/21               | Yes – COVID                          |                       |                |                 |                |
| 11/01/21               | Yes – COVID                          |                       |                |                 |                |
| 12/06/21               | Yes – COVID                          |                       |                |                 |                |
| 12/20/21               |                                      | 4 of 7                | 8              | 1               | 1.25 hrs       |
| 01/03/22               | Yes – COVID                          |                       |                |                 |                |
| 02/07/22               |                                      | 5 of 6                | 11             | 2               | 1 hr           |
| 03/07/22               |                                      | 5 of 6                | 5              | 1               |                |
| 04/04/22               |                                      | 6 of 6                | 5              | 1               | 0.75 hrs       |
| 05/09/22               |                                      | 6 of 6                | 7              | 1               | 1 hr           |
| 06/13/22               | Yes – COVID                          |                       |                |                 |                |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

Vacant seats: 0  
(as of August 31, 2022)

Commission: Planning Commission

Commission Secretary: Alene Pearson

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/1/2021               | No.                                  | 9 of 9                | 105            | 47              | 3hr 34 min     |
| 10/6/2021              | No.                                  | 8 of 9                | 27             | 7               | 2hr 35 min     |
| 10/20/2021             | No.                                  | 9 of 9                | 32             | 8               | 1 hr 43 min    |
| 11/3/2021              | No.                                  | 8 of 9                | 107            | 53              | 3 hr 56 min    |
| 12/1/2021              | No.                                  | 7 of 9                | 2              | 0               | 45 min         |
| 1/19/2022              | No.                                  | 9 of 9                | 4              | 1               | 1 hr 7 min     |
| 2/9/2022               | No.                                  | 8 of 9                | 11             | 0               | 1 hr 13 min    |
| 3/2/2022               | No.                                  | 8 of 9                | 24             | 17              | 3 hr 35 min    |
| 4/6/2022               | No.                                  | 9 of 9                | 117            | 53              | 4 hr 46 min    |
| 5/4/2022               | No.                                  | 7 of 9                | 11             | 3               | 1 hr 54 min    |
| 6/1/2022               | No.                                  | 9 of 9                | 12             | 10              | 2 hr 27 min    |
| 7/6/2022               | No.                                  | 8 of 9                | 7              | 7               | 1 hr 51 min    |
|                        |                                      |                       |                |                 |                |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

Vacant seats: 0  
(as of August 31, 2022)

**Commission:** Police Accountability Board

**Commission Secretary:** No Commission Secretary as of 8-31-2022

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/8/2021               |                                      | 9 of 9                | 27             | 10              | 3.6 hrs        |
| 9/22/2021              |                                      | 9 of 9                | 18             | 7               | 1.8 hrs        |
| 9/29/2021              |                                      | 9 of 9                | 21             | 9               | 3.1 hrs        |
| 10/13/2021             |                                      | 8 of 9                | 17             | 3               | 3.7 hrs        |
| 10/27/2021             |                                      | 9 of 9                | 14             | 4               | 3.1 hrs        |
| 11/10/2021             |                                      | 8 of 9                | 16             | 7               | 3.3 hrs        |
| 11/17/2021             |                                      | 9 of 9                | 10             | 1               | 3.4 hrs        |
| 12/8/2021              |                                      | 8 of 9                | 16             | 9               | 3.9 hrs        |
| 12/7/2021              |                                      | 8 of 9                | 10             | 0               | 2.6 hrs        |
| 1/5/2022               |                                      | 8 of 9                | 6              | 1               | 2.6 hrs        |
| 1/12/2022              |                                      | 9 of 9                | 30             | 14              | 3.4 hrs        |
| 1/26/2022              |                                      | 9 of 9                | 30             | 5               | 2.8 hrs        |
| 2/9/2022               |                                      | 9 of 9                | 30             | 7               | 3.4 hrs        |
| 2/23/2022              |                                      | 8 of 9                | 0              | 0               | 1.2 hrs        |
| 2/23/2022              |                                      | 9 of 9                | 21             | 7               | 2.9 hrs        |
| 3/9/2022               |                                      | 9 of 9                | 20             | 7               | 4.1 hrs        |
| 3/23/2022              |                                      | 8 of 9                | 9              | 4               | 2.8 hrs        |
| 3/30/2022              |                                      | 8 of 9                | 10             | 5               | 2.5 hrs        |
| 4/13/2022              |                                      | 9 of 9                | 16             | 9               | 3.9 hrs        |
| 4/26/2022              | *Yes                                 |                       |                |                 |                |
| 4/27/2022              |                                      | 8 of 9                | 13             | 8               | 2.6 hrs        |
| 5/11/2022              |                                      | 9 of 9                | 17             | 5               | 4.1 hrs        |
| 5/25/2022              |                                      | 8 of 9                | 15             | 8               | 3.9 hrs        |
| 6/8/2022               |                                      | 9 of 9                | 17             | 8               | 4 hrs          |
| 6/22/2022              |                                      | 8 of 9                | 10             | 8               | 2.9 hrs        |
| 6/29/2022              |                                      | 8 of 9                | 1              | 1               | 3.9 hrs        |
| 7/13/2022              |                                      | 8 of 9                | 12             | 9               | 3.8 hrs        |
| 7/20/2022              |                                      | 8 of 9                | 12             | 4               | 3.5 hrs        |



# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|           |  |        |    |   |         |
|-----------|--|--------|----|---|---------|
| 7/27/2022 |  | 8 of 9 | 20 | 7 | 3.2 hrs |
|-----------|--|--------|----|---|---------|

\*The 4-26-2022 regular meeting was cancelled, because there was something coming before Council that night that PAB wanted to comment or present on.

The dates that are highlighted were special meetings.

# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

Vacant seats: \_\_\_\_\_  
(as of August 31, 2022)

**Commission:** Zoning Adjustments Board

**Commission Secretary:** Samantha Updegrave

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/9/2021               |                                      | 9 of 9                | 23             | 22              | 3.75 hrs       |
| 10/14/2021             |                                      | 6 of 9                | 51             | 2               | 0.5 hrs        |
| 10/28/2021             |                                      | 9 of 9                | 36             | 24              | 2.75 hrs       |
| 12/09/2021             |                                      | 9 of 9                | 30             | 15              | 3.5 hrs        |
| 1/13/2022              |                                      | 8 of 9                | 20             | 18              | 3.5 hrs        |
| 2/24/2022              |                                      | 9 of 9                | 19             | 1               | 0.75 hrs       |
| 3/24/2022              |                                      | 8 of 9                | 4              | 0               | 0.5 hrs        |
| 4/28/2022              |                                      | 9 of 9                | 64             | 33              | 5.25 hrs       |
| 5/26/2022              |                                      | 8 of 9                | 36             | 10              | 3 hrs          |
| 6/23/2022              |                                      | 8 of 9                | 39             | 13              | 3.5 hrs        |
| 7/14/2022              |                                      | 7 of 9                | 23             | 9               | 1.5 hrs        |
| 8/11/2022              |                                      | 8 of 8                | 13             | 2               | 0.75 hrs       |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>6</u><br>(as of August 31, 2022) |
|---------------------------------------------------|

**Commission:** Commission on Disability

**Commission Secretary:** Dominika Bednarska until 7/15/22 then Andrew Brozyna

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 09/01/21               |                                      | 3 of 3                | 4              | 3               | 3 hours        |
| 10/06/21               |                                      | 2 of 3                |                |                 | 3 hours        |
| 10/20/21               |                                      | 3 of 3                | 1              |                 | 2.5 hours      |
| 11/03/21               |                                      | 2 of 3                | 1              |                 | 3 hours        |
| 12/08/21               |                                      | 3 of 3                |                |                 | 3 hours        |
| 01/12/22               |                                      | 3 of 3                |                |                 | 1 hour         |
| 01/19/22               |                                      | 3 of 3                |                |                 | 3 hours        |
| 03/02/22               |                                      | 4 of 4                |                |                 | 3 hours        |
| 04/06/22               |                                      | 4 of 4                |                |                 | 2 hours        |
| 05/04/22               | Technical Issues                     | 0                     |                |                 | 0              |
| 05/18/22               |                                      | 3 of 4                |                |                 | 3 hours        |
| 06/01/22               | Technical Issues                     | 0                     |                |                 | 0              |
| 06/22/22               |                                      | 3 of 3                |                |                 | 3 hours        |
| 07/06/22               |                                      | 3 of 3                | 3              | 3               | 3 hours        |
| 08/03/22               |                                      | 2 of 3                |                |                 | 2 hours        |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>6</u><br>(as of August 31, 2022) |
|---------------------------------------------------|

**Commission:** Commission on the Status of Women

**Commission Secretary:** Shallon Allen

**Example:**

| Scheduled Meeting Date | Cancelled? If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|-----------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                   | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                   |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled? If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|-----------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/21                |                                   | 4                     | 0              | 0               | 26min          |
| 10/20/21               | Yes – no quorum                   |                       |                |                 |                |
| 11/17/21               |                                   | 5                     | 1              | 1               | 1hr 21min      |
| 1/19/22                |                                   | 5                     | 3              | 3               | 1hr 34min      |
| 2/16/22                |                                   | 4                     | 2              | 2               | 1hr 54min      |
| 3/16/22                |                                   | 5                     | 1              | 1               | 55min          |
| 4/20/22                | Yes – no quorum                   |                       |                |                 |                |
| 5/18/22                | Yes – no quorum                   |                       |                |                 |                |
| 6/15/22                | Yes – no quorum                   |                       |                |                 |                |
| 8/17/22                |                                   | 4                     | 2              | 2               | 1hr 2min       |



# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>2</u><br>(as of August 31, 2022) |
|---------------------------------------------------|

**Commission: Community Health Commission**

**Commission Secretary:** Roberto Terrones

**Example:**

| Scheduled Meeting Date | Cancelled? If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|-----------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                   | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                   |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled? If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|-----------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/23/2021              | Yes – Covid-19                    |                       |                |                 |                |
| 10/28/2021             | Yes – Covid-19                    |                       |                |                 |                |
| 11/18/2021             | No                                | 12 of 14              | 0              | 0               | 2.0 hrs        |
| 1/27/2022              | No                                | 8 of 14               | 1              | 1               | 2.0 hrs        |
| 2/24/2022              | No                                | 11 of 15              | 1              | 0               | 1.7 hrs        |
| 3/24/2022              | No                                | 10 of 15              | 1              | 0               | 0.97 hrs       |
| 4/28/2022              | No                                | 10 of 15              | 0              | 0               | 1.83 hrs       |
| 5/26/2022              | No                                | 10 of 15              | 0              | 0               | 2.33 hrs       |
| 6/23/2022              | Yes – Commission restructuring    |                       |                |                 |                |
| 7/28/2022              | No                                | 4 of 7                | 0              | 0               | 2.57 hrs       |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|                                                   |
|---------------------------------------------------|
| Vacant seats: <u>1</u><br>(as of August 31, 2022) |
|---------------------------------------------------|

**Commission:** Disaster and Fire Safety Commission

**Commission Secretary:** Keith May

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/22/2021              |                                      | 7 of 8                | 5              | 1               | 2.5 hrs        |
| 10/27/2021             |                                      | 6 of 8                | 9              | 9               | 3.0 hrs        |
| 12/01/2021             |                                      | 6 of 8                | 7              | 7               | 2.0 hrs        |
| 1/26/2022              |                                      | 7 of 8                | 13             | 7               | 2.0 hrs        |
| 2/23/2022              |                                      | 6 of 7                | 12             | 7               | 2.5 hrs        |
| 3/23/2022              |                                      | 6 of 8                | 22             | 3               | 3.0 hrs        |
| 4/13/2022              |                                      | 8 of 8                | 8              | 5               | 2.0 hrs        |
| 4/27/2022              |                                      | 7 of 8                | 8              | 3               | 1.25 hrs       |
| 5/25/2022              |                                      | 6 of 8                | 3              | 1               | 2.0 hrs        |
| 6/22/2022              |                                      | 8 of 8                | 4              | 1               | 2.0 hrs        |
| 8/3/2022               |                                      | 7 of 8                | 42             | 10              | 2.5 hrs        |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

Vacant seats: 7  
(as of August 31, 2022)

**Commission:** ELMWOOD BUSINESS IMPROVEMENT DISTRICT ADVISORY BOARD

**Commission Secretary:** Kieron Slaughter

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/10/21                |                                      | 3 of 5                | 0              | 0               | 1.5 hrs        |
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## 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|                                                       |
|-------------------------------------------------------|
| Vacant seats: <u>  3  </u><br>(as of August 31, 2022) |
|-------------------------------------------------------|

**Commission:**   Environment & Climate Commission  

**Commission Secretary:**   Billi Romain  

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| <i>10/10/2021</i>      |                                      | <i>8 of 9</i>         | <i>5</i>       | <i>3</i>        | <i>2.5 hrs</i> |
| <i>1/19/2022</i>       | <i>Yes – no quorum</i>               |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length    |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|-------------------|
| <i>5/25/2022</i>       |                                      | <i>4 of 4</i>         | <i>2</i>       | <i>1</i>        | <i>1.75 hours</i> |
| <i>6/22/2022</i>       |                                      | <i>5 of 5</i>         | <i>5</i>       | <i>1</i>        | <i>2.0 hours</i>  |
| <i>7/27/2022</i>       |                                      | <i>4 of 6</i>         | <i>3</i>       | <i>1</i>        | <i>2.0 hours</i>  |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

Vacant seats: 2  
(as of August 31, 2022)

**Commission:** Homeless Services Panel of Experts

**Commission Secretary:** Josh Jacobs

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/19                |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 2/1/20                 | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/1/21                 |                                      | 5 of 5                | 0              | 0               | 2 hours        |
| 1/5/22                 |                                      | 5 of 6                | 15             | 7               | 2 hours        |
| 2/2/22                 |                                      | 6 of 6                | 7              | 2               | 2 hours        |
| 3/2/22                 |                                      | 7 of 7                | 3              | 0               | 2 hours        |
| 4/6/22                 |                                      | 7 of 7                | 2              | 2               | 2 hours        |
| 4/18/22                |                                      | 6 of 7                | 2              | 0               | 2 hours        |
| 4/25/22                |                                      | 6 of 7                | 1              | 0               | 2 hours        |
| 5/4/22                 |                                      | 7 of 7                | 1              | 0               | 2 hours        |
| 6/1/22                 |                                      | 6 of 7                | 1              | 0               | 2 hours        |
| 6/22/22                |                                      | 4 of 7                | 1              | 0               | 1 hour         |
| 7/6/22                 |                                      | 7 of 7                | 4              | 1               | 2.5 hours      |
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# 2022 Annual Commissioner Attendance Report

Attachment 1b

Reporting Period: September 1, 2021 through August 31, 2022

|                                                                                                          |
|----------------------------------------------------------------------------------------------------------|
| Vacant seats: <span style="border: 1px solid black; padding: 0 5px;">9</span><br>(as of August 31, 2022) |
|----------------------------------------------------------------------------------------------------------|

**Commission:** Human Welfare and Community Action Commission

**Commission Secretary:** Mary-Claire Katz

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/15/21                | Yes – no quorum                      | N/A                   | N/A            | N/A             | N/A            |
| 10/20/21               | No                                   | 7 of 9                | None           | None            | 2 hrs          |
| 11/17/21               | No                                   | 7 of 8                | None           | None            | 2 hrs          |
| 2/16/22                | No                                   | 6 of 6                | 1              | None            | 2 hrs          |
| 3/23/22                | No                                   | 5 of 6                | 1              | 1               | 1.5 hrs        |
| 4/27/22                | No                                   | 6 of 6                | None           | None            | 2 hrs          |
| 5/18/22                | No                                   | 5 of 6                | None           | None            | 2 hrs          |
| 6/15/22                | No                                   | 6 of 6                | None           | None            | 1.45 hrs       |
| 7/20/22                | Yes – no quorum                      | N/A                   | N/A            | N/A             | N/A            |
| 8/31/22                | No                                   | 5 of 6                | 1              | 1               | 2 hrs          |
| 9/21/22                | TBD                                  | TBD                   | TBD            | TBD             | TBD            |
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## 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|                                                           |
|-----------------------------------------------------------|
| Vacant seats: <u>    2    </u><br>(as of August 31, 2022) |
|-----------------------------------------------------------|

**Commission:**     LOAN ADMINISTRATION BOARD    

**Commission Secretary:**     Kieron Slaughter    

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 1/27/22                |                                      | 7 of 7                | 1              | 1               | 2 hrs          |
| 3/21/22                |                                      | 5 of 7                | 1              | 1               | 1 hrs          |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

Vacant seats: 5  
(as of August 31, 2022)

Commission: Mental Health Commission

Commission Secretary: Jamie Works-Wright

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length    |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|-------------------|
| 9/23/21                | No                                   | 7 of 8                | 7              | 2               | 2 hrs. 10 min     |
| 10/28/21               | No                                   | 5 of 9                | 6              | 1               | 2 hrs. 15 min     |
| 12/16/21               | No                                   | 7 of 8                | 15             | 5               | 2 hrs. 19 min     |
| 1/27/22                | No                                   | 6 or 7                | 18             | 2               | 2 hrs. and 14 min |
| 2/24/22                | No                                   | 5 of 7                | 15             | 1               | 1 hr. and 58 min  |
| 3/24/22                | No                                   | 4 of 6                | 7              | 0               | 2 hrs. 9 min      |
| 4/28/22                | No                                   | 5 of 6                | 17             | 4               | 2 hrs. 25 min     |
| 5/26/22                | No                                   | 5 of 6                | 22             | 6               | 2 hrs. 10 min     |
| 6/23/22                | No                                   | 4 of 6                | 8              | 3               | 2 hrs.            |
| 7/28/22                | No                                   | 7 of 8                | 16             | 6               | 2.5 hrs.          |
| 8/23/22                | No                                   | 7 of 8                | 11             | 3               | 2 hrs. 15 min     |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

Vacant seats:     0      
(as of August 31, 2022)

**Commission:**     Parks, Recreation, and Waterfront    

**Commission Secretary:**     Roger Miller    

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| New Commission         |                                      |                       |                |                 |                |
| 02-16-2022             |                                      | 9 of 9                | 10             | 6               | 3.5 hrs        |
| 03-09-2022             |                                      | 9 of 9                | 9              | 4               | 3.0 hrs        |
| 04-27-2022             |                                      | 9 of 9                | 12             | 11              | 2.50 hrs       |
| 05-11-2022             |                                      | 9 of 9                | 31             | 16              | 3.25 hrs       |
| 06-08-2022             |                                      | 8 of 9                | 17             | 5               | 2.25 hrs       |
| 07-13-2022             |                                      | 8 of 8                | 216            | 50              | 3.0 hrs        |
| No August mtg          |                                      |                       |                |                 |                |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

Vacant seats: \_\_\_\_\_  
(as of August 31, 2022)

**Commission:** Peace and Justice Commission

**Commission Secretary:** Okeya Vance-Dozier

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length    |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|-------------------|
| 09/2021                | I was not the secretary              |                       |                |                 |                   |
| 10/04/2021             |                                      | 11 of 11              | 4              | 2               | 3 hrs and 12 mins |
| 11/01/2021             |                                      | 10 of 10              | 5              | 4               | 1 hr and 50 mins  |
| 12/13/2021             |                                      | 7 of 9                | 2              | 2               |                   |
| 1/4/2022               |                                      | 9 of 9                | 4              | 4               | 1 hr and 50 mins  |
| 2/7/2022               | Yes-conflicting schedule             |                       |                |                 | 1 hr and 30 mins  |
| 3/7/2022               |                                      | 9 of 9                | 3              | 1               | 2 hrs and 30 mins |
| 4/4/2022               |                                      | 8 of 9                | 3              | 2               | 3 hrs and 10 mins |
| 5/2/2022               |                                      | 6 of 9                | 3              | 1               | 2 hrs and 25 mins |
| 6/6/2022               |                                      | 7 of 9                | 3              | 3               | 2 hrs and 48 mins |
| 7/18/2022              | Yes-conflicting schedule             |                       |                |                 |                   |
| 8/15/2022              |                                      | 7 of 9                | 2              | 2               | 2 hrs             |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

Vacant seats: 6  
(as of August 31, 2022)

**Commission:** Solano BID Advisory Board

**Commission Secretary:** Eleanor Hollander

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 7/12/22                |                                      | 3 of 3                | 3              | 3               | 50 Minutes     |
| 5/31/22                |                                      | 3 of 3                | 2              | 2               | 50 Minutes     |
| 3/22/22                |                                      | 3 of 4                | 3              | 3               | 55 minutes     |
| 9/21/21                |                                      | 3 of 4                | 3              | 3               | 70 minutes     |
| 11/9/21                | Yes, no quorum                       |                       |                |                 |                |
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## 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

Vacant seats: 1  
(as of August 31, 2022)

**Commission: Sugar-Sweetened Beverage Product Panel of Experts**

**Commission Secretary:** Roberto Terrones (Interim Secretary)

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/23/2021              | No                                   | 6 of 8                | 0              | 0               | 1.85 hrs       |
| 10/21/2021             | No                                   | 8 of 8                | 0              | 0               | 2.15 hrs       |
| 11/18/2021             | No                                   | 7 of 8                | 0              | 0               | 1.87 hrs       |
| 1/20/2022              | No                                   | 5 of 7                | 0              | 0               | 1.68 hrs       |
| 2/17/2022              | No                                   | 6 of 7                | 0              | 0               | 1.8 hrs        |
| 3/17/2022              | Yes – Break,                         |                       |                |                 |                |
| 4/21/2022              | No                                   | 6 of 7                | 0              | 0               | 1.87 hrs       |
| 5/19/2022              | No                                   | 8 of 8                | 0              | 0               | 1.7 hrs        |
| 6/16/2022              | No                                   | 4 of 8                | 0              | 0               | 0.75 hrs       |
| 7/21/2022              | No                                   | 5 of 8                | 0              | 0               | 1.12 hrs       |
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# Page 33 of 36 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|                                                           |
|-----------------------------------------------------------|
| Vacant seats: <u>    4    </u><br>(as of August 31, 2022) |
|-----------------------------------------------------------|

**Commission:**     Transportation and Infrastructure Commission    

**Commission Secretary:**     Farid Javandel    

*Example:*

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| <i>10/10/2021</i>      |                                      | <i>8 of 9</i>         | <i>5</i>       | <i>3</i>        | <i>2.5 hrs</i> |
| <i>1/19/2022</i>       | <i>Yes – no quorum</i>               |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length    |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|-------------------|
| <i>7/27/2022</i>       |                                      | <i>4 of 5</i>         | <i>4</i>       | <i>3</i>        | <i>1.25 hours</i> |
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## 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

Vacant seats: \_\_\_\_\_  
(as of August 31, 2022)

**Commission:**     Youth Commission    

**Commission Secretary:**     Ginsi K. Bryant    

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/12/2021             |                                      | 11 of 14              |                |                 | 1.29 hrs       |
| 11/08/2021             |                                      | 10 of 15              |                |                 | 1.37 hrs       |
| 12/13/2021             |                                      | 10 of 15              |                |                 | 1.03 hrs       |
| 1/10/2022              |                                      | 7 of 9                |                |                 | 1..20 hrs      |
| 2/14/2022              |                                      | 7 of 9                |                |                 | 1.13 hrs       |
| 3/14/2022              |                                      | 7 of 9                |                |                 | .50 min        |
| 4/11/2022              |                                      | 9 of 9                |                |                 | .50 min        |
| 5/9/2022               |                                      | 7 of 8                |                |                 | 1.13 hrs       |
| June Break             |                                      |                       |                |                 |                |
| July Break             |                                      |                       |                |                 |                |
| August Break           |                                      |                       |                |                 |                |
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# 2022 Annual Commission Attendance Report

Reporting Period: September 1, 2021 through August 31, 2022

|                                                       |
|-------------------------------------------------------|
| Vacant seats: <u>  3  </u><br>(as of August 31, 2022) |
|-------------------------------------------------------|

**Commission:** Zero Waste Commission

**Commission Secretary:** Heidi Obermeit

**Example:**

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 10/10/2021             |                                      | 8 of 9                | 5              | 3               | 2.5 hrs        |
| 1/19/2022              | Yes – no quorum                      |                       |                |                 |                |

| Scheduled Meeting Date | Cancelled?<br>If Yes, Provide Reason | Commissioners Present | Public Present | Public Speakers | Meeting Length |
|------------------------|--------------------------------------|-----------------------|----------------|-----------------|----------------|
| 9/27/2021              |                                      | 8 of 9                | 8              | 3               | 2 hrs          |
| 10/25/2021             |                                      | 7 of 9                | 6              | 6               | 2 hrs          |
| 11/15/2021             |                                      | 7 of 9                | 6              | 6               | 2 hrs          |
| 1/24/2022              |                                      | 7 of 8                | 5              | 10              | 2 hrs          |
| 2/28/2022              |                                      | 8 of 8                | 8              | 7               | 2 hrs          |
| 3/28/2022              | Yes – no quorum                      |                       |                |                 |                |
| 4/25/2022              |                                      | 6 of 6                | 12             | 9               | 2 hrs          |
| 5/23/2022              |                                      | 4 of 6                | 8              | 5               | 1 hr           |
| 6/27/2022              |                                      | 5 of 6                | 4              | 2               | 2 hrs          |
| 7/25/2022              |                                      | 4 of 6                | 4              | 8               | 2 hrs          |
| No mtg in August       | Commission on recess                 |                       |                |                 |                |
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| <b>Approved Leaves of Absence Granted During the Period<br/>September 1, 2021 - August 31, 2022</b> |                         |
|-----------------------------------------------------------------------------------------------------|-------------------------|
| <b>Commission</b>                                                                                   | <b># Leaves granted</b> |
| Cannabis Commission                                                                                 | 0                       |
| Civic Arts Commission                                                                               | 4                       |
| Commission on Aging                                                                                 | 0                       |
| Commission on Disability                                                                            | 2                       |
| Commission on Labor                                                                                 | 0                       |
| Commission on the Status of Women                                                                   | 0                       |
| Community Health Commission                                                                         | 4                       |
| Design Review Committee                                                                             | 0                       |
| Disaster and Fire Safety Commission                                                                 | 4                       |
| Elmwood Business Improvement District Advisory Board                                                | 2                       |
| Environment and Climate Commission                                                                  | 2                       |
| Fair Campaign Practices Commission                                                                  | 3                       |
| Homeless Services Panel of Experts                                                                  | 1                       |
| Housing Advisory Commission                                                                         | 8                       |
| Human Welfare and Community Action Commission                                                       | 2                       |
| Landmarks Preservation Commission                                                                   | 9                       |
| Loan Administration Board                                                                           | 0                       |
| Mental Health Commission                                                                            | 0                       |
| Open Government Commission                                                                          | 0                       |
| Parks, Recreation and Waterfront Commission                                                         | 3                       |
| Peace and Justice Commission                                                                        | 1                       |
| Personnel Board                                                                                     | 0                       |
| Planning Commission                                                                                 | 6                       |
| Police Accountability Board                                                                         | 10                      |
| Solano Avenue Business Improvement District Advisory Board                                          | 0                       |
| Sugar-Sweetened Beverage Product Panel of Experts                                                   | 3                       |
| Transportation and Infrastructure Commission                                                        | 0                       |
| Youth Commission                                                                                    | 1                       |
| Zero Waste Commission                                                                               | 1                       |
| Zoning Adjustments Board                                                                            | 11                      |





Office of the City Manager

CONSENT CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Paul Buddenhagen, Deputy City Manager  
 Subject: Contract No. 32200039 Amendment: Townsend Public Affairs, Inc. for  
 Legislative and Funding Advocacy Strategy

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200039 with Townsend Public Affairs, Inc., for an ongoing tailored legislative and funding advocacy strategy, increasing the contract amount by \$72,000, for an amount not-to-exceed \$117,000, and extending the contract from December 31, 2022 to December 31, 2023.

FISCAL IMPACTS OF RECOMMENDATION

The proposed amendment will support 16 months of contracted services by increasing the Townsend Public Affairs, Inc. contract amount by \$72,000 from \$45,000 to a not to exceed amount of \$117,000. The funding source for the amendment is 011-99-900-900-0000-000-412-612990.

CURRENT SITUATION AND ITS EFFECTS

The City requires legislative information and support including:

- Review of legislation to determine potential beneficial or adverse impacts to the City and recommend appropriate responses.
- Monitoring, analysis, and reporting on selected legislative and agency hearings that have impact on the City's priorities.
- Management of City Council-sponsored legislation, including: drafting language, securing authors and co-authors, and shepherding the bill through the legislative process to a successful conclusion.
- Facilitating participation of City representatives in the legislative process, including: Arranging and preparing legislative testimony, participating in informational hearings as expert witnesses, coordinating meetings and written communications with legislators and agency officials.

- Coordinating, building, and leveraging coalitions with other cities and interest groups with similar legislative needs in order to advance mutual priorities.
- Coordinating a minimum of one advocacy trip each year to Sacramento as requested, including client briefing, documentation, decision-maker briefing, meeting staffing, and follow up.

The current not to exceed amount of \$45,000 will be depleted before the contract end date of December 31, 2022 due to an increase in Townsend Public Affairs' monthly fee from \$2,500 to \$4,500 earlier in the contract year. The contract will require additional funding to provide coverage for the last four months of the contract year, and an additional 12 months of service.

#### BACKGROUND

On November 1, 2009, the City entered into agreement with Townsend Public Affairs, Inc., to have legislative representation in Washington, D.C. to further strengthen the community's access to federal agencies and legislators, as well as to obtain information about local government funding opportunities. The City is interested in having its representative continue to track funding requests and support the City's efforts to secure additional funding for a variety of programs and services.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

Townsend Public Affairs, Inc. has provided excellent legislative and policy advocacy at the Federal level for the City of Berkeley.

#### ALTERNATIVE ACTIONS CONSIDERED

There are no proposed alternatives to consider.

#### CONTACT PERSON

Paul Buddenhagen, Deputy City Manager, (510) 981-7000  
Melanie E. Beasley, Administrative Assistant to the Deputy City Managers, (510) 981-7005

Attachments:

1: Resolution

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

CONTRACT NO. 32200039 AMENDMENT: TOWNSEND PUBLIC AFFAIRS, INC. FOR LEGISLATIVE AND FUNDING ADVOCACY STRATEGY

WHEREAS, on November 1, 2009, the City entered into Agreement with Townsend Public Affairs, Inc. to have legislative representation in Washington, D.C. to further strengthen the community's access to federal agencies and legislators, and to obtain information about local government funding opportunities; and

WHEREAS, the City and Townsend Public Affairs, Inc. have historically established new contracts at or near the end of each term, with each new term ranging between 12 and 18 months, and to date, new contracts have been executed on nine occasions, as follows: November 1, 2009, July 1, 2011, July 1, 2012, July 1, 2015, July 1, 2017, March 30, 2018, August 16, 2019, September 2, 2020, and August 5, 2021; and

WHEREAS, on October 4, 2022, the City Manager issued an extension to the term of the contract from December 31, 2022 to December 31, 2023; and

WHEREAS, the extension effectively requires an increase in the not-to-exceed amount, from \$45,000 to \$117,000, which reflects the increase in monthly fees from \$2,500 per month to \$4,500 per month for the remaining contract year, and an additional 12 months at a cost of \$4,500 per month; and

WHEREAS, the City's General Services Division has mandated that an Amendment to the most recent contract be produced and submitted to Council for approval and Resolution; and

WHEREAS, Townsend Public Affairs, Inc. has provided excellent legislative and policy advocacy at the Federal level for the City of Berkeley.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32200039 with Townsend Public Affairs, Inc., for ongoing tailored legislative and funding advocacy strategy, increasing the contract amount by \$72,000, for an amount not-to-exceed \$117,000, and extending the contract from December 31, 2022 to December 31, 2023.





Office of the City Manager

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Eleanor Hollander, Economic Development Manager  
 Subject: Contract No. 32100186 Amendment: Mildred Howard Public Art Commission  
 for Adeline Street and Martin Luther King Jr. Way

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32100186 with artist Mildred Howard in order to increase the size of the public art commission "*Untitled*" to 11' tall as directed by the Civic Arts Commission. The art work is slated to be installed in the triangular green space on the northern side of the intersection of Adeline Street and Martin Luther King Jr. Way. The artwork budget is to increase by \$144,000 for a total contract amount not to exceed \$354,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the contract amendment (\$144,000) will come from the FY23 Budget for Fund 148 (Cultural Trust Fund) as approved by the Civic Arts Commission.

CURRENT SITUATION AND ITS EFFECTS

The original scope of work for Mildred Howard's contract called for the creation of a 10' tall bronze sculpture for installation at the triangular green space on the northern side of the intersection of Adeline Street and Martin Luther King Jr. Way. Since the contract was executed in April 2021 the cost of bronze increased by approximately 25% impacting the artist's ability to produce the sculpture at the proposed size, thereby reducing it from 10' to 8' tall. As part of the recently completed design process, the location, size, and materials were presented to the Civic Arts Commission for approval. The Commission's feedback was to increase the size of the sculpture from 8' to 11' to have more of a visual impact and offer more public engagement with the work once installed. Subsequently, the Civic Arts Commission approved the allocation of \$144,000 in additional funds to pay for the increased material costs, and additional materials, design renderings and engineering needed to create the larger sculpture size. This contract amendment will allow for the proposed increase in the project's scale with funds coming from the FY23 budget for Fund 148 (Cultural Trust Fund) as approved by the Civic Arts Commission at their regular meeting on September 28, 2022.

BACKGROUND

In 2019 the artist Mildred Howard originally proposed this sculpture as part of the procurement process for the Measure T1 Public Art Project opportunity at San Pablo Park. For that project, a Request for Qualifications was released on September 11, 2018 and was open through October 23, 2018. A selection panel comprised of arts professionals reviewed the qualifications of the 42 applicants and recommended 21 applications to be presented to the San Pablo Park Public Art Project selection panel, which was comprised of arts professionals, a representative from the Civic Arts Commission, a Public Works Measure T1 project team member, and community representatives. This panel reviewed the qualifications of the 21 artists on the short list and selected four finalists, including Mildred Howard, who were invited to develop site specific public art project proposals. The San Pablo Park Public Art Project selection panel reconvened to evaluate the four proposals and they selected another artist for the San Pablo Park public art project. However, the panel made a recommendation to the Civic Arts Commission that the proposal by Mildred Howard be commissioned for another site in Berkeley. In October 2019, the Civic Arts Commission received this recommendation favorably, allocated funds for the sculpture's commission, and approved the proposal for the new site at the triangular green space on the northern side of the intersection of Adeline Street and Martin Luther King Jr. Way. Subsequently, Council authorized this contract at their regular meeting on February 23, 2021.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

This contract amendment would allow the artist to implement a larger, more impactful project that will allow the public to more thoroughly engage with the artwork once installed.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Zoe Taleporos, Civic Arts, Office of Economic Development, (510) 981-7538

Attachments:

1: Resolution

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

CONTRACT NO. 32100186 AMENDMENT: MILDRED HOWARD PUBLIC ART  
COMMISSION

WHEREAS, in 2018 the City issued a Request for Qualifications for public artwork associated with Phase One of the Measure T1 Bond Program, whose selection panel made a recommendation to the Civic Arts Commission, who approved that Mildred Howard's artwork proposal be implemented at the triangular green space on the northern side of the intersection of Adeline Street and Martin Luther King Jr. Way; and

WHEREAS, on February 23, 2021, the City Manager authorized Contract No. 32100186 in an amount not to exceed \$210,000 with Mildred Howard for a public art commission at the triangular green space on the northern side of the intersection of Adeline Street and Martin Luther King Jr. Way; and

WHEREAS, the Civic Arts Commission recommended that the sculpture be increased in height from 8' to 11' which will allow for greater visual impact and more thorough public engagement with the artwork once installed, for an additional cost of \$144,000; and

WHEREAS, funding for the contract amendment will come from the FY23 budget for Fund 148 as approved by the Civic Arts Commission.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32100186 with Mildred Howard to increase the height of her public art commission for the triangular green space on the northern side of the intersection of Adeline Street and Martin Luther King Jr. Way from 8' to 11' tall as approved by the Civic Arts Commission, increasing the artwork budget by \$144,000 for a total contract amount not to exceed \$354,000.







Office of the City Manager

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Eleanor Hollander, Economic Development Manager  
 Subject: Renewal of the Solano Avenue BID for Calendar Year 2023

RECOMMENDATION

Adopt a Resolution approving the Solano Avenue Business Improvement District Advisory Board's (hereafter "Solano BID Advisory Board" or "the Advisory Board") recommendation that Council: 1) approve the 2022 Annual Report and preliminary budget on proposed improvements in the District for calendar year 2023; 2) declare its intent to levy an assessment to finance improvements in the District for calendar year 2023; and 3) direct the City Clerk to schedule a public hearing on the renewal of the assessment for November 29, 2022.

FISCAL IMPACTS OF RECOMMENDATION

Projected BID revenue of approximately \$25,000 will be deposited into the Solano Avenue BID Fund, revenue budget code 783-21-208-251-0000-000-000-412110- and expensed from budget code 783-21-208-251-0000-000-446-636110. The BID constitutes an independent funding source that must be targeted to commercial revitalization efforts that are recommended by the Solano BID Advisory Board. To the extent that the work of the Solano BID enhances the economic development of Solano Avenue and its business climate over the long term, the BID contributes towards improving City revenues through increased sales and property taxes.

CURRENT SITUATION AND ITS EFFECTS

Renewal of the Solano BID is a Strategic Plan Priority Project, advancing our goal to foster a dynamic, sustainable, and locally-based economy. Under the State of California Parking and Business Improvement Area law of 1989 (California Streets and Highways Code section 36500 et.seq.) the City Council must approve an Annual Report prepared by the Solano BID Advisory Board with a proposed budget for the next year as a requirement to levy new assessments. Accordingly, at its meeting of September 20, 2022, the Solano BID Advisory Board voted to recommend that the City Council approve the Report for the Solano Avenue Business Improvement District for 2022-23 and adopt a Resolution of Intention to renew the assessment for that year. The Resolution of Intention also sets a public hearing date for November 29, 2022 where affected Solano businesses can express support or opposition to renewal of the BID for calendar year 2023. If written and/or oral protests are received from businesses

proposed to pay a majority of the assessment, Council cannot vote to levy assessments for 2023. If no majority protest is received the Council may renew the assessment.

### BACKGROUND

Since its revival in May 2012, the Solano BID Advisory Board has used Solano BID revenues to finance three programs: 1) a tree watering contract to ensure the health of 48 young street trees on Solano; 2) installing a program of 40 hanging planter baskets on light poles; and 3) sponsorship of events that attract customers to the district and improvements that enhance the pedestrian experience. In 2022, the BID program has focused on sponsoring activities and improvements intended to market and promote the Solano Avenue business district. In the wintertime, the BID in conjunction with the Solano Avenue Association (which represents both Albany and Berkeley businesses along Solano Avenue) pays a contractor to erect holiday lights and decorations on City street light poles. This will continue for the 2022-23 season. Although the BID will spend a good portion of its funds on the holiday décor program, in the remainder of 2022 it also plans to establish a banner program, and an expanded landscaping program for merchants to clean and level tree wells and water existing hanging flower baskets. BID expenditures are to be made through an established fiscal agency contract with Telegraph Property and Business Management Corporation (Telegraph PBMC).

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

By maintaining and enhancing the district, the Solano BID creates shopping opportunities for residents and visitors alike while encouraging alternative forms of transportation. The environmental enhancements such as the added street trees, hanging planters, parklet, and holiday decorations contribute to making Solano a more pleasant walking destination. Because the District is well served by public transportation and biking infrastructure, these services indirectly support environmental sustainability goals of encouraging alternative transportation modes to decrease carbon emissions.

### RATIONALE FOR RECOMMENDATION

State law requires that the City Council annually renew the Solano BID by first passing a resolution stating Council's intention to levy an annual assessment and scheduling a public hearing on the proposed renewed assessment for the coming year.

### ALTERNATIVE ACTIONS CONSIDERED

None.

### CONTACT PERSON

Eleanor Hollander, Secretary to the Solano BID Advisory Board, (510) 981-7536.

### Attachments:

1: Resolution

Exhibit A: Report for the Solano Avenue Business Improvement District 2022-23

Exhibit A1: Map of the Solano BID

Exhibit A2: Assessment Rate

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

APPROVING THE ANNUAL REPORT AND PROPOSED BUDGET OF THE SOLANO AVENUE BUSINESS IMPROVEMENT DISTRICT FOR 2022-23; DECLARING COUNCIL'S INTENTION TO LEVY AN ASSESSMENT IN THE DISTRICT FOR 2023; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR NOVEMBER 29, 2022 TO CONSIDER LEVYING A RENEWED ASSESSMENT FOR 2023.

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highway Code section 36500 et seq.) authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain purposes; and

WHEREAS, on December 9, 2003 the Berkeley City Council established such an area known as the Solano Avenue Business Improvement District (the "District"); and

WHEREAS, the City Council established a Solano Avenue Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, the City Council established a Solano Avenue Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, the Advisory Board has submitted an Annual Report to the Berkeley City Council that outlines the activities of the District proposed for 2023 as required by the California Streets and Highways Code Section 36533; and

WHEREAS, the Annual Report is clear and complete and found to comply with the interests of Solano Avenue assessees; and

WHEREAS, the annual process for levying assessments in Business Improvement Districts requires that cities adopt a Resolution of Intent that declares their intent to levy such an assessment and then set a date for a public hearing where interested parties may be heard on the issue.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

Section 1. The City Council hereby approves the Solano Avenue Business Improvement District Annual Report 2022 and Budget for the year 2023 (Exhibit A) as submitted to the City Clerk by the Solano Avenue Business Improvement District Advisory Board.

Section 2. Pursuant to the provisions of Section 36500 et seq. of the California Streets and Highways Code (the "Act"), the City Council declares its intent to levy an annual

assessment for the parking and business improvement area known as the Solano Avenue Business Improvement District.

Section 3. The boundaries of the District are set forth in Exhibit A1 to the 2022-23 Annual Report which is attached hereto and incorporated herein by reference.

Section 4. The improvements and activities proposed for the District are as described in the Report and budget (Exhibit A) and appended hereto.

Council intends that these funds be used for designated activities and improvements in the Solano Avenue commercial area. Council explicitly intends that funds generated through this BID shall not be used to pay for activities routinely paid for by the City.

Section 5. The City Council intends to levy assessments on businesses located within the boundaries of the District shown Exhibit A1 and according to the business classifications and rates set forth in Exhibit A2 which is attached hereto and incorporated herein by reference.

Section 6. A public hearing shall be held before the City Council on November 29, 2022 via accessible video teleconference. Following the hearing the Council will consider adoption of a resolution levying an assessment as recommended by the Solano Avenue Business Improvement Advisory Board. At this hearing the Council will hear all interested persons for or against the levying of such an assessment.

Formal protests against the levying of the District assessment must be made in writing. All written and oral protests should contain the following certification: "I certify that I am the owner of the business listed below, and that the business is located or operates within the boundaries of the Solano Avenue Business Improvement District." Protests should also contain the following information: business name (printed), business address (printed), City Business License Tax Registration number, name of protester (printed), signature of protester, date of protest and the reason(s) the protester is against the levying of the District assessment. Protests will not be considered valid unless signed and submitted by the owner of a business located within the boundaries of the proposed District. Written protests shall be filed with the City Clerk, First Floor, City Hall, at 2180 Milvia Street, Berkeley, California, 94704, at or before 3 pm on November 29, 2022 and shall contain a description of the business sufficient to identify the business, and if the person so protesting is not listed on City records as the owner of the business, the protest shall be accompanied by written evidence that the person subscribing the protest is the owner of the business. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made. If written protests are received from the owners of businesses in the District which will pay fifty percent (50%) or more of the assessment proposed to be levied, no further proceedings to levy the assessment shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the District, those types of improvements or activities shall be eliminated.

Section 7. The City Clerk is directed to give notice of said public hearing by publishing the Resolution of Intention in a newspaper of general circulation seven days prior to the public hearing.

Exhibits

A: Report for the Solano Avenue Business Improvement District 2022-23

A1: Map of the Solano BID

A2: Assessment Rates

**Exhibit A:**

Report for the Solano Avenue Business Improvement District for 2022 and Budget for 2023

**Background**

The first version of the Solano Business Improvement District (BID) operated from 2002-2007 with administration of the BID headed by the Solano Avenue Association. In 2012, the Council appointed the Solano BID Advisory Board to administer the Solano Avenue BID, to fund physical improvements to the street and dedicate marketing and promotion efforts towards the businesses on the portion of Solano Avenue that lies in Berkeley. This Annual report and budget updates the most recent year of operational programs of the Solano BID.

**Landscape program**

In 2013, the Solano BID financed a tree watering program for young street trees along upper Solano Avenue. In 2016, per the City of Berkeley arborist, the trees were mature enough to not require additional water services. In early 2016, the board voted to enhance Solano's landscape by installing a program of 41 hanging planter baskets on light poles distributed throughout the district; utilizing the Downtown Berkeley Association's (DBA) services. The DBA watered and maintained the baskets through the end of calendar year 2018. From 2019 to 2021, rainwater alone supported the baskets, and in 2022 the Solano BID entered into a contract with The Peralta Services Corporation to supplement other efforts to clean, weed, and level the tree wells through the district, and to develop an ongoing watering and maintenance system for the hanging flower baskets. Peralta's services began in July of 2022, and a schedule and cadence for this program will be implemented through the end of 2022. Expanded landscaping improvements (including porous pavement in tree wells and watering and maintenance of the hanging flower baskets) have yet to be determined by the board. It is presumed that provided a successful demonstration of landscaping maintenance this fall/winter season (2022-23), a multi-year contract could be extended accordingly in 2023.

In 2020, funds were approved and a selection process was conducted for a public realm plan study on Solano. The BID was supportive of the process and was deeply committed to involving both local merchants and local residents in the effort to re-imagine Solano Avenue in a way that brings more vitality to the Avenue in concert with the efforts of the City of Albany with the intention of strengthening the Solano Avenue 'brand' overall. The funding for this project was repurposed for the emergency response to the COVID-19 pandemic. The project was restored in the city's FY22 budget (adopted June 29, 2021) and has begun again with renewed effort in 2022. It is the intention to issue an RFP for the project in late 2022, or early 2023.

**Marketing and promotion of Solano**

Marketing and promotion of Solano Avenue constitutes the second priority of the Solano BID.

In 2022, the BID took on an ambitious coordinated district marketing program, allocating \$17,000 to the development of a banner campaign, and a \$15,000 to a marketing mailer with

both with the theme “North Berkeley In Bloom.” The Solano Stroll (produced by the SAA) is returned in person on September 11, 2022, which hopefully will be followed in short order by the unveiling of refreshed street banners (anticipated date, late fall 2022).

To promote the avenue during the holiday season, a holiday light display program was established by the Solano BID. In 2016 and 2017 the BID contracted with a vendor, the Christmas Light Pros of SF, to deploy decorative unlit multi-colored garlands. In 2018 and 2019, the board approved funding for a new vendor which, under direction of the Solano Avenue Association (SAA), covered more poles and provided greater decoration coordination opportunities with neighboring Albany, all at a lower cost than previous seasons. The intention for the holiday season in '22 -'23 is to use the same vendor from the '21-'22 season and reimburse the SAA after the lights are installed. This partnership underscores the leverage that the SAA organization has been able to provide to support BID efforts for the Berkeley portion of Solano Avenue.

In the remainder of 2022, the Advisory Board may again decide to participate in the development of virtual or otherwise safe holiday campaigns and activities (i.e. supporting the Solano Avenue Association in producing events ‘Santa on Solano’ event or similar). The details of the overall 2022 (and the future 2023) event and marketing program will be developed over the remainder of the year, with a possible coordinated launch party for the new Touchstone Oaks bouldering gym at the top of the Avenue once construction is complete.

**Solano BID Administration**

The Solano BID has one existing contract; a fiscal agent contract with the Telegraph Property and Business Management Corporation (Telegraph PBMC), who charges a 5% fee on new BID revenue annually (for example, the anticipated new Solano BID revenue for 2023 is \$25,000, so the fiscal agent for 2023 will be \$1,250).

**FINANCIAL STATUS OF THE SOLANO BID, SEPTEMBER 2022**

|                                                                                                          |                |
|----------------------------------------------------------------------------------------------------------|----------------|
| Solano BID Revenue, as of 9/15/2022                                                                      | \$ 96,774.26   |
| Less fiscal agent fee to Telegraph PBMC (5%) - of estimated new revenue                                  | \$ (1,250.00)  |
| Less funds allocated for Solano Ave Assn Events Contract (including 2022-23 holiday-related events)      | \$ (20,000.00) |
| Less funds allocated for decorative holiday lights + Installation + Removal + Storage Nov '22 to Jan '23 | \$ (7,500.00)  |
| Less Funds for Banners (install, new brackets etc.)                                                      | \$ (20,000.00) |

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**Unallocated as of 9/15/2022** **\$ 48,024.26**

**BUDGET FOR THE SOLANO BID FOR 2023 (Calendar Year)**

|                                                |                     |
|------------------------------------------------|---------------------|
| Estimated new revenue 2023                     | \$ 25,000.00        |
| Carryover from 2022 (estimated)                | \$ 48,024.26        |
| <b>Total available for expenditure in 2023</b> | <b>\$ 73,024.26</b> |

*PROPOSED EXPENDITURES FOR 2023 (Calendar Year)*

|                                                                           |                     |
|---------------------------------------------------------------------------|---------------------|
| Landscaping installation/tree well porous pavement                        | \$ 15,000.00        |
| Watering and Maintenance for hanging flower baskets                       | \$ 12,000.00        |
| Installation, removal and storage of holiday decor 2023-24 season         | \$ 11,000.00        |
| Banners 2023 (future design and adtl' install)                            | \$ 17,000.00        |
| Marketing expenditure (branding/business/event support contract with SAA) | \$ 15,000.00        |
| <b>Total projected expenditure 2023</b>                                   | <b>\$ 70,000.00</b> |

**Recommendations**

The Advisory Board recommends that the Council approve the Annual Report and Budget for 2023.

The Advisory Board recommends that the Council make no changes in the boundaries of the Solano Business Improvement District or in the two Benefit Zones, A & B.

The recommended improvements and activities for 2023 are those stated in the Report. The cost for providing them is stated in the Budget for 2023.

The method and basis for the assessment is as stated in Exhibit A2.

The estimate for surplus revenues to be carried over from 2022 is as stated in the Budget for 2023.



Exhibit A1

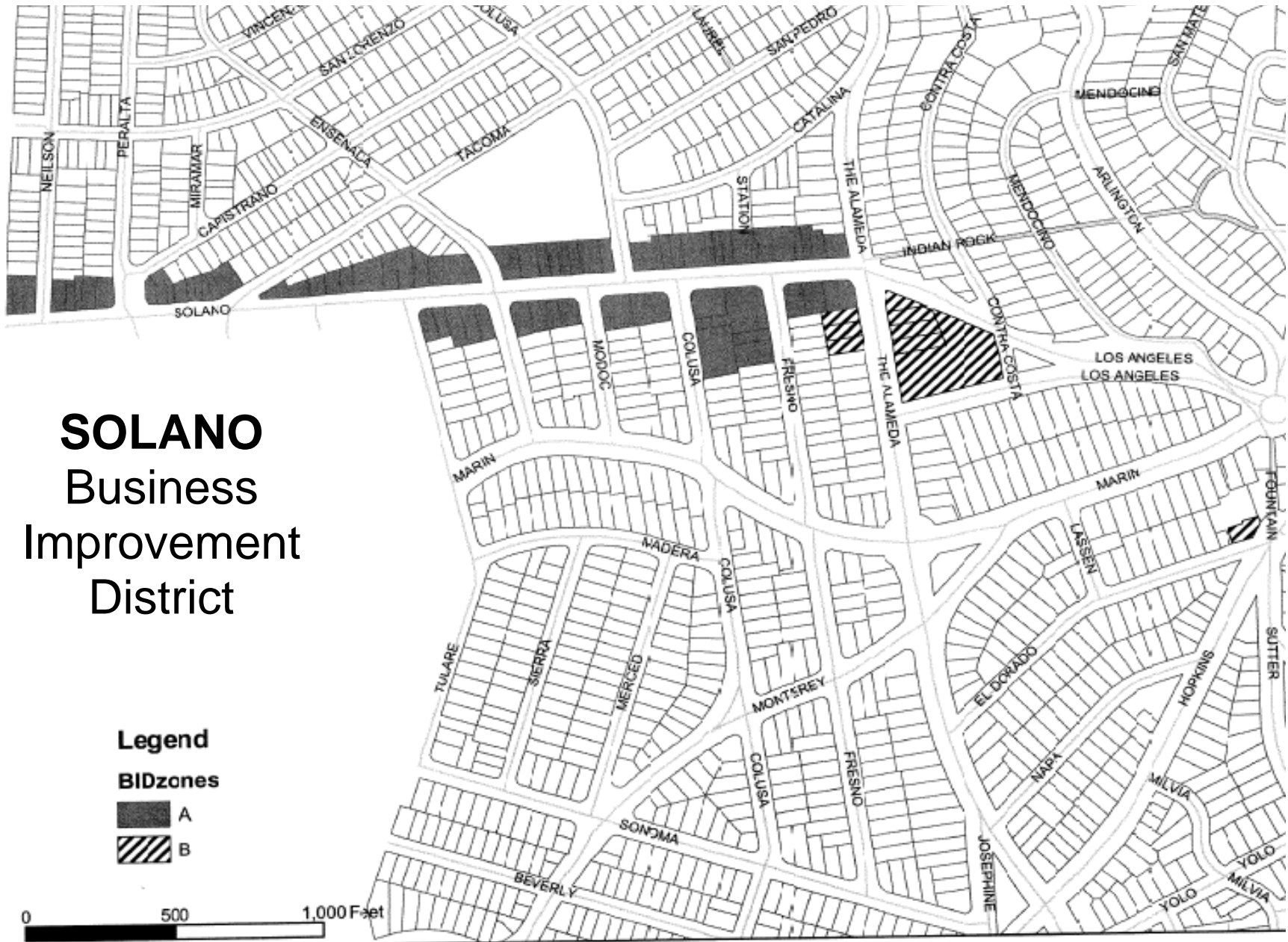


Exhibit A2

**Berkeley Solano Avenue Business Improvement District Annual Assessment Formula**

| Type of Business             |               | Annual Assessments |        |
|------------------------------|---------------|--------------------|--------|
|                              |               | Zone A             | Zone B |
| a. Retailers and Restaurants | 1-5 employees | \$200              | \$125  |
|                              | 6-9 employees | \$300              | \$175  |
|                              | 10+ employees | \$400              | \$225  |
| b. Service Businesses        |               | \$175              | \$100  |
| c. Professional Services     |               | \$100              | \$65   |
| d. Financial Institutions    |               | \$500              | \$500  |



Office of the City Manager

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on November 3, 2022

RECOMMENDATION

Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is **\$75,000**.

| <u>PROJECT</u>                            | <u>Fund</u> | <u>Source</u>                                 | <u>Amount</u>   |
|-------------------------------------------|-------------|-----------------------------------------------|-----------------|
| Web-Based Population Health Data Platform | 302         | Operating Grants –<br>State<br>One-Time Grant | \$75,000        |
|                                           | 336         |                                               |                 |
| <b>Total:</b>                             |             |                                               | <b>\$75,000</b> |

CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager's purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on November 3, 2022

CONSENT CALENDAR  
November 3, 2022

BACKGROUND

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager's purchasing authority for services.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City's environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

RATIONALE FOR RECOMMENDATION

Need for the services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

- 1: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on October 11, 2022
  - a. Web-Based Population Health Data Platform

Note: Original of this attachment with live signature of authorizing personnel is on file in General Services.

| SPECIFICATI<br>ON NO. | DESCRIPTION<br>OF GOODS /<br>SERVICES<br>BEING<br>PURCHASED | APPROX.<br>RELEASE<br>DATE | APPROX.<br>BID<br>OPENING<br>DATE | INTENDED USE                                                                                                                                                                                                                                      | ESTIMATED COST     | BUDGET CODE TO BE<br>CHARGED                                                                                                                                                                                                                          | DEPT. / DIVISION | CONTACT<br>NAME &<br>PHONE    |
|-----------------------|-------------------------------------------------------------|----------------------------|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-------------------------------|
| 23-11554-C            | Web-Based<br>Population<br>Health Data<br>Platform          | 11/4/2022                  | 12/2/2022                         | HHCS is looking for a web-<br>based, subscription<br>solution to support<br>residents and stakeholders<br>of the City of Berkeley in<br>viewing health data from<br>local, regio,nal and national<br>sources in an easy-to-<br>understand format. | \$75,000           | FY23 & FY25:<br>HHOFPH2301-<br>NONPERSONN-<br>OPERATING-<br>SOFTWARE<br>302-51-501-501-0000-<br>000-451-613130-<br>\$50.5K<br><br>FY24:<br>HHOEDF2102-<br>NONPERSONNEL-<br>COMP_EQUIP-<br>SOFTWARE<br>336-51-501-503-2075-<br>000-451-613130- \$24.5K | HHCS/ OD-PHOU    | Gabriella Schulz,<br>981-5273 |
| <b>Dept TOTAL</b>     |                                                             |                            |                                   |                                                                                                                                                                                                                                                   | <b>\$75,000</b>    |                                                                                                                                                                                                                                                       |                  |                               |
| <b>TOTAL</b>          |                                                             |                            |                                   |                                                                                                                                                                                                                                                   | <b>\$75,000.00</b> |                                                                                                                                                                                                                                                       |                  |                               |





Office of the City Manager

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: David Sprague, Interim Fire Chief, Fire Department

Subject: Contract: Restoration Family Counseling Center for Counseling, Education and Support

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to enter into a contract with Restoration Family Counseling Center Inc. (RFCC) for counseling, education and support, for a total amount not to exceed \$80,000 from December 1, 2022 through November 30, 2024.

FISCAL IMPACTS OF RECOMMENDATION

The term of this contract is from December 1, 2022 through November 30, 2024 in an amount not to exceed \$80,000. This contract may be extended an additional two years and shall not exceed \$160,000 total. Funding is budgeted in 147-72-742-835-0000-000-422-612410. UC Settlement Fund). This expenditure supports firefighter and emergency medical response by providing training and support for employees that participate in the Peer Counseling Unit (PCU). The PCU provides critical support to emergency responders who suffer mental health impacts directly related to the emergency work.

CURRENT SITUATION AND ITS EFFECTS

Providing early intervention following traumatic incidents, and having an established peer-based counseling service are two key ways to prevent the progression of mental health problems in the workforce. Following the Berkeley Kittredge balcony collapse in 2015, Fremont Fire responded with their Peer Counseling Team (PCU) and provided debriefing for Berkeley firefighters. This spurred the Development of the Berkeley Firefighters PCU that delivers peer support in the form of Critical Incident Stress Management (CISM) and 1:1 support to employees who seek help. The PCU follows a national curriculum developed by the International Critical Incident Stress Foundation and the International Association of Fire Fighters.

The PCU has been incredibly impactful within the Department, normalizing the practice of organized post traumatic event proactive intervention (lessened the stigma), and in providing direct service to groups and individuals. This has been a critical internal service through the pandemic. The number of informal (1:1) contacts self-initiated by employees is conservatively estimated to be nearly four times what is documented

below. The PCU meets quarterly and the PCU Steering committee meets quarterly to review team performance and set goals for the next quarter.

| Year | Defusing | Debriefing | One:One |
|------|----------|------------|---------|
| 2020 | 6        | 1          | 48      |
| 2021 | 8        | -          | 52      |
| 2022 | 8        | -          | 64      |

The PCU needs professional counseling, education, and support to continue its mission and work. Restoration Family Counseling Center Inc. (RFCC) is composed of professional staff who were influential founders and continue to be active participants in the West Coast Post Trauma Retreat (WCPR). WCPR is the gold standard in-patient, residential crisis treatment center for first responders on the West Coast. This group of clinicians within a geographic region that allows them to respond 24/7 within 30 minutes, has unique and relevant experience, and is able to respond to the unpredictable and often off hours nature of the PCUs requests for assistance.

BACKGROUND

The link between workplace experiences encountered during a career in emergency services and mental health problems is now well documented. In 2017 there were 103 documented firefighter suicides in the US and the Firefighter Behavioral Health Alliance (FBHA) estimates that only 40% of firefighter suicides are reported. Suicide is a result of mental illness, including depression and PTSD. PTSD and depression rates among firefighters have been found to be as much as five times higher than the rates within the civilian population, which causes these first responders to commit suicide at a considerably higher rate (firefighters: 18/100,000; general population 13/100,000).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This contract does not create environmental sustainability or climate change impacts.

RATIONALE FOR RECOMMENDATION

Spending a career in public safety is extremely rewarding, but also has acute and cumulative impacts to employee’s mental health. It is the obligation of the employer to mitigate these impacts through education and post incident support. The PCUs efforts continue progress already achieved in reducing lost time, decreasing the number of workers compensation claims, and improving the mental health and resiliency of City of Berkeley employees.



ALTERNATIVE ACTIONS CONSIDERED

Either to not enter into a contract with RFCC or reduce the funding for the contract, which would render the PCU unfunded and underequipped to provide mental health support to Department employees.

CONTACT PERSON

Julian Christy, PCU Founder, Apparatus Operator, Fire Department, (510) 981-3473

Duncan Allard, PCU Founder, Fire Inspector, Fire Department, (510) 981-3473

David Sprague, Interim Fire Chief, Fire Department, (510) 981-3473

Attachments:

1: Resolution

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

CONTRACT: CONTRACT: RESTORATION FAMILY COUNSELING CENTER FOR COUNSELING, EDUCATION AND SUPPORT

WHEREAS, the link between workplace experiences encountered during a career in emergency services and mental health problems is now well documented. In 2017 there were 103 documented firefighter suicides in the US and the Firefighter Behavioral Health Alliance (FBHA) estimates that only 40% of firefighter suicides are reported. Suicide is a result of mental illness, including depression and PTSD. PTSD and depression rates among firefighters have been found to be as much as five times higher than the rates within the civilian population, which causes these first responders to commit suicide at a considerably higher rate (firefighters: 18/100,000; general population 13/100,000) and

WHEREAS, providing early intervention following traumatic incidents, and having an established peer-based counseling service are two key ways to prevent the progression of mental health problems in the workforce, and

WHEREAS, the Berkeley Firefighters Peer Counseling Unit (PCU) delivers peer support in the form of Critical Incident Stress Management (CISM) and 1:1 support to employees who seek help. The PCU follows a national curriculum developed by the International Critical Incident Stress Foundation and the International Association of Fire Fighters, and

WHEREAS, the PCU has been incredibly impactful, normalizing the practice of organized post traumatic event with proactive intervention, and

WHEREAS, the PCU needs professional counseling, education, and support to continue its mission and work, and

WHEREAS, Restoration Family Counseling Center Inc. (RFCC) includes professionals who were influential founders and continue to be active participants in the West Coast Post Trauma Retreat (WCPR). WCPR is the gold standard in-patient/residential crisis treatment center for first responders on the West Coast. This group of clinicians is hyper-local and able to respond to the unpredictable and often off hours nature of the PCUs requests for assistance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Restoration Family Counseling Center for Counseling, Education and Support, for a total amount not to exceed \$80,000 for a contract period of December 1, 2022 through November 30, 2024. Funding is budgeted in 147-72-742-835-0000-000-422-612410.



Office of the City Manager

CONSENT CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: David Sprague, Interim Fire Chief

Subject: Contract No. 32200227 Amendment: Fire Aside for Mobile Vegetation Management Inspection Software

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200227 Mobile Vegetation Management Inspection Software for the Fire Department (Department); increasing the contract amount by \$100,000 for an amended total contract amount not to exceed \$260,000.

FISCAL IMPACTS OF RECOMMENDATION

The original term of this contract is from May 18, 2022 to December 31, 2024 in the amount of \$70,000 for the base term with a total contract amount not to exceed \$160,000. This amendment will increase the annual fee from \$25,000 to \$45,000 and increase the base term not to exceed \$125,000 and increase the total contract value not to exceed \$260,000. The total contract value of will be funded from 164-72-742-834-0000-000-422-612990. Funding is available and no other projects will be delayed due to this expenditure.

CURRENT SITUATION AND ITS EFFECTS

The Department is working diligently to expand and meet the community need and expectation for comprehensive vegetation management inspections in all of the Very High Fire Severity Zone 2 and 3 properties. This new mandate equates to an 83% (+7,184) increase in inspections from previous years. The Department is adding a module to this platform that will allow residents to schedule vegetation chipping appointments.

BACKGROUND

Fire Aside now offers an additional module called ChipperDay. This module will allow residents to quickly reserve slots, and will provide the Department planning tools which will allow optimized pickup routes and other management tools that will help track activity, measure performance and more easily produce reports for grants and community updates. We know from data coming out of other jurisdictions who coordinate chipping services with vegetation management inspections that access to chipping services can help drive up vegetation removal both in terms of participation rate and cubic yards of vegetation removed. Additionally, Fire Aside shall send

automated Inspection Notices via U.S. Mail to Berkeley property owners who fail to access their on-line Defensible Space Inspection report 14 days after inspection. Immediately upon inspection, Fire Aside shall send automated Inspection Notices via U.S. Mail to Vacant Parcel owners in Fire Zones 2 & 3

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This service will allow the Department to optimize pickup routes which is anticipated to reduce miles traveled by chipping trucks and reduce emissions.

RATIONALE FOR RECOMMENDATION

The City conducted an industry survey of available products and concluded that Fire Aside offers a unique solution that aligns with the emergent need of the City to create more defensible space and hardened homes in the City's wildland urban interface areas.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dan Green, Assistant Fire Chief, (510) 981-3473  
David Sprague, Interim Fire Chief, (510) 981-3473

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

CONTRACT NO. 32200227 AMENDMENT: FIRE ASIDE FOR MOBILE VEGETATION  
MANAGEMENT INSPECTION SOFTWARE

WHEREAS, on April 26, 2022, Council adopted Resolution No. 70,312–N.S., authorizing the City Manager to execute a contract and any amendments with Fire Aside to provide a mobile vegetation inspection software solution for the Fire Department from May 18, 2022 to May 17, 2024 in an amount not to exceed \$60,000 with an option to extend for an additional four years, for a total contract amount not to exceed \$160,000, and

WHEREAS, Fire Aside now offers an additional module called ChipperDay which will allow residents to quickly reserve slots for vegetation chipping services using city contractors, and will provide the Department planning tools which will allow optimized pickup routes and other management tools that will help track activity, measure performance and more easily produce reports for grants and community updates, and

WHEREAS, we know from data coming out of other jurisdictions who coordinate chipping services with vegetation management inspections that access to chipping services can help drive up vegetation removal both in terms of participation rate and cubic yards of vegetation removed.

WHEREAS, Fire Aside shall send automated Inspection Notices via U.S. Mail to Berkeley property owners who fail to access their on-line Defensible Space Inspection report 14 days after inspection. Immediately upon inspection, Fire Aside shall send automated Inspection Notices via U.S. Mail to Vacant Parcel owners in Fire Zones 2 & 3.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200227 Mobile Vegetation Management Inspection Software for the Fire Department (Department); increasing the contract amount by \$100,000 for an amended total contract amount not to exceed \$260,000 with funds from 164-72-742-834-0000-000-422-612990.





Office of the City Manager

CONSENT CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: David Sprague, Interim Fire Chief

Subject: Contract No. 32200083 Amendment: Ganey Scientific for Project Management & Consulting

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200083 with Ganey Scientific for project management and consulting services for the Fire Department (Department); increasing the contract amount by \$500,000 for an amended total contract amount not to exceed \$1.4 million.

FISCAL IMPACTS OF RECOMMENDATION

The original term of this contract was September 13, 2021 to August 31, 2022 in the amount of \$300,000. On May 31, 2022 the contract was extended to August 31, 2024. The total contract value of \$1.4 million will be funded from 164-72-742-834-0000-000-422-612990. Funding is available and no other projects will be delayed due to this expenditure.

CURRENT SITUATION AND ITS EFFECTS

The team from Ganey Science has been an invaluable resource to the Department. Their presence was made even more timely and critical due to the continuing recruitment challenges facing the Department, which have inhibited appropriate administrative staffing levels in a time where demands on the Department have rapidly escalated.

The scope of this contract is not changing, staff underestimated the volume of work when the scope of services was created in 2021. This underestimation was in part due to the novel nature of this type of support for the Department, the continuing recruitment challenges facing the organization, and the unanticipated complexity of the work facing the Department regarding wildfire hazard mitigation, short- and long-term planning, and recruitment. These additional funds will allow the Department to obtain additional support through this non-traditional, yet successful model during a time when thinking outside the box is a necessity.

This contract supports the following Strategic Plan Goals: Create affordable housing and housing support services for our most vulnerable community members; Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment; Provide an efficient and financially-healthy City government; Create a

resilient, safe, connected, and prepared City; Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community; and Attract and retain a talented and diverse City government workforce.

### BACKGROUND

On December 14, 2021, Council adopted Resolution No. 70,151–N.S., authorizing the City Manager to execute a contract and any amendments with Ganey Science for Project Management & Consulting. The total contract amount was for \$900,000 over three years.

The Department is in the midst of a number of large projects which will result in substantial changes to every division within the organization and fundamentally improve the way the department provides prevention, education, training and emergency response to the community. All of these projects are priority and need to be accomplished concurrently.

Secondary to the COVID hiring freeze, the Department has been unable to create special 40hr assignments or make sufficient promotions to perform the work required to plan, implement and sustain this work. Following direction from the City Council on June 29<sup>th</sup>, 2021 to “get creative”, Department leadership has been working on inspired solutions to meet the goals and objectives of the Mayor, Council and the community.

The Ganey team came on board in early 2022 and has reacted quickly and delivered professional service through the contract period. A project management team was quickly onboarded and helped the Department secure cloud-based project management software. The Department is working to move many complex, recurring processes into this software which has created consistency, reduced errors, reduced staff time, has helped retain institutional knowledge, and has allowed staff to refine and improve these processes.

Ganey has been instrumental in developing a comprehensive recruitment plan for entry level positions in a time when competition for quality candidates is presenting an unprecedented challenge; they have assisted with developing entry level curriculum for the paramedic and EMT academies; they are working with the Wildland Urban Interface (WUI) Division to develop public facing materials and researching additional funding for vegetation management and home hardening; they are supporting the development of a continuous quality improvement program for the fire/ems communications center; and they continue to provide specialized technical support in a wide variety of fields, including videography, marketing, information technology, grants management, and environmental planning.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the action requested in this report.



RATIONALE FOR RECOMMENDATION

The City conducted a competitive bid process and received no responses. The Department has a critical business and operational need for this type of expertise and support. The Contractor has demonstrated professionalism and a high value to the Department over the first year of the contract period.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

David Sprague, Interim Fire Chief, (510) 981-3473

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

CONTRACT NO. 32200083 AMENDMENT: GANEY SCIENTIFIC FOR PROJECT  
MANAGEMENT & CONSULTING

WHEREAS, the City released Specification No. 21-11457-C for Fire Department Project Management & Consulting on May 20, 2021 with proposals due on June 22, 2021, and

WHEREAS, although there were six vendors that attended the question and answer meeting, the City did not receive any responses, and

WHEREAS, because of the scope and timelines associated with the Department's re-design work, and due to a lack of proposals from the RFP process, the Department requested General Services and City Manager approval for a waiver of competition, which was approved on September 3, 2021, and

WHEREAS, on December 14, 2021, Council adopted Resolution No. 70,151–N.S., authorizing the City Manager to execute a contract and any amendments with Ganey Science for Project Management & Consulting. The total contract amount was for \$900,000 over three years, and

WHEREAS, the Ganey team came on board in early 2022 and has reacted quickly and delivered professional service through the contract period, and

WHEREAS, staff underestimated the volume of work when the scope of services was created in 2021, and

WHEREAS, this underestimation was in part due to the novel nature of this type of support for the Department, the continuing recruitment challenges facing the organization, and the unanticipated complexity of the work facing the Department regarding wildfire hazard mitigation, short- and long-term planning, and recruitment.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32200083 with Ganey Scientific for project management and consulting services for the Fire Department (Department); increasing the contract amount by \$500,000 for an amended total contract amount not to exceed 1.4 million, through August 31, 2024, with funds from 164-72-742-834-0000-000-422-612990.



Office of the City Manager

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: David Sprague, Interim Fire Chief  
 Subject: Purchase Order: Bauer Compressors Inc. for Self-Contained Breathing Apparatus and Related Accessories

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to issue purchase orders with Bauer Compressors Inc. using the Houston Galveston Area (H-GAC) contract No. EE08-19 for an amount not to exceed \$1.7 million through July 31, 2023 for the purchase of self-contained breathing apparatus (SCBA) and related accessories.

FISCAL IMPACTS OF RECOMMENDATION

The purchase price of Self-Contained Breathing Apparatus (SCBA) and related accessories will not exceed \$1.7 million. This total includes state and local sales taxes. Funding in the amount of \$1,158,441 will be appropriated in the FY 2023 First Amendment to the Annual Appropriations Ordinance in the UC Settlement Fund. The remaining amount is already budgeted in FY 2023 in this same fund.

CURRENT SITUATION AND ITS EFFECTS

This purchase is necessary to replace the currently obsolete and substandard SCBA. The new SCBA's will enable the Department to improve firefighter safety, accountability, mutual aid compatibility, reduce expenditures for ongoing repairs, and meet applicable National Fire Protection Association standards.

BACKGROUND

On July 25, 2017 the City Council approved Resolution No. 68,098-N.S. for a purchase order with Scott Self Contained Breathing Apparatus (SCBA). Since that time the National Fire Protection Association (NFPA) Standard No. 1982 "Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus" was modified. These modifications drove substantial physical improvements to SCBA design to improve firefighter safety. These changes were significant enough that there is no backwards compatibility with the new SCBA thus rendering the City's current fleet of SCBA obsolete. As SCBA reach their end-of-life and are in need of replacement and as the Department expands and needs to purchase additional SCBA for new personnel,

those units are unable to operate interchangeably with the rest of the SCBA fleet, which represents an unsurmountable safety issue for employees who routinely operate in atmospheres that are Immediately Dangerous to Life and Health (IDLH). IDLH is defined as an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere as defined by the Occupational Safety and Health Administration Standard No. 1910.134 - "Respiratory protection".

Fire departments in Alameda County have already made the transition to this new style of SCBA for similar reasons. Berkeley and Albany are the last two Departments in the County still using the outdated style of SCBA.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

National Fire Protection Association (NFPA) Standard No. 1982 "Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus" was modified. These modifications drove substantial physical improvements to SCBA design to improve firefighter safety. Some of these enhancements include a rating that allows personnel to clean the SCBA after fires using a machine that removes carcinogens to reduce the development of cancer in Berkeley firefighters; one-way mask valves to stop cross contamination when rescuing another firefighter; Bluetooth link to radios that will provide far superior communication on the emergency scene; link to a cloud-based system that allows the Incident Commander to monitor individual firefighter location, and air levels when firefighters are working inside of a burning structure. Another firefighter safety feature is the addition of the Rapid Intervention Team (RIT) and Universal Air Connection (UAC) which allows each firefighter on scene the ability to initiate a rescue of a downed firefighter and simplifies the rescue procedures in high stress situations.

These changes were significant enough that there is no backwards compatibility with the new SCBA thus rendering the City's current fleet of SCBA obsolete. The new SCBA's are in compliance with the current NFPA requirements and will improve safety for firefighters engaging in fire suppression and rescue operations in IDLH. These SCBA will place our firefighters on the same platform as all other Alameda County fire departments except one. This enhances our ability to respond into other Alameda County cities and operate safely as well as calling other fire agencies into Berkeley under our Mutual Aid Plan and interact safely on emergency operations.

#### ALTERNATIVE ACTIONS CONSIDERED

Staff researched all potential modifications to the current fleet of SCBA, none of which provided a viable alternative that provided protection and safety to employees routinely working in an IDLH.

Purchase Order: Bauer Compressors Inc. for  
Self-Contained Breathing Apparatus and Related Accessories

CONSENT CALENDAR  
November 3, 2022

CONTACT PERSON

David Sprague, Interim Fire Chief, 510-981-5501

Attachments:

1: Resolution

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

PURCHASE ORDER: BAUER COMPRESSORS INC. FOR SELF-CONTAINED BREATHING APPARATUS AND RELATED ACCESSORIES

WHEREAS, on July 25, 2017 the City Council approved Resolution No. 68,098-N.S. for a purchase order with Scott Self Contained Breathing Apparatus (SCBA), and

WHEREAS, since that time the National Fire Protection Association (NFPA) Standard No. 1982 "Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus" was modified, and

WHEREAS, these modifications drove substantial physical improvements to SCBA design to improve firefighter safety. These changes were significant enough that there is no backwards compatibility with the new SCBA thus rendering the City's current fleet of SCBA obsolete, and

WHEREAS, as SCBA reach their end-of-life and are in need of replacement and as the Department expands and needs to purchase additional SCBA for new personnel, those units are unable to operate interchangeably with the rest of the SCBA fleet, which represents an unsurmountable safety issue for employees who routinely operate in atmospheres that are Immediately Dangerous to Life and Health (IDLH), and

WHEREAS, this purchase is necessary to replace the currently obsolete and substandard SCBA, and

WHEREAS, the new SCBA's will enable the Department to improve firefighter safety, accountability, mutual aid compatibility, reduce expenditures for ongoing repairs, and meet applicable National Fire Protection Association standards.

NOW THEREFORE BE IT RESOLVED that the City Council adopt a Resolution authorizing the City Manager to issue purchase orders with Bauer Compressors Inc. using the General Services Agency's (GSA) contract No. EE08-19 for an amount not to exceed \$1.7 million through July 31, 2023 for the purchase of self-contained breathing apparatus (SCBA) and related accessories.



Office of the City Manager

CONSENT CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services

Subject: Revenue Contracts: Fiscal Year 2023 Aging Services Programs

RECOMMENDATION

Adopt five Resolutions authorizing the City Manager or her designee to execute any resultant revenue agreements and amendments with Alameda County to provide congregate and home-delivered meals, family caregiver support, senior center activities and information and assistance services to seniors for the following programs for Fiscal Year 2023 (FY 2023):

- a. Congregate Meals in the amount of \$40,000;
- b. Home Delivered Meals in the amount of \$84,000;
- c. Family Caregiver Support Program in the amount of \$41,383;
- d. Senior Center Activities in the amount of \$30,000; and
- e. Information and Assistance Services in the amount of \$100,000.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley will receive five grants totaling \$295,383 from Alameda County Area Agency on Aging for FY 2023 for the programs listed below. The contracts require minimum matching funds totaling \$29,583 as detailed below, and the Division will utilize General Fund in its approved FY 2023 budget to provide the match. The grant budgets will be adjusted to match the contract amounts and these changes will be included in the Second Amendment to the FY 2023 Annual Appropriations Ordinance.

1. **Congregate Meals:** Revenue Budget Code 320-51-505-549-2044-000-000-433110-. The FY2023 contract is for \$40,000 and supports staff coordination and management of meals that are both served at senior centers, as well as available for pickup. Expenditure Budget Code 320-51-505-549-2041-000-444-\*. The contract requires a minimum match of \$4,000.
2. **Home Delivered Meals:** Revenue Budget Code 320-51-505-549-2044-000-000-433110-. The FY2023 contract is for \$84,000 and supports staff coordination and management of home delivered meals. Expenditure Budget Code 320-51-505-549-2044-000-444-\*. The contract requires a minimum match of \$8,400.

3. **Family Caregiver Support Program:** Revenue Budget Code 328-51-505-541-2036-000-000-433110. The FY2023 contract is for \$41,383 and supports caregiver outreach, training and respite services for care receivers. Expenditure Budget Code 328-51-505-540-2036-000-444-\*. The contract requires a minimum match of \$4,183.
4. **Senior Center Activities:** Revenue Budget Code 328-51-505-544-2069-000-000-431110. The FY2023 contract is for \$30,000 and supports staff coordination and delivery of senior center outreach, activities, classes, and special events. Expenditure Budget Code 328-51-505-544-2069-000-444-\*. The contract requires a minimum match of \$3,000.
5. **Information and Assistance Services:** Revenue Budget Code 327-51-505-541-2035-000-000-433110. The FY2023 contract is for \$100,000 and supports staff management and delivery of information, assistance, referral and follow-up services. Expenditure Budget Code 327-51-505-544-2035-000-444-\*. The contract requires a minimum match of \$10,000.

#### CURRENT SITUATION AND ITS EFFECTS

In February 2022, Alameda County issued a request for proposals for caregiver, senior center, information and assistance, and nutrition services. The City of Berkeley applied for this funding and received notification of grant awards for caregiver services, senior center activities and administration of Senior Nutrition Programs on June 5, 2022 for a four-year period.

#### BACKGROUND

The City of Berkeley receives funding from city, county, and state sources as well as private donations to serve senior residents of Berkeley, and to coordinate the Tri-City Nutrition Program. The Department of Health, Housing & Community Services (HHCS) is committed to providing a broad range of community services; including services to meet the needs of seniors in the community. The Aging Services Division (HHCS/Aging) provides nutritious meals, outreach, activities, social events, classes, and individual support and referral services to seniors and their families in the community.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The home-delivered and congregate meal programs composts meal waste.

#### RATIONALE FOR RECOMMENDATION

These funds support the City's senior centers and meals programs, and provide critical support to ensure HHCS/Aging can continue to provide services at the North and South Berkeley Senior Centers, and Senior Nutrition Programs.



ALTERNATIVE ACTIONS CONSIDERED

The HHCS/Aging assesses each funding source to ensure that it supports the City's mission and goals. The alternative action of not seeking any of these funding sources would result in a significant reduction in services available to seniors in the community.

CONTACT PERSON

Tanya Bustamante, Manager of Aging Services, HHCS, 981-5178

Attachments:

1. Resolution: Congregate Meals
2. Resolution: Home-Delivered Meals
3. Resolution: Family Caregiver Support Program
4. Resolution: Senior Center Activities
5. Resolution: Information and Assistance Services

RESOLUTION NO. -N.S.

REVENUE CONTRACT: ALAMEDA COUNTY FISCAL YEAR 2023 CONGREGATE  
MEAL PROGRAM

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services provides a broad range of community services to the community; and

WHEREAS, the Aging Services Division provides a broad range of services to Berkeley seniors, and coordinates the delivery of meals to three cities – Berkeley, Albany and Emeryville – as the lead partner in the Tri-City Nutrition Program; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital senior services; and

WHEREAS, Alameda County provides funding to support the Congregate Meal programs for Fiscal Year 2023 in the approximate amount of \$40,000 (Revenue Budget Code 320-51-505-549-2044-000-000-433110-); and

WHEREAS, the City of Berkeley provides a minimum match of \$4,000 in General Funds (Expense Code 011-51-505-549-2041-000-444-various; and

WHEREAS, the funds will support the coordination and management of congregate meals at four sites (North Berkeley Senior Center, South Berkeley Senior Center, Emeryville Senior Center and Albany Senior Center) (budget code 320-51-505-549-2041-000-444-various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a contract agreement to Alameda County for funding for fiscal year 2023 for the Congregate Meal Program, and to accept the grants and to execute any resultant revenue agreements and amendments. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.

RESOLUTION NO. -N.S.

REVENUE CONTRACT: ALAMEDA COUNTY FISCAL YEAR 2023 HOME  
DELIVERED MEAL PROGRAM

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services provides a broad range of community services to the community; and

WHEREAS, the Aging Services Division provides a broad range of services to Berkeley seniors, and coordinates the delivery of meals to three cities – Berkeley, Albany and Emeryville – as the lead partner in the Tri-City Nutrition Program; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital senior services; and

WHEREAS, Alameda County provides funding to support the Home Delivered Meal program for Fiscal Year 2023 in the approximate amount of \$84,000 (Revenue Budget Code 320-51-505-549-2044-000-000-433110-); and

WHEREAS, the City of Berkeley provides a minimum match of \$8,400 in General Funds (Expense Code 011-51-505-549-2044-000-444-various); and

WHEREAS, the funds will support the coordination and management of home delivered meals to the partner cities in the Tri-City Nutrition Program (Berkeley, Albany and Emeryville) (budget code 320-51-505-549-2044-000-444-various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a contract agreement to Alameda County for funding for fiscal year 2023 for the Home Delivered Meal Program, and to accept the grants and to execute any resultant revenue agreements and amendments. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.

RESOLUTION NO. -N.S.

REVENUE CONTRACT: ALAMEDA FISCAL YEAR 2023 FAMILY CAREGIVER  
SUPPORT PROGRAM

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services provides a broad range of community services to the community; and

WHEREAS, the Aging Services Division provides a broad range of services to Berkeley seniors; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital senior services; and

WHEREAS, Alameda County provides funding to support the Family Caregiver Support services for Fiscal Year 2023 in the approximate amount of \$41,383 (Revenue Budget Code 328-51-505-541-2036-000-000-433110); and

WHEREAS, the City of Berkeley provides a minimum match of \$4,183 in General Funds (Expense Code 011-51-505-541-2036-000-444-various); and

WHEREAS, the funds will support the provision of caregiver outreach, training and respite services for care receivers (budget code 328-51-505-540-2036-000-444-various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a contract agreement to Alameda County for funding for fiscal year 2023 for the Family Caregiver Support Program, and to accept the grants and to execute any resultant revenue agreements and amendments. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.

RESOLUTION NO. –N.S.

REVENUE CONTRACT: ALAMEDA COUNTY FISCAL YEAR 2023 SENIOR CENTER  
ACTIVITIES

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services provides a broad range of community services to the community; and

WHEREAS, the Aging Services Division provides a broad range of services to Berkeley seniors; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital senior services; and

WHEREAS, Alameda County provides funding to support Senior Center Activities for Fiscal Year 2023 in the approximate amount of \$30,000 (Revenue Budget Code 328-51-505-544-2069-000-000-433110-); and

WHEREAS, the City of Berkeley provides a minimum match of \$3,000 in General Funds (Expense Code 011-51-505-544-2069-000-444-various); and

WHEREAS, the funds will support the coordination and delivery of senior center outreach, activities, classes, and special events (budget code 328-51-505-544-2069-000-444-various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a contract agreement to Alameda County for funding for fiscal year 2023 for Senior Center Activities, and to accept the grants and to execute any resultant revenue agreements and amendments. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.

RESOLUTION NO. –N.S.

REVENUE CONTRACT: ALAMEDA COUNTY FISCAL YEAR 2023 INFORMATION  
AND ASSISTANCE SERVICES

WHEREAS, the City of Berkeley Department of Health, Housing & Community Services provides a broad range of community services to the community; and

WHEREAS, the Aging Services Division provides a broad range of services to Berkeley seniors; and

WHEREAS, the City of Berkeley should seek outside funding wherever possible to fund vital senior services; and

WHEREAS, Alameda County provides funding to provide Information and Assistance Services for Fiscal Year 2023 in the approximate amount of \$100,000 (Revenue Budget Code 327-51-505-541-2035-000-000-433110-); and

WHEREAS, the City of Berkeley provides a minimum match of \$10,000 in General Funds (Expense Code 011-51-505-541-2035-000-444-various); and

WHEREAS, the funds will support the management and delivery of information, assistance, referral and follow-up services provided in the North and South Berkeley Senior Centers, and in the Social Services Unit (budget code 327-51-505-544-2035-000-444-various).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to submit a contract agreement to Alameda County for funding for fiscal year 2023 for Information and Assistance Services, and to accept the grants and to execute any resultant revenue agreements and amendments. A record signature copy of said agreements and any amendments shall be on file in the office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services Department

Subject: Contract No. 32000240 Amendment: Berkeley Unified School District (BUSD) for Mental Health MHSA-Funded Programs

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000240 with Berkeley Unified School District (BUSD) to provide Mental Health Services Act (MHSA) funded programs in local schools through June 30, 2023 in an amount not to exceed \$1,394,167. This amendment will add \$401,389 in funding to the contract in order to continue three mental health programs for an additional year and add a fourth for the same time period.

FISCAL IMPACTS OF RECOMMENDATION

The funds required to implement this recommendation (a total of \$401,389, made up of \$46,389 for the Mental Health Peer Education program, \$95,000 for the Dynamic Mindfulness Program, \$110,000 for the Supportive Schools program, and \$150,000 for the African American Success Project) are available in MHSA fund budget code 336-51-503-523-2011-000-451-612990 and have been included in the Fiscal Year 2023 budget.

CURRENT SITUATION AND ITS EFFECTS

The MHSA provides funding for the Department of Health, Housing and Community Services' Mental Health Division (HHCS/MH) to work with BUSD to implement four important programs to benefit Berkeley students and their families. This council item is the mechanism for approval to transfer funds for these projects to BUSD.

Funding for the three continuing programs was already approved by Council on July 26, 2022 via Resolution No. 70,469-N.S. This attached resolution will add \$46,389 to fund the Mental Health Peer Education program. No other substantive changes have been made to the changes already approved under Resolution No. 70,469-N.S.

BACKGROUND

On November 12, 2019 via Resolution No. 69,168-N.S., City Council approved entering into a contract with BUSD that encompassed four separate programs, each of which are administered by BUSD: the Mental Health Peer Education and Supports Project (MEET),

the Dynamic Mindfulness Program, the Supportive Schools Program, and the African American Success Project.

The State of California MHSAs provide funding for local mental health services and supports. City of Berkeley MHSAs Three Year Program and Expenditure Plans (Three Year Plans) and Annual Updates detail the uses of local MHSAs funds. Development of local MHSAs Three Year Plans and Annual Updates require community program planning, writing a draft plan, providing a 30-day public review, and conducting a public hearing at the Mental Health Commission.

HHCS/MH has worked closely with BUSD for many years; successfully implementing a variety of programs to support the needs and enhance the well-being of the student body, and providing a solid foundation for positive youth development. Funding programs to be administered directly by BUSD has proven to be an effective model in the past, as it allows educators to tailor programs to meet the individual needs of students within the context of their school setting.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

BUSD is a trusted partner in the implementation of programs to ensure students' needs are met in the most effective manner possible. Each of the programs funded by this contract were developed as a result of feedback from stakeholders and went through a lengthy community input process before being presented to City Council as part of the MHSAs Plan Annual Update.

#### ALTERNATIVE ACTIONS CONSIDERED

Staff did not identify an alternative action that would be consistent with the adopted MHSAs Three-Year Program and Expenditure Plans.

#### CONTACT PERSON

Conor Murphy, Assistant Management Analyst, HHCS, (510) 981-7611  
Jonathan Maddox, Mental Health Program Supervisor, HHCS, (510) 981-5235

Attachments:  
1: Resolution



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

CONTRACT NO. 32000240 AMENDMENT: BERKELEY UNIFIED SCHOOL DISTRICT  
(BUSD) FOR MENTAL HEALTH MHSA-FUNDED PROGRAMS

WHEREAS, on November 12, 2019 via Resolution No. 69,168-N.S., City Council approved entering into a contract with BUSD to fund the Mental Health Peer Education and Supports Project, the Dynamic Mindfulness Program, the Supportive Schools Program, and the African American Success Project; and

WHEREAS, on May 11, 2021 via Resolution No. 69,836-N.S., City Council approved amending Contract No. 32000240; and

WHEREAS, on February 22, 2022 via Resolution No. 70,221-N.S., City Council approved amending Contract No. 32000240; and

WHEREAS, on July 26, 2022 via Resolution No. 70,469-N.S., City Council approved amending Contract No. 32000240; and

WHEREAS, community input and stakeholder feedback has determined a need for the programs being funded; and

WHEREAS, the Berkeley Unified School District (BUSD) has been a trusted partner in the implementation of a variety of programs in collaboration with the City; and

WHEREAS, funding for this contract has been included in the Fiscal Year 2023 Budget and is available in ERMA GL Account 336-51-503-523-2011-000-451-612990.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No. 32000240 with the Berkeley Unified School District for MHSA-funded programs through June 30, 2023 increasing the contract by \$401,389 for a new total not to exceed amount of \$1,394,167. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.





Office of the City Manager

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services

Subject: Greater Bay Area Regional Partnership Workforce, Education and Training Grant – California Mental Health Services Authority

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to enter into a Participation Agreement and any amendments with the California Mental Health Services Authority (CalMHSA) for the Greater Bay Area (GBA) Regional Partnership Workforce, Education and Training (WET) Grant, and to allocate local Mental Health Services Act (MHSA) funds in an amount not to exceed \$42,609, through June 30, 2025.

FISCAL IMPACTS OF RECOMMENDATION

Funding in the amount of \$42,609 from MHSA revenue received from the State of California is available in the FY 2023 budget in MHSA Fund (Fund 315). On July 26, 2022 with Resolution No. 70,641-N.S., the City Council approved the MHSA FY2022/23 Annual Update; which included \$42,609 for this activity in the planned uses for MHSA funds.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley, Mental Health Division is currently experiencing an unprecedented number of staff vacancies. This trend is being felt throughout the State of California, making the recruitment and retention of public mental health professionals extremely difficult. Vacancies in staffing have deleterious impacts on the ability to provide services to vulnerable populations in Berkeley.

To address the need for qualified mental health workers, the state has designed the GBA WET grant, which will provide student loan repayment assistance for certain members of the mental health workforce. In order to participate in this initiative, the City must enter into a Participation Agreement with CalMHSA to allocate the local match of funds and obtain administrative services. California mental health jurisdictions need to allocate a portion of local MHSA funds to California Mental Health Services Authority

(CalMHSA) which administers the program. Then the State Department of Health Care Access and Information (HCAI) will provide CalMHSA with matching funds for the program in that jurisdiction.

On July 26, 2022 with Resolution No. 70,641-N.S., the City Council approved the MHSA FY2022/23 Annual Update, which included \$42,609 for this activity. This item will allow the City to allocate \$42,609 of local MHSA funds to CalMHSA to participate in this initiative. CalMHSA City funds will be combined with \$129,116 from HCAI for a total of \$171,725 that will be available for the GBA WET grant. The cost for CalMHSA to administer the program is \$22,399, and the remaining funds (\$149,326) will be made available for educational loan repayment.

Specifically, this program will provide an opportunity for public mental health professionals who are in City-designated hard-to-fill and/or hard-to-retain positions to apply for partial repayment of their educational loans in exchange for a set number of years of work in the City of Berkeley's Mental Health Division. The Mental Health Division is currently in the process of determining which positions meet these criteria and the loan repayment amount, which is estimated to be somewhere between \$9,000 - \$10,000 per each awardee.

### BACKGROUND

The State Department of Health Care Access and Information (HCAI, formerly named the Office of Statewide Health Planning and Development) allocated \$40 million in WET funds for Regional Partnerships across the state for mental health workforce strategies that will be implemented through FY25. The program aims to address the shortage of mental health practitioners in the public mental health system through a framework that engages Regional Partnerships and supports individuals through five categories including:

- Pipeline Development,
- Loan Repayment Program,
- Undergraduate College and University Scholarships,
- Clinical Master and Doctoral Graduate Education Stipends, and
- Retention Activities.

Each Regional Partnership decides which strategies they want to implement to benefit the local area. The City of Berkeley is part of the GBA Regional Partnership. The Mental Health Division participated in meetings with representatives from the other counties within the GBA, and all participating counties decided to allocate these funds for the Loan Repayment program.

GBA WET will be administered by CalMHSA, a Joint Powers Authority that was formed in 2009 to create a separate public entity to provide administrative and fiscal services in support of Members' Mental/Behavioral Health Departments acting alone or in

collaboration with other Departments. CalMHSA Is governed by a Board of Directors that is comprised of the participating county or city mental/behavioral health director and a designated alternate for when the director is absent. Contributing counties provide direction into the types of initiatives that are implemented.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this project.

RATIONALE FOR RECOMMENDATION

Hiring and retaining mental health professionals is a challenge for the City and jurisdictions across the state. Loan repayment assistance has been identified as a strategy to support diverse candidates to enter and stay in the public mental health field. This program appeared in the City Council-approved MHSA Plan as well as the Annual Update, and the recommended action is needed to effectuate participation.

ALTERNATIVE ACTIONS CONSIDERED

The City could choose not to participate in GBA WET. That would be inconsistent with the City's Strategic Plan goal to attract and retain a talented and diverse City workforce, and is therefore not recommended.

CONTACT PERSON

Karen Klatt, Community Services Specialist III, HHCS, (510) 981-7644

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

GREATER BAY AREA REGIONAL PARTNERSHIP WORKFORCE, EDUCATION & TRAINING PARTICIPATION AGREEMENT

WHEREAS, the State Department of Health Care Access and Information (HCAI, formerly named the Office of Statewide Health Planning and Development) allocated \$40 million in Workforce, Education and Training funds for Regional Partnerships across the state for mental health workforce strategies that will be implemented through FY25, to address the shortage of mental health practitioners in the public mental health system; and

WHEREAS the City of Berkeley is part of the GBA Regional Partnership and all participating counties within the GBA have decided to allocate these funds for the Loan Repayment program; and

WHEREAS the Loan Repayment Program will provide an opportunity for public mental health professionals who are in City designated hard-to-fill and/or hard-to-retain positions to apply for a portion of their educational loans to be re-paid, in exchange for a set number of years of work in the Mental Health Division; and

WHEREAS the amount of local MHSA funds the City of Berkeley is required to contribute to participate in this initiative was originally \$40,157, and this amount was subsequently increased to \$42,609; and

WHEREAS per Resolution No. 69,620-N.S., the City Council approved the MHSA FY2020/21-FY2022/23 Three Year Program and Expenditure Plan, which included \$40,157 in local MHSA funds for this program; and the City Council subsequently adopted the MHSA FY2022/23 Annual Update which revised the planned expense to \$42,209 with Resolution No. 70,641-N.S.; and

WHEREAS the California Mental Health Services Authority (CalMHSA) administers this program, and in order to participate the City must enter into a Participation Agreement to allocate the local MHSA funds and obtain administrative services from CalMHSA; and

WHEREAS, in order to execute a Participation Agreement and allocate funds to CalMHSA for this initiative, City Council approval is required; and

WHEREAS, funding is available in the FY2023 budget in the MHSA Fund (Fund 315).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is hereby authorized to execute a Greater Bay Area Regional Partnership Workforce Education and Training Participation Agreement and any amendments with CalMHSA, and allocate funds for a total amount not to exceed \$42,609, through June 30, 2025.



Office of the City Manager

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services  
 Subject: Fiscal Year 2023 Meals on Wheels of Alameda County Donations for the Berkeley Meals on Wheels Program

#### RECOMMENDATION

Adopt a Resolution accepting donations, totaling approximately \$175,000, for the Berkeley Meals on Wheels Program from the Meals on Wheels of Alameda County (MOWAC) agency, for Fiscal Year 2023 (FY 2023).

#### FISCAL IMPACTS OF RECOMMENDATION

The donations will be received and deposited on a quarterly basis into the Fund Raising Activities Fund (ERMA GL Code 111-51-505-549-2044-000-444-612990-) and will be appropriated as part of the Second Amendment to the FY 2023 Annual Appropriations Ordinance for supporting the operations of the Meals on Wheels. These donations will support the cost of hourly personnel and operating expenses needed to provide meals to home-bound seniors by the City of Berkeley Meals on Wheels program. Total donation amount to be a maximum of \$175,000.

#### CURRENT SITUATION AND ITS EFFECTS

The Berkeley Meals on Wheels program is operated by the Department of Health, Housing and Community Services' Aging Services Division (HHCS/Aging). The program contributes to the City's Strategic Plan goal to be a customer-focused organization that provides excellent, timely, easily-accessible service to the community, particularly the older adult, homebound community. The Berkeley Meals on Wheels program provides over 60,000 nutritious meals to over 250 seniors each year.

MOWAC is a private, non-profit agency that raises funds for the six Meals on Wheels programs in Alameda County. MOWAC provides special grant funding and donations to programs to support the delivery of meals to home-bound seniors.

#### BACKGROUND

The City of Berkeley Meals on Wheels program is funded by an annual grant contract with the Alameda County Area Agency on Aging, as well as by client and community

donations and the City's General Fund. While each Meals on Wheels program in the County is expected to support unfunded costs of the program to meet community needs, MOWAC helps programs meet additional needs by conducting its own fundraising efforts for the benefit of all programs countywide.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Berkeley Meals on Wheels program packages its meals in compostable containers to reduce landfill waste. The program also offers volunteer bicycle delivery routes.

RATIONALE FOR RECOMMENDATION

Donations received from MOWAC will provide the Berkeley Meals on Wheels program with significant financial support that can be directly applied to both personnel and operating expenses for the program.

ALTERNATIVE ACTIONS CONSIDERED

Refusing donations from MOWAC would not be consistent with the City's Strategic Plan goals or its efforts to sustain an Age-Friendly Berkeley, and is not recommended.

CONTACT PERSON

Tanya Bustamante, Aging Services Manager, HHCS, (510) 981-5178

Attachments:  
1: Resolution



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

FISCAL YEAR 2023 MEALS ON WHEELS OF ALAMEDA COUNTY DONATIONS FOR  
THE BERKELEY MEALS ON WHEELS PROGRAM

WHEREAS, the Meals on Wheels of Alameda County (MOWAC) Agency's mission is to raise funds for the six Meals on Wheels programs in Alameda County, including Berkeley Meals on Wheels; and

WHEREAS, Alameda County distributes these funds on a quarterly and proportional basis to Meals on Wheels programs and special grant requests throughout Alameda County; and

WHEREAS, Berkeley Meals on Wheels provides over 60,000 nutritious meals to over 250 seniors each year; and

WHEREAS, total donation amounts from MOWAC will be a maximum of \$175,000 for Fiscal Year 2022-2023; and

WHEREAS, MOWAC donations will assist in covering personnel costs or providing meals to homebound seniors; and

WHEREAS, the donations will be deposited into the Fund Raising Activities Fund (ERMA Budget Code 111-51-505-549-2044-000-444-612990-) and will be appropriated as part of the Second Amendment to the FY 2022 Annual Appropriations Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that donations to the Berkeley Meals on Wheels program from the Meals on Wheels of Alameda County Agency are accepted to support personnel and operational costs of meal provision to home-bound seniors by the City of Berkeley Meals on Wheels program.





Office of the City Manager

CONSENT CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Donald E. Ellison, Interim HR Director

Subject: Contract: Robert Half International/Protiviti for Professional Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to increase spending authority with Robert Half International/Protiviti for professional services in support of the following City Departments: Fire (Administration, Prevention, Wildland Urban Interface, Emergency Medical Services and Training), Human Resources, and Information Technology in the Fiscal Year (FY) 2023 using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an annual increase not to exceed \$750,000 through June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

One-time funding in the amount of \$250,000 for Information Technology is available in its Fiscal Year (FY) 2023 General Allocation fund. Fire has funding in the amount of \$250,000 for the period November 4, 2022 to November 3, 2023 and there is an option to extend for two years for a total term of three years. Funding for Fire will come from 011-72-742-834-0000-000-422-612990- (General Fund), 147-72-743-000-0000-000-422-612990- (UC LRDP), or 164-72-745-000-0000-000-422-612990- , 164-72-742-836-0000-000-422-612990-, 164-72-742-837-0000-000-423-612990- (Measure FF). One-time funding in the amount of \$250,000 for Human Resources is available in its Fiscal Year (FY) 2023 General Allocation fund, 011-34-342-000-0000-000-412-513110.

CURRENT SITUATION AND ITS EFFECTS

Due to recruitment and retention problems facing the Department and the city, which have an unknown duration, it is critical that the Departments have alternatives in place to ensure work can progress and that there is continuity of operations. The volume of work facing the Fire, Human Resources and Information Technology Departments exceeds their current skillset (in some cases) and resource capacity. Robert Half International/Protiviti has been providing critical support which is projected to be critical in the coming year.

BACKGROUND

Fire, Human Resources and Information Technology (IT) are in the midst of a number of large projects. For IT, staff presented to Council in December 2020 an assessment of

threats currently facing the City's technology infrastructure. The resulting roadmap to resolution was prioritized into six projects requiring supplemental skillset to complete. Additionally, there are many Fire projects that are running in parallel to one another that will result in substantial changes to every division within the organization and fundamentally change the way the department provides prevention, education, training and emergency response to the community. All of these projects are priority and need to be accomplished concurrently. Secondary to the COVID hiring freeze, the Fire Department has been unable to create special 40hr assignments or make sufficient promotions to perform the work required to plan, implement, and sustain this work.

Following direction from the City Council on June 29th, 2021 to "get creative", Department leadership has been working to think outside of the box to meet the goals and objectives of the Mayor, Council, and the community.

Robert Half International/Protiviti has been providing critical technical and support staff to the Fire, Human Resources and Information Technology Departments. These needs are projected to continue through the next 12 months and thus on-going support from Robert Half International/Protiviti is crucial.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the action requested in this report.

#### RATIONALE FOR RECOMMENDATION

Robert Half International/Protiviti has been providing critical technical and support staff to the Fire, Human Resources and Information Technology Departments. These needs are projected to continue through the next 12 months and thus on-going support from Robert Half International/Protiviti is crucial.

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CONTACT PERSON

Donald Ellison, Interim Human Resources Director, Human Resources Department, (510)-981-6807.

Attachments:

1: Resolution

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

CONTRACT: ROBERT HALF INTERNATIONAL/PROTIVITI FOR PROFESSIONAL SERVICES

WHEREAS, the Fire, Human Resources and Information Technology Departments are in the midst of a number of large projects that are running in parallel to one another and will result in substantial changes to every division within the organization and fundamentally change the way the departments provide or implement Cybersecurity, fire prevention, education, training and emergency response to the City and community, and

WHEREAS, due to recruitment and retention problems facing the Fire, Human Resources and Information Technology Departments and the City, which have an unknown duration, it is critical that the Fire, Human Resources and Information Technology Departments have alternatives in place to ensure work can progress and that there is continuity of operations. and

WHEREAS, all of these projects are priority and need to be accomplished concurrently, and

WHEREAS, Robert Half International/Protiviti has been providing critical technical and support staff to the Fire, Human Resources and Information Technology Departments, and

WHEREAS, these needs are projected to continue through the next 12 months and thus on-going support from Robert Half International/Protiviti is crucial.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Robert Half International/Protiviti for professional services in support of the following City Departments: Fire (Administration, Prevention, Wildland Urban Interface, Emergency Medical Services and Training), Human Resources, and Information Technology in the Fiscal Year (FY) 2023 using the General Services Agency's (GSA) purchasing vehicle no. GS-35F-0280X for an annual increase not to exceed \$750,000 through June 30, 2023.





Office of the City Manager

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Kevin Fong, Director, Department of Information Technology  
Subject: Contract No. 32000281 Amendment: ConvergeOne for on-site Avaya Administration, Maintenance and Support

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 32000281 to increase the spending authority with ConvergeOne (previously named Integration Partners), for Avaya on-site administration and maintenance, increasing the amount by \$165,000 for a total not to exceed amount of \$892,821, from July 1, 2020 to June 30, 2024.

FISCAL IMPACTS OF RECOMMENDATION

One-time funding for on-site administrative and maintenance services in the amount of \$165,000 is allocated within Fiscal Year (FY) 2023 in the Department of Information Technology's FY 2023 IT Cost Allocation funds as outlined below and any future expenditures are subject to Council approval of the proposed citywide budget and Annual Appropriations Ordinances.

|                  |                                                                                                                                              |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| \$727,821        | Existing Contract Value                                                                                                                      |
| \$165,000        | FY 2023: Professional Services<br>Budget Code: 680-35-363-380-0000-000-472-612990-<br>(IT Department, Professional Services – Miscellaneous) |
| <b>\$892,821</b> | <b>Total Not To Exceed (NTE) Contract Value</b>                                                                                              |

CURRENT SITUATION AND ITS EFFECTS

Consistent with national trends, there was a high volume of turnover of skilled Information Technology (IT) technicians in 2022 at the City of Berkeley. This is due in part to a supply-demand imbalance driven by a high demand for skilled workers with expertise in implementing new ways of remote/distance working. We are engaging in this contract to ensure adequate resources and support for our Avaya system which provides telephonic communications for all City services, including desk telephones, Voice over IP (VoIP) solutions and voicemail.

This professional services contract amendment recommendation will augment City staff with a telephony engineer/administrator to ensure the City's telephones and backend

voice communications systems are administered and maintained consistent with their criticality to daily City operations and delivery of services to the Berkeley community and to continue advancing our City's strategic goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

### BACKGROUND

The City's Voice Over IP (VoIP) telephony system was significantly upgraded between calendar years 2020 and 2021. The City is contracted with Integration Partners (since acquired by ConvergeOne) through the end of fiscal year 2024 (FY24).

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This VoIP telephony administration and maintenance resource will be on-site as telephony continues to be fairly hands-on. This technician will be local and available to complete field work at all City sites. This resolution then, continues to support the goals of environmental sustainability by using local resources.

### RATIONALE FOR RECOMMENDATION

It is critical that we keep the current platform up to date to ensure no gaps in our administration, maintenance or support in the event of a major outage with our Avaya enterprise phone system as that would result in significant disruption of services including and not limited to the Berkeley community not being able to reach City offices via phone call, staff not being able to call each other, and our community and staff not being able to leave voice messages. It is equally critical that the City have access to a trained, experienced, and skilled VoIP telephony technician who can be added to the existing contract for a limited duration while the City begins evaluating future options beginning in January 2023.

### ALTERNATIVE ACTIONS CONSIDERED

Staff considered resourcing this skillset through hiring positions specializing in Avaya and VoIP telephony, however, efforts to date have not yet yielded suitable candidates. Furthermore, redeploying staff to cover Avaya and VoIP telephony was considered, but those so redeployed would not be trained, have experience with, or be skilled in the field of VoIP telephony. This technician is needed now and we will ensure transition of knowledge to staff for future support of the system. Finally, staff also considered staff augmentation through a temporary staffing agency but the cost was substantially higher than expanding the contract with ConvergeOne for this technician.

### CONTACT PERSON

Kevin Fong, Director, Department of Information Technology, 981-6541

Attachments:

1: Resolution



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

CONTRACT No. 32000281 AMENDMENT: CONVERGEONE FOR AVAYA UPGRADE, SUPPORT, AND MAINTENANCE

WHEREAS in December 2019, the City issued a Request for Proposals (RFP) for Avaya upgrade, support, and maintenance (Specification No. 20-11377-C) and received 5 qualifying bids; and

WHEREAS Integration Partners (IPC) provided the best combination of cost, responsiveness, and references to complete the necessary upgrades and provide ongoing support moving forward; and

WHEREAS current contract in the amount of \$727,821, is allocated for Fiscal Year (FY) 2020-2023 in the Department of Information Technology's FY 2020 VoIP Replacement and IT Cost Allocation funds; and

WHEREAS funding for miscellaneous professional services in the amount of \$165,000, is allocated for Fiscal Year (FY) 2023 in the Department of Information Technology's FY 2023 IT Cost Allocation funds; and

WHEREAS in January 2022, ConvergeOne purchased Integration Partners and, effective September 12, 2022, IPC's operations were fully integrated into ConvergeOne; and

WHEREAS the City seeks to maintain this critical Information Technology function – Voice Over IP (VoIP) telephone infrastructure and system; and

WHEREAS ConvergeOne has local, skilled staff available to provide immediate backfill and knowledge transfer to remaining and newly hired Information Technology (IT) City staff; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 32000281 with ConvergeOne for Avaya on-site administration, support and maintenance, increasing the amount by \$165,000 for a total not to exceed amount of \$892,821, from July 1, 2020 to June 30, 2024.





Office of the City Manager

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Kevin Fong, Director of Information Technology  
Subject: Contract No. 32000223 Amendment: Gray Quarter, Inc. for Accela Professional Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 32000223 with Gray Quarter, Inc. for professional services, increasing the amount by \$50,000, for a total not-to-exceed amount of \$299,500 through December 31, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the additional professional services is available in the Fiscal Year (FY) 2023 IT Cost Allocation. Future expenditures are subject to Council approval of the proposed citywide budget and Annual Appropriations Ordinances.

\$50,000 **FY 2023: Professional Services – IT**  
Budget Code: 680-35-362-377-0000-000-472-612990  
(IT Cost Allocation, IT, Professional Services)

\$249,500 **Current Contract Value**

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**\$299,500 Total Contract Value: Professional Services**

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### CURRENT SITUATION AND ITS EFFECTS

Various departments in the City use the Accela Civic Platform as their Business License and Permitting system. The Information Technology Department seeks to extend its contract with Gray Quarter in order to support maintenance, upgrade, and provide technical expertise and support for the Accela Civic Platform.

Currently, Information Technology is engaged in a major upgrade of the Accela Civic Platform. This upgrade moves the City to a supported software version that provides feature enhancements and addresses key security vulnerabilities. In addition, the upgraded version supports newer browsers that streamlines the user experience. Gray Quarter provides installation assistance, upgrade expertise, training support and other project management related support for this upgrade project.

With the additional funds Gray Quarter will continue to assist with the current Accela upgrade, future upgrades, production support and provide support in key projects.

### BACKGROUND

Gray Quarter is an Accela Certified Services Partner and Accela Technology Alliance Partner that specializes in Accela software, with proven experience in many challenging projects.

Gray Quarter has provided support to the city via Accela professional services as a sub-contractor since 2018. In 2019, they were the Accela Professional services sub-contractor to lead the effort to implement Business License renewals online.

In 2020, the City established a direct contract with Gray Quarter to assist with Accela Civic Platform efforts on an as-needed basis. Some of the key efforts in which Gray Quarter has assisted the City include updating the Finance Cash Receipt (CR) interface file to allow for accurate reporting of revenue when overpayments are received and assistance with completion of the data bridge that sends refund data from Accela directly to FUND\$. Gray Quarter has also assisted with the design and configuration management for Ad Hoc reports, and on-going support of Business Licensing module for Rental of Real Property.

In 2021, the City and Gray Quarter enabled online renewal for an additional 10 license types completing the business license online renewal project for the City.

In 2022 Gray Quarter completed the Tax computations changes for Street vendors to use Gross Receipts, delivered the initial draft of a new delinquent business license renewal notification process, and worked with IT to specify new infrastructure for Accela Version 22 and install new instances of Development and Test on the latest version of the Accela Civic Platform.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The City will help reduce carbon emissions by allowing most, if not all, business license processes to be performed online thereby reducing traffic into the City in keeping with the City's Climate Action Plan. This helps with the Digital Strategic Plan goals of providing more online services.

RATIONALE FOR RECOMMENDATION

Gray Quarter, Inc. is an Accela-Certified services partner. They have supported the City in various projects. Gray Quarter has performed specialized process analysis, configuration, and scripting to support the City's online business license system and various other IT and Finance projects. As a result, Gray Quarter has in-depth knowledge of City business processes and data architecture that would take other vendor years to acquire.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered completing projects and enhancements, gaining expertise by investing more time in learning without professional services; however, doing so would lead to an inefficient allocation of staff resources and significantly extend implementation timelines.

CONTACT PERSON

Kevin Fong, Director, Information Technology, 510-981-6525

Attachments:

1: Resolution

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

CONTRACT NO. 32000223 AMENDMENT: GRAY QUARTER, INC. FOR ACCELA  
PROFESSIONAL SERVICES

WHEREAS, Gray Quarter, Inc. provides design, implementation, and support services to public sector technology solutions; and

WHEREAS, Gray Quarter is an Accela Certified Services Partner and Accela Technology Alliance Partner that specializes in Accela software since 2002, with proven experience in many challenging projects; and

WHEREAS, Gray Quarter has provided online enhancements to the Accela platform that have become particularly critical in order to keep business license services accessible and efficient for the community during the COVID 19 pandemic, and this functionality is consistent with the City's strategic goal "to be a customer-focused organization that provides excellent, timely and easily accessible service to the community,"; and

WHEREAS, Gray Quarter has provided excellent scripting, configuration and consulting services for Accela and therefore has an in-depth knowledge of City business processes and data architecture that would take another vendor years to acquire; and

WHEREAS, funding for the additional professional services is available in the Fiscal Year (FY) 2023 IT Cost Allocation, and any future expenditures are subject to Council approval of the proposed citywide budget and Annual Appropriations Ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 32000223 with Gray Quarter, Inc., increasing the amount by \$50,000, for a total not-to-exceed amount of \$299,500, and for the term beginning February 17, 2020 to December 31, 2023.



Office of the City Manager

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Department of Planning and Development

Subject: Adoption of Berkeley Building Codes, including Local Amendments to California Building Standards Code

RECOMMENDATION

1. Adopt first reading of an Ordinance repealing and reenacting the Berkeley Building, Residential, Electrical, Mechanical, Plumbing, Energy, and Green Building Standards Codes in BMC Chapters 19.28, 19.29, 19.30, 19.32, 19.34, 19.36 and 19.37, and adopting related procedural and stricter provisions; and schedule a Public Hearing for the second reading on November 29, 2022 pursuant to state law; and
2. Adopt a Resolution setting forth findings of local conditions that justify more stringent regulations than those provided by the 2022 California Building Standards Code, and rescinding Resolution No. 69,170-N.S.

SUMMARY

The purpose of this report is to provide background on the 2022 California Building Standards Code, identify key changes from the 2019 to 2022 Code editions, and summarize the proposed local amendments, which include:

- Adoption of the California Residential Code Appendix AU *Cob Construction* in support of sustainable construction practices, which reduce environmental impact and provide increased thermal efficiencies; and
- Amendments to the California Plumbing Code to require installation of motion activated gas shut off valves in construction of new and alterations or additions to existing buildings containing fuel gas piping for which a mechanical or plumbing permit is issued. This amendment is in response to a referral from the Disaster and Fire Safety Commission to help reduce or prevent gas-related fires in the event of a major seismic event; and
- Amendments to the California Green Buildings Standards Code (CALGreen) to increase electric vehicle charging infrastructure and readiness requirements in all building types.

The 2022 California Building Standards Code, with local amendments, is adopted in the Berkeley Municipal Code, Title 19, as the Berkeley Building, Residential, Electrical, Mechanical, Plumbing, Energy, and Green Codes (Berkeley Building Codes).

#### FISCAL IMPACTS OF RECOMMENDATION

Adoption of the revised and expanded 2022 California Buildings Standards Code, with the proposed local amendments, will increase the plan check and inspection workload. The expanded California Green Building Standards Code (CALGreen) and the more complex 2022 California Energy Code, which include additional acceptance testing, verification and documentation provisions, will increase plan check and inspection requirements. On July 16, 2019, while adopting an Ordinance Prohibiting Natural Gas Infrastructure in New Buildings, the City Council confirmed that an additional program manager position in the Building and Safety Division of the Planning and Development Department would be needed to implement the Natural Gas Prohibition, CALGreen EV requirements, regularly changing Energy Code requirements, and other Code amendments in support of the Berkeley “Deep Green” Building Initiative. In FY 2022 the Building and Safety Division recruited a Green Building Program Manager, but the position was limited to two years due to pandemic-related budget restrictions. A permanent full-time position is required for ongoing implementation and enforcement of these green building requirements, and is expected to be reflected in the FY 24/25 budget request for Council consideration. The annual cost of extending the Green Building Program Manager position is estimated at \$273,341.

#### CURRENT SITUATION AND ITS EFFECTS

As part of a regular three-year cycle, the State Building Standards Commission has published the 2022 California Building Standards Code that must go into effect no later than January 1, 2023. The California Building Standards Code (California Code of Regulations, Title 24) includes the Building Code (Part 2), Residential Code (Part 2.5), Electrical Code (Part 3), Mechanical Code (Part 4), Plumbing Code (Part 5), Energy Code (Part 6), Historical Code (Part 8), Existing Building Code (Part 10), and Green Building Standards Code (Part 11). The Codes provide for minimum uniform standards for health and safety related to the built environment and for their enforcement through a system of permits, plan review, and inspections.

The ordinance proposed for Council adoption, supported by the resolution of findings, provides for the adoption of the referenced California Codes along with certain local amendments, effective January 1, 2023. If this ordinance does not become effective by January 1, 2023, the 2022 California Building Standards Code will automatically become effective on that date, and until a local ordinance were to become effective, the City would not be able to maintain or implement the local amendments tailored to Berkeley. The last day to file for a building permit to be reviewed under the current 2019 Codes will be Friday, December 30, 2022.



The City's building-related codes include local amendments reflecting operations and local climatic, geological, and topographical conditions that need to be included as part of the adoption of the new code. Under state law, local jurisdictions may adopt other administrative provisions appropriate to the locality and may adopt stricter code provisions if justified by findings of local climatic, geological or topographical conditions.

This ordinance, with the local amendments, supports the City's Strategic Plan goals to create a resilient, safe, connected, and prepared city, and to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment. The proposed actions also support emergency housing provisions to assist in the declared homeless shelter crisis.

### BACKGROUND

The Council last adopted new California Building Standards Code with local amendments in 2019, which became effective on January 1, 2020. As with the last code adoption, staff is conducting community outreach to inform future applicants and other community members that all permit applications submitted on or before December 30, 2022, will be reviewed under the current 2019 building codes. Outreach includes notifications on the City's homepage websites, announcements on the online permit center website, notification flyers at the Permit Service Center, and email notification to local building professionals.

When the Department opens on January 3, 2023 after the observed New Year's Day holiday, new permit applications will be reviewed for conformance to the 2022 California Building Standards Code with adopted local amendments.

Codes recommended for adoption are the Berkeley Building Code (Chapter 19.28), which also includes the Historical Building Code and the Existing Building Code, the Berkeley Residential Code (Chapter 19.29), the Berkeley Electrical Code (Chapter 19.30), the Berkeley Mechanical Code (Chapter 19.32), the Berkeley Plumbing Code (Chapter 19.34), the Berkeley Energy Code (Chapter 19.26) and the Berkeley Green Code (Chapter 19.37).

### *Berkeley Building Code (Chapter 19.28)*

The 2022 California Building Code adopted in BMC Chapter 19.28 includes numerous model code changes, impacting use and occupancies, allowable building heights and areas, fire protection features, means of egress, structural modifications, etc. Of major importance are the introduction of three additional construction types for larger and taller mass timber buildings, new provisions for small and large family care facilities in apartment buildings, introduction of the minimum safety requirements for shipping containers to be repurposed for use as buildings and structures. These changes are designed to provide enhanced protection of public health, safety and general welfare as they relate to the construction and occupancy of buildings and structures.

*Berkeley Residential Code (Chapter 19.29)*

The 2022 California Residential Code adopted in BMC Chapter 19.29 includes numerous model code changes further refining prescriptive provisions for the construction of dwellings. Of major importance are the updated local climatic criteria refining the energy needs for dwelling units for the purpose of ensuring that the selected HVAC equipment meets the heating or cooling requirements, introduction of the minimum safety requirements for shipping containers to be repurposed for use as residential or accessory buildings and structures, and a new Appendix AU Cob Construction which provides requirements for clay, sand and straw to be used as the primary building material. These changes are designed to provide enhanced protection of public health, safety and general welfare as they relate to the construction and use of residential buildings and structures.

*Berkeley Mechanical Code (Chapter 19.32)*

The 2022 California Mechanical Code adopted in BMC Chapter 19.32 incorporates the prior local Berkeley amendment to require installation of residential kitchen range hoods with a minimum air flow of 100 cfm and maximum sound rating not exceeding 3 sones over residential stoves and cooktops.

*Berkeley Plumbing Code (Chapter 19.34)*

In response to a referral from the Disaster and Fire Safety Commission, adopted by the City Council on June 1, 2021 (see Attachment 3), staff proposes a local amendment to the 2022 California Plumbing Code, adopted in BMC Chapter 19.34, to include a mandatory requirement for the installation of motion activated gas shut off valves in construction of new and alterations or additions to existing buildings containing fuel gas piping for which a mechanical or plumbing permit is issued regardless of the permit valuation. This amendment is intended to reduce or prevent serious gas-related fires or explosions in the event of a major seismic event.

*Berkeley Energy Code (Chapter 19.36)*

The 2022 California Energy Code adopted in BMC Chapter 19.36 incorporates requirements for rooftop solar photovoltaic (PV) systems for new nonresidential and new multifamily buildings, which are based on the City of Berkeley requirements previously added through local Reach Code amendments to the 2019 Energy Code. The comprehensive electric readiness requirements now mandated for new residential construction in the 2022 California Energy Code, including building systems for water heating, space conditioning, clothes drying, and cooking, have been modeled on Berkeley's own 2019 Energy Reach code amendments.

The 2022 California Energy Code introduces substantial additional changes over the previous code cycle. It incorporates a new energy source metric, adds chapters specifically addressing energy requirements for multi-family residential buildings, adds comprehensive electric readiness requirements for single family and multi-family buildings, adds new requirements for nonresidential building systems, requires energy

storage systems (ESS) for multi-family buildings of three stories or more and nonresidential buildings, and requires higher ventilation rates.

Since the 2019 Berkeley Reach Code amendments have been incorporated into the 2022 California Energy Code and statewide cost-effectiveness studies have not been provided to justify further amendments, staff proposes adoption of the 2022 California Energy Code without amendments. This recommendation aligns with the regional consensus that any local all-electric building provisions reside outside of the Energy Code. The Natural Gas Prohibition in Berkeley Municipal Code Chapter 12.80 enables design professionals and developers to design new buildings as all-electric from project inception. All electric building compliance is verified as part of the building permit plan review and field inspection process.

*Berkeley Green Code (Chapter 19.37)*

The 2022 California Green Building Standards Code (CALGreen) adopted in BMC Chapter 19.37 makes moderate changes in comparison to the 2019 CALGreen, primarily concentrated on electric vehicle (EV) charging readiness, including charging provisions for medium and heavy-duty commercial vehicles. The proposed local amendments retain additional EV charging requirements, maintain requirements for low-carbon concrete, and preserve past local amendments for increased construction and demolition (C&D) waste diversion. No cost-effectiveness demonstration is required for local amendments to CALGreen.

The proposed local amendments require increased EV charging readiness and installation in new buildings, in keeping with Berkeley's amendments to the 2019 CALGreen Code and implementation of Berkeley's Electric Mobility Roadmap. Specifically, where parking spaces are provided, the proposed EV amendments require:

- Single-family homes, duplexes, and townhouses must have at least one parking space equipped with a raceway, wiring, and power to support a future Level 2 EV charging station. In contrast, the model code requires only a raceway and panel space.
- Multifamily and Hotel/Motel buildings must have at least 20% of spaces as EV capable to support future Level 2 EV charging stations and at least 5% of spaces with EV charging stations installed. In contrast, the model code requires only 10% EV capable spaces and 5% EV charging stations for buildings with 20 dwelling units or greater.
- Nonresidential buildings must have at least 20% of spaces as EV capable to support future Level 2 EV charging stations and at least 10% of spaces with EV charging stations installed. In contrast, the model code requires 15% EV capable spaces and 5% EV charging stations.

These proposed amendments further strengthen 2022 CALGreen requirements for EV charger installations which is supported by the Berkeley Electric Mobility Roadmap. EV charging infrastructure is a critical component to electric vehicle adoption, and it is significantly more expensive to install as a retrofit than during new construction. Ensuring that newly constructed residential and nonresidential parking has EV charging capability will reduce the long-term costs of EV infrastructure installation, while helping to increase EV adoption, and ultimately help to decrease greenhouse gas emissions associated with transportation.

Berkeley's Electric Mobility Roadmap emphasizes that being able to charge at home or at work location is critical for supporting EV ownership and that, increasingly, daytime charging at work or other nonresidential locations could be used to leverage surplus renewable energy. The Roadmap estimates that Berkeley will need about 380 workplace EV charging stations by 2025 to be on track for the Berkeley Climate Action Plan goal of reducing greenhouse gas emissions by 80% from 2000 levels by 2050. To get to zero net carbon in line with State goals by 2045, the goal increases to 610 workplace EV charging stations. Requiring EV charging station installation in new multifamily, nonresidential, and hotel/motel buildings, in concert with EV charging readiness requirements for residential and nonresidential developments, will substantially facilitate electric vehicle adoption in Berkeley.

#### Previous Local Amendments

Previous local amendments, with some revisions and updates in code language and code sections, that are recommended for continuance in the reenacted Berkeley Building Code (BMC Chapter 19.28) include:

- Article 1. Scope and Administrative Provisions – local amendments concerning permits, applications, fees, undocumented units, appeals, violations, unsafe buildings, and safety assessment placards.
- Article 2. Restrictions in Fire Zones – adding additional local requirements applicable to additions, alterations, repairs and re-roofs, and enacting fire protection areas not covered by the state-mandated areas.
- Article 3. Wood Burning Appliances – local amendment reducing the health risks caused by wood smoke based upon Berkeley's climatic conditions.
- Article 4. Projection into Public Right of Way – an administrative amendment concerning revocation, removal and indemnification regarding construction in the Right of Way.
- Article 5. Existing Buildings – adopting 2022 California Existing Building Code and certain chapters of the 2021 International Existing Building Code to reduce the risk from earthquakes.
- Article 6. Repairs to Existing Buildings and Structures – establishing updated

regulations for the repairs of damaged structures to comply with the Stafford Act, which authorizes the Federal Emergency Management Agency (FEMA) to fund the repair and restoration of eligible facilities damaged in a declared disaster and requires that the repair and restoration be "on the basis of the design of such facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications and standards."

- Article 7. Amendments to Structural Standards – addressing Berkeley’s close proximity to major earthquake faults. The Berkeley Building Official has participated in meetings of the Tri-chapter Uniform Code Committee (TUCC), which is part of the International Code Council East Bay Chapter. The TUCC recommended several structural amendments to the 2022 California Building and Residential Codes, which are included in the proposed local amendments for Berkeley.
- Article 8. Construction of Exterior Appurtenances – establishing more stringent construction standards for exterior elevated elements and continuing the amendments adopted in July 2015 following the balcony collapse at 2020 Kittredge Street.
- Article 9. Emergency Housing Appendix P (formally Appendix O) – establishing local amendments reflecting the particular characteristics and needs of Berkeley’s emergency shelter responses.

Previous local amendments, with some revisions and updates in code language and code sections, that are recommended for continuance in the reenacted Berkeley Residential Code (BMC Chapter 19.29) include:

- Adoption of the California Residential Code Appendices AR and AS for light straw-clay and strawbale construction in support of sustainable construction practices which reduce environmental impact and provide increased thermal efficiencies.
- Adoption of the California Residential Code Appendix AQ for tiny homes used as dwelling units, relaxing various code requirements as they apply to smaller homes in response to the California housing crisis.
- Section 19.29.050 Materials and Construction Methods for Exterior Wildlife Exposure – adding additional local requirements applicable to additions, alterations, repairs and re-roofs, and enacting fire protection areas not covered by the state-mandated areas.
- Section 19.29.060 Technical Amendments to Structural Standards – addressing Berkeley’s close proximity to major earthquake faults.

Previous local amendments, with some revisions in code language and code sections, that are recommended for continuance in the reenacted Berkeley Green Code (BMC Chapter 19.37) include:

- Section 19.37.040 Construction and Demolition debris amendments to require that 100% asphalt, concrete, excavated soil and land-clearing debris be diverted from disposal by recycling, reuse, and salvage, in addition to the general 65% diversion requirement.
- Section 19.37.040 Low-carbon concrete requirement, which requires that cement used in concrete mix design be reduced by not less than 25 percent.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Adoption of the 2022 Berkeley Building Codes with local amendments is important to meeting Berkeley's Climate Action Plan, Zero Waste, and Fossil Fuel Free Berkeley goals. The Berkeley Green Code, through expanded EV charging and low-carbon concrete requirements, limits the greenhouse gas emissions associated with transportation (currently about 60% of Berkeley's total emissions) and the use of concrete, a common building product that is responsible for approximately 8% of global carbon emissions. In addition, the increased diversion requirements for construction and demolition materials keeps waste out of landfills. Continued implementation of the Energy Code and Natural Gas Prohibition, including the verification of compliance through the building permit and inspection process, results in new buildings operating on cleaner energy, which supports Berkeley's Climate Action and Fossil Fuel Free City goals.

#### RATIONALE FOR RECOMMENDATION

Local codes must be adopted every three years or state codes go into effect without local amendments. Adoption of local amendments and findings are needed to adapt the state codes to Berkeley's particular administrative, topographic, geologic and climatic conditions. The purpose of the non-administrative local amendments is to provide a higher level of safety than is reflected in the 2022 codes adopted by the State. The fire and seismic danger and other local conditions, as described in detail in the attached resolution of local conditions, justify the Berkeley code amendments that are stricter than the California Building Standards Code.

According to the California Building Standards Commission, the repeal of prior code is often overlooked by municipalities and is critically important to ensure that obsolete provisions are expressly repealed.

#### ALTERNATIVE ACTIONS CONSIDERED

Adopt the California Buildings Standards Code with fewer, or no, local amendments; or take no action, and let the state mandated codes take effect without local amendments specifically designed for Berkeley.

#### CONTACT PERSON

Alex Roshal, Chief Building Official, Manager of Building and Safety Division, Planning and Development Department, 510-981-7445

David Lopez, Assistant Building Official, Building and Safety Division, Planning and  
Development Department, 510-981-7441

Kurt Hurley, Green Building Program Manager, Building and Safety Division, Planning  
and Development Department, 510-981-7501

Attachments:

- 1: Code Adoption Ordinance
- 2: Resolution Adopting Local Condition
- 3: Referral from the Disaster and Fire Safety Commission, adopted by Council 6/1/21

ORDINANCE NO. –N.S.

REPEALING AND REENACTING BERKELEY MUNICIPAL CODE CHAPTERS 19.28 (BERKELEY BUILDING CODE), 19.29 (BERKELEY RESIDENTIAL CODE), 19.30 (BERKELEY ELECTRICAL CODE), 19.32 (BERKELEY MECHANICAL CODE), 19.34 (BERKELEY PLUMBING CODE), 19.36 (BERKELEY ENERGY CODE), AND 19.37 (BERKELEY GREEN CODE)

BE IT ORDAINED by the Council of the City of Berkeley as follows:

**Section 1.** That Berkeley Municipal Code Chapter 19.28 is hereby repealed and reenacted to read as follows:

**Chapter 19.28**

**BERKELEY BUILDING CODE\***

**Sections:**

**19.28.010 Adoption of the California Building Code**

**Article 1. Scope and Administrative Provisions**

**19.28.020 Adoption of Chapter 1 Scope and Administration**

**Article 2. Restrictions in Fire Zones**

**19.28.030 Chapter 7A Materials and Construction Methods for Exterior Wildlife Exposure**

**Article 3. Wood Burning Appliances**

**19.28.040 Wood Burning Appliances**

**Article 4. Projection into Public Right of Way**

**19.28.050 Encroachment into the Public Right of Way - Revocation and Removal Indemnification and Hold Harmless**

**Article 5. Existing Buildings**

**19.28.060 Adoption of 2022 California Existing Building Code and certain Chapters of the 2021 International Existing Building Code by Reference**

**Article 6. Repairs to Existing Buildings and Structures**

**19.28.070 Adoption of Regulations for the Repairs of Existing Structures**

**Article 7. Amendments to Structural Standards**

**19.28.080 Technical Amendments to Structural Standards**

**Article 8. Construction of Exterior Appurtenances**



**19.28.090 Technical Amendments for Construction of Exterior Projecting Elements and Appurtenances**

**Article 9. Emergency Housing**

**19.28.100 Emergency Housing and Emergency Housing Facilities**

**Notes:**

\* See Chapter 1.24 for abatement of nuisances by City.

**19.28.010 Adoption of the California Building Code.**

A. The California Building Code, 2022 edition, as adopted in Title 24 Part 2 of the California Code of Regulations, including Appendices I, J and P, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. One copy of this Code is on file in the office of the City Clerk of the City of Berkeley.

B. The California Historical Building Code, 2022 edition, as adopted in Title 24 Part 8 of the California Code of Regulations, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. One copy of this Code is on file in the office of the City Clerk of the City of Berkeley.

C. The California Existing Building Code, 2022 edition, as adopted in Title 24 Part 10 of the California Code of Regulations, including Appendix A, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. One copy of this Code is on file in the office of the City Clerk of the City of Berkeley.

D. This Chapter shall be known as the "Berkeley Building Code" and shall be referred to in this Chapter as "this Code."

E. This Chapter will become effective on January 1, 2023, and shall not apply to any building permit submitted by December 31, 2022.

**Article 1. Scope and Administrative Provisions**

**19.28.020 Adoption of Chapter 1 Scope and Administration**

Chapter 1 of the 2022 California Building Code is adopted in its entirety subject to the modifications thereto which are set forth below.

**CHAPTER 1 SCOPE AND ADMINISTRATION**

**SECTION 101 – GENERAL**

**101.1 Title.** These regulations shall be known as the Berkeley Building Code, hereinafter referred to as "this Code".

**101.4 Referenced codes.** The other codes specified in Sections 101.4.1 through 101.4.9, and referenced elsewhere in this Code, shall be considered part of the requirements of this Code to the extent prescribed in each such reference.

**101.4.1 Gas.** The provisions of the Berkeley Mechanical Code, based on the 2022 California Mechanical Code, and the Berkeley Plumbing Code, based on the 2022 California Plumbing Code, as amended herein, shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this Code. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.

**101.4.2 Mechanical.** The provisions of the Berkeley Mechanical Code, based on the 2022 California Mechanical Code, as amended herein, shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

**101.4.3 Plumbing.** The provisions of the Berkeley Plumbing Code, based on the 2022 California Plumbing Code, as amended herein, shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. The provisions of the Berkeley Plumbing Code shall apply to private sewage disposal systems.

**101.4.4 Residential property maintenance.** The provisions of the Berkeley Housing Code, as adopted in Chapter 19.40, shall apply to existing residential buildings and premises; equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards; responsibilities of owners, operators and occupants; and occupancy of existing premises and structures.

Notwithstanding any provisions contrary in this Chapter, any building or portion thereof constructed in compliance with the Berkeley Building Code shall not be deemed to be in violation of the Housing Code provisions that may conflict.

**101.4.5 Fire prevention.** The provisions of the Berkeley Fire Code based on the 2022 California Fire Code, as adopted in Chapter 19.48, shall apply to matters affecting or relating to structures, processes and premises from the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.

**101.4.6 Energy.** The provisions of the Berkeley Energy Code, based on the 2022 California Energy Code, as amended herein, shall apply to all matters governing the design and construction of buildings for energy efficiency.

**101.4.7 Existing buildings.** The provisions of the Berkeley Existing Building Code, based on the 2022 California Existing Building Code, as amended herein, shall apply to matters governing the repair, alteration, change of occupancy, addition to and relocation of existing buildings.

**101.4.8 Electrical.** The provisions of the Berkeley Electrical Code, based on the 2022 California Electrical Code, as amended herein, shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

**101.4.9 Green.** The provisions of the Berkeley Green Code, based on the 2022 California Green Building Standards Code, as amended herein, shall apply to enhanced design and construction of buildings through the use building concepts having a reduced negative impact or the positive environmental impact and encouraging sustainable construction practices.

**101.5 References to prior codes.** Unless superseded and expressly repealed, references in City forms, documents and regulations to the chapters and sections of former Berkeley Building Code editions, shall be construed to apply to the corresponding provisions contained within the 2022 Berkeley Building Code Ordinance No. X,XXX–N.S. and all ordinances amendatory thereof. Any ordinances or parts of ordinances in conflict herewith are hereby superseded and expressly repealed.

## SECTION 103 – DIVISION OF BUILDING AND SAFETY

**103.1 Creation of enforcement agency.** The Division of Building and Safety is hereby created and the official in charge thereof shall be known as the building official. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

**103.2 Appointment.** The building official shall be appointed by the City Manager.

**103.3 Deputies.** The building official shall have the authority to appoint an assistant building official, building inspectors, plans examiners, housing inspectors, other technical officers and employees. Such employees shall have powers as delegated by the building official.

## SECTION 104 – DUTIES AND POWERS OF BUILDING OFFICIAL

**104.7 Division records.** The building official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, notices of violations, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

Add a new Subsection 104.12 to read:

**104.12 Unpermitted dwelling units.** When a building permit record for a residential unit does not exist, the building official is authorized to make a determination of when the residential unit was constructed and then apply the building standards in effect when the residential unit was determined to be constructed or the current building standards, whichever is the least restrictive, provided the building or portion thereof does not become or continue to be a substandard or unsafe building. The Building Official is authorized to accept reasonable alternatives to the requirements of the prior or current code editions when dealing with unpermitted dwelling units.

## SECTION 105 – PERMITS

**105.3.2 Expiration of application.** An application for a permit for any proposed work shall expire one year after the date of filing, unless it can be demonstrated by the applicant that such application has been pursued in good faith or a permit has been issued. The building official or the permit service center coordinator are authorized to grant one or more extensions of time for additional periods not exceeding a 180 days per extension. The extension shall be requested in writing and justifiable cause demonstrated. Requests for time extensions shall be accompanied by the payment of a fee set by resolution of the City Council.

If a project is associated with a code enforcement case, the dates specified in the code enforcement notices take precedence over the timelines specified in this section.

**105.5 Expiration of permit.** Permits issued by the building official shall expire one year from the date of issuance. The building official or the supervising building inspector are authorized to grant one or more extensions of time to complete the work for additional periods not exceeding one year per extension. The extension shall be requested in writing and justifiable cause demonstrated. Requests for time extensions shall be accompanied by the payment of a fee set by resolution of the City Council.

The issuance of a building permit shall not excuse the permittee or any other person from compliance with any notice and/or order to correct a code violation issued by the City.

When a permit is expired and a new permit is required to complete the work, a new permit application and plans shall be filed describing the remaining work to be done. If a site visit or other review is required to determine the extent of the remaining work, a fee may be charged to make such determination.

## SECTION 109 – FEES

**109.1 Payment of fees.** Except when fees are deferred, a permit shall not be valid until the fees as set forth by resolution of City Council have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

**109.2 Schedule of permit fees.** On buildings, structures, electrical, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as

required, in accordance with the fee as set forth by resolution of the City Council. Fees for permits and inspections and other related services under this Code shall be assessed and paid as set forth by resolution of the City Council. Unless waived or deferred as provided by local regulations, a plan review fee and other fees as specified in the resolution shall be paid at the time of submitting any documents for review and additional fees as specified in the resolution shall be paid at issuance of the permit.

**109.4 Work commencing before permit issuance.** Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permit shall be subject to a fee as set forth by resolution of the City Council equal to and in addition to the permit fees for the portion of the scope of work performed without the permit.

**109.7 Re-inspection fees.** A re-inspection fee, as set forth by resolution of the City Council, may be assessed for each re-inspection when such portion of work for which an inspection is scheduled is not complete or when corrections previously called for are not made.

Re-inspection fees shall not be required each time a job is disapproved for failure to comply with the requirements of this Code. Rather this section shall be used to control the practice of calling for inspections before the job is ready for such inspection, or when the approved plans are not readily available to the inspector, or for failure to provide access on the date for which the inspection is requested, or when work deviates from the approved plans but no revision is submitted to the City.

To obtain a re-inspection, the applicant shall pay the re-inspection fee as set forth by resolution of the City Council. In instances where re-inspection fees have been assessed, no additional inspection of the work will be performed until the required fees have been paid.

## SECTION 112 – SERVICE UTILITIES

**112.4 Authority to connect utilities.** Clearance for connection of one utility, either gas or electrical, will be withheld until final building, electrical, plumbing, and/or mechanical inspections are made and approval has been given for any new building or change in occupancy classification to an existing building for which connection to such utilities is sought, unless approval has been first obtained from the building official, as provided by a Temporary Certificate of Occupancy or Final Certificate of Occupancy.

**112.5 Unsafe service utilities.** Unsafe service utilities are hereby declared to be public nuisances and shall be abated, repaired, rehabilitated, demolished or removed in accordance with the procedures set forth in Chapter 19.40 of the Berkeley Municipal Code (BMC) for residential buildings and Berkeley Building Code for all other buildings, or any alternate procedure that may be adopted by the City of Berkeley. In addition, the City Attorney may pursue other appropriate action to prevent, restrain, correct or abate the violation as provided for in the BMC. Remedies under this section are cumulative. When

service utilities are maintained in violation of this Code and in violation of a notice issued pursuant to the provisions of this section, the building official shall institute appropriate action to prevent, restrain, correct or abate the violation.

**112.6 Authority to disconnect utilities in emergencies.** The building official or building official's authorized representative shall have the authority to disconnect electrical power or other energy service supplied to the building, structure or building service equipment therein regulated by this Code in case of emergency where necessary to eliminate an immediate hazard to life or property. The building official or building official's authorized representative shall, whenever possible, notify the serving utility, and the owner of the building, structure or electrical system or equipment and any building occupants of the decision to disconnect prior to taking such action and shall notify them, in writing, of the disconnection as soon as possible thereafter.

**112.7 Authority to condemn electrical system and equipment.** Whenever the building official determines that an electrical system or electrical equipment regulated by this Code is hazardous to life, health or property, the building official may order in writing that such electrical system or equipment either be removed or restored to a safe condition. The written notice shall fix a reasonable time limit for compliance with such order. Persons shall not use or maintain defective electrical systems or equipment after receiving such notice except as may be provided therein.

When equipment or an installation is to be disconnected, a written notice of such disconnection and the reasons therefore shall be given within 24-hours of the order to disconnect to the serving utility, the owner and occupants of the building, structure or premises.

When equipment or an installation is maintained in violation of this Code and in violation of a notice issued pursuant to the provisions of this section, the building official shall institute appropriate action to prevent, restrain, correct or abate the violation.

Unsafe electrical systems or equipment are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in Chapter 19.40 of the BMC for residential buildings and Berkeley Building Code for all other buildings, or any alternate procedure that may be adopted by the City of Berkeley. In addition, the City Attorney may pursue other appropriate action to prevent, restrain, correct or abate the violation as provided for in the BMC. Remedies under this section are cumulative.

**112.8 Connection after order to disconnect.** Persons shall not make connections to a service utility system or equipment that has been disconnected or ordered to be disconnected by the building official, or the use of which has been ordered to be discontinued by the building official, until the building official authorizes the reconnection and use of the electrical system or equipment.

## SECTION 113 – BOARD OF APPEALS

**113.1 General.** In order to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this Code, there shall be and is hereby created a board of appeals consisting of the Housing Advisory Commission pursuant to Section 19.44.020 of the Berkeley Municipal Code. The building official may convene and consult with an advisory panel of qualified individuals. This advisory panel is intended to help the building official in formulating and making staff recommendations to the Housing Advisory Commission. The advisory panel may provide written and/or oral presentations to the Housing Advisory Commission as needed.

**113.3 Qualifications.** The board of appeals shall consist of members meeting the qualifications required for the Housing Advisory Commission. The advisory panel shall consist of individuals found by the building official to be qualified by experience and training in the specific area of the appeal who are not employees of the jurisdiction.

## SECTION 114 – VIOLATIONS

**114.4 Violation penalties.** Any person who violates a provision of this Code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this Code, shall be subject to penalties as prescribed by law. Violations of this Code are misdemeanors, but may be cited or charged, at the election of the enforcing officer, building official, or City Attorney, as infractions, subject to an election by the defendant under Penal Code Subsection 17(d). Nothing in this Section shall prevent any other remedy afforded by law.

## SECTION 116 - UNSAFE STRUCTURES AND EQUIPMENT

**116.1 Conditions.** Structures or existing equipment that are or hereafter become structurally unsafe, insanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or that involve illegal or improper occupancy or inadequate maintenance shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.

All such unsafe buildings, equipment, structures or appendages are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in Chapters 1.24, 19.28, 19.40 and/or 19.44 of the BMC as applicable. As an alternative, the building official, or other employee or official of this jurisdiction as designated by the City Council, may institute any other appropriate action to prevent, restrain, correct or abate the violation.

### **116.6 Safety Assessment Placards.**

**116.6.1 Intent.** This section establishes standard placards to be used to indicate the condition of a structure for occupancy after a natural or human-caused disaster and a rapid evaluation by authorized personnel. The building official or authorized representatives shall post the appropriate placard at each entry point to a building or structure upon completion of a safety assessment.

**116.6.2 Application of provisions.** The provisions of this section are applicable to all buildings and structures of all occupancies regulated by the City of Berkeley. The City Council may extend the provisions as necessary.

**116.6.3 Definitions.**

**116.6.3.1 "Safety Assessment"** is a visual, non-destructive examination of a building or structure for the purpose of determining the condition for continued occupancy.

**116.6.3.2 Placards.** Following are titles and descriptions of the official jurisdiction placards to be used to designate the condition of a building structure for continued occupancy, partial or conditional occupancy, or unsafe to enter. Copies of placards are on file in the Building and Safety Division of the Planning and Development Department.

INSPECTED – Lawful Occupancy Permitted is to be posted on any building or structure wherein no apparent hazard has been found. This placard is not intended to mean there is no damage to the building or structure, but that any damage that occurred does not present a hazard to occupants.

RESTRICTED USE is to be posted on each building or structure that has been damaged wherein the damage has resulted in some form of restriction to the continued occupancy. The individual who posts this placard will note in general terms the type of damage encountered and will clearly and concisely note the restrictions on continued occupancy.

UNSAFE – Do Not Enter or Occupy is to be posted on each building or structure that has been damaged such that continued occupancy poses a threat to life safety. Building or structures posted with this placard shall not be entered under any circumstances except as authorized in writing by the building official, or the building official's authorized representative. Safety assessment teams shall be authorized to enter these building at any time. This placard is not to be used or considered as a demolition order. The individual who posts this placard will note in general terms the type of damage encountered.

**116.6.4 Content of placard.** The BMC Section number and the words "City of Berkeley" shall be permanently affixed to each placard.

**116.6.5 Unlawful to remove.** Once a placard has been attached to a building or structure, it is not to be removed, altered or covered until done so by an authorized representative of the Building Official. It shall be unlawful for any person, firm or corporation to alter, remove, cover or deface a placard unless authorized pursuant to this section.



## Article 2. Restrictions in Fire Zones

### 19.28.030 CBC Chapter 7A Materials and Construction Methods for Exterior Wildlife Exposure.

**Chapter 7A** of the 2022 California Building Code is adopted in its entirety subject to the modifications thereto which are set forth below.

#### 701A – SCOPE, PURPOSE AND APPLICATION

**701A.1 Scope.** This chapter applies to building materials, systems and or assemblies used in the exterior design and construction of new buildings and structures, additions, alterations, repairs and re-roofs located within a Wildland-Urban Interface (WUI) Fire Area as defined in Section 702A.

**701A.2 Purpose.** The purpose of this Chapter is to establish minimum standards for the protection of life and property by increasing the ability of a building located in any Fire Hazard Severity Zone within State Responsibility Areas or any building or structure in the Wildland-Urban Interface (WUI) Fire Area to resist the intrusion of flame or burning embers projected by a vegetation fire and contributes to a systematic reduction in conflagration losses.

**701A.3 Application.** New buildings located in any Fire Hazard Severity Zone or new buildings and structures, additions, alterations, repairs and re-roofs located in any Wildland-Urban Interface (WUI) Fire Area designated by the enforcing agency constructed after the application date shall comply with the provisions of this chapter. This shall include all new buildings and structures, additions, alterations, repairs and re-roofs with residential, commercial, educational, institutional or similar occupancy type uses, which shall be referred to in this chapter as “applicable building(s)” (see definition in Section 702A), as well as new buildings and structures, additions, alterations, repairs and re-roofs accessory to those applicable buildings (see Exceptions 1 and 4).

#### **Exceptions:**

1. Group U occupancy accessory buildings or structures, of any size located at least 50 feet (15 240 mm) from an applicable building on the same lot.
2. Group U occupancy agricultural buildings or structures, as defined in Section 202 of this code of any size located at least 50 feet (15 240 mm) from an applicable building.
3. Group C occupancy special buildings or structures conforming to the limitations specified in Section 450.4.1.
4. New accessory buildings and miscellaneous structures specified in Section 710A shall comply only with the requirements of that section.
5. ~~Additions to and remodels of buildings originally constructed prior to July 1, 2008.~~

**701A.3.1 Application date and where required.** New buildings for which an application for a building permit is submitted on or after July 1, 2008 located in any Fire Hazard Severity Zone or buildings and structures, additions, alterations, repairs and re-roofs for which an application for a building permit is submitted on or after July 1, 2008 located in the Wildland Interface Fire Area shall comply with all sections of this chapter, including all of the following areas:

1. All unincorporated lands designated by the State Board of Forestry and Fire Protection as State Responsibility Area (SRA) including:
  - 1.1. Moderate Fire Hazard Severity Zones.
  - 1.2. High Fire Hazard Severity Zones.
  - 1.3. Very-High Fire Hazard Severity Zones.
2. Land designated as Very-High Fire Hazard Severity Zone by cities and other local agencies.
3. Land designated as Wildland Interface Fire Area by cities and other local agencies.

Exceptions:

1. New buildings located in any Fire Hazard Severity Zone within State Responsibility Areas, for which an application for a building permit is submitted on or after January 1, 2008, shall comply with all sections of this chapter.
2. New buildings located in any Fire Hazard Severity Zone within State Responsibility Areas or any Wildland Interface Fire Area designated by cities and other local agencies for which an application for a building permit is submitted on or after December 1, 2005 but prior to July 1, 2008, shall only comply with the following sections of this chapter:
  - 2.1. Section 705A — Roofing.
  - 2.2. Section 706A — Attic Ventilation.

## 702A – DEFINITIONS

**APPLICABLE BUILDING.** A building or structure that has residential, commercial, educational, institutional or similar occupancy type use.

**FIRE ZONE ONE** shall encompass the entire City of Berkeley except for Fire Zones Two and Three.

**FIRE ZONE TWO** encompasses those areas designated as Combined Hillside District in the Official Zoning map of the City of Berkeley and those areas designated as Very High in the official Fire Hazard Severity Zones (FHSZ) map of The Department of Forestry and Fire Protection (CAL FIRE), as they may be amended from time to time. The following properties, not part of the Combined Hillside District, are included in Fire Zone Two under the Very High designation of the FHSZ map: the eastern section of the University of California, Berkeley main campus, block number 2042 (Alameda County Assessor's parcel numbering (APN) system), to the east city line; all of the Clark-Kerr campus, block number 7690, to the east city line; all of block number 7680 in the City of Berkeley; portions of block number 1702 in the City of Berkeley. See Exhibit A for the specific parcels by APN and address.

**FIRE ZONE 3** encompasses those areas designated as Environmental Safety – Residential Districts on the Official Zoning Map of the City of Berkeley, as it may be amended from time to time.

**LOCAL RESPONSIBILITY AREA (LRA).** Areas of the state in which the financial responsibility of preventing and suppressing fires is the primary responsibility of a city, county, city and county, or district. Fire Zones 2 and 3 are designated as Local Responsibility Area.

**WILDLAND-URBAN INTERFACE (WUI).** A geographical area identified by the state as a "Fire Hazard Severity Zone" in accordance with the Public Resources Code Sections 4201 through 4204 and Government Code Sections 51175 through 51189, or other areas designated by the enforcing agency to be at a significant risk from wildfires. Fire Zones 2 and 3 are designated as Wildland-Urban Interface (WUI) Fire Area.

## **705A – ROOFING**

**705A.1 General.** Roofs shall comply with the requirements of Chapter 7A and Chapter 15. Roofs shall have a roofing assembly installed in accordance with its listing and the manufacturer's installation instructions. Roof assemblies in the Fire Hazard Severity Zones shall be Class A rating when tested in accordance with ASTM E108 or UL790.

Wooden shakes and shingles are prohibited roof coverings regardless of the assembly rating of the roof system.

**Exception:** Replacement of less than 50% of the roof area within a 5-year period.

**705A.5 Spark Arrestors.** All chimneys of fireplaces, stoves, barbecues or heating appliances using solid fuel shall be provided with an approved spark arrestor whenever modification has been made to any of these appliances, or whenever a structure is re-roofed. The net free area of the spark arrestor shall be not less than four times the net free area of the outlet of the chimney. The spark arrestor shall have heat and corrosion resistance equivalent to twelve-gauge wire, nineteen-gauge galvanized wire, or twenty-four-gauge stainless steel. Openings shall not permit the passage of spheres having a

diameter larger than one-half inch and shall not block the passage of spheres having a diameter of less than three-eighths inch. The arrestor shall be securely attached to the chimney or stovepipe and shall be adequately supported. The use of bands, mollies, masonry anchors or mortar ties are recommended depending upon the individual need.

## **707A – EXTERIOR COVERING**

**707A.3.2 Replacement of Exterior Wall Covering.** Materials for replacement of existing exterior wall covering shall meet or exceed the standards set forth in this Chapter.

**Exception:** Where less than 50% of any wall surface is being replaced or repaired, and the matching of the new plane to the existing plane on that wall is not possible.

## **711A – UNDERGROUND UTILITY CONNECTIONS**

**711A.1 Underground utility connections.** For new construction, provisions shall be made for the undergrounding of all utilities serving the property, including but not limited to electrical, telephone and cable television, by the installation of appropriately sized underground conduits extending from the street property.

## **712A – ADDITIONAL REQUIREMENTS IN FIRE ZONE THREE**

**712A.1 General.** In addition to meeting the other requirements of this Chapter, buildings or structures hereinafter erected, constructed, moved, altered, added, or repaired within Fire Zone Three shall comply with the following requirements for buildings and structures.

**712A.2 Fire warning system.** All residential units shall be equipped with a Fire Warning System as specified by the residential smoke detector requirements of the current edition of the California Building Code and with an audible exterior alarm. The exterior alarm must meet the requirements of NFPA 72 or equivalent and generate 45 decibels ten feet from the alarm, or more.

**712A.3 Automatic fire sprinklers, Berkeley Fire Code Section 903.2.23.** Any new construction or new additions to existing structures requiring a permit determined to be \$100,000 or more in construction costs shall be required to install automatic fire sprinklers throughout the structure.

**712A.4 Utilities.** Utilities, pipes, furnaces, water heaters or other mechanical devices located in an exposed underfloor area of a building or structure shall be enclosed with material as required for exterior one hour fire resistive construction. Adequate covered access openings for servicing and ventilation of such facilities shall be provided as required by appropriate codes.

**712A.5 Control of brush or vegetation.** Brush and vegetation shall be controlled as required in the Berkeley Fire Code.

**712A.6 Special Conditions.** The following additional conditions must be met:

1. Public access roads and fire trails. No person(s) shall use any public access road or fire trail for the storage of any construction material, stationary construction equipment, construction office, portable refuse container, or earth from any grading or excavating.
2. Water Service. The water service to the site shall be installed with a ¾” hose bib connection prior to beginning any wood framing. The person responsible for the construction shall have at the site a 75 ft ¾” hose available.

**Exhibit A**  
**Parcels in Addition to the Combined Hillside District**

The following additional parcels by Assessor’s Parcel Number and address are included in Fire Zone Two:

| Parcel Number (APN) | Address                  |
|---------------------|--------------------------|
| 048-7680-001-02     | 3 Tanglewood Road        |
| 048-7680-002-01     | 5 Tanglewood Road        |
| 048-7680-031-00     | 7 Tanglewood Road        |
| 048-7680-019-00     | 11 Tanglewood Road       |
| 048-7680-014-00     | 19 Tanglewood Road       |
| 048-7680-032-01     | 25 Tanglewood Road       |
| 048-7680-027-00     | 29 Tanglewood Road       |
| 054-1702-067-00     | 10 Tanglewood Road       |
| 054-1702-068-00     | 18 Tanglewood Road       |
| 054-1702-069-00     | 22 Tanglewood Road       |
| 054-1702-070-00     | 28 Tanglewood Road       |
| 054-1702-063-00     | 2701 Belrose Avenue      |
| 054-1702-076-00     | 2715 Belrose Avenue      |
| 054-1702-075-00     | 2721 Belrose Avenue      |
| 054-1702-074-00     | 2729 Belrose Avenue      |
| 054-1702-073-00     | 2737 Belrose Avenue      |
| 054-1702-112-00     | 2801 Claremont Boulevard |
| 054-1702-123-01     | 2811 Claremont Boulevard |
| 054-1702-122-00     | 2815 Claremont Boulevard |
| 054-1702-120-01     | 2821 Claremont Boulevard |
| 054-1702-114-01     | 2816 Claremont Avenue    |
| 054-1702-115-00     | 2820 Claremont Avenue    |
| 054-1702-072-00     | 3005 Garber Street       |
| 054-1702-071-00     | 3015 Garber Street       |
| 054-1702-113-00     | 3020 Garber Street       |
| 054-1702-116-00     | 3017 Avalon Avenue       |

**Article 3. Wood Burning Appliances**

### 19.28.040 Wood Burning Appliances.

**Chapter 31** of the 2022 California Building Code is adopted in its entirety subject to the modifications thereto which are set forth below.

#### 3116 Wood Burning Appliances.

A. The purpose of this section is to reduce the health risks caused by wood smoke under the climatic conditions applicable to Berkeley.

B. For purposes of this section the following terms shall be defined as set forth below.

1. "EPA" means the United States Environmental Protection Agency.
2. "EPA Certified" means any wood heater that is labeled "EPA Certified" in accordance with the standards in Title 40, Part 60, Subpart AAA, of the Code of Federal Regulations or equivalent, in effect at the time the wood heater is installed.
3. "Pellet heater" means wood heaters that burn pellet fuel exclusively and are either EPA-certified or exempted under EPA requirements set forth in Part 60 Title 40, Subpart AAA, of the Code of Federal Regulations, February 26, 1988.
4. "Wood-burning" means an appliance that burns wood or any wood-based solid fuel, including but not limited to wood pellets.
5. "Wood burning cooking device" means any wood-burning device that is designed or primarily used for cooking.
6. "Wood-burning fireplace" means any permanently-installed masonry or factory-built wood-burning appliance, either open or with doors in front of the combustion chamber, which is neither a wood heater as defined in 40 CFR 60.531 nor designed and used for cooking.

C. No wood-burning fireplace or wood heater as defined in 40 CFR 60.531, that is not EPA certified or exempted by under EPA requirements may be installed in any occupancy.

Exception: Existing masonry fireplaces may be repaired in accordance with the applicable codes in effect at the time of the proposed repair or reconstruction. For purposes of this exception, the term repair includes resurfacing the combustion chamber, but does not include replacing any other part of the combustion chamber.

D. Wood burning cooking devices are not prohibited by this section.

E. Any person planning to install a wood-burning fireplace or heating stove must submit verifiable documentation to the City showing that the appliance conforms to the requirements of this section.

#### **Article 4. Projection into Public Right of Way**

##### **19.28.050 Encroachments into the Public Right of Way – Revocation, Removal, Indemnification and Hold Harmless.**

**Chapter 32** of the 2022 California Building Code is adopted in its entirety subject to the modifications thereto which are set forth below.

#### **3202 – ENCROACHMENTS**

##### **3202.5 Projection into the Public Right of Way – Revocation, Removal, Indemnification and Hold Harmless.**

Any permits granted pursuant to this Code which allow any projection upon, over, or under the public right of way may be revoked by the City at any time. Upon such revocation, the permittee or permittee's successor(s) or assignee(s) shall forthwith remove such projection at permittee's cost and expense and without any cost or expense whatsoever to the City.

Any person who is granted a permit pursuant to the provisions of this Code which allows a projection upon, over or under the public right of way shall by the issuance of such permit thereby indemnify and hold harmless the City of Berkeley, its officers and employees of and from any and all liabilities, claims, demands, actions or causes of action for injury or injuries to any person or persons or death or deaths of any person or persons or damage to property arising out of or occasioned in any way by the issuance of said permit, the work performed pursuant to such permit, or the existence of such projection. The obligation of such indemnification and hold harmless provision shall be applicable to the successor(s) and assignee(s) of the permittee.

#### **Article 5. Existing Buildings**

##### **19.28.060 Adoption of 2022 California Existing Building Code and certain Chapters of the 2021 International Existing Building Code by reference.**

**2022 California Existing Building Code (CEBC), including Appendix A**, is adopted in its entirety subject to the modifications thereto which are set forth below.

#### **DIVISION II SCOPE AND ADMINISTRATION**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any CEBC administrative provisions that may conflict.

**101.9 Adoption of Certain Chapters of the 2021 International Existing Building Code by reference.**

When seismic retrofit is not otherwise required by this Code, the following Chapters of the 2021 International Existing Building Code (IEBC) published by the International Code Council contained in the IEBC Appendix A are hereby adopted by reference as applicable to the types of buildings as designated therein as though fully set forth herein:

Chapter A2, Earthquake Hazard Reduction in Existing Reinforced Concrete and Reinforced Masonry Wall Buildings with Flexible Diaphragms

**Article 6. Repairs to Existing Buildings and Structures**

**19.28.070 Adoption of Regulations for the Repairs of Existing Structures.**

**Add a new Subsection 405.2.7 to Chapter 4 Section 405 of the California Existing Building Code.**

**405.2.7 Seismic Evaluation and Design Procedures for Repairs.** The seismic evaluation and design shall be based on the procedures specified in the California Building Code or ASCE 41 *Seismic Evaluation and Retrofit of Existing Buildings*. The procedures contained in Appendix A Chapters A1, A3 and A4 of the California Existing Building Code and Appendix A Chapter A2 of the International Existing Building Code shall be permitted to be used as specified in Section 405.2.7.2.

**405.2.7.1 Compliance with CBC level seismic forces.** Where compliance requires the use of full seismic forces, the criteria shall be in accordance with one of the following:

1. One-hundred percent of the values in the California Building Code. Where the existing seismic force-resisting system is a type that can be designated as “Ordinary,” the values of  $R$ ,  $\Omega_o$ , and  $C_d$  used for analysis in accordance with Chapter 16 of the California Building Code shall be those specified for structural systems classified as “Ordinary” in accordance with Table 12.2-1 of ASCE 7, unless it is demonstrated that the structural system will provide performance equivalent to that of a “Detailed,” “Intermediate” or “Special” system.
2. ASCE 41, using a Tier 3 procedure and the two-level performance objective in Table 405.2.7.1.

**Table 405.2.7.1  
PERFORMANCE OBJECTIVES FOR USE IN ASCE 41 FOR COMPLIANCE WITH  
FULL SEISMIC FORCES**



| RISK CATEGORY (Based on CBC Table 1604.5) | STRUCTURAL PERFORMANCE LEVEL FOR USE WITH BSE-1N EARTHQUAKE HAZARD LEVEL | STRUCTURAL PERFORMANCE LEVEL FOR USE WITH BSE-2N EARTHQUAKE HAZARD LEVEL |
|-------------------------------------------|--------------------------------------------------------------------------|--------------------------------------------------------------------------|
| I                                         | Life Safety (S-3)                                                        | Collapse Prevention (CP)                                                 |
| II                                        | Life Safety (S-3)                                                        | Collapse Prevention (CP)                                                 |
| III                                       | Damage Control (S-2)                                                     | Limited Safety (S-4)                                                     |
| IV                                        | Immediate Occupancy (S-1)                                                | Life Safety (S-3)                                                        |

**405.2.7.2 Compliance with reduced CBC level seismic forces.** Where seismic evaluation and design is permitted to meet reduced seismic forces, the criteria used shall be in accordance with one of the following:

1. The California Building Code using 75 percent of the prescribed forces. Values of  $R$ ,  $\Omega_o$ , and  $C_d$  used for analysis shall be as specified in Section 405.2.7.1 Item 1.

2. Structures or portions of structures that comply with the requirements of the applicable chapter in Appendix A of the California Existing Building Code (CEBC) or Appendix A of the International Existing Building Code (IEBC) as specified in Items 2.1 through 2.4 below shall be deemed to comply with this section.

2.1. The seismic evaluation and design of unreinforced masonry bearing wall buildings in Risk Category I or II are permitted to be based on the procedures specified in CEBC Appendix A Chapter A1, provided the design is no less stringent than required in Berkeley Municipal Code Section 19.38.130.

2.2. Seismic evaluation and design of the wall anchorage system in reinforced concrete and reinforced masonry wall buildings with flexible diaphragms in Risk Category I or II are permitted to be based on the procedures specified in IEBC Appendix A Chapter A2.

2.3. Seismic evaluation and design of cripple walls and sill plate anchorage in residential buildings of light-frame wood construction in Risk Category I or II are permitted to be based on the procedures specified in CEBC Appendix A Chapter A3.

2.4. Seismic evaluation and design of soft, weak, or open-front wall conditions in multiunit residential buildings of wood construction in Risk Category I or II are permitted to be based on the procedures specified in CEBC Appendix A Chapter A4.

3. ASCE 41, using the performance objective in Table 405.2.7.2 for the applicable risk category. The design spectral response acceleration parameters  $S_{xs}$  and  $S_{x1}$  specified in ASCE 41 shall not be taken less than 75 percent of the respective design spectral response acceleration parameters  $S_{DS}$  and  $S_{D1}$  defined by the *California Building Code* and its reference standards.

**Table 405.2.7.2  
PERFORMANCE OBJECTIVES FOR USE IN ACCE 41 FOR COMPLIANCE WITH  
REDUCED SEISMIC FORCES**

| <b>RISK CATEGORY<br/>(Based on CBC<br/>Table 1604.5)</b> | <b>STRUCTURAL PERFORMANCE<br/>LEVEL FOR USE WITH BSE-1E<br/>EARTHQUAKE HAZARD LEVEL</b> | <b>STRUCTURAL<br/>PERFORMANCE LEVEL FOR<br/>USE WITH BSE-2E<br/>EARTHQUAKE HAZARD<br/>LEVEL</b> |
|----------------------------------------------------------|-----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| I                                                        | Life Safety (S-3). See Note a                                                           | Collapse Prevention (S-5)                                                                       |
| II                                                       | Life Safety (S-3). See Note a                                                           | Collapse Prevention (S-5)                                                                       |
| III                                                      | Damage Control (S-2). See Note a                                                        | Limited Safety (S-4). See Note b                                                                |
| IV                                                       | Immediate Occupancy (S-1)                                                               | Life Safety (S-3). See Note c                                                                   |

- a. For Risk Categories I, II, and III, the Tier 1 and Tier 2 procedures need not be considered for the BSE-1E earthquake hazard level.
- b. For Risk Category III, the Tier 1 screening checklists shall be based on the Collapse Prevention, except that checklist statements using the Quick Check provisions shall be based on MS-factors that are the average of the values for Collapse Prevention and Life Safety.
- c. For Risk Category IV, the Tier 1 screening checklists shall be based on Collapse Prevention, except that checklist statements using the Quick Check provisions shall be based on MS-factors for Life Safety.

**Table 405.2.7.3  
REFERENCED STANDARDS**

| <b>Standard Reference<br/>Number</b> | <b>Title</b>                                                | <b>Referenced in Code<br/>Section Number</b>               |
|--------------------------------------|-------------------------------------------------------------|------------------------------------------------------------|
| ASCE 41-17                           | Seismic Evaluation and<br>Retrofit of Existing<br>Buildings | 405.2.7<br>Table 405.2.7.1<br>405.2.7.2<br>Table 405.2.7.2 |

## Article 7. Technical Amendments to Structural Standards

### 19.28.080 Various Technical Amendments to Structural Standards.

**Chapter 17** of the 2022 California Building Code is adopted in its entirety subject to the modifications thereto which are set forth below.

**1705.3 Concrete construction.** Special inspections and tests of concrete construction shall be performed in accordance with this section and Table 1705.3.

**Exception:** Special inspections and tests shall not be required for: 1. Isolated spread concrete footings of buildings three stories or less above grade plane that are fully supported on earth or rock, where the structural design of the footing is based on a specified compressive strength,  $f'_c$ , no greater than 2,500 pounds per square inch (psi) (17.2 MPa).

**Chapter 19** of the 2022 California Building Code is adopted in its entirety subject to the modifications thereto which are set forth below.

**1905.1.7 ACI 318, Section 14.1.4.** Delete ACI 318, Section 14.1.4, and replace with the following:

14.1.4 - Plain concrete in structures assigned to Seismic Design Category C, D, E or F.

14.1.4.1 - Structures assigned to Seismic Design Category C, D, E or F shall not have elements of structural plain concrete, except as follows:

- ~~Structural plain concrete basement, foundation or other walls below the base are permitted in detached one and two family dwellings three stories or less in height constructed with stud bearing walls. In dwellings assigned to seismic design category D or E, the height of the wall shall not exceed 8 feet (2438 mm), the thickness shall not be less than 7<sup>1</sup>/<sub>2</sub> inches (190 mm), and the wall shall retain no more than 4 feet (1219 mm) of unbalanced fill. Walls shall have reinforcement in accordance with 14.6.1.~~
- Isolated footings of plain concrete supporting pedestals or columns are permitted, provided the projection of the footing beyond the face of the supported member does not exceed the footing thickness.

~~**Exception:** In detached one and two family dwelling three stories or less in height, the projection of the footing beyond the face of the supported member is permitted to exceed the footing thickness.~~

- (Plain concrete footings supporting walls are permitted, provided the footings have at least two continuous longitudinal reinforcing bars. Bars shall not be smaller than No. 4 and shall have a total area of not less than 0.002 times the gross cross-sectional area of the footing. ~~For footings that exceed 8" inches (203 mm) in thickness, A~~ minimum of one bar shall be

provided at the top and bottom of the footing. Continuity of reinforcement shall be provided at corners and intersections.

**Exceptions:**

1. ~~In seismic design categories A, B and C, detached one- and two-family dwellings three stories or less in height and constructed with stud bearing walls, are permitted to have plain concrete footings without longitudinal reinforcement.~~
2. ~~For foundation systems consisting of a plain concrete footing and a plain concrete stem wall, a minimum of one bar shall be provided at the top of the stem wall and at the bottom of the footing.~~
3. ~~Where a slab on ground is cast monolithically with the footing, one No. 5 bar is permitted to be located at either the top of the slab or bottom of the footing.~~

**Article 8. Construction of Exterior Appurtenances**

**19.28.090 Technical Amendments for Construction of Exterior Projecting Elements and Appurtenances.**

**Chapter 12** of the 2022 California Building Code is adopted in its entirety subject to the modifications thereto which are set forth below:

**1202.7 Ventilation of weather exposed enclosed assemblies.** Balconies, landings, decks, stairs and similar exterior projecting elements and appurtenances exposed to the weather and sealed underneath shall have cross ventilation for each separate enclosed space by ventilation openings protected against the entrance of rain and snow and as set forth in Section 2304.12.2.5. Blocking and bridging shall be arranged so as not to interfere with the movement of air. The net free ventilating area shall not be less than 1/150th of the area of the space ventilated. Ventilation openings shall comply with Section 1202.2.2. An access panel of sufficient size shall be provided on the underside of the enclosed space to allow for periodic inspection.

**Exceptions:**

1. An access panel is not required where the exterior coverings applied to the underside of joists are easily removable using only common tools.
2. Removable soffit vents 4 inches minimum in width can be used to satisfy both ventilation and access panel requirements.

**Chapter 14** of the 2022 California Building Code is adopted in its entirety subject to the modifications thereto which are set forth below:

**1403.15 Projections exposed to weather.** Balconies, landings, decks, stairs and similar floor projections exposed to the weather shall be constructed of naturally durable wood,

preservative-treated wood, corrosion resistant (e.g., galvanized) steel, or similar approved materials.

**Chapter 23** of the 2022 California Building Code is adopted in its entirety subject to the modifications thereto which are set forth below:

**2304.12.2.3 Supporting members for permanent appurtenances.** Naturally durable or preservative-treated wood shall be utilized for those portions of wood members that form the structural supports of buildings, balconies, porches or similar permanent building appurtenances ~~where such members are exposed to the weather without adequate protection from a roof, eave, overhang or other covering to prevent moisture or water accumulation on the surface or at joints between members.~~

**2304.12.2.4 Supporting members for permeable floors and roofs.** Wood structural members that support moisture-permeable floors or roofs that are exposed to the weather, such as concrete or masonry slabs, shall be of naturally durable or preservative-treated wood ~~unless and shall be~~ separated from such floors or roofs by an impervious moisture barrier. The impervious moisture barrier system protecting the structure supporting floors shall provide positive drainage of water that infiltrates the moisture-permeable floor topping.

**Table 2308.6.1 WALL BRACING REQUIREMENTS<sup>a, f, g</sup>**

Add new footnotes “f” and “g” to the end of Table 2308.6.1 to read:

f. Methods GB, PBS, HPS and SFB are not permitted in Seismic Design Categories D or E. In Seismic Design Categories D, the use of Method PCP is limited to one-story dwellings and accessory structures.

g. Methods DWB and PCP are not permitted in Seismic Design Categories E.

## Article 9. Emergency Housing

### 19.28.100 Emergency Housing and Emergency Housing Facilities.

**HCD Appendix P** of the 2022 California Building Code is adopted on an emergency basis and reproduced in its entirety subject to the modifications thereto which are set forth below:

## APPENDIX P EMERGENCY HOUSING

### SECTION P101

#### GENERAL

**P101.1 Scope.** This appendix shall be applicable to emergency housing and emergency housing facilities, as defined in Section P102. The provisions and standards set forth in this appendix shall be applicable to emergency housing established pursuant to the declaration of a shelter crisis under Government Code section 8698 et seq. and located

in new or existing buildings, structures, or facilities owned, operated, erected, or constructed by, for or on behalf of the City of Berkeley on land owned or leased by the City of Berkeley.

**P101.2 Application.** Notwithstanding any provisions of this Code to the contrary, the following requirements shall apply to emergency housing operated during a shelter crisis, as provided for in Government Code Section 8698 et seq. Other than the specific requirements set forth in this appendix, the facilities need not comply with the requirements of this Code for Group R occupancies unless otherwise specified in this Code.

## **SECTION P102**

### **DEFINITIONS**

**P102.1 General.** The following words and terms shall, for the purposes of this appendix, have the meanings shown herein. Refer to Chapter 2 of this code for general definitions.

**DECLARATION OF SHELTER CRISIS.** The duly proclaimed existence of a situation in which a significant number of persons are without the ability to obtain shelter, resulting in a threat to their health and safety. (See Government Code Section 8698)

**DEPENDENT UNIT.** Emergency housing not equipped with a kitchen area, toilet, and sewage disposal system. Recreational vehicles that are not self-contained and without utility service connections shall be considered dependent units.

**EMERGENCY HOUSING.** Housing in a permanent or temporary structure(s), occupied during a declaration of state of emergency, local emergency, or shelter crisis. Emergency housing may include, but is not limited to, buildings and structures constructed in accordance with the California Building Standards Code; and emergency sleeping cabins, emergency transportable housing units, and tents constructed in accordance with this appendix.

**EMERGENCY HOUSING FACILITIES.** On-site common use facilities supporting emergency housing. Emergency housing facilities include, but are not limited to, kitchen areas, toilets, showers and bathrooms with running water. The use of emergency housing facilities is limited exclusively to the occupants of the emergency housing, personnel involved in operating the housing, and other emergency personnel.

**EMERGENCY HOUSING SITE.** A site containing emergency housing and emergency housing facilities supporting the emergency housing.

**EMERGENCY SLEEPING CABIN.** Relocatable hard-sided structure constructed in accordance with this appendix, which may be occupied only for emergency housing if allowed by the enforcing agency.

**EMERGENCY TRANSPORTABLE HOUSING UNIT.** A single- or multiple-section prefabricated structure that is transportable by a vehicle and that can be installed on a permanent or temporary site in response to a need for emergency housing. Emergency transportable housing units include, but are not limited to, manufactured homes, mobilehomes, multifamily manufactured homes, recreational vehicles, and park trailers. For the purposes of this appendix, emergency transportable housing units may also include commercial modulars as defined in the Health and Safety Code Section 18001.8, if approved by the enforcing agency. Emergency transportable housing units do not include factory-built housing as defined in the Health and Safety Code Section 19971.

**LANDING PLATFORM.** A landing provided as the top step of a stairway accessing a loft.

**LOCAL EMERGENCY.** Local Emergency as defined in the Government Code, Section 8558.

**LOFT.** A floor level located more than 30 inches (762 mm) above the main floor and open to it on at least one side with a ceiling height of less than 6 feet 8 inches (2032 mm), used as a living or sleeping space.

**MANUFACTURED HOME.** A structure designed to be used as a single-family dwelling, as defined in the Health and Safety Code, Section 18007.

**MEMBRANE STRUCTURE.** An air-inflated, air-supported, cable or frame-covered structure, not otherwise defined as a tent. (See Chapter 31 of this code.)

**MOBILEHOME.** A structure designed to be used as a single-family dwelling, as defined in the Health and Safety Code, Section 18008.

**MULTIFAMILY MANUFACTURED HOME.** A structure designed to contain not less than two dwelling units, as defined in the Health and Safety Code, Section 18008.7.

**PARK TRAILER.** A trailer designed for human habitation that meets all requirements in the Health and Safety Code, Section 18009.3.

**RECREATIONAL VEHICLE.** A motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation, that meets all requirements in the Health and Safety Code, Section 18010.

**STATE OF EMERGENCY.** State of Emergency as defined in the Government Code, Section 8558.

**TENT.** A structure, enclosure or shelter, with or without sidewalls or drops, constructed of fabric or pliable material supported by any manner except by air or the contents that it protects.

## SECTION P103

### EMERGENCY HOUSING

**P103.1 General.** Emergency sleeping cabins, emergency transportable housing units including commercial modulars, membrane structures and tents constructed and/or assembled in accordance with this appendix, shall be occupied only during declaration of state of emergency, local emergency, or shelter crisis.

Buildings and structures constructed in accordance with the California Building Standards Code, used as emergency housing, shall be permitted to be permanently occupied.

**P103.2 Existing buildings.** Existing residential and nonresidential buildings or structures shall be permitted to be used as emergency housing and emergency housing facilities provided such buildings or structures comply with the building code provisions and/or other regulations in effect at the time of original construction and/or alteration. Existing buildings or structures used as emergency housing shall not become or continue to be substandard buildings, as determined by the enforcing agency.

**P103.2.1 New additions, alterations, and change of occupancy.** New additions, alterations, and change of occupancy to existing buildings shall comply with the requirements of the California Building Standards Code effective at the time of addition, alteration, or change of occupancy. The requirements shall apply only to and/or within the specific area of the addition, alteration, or change of occupancy.

#### Exceptions:

1. Existing buildings and structures used for emergency housing and emergency housing facilities may not be required to comply with the California Energy Code, as determined by the enforcing agency.
2. Change in occupancy shall not mandate conformance with new construction requirements set forth in the California Building Standards Code, provided such change in occupancy meets the minimum fire and life safety requirements set forth in Section P112 of this appendix.

**P103.3 Occupant load.** Except as otherwise stated in this appendix, the maximum occupant load allowed in buildings and structures used as emergency housing shall be determined by the enforcing agency, but the interior floor area shall not be less than 70 square feet (6.5 m<sup>2</sup>) for one occupant. Where more than one person occupies the building/structure, the required floor area shall be increased at the rate of 50 square feet (4.65 m<sup>2</sup>) for each occupant in excess of one.

#### Exceptions:

1. Tents.
2. Recreational vehicles and park trailers designed for human habitation that meet the requirements in the Health and Safety Code, Sections 18009.3 and 18010, as applicable



3. For emergency housing, including emergency sleeping cabins, the minimum interior floor area may be reduced to 53 square feet (4.9 m<sup>2</sup>) if the enforcing agency determines that 53 square feet (4.9 m<sup>2</sup>) is adequate space for a single-occupancy sleeping unit.

**P103.4 Fire and life safety requirements not addressed in this appendix.** If not otherwise addressed in this appendix, fire and life safety measures, including, but not limited to, means of egress, fire separation, fire sprinklers, smoke alarms, and carbon monoxide alarms, shall be determined and enforced by the enforcing agency.

**P103.5 Privacy.** Emergency housing shall be provided with a privacy lock on each entrance door and all windows for use by the occupants.

**P103.6 Heating.** All sleeping areas shall be provided with adequate heating as determined by the enforcing agency.

## SECTION P104

### EMERGENCY SLEEPING CABINS

**P104.1 General.** Emergency sleeping cabins shall have an interior floor area of not less than 70 square feet (6.5 m<sup>2</sup>) for one occupant. Where more than one person occupies the cabin, the required floor area shall be increased at the rate of 50 square feet (4.65 m<sup>2</sup>) for each occupant in excess of one. The interior floor area shall not exceed 400 square feet (37 m<sup>2</sup>), excluding lofts.

**P104.2 Live loads.** Emergency sleeping cabins shall be designed to resist intrusion of wind, rain, and to support the following live loads:

1. Floor live loads not less than 40 pounds per square foot (1.92 kPa) of floor area.
2. Horizontal live loads not less than 15 pounds per square foot (718 Pa) of vertical wall and roof area.
3. Roof live loads not less than 20 pounds per square foot (958 Pa) of horizontal roof area.
4. In areas where snow loads are greater than 20 pounds per square foot (958 Pa), the roof shall be designed and constructed to resist these additional loads.

**P104.3 Minimum ceiling height.** Habitable space and hallways in emergency sleeping cabins shall have a ceiling height of not less than 80 inches (2032 mm). Bathrooms, toilet rooms, and kitchens, if provided, shall have a ceiling height of not less than 76 inches (1930 mm). Obstructions shall not extend below these minimum ceiling heights including beams, girders, ducts, lighting and other obstructions.

**Exception:** Ceiling heights in lofts constructed in accordance with Section P108 are permitted to be less than 80 inches (2032 mm).

**P104.4 Means of egress.** Emergency sleeping cabins shall be provided with at least two forms of egress placed remotely from each other. One form of egress may be an egress window complying with Section P104.4.1. When a loft is provided, one form of egress shall be an egress window complying with Section P104.4.1, provided in the loft space.

**P104.4.1 Egress window.** The bottom of the clear opening of the egress window shall not be more than 44 inches (1118 mm) above the floor. The egress window shall have a minimum net clear opening height of 24 inches (610 mm), and a minimum net clear opening width of 20 inches (508 mm). The egress window shall have a minimum net clear opening area of 5 square feet (0.465 m<sup>2</sup>).

**P104.5 Plumbing and gas service.** If an emergency sleeping cabin contains plumbing or gas service, it shall comply with all applicable requirements of the California Plumbing Code and the California Mechanical Code.

**P104.6 Electrical.** Emergency sleeping cabins shall be provided with all of the following installed in compliance with the California Electrical Code:

1. Continuous source of electricity.

**Exception:** The source of electricity may be an emergency generator or renewable source of power such as solar or wind power.

2. At least one interior lighting fixture.

3. Electrical heating equipment listed for residential use and a dedicated receptacle outlet for the electrical heating equipment.

**Exception:** Electrical heating equipment and a dedicated receptacle outlet for the electrical heating equipment are not required if a nonelectrical source of heating is provided.

4. At least one GFCI-protected receptacle outlet for use by the occupant(s).

**P104.7 Ventilation.** Emergency sleeping cabins shall be provided with means of ventilation (natural and/or mechanical) allowing for adequate air replacement, as determined by the enforcing agency.

**P104.8 Smoke alarms.** Emergency sleeping cabins shall be provided with at least one smoke alarm installed in accordance with the California Residential Code, Section R314.

**P104.9 Carbon monoxide alarms.** If an emergency sleeping cabin contains a fuel-burning appliance(s) or a fireplace(s), a carbon monoxide alarm shall be installed in accordance with the California Residential Code, Section R315

## SECTION P105

### EMERGENCY TRANSPORTABLE HOUSING UNITS

**P105.1 General.** In addition to the requirements in this appendix, manufactured homes, mobilehomes, multifamily manufactured homes, commercial modulars, recreational vehicles, and park trailers used as emergency transportable housing shall comply with all applicable requirements in the Health and Safety Code, Division 13, Part 2; and Title 25, Division 1, Chapter 3, Subchapter 2.

No provisions of Sections P111 through P114 of this appendix shall be deemed to grant authorization for any additional work that may conflict with the standards specified in Section P105 applicable for emergency transportable housing units.

## **SECTION P106**

### **TENTS AND MEMBRANE STRUCTURES**

**P106.1 General.** Tents shall not be used to house occupants for more than 7 days unless such tents are maintained with tight wooden floors raised at least 4 inches (101.6 mm) above the ground level and are equipped with baseboards on all sides to a height of at least 6 inches (152.4 mm). Tents may be maintained with concrete slabs with the finished surface at least 4 inches (101.6 mm) above grade and equipped with curbs on all sides at least 6 inches (152.4 mm) high.

A tent shall not be considered a suitable sleeping place when it is found necessary to provide heating facilities in order to maintain a minimum temperature of 50 degrees Fahrenheit (10 degrees Celsius) within such tent during the period of occupancy.

Membrane structures installed and/or assembled in accordance with Chapter 31 of this code, may be permitted to be used as emergency housing and emergency housing facilities, as determined by the enforcing agency.

Tents and membrane structures shall comply with Chapter 31 of the California Fire Code and shall not be erected for a period of more than 180 days within a 12 month period. Tents and membrane structures shall be limited to one level located at the level of Fire Department vehicle access road or lane. Tents and membrane structures complying with Chapter 31 of the California Fire Code shall not be subject to additional provisions of Sections P111 and P112 of this appendix.

Tents and membrane structures used for sleeping purposes shall be equipped with single station battery powered smoke alarms installed in accordance with Section 907.2.11 of the California Fire Code.

## **SECTION P107**

### **ACCESSIBILITY**

**P107.1 General.** Emergency housing shall comply with the applicable requirements in Chapter 11B and/or the US Access Board Final Guidelines for Emergency Transportable Housing.

**Note:** The Architectural and Transportation Barriers Compliance Board (US Access Board) issued the Final Guidelines for Emergency Transportable Housing on May 7, 2014. The final guidelines amended the 2004 ADA Accessibility Guidelines (2004 ADAAG) and the 2004 Architectural Barriers Act (ABA) Accessibility Guidelines (2004 ABAAG) to specifically address emergency transportable housing units provided to disaster survivors by entities subject to the ADA or ABA. The final rule ensures that the emergency transportable housing units are readily accessible to and usable by disaster survivors with disabilities.

## **SECTION P108**

### **LOFTS IN EMERGENCY HOUSING**

**P108.1 Minimum loft area and dimensions.** Lofts used as a sleeping or living space shall meet the minimum area and dimension requirements of Sections P108.1.1 through P108.1.3.

**P108.1.1 Minimum area.** Lofts shall have a floor area of not less than 35 square feet (3.25 m<sup>2</sup>).

**P108.1.2 Minimum dimensions.** Lofts shall be not less than 5 feet (1524 mm) in any horizontal dimension.

**P108.1.3 Height effect on loft area.** Portions of a loft with a sloping ceiling measuring less than 3 feet (914 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft.

**Exception:** Under gable roofs with a minimum slope of 6:12, portions of a loft with a sloping ceiling measuring less than 16 inches (406 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required area for the loft.

**P108.2 Loft access.** The access to and primary egress from lofts shall be any type described in Sections P108.2.1 through P108.2.4.

**P108.2.1 Stairways.** Stairways accessing lofts shall comply with the California Residential Code or with Sections P108.2.1.1 through P108.2.1.6.

**P108.2.1.1 Width.** Stairways accessing a loft shall not be less than 17 inches (432 mm) in clear width at or above the handrail. The minimum width below the handrail shall be not less than 20 inches (508 mm).

**P108.2.1.2 Headroom.** The headroom in stairways accessing a loft shall be not less than 74 inches (1880 mm), as measured vertically, from a sloped line connecting the tread or landing platform nosings in the middle of their width.

**P108.2.1.3 Treads and risers.** Risers for stairs accessing a loft shall be not less than 7 inches (178 mm) and not more than 12 inches (305 mm) in height. Tread depth and riser height shall be calculated in accordance with one of the following formulas:

1. The tread depth shall be 20 inches (508 mm) minus  $\frac{4}{3}$  of the riser height, or
2. The riser height shall be 15 inches (381 mm) minus  $\frac{3}{4}$  of the tread depth.

**P108.2.1.4 Landing platforms.** The top step of stairways accessing lofts shall be constructed as a landing platform where the loft ceiling height is less than 74 inches (1880 mm). The landing platform shall be 18 inches (457 mm) to 22 inches (559 mm) in depth measured from the nosing of the landing platform to the edge of the loft, and 16 inches (406 mm) to 18 inches (457 mm) in height measured from the landing platform to the loft floor.

**P108.2.1.5 Handrails.** Handrails shall comply with the California Residential Code, Section R311.7.8.

**P108.2.1.6 Stairway guards.** Guards at open sides of stairways shall comply with the California Residential Code, Section R312.1.

**P108.2.2 Ladders.** Ladders accessing lofts shall comply with Sections P108.2.2.1 and P108.2.2.2.

**P108.2.2.1 Size and capacity.** Ladders accessing lofts shall have a rung width of not less than 12 inches (305 mm), and 10 inches (254 mm) to 14 inches (356 mm) spacing between rungs. Ladders shall be capable of supporting a 200 pound (90.7 kg) load on any rung. Rung spacing shall be uniform within  $\frac{3}{8}$ -inch (9.5 mm).

**P108.2.2.2 Incline.** Ladders shall be installed at 70 to 80 degrees from horizontal.

**P108.2.3 Alternating tread devices.** Alternating tread devices are acceptable as allowed by the enforcing agency.

**P108.2.4 Loft guards.** Loft guards shall be located along the open side of lofts. Loft guards shall not be less than 36 inches (914 mm) in height or one-half of the clear height to the ceiling, whichever is less. Loft guards shall not have openings from the walking surface to the required guard height that allow passage of a sphere 4 inches (102mm) in diameter.

## SECTION P109

### LOCATION, MAINTENANCE AND IDENTIFICATION

**P109.1 Maintenance.** Emergency housing and emergency housing facilities shall be maintained in a safe and sanitary condition, and free from vermin, vectors and other matter of an infectious or contagious nature. The grounds within emergency housing sites shall be kept clean and free from accumulation of debris, filth, garbage and deleterious matter. Emergency housing and emergency housing facilities shall not be occupied if a substandard condition exists, as determined by the enforcing agency.

**P109.1.1 Fire hazards.** Dangerous materials or materials that create a fire hazard, as determined by the enforcing agency, shall not be allowed on the grounds within emergency housing sites.

**P109.3 Identification.** Emergency housing shall be designated by address numbers, letters, or other suitable means of identification. The identification shall be in a conspicuous location facing the street or driveway fronting the building or structure. Each identification character shall be not less than 4 inches (102 mm) in height and not less than 0.5 inch (12.7 mm) in width, installed/painted on a contrasting background.

## **SECTION P110**

### **EMERGENCY HOUSING FACILITIES SANITATION REQUIREMENTS**

**P110.1 Drinking water.** Potable drinking water shall be provided for all occupants of emergency housing.

**P110.2 Kitchens and food facilities.** Where provided, kitchens and food facilities, as defined in Section 113789 of the California Health and Safety Code, which support emergency housing sites, shall comply with applicable food safety provisions of Sections 113980 – 114094.5 of the California Health and Safety Code.

Where occupants of dependent units are permitted or required to cook for themselves, a separate area shall be equipped and maintained as a common use kitchen. Refrigerated storage shall be provided for safe storage of food.

**P110.3 Toilet and bathing facilities.** When dependent units are used as emergency housing, the emergency housing site shall be provided with one toilet and one bathing facility for every 15 occupants of each gender. The enforcing agency may permit different types and ratios of toilet and bathing facilities. The approval shall be based upon a finding that the type and ratio of toilet and bathing facilities are sufficient to process the anticipated volume of sewage and waste water, while maintaining sanitary conditions for the occupants of the emergency housing.

Bathing facilities shall be provided with heating equipment which shall be capable of maintaining a temperature of 70 degrees F (21.0 degrees Celsius) within such facilities.

Lavatories with running water shall be installed and maintained in the toilet facilities or adjacent to the toilet facilities.

**P110.4 Garbage, waste and rubbish disposal.** All garbage, kitchen waste and rubbish shall be deposited in approved covered receptacles, which shall be emptied when filled and the contents shall be disposed of in a sanitary manner acceptable to the enforcing agency.

## **SECTION P111**

### **EMERGENCY HOUSING LIGHTING AND VENTILATION REQUIREMENTS**

**P111.1 Lighting.** Buildings or structures used for emergency housing shall be provided with natural light by means of exterior glazed openings in accordance with Section 1204.2 of the California Building Code, or shall be provided with artificial light in accordance with Section 1204.3 of the California Building Code.

**P111.2 Ventilation.** Buildings or structures used for emergency housing shall be provided with natural ventilation in accordance with Section 1202.5 of the California Building Code, or mechanical ventilation in accordance with the California Mechanical Code.

## **SECTION P112**

### **EMERGENCY HOUSING FIRE AND LIFE SAFETY REQUIREMENTS**

**P112.1 Location on property.** Buildings or structures used for emergency housing, including sleeping cabins, shall be located in accordance with the requirements of Section 705 and Table 705.5 of the California Building Code, based on their type of construction and fire-resistance ratings of the exterior walls. During a shelter crisis, the fire separation distances are permitted to be measured to the existing buildings on the adjacent parcels rather than to the interior lot lines, provided the open spaces are to remain unobstructed for the duration of the shelter crisis.

**P112.2 Buildings on same lot.** Buildings or structures used for emergency housing, including sleeping cabins, shall be separated from each other and from other buildings on the same lot as set forth in Section 705.3 of the California Building Code. The Building Official and Fire Marshal may accept reasonable alternatives to these requirements provided reasonably equivalent fire and life safety is achieved.

**P112.3 Means of egress.** Buildings or structures used for emergency housing shall be provided with means of egress complying with Chapter 10 of the California Building Code, unless modified elsewhere in this appendix.

**P112.4 Emergency escape and rescue.** Each area of a building or structure used for sleeping purposes in emergency housing shall be provided with an emergency escape and rescue opening in accordance with Section 1031 of the California Building Code, unless modified elsewhere in this appendix.

**P112.5 Smoke alarms.** Buildings or structures used for emergency housing, which provide sleeping accommodations, shall be equipped with single station battery powered smoke alarms installed in accordance with the location requirements of Section 907.2.11 of the California Fire Code, unless modified elsewhere in this appendix.

**P112.6 Carbon monoxide alarms.** Buildings or structures used for emergency housing, which provide sleeping accommodations, and equipped with fuel-burning appliances shall be provided with carbon monoxide detection in accordance with Section 915 of the California Fire Code, unless modified elsewhere in this appendix.

**P112.7 Fire alarm.** A manual fire alarm system capable of arousing sleeping occupants in accordance with Section 907.2.9.1 of the California Fire Code shall be installed in buildings, structures, or groups of buildings or structures used for emergency housing and having a gross floor area of more than 2,500 square feet or having more than 49 sleeping occupants.

**Exception:** Individual buildings or structures in a group of buildings or structures with sufficient separation distances to allow each building or structure to function independently in case of a fire, as approved by the Fire Marshal.

**P112.8 Automatic sprinkler systems.** Fire sprinklers shall be provided for new and existing buildings or structures used for emergency housing, including sleeping cabins, which provide sleeping facilities, as required by Section 903.3 of the California Fire Code. Strict compliance with the requirements of Section 903.3 may not be required when approved by the Fire Marshal. The Fire Marshal is authorized to accept reasonably equivalent alternatives to the installation provisions of Section 903.3 when dealing with buildings or structures used for emergency housing.

**P112.9 Fire extinguishers.** Portable fire extinguishers shall be provided in accordance with Section 906.1 of the California Fire Code.

**P112.10 Flammable or combustible liquids.** The possession or storage of any flammable or combustible liquids or gases shall not be permitted (intact cigarette lighters excepted). The use of any type of open flame indoors is prohibited unless conditionally approved by the Fire Chief.

**P112.11 Storage in attics, under-floor and concealed spaces.** Combustible materials, including but not limited to the possessions of occupants, users and staff shall not be stored in attics, under-floor spaces, or within other concealed spaces of buildings or structures used for emergency housing with sleeping accommodations.

**P112.12 Fire department access.** Fire Department access to building and premises used for emergency housing shall be in compliance with Section 503, Section 504 and Appendix D of the California Fire Code, as approved by the Fire Chief.



**P112.13 Water supply.** An approved fire protection water supply complying with Section 507 of the California Fire Code, or as approved by the Fire Chief, shall be provided for each structure, group of structures or premises used for emergency housing.

**SECTION P113**

**ADDITIONAL REQUIREMENTS**

**P113.1 Operating procedures.** Operating procedures including a security plan and service requirements shall be developed by the professional service provider and shown to be consistent with the shelter standards imposed by the Alameda County Social Services Agency. These procedures shall be designed to maintain order and safety within the buildings or structures used for emergency housing.

**SECTION P114**

**ALTERNATIVES AND MODIFICATIONS**

**P114.1 Alternatives and modifications.** Alternative compliance and/or modifications that are reasonably equivalent to the requirements in this appendix may be granted by the Local Administrative Authority in individual cases when dealing with buildings or structures used for emergency housing.

**NOTE:**

Authority Cited: Health and Safety Code Sections 17040, 17050, 17920.9, 17921, 17921.5, 17921.6, 17921.10, 17922, 17922.6, 17922.12, 17922.14, 17927, 17928, 18300, 18552, 18554, 18620, 18630, 18640, 18670, 18690, 18691, 18865, 18871.3, 18871.4, 18873, 18873.1 through 18873.5, 18938.3, 18944.11, and 19990; and Government Code Section 12955.1.

Reference: Health and Safety Code Sections 17000 through 17062.5, 17910 through 17995.5, 18200 through 18700, 18860 through 18874, and 19960 through 19997; Civil Code Sections 1101.4 and 1101.5; and Government Code Sections 12955.1 and 12955.1.1. (Ord. 7613-NS § 3, 2018)

**Section 2.** That Berkeley Municipal Code Chapter 19.29 is hereby repealed and reenacted to read as follows:

**Chapter 19.29**

**BERKELEY RESIDENTIAL CODE**

**Sections:**

- 19.29.010**            **Adoption of California Residential Code.**
- 19.29.020**            **Title.**
- 19.29.030**            **Administrative Provisions.**

- 19.29.040 Subsection R301.2 Climatic and Geographic Design Criteria.
- 19.29.050 Section R337 Materials and Construction Methods for Exterior Wildlife Exposure.
- 19.29.060 Technical Amendments to Structural Standards.

**19.29.010 Adoption of California Residential Code.**

The California Residential Code, 2022 Edition, as adopted in Title 24 Part 2.5 of the California Code of Regulations, including Appendices AH, AQ, AR, AS, AU and AX is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. A copy of this Code is on file for use and examination by the public in the office of the City Clerk of the City of Berkeley.

**19.29.020 Title.**

This Code shall be known as the "Berkeley Residential Code" and may be cited as "this Code".

**19.29.030 Administrative provisions.**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any CRC administrative provisions that may conflict.

For regulations governing wood burning appliances see BMC 19.28.040.

**19.29.040 CRC Subsection R301.2 Climatic and geographic design criteria.**

**TABLE R301.2  
CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA**

| GROUND SNOW LOAD <sup>o</sup>                        | WIND DESIGN              |                                  |                                  |                                       | SEISMIC DESIGN CATEGORY <sup>f</sup> | SUBJECT TO DAMAGE FROM              |                               |                      |
|------------------------------------------------------|--------------------------|----------------------------------|----------------------------------|---------------------------------------|--------------------------------------|-------------------------------------|-------------------------------|----------------------|
|                                                      | Speed <sup>d</sup> (mph) | Topographic effects <sup>k</sup> | Special wind region <sup>l</sup> | Wind-borne debris zone <sup>m</sup>   |                                      | Weathering <sup>a</sup>             | Frost line depth <sup>b</sup> | Termite <sup>c</sup> |
| ZERO                                                 | 85                       | NO                               | NO                               | NO                                    | D <sub>2</sub> or E                  | NEGLIGIBLE                          | N/A                           | VERY HEAVY           |
| <b>ICE BARRIER UNDERLAYMENT REQUIRED<sup>h</sup></b> |                          | <b>FLOOD HAZARDS<sup>g</sup></b> |                                  | <b>AIR FREEZING INDEX<sup>i</sup></b> |                                      | <b>MEAN ANNUAL TEMP<sup>j</sup></b> |                               |                      |
| NO                                                   |                          | See Footnote 'p'                 |                                  | ZERO                                  |                                      | 57.2°F                              |                               |                      |

| MANUAL J DESIGN CRITERIA <sup>n</sup> |                              |            |               |        |  |         |
|---------------------------------------|------------------------------|------------|---------------|--------|--|---------|
| Elevation                             | Altitude correction factor e | Coincident | Indoor winter | Indoor |  | Heating |

|          |             |                                        |                                 |                                           |                                            |                                |
|----------|-------------|----------------------------------------|---------------------------------|-------------------------------------------|--------------------------------------------|--------------------------------|
|          |             | wet bulb                               | <u>design relative humidity</u> | winter design dry-bulb temperature        | Outdoor winter design dry-bulb temperature | temperature difference         |
| 345      | N/A         | 63                                     | N/A                             | 70                                        | 40                                         | 30                             |
| Latitude | Daily range | Indoor summer design relative humidity | <u>Summer Design Grains</u>     | Indoor summer design dry-bulb temperature | Outdoor summer design dry-bulb temperature | Cooling temperature difference |
| 38       | 16          | 50                                     | -6                              | 75                                        | 80                                         | 5                              |

For SI: 1 pound per square foot = 0.0479 kPa, 1 mile per hour = 0.447 m/s.

- a. Where weathering requires a higher strength concrete or grade of masonry than necessary to satisfy the structural requirements of this Code, the frost line depth strength required for weathering shall govern. The weathering column shall be filled in with the weathering index, “negligible,” “moderate” or “severe” for concrete as determined from Figure R301.2.(1). The grade of masonry units shall be determined from ASTM C34, ASTM C55, ASTM C62, ASTM C73, ASTM C90, ASTM C129, ASTM C145, ASTM C216 or ASTM C652.
- b. Where the frost line depth requires deeper footings than indicated in Figure R403.1(1), the frost line depth strength required for weathering shall govern. The jurisdiction shall fill in the frost line depth column with the minimum depth of footing below finish grade.
- c. The jurisdiction shall fill in this part of the table to indicate the need for protection depending on whether there has been a history of local subterranean termite damage.
- d. The jurisdiction shall fill in this part of the table with the wind speed from the basic wind speed map Figure R301.2(2). Wind exposure category shall be determined on a site-specific basis in accordance with Section R301.2.1.4.
- e. The jurisdiction shall fill in this section of the table to establish the design criteria using Table 10A from ACCA Manual J or established criteria determined by the jurisdiction.
- f. The jurisdiction shall fill in this part of the table with the seismic design category determined from Section R301.2.2.1.
- g. The jurisdiction shall fill in this part of the table with: the date of the jurisdiction’s entry into the National Flood Insurance Program (date of adoption of the first code or ordinance for management of flood hazard areas); and the title and date of the currently effective Flood Insurance Study or other flood hazard study and maps adopted by the authority having jurisdiction, as amended.
- h. In accordance with Sections R905.1.2, R905.4.3.1, R905.5.3.1, R905.6.3.1, R905.7.3.1 and R905.8.3.1, where there has been a history of local damage from the effects of ice damming, the jurisdiction shall fill in this part of the table with “YES.” Otherwise, the jurisdiction shall fill in this part of the table with “NO.”
- i. The jurisdiction shall fill in this part of the table with the 100-year return period air freezing index (BF-days) from Figure R403.3(2) or from the 100-year (99 percent) value on the National Climatic Data Center data table “Air Freezing Index-USA Method (Base 32°F).”

- j. The jurisdiction shall fill in this part of the table with the mean annual temperature from the National Climatic Data Center data table “Air Freezing Index-USA Method (Base 32°F).”
- k. In accordance with Section R301.2.1.5, where there is local historical data documenting structural damage to buildings due to topographic wind speed-up effects, the jurisdiction shall fill in this part of the table with “YES.” Otherwise, the jurisdiction shall indicate “NO” in this part of the table.
- l. In accordance with Figure R301.2(2), where there is local historical data documenting unusual wind conditions, the jurisdiction shall fill in this part of the table with “YES” and identify any specific requirements. Otherwise, the jurisdiction shall indicate “NO” in this part of the table.
- m. In accordance with Section R301.2.1.2 the jurisdiction shall indicate the wind-borne debris wind zone(s). Otherwise, the jurisdiction shall indicate “NO” in this part of the table.
- n. The jurisdiction shall fill in these sections of the table to establish the design criteria using Table 1a or 1b from ACCA Manual J or established criteria determined by the jurisdiction.
- o. The jurisdiction shall fill in this section of the table using the Ground Snow Loads in Figures R301.2(3) and R301.2(4).
- p. Flood Hazard Data for the City of Berkeley:
  - Date of Jurisdiction’s Entry into the NFIP: December 7, 1973;
  - Date of adoption of the first code or ordinance for management of flood hazards: Ordinance No. 5085-N.S., July 25, 1978;
  - Date of Flood Insurance study: Aug 3, 2009;
  - Panel numbers and dates of all currently effective maps adopted by the AHJ (Ordinance 7108-NS 9/29/09):
    - FEMA’s “Use of Digital Flood Hazard Data” establishes that paper and digital maps are equivalent. Policy and related information are available from FEMA. The policy implements section 107 of Public Law 108-264, 118 Stat. 724 (2004)
    - Panel 13 (not available in printed form)
    - Panel 14 of 725, Map Number 06001C0014G, August 3, 2009
    - Panel 18 of 725, Map Number 06001C0018G, August 3, 2009
    - Panel 19 of 725, Map Number 06001C0019G, August 3, 2009
    - Panel 38 (not available in printed form)
    - Panel 51 (not available in printed form)
    - Panel 52 of 725, Map Number 06001C0052G, August 3, 2009
    - Panel 53 (not available in printed form)
    - Panel 54 of 725, Map Number 06001C0054G, August 3, 2009
    - Panel 56 of 725, Map Number 06001C0056G, August 3, 2009
    - Panel 57 of 725, Map Number 06001C0057G, August 3, 2009
    - Panel 80 of 725, Map Number 06001C0080G, August 3, 2009

**19.29.050 CRC Section R337 Materials and Construction Methods for Exterior Wildlife Exposure.**

**Chapter 3** of the 2022 California Residential Code is adopted in its entirety subject to the modifications thereto which are set forth below.

### **R337.1 – SCOPE, PURPOSE AND APPLICATION**

**R337.1.1 Scope.** Section R337 and all subsections apply to building materials, systems and or assemblies used in the exterior design and construction of new buildings and structures, additions, alterations, repairs and re-roofs located within a Wildland-Urban Interface (WUI) Fire Area as defined in Section R337.2.

**R337.1.2 Purpose.** The purpose of Section R337 is to establish minimum standards for the protection of life and property by increasing the ability of a building located in any Fire Hazard Severity Zone within State Responsibility Areas or any building or structure in the Wildland-Urban Interface (WUI) Fire Area to resist the intrusion of flame or burning embers projected by a vegetation fire and contributes to a systematic reduction in conflagration losses.

**R337.1.3 Application.** New buildings located in any Fire Hazard Severity Zone or new buildings and structures, additions, alterations, repairs and re-roofs located in any Wildland-Urban Interface (WUI) Fire Area designated by the enforcing agency constructed after the application date shall comply with the provisions of this section. This shall include all ~~new~~ buildings with residential, commercial, educational, institutional or similar occupancy type use, which shall be referred to in this section as “applicable building” (see definition in Section R337.2), as well as ~~new~~ buildings and structures accessory to those applicable buildings (see Exceptions 1 and 4).

#### **Exceptions:**

1. Group U occupancy accessory buildings or structures of any size located at least 50 feet (15 m) from an applicable building on the same lot.
2. Group U occupancy agricultural building or structure, as defined in Section 202 of the California Building Code, of any size located at least 50 feet (15 m) from an applicable building.
3. Group C occupancy special buildings conforming to the limitations specified in Section 450.4.1 of the California Building Code.
4. New accessory buildings and miscellaneous structures specified in Section R337.10 shall comply only with the requirements of that section.
5. ~~Additions to and remodels of building originally constructed prior to July 1, 2008.~~

**R337.1.3.1 Application date and where required.** New buildings for which an application for a building permit is submitted on or after July 1, 2008 located in any Fire Hazard Severity Zone or buildings and structures, additions, alterations, repairs and re-roofs for which an application for a building permit is submitted on or after July 1, 2008 located in the Wildland Interface Fire Area shall comply with all sections of this chapter.

## **R337.2 – DEFINITIONS**

For the purposes of this Section R337, certain terms are defined below:

**FIRE ZONE ONE** shall encompass the entire City of Berkeley except for Fire Zones Two and Three.

**FIRE ZONE TWO** encompasses those areas designated as Combined Hillside District in the Official Zoning map of the City of Berkeley and those areas designated as Very High in the official Fire Hazard Severity Zones (FHSZ) map of The Department of Forestry and Fire Protection (CAL FIRE), as they may be amended from time to time. The following properties, not part of the Combined Hillside District, are included in Fire Zone Two under the Very High designation of the FHSZ map: the eastern section of the University of California, Berkeley main campus, block number 2042 (Alameda County Assessor's parcel numbering (APN) system), to the east city line; all of the Clark-Kerr campus, block number 7690, to the east city line; all of block number 7680 in the City of Berkeley; portions of block number 1702 in the City of Berkeley. See Exhibit A for the specific parcels by APN and address.

**FIRE ZONE 3** encompasses those areas designated as Environmental Safety – Residential Districts on the Official Zoning Map of the City of Berkeley, as it may be amended from time to time.

**LOCAL RESPONSIBILITY AREA (LRA)**. Areas of the state in which the financial responsibility of preventing and suppressing fires is the primary responsibility of a city, county, city and county, or district. Fire Zones 2 and 3 are designated as Local Responsibility Area.

**WILDLAND-URBAN INTERFACE (WUI)** is a geographical area identified by the state as a "Fire Hazard Severity Zone" in accordance with the Public Resources Code Sections 4201 through 4204 and Government Code Sections 51175 through 51189, or other areas designated by the enforcing agency to be at a significant risk from wildfires. Fire Zones 2 and 3 are designated as Wildland-Urban Interface (WUI) areas.

## **R337.5 – ROOFING**

**R337.5.1 General.** Roofs shall comply with the requirements of Sections R337 and R902. Roofs shall have a roofing assembly installed in accordance with its listing and the manufacturer's installation instructions. Roof assemblies in the Fire Hazard Severity Zones shall be Class A rating when tested in accordance with ASTM E108 or UL790. Wooden shakes and shingles are prohibited roof coverings regardless of the assembly rating of the roof system.

**Exception:** Replacement of less than 50% of the roof area within a 5 year period.

**R337.5.5 Spark Arrestors.** All chimneys of fireplaces, stoves, barbecues or heating appliances using solid fuel shall be provided with an approved spark arrestor whenever modification has been made to any of these appliances, or whenever a structure is re-roofed. The net free area of the spark arrestor shall be not less than four times the net

free area of the outlet of the chimney. The spark arrestor shall have heat and corrosion resistance equivalent to twelve-gauge wire, nineteen-gauge galvanized wire, or twenty-four-gauge stainless steel. Openings shall not permit the passage of spheres having a diameter larger than one-half inch and shall not block the passage of spheres having a diameter of less than three-eighths inch. The arrestor shall be securely attached to the chimney or stovepipe and shall be adequately supported. The use of bands, mollies, masonry anchors or mortar ties are recommended depending upon the individual need.

## **R337.7 – EXTERIOR COVERING**

**R337.7.3.2 Replacement of Exterior Wall Covering.** Materials for replacement of existing exterior wall covering shall meet or exceed the standards set forth in this chapter.

**Exception:** Where less than 50% of any wall surface is being replaced or repaired, and the matching of the new plane to the existing plane on that wall is not possible.

## **R337.11 – UNDERGROUND UTILITY CONNECTIONS**

**R337.11.1 Underground utility connections.** For new construction, provisions shall be made for the undergrounding of all utilities serving the property, including but not limited to electrical, telephone and cable television, by the installation of appropriately sized underground conduits extending from the street property.

## **R337.12 – ADDITIONAL REQUIREMENTS IN FIRE ZONE THREE**

**R337.12.1 General.** In addition to meeting the other requirements of this Chapter, buildings or structures hereinafter erected, constructed, moved, altered, added, or repaired within Fire Zone Three shall comply with the following requirements for buildings and structures.

**R337.12.2 Fire Warning System.** All residential units shall be equipped with a Fire Warning System as specified by the residential smoke detector requirements of the current edition of the California Building Code and with an audible exterior alarm. The exterior alarm must meet the requirements of NFPA 72 or equivalent and generate 45 decibels ten feet from the alarm, or more.

**R337.12.3 Automatic Fire Sprinklers, Berkeley Fire Code Section 903.2.23** Any new construction or new additions to existing structures requiring a permit determined to be \$100,000 or more in construction costs shall be required to install automatic fire sprinklers throughout the structure.

**R337.12.4 Utilities.** Utilities, pipes, furnaces, water heaters or other mechanical devices located in an exposed underfloor area of a building or structure shall be enclosed with material as required for exterior one hour fire resistive construction. Adequate covered access openings for servicing and ventilation of such facilities shall be provided as required by appropriate codes.

**R337.12.5 Control of brush or vegetation.** Brush and vegetation shall be controlled as required in the Berkeley Fire Code.

**R337.12.6 Special Conditions.** The following additional conditions must be met:

1. Public access roads and fire trails. No person(s) shall use any public access road or fire trail for the storage of any construction material, stationary construction equipment, construction office, portable refuse container, or earth from any grading or excavating.
2. Water Service. The water service to the site shall be installed with a ¾" hose bib connection prior to beginning any wood framing. The person responsible for the construction shall have at the site a 75 ft ¾" hose available.

### **Exhibit A**

#### **Parcels in Addition to the Combined Hillside District**

The following additional parcels by Assessor's Parcel Number and address are included in Fire Zone Two:

| <b>Parcel Number (APN)</b> | <b>Address</b>           |
|----------------------------|--------------------------|
| 048-7680-001-02            | 3 Tanglewood Road        |
| 048-7680-002-01            | 5 Tanglewood Road        |
| 048-7680-031-00            | 7 Tanglewood Road        |
| 048-7680-019-00            | 11 Tanglewood Road       |
| 048-7680-014-00            | 19 Tanglewood Road       |
| 048-7680-032-01            | 25 Tanglewood Road       |
| 048-7680-027-00            | 29 Tanglewood Road       |
| 054-1702-067-00            | 10 Tanglewood Road       |
| 054-1702-068-00            | 18 Tanglewood Road       |
| 054-1702-069-00            | 22 Tanglewood Road       |
| 054-1702-070-00            | 28 Tanglewood Road       |
| 054-1702-063-00            | 2701 Belrose Avenue      |
| 054-1702-076-00            | 2715 Belrose Avenue      |
| 054-1702-075-00            | 2721 Belrose Avenue      |
| 054-1702-074-00            | 2729 Belrose Avenue      |
| 054-1702-073-00            | 2737 Belrose Avenue      |
| 054-1702-112-00            | 2801 Claremont Boulevard |
| 054-1702-123-01            | 2811 Claremont Boulevard |
| 054-1702-122-00            | 2815 Claremont Boulevard |
| 054-1702-120-01            | 2821 Claremont Boulevard |
| 054-1702-114-01            | 2816 Claremont Avenue    |
| 054-1702-115-00            | 2820 Claremont Avenue    |
| 054-1702-072-00            | 3005 Garber Street       |
| 054-1702-071-00            | 3015 Garber Street       |
| 054-1702-113-00            | 3020 Garber Street       |
| 054-1702-116-00            | 3017 Avalon Avenue       |



### 19.29.060 Technical Amendments to Structural Standards

**Chapter 6** of the 2022 California Residential Code is adopted in its entirety subject to the modifications thereto which are set forth below.

#### **Table R602.10.3(3) BRACING REQUIREMENTS BASED ON SEISMIC DESIGN CATEGORY<sup>i,j</sup>**

Add new footnotes "i" and "j" to the end of Table R602.10.3(3) to read:

i. Methods GB, PBS, HPS and SFB are not permitted in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub>, and D<sub>2</sub>.

j. Method DWB are not permitted in Seismic Design Categories D<sub>0</sub>, D<sub>1</sub>, and D<sub>2</sub> where S<sub>1</sub> is greater than or equal to 0.75.

Add a new Subsection R602.10.4.5, to read:

**R602.10.4.5 Limits on methods GB and PCP.** In Seismic Design Categories D<sub>0</sub>, D<sub>1</sub>, and D<sub>2</sub>, Method GB is not permitted, but gypsum board is permitted to be placed on the opposite side of the studs from other types of braced wall panel sheathing. In Seismic Design Categories D<sub>0</sub>, D<sub>1</sub>, and D<sub>2</sub>, the use of Method PCP is limited to one-story dwellings and accessory structures.

**Section 3.** That Berkeley Municipal Code Chapter 19.30 is hereby repealed and reenacted to read as follows:

### Chapter 19.30

#### BERKELEY ELECTRICAL CODE

##### Sections:

**19.30.010 Adoption of California Electrical Code.**

**19.30.020 Title.**

**19.30.030 Administrative provisions.**

##### **19.30.010 Adoption of California Electrical Code.**

The California Electrical Code, 2022 Edition, as adopted by the California Code of Regulations, Title 24, Part 3 is hereby adopted and made a part of this Chapter as though fully set forth herein subject to the modifications thereto which are set forth in this Chapter. A copy of this Code is on file for use and examination by the public in the office of the City Clerk of the City of Berkeley.

##### **19.30.020 Title.**

This Code shall be known as the "Berkeley Electrical Code" and may be cited as "this Code".

**19.30.030 Administrative provisions.**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any administrative provisions contained in Article 89 General Code Provisions that may conflict.

**Section 4.** That Berkeley Municipal Code Chapter 19.32 is hereby repealed and reenacted to read as follows:

**Chapter 19.32**

**BERKELEY MECHANICAL CODE**

**Sections:**

- 19.32.010 Adoption of the California Mechanical Code.**
- 19.32.020 Title.**
- 19.32.030 Administrative provisions.**
- 19.32.040 Amendments to the California Mechanical Code**

**19.32.010 Adoption of the California Mechanical Code.**

The California Mechanical Code, 2022 Edition, as adopted in Title 24 Part 4 of the California Code of Regulations, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. A copy of this Code is on file for use and examination by the public in the office of the City Clerk of the City of Berkeley.

**19.32.020 Title.**

This Code shall be known as the "Berkeley Mechanical Code" and may be cited as "this Code".

**19.32.030 Administrative provisions.**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any California Mechanical Code administrative provisions that may conflict.

**19.32.040 Amendments to the California Mechanical Code**

**Chapter 4** of the 2022 California Mechanical Code is adopted in its entirety subject to the modifications thereto which are set forth below:

**405.4 Kitchen Exhaust.** A mechanical exhaust directly to the outdoors shall be provided in each kitchen. The fan shall run intermittently (on demand) or continuously. A readily accessible manual control designed to be operated as needed or an automatic control shall be provided for intermittent operations.

**405.4.1 Exhaust Rate.** For intermittent-controlled operations, the exhaust rate shall be not less than 100 ft<sup>3</sup>/min (0.047 m<sup>3</sup>/s) for range hoods or 300 ft<sup>3</sup>/min (0.141 m<sup>3</sup>/s) for mechanical exhaust fans including downdraft appliances, and shall be rated for sound at a maximum of 3 sone at greater than or equal to 100 cfm. For continuous operated ventilation, the exhaust rate shall be not less than 5 air changes per hour based on kitchen volume for enclosed kitchens and shall be rated for sound at a maximum of 1.0 sone.

**Exception:** A vented range hood shall not be required in dwelling unit kitchens equipped with a local mechanical exhaust system installed in accordance with ASHRAE 62.2.

**Section 5.** That Berkeley Municipal Code Chapter 19.34 is hereby repealed and reenacted to read as follows:

### Chapter 19.34

#### BERKELEY PLUMBING CODE

##### Sections:

- 19.34.010 Adoption of the California Plumbing Code.**
- 19.34.020 Title.**
- 19.34.030 Administrative provisions.**
- 19.34.040 Gas Shut-Off Valves**

##### **19.34.010 Adoption of the California Plumbing Code.**

The California Plumbing Code, 2022 Edition, as adopted in Title 24 Part 5 of the California Code of Regulations, including Appendices A, B and D, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. A copy of this Code is on file for use and examination by the public in the office of the City Clerk of the City of Berkeley.

##### **19.34.020 Title.**

This Code shall be known as the "Berkeley Plumbing Code" and may be cited as "this Code."

##### **19.34.030 Administrative Provisions.**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any California Plumbing Code administrative provisions that may conflict.

##### **19.34.040 Gas Shut-Off Valves**

**Chapter 12** of the 2022 California Plumbing Code is adopted in its entirety subject to the modifications thereto which are set forth below.

Retitle and amend Section 1209.0 Excess Flow Valves to read:

### **1209.0 Automatic Gas Shut-Off Valves**

**1209.1 General.** Where automatic excess flow valves are installed, they shall be listed to CSA Z21.93 and shall be sized and installed in accordance with the manufacturer's instructions. [NFPA 54:5.13]

**1209.2 General Requirements for Automatic Gas Shut-Off Valves.** Automatic gas shut-off valves shall:

1. Comply with all applicable requirements of the Berkeley Plumbing Code.
2. Be tested and listed by recognized testing agencies such as the Independent Laboratory of the International Approval Services (IAS), Underwriter's Laboratory (UL), International Association of Plumbing and Mechanical Officials (IAPMO) or any other agency approved by the State of California Office of the State Architect (OSA).
3. Be installed on downstream side of the gas utility meter.
4. Be installed in accordance with the manufacturer's instructions.
5. Provide a method for expedient and safe gas shut-off in an emergency.
6. Provide a capability for ease of consumer or owner resetting in a safe manner.

### **1209.3 Definitions**

For the purpose of this Section, terms shall be defined as follows:

**AUTOMATIC GAS SHUT- OFF VALVE** shall mean either a motion activated gas shut-off valve or device or an excess flow gas shut-off valve or device.

**DOWNSTREAM OF GAS UTILITY METER** shall mean all gas piping on the property owner's side of the gas meter and after the service tee.

**MOTION ACTIVATED GAS SHUT OFF VALVE** shall mean an approved gas valve activated by motion. Valves are set to activate in the event of a moderate or strong seismic event greater than 5.0 on the Richter scale.

**UPSTREAM OF GAS UTILITY METER** shall mean all gas piping installed by the utility up to and including the meter and the utility's service tee.

**1209.4 Motion Activated Gas Shut-off Valve, Required.** A listed motion activated gas shut-off valve shall be installed as follows:

**1209.4.1 New Construction.** In any newly constructed building or structure containing fuel gas piping.

**1209.4.2 Existing Buildings with a single meter.** In any existing building or structure containing fuel gas piping served by a single gas meter, when any addition, alteration or repair is made for which a mechanical or plumbing permit is issued.

**1209.4.3 Existing Buildings with separate meters serving individual units or tenant spaces.** In any existing building or structure containing fuel gas piping served by multiple gas meters, when any addition, alteration or repair is made to an individual unit or tenant space for which a mechanical or plumbing permit is issued. The requirement for a motion activated gas shut off valve shall apply to the gas meter serving the individual unit or tenant space and the gas meter serving common area(s).

**Exceptions:**

1. Existing automatic gas shut-off valves installed prior to the effective date of this Section, provided the valves are maintained in operational condition.
2. Automatic gas shut-off valves installed on a gas distribution system owned or operated by a public utility.

**Note:** For the purpose of the requirements of this Section, excess flow valves are not permitted to be installed as a substitute for motion activated gas shut-off valves.

**1209.5 Mounting.** Motion activated seismic gas shut-off valves shall be mounted rigidly to the building or structure containing the fuel gas piping, unless otherwise specified in the manufacturer's installation instructions.

**Section 6.** That Berkeley Municipal Code Chapter 19.36 is hereby repealed and reenacted to read as follows:

**Chapter 19.36**

**BERKELEY ENERGY CODE**

**Sections:**

|                  |                                                  |
|------------------|--------------------------------------------------|
| <b>19.36.010</b> | <b>Adoption of the California Energy Code.</b>   |
| <b>19.36.020</b> | <b>Title.</b>                                    |
| <b>19.36.030</b> | <b>Administrative provisions.</b>                |
| <b>19.36.040</b> | <b>Amendments to the California Energy Code.</b> |
| <b>19.36.050</b> | <b>CEQA</b>                                      |

**19.36.010 Adoption of the California Energy Code.**

The California Energy Code, 2022 Edition, as adopted in Title 24 Part 6 of the California Code of Regulations, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. A copy of this Code is on file for use and examination by the public in the office of the City Clerk of the City of Berkeley.

**19.36.020 Title.**

This Code shall be known as the “Berkeley Energy Code” and may be cited as "this Code”.

**19.36.030 Administrative provisions.**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any California Energy Code administrative provisions that may conflict.

**Section 7.** That Berkeley Municipal Code Chapter 19.37 is hereby repealed and reenacted to read as follows:

**Chapter 19.37**

**BERKELEY GREEN CODE**

**Sections:**

**19.37.010 Adoption of the California Green Building Standards Code.**

**19.37.020 Title.**

**19.37.030 Administrative provisions.**

**19.37.040 Amendments to the California Green Building Standards Code.**

The California Green Building Standards Code (CALGreen), 2022 Edition, as adopted in Title 24 Part 11 of the California Code of Regulations, is hereby adopted and made a part of this Chapter as though fully set forth herein, subject to the modifications thereto which are set forth in this Chapter. A copy of this Code is on file for use and examination by the public in the office of the City Clerk of the City of Berkeley.

**19.37.020 Title.**

This Code shall be known as the “Berkeley Green Code” and may be cited as "this Code”.

**19.37.030 Administrative provisions.**

All of the administrative provisions contained in Article 1 of Chapter 19.28, the Berkeley Building Code, shall apply to this Code as well and take precedence over any California Green Building Standards Code administrative provisions that may conflict.

**19.37.040 Amendments to the California Green Building Standards Code.**

**Chapter 3 Green Building** of the California Green Building Standards Code is adopted in its entirety subject to the modifications thereto which are set forth below:

Add a new Subsection 301.1.2 to read:

**301.1.2 Residential waste diversion.** The requirements of Section 4.408 shall be required for:

1. Any additions or alterations, which increase the building's conditioned area, volume or size
2. Any building alterations with a permit valuation over \$100,000
3. Any interior or exterior demolitions valued over \$3,000

Modify Subsection 301.3.2 to read:

**301.3.2 Nonresidential waste diversion.** The requirements of Section 5.408 shall be required for additions and, alterations and demolitions whenever a permit is required for work.

**Chapter 4 Residential Mandatory Measures** of the California Green Buildings Code is adopted in its entirety subject to the modifications thereto which are set forth below:

Modify Subsection 4.106.4.1 to read:

**4.106.4.1 New one- and two-family dwellings and townhouses with attached or detached private garages, carports, or any other on-site parking.** For each dwelling unit, install a listed raceway to accommodate a dedicated 208/240-volt branch circuit. The raceway shall not be less than trade size 1 (nominal 1-inch inside diameter). The raceway shall originate at the main service or subpanel and shall terminate into a listed cabinet, box or other enclosure in close proximity to the proposed location of an EV charger. Raceways are required to be continuous at enclosed, inaccessible or concealed areas and spaces. The service panel and/or subpanel shall provide capacity to install a 40-ampere 208/240-volt minimum dedicated branch circuit and space(s) reserved to permit installation of a branch circuit overcurrent protective device minimum 40-ampere 208/240-volt dedicated EV branch circuit in close proximity to the proposed location of an EV charger at the time of original construction in accordance with the California Electrical Code.

**Exception:** A raceway is not required if a minimum 40-ampere 208/240-volt dedicated EV branch circuit is installed in close proximity to the proposed location of an EV charger at the time of original construction in accordance with the California Electrical Code.

**4.106.4.1.1 Identification.** The service panel or subpanel circuit directory shall identify the overcurrent protective device space(s) reserved for future EV charging

as "EV CAPABLE READY". The raceway termination location shall be permanently and visibly marked as "EV CAPABLE READY".

Modify Subsection 4.106.4.2.1 to read:

**4.106.4.2.1 Multifamily development projects with less than 20 dwelling units; and hotels and motels with less than 20 sleeping units or guest rooms.** The number of dwelling units, sleeping units or guest rooms shall be based on all buildings on a project site subject to this section.

1. **EV Capable.** ~~Ten (10)~~ Twenty (20) percent of the total number of parking spaces on a building site, provided for all types of parking facilities, shall be electric vehicle charging spaces (EV spaces) capable of supporting future Level 2 EVSE. Electrical load calculations shall demonstrate that the electrical panel service capacity and electrical system, including any on-site distribution transformer(s), have sufficient capacity to simultaneously charge all EVs at all required EV spaces at a minimum of 40 amperes.

The service panel or subpanel circuit directory shall identify the overcurrent protective device space(s) reserved for future EV charging purposes as "EV CAPABLE" in accordance with the California Electrical Code.

**Exception:**

- ~~1. When EV chargers (Level 2 EVSE) are installed in a number equal to or greater than the required number of EV capable spaces.~~
- ~~2. When EV chargers (Level 2 EVSE) are installed in a number less than the required number of EV capable spaces, the number of EV capable spaces required may be reduced by a number equal to the number of EV chargers installed.~~
1. When EV chargers (Level 2 EVSE) are installed in a number greater than five (5) percent of parking spaces required by Section 4.106.4.2.1, Item 3, the number of EV capable spaces required may be reduced by a number equal to the number of EV chargers installed over the five (5) percent required.

**Notes:**

- a. Construction documents are intended to demonstrate the project's capability and capacity for facilitating future EV charging.
- b. There is no requirement for EV spaces to be constructed or available until receptacles for EV charging or EV chargers are installed for use.



2. **EV Ready.** Twenty-five (25) percent of the total number of parking spaces shall be equipped with low power Level 2 EV charging receptacles. For multifamily parking facilities, no more than one receptacle is required per dwelling unit when more than one parking space is provided for use by a single dwelling unit.

**Exception:** Areas of parking facilities served by parking lifts, provided the required percentage of EV Ready spaces are installed elsewhere.

3. **EV Chargers.** Five (5) percent of the total number of parking spaces shall be equipped with Level 2 EVSE. Where common use parking is provided, at least one EV charger shall be located in the common use parking area and shall be available for use by all residents or guests.

When low power Level 2 EV charging receptacles or Level 2 EVSE are installed beyond the minimum required, an automatic load management system (ALMS) may be used to reduce the maximum required electrical capacity to each space served by the ALMS. The electrical system and any on-site distribution transformers shall have sufficient capacity to deliver at least 3.3 kW simultaneously to each EV charging station (EVCS) served by the ALMS. The branch circuit shall have a minimum capacity of 40 amperes, and installed EVSE shall have a capacity of not less than 30 amperes. ALMS shall not be used to reduce the minimum required electrical capacity to the required EV capable spaces.

**Exception:** Areas of parking facilities served by parking lifts, provided the required percentage of EV Chargers spaces are installed elsewhere.

**NOTE:** Calculations required by Section 4.106.4.2.1, Items 1 – 3 shall be rounded up to the nearest whole number.

Modify Subsection 4.106.4.2.2 to read:

**4.106.4.2.2 Multifamily development projects with 20 or more dwelling units, hotels and motels with 20 or more sleeping units or guest rooms.** The number of dwelling units, sleeping units or guest rooms shall be based on all buildings on a project site subject to this section.

1. **EV Capable.** ~~Ten (10)~~ Twenty (20) percent of the total number of parking spaces on a building site, provided for all types of parking facilities, shall be electric vehicle charging spaces (EV spaces) capable of supporting future Level 2 EVSE. Electrical load calculations shall demonstrate that the electrical panel service capacity and electrical system, including any on-site distribution transformer(s), have sufficient capacity to simultaneously charge all EVs at all required EV spaces at a minimum of 40 amperes.

The service panel or subpanel circuit directory shall identify the overcurrent protective device space(s) reserved for future EV charging purposes as "EV CAPABLE" in accordance with the California Electrical Code.

**Exception:** When EV chargers (Level 2 EVSE) are installed in a number greater than five (5) percent of parking spaces required by Section 4.106.4.2.2, Item 3, the number of EV capable spaces required may be reduced by a number equal to the number of EV chargers installed over the five (5) percent required.

**Notes:**

- a. Construction documents shall show locations of future EV spaces.
  - b. There is no requirement for EV spaces to be constructed or available until receptacles for EV charging or EV chargers are installed for use.
2. **EV Ready.** Twenty-five (25) percent of the total number of parking spaces shall be equipped with low power Level 2 EV charging receptacles. For multifamily parking facilities, no more than one receptacle is required per dwelling unit when more than one parking space is provided for use by a single dwelling unit.

**Exception:** Areas of parking facilities served by parking lifts-, provided the required percentage of EV Ready spaces are installed elsewhere.

3. **EV Chargers.** Five (5) percent of the total number of parking spaces shall be equipped with Level 2 EVSE. Where common use parking is provided, at least one EV charger shall be located in the common use parking area and shall be available for use by all residents or guests.

When low power Level 2 EV charging receptacles or Level 2 EVSE are installed beyond the minimum required, an automatic load management system (ALMS) may be used to reduce the maximum required electrical capacity to each space served by the ALMS. The electrical system and any on-site distribution transformers shall have sufficient capacity to deliver at least 3.3 kW simultaneously to each EV charging station (EVCS) served by the ALMS. The branch circuit shall have a minimum capacity of 40 amperes, and installed EVSE shall have a capacity of not less than 30 amperes. ALMS shall not be used to reduce the minimum required electrical capacity to the required EV capable spaces.

**Exception:** Areas of parking facilities served by parking lifts, provided the required percentage of EV Chargers spaces are installed elsewhere.

**NOTE:** Calculations required by Section 4.106.4.2.2, Items 1 – 3 shall be rounded up to the nearest whole number.

Add a new Subsection 4.405.1 to read:

**4.405.1 Reduction in cement use.** As allowed by the enforcing agency, cement used in concrete mix design shall be reduced not less than 25 percent. Products commonly used to replace cement in concrete mix designs include, but are not limited to:

1. Fly ash
2. Slag
3. Silica fume
4. Rice hull ash

**Exception:** Minimum cement reductions in concrete mix designs approved by the Engineer of Record may be lower where high early strength is needed for concrete products or to meet an accelerated project schedule.

Modify Subsection 4.408.1 to read:

**4.408.1 Construction waste management.** Recycle and/or salvage for reuse 100% of excavated soil and land-clearing debris, 100% of concrete, 100% of asphalt, and a minimum of 65 percent of the other nonhazardous construction and demolition waste in accordance with either Section 4.408.2, 4.408.3 or 4.408.4, or meet a more stringent local construction and demolition waste management ordinance.

**Exceptions:**

1. ~~Excavated soil and land-clearing debris.~~
2. Alternate waste reduction methods developed by working with local agencies if diversion or recycle facilities capable of compliance with this item do not exist or are not located reasonably close to the jobsite.
3. The enforcing agency may make exceptions to the requirements of this section when isolated jobsites are located in areas beyond the haul boundaries of the diversion facility.

**Chapter 5 Nonresidential Mandatory Measures** of the California Green Buildings Code is adopted in its entirety subject to the modifications thereto which are set forth below:

Modify Subsection 5.106.5.3.1 to read:

**5.106.5.3.1 EV Capable Spaces.** [N] Twenty (20) percent of the total number of parking spaces shall be EV capable spaces. Calculation for EV capable spaces shall be rounded up to the nearest whole number. shall be provided in accordance with Table 5.106.5.3.1 and The spaces shall comply with the following requirements:

1. Raceways complying with the California Electrical Code and no less than 1-inch (25 mm) diameter shall be provided and shall originate at a service panel or a subpanel(s) serving the area, and shall terminate in close proximity to the proposed location of the EV capable space and into a suitable listed cabinet, box, enclosure or equivalent. A common raceway may be used to serve multiple EV capable spaces.
2. A service panel or subpanel(s) shall be provided with panel space and electrical load capacity for a dedicated 208/240 volt, 40-ampere minimum branch circuit for each EV capable space, with delivery of 30-ampere minimum to an installed EVSE at each EVCS.
3. The electrical system and any on-site distribution transformers shall have sufficient capacity to supply full rated amperage at each EV capable space.
4. The service panel or subpanel circuit directory shall identify the reserved overcurrent protective device space(s) as "EV CAPABLE". The raceway termination location shall be permanently and visibly marked as "EV CAPABLE."

**Note:** A parking space served by electric vehicle supply equipment or designed as a future EV charging space shall count as at least one standard automobile parking space only for the purpose of complying with any applicable minimum parking space requirements established by an enforcement agency. See Vehicle Code Section 22511.2 for further details.

Delete Table 5.106.5.3.1.

Modify Subsection 5.106.5.3.2 to read:

**5.106.5.3.2 Electric Vehicle Charging Stations (EVCS) [N]** ~~Ten (10) percent of the total number of parking spaces shall be EV capable spaces shall be provided with EVSE to create EVCS. Calculation for EVCS shall be rounded up to the nearest whole number. in the number indicated in Table 5.106.5.3.1. The EVCS required by Table 5.106.5.3.1 may be provided with EVSE in any combination of Level 2 and Direct Current Fast Charging (DCFC), except that at least one Level 2 EVSE shall be provided.~~

One EV charger with multiple connectors capable of charging multiple EVs simultaneously shall be permitted if the electrical load capacity required by Section 5.106.5.3.1 for each EV capable space is accumulatively supplied to the EV charger.

The installation of each DCFC EVSE shall be permitted to reduce the minimum number of required EV capable spaces without EVSE by five and reduce proportionally the required electrical load capacity to the service panel or subpanel.

## 5.405 Material Sources

Add a new Subsection 5.405.1 to read:

**5.405.1 Reduction in cement use.** As allowed by the enforcing agency, cement used in concrete mix design shall be reduced not less than 25 percent. Products commonly used to replace cement in concrete mix designs include, but are not limited to:

1. Fly ash.
2. Slag.
3. Silica fume.
4. Rice hull ash.

**Exception:** Minimum cement reductions in concrete mix designs approved by the Engineer of Record may be lower where high early strength is needed for concrete products or to meet an accelerated project schedule.

**5.408.3 Concrete, asphalt, excavated soil and land clearing debris.** 100 percent of concrete, asphalt, trees, stumps, rocks and associated vegetation and soils resulting primarily from land clearing shall be reused or recycled. For a phased project, such material may be stockpiled on site until the storage site is developed.

**Section 8.** Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

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

ADOPTING FINDINGS AS TO LOCAL CLIMATIC, GEOLOGICAL, AND TOPOGRAPHICAL CONDITIONS, AND COST-EFFECTIVENESS OF LOCAL AMENDMENTS TO THE ENERGY CODE, RENDERING REASONABLY NECESSARY ENUMERATED LOCAL BUILDING STANDARDS THAT ARE MORE STRINGENT THAN THOSE MANDATED BY THE CALIFORNIA BUILDING STANDARDS CODE

WHEREAS, the City is proposing to adopt various enumerated changes and modifications to the 2022 California Building Standards Code, California Code of Regulations, Title 24, as set forth below; and

WHEREAS, Health & Safety Code §17958 allows the City to make modifications or changes to the California Building Standards Code and other regulations adopted pursuant to Health & Safety Code §17921(a) which result in more stringent local requirements; and

WHEREAS, Health & Safety Code §17958, §17958.5 and §17958.7 require that such changes be supported by findings made by the governing body that such more stringent local requirements are necessary because of "local climatic, geological, or topographical conditions"; and

WHEREAS, such findings must be made available as a public record and a copy thereof with each such modification or change shall be filed with the California Building Standards Commission; and

WHEREAS, on November 12, 2019, the Berkeley City Council adopted Resolution No. 69,170-N.S. making findings in support of previous local code amendments.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it finds that each of the proposed changes or modifications to the California Building Standards Code which are enumerated below are reasonably necessary because of local conditions in the area encompassed by the City of Berkeley, as set forth below:

**A. LOCAL CONDITIONS**

**1. Climatic Conditions**

a. Discussion

The City of Berkeley is located at the geographic center of the Bay Area. The western limits are defined by the Bay at near sea level and the eastern limits by the abruptly rising Berkeley Hills to 1,200 feet. The eastern limit faces open parklands and open space (covered with vegetative fuel loading) to the east and is exposed to a unique danger from wild land fires during periods of hot, dry weather in the summer months.

Many of the Berkeley homes in this area have wood shake and shingle roofs and are surrounded by brush type vegetation. The situation is made even worse by the negative effects of high wind conditions during the fire season. During May to October, critical climatic fire conditions occur where the temperature is greater than 80°F, the wind speed is greater than 15 mph, fuel moisture is less than or equal to 10.0 percent, wind direction is from north to the east-southeast and the ignition component is 65 or greater. These conditions occur more frequently during the fire season but this does not preclude the possibility that a serious fire could occur during other months of the year. The critical climate fire conditions create a situation conducive to rapidly moving, high intensity fires. Fires starting in the wild land areas along the easterly border are likely to move rapidly westward into Berkeley's urban areas.

In September 1923, critical climatic fire conditions were in effect and Berkeley sustained one of the most devastating fires in California's history. A fire swept over the range of the hills to the northeast of Berkeley and within two hours was attacking houses within the City limits. A total of 130 acres of built-up territory burned. 584 Berkeley buildings were wholly destroyed and about 30 others seriously damaged. By far the greater portion were single-family dwellings, but among the number were 63 apartments, 13 fraternity, sorority and students' house clubs and 6 hotels and boarding houses.

In December of 1980, during critical climatic fire conditions, a small fire started at Berkeley's northeast limits and within minutes five homes were totally destroyed by fire.

On October 20, 1991, a disastrous firestorm swept down from the Oakland hills. Within the first few hours, thousands of people were evacuated. Ultimately over 3,000 dwelling units were destroyed, of which more than 70 were in Berkeley. This fire matched the pattern established by the fires of 1923 and 1980. Additionally, the conditions that led to it were the same as the conditions that led to a 1970 fire that destroyed 70 homes in Oakland.

Berkeley frequently experiences cold winter days with accompanying temperature inversions which trap wood smoke near the ground and increase air pollution. These stagnant air days are marked by increased acute respiratory disease, including asthma, and a small but consistent increase in deaths from heart and lung disease. During these periods the usual onshore flow of clean marine air ceases and wood smoke air pollution becomes an area-wide phenomena. Studies by the Bay Area Air Quality Management District suggest that between 20 and 50% of air polluting small particles come from residential wood burning.

In addition, local surface winds frequently transport moisture laden air from the surface of the Bay waters into the City. Larger scale prevailing weather patterns and winds created by the jet stream from the west also transport highly humid air and storms across the Pacific Ocean through the strait between the San Francisco peninsula and the Marin Headlands straddled by Golden Gate Bridge and into the City. The moderating effect of the Bay waters on local temperatures tends to reduce local temperature extremes, even during periods of high inland temperatures. The combination of moist air from adjacent waters and the associated mild temperatures means that it is common for local weather

conditions to hover near the dew point. This can result in the formation of fog associated with local and regional marine weather layers, which commonly cover the City for hours or even days at a time with an average morning relative humidity of 82 percent.

Much of Northern California is considered to possess a predominantly Mediterranean climate. At times Berkeley does experience periods of high temperature and/or low humidity particularly between mid-July and mid-October, when the danger of hillside fires is greatest. Throughout the rest of the year, the marine weather environment is characterized by higher humidity and lower overall prevailing temperatures, resulting in a higher overall moisture content in building construction materials and slower drying of building materials and assemblies once wet or humidified.

Scientific evidence has established that natural gas combustion, procurement and transportation produce significant greenhouse gas emissions that contribute to global warming and climate change. Human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, which contribute to melting of glaciers and thermal expansion of ocean water, drought conditions, increase in vegetative fuel, and length of fire seasons. As a coastal city located on the San Francisco Bay, Berkeley is experiencing the repercussions of climate change due excessive greenhouse gas emissions. Rising sea levels have caused significant coastal erosion and have increased impacts to infrastructure during extreme tides.

Scientific evidence also suggests storms are growing with higher intensity due to climate change and will be followed by an increased frequency of dry periods. By 2100, average temperatures in the San Francisco Bay Area is expected to increase up to 11°, bringing 6-10 additional heat waves to Berkeley each year. According to historical records, Bay Area sea level has risen 8 inches over the last century and the pace of sea level rise has increased since 2011. While regional variability exists, the median increase for the San Francisco Bay is expected to reach almost 1 ft by 2050<sup>1</sup> under a low risk model, while 2.7 ft is projected under an extreme risk scenario. Such climate change events are expected to increase the risk of flooding in low-lying areas of Berkeley, while hillside communities face increased risk of wildfires.

## b. Summary

Local climatic conditions of periods of limited rainfall, high temperature and/or low humidity particularly between mid-July and mid-October, and high winds along with existing building construction create periodic extremely hazardous fire conditions that adversely affect the acceleration intensity and size of fires in the City. The same climatic conditions may result in the concurrent occurrence of one or more fires, which may spread in the more populated areas of the City without adequate fire department personnel to protect against and control such a situation. Throughout the rest of the year, the marine weather environment is characterized by higher humidity and lower overall prevailing

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<sup>1</sup> Griggs, G., Cayan, D., Tebaldi, C., Fricker, H., & Árvai, J. (2017). Rising Seas in California. California Ocean Science Trust, (April), 71. Retrieved from <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>



temperatures, resulting in a higher overall moisture content in building construction materials and slower drying of building materials and assemblies once wet or humidified. Berkeley is susceptible to the impacts of climate change, including sea level rise, increased average temperatures, and reduced air quality.

## **2. Geological Conditions**

### a. Discussion

The City of Berkeley is in a region of high seismic activity and is traversed by the Hayward fault. It has the San Andreas earthquake fault to the west and the Calaveras earthquake fault to the east. All three faults are known to be active as evidenced by the damaging earthquakes they have produced in the last 100 years and can, therefore, be expected to do the same in the future. Of primary concern to Berkeley is the Hayward Fault, which has been estimated to be capable of earthquakes exceeding a magnitude of 7.0 on the Richter scale. It extends through many residential areas and passes through a small business district and the University of California. A large number of underground utilities cross the fault, including major water supply and natural gas lines. Intensified damage during an earthquake may be expected in liquefaction zones along the Bay west of Interstate 80 and in known slide areas, as well as hillside areas (occupied mainly by dwellings) located within or near the fault zone; some areas are steep and have been subjected to slides.

The waterfront areas and areas in the Berkeley flatlands immediately adjacent to creeks and water streams present a major potential for soil liquefaction hazard. The Eastshore Freeway may liquefy and fail under heavy shaking or it may be inundated by a tsunami. The north hill area is most susceptible to landslides because of the presence of soft and unconsolidated sediments, extensive water content in the ground and the steepness of slopes.

Great potential damage can be related to the likely collapse of freeway overpasses. In the event of a major earthquake, Berkeley's firefighting capability could be significantly affected by loss of its main water supply. There is also the strong possibility of inundation due to failure of water reservoirs in the hill area. Summit Reservoir at the Kensington border in Berkeley and Berryman Reservoir North have recently been replaced by steel tanks. Berryman Reservoir South has received a seismic upgrade. Additional potential situations following an earthquake include broken natural gas mains and ensuing fire in the streets, building fires, as the result of broken service connections, the need for rescues for collapsed structures, and the rendering of first aid and other medical attention to a large number of people.

### b. Summary

Local geological conditions include high seismic activity and large concentrations of residential type buildings as well as a major freeway. Since the City of Berkeley is located in a densely populated area having buildings and structures constructed over and near a vast array of fault systems capable of producing major earthquakes, the

modifications cited herein are intended to better limit property damage as a result of a seismic activity and to establish criteria for repair of damaged properties following a local emergency.

### **3. Topographical Conditions**

#### a. Discussion

The City of Berkeley has many homes built throughout the urban portion of the Berkeley Hills that are reached by narrow and often winding paved streets which hamper access for fire apparatus and escape routes for residents. In addition, many of the hillside homes are on the extreme eastern edge of the City and require longer response times for the total required firefighting force. Panoramic Way and other hill areas with narrow and winding streets may face the problem of isolation from the rest of the City.

In the areas north and south of the University of California, there are large concentrations of apartments, rooming houses, and fraternity and sorority houses. A number of apartments in these areas are of wood frame construction and are up to five stories in height from grade level. The fire potential is moderately high due to building congestion, heights, and wood shingle roof coverings and siding. Fires can be expected to involve large groups of buildings in these areas. It is noted that Berkeley most probably has more physically impaired people per capita than any other community in the United States. It is estimated that 14% of the approximate population of 124,321 per the 2021 Census in Berkeley are physically impaired. Emergency egress and rescue for these people are more difficult during a fire or other life safety emergency.

The Eastshore Freeway, running along the western edge of Berkeley, is one of the most heavily used and congested freeway sections in the state. Noted impacts have included increased rates of asthma, particularly among children. The proximity of Berkeley to this freeway and its location downwind from prevailing patterns negatively affects air quality, thus increasing the impact of wood smoke in Berkeley.

Part of the Pacific Coast Range, the Berkeley Hills, define the eastern boundary of the City and form a natural obstruction to the movement of humidified, cooler air out of the San Francisco Bay basin and the City of Berkeley into the dryer adjacent inland valleys and the interior of the State. Although these hills do not form an absolute air barrier, they do play a significant role in the creation of local microclimates. This effect is evidenced by the disparity in temperatures and relative humidity commonly experienced during periods of warm weather between communities adjacent to the San Francisco Bay / Pacific Ocean and communities in the Bay Area inland valleys only a few miles inland.

The City of Berkeley is part of a densely populated metropolitan area with limited space for landfills. It is important to preserve the limited landfill space for materials which cannot be diverted and to keep land-clearing debris out of landfills, where decomposition of such organic material would result in methane.

b. Summary

Local topographical conditions include hillside housing with many narrow and winding streets with slide potential for blockage in the abruptly rising Berkeley hills. These conditions create an extremely serious problem for the Fire Department when a major fire or earthquake occurs. Many situations will result in limiting or total blockage of fire department emergency vehicular traffic, overtaxed fire department personnel and a total lack of resources for the suppression of fire in buildings and structures in the City of Berkeley. In addition, under these local conditions, the presence of wood smoke can cause increased disease, including asthma, and increased deaths from heart and lung disease. The built environment also provides little space for landfills.

**B. REASONABLE NECESSITY**

The proposed changes and modifications to the California Building Standards Code are reasonably necessary due to the local conditions set forth above because they reduce the risks to life, public safety, health, welfare and property which result from the City's changing climate and location astride an active earthquake fault. They are further justified for the reasons set forth below.

In adopting the California Building Standards Code as the Berkeley Building Codes, the City proposes to make certain substantive modifications whose effect is to impose more stringent requirements locally than are mandated by the California Building Standards Code. These are:

- (1) Building standards relating to increased fire resistance in Fire Zones 2 and 3 (Berkeley Building Code Chapter 19.28 Article 2, Berkeley Residential Code Chapter 19.29 Section 19.29.050);
- (2) Standards to reduce the health risk caused by wood smoke under the climatic conditions of Berkeley (Berkeley Building Code Chapter 19.28 Article 3);
- (3) Building standards for retrofit of certain existing building types with seismic weaknesses (Berkeley Building Code Chapter 19.28 Article 5);
- (4) Standards for repair of existing buildings (Berkeley Building Code Chapter 19.28, Article 6);
- (5) Provisions requiring retrofitting of unreinforced masonry buildings (Berkeley Building Code Chapter 19.28 Article 6 and Berkeley Municipal Code Chapter 19.38);
- (6) Provisions requiring retrofitting of soft, weak, or open front buildings (Berkeley Building Code Chapter 19.28 Article 6 and Berkeley Municipal Code Chapter 19.39);
- (7) Various technical amendments to structural standards (Berkeley Building Code Chapter 19.28 Article 7, Berkeley Residential Code Chapter 19.29 Section 19.29.060);

- (8) Building standards for construction of exterior elevated elements (E3) to resist moisture intrusion (Berkeley Building Code Chapter 19.28 Article 8);
- (9) Building standards for emergency housing during the declaration of a shelter crisis (Berkeley Building Code Chapter 19.28 Article 9);
- (10) Provisions requiring range hood ventilation with sound ratings in residential dwelling units (Berkeley Mechanical Code Chapter 19.32 Section 19.32.040);
- (11) Provisions requiring installation of motion activated gas shut-off valves (Berkeley Plumbing Code Chapter 19.34 Section 19.34.040);
- (12) Provisions increasing and expanding the applicability of construction and demolition waste diversion requirements (Berkeley Green Code Chapter 19.37 Section 19.37.040);
- (13) Provisions to reduce the cement content in construction concrete mix designs (Berkeley Green Code Chapter 19.37 Section 19.37.040); and
- (14) Provisions for increasing electric vehicle charging requirements in new low-rise residential, multifamily, and nonresidential buildings. (Berkeley Green Code Chapter 19.37 Section 19.37.040).

These more stringent local requirements are reasonably necessary to address risks created by local conditions set forth above for the following reasons:

- The construction in the fire zones modifications made by Chapter 19.28 Article 2, and Chapter 19.29 Section 19.29.050 reduce the risk to life and property created by wildfires in the hillside areas of the City.
- The air pollution modifications made by Chapter 19.28 Article 3 Section 19.28.040, and Chapter 19.32 Section 19.32.040 reduce the risk to public safety created by air pollution throughout the City.
- The structural modifications made by Chapter 19.28 Article 5, Article 6, Article 7, Chapter 19.29 Section 19.29.060, Chapter 19.32 Section 19.32.40, Chapter 19.34 Section 19.34.040, Chapters 19.38 and 19.39 reduce the risk to life and property and hasten recovery from predictable future natural disasters.
- The E3 modifications made by Chapter 19.28, Article 8, reduce the risk to life and property resulting from the effect of the City's climate and topography on exterior building construction features and materials.
- The waste diversion modifications made by Chapter 19.37 Section 19.37.040 improve public health, safety and welfare by preserving the limited landfill space for materials which cannot be diverted resulting from the effect of local topography with limited space for landfills, and mitigating the impacts of climate change.
- The cement reduction modifications made by Chapter 19.37 Section 19.37.040 support the City's decarbonization efforts by reducing the embodied emissions

associated with the production of concrete, thus mitigating the impacts of climate change.

- The EV infrastructure modifications made by Chapter 19.37 Section 19.37.040 support the City's decarbonization efforts by increasing electric vehicle charging infrastructure in both low-rise residential, multifamily, and nonresidential buildings, thus mitigating the impacts of climate change.

BE IT FURTHER RESOLVED that certain local amendments to the Codes are not more stringent than the provisions of the California Codes but rather cover matters not addressed by those Codes or are administrative in nature and do not modify building standards pursuant to Health & Safety Code §17958, §17958.5 and §17958.7. These amendments establish administrative regulations for the effective enforcement of building standards throughout the City of Berkeley as follows:

Chapter 19.28, Article 1 (Administrative provisions and definitions) and Article 4 (Construction in the Right of Way), and Administrative amendments to Chapter 19.29 (California Residential Code), to Chapter 19.30 (California Electrical Code), to Chapter 19.32 (California Mechanical Code), to Chapter 19.34 (California Plumbing Code), to Chapter 19.36 (California Energy Code) and to Chapter 19.37 (California Green Building Standards Code), which are local amendments to the California Codes affecting administration provisions only.

BE IT FURTHER RESOLVED that this Resolution shall go into effect on January 1, 2023.

BE IT FURTHER RESOLVED that Resolution No. 69,170-N.S. is hereby rescinded effective January 1, 2023.



Disaster and Fire Safety Commission

CONSENT CALENDAR

June 1, 2021

To: Honorable Mayor and Members of the City Council

From: Disaster and Fire Safety Commission

Submitted by: Jose Bedolla, Chairperson, Disaster and Fire Safety Commission

Subject: Referral Response: Amending Chapter 19.34 of the Berkeley Municipal Code to Expand Automatic Gas Shut-Off Valve Requirements in Multifamily, Condominium and Commercial Buildings Undergoing Renovations

RECOMMENDATION

The proposed ordinance modifications in the referral dated October 29, 2019, shown in Attachment 2 to the staff report (the Referral), can be briefly summarized as:

- Expand the Gas Shut-Off Valve requirements to remove exceptions for multi-family, condominium, and commercial buildings

The Disaster and Fire Safety Commission (DFSC) recommends that changes of the Berkeley Municipal Code be referred to the City Manager and Planning Department to be modified in accordance with the Referral as part of the 2022 Code adoption cycle, including the following changes:

1. Do not allow excess flow valves to substitute for motion-activated shut-off valves as a way to comply with this ordinance.
2. Clarify requirements for excess flow valves and motion activated (seismic) valves.
3. Include a provision to include gas valves for common areas when required for any individual unit of a building.
4. Do not include any requirements regarding sale or transfer of the building.
5. Remove the dollar limit on the modifications and replace with a requirement to comply any time a plumbing or mechanical permit is issued.

In addition, the Commission recommends the inclusion of wording in the Berkeley Emissions Saving Ordinance (BESO) to require that in any transfer of property, that the property be required to equipped with a seismic gas shutoff valve.

FISCAL IMPACTS OF RECOMMENDATION

Staff savings realized from first responders not having to shut off valves manually in case of emergency.

Costs will include staff time to submit ordinance to the Building Standards Commission. In addition, building inspector staff time will be necessary to ensure compliance with new provisions.

#### CURRENT SITUATION AND ITS EFFECTS

Currently, BMC 19.34.040 requires automatic gas shut-off valves in all new construction or existing buildings that undergo repair or alteration exceeding \$50,000 consistent with sewer lateral requirements. However, it makes several exceptions for multi-unit buildings, as described in Attachment 2. As a result, residents of multi-unit buildings as well as neighboring buildings that may be impacted by a gas-driven fire after an earthquake, are not protected by a gas shut-off valve requirement.

#### BACKGROUND

In October of 2019 the Disaster and Fire Safety Commission received a referral from Councilmembers Harrison, Wengraf, Hahn, and Bartlett on modifications to the BMC 19.34.040 Gas Shut-Off Valves ordinance.

The Referral's proposed ordinance modifications expands the Gas Shut-Off Valves requirement by removing several exceptions, including an exception for multi-unit buildings.

The Referral was discussed by the DFSC in the 12/4/19, 1/22/20, and 2/26/20 meetings. Several meetings subsequent were cancelled due to Covid-19.

At the March 24, 2021 regular meeting of the Disaster and Fire Safety Commission, the commission took the following action:

**Action:** Recommend that changes of the Berkeley Municipal Code be referred to the City Manager and Planning Department to be modified in accordance with the Referral as part of the 2022 Code adoption cycle: Couzin

Second: Stein

**Vote:** 9 Ayes - Couzin, Dean, Bradstreet, Degenkolb, Grimes, Bedolla, Simmons, Rader, Stein.

Additional background can be found in the Referral, Attachment 1.

#### ENVIRONMENTAL SUSTAINABILITY

In addition to potentially saving lives and property, increasing gas shut-off valve use may reduce the spread of house-fires and wildland-urban interface fires, reducing the pollution, hazardous waste, loss of habitat, and other environmental damage caused by uncontrolled fires, and reducing greenhouse gas emissions caused by gas leaks after an earthquake.

### RATIONALE FOR RECOMMENDATION

The DFSC generally concurs with the rationale for this recommendation described in the Referral. The modifications to the ordinance are intended to increase the use of automatic gas shutoff valves to help reduce or prevent gas-related fires in the event of an earthquake.

In a major earthquake, gas piping is subjected to forces which may result in significant leaks of natural gas. These leaks can in turn result in serious fires or explosions.

A good article about the dangers of gas fires in an earthquake and the performance of Motion Activated Gas Shutoff Valves can be found here:

<http://www.strandearthquake.com/psgsv.html>.

The DFSC differs from the Referral regarding excess flow valves:

The ordinance modifications in the Referral allow the use of excess flow shut-off valves in place of motion-activated shut-off valves. The DFSC recommends against allowing excess flow valves to substitute for motion-activated shut-off valves.

Excess flow valves are appropriate for connection to individual appliances and are readily available incorporated in appliance connection lines. However, these valves would have to allow for a very large flow if connected to a whole house, and the leaks resulting from an earthquake may not be adequate to trigger an excess flow valve, while still being large enough to create a severe potential for fire or explosion.

Therefore, we recommend against allowing excess flow valves at the whole-house level to satisfy the requirements of the ordinance. Our edits in Attachment 1 incorporate this suggestion.

The DFSC believes that setting a minimum project value to trigger the installation of seismic gas shutoff valves is not the right way to trigger that requirement. In practice, the installation of a Seismic Gas Shutoff Valve is a simple task for a plumbing or mechanical contractor, however it is not within the designated ability of many other contractors. The \$10,000 minimum value set could easily be exceeded by work done by persons not approved to contract for such work, which could add significantly to the cost of a contract. On the other hand, the work required to install a seismic shutoff valve is generally less than an hour for a mechanical or plumbing contractor and the valve itself will usually cost less than \$150. The change in cost to the property owner should be minor compared to the cost of the other work performed under mechanical or plumbing permits. Therefore, it makes sense to require that having an operational seismic gas shutoff valve in place to receive a final signoff on a permit is not a significant burden to the property owner.



Finally, the DFSC has been informed that the building department does not get involved with transfer of property except as permit applications are filed. Any requirements affecting the transfer of property, especially those involving natural gas service, should be addressed through the Office of Energy and Sustainable Development.

ALTERNATIVE ACTIONS CONSIDERED

n/a This is in response to a City Council referral.

CITY MANAGER

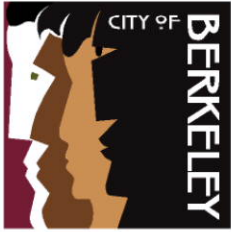
The City Manager concurs the content and recommendations of the Commission's Report.

CONTACT PERSON

Keith May, Secretary, Disaster and Fire Safety Commission, 510-981-5508

Attachments:

1. 10/19/2019 referral to the Disaster and Fire Safety Commission



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
October 29, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Harrison, Wengraf, Hahn, and Bartlett  
Subject: Amending Chapter 19.34 of the Berkeley Municipal Code to Expand Automatic Gas Shut-Off Valve Requirements in Multifamily, Condominium and Commercial Buildings Undergoing Renovations and to All Existing Buildings Prior to Execution of a Contract for Sale or Close of Escrow

RECOMMENDATION

Refer to the Disaster and Fire Safety Commission to consider an ordinance amending Berkeley Municipal Code (BMC) 19.34.040 to expand requirements for automatic natural gas shut-off valves or excess flow valves in multifamily, condominium and commercial buildings undergoing renovations and in all existing buildings prior to execution of a contract for sale or close of escrow. Ask the Commission to consider other triggers as appropriate.

POLICY COMMITTEE RECOMMENDATION

On October 3, 2019, the Facilities, Infrastructure, Technology, Environment & Sustainability Committee adopted the following action: M/S/C (Harrison/Robinson) to send the item with a Positive Qualified Recommendation back to the City Council with the following amendments.

Amend the recommendation revised to read as follows:

1. Refer to the Disaster and Fire Safety Commission to consider an ordinance amending Berkeley Municipal Code (BMC) 19.34.040 to expand requirements for automatic natural gas shut-off valves or excess flow valves in multifamily, condominium and commercial buildings undergoing renovations and in all existing buildings prior to execution of a contract for sale or close of escrow and to ask the Commission to consider other triggers as appropriate.

Amend the Financial Implications to read:

Staff savings realized from responders not having to shut off gas in an emergency.

Vote: All Ayes.

**BACKGROUND**

The California Building Standards Code, or Title 24 of the California Code of Regulations, specifies the standards for buildings and other structures in California. Title 24 is intended to protect public health, safety, and general welfare building occupants, and is updated at the state level and adopted by local jurisdictions every three years. Municipalities are permitted to make local amendments to the Building Standards Code<sup>1</sup> as deemed necessary for general welfare, as long as they are submitted to the California Building Standards Commission with the necessary findings. The ideal time to update local buildings codes is before the next code cycle. Berkeley will adopt the 2019 code on January 1, 2020.

Natural gas in buildings poses significant risks to health and safety. A recent ordinance adding Chapter 12.80 to the Berkeley Municipal Code phases out natural gas in new buildings.<sup>2</sup> This will make Berkeley’s new building stock safer and greener over time, but there is an outstanding need to prevent seismic and other disasters in existing buildings.

Gas shut-off valves are a component of a plumbing system capable of preventing the flow within a gas piping system. Shut-off valves allow for a resident to stop the flow of gas in their homes in case of an emergency, such as an earthquake or a gas leak.

All existing buildings, if they have natural gas, should have a shut-off valve of some kind. However, manual shut-off valves require timely attention during a seismic event, physical access and exertion, and mechanical knowledge to operate. In case of a natural disaster, relying purely on manual shut-off valves can be dangerous. For example, following the 2010 San Bruno explosion, Pacific Gas & Electric officials testified before the National Transportation Safety Board that “gas feeding the flames could have been shut off an hour earlier if PG&E had automatic or remotely controlled valves on the pipeline that exploded.”<sup>3</sup> Since the San Bruno explosion, gas companies across California have urged a fast transfer to automatic shut-off valves.

Currently, BMC 19.34.040 requires automatic gas shut-off valves in all new construction or existing buildings that undergo repair or alteration exceeding \$50,000 consistent with sewer lateral requirements. However, it makes blanket exceptions for buildings with individually metered residential units when the building contains five or more residential units, unless the units are condominiums, putting renters at risk of physical harm.

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<sup>1</sup> “Local Amendments to Building Standards—Ordinances,” California Building Standards Commission, <https://www.dgs.ca.gov/BSC/Codes/Local-Jurisdictions-Code-Ordinances>.

<sup>2</sup> Susie Cagle, “Berkeley became first US city to ban natural gas. Here's what that may mean for the future,” The Guardian, <https://www.theguardian.com/environment/2019/jul/23/berkeley-natural-gas-ban-environment>.

<sup>3</sup> Paul Rogers, “PG&E officials grilled about automatic shut of valves,” Mercury News, March 1, 2011, <https://www.mercurynews.com/2011/03/01/pge-officials-grilled-about-automatic-shut-off-valves-3/>.

In recommending this exception for multi-unit buildings in 2010, City staff intended to reduce the cost burden to property owners. For example, City staff were concerned that the ordinance would require very large multifamily buildings to install shut-off valves in every unit in a 50 unit building when completing a \$50,000 renovation.<sup>4</sup>

While financial costs are important, there will also likely be significant costs to human life and property resulting from natural gas infrastructure during seismic events that far outweigh the costs to property owners for installing shut-off valves. A more-tailored and comprehensive approach was adopted by the City of Los Angeles's 1997 policy in the wake of the Northridge Earthquake, requiring valves in all multifamily, condominium and commercial units when a permit for any addition, alteration or repair valued in excess of \$10,000 is taken out affecting the entire building, or in specific units affected by work in excess of \$10,000.<sup>5</sup>

This item proposes to apply the \$50,000 threshold for all work affecting multifamily, condominium and commercial buildings exclusive of work affecting the units and apply a \$10,000 threshold to work in excess of \$10,000 inclusive of any individual unit. In addition, this item proposes maintaining the current single-family home requirement when a permit is taken out of any addition, alteration or repair valued in excess of \$50,000.

Consistent with the Los Angeles code, the item removes the exception for commercial occupancies and uses in mixed use buildings of residential and non-residential occupancies with a single gas service line larger than 1 1/2 inches that serves the entire building. Berkeley City staff in 2010 previously suggested that pipes larger than 1 1/2 inches were marginally more expensive to retrofit with valves and therefore warranted an exception. Though upon further review, the few additional hundred dollars in labor and materials per valve does not warrant an exception due to ongoing risks to health and safety.

Berkeley is on top of one of California's most dangerous fault lines, the Hayward fault, making it prone to earthquakes. The extreme fire risk associated with natural gas infrastructure is illustrated by the 2017 U.S. Geological Survey stimulation of "a 7.0 quake on the Hayward fault line with the epicenter in Oakland." The agency's report predicted that "about 450 large fires could result in a loss of residential and commercial building floor area equivalent to more than 52,000 single-family homes and cause

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<sup>4</sup> "Installation of Automatic Gas Shut-off Valves," Berkeley Planning and Development Department, July 13, 2010, <https://www.cityofberkeley.info/recordsonline/api/Document/Af7NhvRQQKZ1%C3%81%C3%89xY9QpwmChW6QBqKp%C3%89scsKBclRXOVsvA1QlgXjP%C3%89Rs2zLVn2kCnCNjn918yaZSDbGqiogM WpBM%3D/>

<sup>5</sup> City of Los Angeles Ordinance No. 171874, December 16, 1997, [http://clkrep.lacity.org/onlinedocs/1995/95-0217-S1\\_ORD\\_171874\\_02-05-1998.pdf](http://clkrep.lacity.org/onlinedocs/1995/95-0217-S1_ORD_171874_02-05-1998.pdf); See also, City of Los Angeles Plumbing Code Section 94.1217.0.

property (building and content) losses approaching \$30 billion.”<sup>6</sup> The report identified ruptured gas lines as a key fire risk factor. This finding mirrors the destructive gas fires resulting from the Loma Prieta (1989) and Northridge (1994) earthquakes. According to the most recent census, 59.1% of units in Berkeley are occupied by renters.<sup>7</sup> It is vital to extend the shut-off valve requirement to rental units to prioritize the health and safety of all Berkeley residents and the broader community.

Beyond extending this protection to large rental buildings during major renovations, this ordinance amends BMC 19.34 to mirror the City of Los Angeles’s code to require installing automatic shut-off valves prior to execution of a contract for sale in all buildings and units therein.

The transfer of property triggers various state and local building code requirements. For example, at time of sale the state health and safety code requires that, gas water heaters are seismically braced, anchored, or strapped.<sup>8</sup> Other local ordinances related to environment, such as the BMC 19.81: the Building Energy Saving Ordinance, require energy efficiency reports prior to time of sale. The intention of Section 1209.4.2 is to ensure that all buildings that are sold in Berkeley include automatic gas shut-off valves, therefore enhancing seismic safety across the existing building stock.

FINANCIAL IMPLICATIONS

Staff savings realized from first responders not having to shut off valves manually in case of emergency.

Staff time to submit ordinance to the Building Standards Commission. In addition, building inspector staff time will be necessary to compliance with new provisions.

ENVIRONMENTAL SUSTAINABILITY

Mandating shut-off valves in rental units undergoing renovation and all units at sale will prevent the excess release of greenhouse gases (methane) due to gas leaks and fires during seismic events and other related emergencies.

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

ATTACHMENTS

1: Ordinance

<sup>6</sup> “The HayWired earthquake scenario—Engineering implications,” U.S. Geological Survey, April 18, 2018, <https://pubs.er.usgs.gov/publication/sir20175013v2>.

<sup>7</sup> “Bay Area Census: City of Berkeley” <http://www.bayareacensus.ca.gov/cities/Berkeley.htm>

<sup>8</sup> Health and Safety Code § 18031.7, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=18031.7.&lawCode=HSC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=18031.7.&lawCode=HSC)

AMENDING CHAPTER 19.34 OF THE BERKELEY MUNICIPAL CODE TO EXPAND  
AUTOMATIC GAS SHUT-OFF VALVE REQUIREMENTS IN MULTIFAMILY,  
CONDOMINIUM AND COMMERCIAL BUILDINGS UNDERGOING RENOVATIONS  
AND TO ALL EXISTING BUILDINGS PRIOR TO EXECUTION OF A CONTRACT FOR  
SALE OR CLOSE OF ESCROW

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 19.36.040 is hereby amended to read as follows:

**19.34.040 Gas Shut-Off Valves.**

Chapter 12 of the 2016~~9~~ California Plumbing Code is adopted in its entirety subject to the modifications thereto which are set forth below.

**1209.2 General Requirements for Gas Shut-Off Valves.** Automatic gas shut-off valves installed either in compliance with this Section or voluntarily pursuant to a plumbing permit issued on or after the effective date of this Section, shall comply with the following:

**1209.2.1** All valves shall:

1. Comply with all applicable requirements of the Berkeley Plumbing Code.
2. Be tested and listed by recognized testing agencies such as the Independent Laboratory of the International Approval Services (IAS), Underwriter's Laboratory (UL), International Association of Plumbing and Mechanical Officials (IAPMO) or any other agency approved by the State of California Office of the State Architect (OSA).
3. Be listed by the State of California Office of the State Architect (OSA).
4. Be installed on downstream side of the gas utility meter.
5. Be installed in accordance with the manufacturer's instructions.
6. Be installed in accordance with a plumbing permit issued by the City of Berkeley.
7. Provide a method for expedient and safe gas shut-off in an emergency.
8. Provide a capability for ease of consumer or owner resetting in a safe manner.

**1209.2.2** Motion activated seismic gas shut-off valves shall be mounted rigidly to the exterior of the building or structure containing the fuel gas piping, unless otherwise specified in the manufacturer's installation instructions.

**1209.3 Definitions**

For the purpose of this Section terms shall be defined as follows:

**AUTOMATIC GAS SHUT-OFF VALVE** shall mean either a motion activated gas shut-off valve or device or an excess flow gas shut-off valve or device.

**DOWNSTREAM OF GAS UTILITY METER** shall mean all gas piping on the property owner's side of the gas meter and after the service tee.

**EXCESS FLOW GAS SHUT-OFF VALVE** shall mean an approved valve or device that is activated by significant gas leaks or overpressure surges that can occur when pipes rupture inside a structure. Such valves are installed at each appliance, unless otherwise specified by the manufacturer's installation instructions.

**MOTION ACTIVATED GAS SHUT OFF VALVE** shall mean an approved gas valve activated by motion. Valves are set to activate in the event of a moderate or strong seismic event greater than 5.0 on the Richter scale.

**UPSTREAM OF GAS UTILITY METER** shall mean all gas piping installed by the utility up to and including the meter and the utility's service tee.

**1209.4 Devices When Required.** Approved automatic gas shut-off or excess flow valves shall be installed as follows:

**1209.4.1 New Construction.** In any new building construction containing gas piping for which a building permit is first issued on or after the effective date of this Section.

**1209.4.2 Existing Buildings.** In any existing building, when any addition, alteration or repair is made for which a building permit is issued on or after the effective date of this Section and the valuation for the work exceeds \$50,000.

**1209.4.2.1 Multifamily, Condominium and Commercial Buildings.**

1. In any existing commercial, multifamily and condominium and commercial building, and applicable to all units and tenant spaces therein if the building is individually metered and lacks a central automatic shut-off valve downstream of the utility delivery point, when any addition, alteration or repair exclusive of individual units or tenant spaces is made for which a building permit is issued on or after the effective date of this Section and the valuation for the work exceeds \$50,000.
2. In any existing commercial, multifamily and condominium unit for all gas piping serving only those individual units, when any addition, alteration or repair inclusive of individual units or tenant spaces is made for which a building permit is issued on or after the effective date of this Section and the valuation for the work exceeds \$10,000.

**1209.4.3 Sale of Existing Buildings.**

The requirement to install seismic gas shutoff or excess flow shutoff valves shall apply

prior to entering into a contract of sale, or prior to the close of escrow when an escrow agreement has been executed in connection with a sale as follows:

1. in any building or structure, and all units therein when gas piping serving those units lacks a central automatic shut-off valve downstream of the utility delivery point; or
2. in an individual condominium unit for all gas piping serving that individual unit.

**1209.4.4 Exceptions:**

~~1. Buildings with individually metered residential units when the building contains 5 or more residential units, unless the units are condominiums.~~

~~2. For residential or mixed use condominium buildings, valves are required when the value of the work exceeds \$50,000 in any single condominium unit or when any work done outside of the units exceeds \$50,000.~~

~~3. Commercial occupancies and uses in mixed use buildings of residential and non-residential occupancies with a single gas service line larger than 1 1/2 inches that serves the entire building.~~

14. Automatic gas shut-off valves installed with a building permit on a building prior to the effective date of this Section provided the valves remain installed on the building or structure and are adequately maintained for the life of the building or structure.

25. Automatic gas shut-off valves installed on a gas distribution system owned or operated by a public utility.

Section 2. The effective date of this amendment shall be January 1, 2020, or the effective adoption date of the 2019 California Building Standards Code, whichever is sooner.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.









Office of the City Manager

CONSENT CALENDAR

November 3, 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: Re-enactment of the Berkeley Housing Code; Repealing Chapter 12.48 and Repealing and Re-enacting Chapter 19.40

RECOMMENDATION

Adopt first reading of an Ordinance repealing Berkeley Municipal Code (BMC) Chapter 12.48 (Residential Rental Housing Safety Program), and repealing and re-enacting BMC 19.40 (Berkeley Housing Code), incorporating BMC Chapter 12.48 into BMC Chapter 19.40; and schedule a Public Hearing for the second reading on November 29, 2022, pursuant to state law.

SUMMARY

This report provides background on the ordinance to consolidate and update housing code regulations in the BMC and explains key changes, which reflect code updates and local operations. The Berkeley Housing Code provides minimum standards for housing and property maintenance to ensure safe housing for tenants. Housing inspectors use the code during inspections of rental properties to identify code violations and require owners to correct them. The Berkeley Housing Code has not been updated in almost 20 years. The revised Housing Code will serve the community, benefitting tenants, property owners, and staff by making the Housing Code clear, accessible, up to date, and more enforceable.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The purpose of the Berkeley Housing Code is to safeguard, remedy and prevent the decay and deterioration of residential buildings and property by providing minimum standards for housing and property maintenance, and for the protection of life, health, welfare, and the safety of the general public and the occupants and owners of such buildings. The Rental Housing Safety Program (RHSP) enforces the provisions of the Berkeley Housing Code by identifying housing violations when responding to tenant complaints and conducting proactive housing inspections of rental housing.

The Berkeley Housing Code is scoped and defined as BMC Chapter 19.40 and applicable provisions of the currently adopted editions of the California Building Code, California Existing Building Code, California Electrical Code, California Mechanical Code, California Plumbing Code, and of the State Housing Law and applicable regulatory ordinances enacted by the City and listed in Title 19 of the Berkeley Municipal Code.

This ordinance restructures and updates BMC Chapter 19.40, which has not been significantly updated for over 20 years, retaining the existing content, editing for clarity and including additional sections to reflect code updates and local operations. Since the RHSP is under the jurisdiction of the Building Official, RHSP provisions formerly contained in BMC 12.48 were moved into Title 19 Buildings and Construction, in Section 19.40.080. Attachment 2 to this staff report, "Explanation of Significant Changes to the Berkeley Housing Code," identifies how the Berkeley Housing Code has been restructured, describes new content, and provides the rationale for the proposed changes. This report highlights the most significant changes. The re-enactment of the Berkeley Housing Code supports the City's Strategic Plan goal to create a resilient, safe, connected, and prepared city.

The re-enacted Berkeley Housing Code is reflective of the state housing law provisions in Title 25 of the California Code of Regulations (CCR) as well as the applicable provisions in the Health and Safety Code for buildings used for human habitation. The current Berkeley Housing Code references multiple chapters from the 1997 Uniform Housing Code. Despite still being a part of state housing law in California, the 1997 Uniform Housing Code is out of publication and not easily found. This generates complaints from property owners who are unable to locate applicable code sections. The amended Berkeley Housing Code corrects this problem by reproducing all relevant sections from the 1997 Uniform Housing Code, with minor modifications and updates to improve clarity for the end-user. In addition, the complete definition of substandard housing from Health and Safety Code Section 17920.3 has been incorporated into the Berkeley Housing Code, due to its importance. These additions will make the Berkeley Housing Code more transparent and readable for tenants and property owners, providing direct references from the Berkeley Housing Code, and reducing instances where a violation references another code.

Under Section 103 Scope and Applicability, new Sections 103.6 and 103.7 are intended to allow the Building Official to use the most flexible provisions if there are conflicts between codes. These sections allow use of the "least restrictive" standards when dealing with unpermitted dwelling units, including standards in effect at the time of construction, current code standards, or "reasonable alternatives to the requirements of prior code editions," provided the building or portion thereof does not become or continue to be a substandard or unsafe building. This code language will reduce the risk of taking housing units off the market while trying to comply with more restrictive code

requirements. This approach will also enable the City to develop a viable amnesty program for undocumented units, a current City Council referral.

The Housing Code has been updated to reflect changes in the California Building Code. The California Building Code is revised every three years, and over time, has become more flexible than the existing outdated Berkeley Housing Code. For example, requirements for new construction pertaining to natural light, ventilation and ceiling heights have become less stringent and more flexible by providing certain exemptions and alternatives not currently found in the existing Berkeley Housing Code. Major changes were made to the California Building Code, Residential Code, and Energy Code in 2008 when the state adopted International Codes. The re-enacted Berkeley Housing Code recognizes different requirements for residential units built or remodeled after 2008, so there is no conflict between the California Building Code and the Berkeley Housing Code.

The re-enacted Berkeley Housing Code reflects and codifies Berkeley's approach to code enforcement, which emphasizes education, voluntary compliance and a gradual enforcement approach. The only enforcement mechanism currently in the Berkeley Housing Code is a Notice and Order, which is a punitive measure that obligates the City to take action if substandard conditions are not abated by the owner in a timely manner, such as seeking a court appointed receiver. The re-enacted Berkeley Housing Code adds Section 1002, which allows inspectors to issue a Notice of Violation as the first step in the code enforcement process if substandard conditions are observed. It provides the property owner with a list of Housing Code violations, the actions required to remedy the violations, and the time frame to correct. After issuing multiple notices of violation, if the problem has not been corrected or if conditions deteriorate to endanger the life and safety of the occupants, the City may issue a Notice and Order to escalate enforcement efforts. Unless there is an immediate hazard, a Notice of Violation precedes issuance of a Notice and Order, and the City would resort to code enforcement proceedings only after efforts to secure voluntary compliance had failed.

The State of California established statewide inspection requirements for exterior elevated elements when it added Section 17973 to the Health and Safety Code, effective January 1, 2019 and Section 5551 to the California Civil Code, effective January 1, 2020. These requirements are based on Berkeley's exterior elevated elements inspection requirements enacted in 2015, but with a few modifications, including different timeframes. The Berkeley Housing Code is being amended to align with state law, with the timeframe of the inspection cycle adjusted to every six years for rental properties and every nine years for condominiums.

Other significant modifications in the ordinance include:

- Provisions for smoke alarms and carbon monoxide alarms from the California Building Code have been incorporated into the Berkeley Housing Code (Section

19.40.070), since inspectors frequently note violations related to fire detection systems. This will allow inspectors to directly reference the Berkeley Housing Code for these violations.

- Section 19.40.140 adopts specific lien and special assessment procedures to strengthen enforceability. This Section also specifies these apply to administrative citations as well as inspection fees.

### BACKGROUND

In 2015, the City Council referred to the City Manager to improve and expand the RHSP. Updating the Berkeley Housing Code has been a priority to support the expansion of proactive inspections and the effort to improve the quality of housing and the quality of life for tenants in Berkeley.

There have only been three minor updates to the Berkeley Housing Code since 1999: an administrative update in 2003, establishment of the exterior elevated elements inspection requirement in 2015, and the repeal of the certification of gas heating equipment in 2011 after the State passed a law requiring all owners to install carbon monoxide detection devices. For the current effort, staff conducted extensive research and reviewed housing codes from numerous other jurisdictions.

### ***Commissions***

The 4x4 Joint Task Force Committee on Housing reviewed the amendments at its meeting on September 28 and voted unanimously to recommend Council adopt the amendments with the following motion:

M/S/C (Robinson/Arreguin) Recommend that City Council adopt amendments to Berkeley Housing Code as proposed by Planning Department staff. Roll call vote. YES: Arreguin, Harrison, Johnson, Kelley, Robinson, Simon-Weisberg, Taplin; NO: None; ASBSTAIN: None; ABSENT: Alpert. Carried: 7-0-0-1.

Staff presented the proposed Housing Code revisions to the Housing Advisory Commission (HAC) at its meetings on September 1 and October 6. Several suggestions provided by HAC Commissioners have been incorporated and noted in Attachment 2, "Explanation of Changes to the Housing Code." On October 6, the HAC recommended that City Council adopt the staff recommendation for the reenactment of the Berkeley Housing Code with the inclusion of a tenant habitability plan. (M/S/C (Simon-Weisberg/Johnson); YES: Ching, Johnson, Lee-Egan, Mendonca, Sanidad, and Simon-Weisberg. NO: None. ABSTAIN: None. ABSENT: Fain, Rodriguez, and Potter).

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The hot water requirement in the Berkeley Housing Code has been updated from 120°F to 110°F to be consistent with the state housing law provisions in Title 25 of the California Code of Regulations. The comfort space heating requirement has been

updated from 70°F to 68°F to reflect the State Energy Code. These lower temperatures allow for energy conservation.

RATIONALE FOR RECOMMENDATION

The Berkeley Housing Code needs updating. The current code in BMC Chapter 19.40 adopts the 1997 Uniform Housing Code by reference. The newly revised Chapter 19.40 is better organized, incorporates all relevant sections of the Uniform Housing Code with local modifications, and is based on California Code of Regulations Title 25 State Housing Law Regulations and Health and Safety Code Regulation of Buildings Used for Human Habitation. The description of and rationale for the significant changes to the Berkeley Housing Code are included in Attachment 2, “Explanation of Significant Changes to the Berkeley Housing Code.”

The revised Berkeley Housing Code will benefit tenants, help property owners fulfill their obligations as landlords, and assist inspectors in doing their jobs by better substantiating the violations they write. BMC Chapter 19.40 is an educational asset and will serve the community by eliminating confusion, making the Berkeley Housing Code accessible and easier to use. It will help tenants verify habitability requirements and understand the basis of violations in their units. It provides clearer and more specific context for describing violations and facilitating abatement work.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered the HAC’s recommendation that a tenant habitability plan requirement be incorporated into the Housing Code. There are a number of implementation issues related to a tenant habitability plan requirement that require additional analysis, including staffing requirements, cost recovery, applicability, and operations. That analysis and program development will require multi-departmental collaboration, and could be referred by City Council. In addition, it would likely be more appropriate to incorporate a tenant habitability plan and program requirement into Title 13 rather than Title 19.

CONTACT PERSON

Jenny McNulty, Resilient Buildings Program Manager, Planning, 981-7451  
Alex Roshal, Manager of Building and Safety Division, 981-7445

Attachments:

- 1: Ordinance repealing BMC 12.48 and repealing and re-enacting BMC 19.40
- 2: Explanation of Significant Changes to the Berkeley Housing Code

ORDINANCE NO. -N.S.

REPEALING BMC 12.48 AND REPEALING AND RE-ENACTING BMC 19.40

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 12.48 is hereby repealed.

Section 2. That Berkeley Municipal Code Chapter 19.40, the Berkeley Housing Code, is hereby repealed and re-enacted, effective January 1, 2023, to read as follows:

**Chapter 19.40  
Berkeley Housing Code**

- 19.40.010 Scope and Administration**
- 19.40.020 Definitions**
- 19.40.030 Space and Occupancy Standards**
- 19.40.040 Structural Requirements**
- 19.40.050 Mechanical and Electrical Requirements**
- 19.40.060 Exits**
- 19.40.070 Fire Protection**
- 19.40.080 Rental Housing Safety**
- 19.40.090 Substandard Housing**
- 19.40.100 Notices of the Building Official**
- 19.40.110 Enforcement of Orders**
- 19.40.120 Performance of Repair or Demolition**
- 19.40.130 Recovery of Cost of Repair or Demolition**
- 19.40.140 Recovery of Costs for Housing Code Enforcement and Administration**



## **19.40.010 Scope and Administration**

### **101 – Title**

This chapter shall be known as the “Berkeley Housing Code” and may be cited in this Chapter as “this Code”.

The following provisions of the Uniform Housing Code (UHC), 1997 Edition have been incorporated into this Code subject to the local modifications thereto which are set forth below: 1997 UHC Chapters 1 and 4-9, except Section 701.1

In administering the substantive provisions of this Code, the City shall be guided by the regulations issued by the California Department of Housing and Community Development in Title 25 of the California Code of Regulations, Division 1, Chapter 1, Subchapter 1 State Housing Law Regulations, as well as applicable provisions of the California Health and Safety Code, Division 13, Part 1.5 Regulation of Buildings Used for Human Habitation, Sections 17910 to 17998.3, and other housing related Codes adopted by the State of California.

### **102 – Purpose**

The purpose of this Code is to safeguard, remedy and prevent the decay and deterioration of residential buildings and property as defined herein by providing minimum housing and property maintenance standards for the protection of life, health, welfare, and the safety of the general public and the occupants and owners of such buildings within the City of Berkeley.

### **103 – Scope and Applicability**

1. The provisions of the Housing Code shall apply to all buildings or portions thereof used, or designed or intended to be used, for human habitation. This Chapter is not an exclusive regulation of housing within the City of Berkeley. It shall supplement, be accumulative with, and be in addition to any applicable regulatory ordinances enacted by the City and listed in Title 19 of the Berkeley Municipal Code and any applicable State or Federal laws enacted by the State or Federal government or any other legal entity that may have jurisdiction.

2. Existing buildings and all portions thereof may have their existing use or occupancy continued, provided the building or portion thereof met the code requirements in effect at the time of construction, addition or alteration, and such continued use is not dangerous to life and is not substandard.

3. Existing buildings and all portions thereof shall be maintained in a safe and sanitary condition. All devices, components or safeguards, which are required by this Code,

shall be maintained in conformance with the Code edition under which installed, unless otherwise required by the Berkeley Building Code or other adopted ordinance or state law applied retroactively.

4. Existing buildings which are altered or enlarged shall be made to conform to this Code insofar as the new work is concerned, and in accordance with the adopted edition of the California Building Standards Code.

5. Any references to the provisions of former code editions shall be construed to apply to the corresponding provisions contained within the currently adopted edition of the California Building Standards Code.

6. Notwithstanding anything set forth or provided for in this chapter, if there is a conflict or discrepancy between the provisions of this Code, the State Housing Law, or the California Building Standards Code the Building Official is authorized to apply building standards which provide for the most flexibility to maintain continuity of housing, provided a substandard condition is not created or continued.

7. When a building permit record for a residential unit does not exist, the Building Official is authorized to make a determination of when the residential unit was constructed and then apply the building standards in effect when the residential unit was determined to be constructed or the current building standards, whichever is the least restrictive, provided the building or portion thereof does not become or continue to be a substandard or unsafe building. The Building Official is authorized to accept reasonable alternatives to the requirements of the prior or current code editions when dealing with unpermitted dwelling units.

8. Notwithstanding any provisions contrary in this Chapter, any building or portion thereof constructed in compliance with the Berkeley Building or Residential Codes shall not be deemed to be in violation of the Berkeley Housing Code provisions that may conflict.

#### **104 – Authority**

The City Manager is hereby authorized and directed to designate City departments and employees to administer and enforce all of the provisions of this code. City personnel designated to enforce this Code shall have the powers of a law enforcement officer.

The Building Official shall have the power to render interpretations of this Code and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of this code. The Building Official has the authority to delegate the implementation, administration and enforcement of the provisions of this code to

housing inspectors, building inspectors, and other technical officers and employees. Such employees shall have powers as delegated by building official.

### **105 – Right of Entry**

When it is necessary to make an inspection to enforce the provisions of this Code, or when the Building Official has reasonable cause to believe there exists in a building or upon a premises a condition which is contrary to or in violation of this Code, which makes the building or premises unsafe, dangerous or hazardous, the Building Official may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this Code, provided that such building or premises be occupied, that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the Building Official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the Building Official shall have recourse to the remedies provided by law to secure entry.

### **106 – Responsibilities Defined**

Owners remain liable for violations of duties imposed by this Code even though an obligation is also imposed on the occupants of the building, and even if the owner has, by agreement, imposed on the occupant the duty of furnishing required equipment or of complying with this Code.

The owner or the owner's designated agent shall be responsible for maintaining buildings and structures and parts thereof in a safe and sanitary condition. To determine compliance with this subsection, the building may be re-inspected.

Owners, in addition to being responsible for maintaining buildings in a sound structural condition, shall be responsible for keeping that part of the building or premises which the owner occupies or controls in a clean, sanitary and safe condition, including the shared or public areas in a building containing two or more dwelling units.

Owners shall, when required by this Code, the Health Ordinance or the Health Officer, furnish and maintain such approved sanitary facilities as required, and shall furnish and maintain approved devices, equipment or facilities for the prevention of insect and rodent infestation, and when infestation has taken place, shall be responsible for the extermination of any insects, rodents or other pests when such extermination is not specifically made the responsibility of the occupant by law or ruling.

Occupants of a dwelling unit, in addition to being responsible for keeping in a clean, sanitary and safe condition that part of the dwelling or dwelling unit or premises which they occupy and control, shall dispose of their rubbish, garbage and other organic waste in a manner required by the Health Ordinance and approved by the Health Officer.

Occupants shall, when required by this Code, the Health Ordinance or the Health Officer, furnish and maintain approved devices, equipment or facilities necessary to keep their premises safe and sanitary.

### **107 – Owner or Representative to Reside on Premises**

1. The owner of every apartment house in which there are 16 or more apartments, and every hotel in which there are 12 or more guest rooms, shall either reside on the premises or ensure that a manager resides upon the premises.
2. Only one caretaker is required under this section for all structures under one ownership and on one contiguous parcel of land.
3. If the owner does not reside upon the premises of any apartment house in which there are more than four but less than 16 apartments, a notice stating his/her name and address, or the name and address of his/her agent in charge of the apartment house, shall be posted in a conspicuous place on the premises.

### **108 – Violations**

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this Code. Violations of this Code may be charged as infractions or misdemeanors, at the discretion of the enforcing officer. Charging violations of this Code as public offenses does not in any way limit any other remedies that might be available.

### **109 – Housing Advisory and Appeals Board**

**109.1 General.** The Housing Advisory Commission (“Commission”) as defined in this Code and Chapter 19.44 of the Berkeley Municipal Code shall serve as the “Board of Appeals” and “Housing Advisory and Appeals Board” referred to in this Code. The Commission shall hear and decide appeals of orders, decisions or determinations made by the Building Official under this Code.

**109.2 Limitations of Authority.** The Housing Advisory and Appeals Board shall have no authority relative to interpretation of the administrative provisions of this Code nor shall the Board be empowered to waive requirements of this Code.

### **19.40.020 Definitions**

#### **201 – General**

**201.1 Terms Defined in Other Codes.** Where terms are not defined in this Code and are defined in the California Building Code, California Existing Building Code, California

Electrical Code, California Mechanical Code, California Plumbing Code or California Fire Code, such terms shall have the meanings ascribed to them in those codes.

**201.2 Terms Not Defined.** Where terms are not defined through the methods authorized by this section, such terms shall have ordinary accepted meanings such as the context applies. Webster's Third New California Dictionary of the English Language, Unabridged, latest edition, shall be considered as providing ordinary accepted meanings.

## **202 – Definitions**

Unless otherwise expressly stated, the following words and terms shall, for the purpose of this Code, have the meanings shown in the section.

**Alteration** is any construction or renovation to an existing building other than repair or addition. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, and replacement of existing components.

**Apartment** is a dwelling unit as defined in this Code.

**Apartment House** is any building or portion thereof which contains three or more dwelling units and, which is rented, leased, let or hired out to be occupied for consideration, or which is occupied, as the home of three or more individuals, families or living groups, living independently of each other and doing their own cooking in said building.

**Berkeley Housing Code** is this Chapter and applicable provisions of the currently adopted editions of the California Building Code, California Existing Building Code, California Residential Code, California Electrical Code, California Mechanical Code, California Plumbing Code and the State Housing Law, and applicable regulatory ordinances enacted by the City and listed in Title 19 of the Berkeley Municipal Code.

**Building Code** is the California Building Code contained in Part 2, Title 24, California Code of Regulations, as adopted in Chapter 19.28 of the Berkeley Municipal Code.

**Building Official** is the officer or other designated authority charged with the administration and enforcement of this code, or a duly authorized representative.

**City** means the City of Berkeley.

**Complaint** means notification by any person of a violation or a suspected violation of Berkeley Housing Code.

**Congregate Residence** is any building or portion thereof that contains facilities for living, sleeping and sanitation, as required by this code, and may include facilities for

eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house but does not include jails, hospitals, nursing homes, hotels or lodging houses.

**Dwelling** is a building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes, and includes any garages or other accessory buildings belonging thereto.

**Dwelling Unit** is a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**Efficiency Dwelling Unit** is a dwelling unit containing only one habitable room and constructed in accordance with Health and Safety Code Section 17958.1 or the California Building Code Section 1207.4.

**Electrical Code** is the California Electrical Code, contained in Part 3, Title 24, California Code of Regulations as adopted in Chapter 19.30 of the Berkeley Municipal Code.

**Enforcement** means diligent effort to secure compliance, including review of plans and permit applications, response to complaints, citation of violations, and other legal process. Except as otherwise provided in this Code, "enforcement" includes inspections of existing buildings, subject to this Code, on which no complaint or permit application has been filed, in an effort to secure code compliance as to these existing buildings.

**Fire Code** is the California Fire Code contained in Part 9, Title 24, California Code of Regulations, as adopted in Chapter 19.48 of the Berkeley Municipal Code.

**Hot Water** is water supplied to plumbing fixtures at a temperature of not less than 110°F.

**Hotel** is any building containing six or more rooms, which are used, intended or designed to be used, rented or hired out to be occupied for sleeping purposes by guests.

**Landlord** means an owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

**Lodging House** is any building or portion thereof, containing not more than five guest rooms where rent is paid in money, goods, labor or otherwise.

**Manager** means the person who has charge of any premises and is responsible for its maintenance, upkeep and cleaning.

**Mechanical Code** is the California Mechanical Code, contained in Part 4, Title 24, California Code of Regulations as adopted in Chapter 19.32 of the Berkeley Municipal Code.

**Mold** means microscopic organisms or fungi that can grow in damp conditions in the interior of a building.

**Nuisance.** The following shall be defined as nuisances:

1. Any public nuisance known at common law or in equity jurisprudence.
2. Any attractive nuisance that may prove detrimental to children whether in a building, on the premises of a building or on an unoccupied lot. This includes any abandoned wells, shafts, basements or excavations; abandoned refrigerators and motor vehicles; any structurally unsound fences or structures; or any lumber, trash, fences, debris or vegetation that may prove a hazard for inquisitive minors.
3. Whatever is dangerous to human life or is detrimental to health, as determined by the health officer.
4. Overcrowding a room with occupants.
5. Insufficient ventilation or illumination.
6. Inadequate or unsanitary sewage or plumbing facilities.
7. Uncleanliness, as determined by the health officer.
8. Whatever renders air, food or drink unwholesome or detrimental to the health of human beings, as determined by the health officer.
9. Fire hazard.
10. Substandard building.

**Occupant** is any individual living, sleeping, cooking, or eating in or having possession of a dwelling unit or portion thereof.

**Plumbing Code** is the California Plumbing Code, contained in Part 5, Title 24, California Code of Regulations as adopted in Chapter 19.34 of the Berkeley Municipal Code.

**Rent** means the consideration, including any deposit, bonus, benefit or gratuity, demanded or received for or in connection with the use or occupancy of rental unit and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the terms of the rental agreement.

**Rental Unit** is any dwelling or sleeping unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy located in the City, together with all services connected with the use or occupancy of such property such as common areas held out for use by the tenant.

**Repair** is renewal of any part or component of an existing building for the purpose of its maintenance or to correct damage.

**Safety Assessment** is a visual, non-destructive examination of a building or structure for the purpose of determining the condition for continued occupancy following a natural or human-caused disaster event.

**Sleeping Unit** is a single unit that provides rooms or spaces for one or more persons, includes permanent provisions for sleeping and can include provisions for living, eating and sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

**State Housing Law** is the state law regulating residential occupancies. It consists of

- Health and Safety Code: Division 13, Part 1.5 Regulation of Buildings Used for Human Habitation, Sections 17910 to 17998.3.
- California Code of Regulations: Title 25, Division 1, Chapter 1, Subchapter 1 State Housing Law and Regulations.

**Substandard Building** means any building or portion thereof used for habitation that substantially endangers the life, limb, health, property, safety or welfare of the public or its occupants due to one or more violations of Section 19.40.090 of this Code.

**Tenant** means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

**Voluntary Code Compliance** means, for the purpose of this Code, actions voluntarily initiated by an owner to achieve compliance with applicable laws including, but not limited to, fumigation, mold abatement, lead abatement, seismically retrofitting, as well abatement work performed in response to a Notice of Violation under Sections 808 and 1002 of this Code. Work performed for the purpose of improvements is not considered voluntary code compliance.

## **19.40.030 Space and Occupancy Standards**

### **301 – Location of Buildings on Property**



All buildings shall be located with respect to property lines and to other buildings on the same property as required by the Building Code.

### **302 – Yards and Courts**

**302.1 Scope.** This section shall apply to yards and courts having required window openings therein.

**302.2 Yards.** Every yard shall not be less than 3 feet in width for one- and two-story buildings. For buildings more than two stories in height, the minimum width of the yard shall be increased at the rate of 1 foot for each additional story. Where yards completely surround the building, the required width may be reduced by 1 foot. For buildings exceeding 14 stories in height, the required width of yard shall be computed on the basis of 14 stories.

**303.3 Courts.** Every court shall not be less than 3 feet in width. Courts having windows opening on opposite sides shall not be less than 6 feet in width. Courts bounded on three or more sides by the walls of the building shall not be less than 10 feet in length unless bounded on one end by a public way or yard. For buildings more than two stories in height, the court shall be increased 1 foot in width and 2 feet in length for each additional story. For buildings exceeding 14 stories in height, the required dimensions shall be computed on the basis of 14 stories.

Adequate access shall be provided to the bottom of all courts for cleaning purposes. Every court more than two stories in height shall be provided with a horizontal air intake at the bottom not less than 10 square feet (0.93 m<sup>2</sup>) in area and leading to the exterior of the building unless abutting a yard or public way. The construction of the air intake shall be as required for the court walls of the building, but in no case shall be less than one-hour fire-resistive.

### **303 – Room Dimensions**

#### **303.1 Ceiling Heights**

- A. Habitable spaces shall have a ceiling height of not less than 7 feet 6 inches except as otherwise permitted in this section. Kitchens, halls, bathrooms and toilet compartments may have a ceiling height of not less than 7 feet measured to the lowest projection from the ceiling. Where exposed beam ceiling members are spaced at less than 48 inches on center, ceiling height shall be measured to the bottom of these members. Where exposed beam ceiling members are spaced at 48 inches or more on center, ceiling height shall be measured to the bottom of the deck supported by these members provided that the bottom of the members is not less than 7 feet above the floor.

**Exceptions** - In one- and two-family dwellings only:

- (a) habitable spaces shall have a ceiling height of not less than 7 feet
  - (b) bathrooms, toilet compartments and laundry rooms shall have a ceiling height of not less than 6 feet 8 inches
  - (c) beams, girders, ducts or other obstructions in basements containing habitable space shall be permitted to project to within 6 feet 4 inches of the finished floor
- B.** If any room in a building has a sloping ceiling, the prescribed ceiling height for the room is required in only one-half the area thereof. No portion of the room measuring less than 5 feet from the finished floor to the finished ceiling shall be included in any computation of the minimum area thereof.
- C.** If any habitable room has a furred ceiling, the prescribed ceiling height is required in two-thirds the area thereof, but in no case shall the height of the furred ceiling be less than 7 feet.

**303.2. Floor Area.** Dwelling units and congregate residences shall have at least one room which shall have not less than 120 square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than 70 square feet. Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two.

**Exceptions:**

1. Efficiency units: Nothing in this section shall prohibit the use of an efficiency living unit within an apartment house meeting the following requirements:
  - a. The unit shall have a living room of not less than 220 square feet of superficial floor area. An additional 100 square feet of superficial floor area shall be provided for each occupant of such unit in excess of two.
  - b. The unit shall be provided with a separate closet.
  - c. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches in front. Light and ventilation conforming to this Code shall be provided.
  - d. The unit shall be provided with a separate bathroom containing a water closet, lavatory, and bathtub or shower.

2. In one- and two-family dwellings only, habitable rooms shall have a floor area of not less than 70 square feet.

**303.2 Width.** No habitable room other than a kitchen shall be less than 7 feet in any dimension. Each water closet stool shall be located in a clear space not less than 30 inches in width, and a clear space in front of the water closet stool of not less than 24 inches shall be provided.

## **304 – Light and Ventilation**

**304.1 General.** For the purpose of determining the light or ventilation required by this section, any room may be considered as a portion of an adjoining room when one half of the area of the common wall is open and unobstructed and provides an opening of not less than one tenth of the floor area of the interior room or 25 square feet, whichever is greater.

Exterior openings for natural light or ventilation required by this section shall open directly onto a public way or a yard or court located on the same lot as the building.

### **Exceptions:**

1. Required windows may open into a roofed porch where the porch:
  - 1.1 Abuts a public way, yard or court;
  - 1.2 Has a ceiling height of not less than 7 feet; and
  - 1.3 Has a longer side at least 65 percent open and unobstructed.
2. Skylights.

**304.2 Light.** Habitable spaces shall be provided with natural light by means of exterior glazed openings with an area not less than one tenth of the floor area of such rooms with a minimum of 10 square feet or shall be provided with artificial light.

Habitable spaces constructed, converted, or altered after January 1, 2008, are permitted to have the minimum net glazed area of not less than 8 percent of the floor area of the room served.

When artificial lighting is provided, it shall be capable to provide an average illumination of 10 footcandles (107 lux) over the area of the room at a height of 30 inches above the floor level.

### **304.3 Ventilation.**

- A.** Habitable spaces shall be provided with natural ventilation by means of openable exterior openings with an area of not less than 1/20 of the floor area of such rooms with a minimum of 5 square feet.

Habitable spaces constructed, converted, or altered after January 1, 2008, are permitted to have the minimum openable area of the openings to the outdoors of not less than 4 percent of the floor area being ventilated.

In lieu of required exterior openings for natural ventilation, a mechanical ventilating system may be provided. Such system shall be capable of providing two air changes per hour. Habitable spaces constructed, converted, or altered after January 1, 2008, are permitted to provide a mechanical ventilation Outdoor Air Rate ( $Q_{tot}$ ) calculated in accordance with the following:

Outdoor Air Rate ( $Q_{tot}$ ) equals 3% of the floor area plus 7.5 cfm for each occupant assumed to be equal to the number of bedrooms plus 1.

$$Q_{tot} = 0.03A_{floor} + 7.5 (N_{br} + 1)$$

Where:

$Q_{tot}$  = Total required ventilation outdoor air rate (cfm)

$A_{floor}$  = Floor Area (ft<sup>2</sup>)

$N_{br}$  = Number of bedrooms

- B.** Bathrooms, water closet compartments, laundry rooms and similar rooms shall be provided with natural ventilation by means of openable exterior openings with an area not less than 1/20th of the floor area of such rooms with a minimum of 1-½ square feet. In lieu of required exterior openings for natural ventilation in bathrooms containing a bathtub, shower or combination thereof; laundry rooms; and similar rooms, a mechanical ventilation system connected directly to the outside capable of providing five air changes per hour shall be provided. The point of discharge of exhaust air shall be at least 3 feet from any opening into the building. Bathrooms that contain only a water closet, lavatory or combination thereof, and similar rooms, may be ventilated with an approved mechanical recirculating fan or similar device designed to remove odors from the air.

Bathrooms, water closet compartments, laundry rooms and similar spaces constructed, converted, or altered after January 1, 2008 are permitted to be mechanically ventilated at an exhaust rate not less than 50 cubic feet per minute for intermittent operation and 20 cubic feet per minute for continuous operation.

- C.** Kitchens constructed, converted, or altered after January 1, 2008 are permitted to be intermittently mechanically ventilated at an exhaust rate not less than 100

cubic feet per minute for range hoods or 300 cubic feet per minute for mechanical exhaust fans including downdraft appliances. Enclosed kitchens are permitted to be provided with continuous mechanical ventilation at an exhaust rate not less than 5 air changes per hour based on kitchen volume.

- D. Each kitchen range or cooktop shall be provided with a vented hood ducted to terminate outside the building, with a minimum air flow of 100 cubic feet per minute..

A local mechanical exhaust system installed in accordance with ASHRAE 62.2 and Subsection 304.3.C above shall be permitted in lieu of a vented range hood.

**304.4 Hallways.** All public and common hallways, corridors, stairs and other exitways shall be adequately lighted and illuminated at all times in accordance with Chapter 10 of the Building Code.

### **305 – Sanitation**

#### **A. Dwelling Units, Lodging Houses and Congregate Residences**

Dwelling units, lodging houses and congregate residences shall be provided with a bathroom equipped with facilities consisting of a water closet, lavatory, and either a bathtub or shower.

#### **B. Hotels**

Where private water closets, lavatories and baths are not provided, there shall be provided on each floor, for each sex, at least one water closet and lavatory and one bath, accessible from a public hallway. Additional water closets, lavatories and baths shall be provided on each floor for each sex at the rate of one for every additional ten guests or fractional number thereof in excess of ten. As an equivalent alternative, adequate genderless facilities may be provided.

#### **C. Kitchen**

Each dwelling unit shall be provided with a kitchen. Every kitchen shall be provided with a kitchen sink. A wooden sink or sink of similarly absorbent material shall not be permitted.

#### **D. Fixtures**

All plumbing fixtures shall:

1. Be connected to a sanitary sewer or an approved private sewage disposal system;

2. Be connected to an approved system of water supply and provided with hot and cold running water necessary for its normal operation; and
3. Be of an approved glazed earthenware type or of a similarly nonabsorbent material.
4. All piping and plumbing fixtures shall be installed and maintained in working order, and shall be kept free from obstructions, leaks and defects.

#### **E. Water Closet Compartments**

Walls and floors of water closet compartments in common use and public areas, shall be finished in accordance with applicable provisions of the Building Code.

#### **F. Room Separations**

Every water closet, bathtub or shower required by this Code shall be installed in a room, which will afford privacy to the occupant.

#### **G. Installation and Maintenance**

All sanitary facilities shall be installed and maintained in a safe and sanitary condition and in accordance with applicable requirements of the Plumbing Code and other applicable laws.

### **306 – Building Interior**

**306.1 Interior Surfaces** – Interior surfaces, including wall, floor and ceiling surfaces, windows and doors, shall be maintained in good, clean and sanitary condition. Any interior finishes that have a fire-resistance rated classification must maintain their fire rating and when repairs or replacement are performed, shall be repaired or replaced with similar or compatible materials of the same fire-resistance rating.

**306.2 Interior Doors.** Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers or tracks. Any hardware that provides privacy must be maintained in operational condition.

### **19.40.040 Structural Requirements**

#### **401 – General**

Buildings or structures may be of any type of construction permitted by the Building Code. Roofs, floors, walls, foundations, and all other structural components of buildings shall be capable of resisting any and all forces and loads to which they may

be subjected. All structural elements shall be proportioned and joined in accordance with the stress limitations and design criteria as specified in the appropriate sections of the building code. Buildings of every permitted type of construction shall comply with the applicable requirements of the Building Code.

#### **402 – Protection from Weather and Dampness**

Every building shall be weather-protected so as to provide shelter for the occupants against the elements and to exclude dampness.

#### **403 – Protection of Materials**

All wood shall be protected against termite damage and decay as provided in the Building Code.

#### **404 – Structural Maintenance**

- A.** Pursuant to the requirements of Health and Safety Code Section 17973 (inspection deadlines in subsection (d) notwithstanding) projecting exterior elevated wood and metal decks, balconies, landings, stairway systems, guardrails, handrails, or any parts thereof in weather-exposed areas of Group R-1 and R-2 Occupancies, as defined in the most recent edition of the California Building Code, shall be inspected within six months of adoption of this section, and every six years thereafter by a licensed general contractor, licensed architect, licensed civil or structural engineer, or certified building inspector or building official who are not employees of the City of Berkeley to verify that the elements are in general safe condition, adequate working order, and do not exhibit signs of deterioration, decay, corrosion or similar damage that could pose a safety concern and there is no evidence of active water intrusion in concealed spaces of the inspected elements. The inspection schedule set forth above shall apply retroactively to the original enactment of the City's Exterior Elevated Elements inspection program on July 14, 2015; cyclical inspections shall be completed by March 31, 2022 and every six years thereafter.
  
- B.** Pursuant to the requirements of Code of Civil Procedure Section 5551, projecting exterior elevated wood and metal decks, balconies, landings, stairway systems, guardrails, handrails, or any parts thereof in weather-exposed areas of condominium projects containing 3 or more dwelling units shall be inspected by January 1, 2025, and then at least once every nine years. The inspection shall be conducted by a licensed structural engineer or architect of a random and statistically significant sample of exterior elevated elements for which the association has maintenance or repair responsibility.

The inspection reports shall comply with the requirements of Health and Safety Code Section 17973 Subsections (c) and (d). The property owner shall be responsible for complying with the repair requirements set forth in Health and Safety Code Section

17973 Subsections (g), (h) and (i). Property owners shall provide proof of compliance with this section by submitting an affidavit form provided by the City. The affidavit shall be signed by the responsible inspecting party and submitted to the Housing Code Enforcement Office. If the inspector indicates corrective work is required, a second affidavit form shall be submitted once the work is completed. For the purpose of this section, elevated "weather-exposed areas" mean those areas which are not interior building areas, extend beyond exterior walls and are located more than six feet above adjacent grade. For newly constructed residential buildings, inspections shall occur no later than six years following issuance of the Certificate of Occupancy for such buildings.

### **19.40.050 Mechanical and Electrical Requirements**

#### **501 – Heating**

Habitable spaces shall be provided with heating facilities capable of maintaining a room temperature of 68° F at a point three feet above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe working condition and in accordance with Chapter 12 of the Building Code, the Mechanical Code, and all other applicable laws. Unvented fuel-burning heaters are not permitted. All heating devices or appliances shall be of an approved type. Hot water provided to plumbing fixtures shall be supplied at a temperature of not less than 110°F.

#### **502 – Electrical Equipment**

All electrical equipment, wiring and appliances shall be installed and maintained in a safe manner in accordance with all applicable laws. All electrical equipment shall be of an approved type. Every habitable room shall contain at least two electrical convenience outlets or one convenience outlet and one electric light fixture. Every water closet compartment, bathroom, laundry room, furnace room and public hallway shall contain at least one electric light fixture. All electrical equipment, wiring and appliances shall be installed and maintained in a safe manner in accordance with the Electrical Code and all applicable laws.

#### **503 – Ventilation**

Ventilation for rooms and areas and for fuel-burning appliances shall be provided as required in the Mechanical Code and in this Code. Where mechanical ventilation is provided in lieu of the natural ventilation required by Section 304.3 of this Code, such mechanical ventilating systems shall be maintained in operational condition during the occupancy of any building or portion thereof.

### **19.40.060 Exits**



## 601 – Requirements Designated

All buildings or portions thereof shall be provided with exits, exitways and appurtenances as required by Chapter 10 of the Building Code or the Codes in effect at the time of construction, alteration or conversion.

- A. Dwelling units or guestrooms shall have access directly to the outside or to a common or public corridor, passageway, or egress balcony.
- B. Exit doors shall meet the minimum security requirements set forth in BMC Chapter 19.80. For sliding doors used as required exit doors, the manufacturer's locking device shall be maintained in operational condition.
- C. Every sleeping room below the fourth story shall have at least one operable window or exterior door approved for emergency escape or rescue. Such windows shall be operable from the inside to provide a full clear opening without the use of separate tools.
- D. All escape or rescue windows from sleeping rooms shall have the required minimum net clear openings and finished sill heights. Escape or rescue windows shall not be obstructed from the outside of the building.
- E. Security bars, grills, screens and covers placed over sleeping room windows or bedroom exterior doors, which provide the required emergency escape or rescue, shall comply with the Building Code and shall be openable or removable from within the room without the use of a key, tool, special knowledge or effort. Any release mechanism shall be readily accessible and operable at all times. Window bars, grills, screens and covers shall not reduce the net clear opening of the emergency escape and rescue opening.
- F. The installation of replacement glazing, or replacement windows shall be as required for new installations, when practical.
- G. Means of egress including but not limited to stairs, ramps, walking surfaces, shall be maintained in safe working condition, shall not be obstructed in any manner and shall remain free of any material, matter or defect where its presence would obstruct or render the means of egress hazardous.
- H. All handrails and guards shall be firmly fastened and capable of supporting code specified loads and shall be maintained in safe working condition.

## 19.40.070 Fire Protection

### 701 – General

All buildings or portions thereof shall be provided with the degree of fire-resistive construction as required by the Building Code for the appropriate occupancy, type of construction and location on property, and shall be provided with the appropriate fire-extinguishing systems or equipment required by Chapter 9 of the Building Code.

### **702 – Smoke Alarms**

Smoke Alarms shall be installed per the manufacturer's installation instructions in all residential occupancies and at the required locations as prescribed in the Building Code:

1. In each room used for sleeping purposes.
2. Outside each separate sleeping area in the immediate vicinity of the sleeping room.
3. On each story within a dwelling unit, including basements and habitable attic spaces. In units with split levels without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice provided that the lower level is less than one full story below the upper level.

### **703 – Carbon Monoxide Alarms**

Carbon Monoxide Alarms are required in all dwelling and sleeping units where one of the following exist:

1. The unit contains a fuel-fired appliance or fireplace.
2. The unit has an attached garage with an opening that communicates with the unit.

Carbon Monoxide Alarms shall be installed per manufacturer's installation instructions and at the required locations as prescribed in the Building Code:

1. Outside of each separate sleeping area in the immediate vicinity of the sleeping rooms.
2. On every occupiable level of a dwelling unit including basements and habitable attic spaces.
3. Inside each sleeping room where a fuel-burning appliance is located within the sleeping room or its attached bathroom.

Combination Alarms – Combination carbon monoxide/smoke alarms shall be an acceptable alternative to carbon monoxide alarms and smoke alarms.

## **19.40.080 Rental Housing Safety**

### **801 – Findings**

- A. Berkeley has an aging rental housing stock where the majority of rental units are over 50 years old and, thus, are more likely to violate housing safety codes

and endanger the health and safety of occupants and others. According to the 2020 census, 76% of all housing units, owner-occupied or rental units, are more than 50 years old.

- B. There is a crisis in Berkeley's rental housing market reflected in a reduced vacancy rate which increases the likelihood that tenants may not complain about unsafe conditions for fear of losing their homes.
- C. Berkeley has a large number of tenants who are immigrants or who have special needs which makes it more difficult for them to be aware of and enforce their rights to safe accommodations.
- D. There have been several tragic deaths that may have been avoided had there been a regular residential rental inspection program, an exterior elevated elements inspection program, and a safety education program.
- E. An inspection made by a property owner in order to submit a certification pursuant to Subsection 803A is a necessary service pursuant to California Civil Code Section 1954(b) where the tenant/occupant has refused entry to a City inspector acting pursuant to this chapter.

## **802 – Purpose**

The purpose of the Rental Housing Safety Program (RHSP) is to increase the number of rental units in the City that meet housing safety standards established by the City in order to ensure the occupants' health and safety.

## **803 – Residential Rental Housing Safety Certification—City Inspection in lieu of Self-Certifications—Exemptions**

- A. All owners of residential real property containing rental units and not otherwise exempt pursuant to Subsection 803.C shall annually certify that their rental unit(s) meet housing safety standards established by the City or seek an inspection by the City pursuant to Subsection 803.B. Self-certification shall be made in the manner set forth below:
  - 1. Owners shall inspect each rental unit owned using the Rental Housing Safety Program Certification Checklist form required by the City.
  - 2. Owners shall provide a copy of the completed Rental Housing Safety Program Certification Checklist to each tenant whose rental unit has been inspected. If the owner is unable to certify compliance with all applicable provisions of the checklist, including by reason of refusal of entry by the tenant, in addition to providing the completed form to the tenant, the owner

shall submit a copy of the completed checklist to the City by email, mail or personal delivery. Owners shall provide the copy of the checklist to the tenant and, if applicable, a copy to the City within five days of completing the inspection and no later than July 1<sup>st</sup> of each year beginning with July 1, 2004.

3. Any tenant may request that the City verify the accuracy of the representations made by the owner in the checklist. Further, all checklists submitted to the City shall be considered public information.
- B. An owner or tenant may request that their residential rental unit(s) be inspected by the City to ascertain compliance with the housing safety standards. If the City is unable to conduct such inspection, the owner is nonetheless required to complete a checklist pursuant to Subsection 803.A. Such inspection may also determine compliance with all other applicable requirements relating to building safety.
- C. Newly constructed residential rental units shall be exempt from the requirements of Section 803 for a period of five years following issuance of the Certificate of Occupancy for such units.
- D. For those units where the City has determined that the tenant has refused entry to the owner to conduct the inspection necessary for completing the checklist, the City may seek a warrant for entry pursuant to California Code of Civil Procedure Sections 1822.51 and 1822.52

#### **804 – Unlawful Alteration of Premises by Tenant/Occupant**

It shall be a violation of this chapter for any tenant/occupant to modify, damage, destroy or otherwise alter their premises in a manner which renders the premises in a condition which the City has determined violates applicable laws enforced by the City to such an extent as to endanger the safety of the public or the occupants thereof and the tenant/occupant has failed to correct the violation after receiving written notice and being given a reasonable opportunity to do so.

#### **805 – Proactive Inspection of Rental Units**

The City Manager or their designee may periodically inspect every residential rental unit in any real property in the City provided that no residential rental unit shall be subject to a Rental Housing Safety Program inspection on more than a triennial basis where such unit complies with the annual self-certification requirement, unless an inspection is required in response to a request for service or the City reasonably believes that the property may be in violation of applicable laws or ordinances. Nothing contained herein affects the ability of the Berkeley Fire Department to conduct annual inspections pursuant to Berkeley Municipal Code Chapter 19.48. Entry for inspection shall be as a

result of either consent or execution of a warrant secured pursuant to California Code of Civil Procedure Sections 1822.51 and 1822.52.

### **806 – Reactive / Complaint Inspections**

The City Manager or their designee may inspect those portions of residential rental properties, buildings, units or structures in response to a complaint. Any residential rental unit shall be inspected for code violations whenever information from the following sources indicates that a pertinent code violation may exist therein:

- A. Complaint from a tenant that a code violation may exist;
- B. Direct referrals for inspection from other City officials with code enforcement responsibilities or from officials of a federal, state, or local agency, or from officials with a public or private utility; or
- C. Reports that the exterior condition of a residential real property containing rental housing reflects the existence of code violations.

### **807 – Certificate of Compliance Issued When**

If, upon the proactive or reactive inspection by the City of a residential rental unit within any real property, no violations of applicable laws or ordinances are determined to exist, a Certificate of Compliance shall be issued. Said certificate shall be given to the owner, manager (if requested) and affected resident(s) and shall state that the determination may be subject to an informal review by the Building Official if any affected party seeks such review within ten (10) days of the date of issuance of the Certificate of Compliance.

### **808 – Correction of Violations Required**

- A. Whenever any proactive or reactive inspection results in a determination that a rental unit is in violation of applicable laws or ordinances, the inspector shall promptly give the owner, manager (if any) and affected resident(s) written Notice of Violation as set forth on Section 1002 of this Code. Said notice shall specify a reasonable time to correct the violation, and shall state that the determination may be subject to an informal review by the Building Official if any affected party seeks such review within ten (10) days of the date of issuance of the Notice of Violation.
- B. If the violation is corrected within the time specified, the owner, manager (if any) and resident(s) shall be so notified in writing, and a Certificate of Compliance shall be issued.

- C. If the violations have not been corrected, enforcement, including reinspections, will continue until all violations are corrected.

### **809 – Violations**

Any person who fails to comply with any provisions of Section 19.40.080 after receiving written Notice of Violation(s) and being given a reasonable opportunity to correct such violation(s) shall be deemed to be in violation of the Chapter and shall be subject to criminal sanctions and civil remedies pursuant to Subsection 810.

### **810 – Penalties**

- A. Any person violating any provision or failing to comply with any of the requirements of Section 19.40.080 shall be deemed guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code.
- B. The City Attorney may bring a civil action to seek redress for a violation(s) under Section 19.40.080 on behalf of the City. In any such action, the City shall recover civil penalties in an amount not to exceed \$500 for each violation and any other relief the court deems proper.

In any civil action filed pursuant to this subsection where the violation of Section 19.40.080 is declared to be a public nuisance, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that, pursuant to Government Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

- C. Any tenant may bring a civil action to establish that the owner of the property from which the tenant rents a dwelling unit has failed to provide the tenant with a copy of the Rental Housing Safety Program Certification Checklist or submit a copy of the Checklist to the City pursuant to Subsection 803.A.2. Such action may not be maintained where the City Attorney has commenced or is prosecuting an action against such violation. In any such action, the tenant shall recover civil penalties in an amount not to exceed \$500 for each violation.

In any action brought under this subsection, the court shall award reasonable attorneys' fees to any prevailing plaintiff. Any aggrieved person who initiates a civil action under this subsection shall file a copy of his or her complaint against the property owner and a copy of the court's decision with the City.

## 19.40.090 Substandard Housing

### 901 – Substandard Housing – Defined

Pursuant to Health and Safety Code Section 17920.3 or its successor, any building or portion thereof including any dwelling unit, guestroom or suite of rooms, or the premises on which the same is located, in which there exists any of the following listed conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building:

**(a) Inadequate Sanitation** shall include, but not be limited to, the following:

- (1)** Lack of, or improper water closet, lavatory, or bathtub or shower in a dwelling unit.
- (2)** Lack of, or improper water closets, lavatories, and bathtubs or showers per number of guests in a hotel.
- (3)** Lack of, or improper kitchen sink.
- (4)** Lack of hot and cold running water to plumbing fixtures in a hotel.
- (5)** Lack of hot and cold running water to plumbing fixtures in a dwelling unit.
- (6)** Lack of adequate heating.
- (7)** Lack of, or improper operation of required ventilating equipment.
- (8)** Lack of minimum amounts of natural light and ventilation required by this code.
- (9)** Room and space dimensions less than required by this code.
- (10)** Lack of required electrical lighting.
- (11)** Dampness of habitable rooms.
- (12)** Infestation of insects, vermin, or rodents as determined by a health officer or, if an agreement does not exist with an agency that has a health officer, the infestation can be determined by a code enforcement officer, as defined in Section 829.5 of the Penal Code, upon successful completion of a course of study in the appropriate subject matter as determined by the local jurisdiction.
- (13)** Visible mold growth, as determined by a health officer or a code enforcement officer, as defined in Section 829.5 of the Penal Code, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their properly functioning and intended use.
- (14)** General dilapidation or improper maintenance.
- (15)** Lack of connection to required sewage disposal system.
- (16)** Lack of adequate garbage and rubbish storage and removal facilities, as determined by a health officer or, if an agreement does not exist with an agency that has a health officer, the lack of adequate garbage and rubbish removal facilities can

be determined by a code enforcement officer as defined in Section 829.5 of the Penal Code.

**(b) Structural Hazards** shall include, but not be limited to, the following:

- (1) Deteriorated or inadequate foundations.
- (2) Defective or deteriorated flooring or floor supports.
- (3) Flooring or floor supports of insufficient size to carry imposed loads with safety
- (4) Members of walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration.
- (5) Members of walls, partitions, or other vertical supports that are of insufficient size to carry imposed loads with safety.
- (6) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration.
- (7) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety.
- (8) Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration.
- (9) Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety.

**(c) Any Nuisance.**

**(d) Hazardous Wiring.** All wiring, except that which conformed with all applicable laws in effect at the time of installation if it is currently in good and safe condition and working properly.

**(e) Hazardous Plumbing.** All plumbing, except plumbing that conformed with all applicable laws in effect at the time of installation and has been maintained in good condition, or that may not have conformed with all applicable laws in effect at the time of installation but is currently in good and safe condition and working properly, and that is free of cross connections and siphonage between fixtures.

**(f) Hazardous Mechanical Equipment.** All mechanical equipment, including vents, except equipment that conformed with all applicable laws in effect at the time of installation and that has been maintained in good and safe condition, or that may not have conformed with all applicable laws in effect at the time of installation but is currently in good and safe condition and working properly.

**(g) Faulty Weather Protection,** which shall include, but not be limited to, the following:

- (1) Deteriorated, crumbling, or loose plaster.
- (2) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors.
- (3) Defective or lack of weather protection for exterior wall coverings, including lack of paint, or weathering due to lack of paint or other approved protective covering.



(4) Broken, rotted, split, or buckled exterior wall coverings or roof coverings.

**(h) Fire Hazard.** Any building or portion thereof, device, apparatus, equipment, combustible waste, or vegetation that, in the opinion of the chief of the fire department or his deputy, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause.

**(i) Faulty Materials of Construction.** All materials of construction, except those that are specifically allowed or approved by this code, and that have been adequately maintained in good and safe condition.

**(j) Hazardous or Insanitary Premises.** Those premises on which an accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rodent harborages, stagnant water, combustible materials, and similar materials or conditions constitute fire, health, or safety hazards.

**(k) Inadequate Maintenance.** Any building or portion thereof that is determined to be an unsafe building due to inadequate maintenance, in accordance with the latest edition of the Uniform Building Code.

**(l) Inadequate Exits.** All buildings or portions thereof not provided with adequate exit facilities as required by this code, except those buildings or portions thereof whose exit facilities conformed with all applicable laws at the time of their construction and that have been adequately maintained and increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

When an unsafe condition exists through lack of, or improper location of, exits, additional exits may be required to be installed.

**(m) Inadequate Fire Protection.** All buildings or portions thereof that are not provided with the fire-resistive construction or fire-extinguishing systems or equipment required by this code, except those buildings or portions thereof that conformed with all applicable laws at the time of their construction and whose fire-resistive integrity and fire-extinguishing systems or equipment have been adequately maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

**(n) Improper Occupancy.** All buildings or portions thereof occupied for living, sleeping, cooking, or dining purposes that were not designed or intended to be used for those occupancies.

**(o) Inadequate Structural Resistance** to horizontal forces.

"Substandard building" includes a building not in compliance with Health and Safety Code Section 13143.2.

However, a condition that would require displacement of sound walls or ceilings to meet height, length, or width requirements for ceilings, rooms, and dwelling units shall not by itself be considered sufficient existence of dangerous conditions making a building a substandard building, unless the building was constructed, altered, or converted in violation of those requirements in effect at the time of construction, alteration, or conversion.

The list of conditions, hazards and uses of property determined to be substandard is not intended to be exclusive. The Building Official is authorized to declare other and additional conditions, hazards and uses of property to be substandard if they endanger the health and safety of the residents or the public pursuant to this Code.

## **902 – Substandard Building – Nuisance**

Buildings or portions thereof which are determined to be substandard, which substantially endanger the health and safety of residents or the public, as defined in Health & Safety Code §17920.3 or its successor are hereby declared to be public nuisances, which shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures specified in this Code and Chapters 1 and 19.44 of the Berkeley Municipal Code.

### **19.40.100 Notices of the Building Official**

#### **1001 – Commencement of Proceedings**

When the Building Official or an authorized representative has inspected or caused to be inspected any building subject to this Code and has found and determined that such building either has substandard conditions or is a substandard building which substantially endangers the health and safety of residents or the public, the Building Official may commence proceedings to cause the repair, rehabilitation, vacation or demolition of the building. Depending on the severity of conditions, the Building Official may begin enforcement efforts by issuing one or more Notices of Violation as set forth in Sections 1002 or may proceed immediately to issuing a Notice and Order including a declaration of substandard building as set forth in Section 1003.

If substandard conditions are not abated following issuance of one or more Notices of Violation or if conditions deteriorate to the point they substantially endanger the health and safety of residents or the public, the Building Official may proceed to issuing a Notice and Order.

#### **1002 – Notice of Violation**

**1002.1 Issuance of Notice of Violation.** Whenever an inspector appointed by the Building Official inspected a building or portion thereof and determined that a violation of this Code exists, the inspector shall issue a written Notice of Violation directed to the owner of record of the property. For the purpose of this Code, complying with a Notice of Violation is considered voluntary code compliance, not subject to administrative penalties or appeals to the Commission. The intent of issuing a Notice of Violation is to advise an owner of each violation and of each action the owner is required to take to remedy the violation. A re-inspection shall be scheduled to verify correction of the violations.

The Notice of Violation shall contain:

- A. The street address sufficient for identification of the premises upon which the building is located.
- B. Description of the codified violation(s).
- C. The specific action required to correct the violation and a request that the violations be corrected within the specific time period listed in the Notice.
- D. The scheduled re-inspection date and time.
- E. The Notice shall specify that any permits, if required, be secured and the work physically commenced and completed within such time as the Building Official shall determine is reasonable under all of the circumstances, but not less than 30 days, unless an immediate hazard exists

**1002.2 Service of Notice of Violation.** The Notice of Violation may be served by US mail, in a sealed envelope, postage prepaid, addressed to such person to be notified at their last known business or residence address as the same appears in the public records of the City or other records pertaining to the matter to which such Notice is directed, or may be served personally on the owner, or if the owner is not present, a copy of the Notice may be posted on the property. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

**1002.3 Compliance Re-inspections.** Compliance re-inspections shall be conducted to verify that the violations identified on the Notice of Violation have been abated. Violations not noted on the initial Notice of Violation, but discovered during any re-inspection due to subsequent activities, damage or deterioration, shall also be subject to correction.

**1002.4 Inspection Service Fees.** No inspection fees shall be charged for the initial housing inspection or inspection report. If violations have been verified to be corrected at the time of the first re-inspection, no re-inspection fees shall be charged. If the violations have not been corrected, a fee shall be assessed for the first and subsequent re-inspections, in accordance with the fee schedule established by Council.

**1002.5 Recordation of Notice of Violation.** If compliance with the Notice of Violation is not obtained within the time specified therein, the Building Official may file in the Office of the County Recorder a Notarized Statement describing the property and certifying (i) that the building is in violation of Berkeley Municipal Code, and (ii) that the owner has been so notified. The notarized statement shall include the information set forth in Subsections 1002.1.B and 1002.1.C of this Code. Whenever the cited corrections are completed and any outstanding inspection service fees paid, the Building Official shall

file a new Notarized Statement with the County Recorder certifying that all required corrections have been made so that the building is no longer in violation of Berkeley Municipal Code.

### **1003 – Notice and Order**

**1003.1 Issuance of Notice and Order.** Whenever a building, or portion thereof, has been determined to be a substandard building, which substantially endangers the health and safety of residents or the public, either due to the severity of substandard conditions or due to failure to repair pursuant to proceedings specified in Section 1002, the Building Official shall issue a Notice and Order directed to the owner of record of the building.

The Notice and Order shall contain:

- A. The street address and a legal description sufficient for identification of the premises upon which the building is located.
- B. A statement that the Building Official has found the building to be a substandard building substantially endangering the health and safety of residents or the public, with a brief and concise description of the conditions which render the building substandard under the provisions of Sections 901 and 902 of this Code.
- C. A statement of the action required to be taken as determined by the Building Official. If in the opinion of the Building Official, the substandard conditions can be corrected or abated by repair thereof, the Notice shall state the repairs which will be required.
  1. If the Building Official has determined the building or structure must be repaired, the Order shall require that all required permits be secured and the work physically commenced within such time (not to exceed 60 days from the date of the Order) and completed within such time as the Building Official shall determine is reasonable under all of the circumstances, but not less than 30 days.
  2. If the Building Official has determined that the building or structure must be vacated, the Order shall require the building or structure be vacated within a certain time from the date of the Order as determined by the Building Official to be reasonable, but not less than 30 days.
  3. If the Building Official has determined the building or structure must be demolished, the Order shall require that the building be vacated within such time as the Building Official shall determine reasonable (not to exceed 60 days from the date of the Order), that all required permits be secured within

60 days from the date of the Order and the demolition be completed within such time as the Building Official shall determine is reasonable, but in no event less than 30 days.

- D. Statements advising that if any required repair or demolition work is not commenced within the time specified, the Building Official may:
1. Order the building vacated and posted to prevent further occupancy until the work is completed; and
  2. Proceed to cause the work to be done and charge the costs thereof against the property or its owner.
- E. Statements advising that:
1. Any person having any record or title or legal interest in the building may appeal the Notice and Order or any action of the Building Official to the Commission as set forth in Chapter 19.44 of this Code; and
  2. Failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter. The Notice shall include a copy of Chapter 19.44 of this Code.
- F. A statement that, in accordance with Revenue & Taxation Code Sections 17274 and 24436, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year.
- G. A determination whether the repairs necessary to abate the violation(s) can reasonably be accomplished without relocation of the tenant household in possession of the unit or room as set forth in Chapter 13.84 Section 13.84.050 of the Berkeley Municipal Code.

**1003.2 Service of Notice and Order.** The Notice and Order, and any amended or supplemental notice and order, shall be served upon the record owner, and posted on the property; and one copy thereof shall be served on each of the following if known to the Building Official or disclosed from official public records; the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the Building Official to serve any person listed above shall not invalidate any proceeding hereunder as to any person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section. In addition, the Notice and Order shall be served on tenants.

**1003.3 Method of Service.** Service of the Notice and Order shall be made upon all persons entitled thereto either personally or by mailing a copy of such Notice and Order by certified mail, postage prepaid, return receipt requested, to each such person at their address as it appears on the last Equalized Assessment Roll of the County or as known to the Building Official. If no address of any such person so appears or is known to the Building Official, then a copy of the Notice and Order shall be so mailed, addressed to such person, at the address of the building involved in the proceedings. The failure of any such person to receive such Notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing. Service on tenants may be by first class mail.

**1003.4 Proof of Service.** Proof of Service of the Notice and Order shall be certified to at the time of service by a written declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the Notice and Order retained by the Building Official, either as an electronic record or a hard copy. The proof of service may be signed with an electronic signature.

**1003.5 Appeals.** Orders of the Building Official may be appealed as set forth in Chapter 19.44. For purposes of this Code, orders of the Building Official, or, on appeal, of the Commission or City Council, shall be final as set forth in Chapter 19.44.

#### **1004 – Repair, Vacation and Demolition**

In ordering the repair, vacation or demolition of any substandard building or structure, the following standards shall be followed:

- A. In general, any building or structure or portion thereof declared substandard shall be repaired in accordance with the current Building Code or other current code applicable to the type of substandard conditions requiring repair.
- B. If the building or structure, or portion thereof, substantially endangers the health or safety of its occupants or the public, it shall be ordered to be vacated, secured and maintained against entry, and the Building Official or Commission shall require its expeditious repair.
- C. If a building or structure constitutes an imminent and substantial danger to the health or safety of the public, Chapter 1.24 of the Berkeley Municipal Code shall apply.
- D. If an entire building or structure is declared to be substandard the owner may elect to demolish it instead so long as the right to such election is preserved by state law.

#### **1005 – Notice to Vacate**

**1005.1 Posting.** Every Notice to Vacate shall, in addition to being served as provided in Sections 1003.2 – 1003.5, be posted at or upon each main exit of the building, and shall be in substantially the following form:

**DO NOT ENTER**

**UNSAFE TO OCCUPY**

**It is a misdemeanor to occupy this building, or to remove or deface this notice.**

**Building Official of City of Berkeley**

**1005.2. Compliance.** Whenever such Notice is posted, the Building Official shall include a notification thereof in the Notice and Order issued under Section 1003, reciting the emergency and specifying the conditions which necessitate the posting. No person shall remain in or enter any building which has been so posted, except that entry may be made to repair, demolish, or remove such building under Permit. No person shall remove or deface any such Notice after it is posted until the required repairs or demolition have been completed and the Building Official has approved occupancy of the building. Any person violating this subsection shall be guilty of a misdemeanor.

#### **1006 – Recordation of Notice and Order**

If compliance is not obtained with a final Order within the time specified therein, the Building Official shall file in the Office of the County Recorder a Certified Statement describing the property and certifying (i) that the building is a substandard building, and (ii) that the owner has been so notified. The certified statement shall include the information set forth in Subsections 1003.1.B and 1003.1.C. The Proof of Service required by Section 1003.4 shall also be recorded with the Notice and Order. Whenever the corrections ordered are thereafter completed, or the building demolished so that it no longer exists as a substandard building, the Building Official shall file a new Certified Statement with the County Recorder certifying that the building has been demolished or all required corrections have been made so that the building is no longer substandard, whichever is appropriate.

#### **1007 – Post-Disaster Safety Assessment**

After a natural or human-caused disaster event, the Building Official or an authorized representative shall conduct a rapid safety assessment inspection of a damaged or potentially damaged building or portion thereof to evaluate safety and habitability for continued use and to determine the need for restricted or prohibited entry. Upon completion of a safety assessment, the Building Official or an authorized representative shall post the appropriate placard at each entry point to a building following the procedure set forth in Berkeley Municipal Code 19.28.020 Section 116.6.

## **19.40.110 Enforcement of Orders**

### **1101 – Failure to Obey Order**

**1101.1 Failure to Obey Order.** After any Order made pursuant to Sections 1003 or 1005 of this Code has become final, no person to whom any such Order is directed shall fail, neglect, or refuse to obey any such Order.

**1101.2 Initiation of Abatement Proceedings.** After any Order made pursuant to Sections 1003 or 1005 of this Code has become final, and the person to whom it is directed fails, neglects or refuses to obey such Order within the period set forth therein, the Building Official may institute any appropriate action to abate such building or structure as a public nuisance. However, if such building is encumbered by a mortgage or deed of trust, of record, the mortgagee or beneficiary under such deed of trust may, within 15 days after the expiration of the period set forth in the Order, comply with the requirements of the Order, in which event the cost to such mortgagee or beneficiary shall be added to and become a part of the lien secured by said mortgage or deed of trust and shall be payable at the same time and in the same manner as may be prescribed in said mortgage or deed of trust for the payment of any taxes advanced or paid by said mortgagee or beneficiary for and on behalf of said owner.

**1101.3 Repair, Vacation, Demolition.** In addition to any other remedy herein provided, the Building Official may vacate, repair or demolish the building, take any other appropriate action, or institute any other appropriate proceeding, if any of the following occur:

1. The repair work is not done as scheduled;
2. The owner does not make a timely choice of repair or demolition; or
3. The Building Official determines that the owner has selected an option which cannot be completed within a reasonable period of time for any reason, including, but not limited to, an outstanding Judicial or Administrative Order.

In making the election permitted by this section, the Building Official shall give preference to the repair of the building whenever it is economically feasible to do so, as long as it is not necessary to repair more than 50% of the building, and shall give full consideration to the needs for housing as expressed in the City of Berkeley Housing Element. The cost of any repair or demolition work may be recovered in the manner hereinafter provided in this Code. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot shall be paid over to the person or persons lawfully entitled thereto.

### **1102 – Extension of Time to Perform Work**



Upon receipt of an application from the person required to conform to the Order and by agreement of such person to comply with the Order if allowed additional time, the Building Official may grant an extension of time, not to exceed an additional 120 days, within which to complete said repair, rehabilitation or demolition, if the Building Official determined that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The Building Official's authority to extend time is limited to the physical repair, rehabilitation or demolition of the premises and will not in any way affect or extend the time to appeal the Notice and Order.

### **1103 – Interference with Repair or Demolition Work Prohibited**

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the City or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated or demolished under the provisions of this Code, or with any person to whom such building has been lawfully sold pursuant to the provisions of this Code, whenever such officer, employee, contractor or authorized representative of this jurisdiction, person having an interest or estate in such building or structure, or purchaser is engaged in the work of repairing, vacating and repairing, or demolishing any such building pursuant to the provisions of this Code, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this Code.

### **19.40.120 Performance of Repair or Demolition**

#### **1201 – Performance**

**1201.1 Procedure.** When any repair or demolition is done pursuant to Section 1101.3 of this Code, the Building Official shall cause the work to be accomplished by City personnel or by private contract under the direction of the Building Official, subject to the City of Berkeley Charter. Plans and specifications therefore may be prepared by the Building Official, or the Building Official may employ such architectural and engineering assistance on a contract basis as may be deemed reasonably necessary.

**1201.2 Costs.** The costs of such work shall be paid from the Repair and Demolition Fund, and may be recovered from the owner as set forth herein.

#### **1202 – Repair and Demolition Fund**

**1202.1 Establishment of Repair and Demolition Fund.** The City Council may establish a special revolving fund to be designated as the Repair and Demolition Fund. Subject to the City of Berkeley Charter, payments shall be made out of said Fund upon the demand of the Building Official to defray the costs and expenses which may be incurred by this jurisdiction in doing or causing to be done the necessary work of repair or demolition of substandard buildings.

**1202.2 Maintenance of Fund.** The City Council may at any time transfer to the Repair and Demolition Fund, out of any money in the General Fund of the City, such sums as it may deem necessary in order to expedite the performance of the work of repair or demolition, and any sum so transferred shall be deemed a loan to the Repair and Demolition Fund and shall be repaid out of the proceeds of the collections herein after provided for. All funds collected under the proceedings hereinafter provided for shall be paid to the Treasurer of the City, who shall credit the same to the Repair and Demolition Fund.

### **19.40.130 Recovery of Cost of Repair or Demolition**

#### **1301 – Recovery of Costs**

**1301.1 Account and Report of Expense.** The Building Official shall keep an itemized account of the expense incurred by the City in the repair or demolition of any building done pursuant to the provisions of Section 1101.3 of this Code. Upon the completion of the repair or demolition, the Building Official shall prepare a report specifying the work done and the cost thereof. The report shall be verified by the Building Official, and shall show the itemized and total reasonable gross and net expense of the actions taken, including the expense of inspections, repairs or demolition and any other costs incurred, as well as any proceeds from salvage. The report shall also contain a statement advising:

1. That any person having any record or title or legal interest in the building may appeal from the report and demand of the Building Official to the Commission as set forth in Chapter 19.44 of this Code, and
2. That failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

The notice shall include a copy of Chapter 19.44 of this Code.

**1301.2 Posting and Service.** The Building Official shall post this report and a demand for payment in a conspicuous location at the property, and shall serve them upon the record owner, and each of the following if known to the Building Official or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located.

**1301.3 Proof of Service.** Proof of service of the report and demand shall be certified to at the time of service by a written declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the Notice and Order retained by the Building Official, either as an electronic record or a hard copy.

The failure of the Building Official to serve any person required herein to be served shall not invalidate any proceeding hereunder as to any person duly served or relieve any such person from any duty or obligation imposed by the provisions of this Section.

**1301.4 Appeals.** The report and demand may be appealed by any person interested in or affected by the proposed charge as set forth in Chapter 19.44. For purposes of this Code, the report and demand of the Building Official, or, on appeal, of the Commission or City Council, shall be final and effective as set forth in Chapter 19.44.

### **1302 – Personal Obligation and Special Assessment**

Charges confirmed and imposed in a final order by the City shall be a personal obligation of the property owner and an assessment against the property involved under Government Code Section 38773.1. The City may collect these charges in any manner permitted by law, and may elect to change the nature of the assessment as set forth in Section 1.24.140 of the Berkeley Municipal Code.

### **1303 – Repayment of Repair and Demolition Fund**

All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale or in any other manner shall be deposited in the Repair and Demolition Fund.

## **19.40.140 Recovery of Costs for Housing Code Enforcement and Administration**

### **1401 – Fees**

**1401.1 Establishment of Fees.** The City Council may by resolution establish fees for the enforcement and administration of the Berkeley Housing Code and the Rental Housing Safety Program.

**1401.2 Recovery of Delinquent Housing Inspection Program Fees and Administrative Citations.** Unpaid housing inspection program fees established pursuant to this section, including annual flat fees, inspection service fees, late payment fees, administration lien fees, and administrative citations, which are more than 30 days delinquent shall constitute a debt that is collectible in any manner allowed by law, including, but not limited to: (1) the filing of a civil action in the Alameda County superior court; and/or (2) the recordation of a lien with the Alameda County recorder's office provided the responsible person has a legal interest in the property on which the violation was located; and/or (3) by means of a special assessment with Alameda County for inclusion on property taxes provided the responsible person has a legal interest in the property on which the violation was located; and/or (4) by denying the issuance or renewal of any city approval, license, entitlement, or permit to any responsible person who has failed to pay fees that are imposed pursuant to this section.

The remedies may be concurrently used to collect unpaid fees. Such delinquent fees or citations shall be a lien or special assessment on the property.

**1401.3 – Appeals.**

- A. Any person aggrieved by any decision of an administrative officer or agency with respect to the amount of fees charged under the Rental Housing Safety Program, may appeal to the City Manager by filing a notice of appeal with the City Manager within 14 days of the billing notice, setting forth in full the grounds of the appeal.
- B. Said appeal shall be scheduled for hearing by the City Manager or his/her designee, and the appellant shall be given no less than 14 days' notice of the time and place of said hearing.
- C. The appellant may appear at the time and place fixed in the notice and present his/her appeal. If the appellant fails to appear in compliance with the notice or to obtain a continuance, the appellant shall be deemed to have waived any and all grounds of appeal that could have been asserted against the City.
- D. Within 30 days after the conclusion of the hearing, the City Manager or his/her designee shall notify the appellant in writing of the decision, which shall be final. If the decision establishes an amount due and payable, the total amount shall be due and payable as of the date the original fee was due and payable, together with any penalties that may be due.

**1401.4 – Lien or Special Assessment Procedures.**

Unless a different procedure is authorized elsewhere in this code, where the code authorizes the city to record a lien or impose a special assessment for any unpaid fee, citation, fine, cost, charge, or other monies, the following procedures shall apply:

**1. Notification Procedure**

A lien may be recorded or a special assessment may be imposed upon real property subject to the Rental Housing Safety Program if the unpaid fees or citations are not paid within 30 calendar days of written Notice thereof.

- A. Such Notice must have advised the owner(s) of the subject property in plain language of the city's intent to record a lien or impose a special assessment if the fee, citation, fine or other monies were not paid within 30 calendar days, the amount of the proposed lien, a description of the basis for the amount(s) comprising the lien, and notice that if the owner contests the costs, they have ten calendar days from the date of service of the notice to file objections to the costs and request a hearing on the reasonableness of the costs. The failure of the owner to request a hearing within ten calendar days of the date

of service of the Notice shall constitute a waiver of the owner's right to a hearing.

- B. Service of Notice under this section shall be by first class and certified mail to the address of record of the owner of the property per Alameda County's Assessor's Office.
- C. Where the City Council designates another hearing body should the property owner(s) exercise their right to be heard, the hearing body shall make a written recommendation to the City Council that shall include factual findings based on evidence introduced at the hearing. The City Council may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the City Council.

## 2. Liens

- A. The lien shall be recorded in the Alameda County recorder's office and from the date of recording shall have the force, effect, and priority of a judgment lien.
- B. A lien authorized by this section shall specify the amount of the lien for the city, the name of the city department or division on whose behalf the lien is imposed, the date upon which the lien was created, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.
- C. In the event that the lien is discharged, released, or satisfied, notice of the discharge shall be recorded by the city.
- D. The city may recover from the property owner any costs incurred regarding the processing and recording of the lien.

## 3. Special Assessments

- A. It shall be the duty of the City Manager (or designee thereof) to submit the charges to the Alameda County Auditor – Controller Agency to add the amounts of the assessment, or assessments, to the next regular property tax bills.
- B. The amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment.
- C. The amount of a special assessment shall also constitute a personal obligation of the property owner.

**1401.5 Failure to Comply.** Any person violating any provision or failing to comply with any of the requirements of the Berkeley Housing Code shall be deemed guilty of an infraction as set forth in Chapter 1.20 of the Berkeley Municipal Code.

Section 3. This ordinance shall become effective on January 1, 2023.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

### Explanation of Significant Changes to the Berkeley Housing Code

| New Code Section in 19.40 | Title                                       | Prior BMC or Uniform Housing Code (UHC) Section or New Content                                                                          | Description of / Rationale for Significant Changes                                                                                                                                                                                                                                                                             |
|---------------------------|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>19.40.010</b>          | <b>General Provisions</b>                   |                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                |
| 101                       | Title                                       | BMC 19.40.010                                                                                                                           |                                                                                                                                                                                                                                                                                                                                |
| 102                       | Purpose                                     | New section based on UHC Section 102                                                                                                    | Clarifies purpose of the Berkeley Housing Code.                                                                                                                                                                                                                                                                                |
| 103                       | Scope and Applicability                     | New section based on UHC Section 103 with staff clarifications                                                                          | Clarifies applicability and identifies how the Berkeley Housing Code supplements other BMC sections.                                                                                                                                                                                                                           |
| 104                       | Authority                                   | BMC 19.40.020 Sec. 201.1                                                                                                                |                                                                                                                                                                                                                                                                                                                                |
| 105                       | Rights of Entry                             | BMC 19.40.020 Sec. 201.2                                                                                                                |                                                                                                                                                                                                                                                                                                                                |
| 106                       | Responsibilities defined                    | BMC 19.40.020 Sec. 201.3                                                                                                                |                                                                                                                                                                                                                                                                                                                                |
| 107                       | Owner or representative to live on premises | BMC 19.40.100 Section 1701                                                                                                              |                                                                                                                                                                                                                                                                                                                                |
| 108                       | Violations                                  | BMC 19.40.020 Sec. 204                                                                                                                  |                                                                                                                                                                                                                                                                                                                                |
| 109                       | Housing Advisory and Appeals Board          | BMC 19.40.020 Sec. 203                                                                                                                  |                                                                                                                                                                                                                                                                                                                                |
| <b>19.40.020</b>          | <b>Definitions</b>                          | BMC 12.48.030, UHC Section 401 with added definitions                                                                                   | Definitions expanded to be more complete and coordinated with the California Building Code and Health & Safety Code.                                                                                                                                                                                                           |
| <b>19.40.030</b>          | <b>Space and Occupancy Standards</b>        | New section based on UHC Chapter 5 with staff clarifications. Subsection 304.3D is a local amendment from the Berkeley Mechanical Code. | Incorporated into the BMC since the 1997 UHC is out of publication.<br><br>Starting in 2008, the Building and Mechanical Codes allowed habitable spaces to use artificial lighting and outdoor air mechanical ventilation in lieu of window openings for natural light and ventilation. This is not reflected in the currently |

| New Code Section in 19.40 | Title | Prior BMC or Uniform Housing Code (UHC) Section or New Content | Description of / Rationale for Significant Changes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------|-------|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           |       |                                                                | <p>adopted 1997 UHC. Since different requirements apply to habitable spaces constructed or altered after 2008, this section reconciles the difference between the Berkeley Housing Code and the California Building Code and incorporates alternative ventilation and lighting requirements for those buildings constructed or altered after 2008.</p> <p>Ceiling height reductions added to Section 303.1 reducing the ceiling height from 7'6" to 7' and 6'8" in certain instances and room floor area reduction from 120 sq ft to 70 sq ft in Section 303.2 for one- and two-family dwellings in coordination with the California Residential Code.</p> <p>The Berkeley Mechanical Code has a local amendment mandating that residential kitchen ranges or cooktops be provided with a vented hood. This amendment has been incorporated into the Housing Code Subsection 304.3 D for transparency and to make the information more accessible to inspectors and the public.</p> <p>Section 606 added clarifying how interior surfaces of residential buildings are to be maintained.</p> |



| New Code Section in 19.40 | Title                                         | Prior BMC or Uniform Housing Code (UHC) Section or New Content | Description of / Rationale for Significant Changes                                                                                                                                                                                                                                                                                                                                                                                    |
|---------------------------|-----------------------------------------------|----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>19.40.040</b>          | <b>Structural Requirements</b>                |                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 401, 402, 403             | Structural Requirements                       | UHC Section 601                                                | Incorporated into the BMC since the 1997 UHC is out of publication.                                                                                                                                                                                                                                                                                                                                                                   |
| 404                       | Structural Maintenance                        | BMC 19.40.035 and BMC 12.48.055                                | Exterior Elevated Elements (E3) inspection requirements updated to be consistent with the Health and Safety Code, with a 6-year inspection cycle for rental units and a 9-year cycle for condos and the same licensed professionals authorized to perform inspections. The State excluded structural pest control operators and added certified building inspectors and building officials who are not employees of the jurisdiction. |
| <b>19.40.050</b>          | <b>Mechanical and Electrical Requirements</b> |                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 501                       | Heating                                       | BMC 19.40.040 Section 701.1                                    | Revised temperature that heating systems in habitable spaces need to be able to maintain from 70°F to 68°F to reflect changes in the California Building Code and Energy Code. Added a requirement that water provided to plumbing fixtures shall be supplied at a temperature of not less than 110°F as specified in the CCR Title 25 State Housing Law.                                                                             |
| 502                       | Electrical Equipment                          | UHC Section 701.2                                              | Incorporated into the BMC since the 1997 UHC is out of publication.                                                                                                                                                                                                                                                                                                                                                                   |
| 503                       | Ventilation                                   | UHC Section 701.3                                              | Incorporated into the BMC since the 1997 UHC is out of publication.                                                                                                                                                                                                                                                                                                                                                                   |

| New Code Section in 19.40 | Title                 | Prior BMC or Uniform Housing Code (UHC) Section or New Content                                    | Description of / Rationale for Significant Changes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------|-----------------------|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 19.40.060                 | Exits                 | New section based on UHC Chapter 8 with staff clarifications                                      | <p>Incorporated into the BMC since the 1997 UHC is out of publication.</p> <p>Added reference to minimum security requirements for exit doors in BMC 19.80.</p> <p>Clarification added regarding minimum net clear openings and requirement that egress windows not be obstructed. Section 601.F on means of egress added for ease of reference.</p> <p>Added window security bar regulations from the California Building Code and Health and Safety Code 17958.3.</p> <p>Clarification added that replacement windows shall be as required for new installations to be consistent with the California Building Code.</p> |
| 19.40.070                 | Fire Protection       | New based on UHC Section 901, California Building Code Chapter 9 and Health and Safety Code 17926 | <p>Incorporated into the BMC since the 1997 UHC is out of publication.</p> <p>Also, for reference purposes, this section incorporates smoke alarm and carbon monoxide alarm provisions from the California Building Code Chapter 9 and Health and Safety Code 17926.</p>                                                                                                                                                                                                                                                                                                                                                   |
| 19.40.080                 | Rental Housing Safety | 12.48                                                                                             | Since the Rental Housing Safety Program (RHSP) is under the jurisdiction of the                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

| New Code Section in 19.40 | Title                                              | Prior BMC or Uniform Housing Code (UHC) Section or New Content | Description of / Rationale for Significant Changes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------|----------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           |                                                    |                                                                | Building Official, RHSP provisions contained in BMC 12.48 were moved to BMC 19.40.080.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 801                       | Findings                                           | BMC 12.48.010                                                  | Outdated findings (previous 12.48.010 C and D) deleted per HAC recommendation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 802                       | Purpose                                            | BMC 12.48.020                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 803                       | Residential rental housing safety certification    | BMC 12.48.050                                                  | <p>Added the option of emailing the checklist, in addition to mailing or personal delivery.</p> <p>Deleted the three-year exemption from proactive housing inspections for units which have had an inspection and received a certificate of compliance. Currently, the RHSP conducts a comprehensive inspection when responding to a tenant complaint. In the future, the RHSP may modify this practice to limit reactive inspections to the tenant's concerns and inspect all units on a cyclical basis, based on LA's model. This would eliminate the administrative step of checking if there has been an inspection in the unit in the last three years. Removing this from the Code would allow flexibility in the future.</p> |
| 804                       | Unlawful alteration of premises by tenant/occupant | BMC 12.48.060                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 805                       | Periodic inspection of rental dwelling unit        | BMC 12.48.070                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 806                       | Reactive/Complaint Inspections                     | New                                                            | BMC 19.40.070 incorporates current BMC 12.48 of the RHSP, Berkeley's proactive                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

| New Code Section in 19.40 | Title                                  | Prior BMC or Uniform Housing Code (UHC) Section or New Content              | Description of / Rationale for Significant Changes                                                                                                                                                    |
|---------------------------|----------------------------------------|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           |                                        |                                                                             | inspection program. BMC Section 806 has been added regarding complaint-based inspections. The subsequent code sections describe procedures for both proactive and reactive inspections.               |
| 807                       | Certificate of Compliance issued when  | BMC 12.48.070                                                               | Removed that the certificate of compliance will be valid for three years, for the reason explained above for section 803.                                                                             |
| 808                       | Correction of violations required      | BMC 12.48.080                                                               |                                                                                                                                                                                                       |
| 809                       | Violations                             | BMC 12.48.100                                                               |                                                                                                                                                                                                       |
| 810                       | Penalties                              | BMC 12.48.110                                                               |                                                                                                                                                                                                       |
| <b>19.40.090</b>          | <b>Substandard Housing</b>             |                                                                             |                                                                                                                                                                                                       |
| 901                       | Substandard housing - Defined          | BMC 19.40.020 Section 202 with added definition from Health and Safety Code | For reference purposes, this section incorporates the entire list of substandard conditions from the California Health and Safety Code 17920.3. Headings have been bolded for ease of understanding.  |
| 902                       | Substandard building - Nuisance        | BMC 19.40.020 Sec. 202                                                      |                                                                                                                                                                                                       |
| <b>19.40.100</b>          | <b>Orders of the Building Official</b> | BMC 19.40.060                                                               |                                                                                                                                                                                                       |
| 1001                      | Commencement of proceedings            | BMC 19.40.060 Section 1101 (a)                                              |                                                                                                                                                                                                       |
| 1002                      | Notice of violation                    | New                                                                         | Added to reflect current procedures. Berkeley begins with a Notice of Violation to encourage voluntary compliance before progressing to a Notice and Order, unless substandard conditions are severe. |
| 1003.1                    | Notice and order                       | BMC 19.40.060 Section 1101 (b)<br>1003.1.G New                              | 1003.1.G added for clarity to cross reference the relocation ordinance per HAC recommendation.                                                                                                        |

| New Code Section in 19.40 | Title                                                                    | Prior BMC or Uniform Housing Code (UHC) Section or New Content | Description of / Rationale for Significant Changes |
|---------------------------|--------------------------------------------------------------------------|----------------------------------------------------------------|----------------------------------------------------|
| 1003.2                    | Service of notice and order                                              | BMC 19.40.060 Section 1101 (c)                                 |                                                    |
| 1003.3                    | Method of service                                                        | BMC 19.40.060 Section 1101 (d)                                 |                                                    |
| 1003.4                    | Proof of service                                                         | BMC 19.40.060 Section 1101 (e)                                 |                                                    |
| 1003.5                    | Appeals                                                                  | BMC 19.40.060 Section 1101 (f)                                 |                                                    |
| 1004                      | Repair, vacation and demolition                                          | BMC 19.40.060 Section 1102                                     |                                                    |
| 1005                      | Notice to vacate                                                         | BMC 19.40.060 Section 1103                                     |                                                    |
| 1005.1                    | Posting                                                                  | BMC 19.40.060 Section 1103 (a)                                 |                                                    |
| 1005.2                    | Compliance                                                               | BMC 19.40.060 Section 1103 (b)                                 |                                                    |
| 1006                      | Recordation of notice and order                                          | BMC 19.40.060 Sec. 1104                                        |                                                    |
| 1007                      | Post-Disaster Safety Assessment                                          | New                                                            | Provides inspection procedures post-disaster.      |
| <b>19.40.110</b>          | <b>Enforcement of Orders</b>                                             | BMC 19.40.070                                                  |                                                    |
| <b>19.40.120</b>          | <b>Performance of Repair or Demolition</b>                               | BMC 19.40.080                                                  |                                                    |
| <b>19.40.130</b>          | <b>Recovery of Cost of Repair or Demolition</b>                          | BMC 19.40.090                                                  |                                                    |
| <b>19.40.140</b>          | <b>Recovery of Costs for Housing Code Enforcement and Administration</b> | BMC 19.40.110 and BMC 12.48.090                                |                                                    |
| 1401.1                    | Establishment of Fees                                                    | BMC 19.40.110 Section 1801 (a) and BMC 12.48.090.A             |                                                    |

| New Code Section in 19.40 | Title                                                                                  | Prior BMC or Uniform Housing Code (UHC) Section or New Content | Description of / Rationale for Significant Changes                                                                                                                                               |
|---------------------------|----------------------------------------------------------------------------------------|----------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1401.2                    | Recovery of delinquent Rental Housing Safety Program fees and administrative citations | BMC 19.40.110 Section 1801 (b)                                 |                                                                                                                                                                                                  |
| 1401.3                    | Appeals                                                                                | BMC 12.48.120                                                  |                                                                                                                                                                                                  |
| 1401.4                    | Lien or special assessment procedures                                                  | New and BMC 12.48.090.B                                        | Adopts more specific lien and special assessment procedures to strengthen their enforceability and specifies that these apply to administrative citations as well as inspection and annual fees. |
| 1401.5                    | Failure to comply                                                                      | BMC 19.40.110 Section 1801 (c)                                 |                                                                                                                                                                                                  |

|                                                                                           |                                                                                                                                             |
|-------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Deletions from 19.40</b>                                                               |                                                                                                                                             |
| 19.40.030                                                                                 | Deleted outdated language in BMC 19.40.030 including outdated code references.                                                              |
| <b>Previously Adopted Section of 1997 Uniform Housing Code that is no longer included</b> |                                                                                                                                             |
| Chapter 3                                                                                 | Permits and Inspections (covered under administrative provisions of BMC 19.28 Berkeley Building Code and BMC 19.40.080 Housing Inspections) |



Office of the City Manager

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Revenue Grant Contract: Fiscal Year 2022-23 Alcoholic Beverage Control Grant

RECOMMENDATION

Adopt a Resolution authorizing the City Manager and/or Chief of Police, to execute a grant contract and any subsequent amendments with the State of California Department of Alcoholic Beverage Control (ABC) in the amount of \$72,449 for one fiscal year, July 1, 2022 through June 30, 2023.

FISCAL IMPACTS OF RECOMMENDATION

The City of Berkeley Police Department (BPD) will be the direct recipient of the grant in the amount of \$72,449 for state fiscal year 2022-23. Grant revenues will be deposited into the Alcoholic Beverage Control Fund (Fund 318). There is no required local match of funds to obtain the grant. Appropriation of the expenditures is being included in the First Amendment to the FY 2023 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

The ABC grant is a Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city and be a customer-focused organization that provides excellent, timely, easily accessible service and information to the community. The grant provides overtime support for Berkeley Police Department operations and efforts to reduce underage drinking. Over the years, BPD staff have worked diligently to reduce the number of alcohol related problems within the residential areas surrounding the University of California at Berkeley (UCB), especially the Greek community. Despite the education and preventative work conducted each year, we continue to experience alcohol related tragedies, many of which could have been prevented. The BPD and Berkeley Fire Department (BFD) have continued to experience an increase in calls for service. This increase hampers and strains emergency services across the entire city. A report prepared by the BFD and provided to City Council, highlighted that over 1,500 people were transported in 2014 and 2015. Of those calls, more than 600 involved alcohol and approximately half of the intoxicated students were under the legal drinking age of 21. One-hundred and twenty of the intoxicated patients were under 18 years of age.

During the 2015-16 grant, a total of 482 alcohol-related citations and arrests were made. The BPD has provided responsible beverage training for over 100 Berkeley managers and employees representing over 40 Berkeley businesses.

BACKGROUND

The BPD has been receiving the Alcoholic Beverage Control grant for over sixteen years. Each school year brings an influx of new students, as well as, new employees to various businesses which sell alcohol. The BPD will continue to inform, educate, and enforce under-age drinking laws in an effort to reduce and/or prevent alcohol related tragedies within the City of Berkeley.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Fewer calls to first-responders will result in lower local air pollutants and greenhouse gas emissions due to reduced fuel consumption.

RATIONALE FOR RECOMMENDATION

The BPD has been awarded a Department of Alcoholic Beverage Control grant in the amount of \$72,449 to address the critical issue of underage drinking and alcohol availability to those individuals under the age of 21. Without this funding, the BPD would not have the resources to reduce alcohol-related incidents which can have life-altering results for many young adults.

ALTERNATIVE ACTIONS CONSIDERED

If the award is not accepted, the City would not be able to provide these vital services to our community.

CONTACT PERSON

Jennifer Louis, Interim Chief of Police, 510-981-5700

Attachments:

1: Resolution



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

REVENUE GRANT: STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC  
BEVERAGE CONTROL GRANT FOR FISCAL YEAR 2022-23

WHEREAS, the Police Department is committed to providing a safe and secure environment through vigorous law enforcement within the City of Berkeley; and

WHEREAS, underage drinking and excessive drinking is currently a problem within the City of Berkeley; and

WHEREAS, there has been a longstanding problem with underage drinking and the availability of alcohol to persons under the age of 21 throughout the City; and

WHEREAS, despite years of education and preventive work, alcohol related problems persist; and

WHEREAS, the young adult community continues to acquire alcohol through fake identification, merchants who fail to check identification or asking someone to purchase alcohol for them; and

WHEREAS, several liquor stores can be magnets for criminal activity; and

WHEREAS, the police do not have sufficient resources within the existing budget to expand their work on these problems; and

WHEREAS, the Berkeley Police Department desires to undertake a certain project to limit access to alcohol by minors funded in part from state funds from the Department of Alcoholic Beverage Control (also referred to as ABC); and

WHEREAS, the funds have been appropriated into the Alcoholic Beverage Control Program Fund (Fund 318) with the agreement that grant funds received hereunder shall not be used to supplant expenditures controlled by this body.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, and/or the Chief of Police, is hereby authorized to execute a contract and any amendments or extensions with the State of California in order to accept funds in the amount of \$72,449 from the Department of Alcoholic Beverage Control for the enforcement of alcohol related laws for one fiscal year, July 1, 2022 through June 30, 2023.

BE IT FURTHER RESOLVED that any liability arising out of the performance of this contract, including civil court actions for damages, shall be the responsibility of the grant recipient and the authorizing agency. The State of California and ABC disclaim responsibility for any such liability.

BE IT FURTHER RESOLVED that this award is not subject to local hiring freezes.



Mental Health Commission

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council  
 From: Mental Health Commission  
 Submitted by: Dr. Margaret Fine, Chairperson, Mental Health Commission  
 Subject: Reappointment of Andrea Prichett and Edward Opton to the Mental Health Commission

RECOMMENDATION

Adopt a Resolution approving the re-appoint Andrea Prichett to the Mental Health Commission, as representative of the general public interest category, for a second-three-year term beginning November 4, 2022 and ending November 3, 2025. And re-appoint Edward Opton as a representative of the general public interest category, for his first term ending January 21, 2023 and his second-term beginning January 22, 2023 to January 21, 2026.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The Mental Health Commission is authorized to be composed of thirteen members. However, there are presently four vacancies on the Commission. These vacancies impair the Commission's ability to adequately review and evaluate the community's mental health needs, resources, and programs.

Approval of the recommended action will keep 2 two positions filled and allow the Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

BACKGROUND

California State law requires that appointments to the Mental Health Commission meet specific categories, who may serve up to nine years consecutively. The general public interest category may include anyone who has an interest in and some knowledge of mental health services. The special public interest category includes direct consumers of public mental health services and family members of consumers, which together must constitute at least fifty percent or seven of the commission seats. Direct

consumers and family members shall each constitute at least 20% of the commission membership. Two members shall be residents of the City of Albany with at least one of these seats filled by a direct consumer or family member.

Currently, the Mental Health Commission consists of the following openings: two Berkeley Special Public Interest Commissioners; two Berkeley General Public Interest Commissioners; one Albany General Special Interest Commissioner; and one Mayoral appointee.

At its August 23, 2022 special commission meeting, the Mental Health Commission interviewed Andrea Prichett who is a teacher with the Berkeley Unified School District (BUSD), a board member of the Berkeley Flea Market, and a police accountability advocate. Ms. Prichett is a founder and leader for more than 32 years of Berkeley Copwatch, a nonprofit organization “dedicated to monitoring the police and non-violently asserting our rights”.

Ms. Prichett has served on the Mental Health Commission for 3 years. One of her main focuses has been on people living with mental illness and substance use issues and disorders and the interactions with law enforcement, as well as non-police crisis response service to distressed people in the community. She has spoken on and shown videos of police encounters with people living with mental illness to the Mental Health Commission to illustrate this work. In addition, another of her main focuses is diversion of people with mental illness and substance use issues and disorders away from policing and further avoiding involuntary commitment and transfer to the county psychiatric hospital or criminal legal involvement and incarceration at the county jail. In July 2022, Ms. Prichett was one of 6 Commissioners to visit the crisis stabilization center, Amber House, located in Oakland. Amber House provides voluntary 23-hour emergency crisis stabilization services (1<sup>st</sup> floor) and a crisis residential home (2<sup>nd</sup> floor).

On August 23, 2022 the Mental Health Commission passed the following motion:

Re-Appoint Andrea Prichett to the Mental Health Commission

M/S/C (Opton, Turner) Make a motion to re-nominate

PASSED

Ayes: Escarcega, Fine, Jones, Opton, Kimber- Smith, Turner; Noes: None; Abstentions: Prichett; Absent: Taplin

At its August 23, 2022 special commission meeting, the Mental Health Commission interviewed Edward Opton for the General Public Interest seat. Mr. Opton is a retired attorney and has a Ph.D in clinical psychology and has volunteered at the National Center for Youth Law to improve mental health treatment for children in foster care. Mr. Opton has also been active in the community working on numerous issues that affect the community. Mr. Opton has served on the Mental Health Commission for 3 years. One of his focuses has been people living with mental illness and substance use issues and disorders and the intersection with law enforcement, the criminal legal system, and

incarceration systems in Berkeley and Alameda County, as well as non-police crisis response service to people in crisis in the community. In addition, he has focused on diversion of people with mental illness and substance use issues and disorders away from policing and further avoiding involuntary commitment and transfer to the county psychiatric hospital or criminal legal involvement and incarceration at the county jail. In June 2022, he was one of 4 Commissioners to visit the crisis stabilization center, Amber House, located in Oakland. Mr. Opton further served as the Mental Health Commission appointee to the Reimagining Public Safety Task Force.

On August 23, 2022 the Mental Health Commission passed the following motion:

Re-Appoint Edward Opton to the Mental Health Commission

M/S/C (Kimber-Smith, Prichett) Make a motion for the re-appointment of Ned (Edward Opton)

PASSED

Ayes: Escarcega, Fine, Jones, Prichett, Kimber- Smith, Turner; Noes: None;

Abstentions: Opton; Absent: Taplin

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

Approval of the recommended action will allow the Mental Health Commission to move one step closer to having a full and diverse complement of commissioners to review and evaluate the community's mental health needs, resources, and programs.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CITY MANAGER

The City Manager takes no position

#### CONTACT PERSON

Jamie Works-Wright, Commission Secretary, (510) 981-7721

Attachments:

1: Resolution

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

RE-APPOINTMENT OF ANDREA PRICHETT AND EDWARD OPTON TO THE MENTAL HEALTH COMMISSION AS A REPRESENTATIVE OF THE GENERAL PUBLIC INTEREST

WHEREAS, membership of the Mental Health Commission is composed of thirteen appointments by the City Council as a whole, including one appointment by the Mayor (*or designee*), six special public interest appointments, two appointments of residents of Albany (*one of which shall be a representative of the special public interest category*), and four general public interest appointments; and

WHEREAS, with the ongoing implementation of the Mental Health Services Act, the City of Berkeley will need to have a full complement of diverse appointees to the Commission to review and evaluate the community's mental health needs, resources, and programs and to fulfill its mandate; and

WHEREAS, the Mental Health Commission, at its August 23, 2022 meeting recommended the re-appointment of Andrea Prichett and Edward Opton to the Mental Health Commission.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council re-appoint Andrea Prichett to the Mental Health Commission, as representative of the general public interest category, for a three-year term beginning November 4, 2022 and ending November 3, 2025. And re-appoint Edward Opton as a representative of the general public interest category, for his first term ending January 21, 2023 and his second-term beginning January 22, 2023 to January 21, 2026.



Rashi Kesarwani  
Councilmember District 1

CONSENT CALENDAR

November 3, 2022

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author)

SUBJECT: Referral to Conduct an Automatic Traffic Calming Review for the Area Immediately Surrounding the Project at 1201-1205 San Pablo Avenue

RECOMMENDATION

Refer to the City Manager to conduct an automatic traffic calming review for the area immediately surrounding the streets of the project located at 1201-1205 San Pablo Avenue within six (6) months of the building's occupancy reaching 90 percent of its capacity with the intent of expediting the traffic calming process for neighbors impacted by the development of this project.

The traffic calming review should include the following intersections:

Gilman and Kains  
Gilman and Stannage  
Harrison and San Pablo  
Harrison and Kains  
Harrison and Stannage

CURRENT SITUATION AND ITS EFFECTS

***The City's Traffic Calming Process is lengthy, requiring significant time and effort from residents.*** The typical process for initiating traffic calming measures in residential areas entails several requirements just to determine eligibility for a traffic survey:

- A neighbor living in the petition area submitting a [Neighborhood Request for Traffic Calming Study](#) identifying both the specific location of the area in question and the type of concern by the annual December 31 deadline for the following review cycle;
- Satisfying the minimum criteria to qualify for traffic calming:
  - Any residential street and a petition showing that 50% + 1 of households within the petition area defined by City staff support the proposal. AND,
  - At least one of the conditions noted below:
    - Where the 85th percentile speed profile is greater than 5 mph over the speed limit; OR

- Where there is a proximity to school or park (within two blocks), or senior center (within one block) combined with 85th percentile speed profile greater than 3 mph over the speed limit; OR
  - Where the traffic calming measure would mitigate a documented collision pattern (bike, pedestrian, motor vehicle); OR
  - Where there is a documented problem of a significant or inappropriate number of “through” motor vehicles on the street or in the neighborhood, per ITE (Institute of Transportation Engineers) volume guidelines for neighborhood streets.
- Evaluation by City staff ensuring compliance with minimum criteria.<sup>1</sup>

After these steps, a traffic survey is conducted within the petition area to validate problems of significance that, if appropriate, could lead to a traffic study to determine a list of identified solutions. If the area qualifies for traffic calming, community meetings are called to engage the neighbors to select a solution. In the final step, staff prepare the cost estimates and integrate the project into the City’s Capital Improvement Plan (CIP). The entire process of the review cycle, from the beginning of the calendar year when staff review the newly collected applications to the preparation of cost estimates and prioritization for inclusion within the CIP takes an entire calendar year. Construction of any traffic calming mitigations begins the next calendar year – at a minimum 13 months from the date of the initial submission of the Neighborhood Request for Traffic Calming Study application.<sup>2</sup>

***Neighbors in close proximity to the 1201-1205 San Pablo Avenue project site have been in the appeal process since spring of 2021 and are deeply concerned about the traffic impacts of adding a 66-unit building.*** This referral requests an expedited traffic calming review process to address any increase in traffic impacts once the new development is nearly at full capacity. As numerous residents of the neighborhood have already made clear in their appeal letter included within the appeal packet<sup>3</sup> and through numerous communications sent directly to City Council, a traffic study will be needed to help identify and potentially mitigate traffic related safety concerns. The regular traffic calming process can be expedited for this group of residents by circumventing the initial stages of the review process by allowing them to skip the application and signature gathering phase, shortening the lengthy process by several months.

## BACKGROUND

On May 11, 2021, 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. In December of that year, the Zoning Adjustment

<sup>1</sup> See City of Berkeley website: [Request Traffic Calming](#)

<sup>2</sup> See this [Timeline](#) for Neighborhood Traffic Calming, found on the City of Berkeley Request Traffic Calming webpage: <https://berkeleyca.gov/city-services/livable-neighborhoods/request-traffic-calming>

<sup>3</sup> See pages 72 - 82 of the September 29, 2022 Appeal Packet for ZAB Appeal 1201-1205 San Pablo Avenue Use Permit #ZP 2021-0070 for the [September 29, 2022 City Council Meeting, item #7](#)



Board (ZAB) conducted a public preview and provided a preliminary review of the project. In January, 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 18, 2022, Councilmember Kesarwani met with the neighbors to hear their concerns and answer questions related to this project and several new housing laws. 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 two residents living in close proximity to the proposed development: 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 hears the appeal on Thursday, September 29th, 2022.

#### FISCAL IMPACTS

There are no direct fiscal impacts of expediting the traffic calming review process as this work is part of the standard process available to all residents throughout the City.

#### ENVIRONMENTAL IMPACTS

Traffic mitigation measures could slow down traffic and discourage the use of single-occupancy vehicles, thus decreasing greenhouse gas emissions.

#### CONTACT

Rashi Kesarwani, Councilmember District 1

(510) 981-7110





CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Taplin, Vice Mayor Harrison (co-sponsor),  
Councilmember Hahn (co-sponsor)

Subject: Budget Referral: Down Payment Assistance (DPA) and Closing Cost Assistance  
Revolving Loan Fund Pilot

### RECOMMENDATION

Refer to the budget process \$500,000 for a local Down Payment Assistance (DPA) and Closing Cost Assistance Revolving Loan Fund Pilot Program, providing third-lien shared appreciation loans (SALs) to cover down payments and closing costs for qualifying applicants in a racial equity and reparative justice framework consistent with regulations for local, state, federal, and nonprofit DPA programs including, but not limited to: California Dream For All (CalHFA), AC Boost (Alameda County), Community Seconds (Fannie Mae), and Black Wealth Builders Fund. The City should aim spend no more than 10-20% on administrative costs if existing resources are insufficient.

### FINANCIAL IMPLICATIONS

\$500,000 in general fund impact. Shared appreciation loans are repaid only upon transfer, refinancing, or sale of qualifying properties; the effective interest rate would be the property's net appreciation. All funds not allocated to program staffing would thus eventually be repaid with interest. To the extent feasible, administrative costs should be leveraged with state and regional resources, and other approved policy initiatives focused on reparative justice, including the Office of Racial Equity and consulting/community outreach for reparations.

The maximum loan amount for AC Boost applicants earning up to 100% of Area Median Income is \$210,000 and \$160,000 for households earning less than 120% AMI for a 97%-100 Combined Loan-to-Value (CLTV). Therefore, at a maximum, if \$210,000 only covered a 17% down payment, a household could cover the remaining 3% with roughly \$37,000. Since not all applicants qualify for the maximum amount or will require a full 3%, and layering with other assistance programs is strongly encouraged, smaller loan amounts per applicant can be anticipated.

### CURRENT SITUATION AND ITS EFFECTS

Down Payment Assistance and Closing Cost Assistance is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

Rising housing costs have widened the racial wealth gap, exacerbated gentrification and accelerated displacement in historically red-lined Black and brown communities across the Bay Area. Patterns of historical discrimination against people of color in

mortgage lending, insurance, and consumer credit enforced by government policy and private sector practices<sup>1</sup> have compounded with discrimination in appraisals, infrastructure, employment and education such that homeownership increasingly drives the racial wealth gap.<sup>2</sup> The disproportionate declines in homeownership rates for Black and Latino households following the Great Recession and COVID-19 Recession have widened this gap further.<sup>3</sup>

High costs in Berkeley are driven in part by the lack of available housing for a growing population of middle-income households (80-120% of Area Median Income) who are increasingly priced out of first-time homeownership opportunities. As recent Census maps published in *Berkeleyside* have shown, South Berkeley saw a dramatic decline in the share of its Black population from 2010 to 2020 (34/3% decline in the San Pablo Park tract), while the share of Black populations increased in census tract with increased multifamily housing in the same period of time (e.g. Downtown Berkeley tract, 44.1% increase).<sup>4</sup>

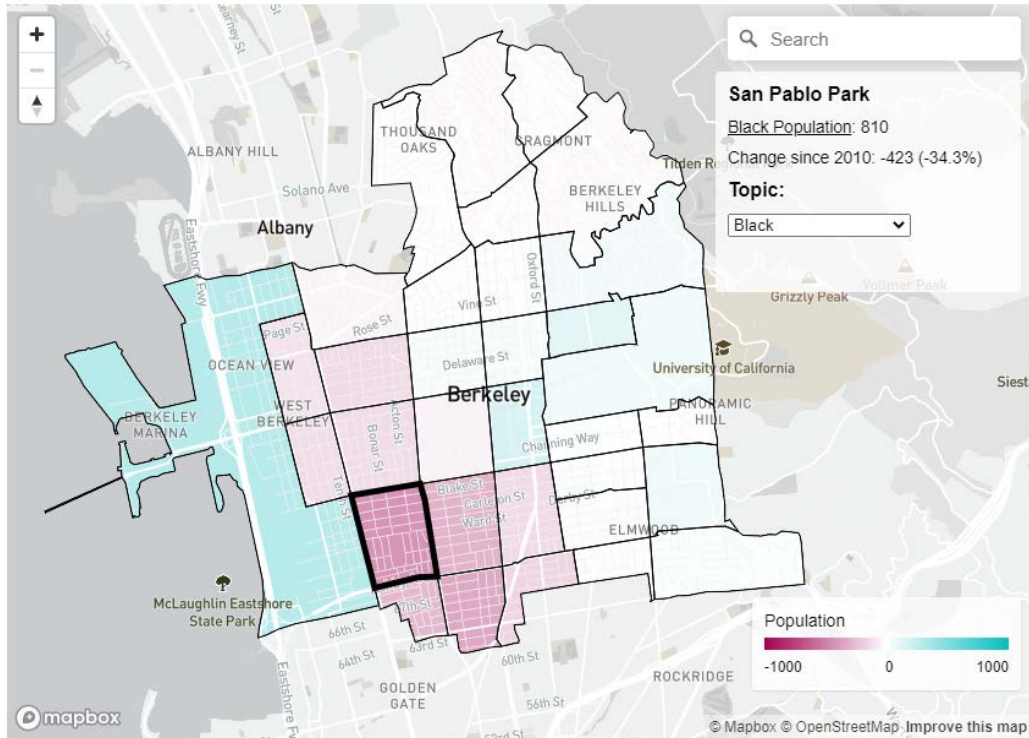
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<sup>1</sup> Baradaran, M. (2017). *The color of money: Black banks and the racial wealth gap*. Harvard University Press.

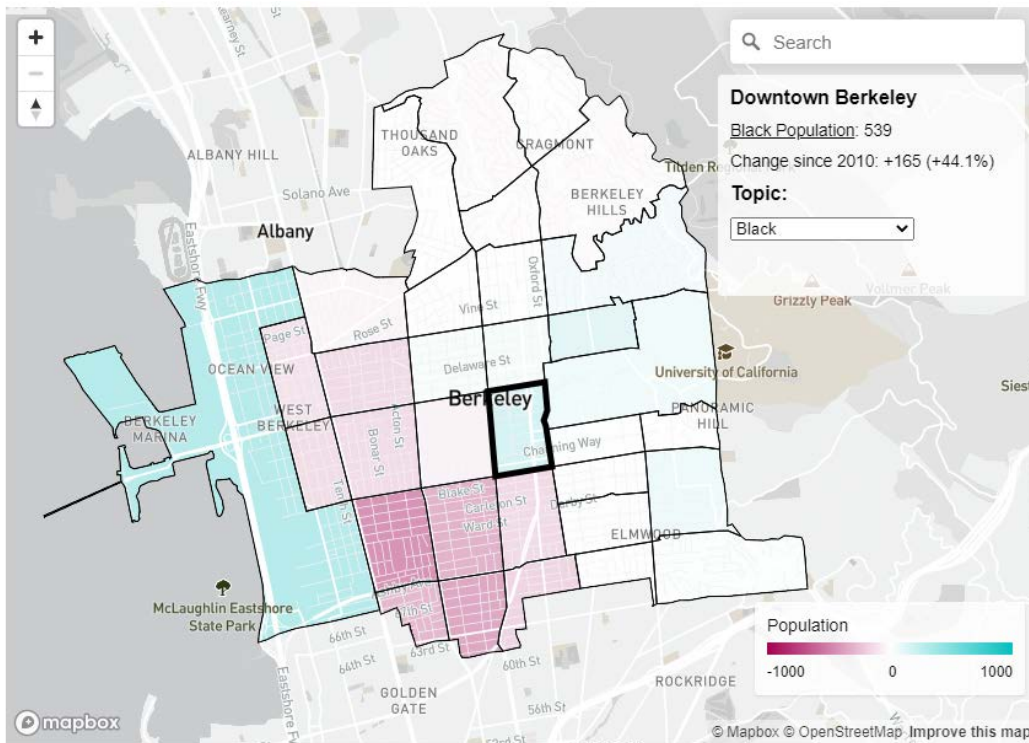
<sup>2</sup> Ray, R. et al. (2021). Homeownership, racial segregation, and policy solutions to racial wealth equity. *Brookings Institution*. Retrieved from <https://www.brookings.edu/essay/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/>

<sup>3</sup> Choi, J.H. (2022). Disparate impacts of the COVID-19 Pandemic Across Race and Ethnicity in the Housing Market: Statement before the Committee on Financial Services, U.S. House of Representatives. *Urban Institute*. Retrieved from <https://www.urban.org/sites/default/files/2022-08/Disparate%20Impacts%20of%20the%20COVID-19%20Pandemic%20Across%20Race%20and%20Ethnicity%20in%20the%20Housing%20Market%20with%20QFRs.pdf>

<sup>4</sup> Markovich, A. (2022). A changing Berkeley: 6 maps show how the past decade has reshaped the city. *Berkeleyside*. Retrieved from <https://www.berkeleyside.org/2022/07/17/berkeley-population-demographics-housing-census-2020-maps>



Demographic change in race/ethnicity by census tract, 2010 to 2020. Select a racial/ethnic group from the drop down menu to see the group's change in population from 2010 to 2020. Data: U.S. Census. Visualization: Darrell Owens and Doug Ng



The Berkeley City Council has committed to equitably increasing housing supply in its Sixth Cycle Housing Element Update in a 2021 Resolution to End Exclusionary Zoning in Berkeley and pursuant to Affirmatively Furthering Fair Housing standards in Assembly Bill 686 (2019). Additionally, Berkeley's Neighborhood Preference Program aims to affirmatively redress displacement in lower-income communities of color by providing preference to former Berkeley residents in our affordable housing lottery. Due to the persistent high cost of housing in Berkeley, further efforts to level the homeownership playing field offer an important tool for redressing the racial wealth gap.

Recent efforts in the state of California and Alameda County have focused on maximizing racial justice outcomes in homeownership through Down Payment Assistance (DPA). The California Dream For All program, established by Senate Bill 197 (2021), established a revolving fund for shared appreciation loans (SALs) providing down payment assistance to low- and moderate-income homebuyers in the purchase of owner-occupied homes. The California Housing Finance Authority (CalHFA), which administers the program, is currently developing draft program terms.

In Alameda County, voters approved \$580 million in General Obligation bonds for affordable housing as Measure A1 in June 2016, which included funds for down payment assistance. The AC Boost program was established by the Board of Supervisors to provide second-lien shared appreciation loans capitalized by \$50 million in Measure A1 funds. As of March 2022, the program had reserved \$7.43 million in funds for 38 applicants. The program design includes provisions to encourage applicants to purchase homes near work or public transit, benefit former residents who have been displaced from the County, and benefit educators and first responders. The program provides multilingual outreach and marketing, and tracks racial equity outcomes (see Attachment).

The high cost of housing in Berkeley means fewer homes available on the market will qualify an applicant for the maximum loan amount (\$160k-\$210k for a 0-3% down payment), and that additional closing costs will price out marginal applicants.

Hello Housing, the nonprofit program manager for AC Boost, reported to the District 2 Council Office that 22% of survey respondents said they could cover the 3% down payment but not closing costs.

In AC Boost's first and second funding cycles, out of 17 Berkeley residents who submitted complete applications:

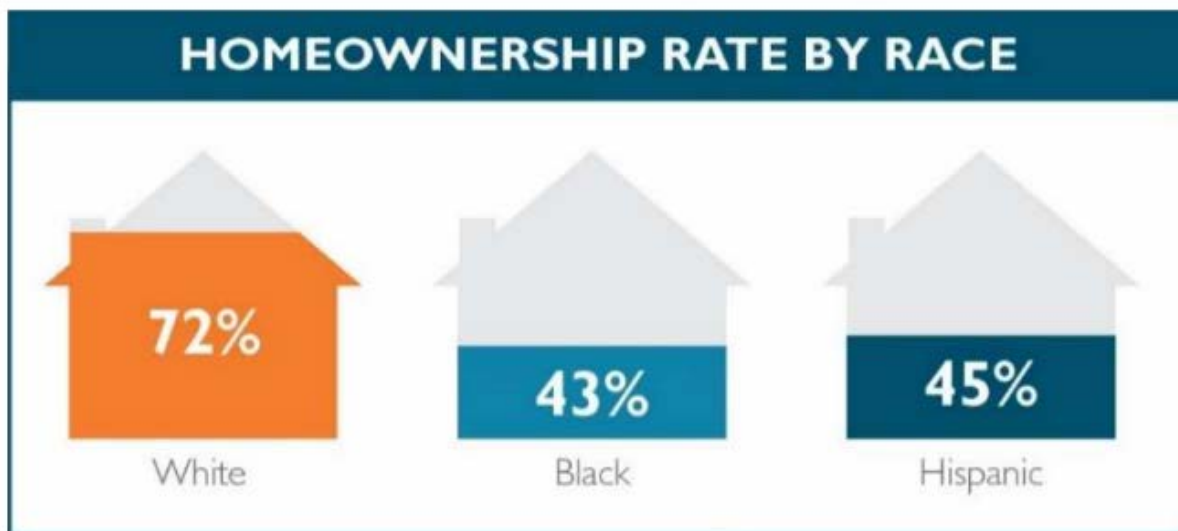
- 9 applicants were approved for a reservation of funds
  - 3 had their reservation of funds expire
  - 3 are currently shopping for homes
  - 3 purchased a home in:
    - Emeryville (2)
    - Oakland (1)

## BACKGROUND

Between 1934 and 1968, 98% of mortgages that received government backing were extended exclusively to White households. Evidence indicates that a first-time Black homebuyer is less likely to be able to afford a 20% down payment, but no more likely to default on payments than a white homebuyer who can—rather, the disparity in mortgage defaults has been attributed to higher and variable interest rates in predatory lending practices that target communities of color.<sup>5</sup>

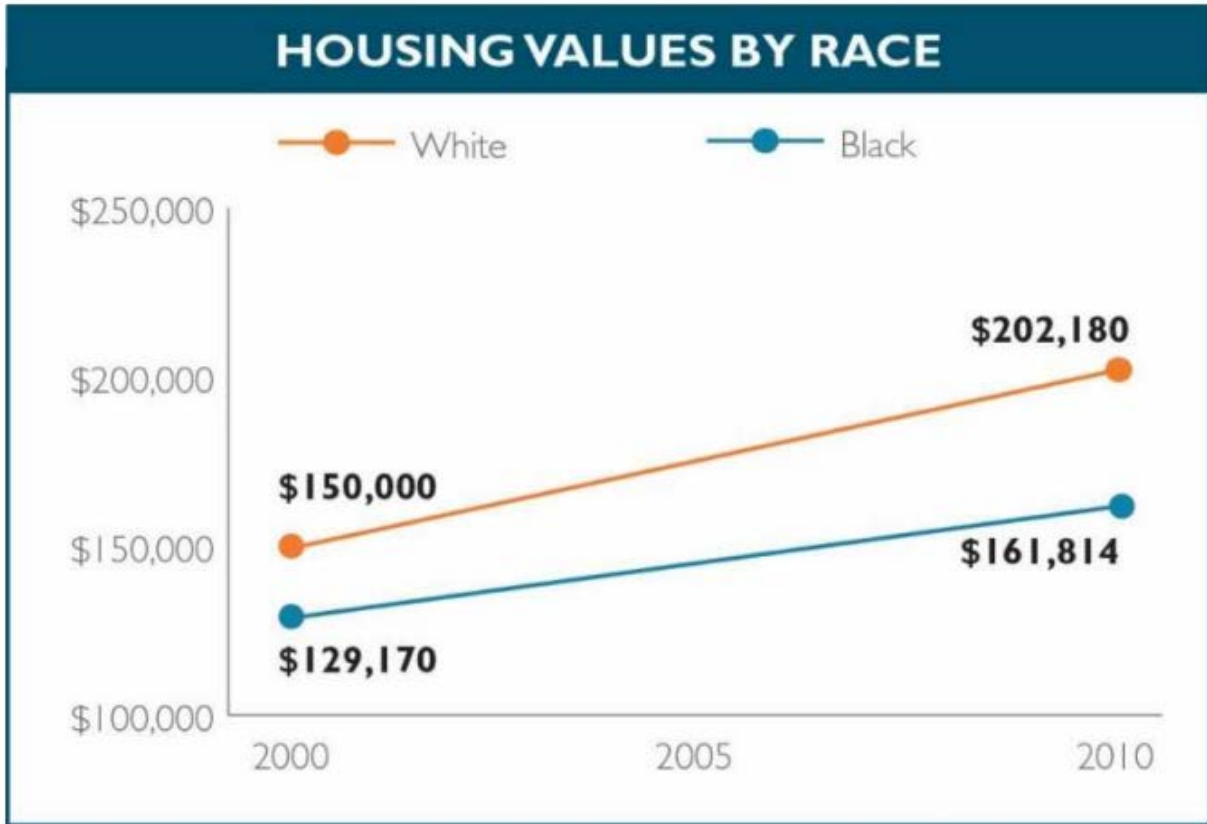
Because Black households have historically been excluded from wealth-building opportunities even after centuries of zero compensation for forced labor, the asset wealth and liquid savings of white households are more easily transferred and sustained across generations, while Black wealth has remained tenuous over repeated cycles of theft and destruction through redlining, Urban Renewal, and predatory lending.

Disparities in property appraisal and lending discrimination have exacerbated the institutionally-enforced racial wealth gap. Inequities in access to credit effectively make the homeownership gap a self-fulfilling prophecy of poverty and lending discrimination. This is the result of public policy choices intended to reinforce racial inequality; affirmative and targeted public investment must now reverse it.

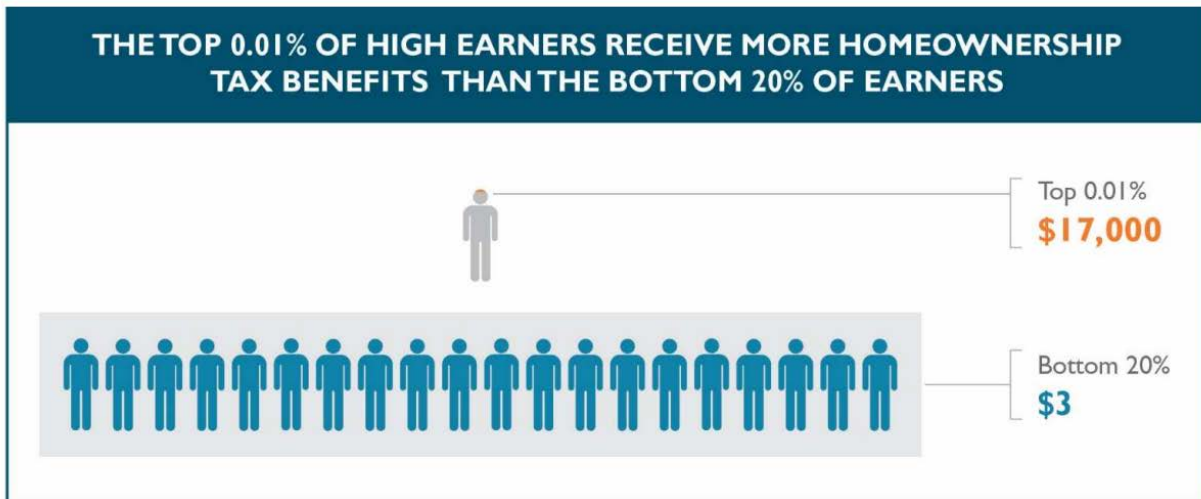


Source: Pew Research Center, 2017

<sup>5</sup> Chopra, A. et al. (2017). A Downpayment on the Divide: Steps to Ease Racial Inequality in Homeownership. *Prosperity Now*. Retrieved from <https://prosperitynow.org/resources/downpayment-divide-steps-ease-racial-inequality-homeownership>



Source: Institute on Assets and Social Policy, 2014



Source: From Upside Down to Right-Side Up, 2014

CA Dream For All and other DPA programs are financially sustainable policy interventions to close the racial wealth gap primarily because sufficient cash savings to



afford 20% combined loan-to-value (CLTV) down payments for a first home demonstrably do not correlate with future debt servicing capacity. However, Black households disproportionately lack access to high quality mortgages. Nationally, Black households nationally had a median debt-to-income ratio of 41% in 2020, compared to 37% for white households; in October 2020, 45% of Black consumers had subprime credit scores, compared to 18% of White consumers. Black and Latino homebuyers disproportionately rely on federal assistance through FHA loans, which private lenders perceive as riskier and thus have larger mortgage payments to account for lower down payments. However, the California Treasurer’s Office reports that sellers are indifferent to the use of shared appreciation loans (SALs) covering down payments, which makes them a potentially effective and scalable tool for reducing racial disparities in homeownership.<sup>6</sup>

Figure 12: Loan Application Denial Rates for All Applicants and Applicants Over 120 AMFI, by Race

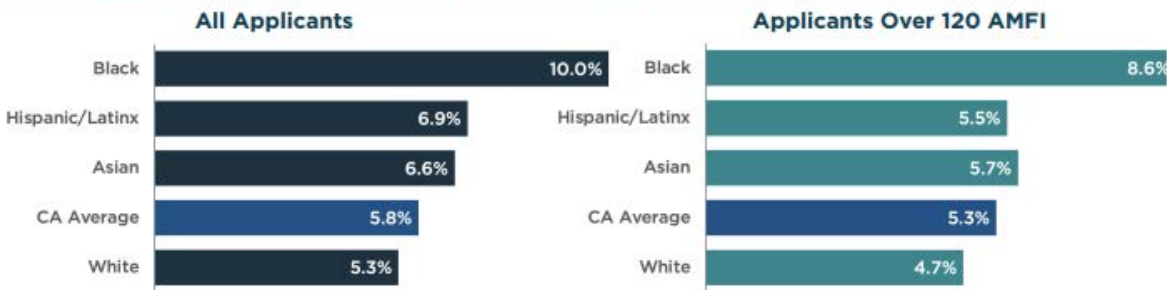
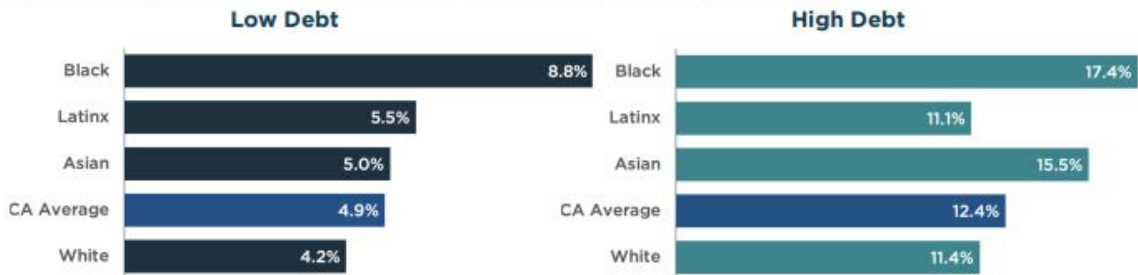


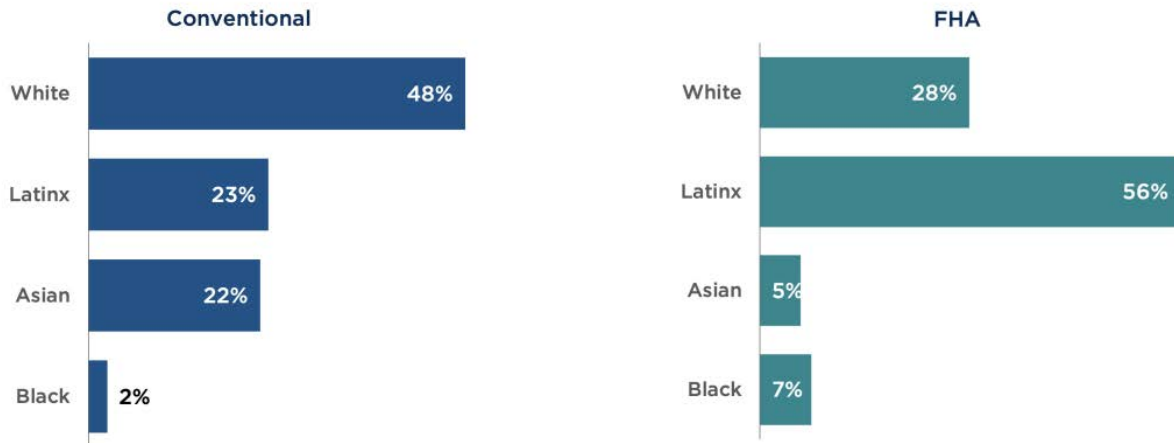
Figure 13: Loan Application Denial Rates for Low-Debt and High-Debt Applicants, by Race



Source: HMDA 2020

<sup>6</sup> CA Fwd. et al. (2022). California Dream For All: A Proposed Shared Appreciation Loan Investment Fund for the State of California. *California Treasurer’s Office*. Retrieved from <https://www.treasurer.ca.gov/publications/ca-dream-for-all-report.pdf>

Figure 14: Share of Conventional and FHA Loans Issued to Borrowers, by Race



The Treasurer’s report further states: *“SAL’s most compelling advantage is the combination of reducing the monthly payment to a household, while generating revenue to serve future households and providing protection to the homebuyer in the event of depreciation. The biggest drawback is the financial complexity of the terms for a SAL... A well-designed SAL can provide borrowers the opportunity to build wealth in upside scenarios and share losses in downside scenarios.”*

Figure 22: Illustrative Example of Shared Appreciation Loan in Downside and Upside Scenarios



Sources: HR&A Advisors

In order to maximize reparative racial justice outcomes and maintain fiscal sustainability for future generations, a municipal DPA initiative should include the following program considerations:

1. **Ensure that applicant eligibility is compatible with existing DPA programs so that applicants can “layer” multiple loans to cover 100% combined loan-to-value (CLTV).** As a second lien program, Alameda County has approved layering AC Boost loans with subordinate loan programs such as WISH Funds, NeighborhoodLIFT Funds, the Black Wealth Builders Fund, and several closing cost assistance programs. However, the lotteries of AC Boost applicants and their corresponding applications for subordinate loans may not necessarily overlap, making layering more difficult.
2. **As much as feasible, integrate administrative processes so that applicants in high-cost cities can seamlessly layer state and regional assistance programs, including CA Dream For All loans and future programs planned for the Bay Area Housing Finance Authority (BAHFA).**
3. **Enable SALs to cover closing costs in addition to down payments.** Consider cost-benefit tradeoffs for limiting closing cost assistance to escrow fees (e.g. escrow services, title insurance, document preparation, recording fees, etc.) rather than lender fees (e.g. mortgage origination).

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

AC Boost’s down payment assistance fund includes incentives to reduce Vehicle Miles Traveled (VMT) while mitigating displacement by encouraging home purchases close to jobs and public transit. According to Wheeler et al (2018), the urban core of the San Francisco Bay Area (including Berkeley) contains some of the lowest carbon emissions per capita in California, making urban infill housing a key policy lever for cities to reduce carbon footprints by reducing VMT per capita.<sup>7</sup> Preventing displacement from Berkeley also prevents increased emissions from households who would otherwise be priced out to areas with higher per capita emissions.

#### CONTACT PERSON

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#### ATTACHMENTS

1. CA Dream For All - Treasurer’s Office Report
2. AC Boost: Measure A1 Oversight Committee Presentation
3. Black Wealth Builders Fund - Frequently Asked Questions

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<sup>7</sup> Wheeler, S. M., Jones, C. M., & Kammen, D. M. (2018). Carbon footprint planning: quantifying local and state mitigation opportunities for 700 California cities. *Urban Planning*, 3(2), 35-51.



# CALIFORNIA DREAM FOR ALL: A PROPOSED SHARED APPRECIATION LOAN INVESTMENT FUND FOR THE STATE OF CALIFORNIA



This report was prepared for the California State Treasurer's Office by California Forward with assistance from HR&A Advisors, CSG Advisors, and California Community Builders.



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ACKNOWLEDGMENTS



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# I. EXECUTIVE SUMMARY

**This report provides a design framework for the California Dream for All, a proposed shared appreciation loan investment fund for the state of California.** In July 2021, the California legislature enacted Assembly Bill 140 (AB 140), which empowered the California State Treasurer's Office to develop a design framework for the California Dream for All program that makes homeownership more affordable to low- and moderate-income Californians.

**California faces an unprecedented gap in access to housing that is affordable, particularly for ownership.** Home prices across the state have spiraled upwards for years. According to the California Association of Realtors, the median sales price for a single-family home was \$786,000 in 2021—a 38% increase since 2018, before the onset of the COVID-19 pandemic. Meanwhile, incomes have failed to keep pace with increasing prices. In 2020, the median home price was 8.5 times median yearly income—a level that is nearly four times the ratio in 1969. Lack of affordability is a challenge in every community across the state, but is more acute in some regions than others. For example, the median house price in the Bay Area is nearly double the median house price in the Inland Empire. Aspiring homeowners in the Inland Empire still struggle to find the resources to afford a home, but in the Bay Area, the challenge is even more acute. These types of regional variations abound across the state.

**The high price of homeownership has disproportionately impacted first-time homebuyers.** As house prices grew, so did the amount of wealth necessary to make a down payment on a house. In 2021, a 20% down payment on a median price home would total \$119,000; this represents one and half times the amount that the average household in California makes in a year. Very few first-time homebuyers have access to this level of savings, and as a result, most choose to make much smaller down payments, which in turn increases their monthly mortgage costs. According to a survey by the California Association of Realtors, first-time homebuyers put down 6% compared to repeat buyers who put down 12%. Homebuyers who make smaller down payments must often take on supplementary costs like mortgage insurance, and frequently face additional fees or higher interest

rates. These costs make it difficult for first-time homebuyers to maintain homeownership, or to access the wealth benefits that homeownership may offer.

**Accessing homeownership and making a large down payment is often even more difficult for low-income communities and communities of color.** This program is designed to provide assistance to homeowners from all disadvantaged groups, especially those that have been the targets of both legal and social discrimination. Black and Latino households, for example, are far less likely to receive down payment assistance than are White households, and the percentage of home loans going to Black and Latino families are both approximately 20% lower than their shares of the population. As a result, statistics on racial disparities will often be used to highlight the gap between communities of economic and social privilege and those that need this program to access the California dream of homeownership. Yet it's also clear that challenges extend far beyond racial discrepancies—between 2010 and 2019, for example, the homeownership rate decreased from 48% to 44% for all households with incomes of less than \$100,000. This program is designed to benefit disadvantaged communities of all demographics, and racial disparities are far from the only driver of action.

**California has a wide range of homebuyer assistance programs that help households access ownership, but their impact is limited.** The majority of homebuyer assistance programs administered statewide offer between 3% and 5% down payment support, which is not enough to eliminate the need for mortgage insurance in most cases. And many of these programs at the local and state level are constrained by uneven funding allocations that make it difficult to serve even a fraction of the need across the state. Nevertheless, these programs have benefitted many homeowners and will often work in concert with the program outlined in this report in some cases eliminating the need for a down payment entirely. And the existing ecosystem of service providers, mortgage underwriters and community financial counselors that support potential homebuyers through these programs can be leveraged to serve a far larger number of households.

### One option to expand access to homeownership in California is through a “shared appreciation” loan (SAL) supported by the State.

SALs are repaid through a portion of the amount that the home price appreciates in value over time. Homebuyers do not make a payment on the loan until they sell the property. A SAL as designed below even splits the risk of home price depreciation with homebuyers. The result of this financing structure is both dependable and lower monthly housing costs than other financing options available to homebuyers with limited savings. While a SAL cannot by itself solve the supply-side issues that dramatically impacted housing affordability in California, there may be future opportunities to link shared appreciation to other reforms in order to increase housing supply.

### With a few key design decisions, a SAL supported by the State could significantly expand access to homeownership by making homeownership more affordable and by reducing the amount of wealth required to purchase a home.

Several privately-funded SAL programs exist, but they generally have program features that are less favorable to homebuyers due to the rate of return required by the private capital. In order to maximize public benefit and support first-time homebuyers, a sustainable and

prudent long-term product should include the following design features:

- A loan amount that ensures a 20% down payment, but no more than 30%;
- Income targeting between 100% and 150% of area median income to allow for regional variation in home pricing;
- A 1 to 1 (or “pro rata”) split between the homebuyer and the program in the appreciated value of the home;
- Flexibility to target originations and design terms to support disadvantaged communities

Helping households reach a 20% down payment significantly reduces the cost of homeownership and increases affordability. The size of the first mortgage is reduced, and mortgage insurance is eliminated, which substantially cuts monthly payments. For example, if a household used a SAL to achieve a 20% down payment instead of relying on a Federal Housing Administration (FHA) loan to purchase a median-priced home, their monthly payment would fall by almost \$1,200. Shared appreciation offers a lower cost of homeownership that makes it more sustainable for homebuyers who would otherwise be unlikely to own a home.

## WHAT IS A SHARED APPRECIATION LOAN?

SALs offer an alternative to either public subsidy or conventional mortgage financing. That is, a SAL is repaid through a predetermined percentage of the appreciation, or depreciation, in the home’s value. This contrasts with conventional mortgages that have a fixed or variable interest payment on the outstanding loan amount. It also is different from a subsidy program where the assistance is not repaid.

***At the time of the home purchase, SALs reduce the amount of down payment borrowers need to pay into the transaction. A SAL replaces some or all of the down payment a household would provide for a conventional loan.***

*SALs are commonly structured as second mortgages. Second mortgage lenders can have specific credit, equity and income requirements that borrowers must meet. The primary difference between a second mortgage and a first mortgage is how repayment is prioritized. If the borrower cannot repay the debt in full, both loans are secured with the same asset, but the first mortgage receives priority if the home is foreclosed or sold to repay the debt. The second*

*mortgage lender therefore assumes more risk. A SAL does not have monthly payments, and is therefore often called a “silent second” mortgage. The financial arrangement more closely resembles an equity investment in the property than a loan against the property. The basic terms of the second mortgage, such as interest rate and amortization schedule, are also set independently of the first mortgage. A SAL can align with the underwriting requirements of first mortgage lenders and the requirements of the secondary mortgage market because it becomes “junior” to the first mortgage. In other words, the first mortgage will be paid first in the event of a borrower default resulting in a foreclosure sale.*

*Sellers or developers are indifferent to whether a homebuyer uses a SAL. SALs do not directly impact the buyer or seller; homes are sold at a market rate through conventional market transaction processes. The seller, whether an investor, developer, or homeowner, lists the property and can receive offers from potential buyers with and without shared appreciation financing.*

**The State can support SALs through a statewide revolving fund: the CA Dream for All Fund.**

The goal of the Fund would be to increase access to homeownership for first-time homebuyers and disadvantaged communities, including previously redlined neighborhoods and historically marginalized groups like communities of color. The value created through appreciation will allow the initial public funding to help new homeowners in California for decades to come; for example, **with a present value investment of \$10.8 billion, the State would help generate about six times that amount in household wealth for low- and moderate-income homebuyers, while still continuing to receive future repayments to assist later borrowers.** If capitalized with \$1 billion annually for 10 years, the CA Dream for All Fund is projected to be able to make approximately \$48 billion in loan originations over 40 years, benefitting 157,000 homebuyers in the process. Assuming a rate of price appreciation that matches the last 40 years in California, assisted homebuyers would gain \$134 billion in wealth—a return that represents nearly six times the taxpayer cost of capitalizing the Fund. With this structure, the State faces very limited financial risk because the allocations are expected to revolve without exposure to additional financing needs. The CA Dream for All Fund could be financed through a combination of annual budget allocations, general obligation bond funds and revenue bonds.

**Clear requirements should govern the program's financing options in order to optimize its impact.**

To determine and assess program financing options, several minimum thresholds were set:

- **The funding approach should not limit who the program can help**, such as excluding areas of the state or preventing the program from assisting lower-income borrowers or those who need larger amounts of assistance.
- **The funding approach must be compatible with Fannie Mae and Freddie Mac underwriting requirements** and not prevent borrowers from using government-sponsored enterprise (GSE) first mortgages.
- **The funding approach should provide an ongoing way to help first-time buyers over many years to come**, rather than only helping buyers in the next few years, given future affordability pressures anticipated in California.
- **Investments of taxpayer funds need to be sustainable**, without significantly impacting the State's borrowing capacity, ability to promote housing that is affordable or ability to meet other critical needs.
- **The funding approach should not expose the State to any meaningful future financial risk**—for example, by requiring the State to cover shortfalls because of the CA Dream for All portfolio's performance.
- **The State should leverage taxpayer monies with non-taxpayer monies so as to expand the number of borrowers who are ultimately served—consistent with the purposes of the program**, without narrowing who can be helped, violating other minimum thresholds or reducing borrower equity.

These basic minimum thresholds operate as extremely important guardrails when considering different financial approaches and structures.

**Governance of the CA Dream for All Fund will require collaboration between a variety of stakeholders.**

The CA Dream for All Fund should have a board as well as an administrator. In order for the fund to meet its goals of supporting first-time homebuyers and disadvantaged communities, a community advisory board will also be critical. The community advisory board will help to ensure that specific groups or areas of the state remain represented in the CA Dream for All Fund's borrowers.

**The success of the CA Dream Fund for All will depend on how well it connects to existing systems and supports homebuyers who have traditionally been left out and left behind.**

In order to ensure that homebuyers both benefit from and comprehend the terms of a SAL, the CA Dream for All Fund will need to incorporate housing counseling into every step of the loan origination and servicing process. Borrower outreach will also be critical to ensure that mortgage lenders, counselors and target homebuyers fully understand the loan repayment mechanisms. Effective outreach will require making clear and easy-to-understand materials available in many languages. This is especially important since the wealth building benefits of the CA Dream Program accrue slightly more slowly than standard fixed interest rate down payment programs, and it is vital that homeowners understand the benefits and drawbacks of paying off their CA Dream for All loan. Furthermore, it will be important that the benefits of the program are clear to the real

estate industry—a group that includes not only real estate brokers, but also developers who may be able to structure new housing projects for CA Dream for All Fund borrowers over time.

The following report offers a blueprint for progress. First, it lays out the barriers to affordable homeownership facing Californians today, and the necessity for decisive action. Second, it explains the mechanics, uses and value of tools like shared appreciation loans to tackle the problem. Third, it proposes a comprehensive program designed to address our challenges and accomplish our objectives. Fourth, it lays out methods and structures for funding and financing this program in order to safeguard the State’s resources and

promote positive results. Fifth, it recommends strategies for outreach, equity and implementation to achieve the most effective impact. The report is accompanied by an appendix of supplemental materials including a glossary of terms, case studies, preliminary program guidelines, and additional supporting analyses.

Through deep research and analysis, this report presents a clear view of a complex issue. It demonstrates the stakes of our task and the scope of our solutions. Ultimately, it serves as a guide—describing where we have been, detailing where we are, and illuminating a sustainable and affordable pathway for homeownership.



## II. INTRODUCTION & BACKGROUND

In July 2021, the California Legislature enacted Assembly Bill 140 (Chapter 111, Statutes of 2021), which provided for a study to be undertaken by the California State Treasurer, in collaboration with the California Housing Finance Agency and the California Department of Housing and Community Development and other relevant parties, to develop a framework for a project called the “California Dream for All” program.

Following the 2007-2009 financial crisis and the ensuing Great Recession, capital requirements for banks originating and holding mortgage loans were altered in significant ways. The resulting tightening of lending standards has presented challenges to would-be first-time homebuyers everywhere—but in California, where median home prices in urban areas nearest to employment opportunities have risen to all-time highs, the problem is particularly acute.

The enabling legislation is aimed at reducing the cost of home ownership for lower- and middle-income Californians. The conceptual plan is also intended to enable and encourage homebuilders to sell homes at prices that are more attainable by purchasers in these demographics.

### Introduction

**This report provides a design framework for the California Dream for All, a proposed shared appreciation loan investment fund for the state of California.** In July 2021, the California legislature enacted Assembly Bill 140 (AB 140), which empowers the California State Treasurer’s Office to develop a design framework for the California Dream for All program that makes homeownership more affordable to low- and moderate-income Californians.

This report by California Forward (CA FWD) provides a summary of the challenges to affordable homeownership facing Californians today, the mechanisms by which a *shared appreciation loan (SAL)* investment fund could increase access to homeownership, the required fund design to meet policy priorities, an approach to financing and the implementation and governance needs of the proposed design.

### What the RFP required

The State Treasurer’s Office RFP said that a core goal of the CA Dream for All project would be “making home ownership more affordable by reducing the cost of such ownership for lower- and middle-income Californians.” The project team has committed to designing a program that effectively broadens choices for disadvantaged and vulnerable communities of all demographics—especially those that have been victims of historic and ongoing inequity in access to mortgage financing and homeownership, including communities of color.

A key component of fulfilling this commitment is ensuring that, as the program is implemented, it creates direct benefits for families and individuals whose ability to participate in the mortgage market has been impeded by current and historic policy decisions.

### Why this is important<sup>1</sup>

Homeownership provides people with the opportunity to build generational wealth, and can often be a tool for long-term economic prosperity and success. Homeowners can take advantage of economic opportunities like tax subsidies, and can increase wealth by gaining value in assets that will appreciate over time.

The ability to withstand a temporary loss of income or significant unexpected expense depends largely on having a reserve of wealth. In this regard, homeowners have a huge advantage over renters; in 2019, the median wealth of homeowners was \$254,900—more than 40 times the \$6,270 median for renters. Even when we don’t account for home equity, the median wealth of owners is \$98,500—more than 15 times that of renters.<sup>2</sup> Data from a long-term study that followed about 1,700 households from 1984 through 2009 revealed that a difference in years of homeownership was the largest driver of the wealth gap between White and Black families, accounting for 27% of the total gap—a greater influence than household income, differences in unemployment, college education, inheritance and pre-existing family wealth.<sup>3</sup>

1 “Housing, Homeownership, and the Racial Wealth Gap.” California Community Builders, March 2022. Retrieved from: <https://www.ccbuilders.org/housing-homeownership-and-the-racial-wealth-gap/>

2 “The State of the nation’s housing.” Cambridge, Mass.: Joint Center for Housing Studies of Harvard University, 2021. Retrieved from: [www.jchs.harvard.edu/state-nations-housing-2021](http://www.jchs.harvard.edu/state-nations-housing-2021)

3 Shapiro, Thomas, Tatjana Meschede and Sam Osoro. “The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide.” Institute on Assets and Social Policy, 2013. Retrieved from: [drum.lib.umd.edu/bitstream/handle/1903/24590/racialwealthgapbrief.pdf](http://drum.lib.umd.edu/bitstream/handle/1903/24590/racialwealthgapbrief.pdf)

Wealth changes our conception of social inequality, its magnitude and its origins. We know that wealth does not only rely on hard work or discipline; it depends greatly on systemic factors like access to capital, homeownership and other wealth building tools. In many cases, these are tools that the United States government made accessible for some families while intentionally leaving others behind—especially families of color and immigrants.<sup>4</sup> The intergenerational nature of wealth means that, without public interventions, it will be impossible for families that have historically been excluded from homeownership to catch up.<sup>5</sup> Access to homeownership should not be viewed as a housing or shelter issue, but instead as one concerning economic and social justice.

Homeownership is an important part of the American Dream. More than 80% of renters in America hope to own a home someday.<sup>6</sup> Homeownership helps families build wealth, and when lending is done responsibly, it creates a foundation for economic stability in the form of fixed housing costs. Yet there is persistent and well-documented inequality across racial lines in the ability to access and maintain homeownership.<sup>7</sup> White households are more likely to own their homes than any other racial group. For those non-White households lucky enough to be homeowners, most are more recent homeowners who are more likely to have high-risk mortgages and are most vulnerable to foreclosure and volatile housing prices.<sup>8</sup>

The value of homeownership includes control over one's own space, stable monthly payments, tax incentives and improved credit scores.<sup>9</sup> Home equity accounts for 60% of the total wealth among America's middle class.<sup>10</sup> Eliminating racial disparities in homeownership rates and home equity gains would shrink the racial wealth gap by 31% and 16%, respectively, according to a recent analysis by Demos.<sup>11</sup>

In sum:

- **Wealth grants families and individuals many benefits that impact their quality of life.** Of two families with the same income, but different levels of wealth, the family with more wealth has greater access to higher-quality education, more funds for retirement, better health, an improved ability to wait for the right job, a greater possibility of passing on wealth and better overall financial stability.
- **The ability to accumulate wealth does not rely on factors like hard work or persistence.** Rather, it relies on access to resources and capital that help individuals build wealth. Today, for example, communities of color who have not historically had access to wealth-building tools face a racial wealth gap that impedes their ability to reach economic prosperity and stability.
- **Access to capital has been and remains a major barrier to homeownership for low- and moderate income families, people of color and other disadvantaged communities.** Discrimination in lending practices and policies, as well as other barriers, have impacted disadvantaged communities for centuries—and the results here still being felt today.

## Why a focus on communities of color?

The California Legislature has for the past five years shown a significant and consistent commitment to addressing systemic inequality and the needs of disadvantaged communities, including communities of color, with a particular focus on creating equitable outcomes for all. Since 2018, examples of this commitment include the creation of the Collaborative on Race and Equity; passage of Assembly Constitutional Amendment 5 of the 2019–20 Regular Session,

4 Shapiro, Thomas M. "Race, homeownership and wealth." *Wash. UJL & Policy* 20, 2006. Retrieved from: [openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1242&context=law\\_journal\\_law\\_policy](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1242&context=law_journal_law_policy)

5 Weller, Christian, and Lily Roberts. "Eliminating the Black-White Wealth Gap Is a Generational Challenge." Center for American Progress, 2021. Retrieved from: [www.americanprogress.org/issues/economy/reports/2021/03/19/497377/eliminating-black-white-wealth-gap-generational-challenge/](https://www.americanprogress.org/issues/economy/reports/2021/03/19/497377/eliminating-black-white-wealth-gap-generational-challenge/)

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affirming the State's commitment to race and equity; creation of the Task Force to Study the Impact of Reparations for the Black Community; introduction of Senate Concurrent Resolution 92 of the 2019–20 Regular Session, which declared racism a public health crisis; and the passage of HR 39, which resolved that the Assembly will explore methods to integrate equity more formally into its daily activities, including the potential adoption of equity impact analysis into the existing committee and floor bill analysis process.<sup>12</sup>

An approach focused on equity and equitable outcomes is especially important in efforts related to homeownership. As the long-term financial impact of the COVID-19 pandemic continues to take shape, policy makers should learn from the aftermath of the Great Recession and the generational economic setbacks it caused for communities of color. While the foreclosure crisis caused the average family to lose 29% of their wealth, Black Americans lost 48% due to the dominant role of home equity in their wealth portfolios and the prevalence of predatory high-risk loans in communities of color.<sup>13</sup> At the same time, the Latino community lost a devastating 67% of total wealth.<sup>14</sup> Communities of color shouldered the burden of the crisis and were forced to either burn through their hard-earned savings or go into debt. For example, Black families' holdings of stock and mutual funds plummeted by two thirds—and given the long-term impacts of compounding interest, it will be very difficult to make up for this loss.<sup>15</sup> Discriminatory practices like redlining, mortgage steering and racially restrictive covenants—in addition to even wider structural problems like a lack of access to credit and lower incomes—have blocked the path to homeownership for

households among communities of color, while reinforcing racial neighborhood segregation.

Federal policies created in the 1930s during the Great Depression made widespread homeownership and middle-class wealth accumulation possible by subsidizing and insuring long-term, low-interest mortgages with a much smaller down payment than was ever previously possible. This action put homeownership within reach for millions of people for the first time. Future policies sustained this effort, including by creating additional tax incentives and by subsidizing highways to allow suburban development. These efforts have contributed to America's 69% homeownership rate, which is higher than in many other countries. However, most of these subsidies only helped White households—and at a time when homeownership was becoming the primary vehicle for wealth-building for the White middle-class, non-White communities were intentionally excluded from the homeownership market for decades.<sup>16</sup>

Today, the racial homeownership gap is widest for those between 25 and 29 years old and closes incrementally with age. The earlier in life a person buys a home, the more wealth they can accumulate as the home appreciates and the mortgage loan gets paid down.<sup>17</sup> As a result, home purchasing worsens wealth inequality for future generations.<sup>18</sup>

Neighborhoods that were previously redlined still have higher poverty rates and less economic mobility for children.<sup>19</sup> They still experience a reduced housing supply, offering fewer opportunities to buy.<sup>20</sup> Communities in these neighborhoods tend to have a lower life

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expectancy, and a higher incidence of chronic diseases.<sup>21</sup> At the same time, they also experience lower quality broadband access as well as lower house values and homeownership rates.<sup>22</sup>

These disparities are clear—yet simply increasing homeownership rates for households of color is not enough. Under current conditions, homeowners of color go into greater debt for less valuable homes. The average first home of a Black purchaser is valued at \$127,000 and has \$90,000 in mortgage debt, while White first-time homebuyers have an average home value of \$139,000 with \$75,000 in mortgage debt.<sup>23</sup> Reasons for the homeownership gap and home equity rising so much more for White homeowners include:

- The home-appraisal process has contributed significantly to the racial wealth gap. The history of redlining has led to homes in predominantly White neighborhoods appraising at nearly three times the value of a comparable home in a neighborhood with more communities of color.<sup>24</sup>
- Financial institutions reject households of color for home mortgages 60% more often than White families, even with comparable credit scores.<sup>25</sup>
- White families have more wealth to give as inheritances or to help with down payments, allowing their children to buy homes and start acquiring equity an average eight years earlier than Black families.<sup>26</sup>
- Due to having less money for down payments, families of color face higher interest rates. As a result, they tend to pay off their mortgages more slowly while paying much more in interest over the length of the loan.

- Households of color typically have higher student debt.

All these factors contribute to White families having a homeownership rate that is 23 percentage points higher than the average for non-White families throughout the country.<sup>27</sup> So, while homeownership has the potential to create wealth for anyone, unfair and unequal circumstances around homeownership widen the racial wealth gap. Of all the assets that lead to wealth, homeownership is often the first step and acts as a launching pad to asset diversity.<sup>28</sup> To ensure a future of wealth and racial equity, we must develop new ideas on how to increase homeownership opportunities and build wealth more equitably.<sup>29</sup>

Low-wealth homebuyers have needs that mainstream mortgage and homebuying programs often fail to address. For example, 33% of Black households have thin credit files, or credit-use levels that are insufficient for generating a credit score, compared to only 18% of White households.<sup>30</sup> Structural racism and other systemic factors that contribute to unemployment, income and student loan debt all affect credit history, which is a crucial factor in the mortgage loan approval process. Black borrowers fall 135 points below the overall average credit score for conventional loans, and Latino borrowers are 85 points lower.<sup>31</sup> Evidence suggests that this difference has little or nothing to do with individual borrower responsibility, and a lot to do with the fact that the credit scoring system is the product of a financial services industry that has structurally disadvantaged communities of color. Credit scoring systems are well-known for disadvantaging households of color. Including rent, cell phone and utility

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payments in credit scoring could help households of color demonstrate their creditworthiness.

While many of these issues have affected individuals who have lived in America for generations, more recent immigrants face unique challenges. Although Asian and Pacific Islander (API) households have a relatively high homeownership rate of around 60% as a whole, less than half of Pakistani (43%), Laotian (45%), Thai (46%), Korean (46%), Pacific Islander (41%) and Cambodian (39%) households own their homes.<sup>32</sup> This disparity shows the importance of disaggregated data when analyzing racial equity indicators. Data broken down by ethnicity, micro-geography and many other factors gives us information that a broad category like “Asian American” or “API” tends to obscure.

The Home Mortgage Disclosure Act (HMDA) requires financial institutions to provide mortgage data to the public. The first HMDA data disaggregated by race collected in 1991 revealed a striking racial disparity in loan denial rates for different groups: Black households were denied almost 250% more than White households, and the Latino denial rate was 50% higher than the White denial rate.<sup>33</sup> A study published in the *American Economic Review* concluded that “even after controlling for financial, employment, and neighborhood characteristics, Black and Latino mortgage applicants in the Boston metropolitan area are roughly 80% more likely to be turned

down than whites.”<sup>34</sup> Since the Great Recession, it has become even more difficult for lower-income families to access mortgage credit as lenders tightened their lending rules.<sup>35</sup> If racial and ethnic disparities in homeownership rates caused largely by disparities in access to credit were eliminated, the Black-White wealth gap would shrink by 31%.<sup>36</sup> Limiting access to homeownership only serves to weaken the U.S. economy and widen the wealth gap.<sup>37</sup>

Securing enough cash for closing and a down payment creates another huge barrier to homeownership for many families. More than half of renters see the down payment as the major obstacle to buying a home. Increasing the visibility of and access to down payment assistance will especially benefit young homebuyers of disadvantaged groups like communities of color, who are less likely to receive parental support when purchasing a home than their White counterparts.<sup>38</sup>

## Access to Affordable Homeownership in California

Californians have limited access to affordable homeownership due to a series of barriers that are detailed in the following section. The first set of barriers is at the market level, where the gap between housing demand and supply continues to increase and home prices are growing faster than household income. The result is that homeownership is becoming increasingly inaccessible to moderate-income renters, who are remaining in rental units or moving out of the state. The second set of financial barriers involves more limited and expensive mortgage options for first-time homebuyers than conventional mortgage financing. There are also barriers at the household level where homebuyers, particularly from lower-income households, face difficulty saving for closing costs and down payments, often as a result of long-term racial inequality. Finally, COVID-19 created market shocks throughout the state that have further reduced access to homeownership.

According to the most recent data from the **California Dream Index**, the homeownership rate is 35% for Black families and 44% for Latino families. White families have a 59% homeownership rate.



**CALIFORNIA  
DREAM INDEX**

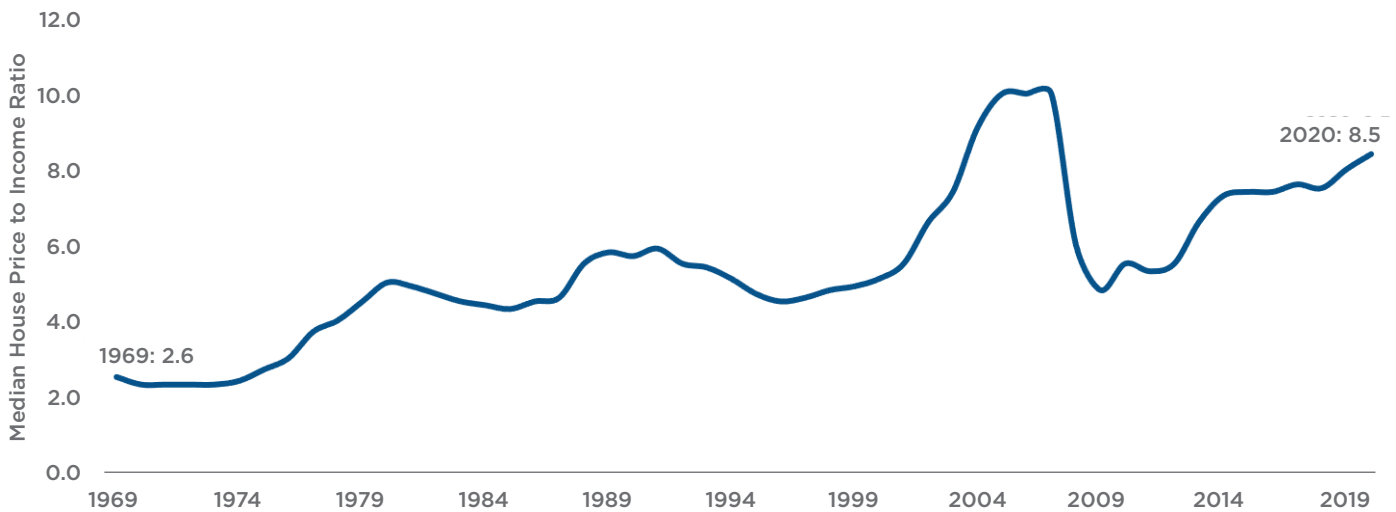
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## Market Barriers: Supply Gap and Price Growth

Despite strong income growth in the past decade, housing prices have far outpaced income growth, leading to larger affordability gaps. Figure 1 shows that growing disparity: in 1960, the median house price was 2.6 times the median income, but in 2020, the median house price had expanded to 8.5 times the median income. That increase has been particularly steep over the last decade. As a result, higher-income households have

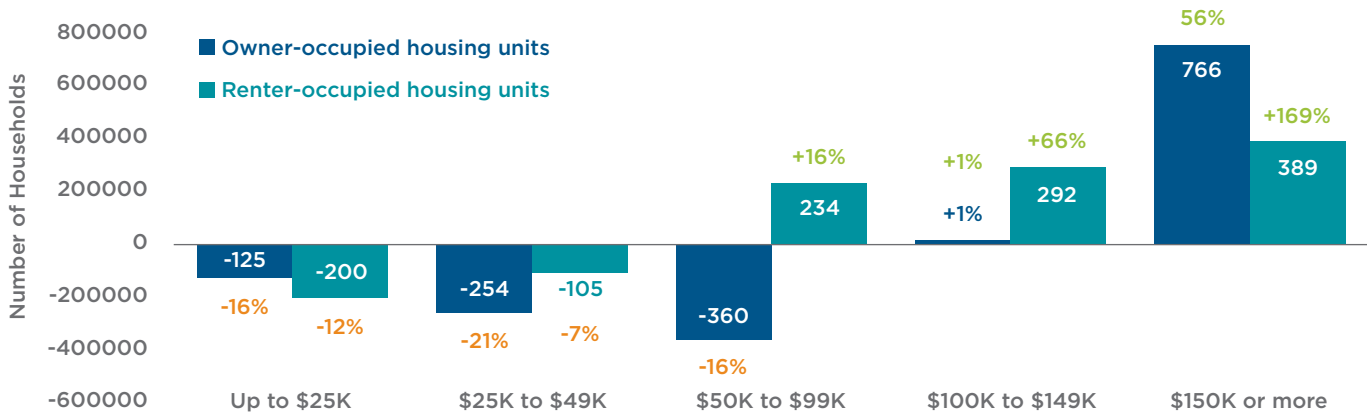
remained in apartments, which has crowded out lower-income households. For instance, Figure 2 shows that, since 2010, the number of owner-occupied housing units have only increased for households earning more than \$150,000, which implies that homeownership has only been rising for those households. A clear outcome of this dynamic is people moving both within California and out of state.<sup>39</sup> The growth in higher-income renters is also an indication of the barriers to homeownership in California.

Figure 1: Rising Home Price to Income Ratio in California



Source: California Association of Realtors 2021; California Department of Housing and Community Development 2021; HR&A Advisors

Figure 2: Change in Housing Tenure by Income in California (2010-2019)



Source: American Community Survey 2010 and 2019; HR&A Advisors

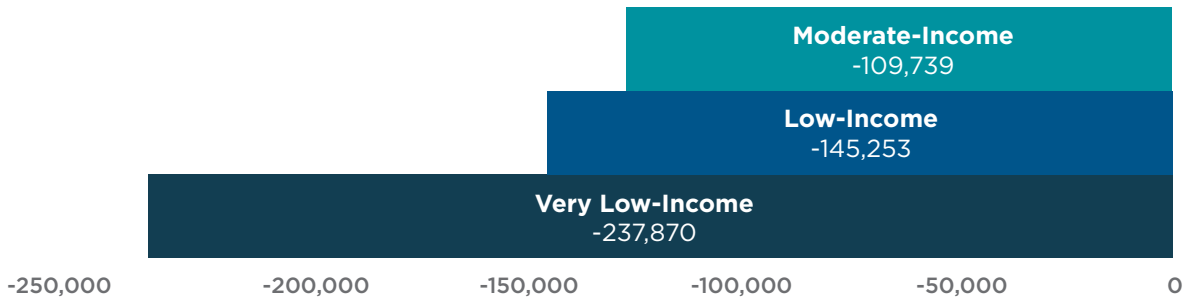
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## Housing Demand and Supply Imbalance

Declining homeownership can be linked in part to the state’s housing shortage. In recent years, statewide housing construction has lagged relative to demand. Based on the Regional Housing Needs Allocation (RHNA) projections set by the California Department of Housing and Community Development (HCD), the California Housing Partnership estimates that the state must develop at least an additional 490,000 housing units (both rental and for-sale) by the end of the Fifth Housing Element Cycle (approximately

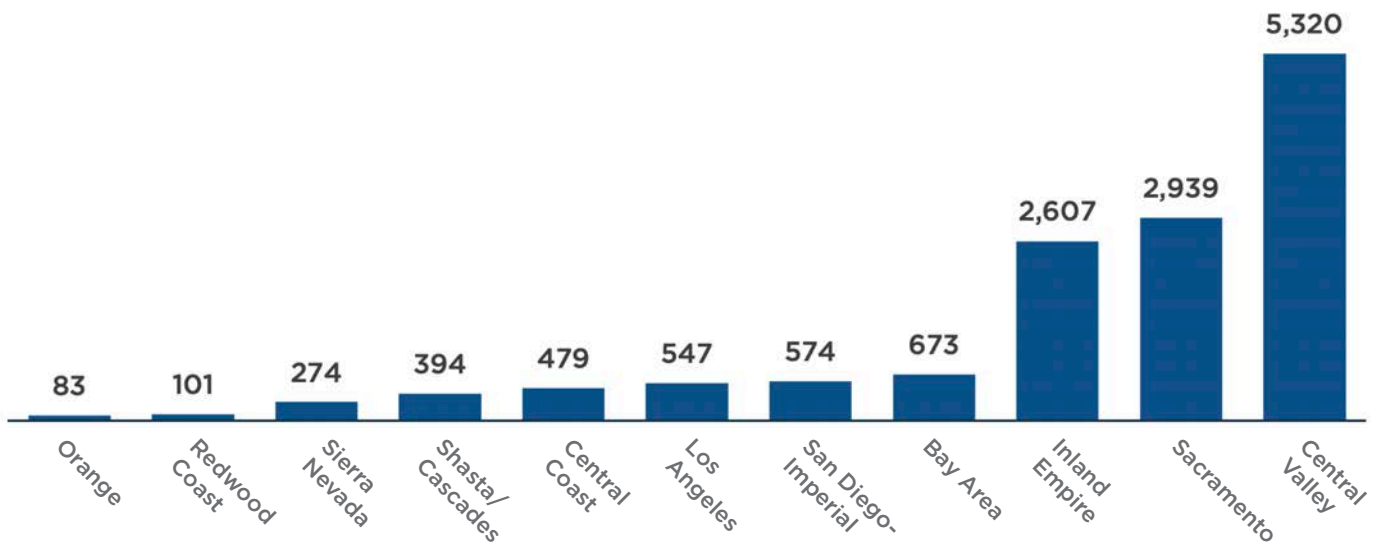
early 2024) in order to meet demand for very low-, low- and moderate-income households.<sup>40</sup> For example, California is short nearly 110,000 units that are affordable to moderate-income households (both deed- and non-deed-restricted) and 238,000 units that are affordable to very low-income households. The state appears unlikely to meet these targets based on recent development activity, as it only built 37,000 affordable units between 2018 and 2020. In this same timeframe, the median sales price of single-family homes grew by at least 8% in every regional market.

Figure 3: Statewide Progress Toward RHNA Target (Unit Deficit/Surplus; 2015-2023)



Source: California Housing Partnership 2021

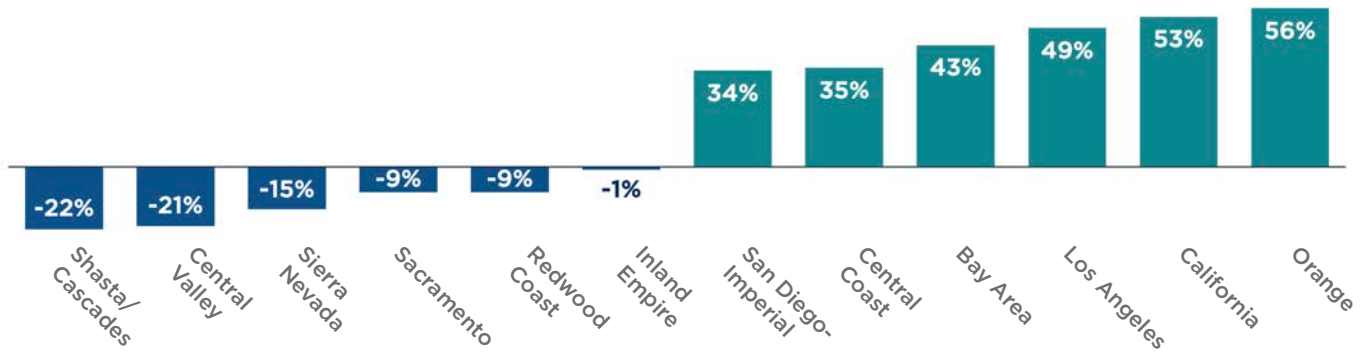
Figure 4: Units Built Affordable to Moderate-, Low-, or Very Low-Income Households (2018-2020)



Source: California Department of Housing and Community Development

40 California’s 1969 Housing Element Law requires all cities and counties to engage in detailed residential planning as part of comprehensive plan updates every five to eight years.

Figure 5: Percentage Above or Below AMI Required to Purchase Median-Value Home



Source: California Association of Realtors 2021; California Department of Housing and Community Development 2021; HR&A Advisors

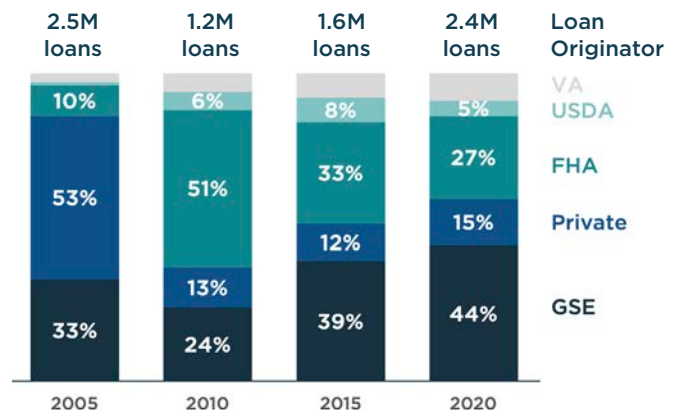
Affordability and market conditions also vary by region. Figure 7 shows the required percentage of Area Median Income (AMI) needed to afford a median-priced home across subregions in California with a 20% down payment. In the Los Angeles region, where the median home value is over \$788,000, a household requires an income of at least \$111,900, or 140% of the AMI, to purchase a home affordably at that price. Other high-cost markets face similar challenges, including Orange County, the Bay Area, the Central Coast and San Diego-Imperial. This affordability gap may be attributed to the slow rate of for-sale housing production in these areas. Despite accounting for more than two-thirds of the state's population, these five submarkets accounted for just 12% of affordable for-sale housing construction between 2018 and 2020. Figure 6 shows the regional breakdown of for-sale units built between 2018 and 2020 that are affordable to moderate-, low- or very low-income households.

- Federal Housing Administration (FHA):** FHA is an agency within the Department of Housing and Urban Development (HUD) and is the largest provider of government mortgage insurance. Because FHA requires a minimum of only 3.5% down payment from borrowers, FHA loans are popular among first-time buyers who have little savings or have credit challenges.
- Department of Veterans Affairs (VA):** The VA provides a guarantee on certain mortgages made to veterans.
- U.S. Department of Agriculture (USDA):** The USDA administers a direct loan program for low-income borrowers in rural areas and a loan guarantee program for low- and moderate-income borrowers in rural areas.

### Financing Barriers: Expensive Loan Products

For many homebuyers, the viability of homeownership also depends on the types of mortgage finance to which they have access. Though there are many types of mortgages, most can be classified as either government-insured mortgages or conventional mortgages. These mortgages offer significantly different terms and service different homebuyers. Conventional mortgages are offered by a range of private financial institutions and generally require higher down payment amounts than the government-insured mortgages. Government mortgage insurance, meanwhile, is primarily provided by the three main agencies:

Figure 6: Loans Originated for First-Time Buyers in the US (2005-2020)



Source: National Mortgage Database 2022

Figure 7: Mortgage Insurance Requirement by Types of Mortgage Products

| Loan Product | Minimum Down Payment | Insurance Type                   | Upfront Premium      | Annual Payment*            |
|--------------|----------------------|----------------------------------|----------------------|----------------------------|
| FHA          | 3.50%                | Mortgage Insurance Premium (MIP) | 1.75% of loan amount | -0.85-1.05% of loan amount |
| Conventional | 3.00%                | Private Mortgage Insurance (PMI) | None                 | -0.58-1.86% of loan amount |
| Conventional | 20.00%               | -                                | None                 | None                       |

\*Depends on the borrower's down payment, first mortgage size, loan term, and credit score.

FHA-insured mortgages play a particularly large role for first-time homebuyers, low- and moderate-income households and minorities both because of its smaller down payment requirement and because of its less stringent requirements related to credit history compared to conventional loans.<sup>41</sup> For example, since 2000, approximately 80% of FHA mortgages were made to first-time homebuyers and one-third of FHA loans were made to borrowers in communities of color.<sup>42</sup> In fact, twice as many FHA mortgages are made to Black and Latino borrowers as the rest of the market.<sup>43</sup> Notably, FHA loans represent about 24% of all loans made to all households making less than 100% AMI. This share is even higher for Black and Latino households, where the share of FHA loans is 36% and 39% respectively. The FHA clearly plays a central role in providing credit to borrowers not adequately served by the conventional market. This role has increased since the Great Recession, with both FHA loans and other government-insured loans accounting for a larger share of first-time homebuyer's' mortgages in 2020 than in 2005.

Although FHA-insured loans expand access to homeownership, the mortgages can be more expensive than conventional loans. Figure 11 details the mortgage insurance requirements for FHA and conventional loans.<sup>44</sup> Mortgage insurance protects lenders from the risk of higher leverage loans by limiting losses if the borrower defaults. Borrowers with FHA-insured mortgages pay Mortgage Insurance Premiums (MIPs), which

carry an upfront cost (UPMIP) equal to 1.75% of the loan amount and an annual premium ranging from 0.85% to 1.05% of the original loan amount for the life of the loan, mostly depending on loan size. Borrowers with conventional mortgages who have down payments less than 20% are required to pay Private Mortgage Insurance (PMI), which is structured as a monthly payment ranging from 0.58% to 1.86% of the original loan amount per year mostly depending on the borrower's credit score until the homeowner reaches 78% loan-to-value or the borrower has 22% equity in their home.

With insufficient income or savings to afford a 20% down payment, asset-poor households have to take out a higher mortgage amount and incur higher monthly payments due to mortgage insurance premiums, which further contributes to the housing burden and deteriorates their financial condition. As illustrated in Figure 10, if a household is able to afford a 20% down payment on a median-priced home in California (\$786,000), or \$157,000, their monthly mortgage payment is at \$3,157 with conforming loan at rates prevailing at the time this report was prepared. If the household is only able to afford a 3% down payment, the monthly mortgage payment will have to increase by \$1,018 due to the larger mortgage amount and the lender's requirement for private mortgage insurance.<sup>45</sup> If the household opts for a FHA loan with a 3.5% down payment, the monthly payment is even higher at \$1,180 as a result of the FHA mortgage insurance premium.

41 "FHA-Insured Home Loans: An Overview." Congressional Research Service, January 21, 2022. Retrieved from <https://crsreports.congress.gov/product/pdf/RS/RS20530/3>

42 FHA Annual Management Report Fiscal Year 2021, p. 15. U.S. Department of Housing and Urban Development. <https://www.hud.gov/sites/dfiles/Housing/documents/FHAFY2021ANNUALMGMNTRPT.pdf>. These figures are for FHA-insured forward mortgages and do not include FHA-insured reverse mortgages, known as Home Equity Conversion Mortgages (HECMs).

43 Ibid.

44 Genworth Mortgage Insurance, Ginnie Mae, and Urban Institute. FHA rate from MBA Weekly Applications Survey. Conforming rate from Freddie Mac Primary Mortgage Market Survey. Note: Rates as of March 24, 2022.

45 Ibid; assuming rates for borrowers with FCIO 760 and higher

Figure 8: Mortgage Payment Comparison - FHA vs. Conventional Loan

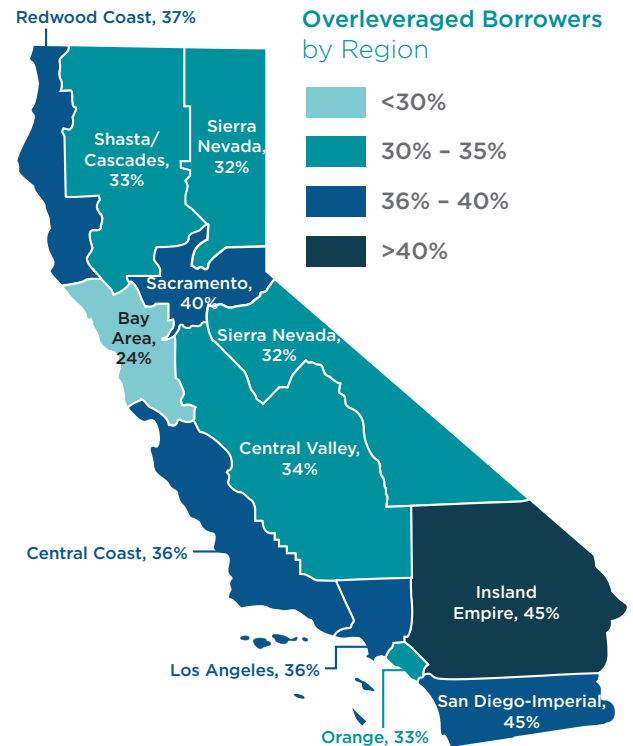
|                                | Conventional Loan |                | FHA            |
|--------------------------------|-------------------|----------------|----------------|
| Down Payment                   | 20.00%            | 3.50%          | 3.50%          |
| 1st Mortgage Payment           | \$3,160           | \$3,810        | \$3,800        |
| PMI / FHA MIP                  | \$0               | \$370          | \$540          |
| Total Monthly Mortgage Payment | \$3,160           | \$4,180        | \$4,340        |
| <b>Monthly Savings</b>         |                   | <b>\$1,020</b> | <b>\$1,180</b> |

Despite the differences in monthly mortgage payments, asset-poor households can also struggle to secure a competitive mortgage. In 2020, mortgage applicants with debt-to-income (DTI) ratios above 42% were nearly 2.5 times as likely to be denied loans as those with ratios at or below 35%.<sup>46</sup> This reflects the “ability to pay rules” that set the highest DTI a borrower can have at 43% DTI for qualified mortgages.<sup>47</sup> Regulation Z sets the requirements for qualified mortgages, which demonstrate to the secondary market that the creditors have made a “reasonable, good faith determination of a consumer’s ability to repay any residential mortgage loan.” The maximum DTI to receive Qualified Mortgage status is 43%. Homebuyers with higher DTI loans must take out non-qualifying mortgages that have additional fees and higher interest rates than qualifying loans. In California, more than a third of homebuyers had a DTI over 42%, which implies many Californians have non-conforming mortgages.<sup>48</sup> Furthermore, it reveals that many households access homeownership by putting themselves in precarious financial situations.

The combination of a small down payment and a less competitive mortgage further constrains how much a household can offer for a home. This puts many buyers at a significant disadvantage, especially in market environments where home costs are accelerating faster than wages and income. Small down payment mortgages are also less attractive to sellers, putting borrowers at a further disadvantage—especially in highly competitive markets. A recent survey found that 89% of home sellers would be “likely” to accept an applicant with a conventional loan, but only 30% would be likely to accept an applicant with a loan backed by either the FHA or the Department of Veterans Affairs (VA).<sup>49</sup> This discrepancy may

be attributed to the additional terms that come with government-issued mortgages as well as a perception of elevated risk associated with the buyer’s ability to secure financing. All-cash offers, by contrast, offer more guarantees that the sales transaction will close.

Figure 9. Share of Total Borrowers with High Debt (>42% DTI) by Region (2020)



Source: HMDA 2020

46 HMDA 2020.

47 “What is a Qualified Mortgage?” Consumer Financial Protection Bureau, 2019. <https://www.consumerfinance.gov/ask-cfpb/what-is-a-qualified-mortgage-en-1789/>

48 Ibid.

49 Goodman, Laurie, and Ratcliffe, Janneke. “The Tight Housing Market Boxes Out Government-Insured Borrowers, Widening Homeownership Gaps.” Urban Institute, 2021. <https://www.urban.org/urban-wire/tight-housing-market-boxes-out-government-insured-borrowers-widening-homeownership-gaps>



## Household Barriers: Savings, Wealth and Racial Inequality

Limited assets pose a major barrier to accessing homeownership. Surveys at the national level indicate that a lack of assets for a down payment may be the most significant barrier for prospective homebuyers. A 2021 survey of 2,500 non-homeowners found that 54% could not afford a down payment.<sup>50</sup> This result is consistent with a separate 2017 survey, in which 68% of all respondents cited down payment as a barrier.<sup>51</sup> While many low- and middle-income households struggle to save, asset-building is even more difficult for households of color. For instance, the median-income White household typically requires nine years of savings to afford a 5% down payment compared to 14 years for Black households and 11 years for Latino households.<sup>52</sup> This disparity reflects mortgage lending practices that deny households of color access to homeownership and economic mobility, perpetuating an intergenerational racial wealth gap.

High student debt further constrains homebuyers' ability to save for a down payment. In 2019, the median net worth of young renter households with a bachelor's degree was \$62,000 if they were debt free—more than twelve times the net worth of a similar household with debt (-\$4,860).<sup>53</sup> The difference between these two situations shows how student debt impacts wealth accumulation. Although a bachelor's degree may lead to higher earning potential over an individual career, the additional income often goes to pay off student debt in the early years. This added debt burden

makes it more difficult for potential homebuyers to save the necessary down payment.

Furthermore, first generation homebuyers are also constrained by a lack of intergenerational wealth transfers that help them save for a down payment. One survey found that only 37% of first-generation homebuyers received help from their parents, compared to 51% of all first-time homebuyers.<sup>54</sup> This difference begins to reveal how beneficial homeownership is for multi-generational wealth building. Homeownership offers an opportunity to pass wealth between generations that puts first-generation homebuyers at a disadvantage when trying to save for a down payment.

As a result of these constraints, many homebuyers are priced out of the market. A smaller down payment correlates to higher mortgage payments, which many low- and moderate-income homebuyers cannot afford. Figure 10 shows how much more savings a homebuyer needs to accumulate to make a 20% down payment on a median price compared to a 10% down payment in different regions across the state. The difference ranges from approximately \$5,200 to \$18,000. The implication is that first-time homebuyers may need to save for many more years, and may never have enough savings to make a 20% down payment. These conditions create a competitive market that strongly disadvantages low- and moderate-income households.

50 McNair, Kamaron. "48% of Renters Worry They'll Never Be Able to Buy; Down Payments Biggest Barrier." LendingTree, 2021. <https://www.lendingtree.com/home/mortgage/homeownership-renting-survey/>

51 Gudell, Svenja. "Down Payment the Top Hurdle Holding Back Would-Be Home Buyers." Zillow, 2017. <https://www.zillow.com/research/down-payment-hurdle-zhar-14790/>

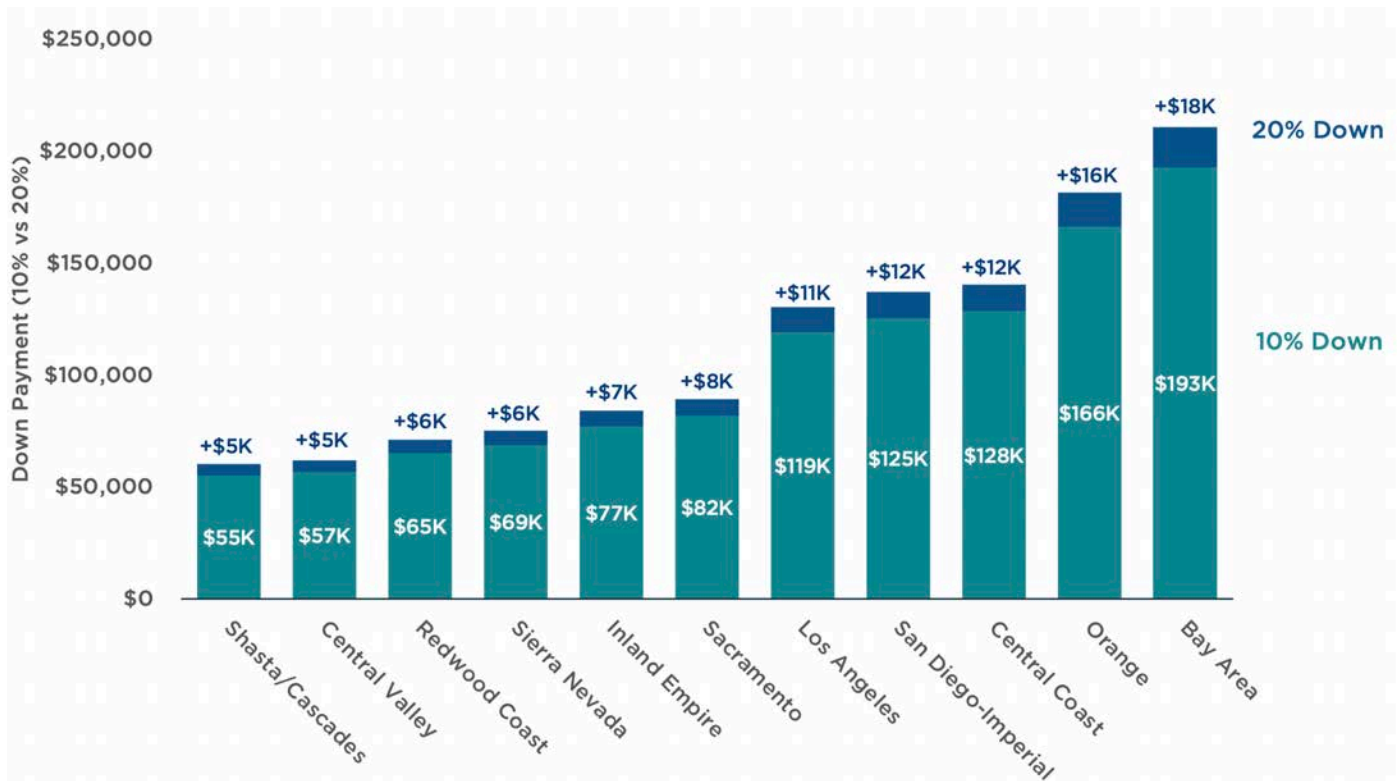
52 "Hardship for Renters: Too Many Years to Save for Mortgage Down Payment and Closing Costs." Center for Responsible Lending, April 2021. <https://www.responsiblelending.org/research-publication/hardship-renters-too-many-years-save-mortgage-down-payment-and-closing-costs>

53 "Hardship for Renters: Too Many Years to Save for Mortgage Down Payment and Closing Costs." Center for Responsible Lending, April 2021. <https://www.responsiblelending.org/research-publication/hardship-renters-too-many-years-save-mortgage-down-payment-and-closing-costs>

54 "2021 Homebuyer Insights Report. First-Generation Homeowner Spotlight." Bank of America, 2021.



Figure 10: Income Required to Make a 10% and 20% Down Payment



Source: HR&A Advisors

## Racial Disparity in Access to Homeownership

Despite federal legislation prohibiting discrimination in the homebuying process, people of color continue to have more limited access to mortgage finance. While Latino and Black households account for 39% and 5% of all California households, respectively, they accessed just 31% and 4% of all home purchase loans in 2020.<sup>55</sup> Many households of color who do access loans may still be at a competitive disadvantage. Figure 11 shows that Latino households accounted for 56% of all government-issued mortgages, but just 23% of conventional mortgages. Mortgage underwriting criteria are partially responsible for these disparities; Black households nationally had a median DTI ratio of 41% in 2020, compared to 37% for White households, and as of October

2020, 45% of Black consumers nationally had subprime credit scores, compared to 18% of White consumers.<sup>56</sup>

However, economic characteristics do not fully explain racial disparities in mortgage access. In 2020, California lenders made fewer loans to Black applicants than White applicants, even when their incomes were high, \$100,000 a year or more, and even when accounting for household debt.<sup>57</sup> In fact, high-earning Black applicants with low debt were rejected more often than White applicants in the same category and nearly as often as high-earning White applicants with high debt. Black applicants are also nearly twice as likely to be denied conventional mortgages as White applicants, even when controlling for income.

55 "HMDA Data Reveals Refi Boom During Pandemic, But Not For Black and Hispanic Homeowners." National Community Reinvestment Coalition, 2021. <https://www.ncrc.org/hmda-data-reveals-refi-boom-during-pandemic-but-not-for-black-and-hispanic-homeowners/>

56 HMDA, 2020.

57 HMDA, 2020.

Figure 11: Racial Disparities in Home Purchase Loan Access in California (2020)

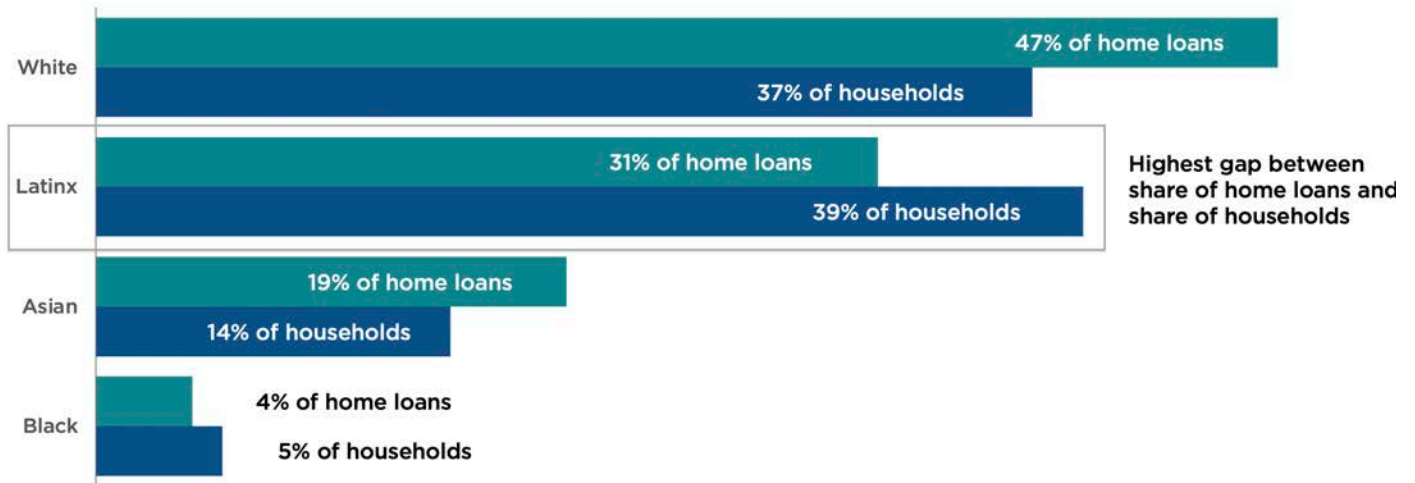


Figure 12: Loan Application Denial Rates for All Applicants and Applicants Over 120 AMFI, by Race

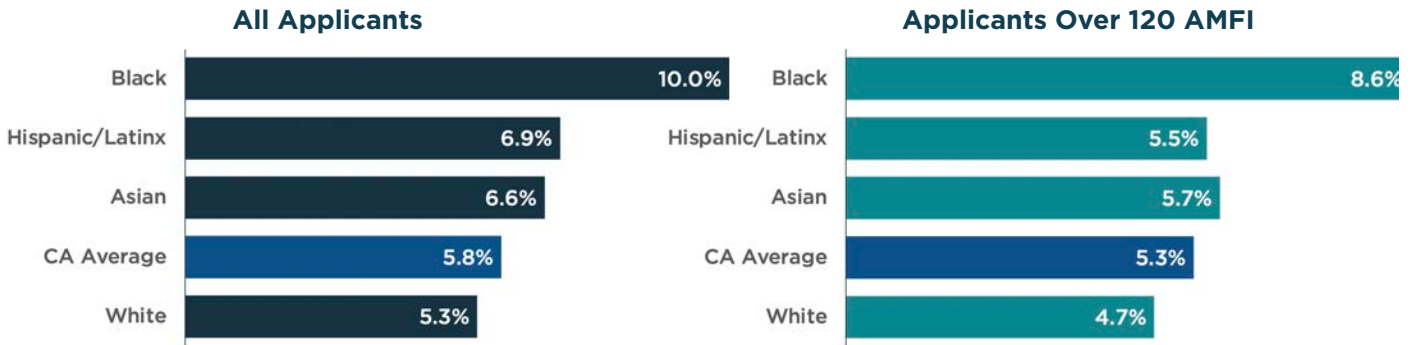
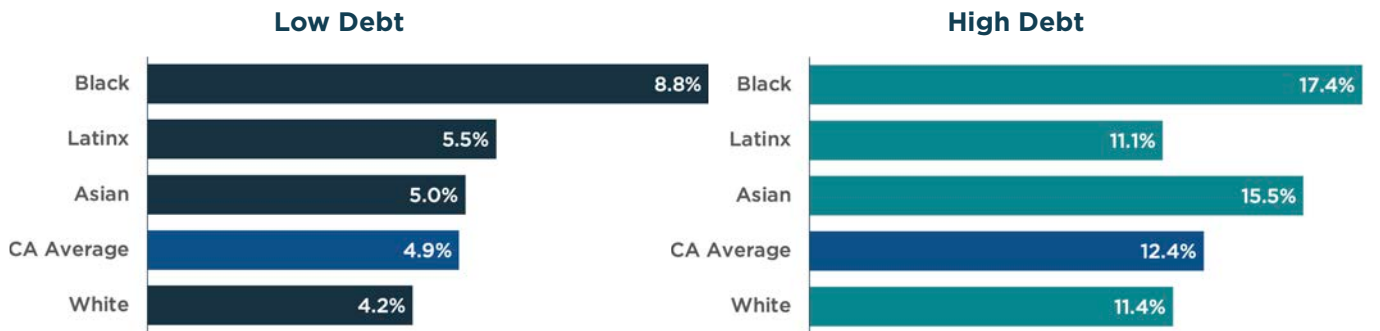
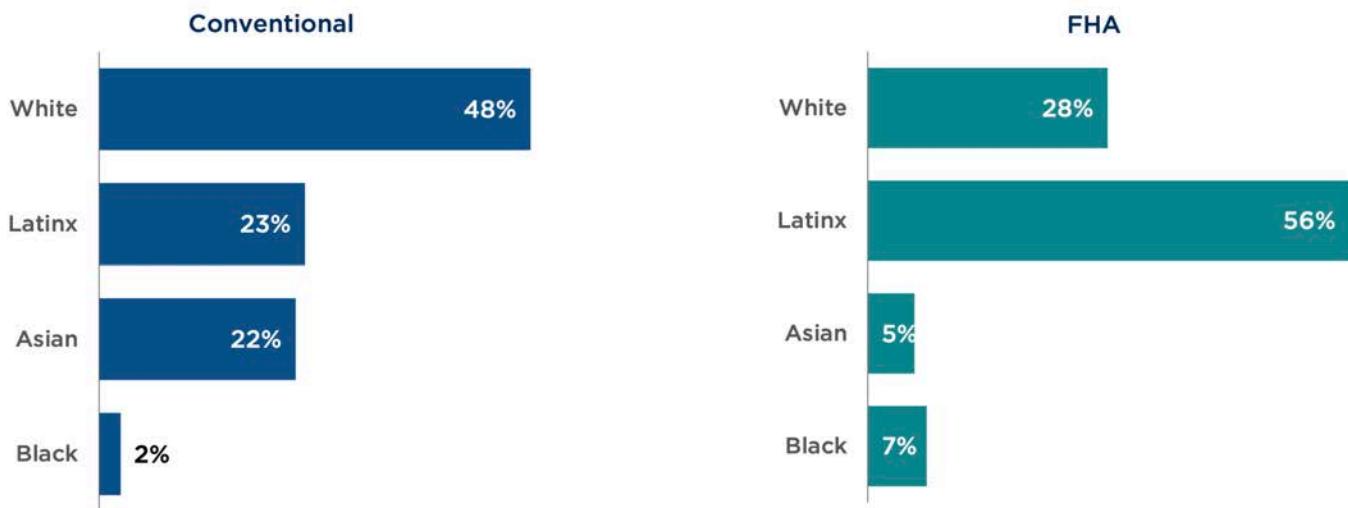


Figure 13: Loan Application Denial Rates for Low-Debt and High-Debt Applicants, by Race



Source: HMDA 2020

Figure 14: Share of Conventional and FHA Loans Issued to Borrowers, by Race



### COVID-19 Impacts

The COVID-19 pandemic has negatively impacted existing and prospective homeowners. Through the first several months of the pandemic, an estimated 9.8% of American homeowners could not pay their mortgage on time.<sup>58</sup> These hardships have coincided with a reduction in home loans issued by banks and other mortgage lenders—also known as “credit tightening.” Credit tightening can result from lenders requiring more stringent terms or the application of more restrictive regulation of the credit underwriting process, as was the case following the Great Recession. According to the Mortgage Credit Availability Index (MCAI), the availability of home loans nationwide dropped nearly 35% between February and September

2020. Credit availability has slightly rebounded since then, with a 5% increase between September 2020 and January 2022,<sup>59</sup> but it remains far below pre-pandemic levels. These constraints persist amid a continued escalation of home prices. Between 2020 and 2022, the median home price in California rose more than 26%.<sup>59</sup>

In response to this crisis, the State has dedicated funding to address housing affordability as part of its recovery effort. Through the California Comeback Plan, the State will dedicate over \$3 billion to increase the supply of housing that is affordable to low-income families and increase access to homeownership. The CA Dream for All program is an important component of this allocation.

58 “Measuring the Crisis: Housing Data during the COVID-19 Pandemic.” Urban Institute, 2020.

59 Mortgage Credit Availability Index. Mortgage Bankers Association. Retrieved from: <https://www.mba.org/news-and-research/research-and-economics/single-family-research/mortgage-credit-availability-index-x241340>

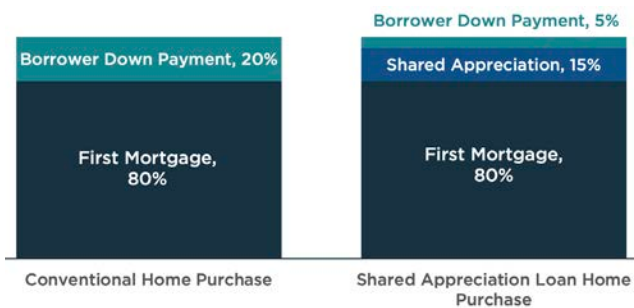
# III. SHARED APPRECIATION LOAN

The following will lay out the basics of a shared appreciation loan, or SAL; how it benefits households compared to other home financing options; and the limitations of a SAL, particularly in a supply-constrained market like California.

SALs offer an alternative to either public subsidy or conventional mortgage financing. That is, a SAL is repaid through a predetermined percentage of the appreciation, or depreciation, in the home's value. This contrasts with conventional mortgages that have a fixed or variable interest payment on the outstanding loan amount. It also is different from a subsidy program where the assistance is not repaid.

**At the time of the home purchase, SALs reduce the amount of down payment borrowers need to pay into the transaction. A SAL replaces some or all of the down payment a household would provide for a conventional loan.** For example, Figure 15 shows a conventional loan with a 20% down payment and first mortgage. The SAL example reduces the down payment to 5% and replaces the balance with the SAL by providing down payment funds from a third party source.

Figure 15: Conventional Home Purchase vs. Shared Appreciation Home Purchase



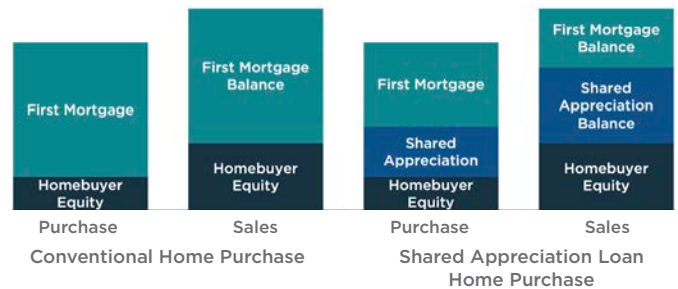
Source: HR&A Advisors

**SALs are commonly structured as second mortgages.** Second mortgage lenders can have specific credit, equity and income requirements that borrowers must meet. The primary difference between a second mortgage and a first mortgage is how repayment is prioritized. If the borrower cannot repay the debt in full, both loans are secured with the same asset, but the first mortgage receives priority if the home is foreclosed or sold to repay the debt. The second

mortgage lender therefore assumes more risk. A SAL does not have monthly payments, and is therefore often called a “silent second” mortgage. The financial arrangement more closely resembles an equity investment in the property than a loan against the property. The basic terms of the second mortgage, such as interest rate and amortization schedule, are also set independently of the first mortgage. A SAL can align with the underwriting requirements of first mortgage lenders and the requirements of the secondary mortgage market because it becomes “junior” to the first mortgage. In other words, the first mortgage will be paid first in the event of a borrower default resulting in a foreclosure sale.

**Sellers or developers are indifferent to whether a homebuyer uses a SAL.** SALs do not directly impact the buyer or seller; homes are sold at a market rate through conventional market transaction processes. The seller, whether an investor, developer, or homeowner, lists the property and can receive offers from potential buyers with and without shared appreciation financing.

Figure 16: Shared Appreciation Loan at Purchase and Sale



Source: HR&A Advisors

**The cost of a SAL to a borrower depends mainly on the level of home price appreciation and is aligned with market condition and household repayment capacity.** One way to understand the cost of the loan is to evaluate the true annual cost as measured by the effective annual interest rate (EAR). With a pro rata SAL, the EAR is the annual rate of home price appreciation of the property, despite the size of the SAL. The EAR takes into consideration regional variances and differences in home conditions and valuation.

## Existing Shared Appreciation Loan Programs

Among existing SAL programs, privately and publicly funded programs focus on different homebuyers. The privately funded SAL programs tend to bear higher cost of capital and therefore restrict eligible markets, property types and borrowers to increase the program's expected return to the entity providing the capital. This is a result of private sector investors' demand for higher returns on investment to meet their cost of capital. Such returns are anything but arbitrary; they are driven by market forces in an investment world that balances risks with rewards. The result is that private programs cannot provide sufficient subsidy or long-term investment to meet many low-and-moderate income households' needs, largely because of uncertainty around the timing of repayments of the initial capital investment.

Private and public SAL programs target different homebuyers. That is, private programs offer both lines of credit for existing homeowners and upfront financing for first-time homebuyers. Private programs typically provide loans to high-income or moderate-income households

in housing markets with strong appreciation. Finally, private program terms are weighted to provide a greater share of appreciation to the SAL loan repayment than the typical public program that is often pro rata sharing or forgivable (See Appendix B for more detailed information on existing shared appreciation programs). Public SAL programs, on the other hand, tend to focus on first-time homebuyers and target low- to moderate-income homebuyers.

## Comparison with Other Shared Equity Models

It should be noted that a SAL is fundamentally different from other shared equity models like limited equity cooperatives (LECs) and community land trusts (CLTs). Most other shared equity homeownership models aim to preserve affordability by adding a long-term restriction on the sales prices rather than allowing households to reap the full benefits of home appreciation at sale. Meanwhile, a SAL program typically does not have an affordability component, and is focused on building assets for borrowers and sharing market risks.

Figure 17: Key Features of Private Shared Appreciation Programs

| Program Feature          | General Definition                                                                                                                                   |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Program Serves           | Existing homeowners and first-time homebuyers                                                                                                        |
| Funding Sources          | Private investors incl. institutional investors, venture capital, REITs                                                                              |
| Loan Amount              | 5%-30% of beginning property value<br>Maximum loan amounts in the range of \$120,000 - \$600,000                                                     |
| Borrower Eligibility     | 500+ credit score, 75%-95% LTV, some down payment contribution                                                                                       |
| Appreciation Share Split | Programs receive appreciation split of 2.5:1 or higher.                                                                                              |
| Downside Protections     | Most programs share downside risk but may apply an upfront risk adjustment                                                                           |
| Repayment Events         | Repayment typically occurs at borrower buy-out of the loan, home sale, or refinance. In some cases, borrower can refinance without repaying the SAL. |
| Examples                 | Landed, Unison, Hometap, Noah, The Point                                                                                                             |

## Shared Appreciation Loan and Traditional First-Time Homebuyer Assistance

There are a number of existing types of public support that a first-time homebuyer can access, as described in Figure 19. Though the exact terms vary, the common limitation is the amount of assistance, which is typically below 5% of purchase price. In addition, most programs operate at a small scale with a long waiting list. A well-designed statewide SAL program could complement the existing financing options to overcome limitations of the existing programs.

Figure 18: Comparison with Shared Equity Homeownership Models

| Model                            | Type                | Primary Goal                       | Description                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------|---------------------|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Limited Equity Cooperative (LEC) | Shared Equity       | Long-term affordable housing stock | Residents jointly own shares in a cooperative which in turn owns housing units. Co-op members pay a monthly fee to cover shared expenses. Ownership shares can be sold based on a formula which typically maintain affordability.                                                                                                                              |
| Community Land Trust (CLT)       | Shared Equity       | Long-term affordable housing stock | A nonprofit entity (the CLT) purchases and holds a portion of the property (typically, the land value) and an income-qualified homebuyer owns the remaining portion (typically, the house). The CLT retains ownership of its portion at sale, which much be made to another income-qualified homebuyer, thus preserving the home for affordable homeownership. |
| Shared Appreciation Loan (SAL)   | Shared Appreciation | Wealth-building for homebuyers     | A lender provides a “silent second” mortgage to a homebuyer or existing homeowner in exchange for a share of the appreciated value on the home over the term of the loan.                                                                                                                                                                                      |

Figure 19: Common Homeownership Financing Options for First-Time Homebuyers

| Public Finance Instrument          | General Definition                                                                                                                                                                      |
|------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Forgivable Down Payment Assistance | Public subsidy with no repayment and interests, typically within a range of 3-5% of purchase price with the rare exception up to 10%, such as the CalHFA Forgivable Equity Builder Loan |
| Fixed Rate Down Payment Assistance | Silent second mortgage with fixed simple interest rate that accrues and is due at exit, typically up to 3-4% of purchase price, such as the CalHFA MyHome Program                       |
| Closing Cost Assistance Program    | Silent second mortgage with zero interest, typically up to 3-4% of purchase price with zero interest, such as the CalHFA ZIP Program                                                    |
| Shared Appreciation                | Silent second mortgage with no monthly payment and is due at exit based on a percentage share of home price appreciation or depreciation                                                |

### CalHFA MyHome Program

The MyHome program is second, silent mortgage that covers the lesser of 3% of the loan amount and \$15,000 (up to 3.5% for FHA), sits in the second lien position, and can be layered with any CalHFA first mortgage. To qualify for the MyHome program, the borrower must be first-time homebuyer, complete homebuyer education, and meet the **CalHFA income limits of 150% of county AMI** by household size. Public school and Fire Department employees, new construction properties, manufactured housing properties, and single-family homes with ADUs are exempt from the loan amount limit.

**Loan Amount:** 3% (3.5% for FHA) of the first mortgage up to \$15,000

**Eligible Use(s):** Down Payment and Closing Coast Assistance

60

**CalHFA Forgivable Equity Builder Loan**

The Forgivable Equity Builder Loan (FEB Loan) is an forgivable, zero percent interest second lien for first-time homebuyers that covers the loan amount up to 10% of the sales price of appraised value. To qualify for the FEB Loan, the borrower must receive approval for any CalHFA first mortgage that does not utilize the ZIP program, **earn income at or below 80% AMI**, be a first-time homebuyer, and take education. The Loan is forgiven if the borrower stays in the residence for five years; or, if paid off or sold before the first five years of the term, is forgiven on an annual pro-rated basis. The program is funded by federal proceeds from the Build Back Better bill.

**Loan Amount:** 10% of the sales price or appraised value

**Eligible Use(s):** Down Payment Assistance

61

**CalHFA ZIP Program**

The ZIP is used to cover closing costs, it will not reduce the first mortgage amount and thus cannot reduce the LTV on a first mortgage. To qualify for the ZIP program, the first mortgage must be CalPLUS Conventional or CalPLUS FHA, limiting eligibility to borrowers with **income at or below 80% of county AMI**, set by Fannie Mae, and those who have completed homebuying counseling. The ZIP program provides closing cost assistance equal to 2 or 3% of the loan amount and sits in the third lien position.

**Loan Amount:** 2-3% of the first mortgage

**Eligible Use(s):** Closing Cost Assistance

62

**Advantages of Shared Appreciation**

As illustrated in Figure 20, each of these home purchase financing options has its unique benefits and drawbacks in terms of its ability to balance public and homebuyer priorities. With limited public funding resources, there is a direct tradeoff between the need to maximize the number of households assisted and the level of support provided to each individual homebuyer. **SAL's most compelling advantage is the combination of reducing the monthly payment to a household, while generating revenue to serve future households and providing protection to the homebuyer in the event of depreciation. The biggest drawback is the financial complexity of the terms for a SAL.**

Figure 20: Public and Homebuyer Priorities by Various Financing Options

| Financing Instruments | Public Priorities         |                               | Homebuyer Priorities |                          |                      |
|-----------------------|---------------------------|-------------------------------|----------------------|--------------------------|----------------------|
|                       | Recycle to new home buyer | Targeting specific population | Downside protection  | Reduced monthly mortgage | Financial simplicity |
| Forgivable DPA        |                           |                               |                      |                          |                      |
| Fixed Rate DPA        |                           |                               |                      |                          |                      |
| Shared Appreciation   |                           |                               |                      |                          |                      |
| FHA Loan w/o DPA      |                           |                               |                      |                          |                      |

Source: HR&A Advisors

61 CalHFA Conventional Loan Program Handbook. CalHFA, 2022. <https://www.calhfa.ca.gov/homeownership/programs/archive/2022/20220510/loans-conventional-05-10.pdf>  
 62 Forgivable Equity Builder Loan. CalHFA, 2022. <https://www.calhfa.ca.gov/homeownership/programs/ForgivableLoan.pdf>

## Reduced Monthly Mortgage Payment

**A SAL structure can provide deeper down payment assistance than most existing public down payment assistance (DPA) programs.** That is, most existing forgivable and fixed rate DPA programs offer assistance equal to 3-5% of the purchase price. A few programs offer up to 10% assistance. The size of existing subsidies reflects that large forgivable down payment assistance to individual homebuyers is financially unsustainable, since the funds do not replenish. In contrast, a much larger average loan size, close to 20% of the purchase price, is financially sustainable with a SAL because the loan repayments replenish the initial investment.

**For a SAL to significantly impact wealth accumulation and bestow the benefits of homeownership, a 20% down payment is necessary to eliminate high mortgage insurance premiums and significantly reduce monthly housing costs.** As mentioned earlier, households must contribute a minimum 20% down payment in order to access conventional loans without private mortgage insurance. For example, to purchase a median-priced home in California (\$786,000 in 2021) with a conventional loan, a homebuyer would need to make a \$157,000 down payment. With a 17% SAL, a homebuyer can save \$133,000 and only need to put 3% down. The homebuyer would also reduce their monthly mortgage payments by 27%, or \$1,180, by avoiding mortgage insurance premiums and taking a lower leverage first mortgage, as illustrated in Figure 23.

**SALs allow homebuyers to access homeownership with lower incomes than either conventional or FHA loans.** A large SAL lowers monthly payments, reducing the financial burden and lowering the income required to qualify for the first mortgage. As shown in Figure 21, to purchase the median price house with a SAL, homebuyers would need an income of \$88,000, or 114% of median income. Without the SAL, homebuyers would need an income of \$121,000, or 156% of California's median income. Although the FHA loan supports increased access to mortgage financing, the current structure puts homeownership out of reach for a large share of Californians.

## Support Wealth Accumulation

**A well-designed SAL can provide borrowers the opportunity to build wealth in upside scenarios and share losses in downside scenarios.** Figure 22 illustrates the impact to homebuyer equity with a pro rata SAL that provides 17% of the purchase price under both an upside scenario assuming 6% annual home price appreciation and a downside scenario where property value stays flat.

When the borrower sells the property at Year 10 in the upside scenario, the effective interest rate for SAL is 6%, and households are able to earn 22.9 times their initial down payment equity due to first mortgage amortization and shared appreciation sharing the upside. In the downside scenario, the effective interest rate for a SAL would be 0%. Households are still able to gain 2.3 times for their equity due to a first mortgage amortization and shared appreciation not charging any effective interests. This scenario shields the borrower from an economic downturn and adjusts the second mortgage repayment amount in alignment with market conditions.

When compared to a fixed rate silent second mortgage of the same loan amount that charges a 3% annual simple-interest over 10 years, a pro rata SAL enables the borrower to accumulate more equity in a downside scenario at \$55,000 compared to \$15,000, since the effective interest rate for a SAL would be 0%, which is significantly lower than the fixed rate. For the fixed rate program, even if property value growth does not keep up with the interest rate, the same amount of repayment is due and leaves the borrower in a worse financial condition before homeownership.

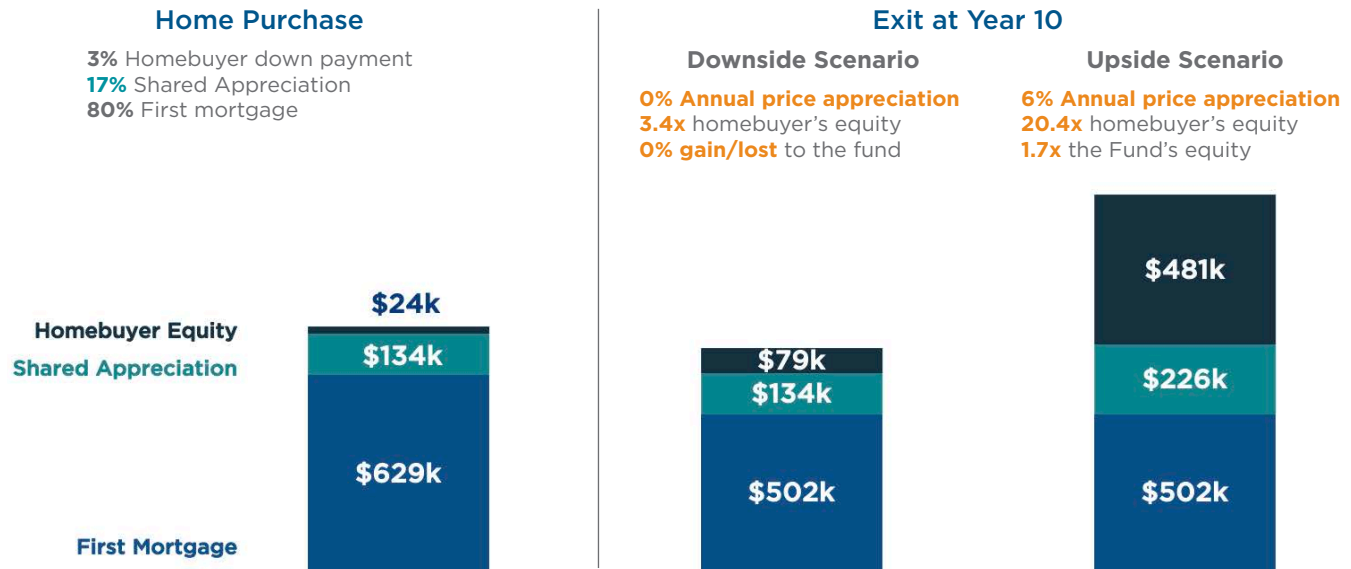
In an upside scenario with 6% annual home price appreciation, the effective interest rate for a SAL would be 6%, and higher than the fixed rate loan. The SAL charges a higher repayment amount, but is within the borrower's ability to repay, thanks to the significant appreciation in property value. Households are still able to gain a 22.9 times multiple of their initial down payment with the SAL.



Figure 21: Shared Appreciation Benefits Compared to FHA Loan

|                                         | Shared Appreciation | FHA Loan       |
|-----------------------------------------|---------------------|----------------|
| 1st Mortgage Payment                    | \$3,160             | \$3,800        |
| FHA MIP                                 | \$0                 | \$540          |
| <b>Total Monthly Mortgage Payment</b>   | <b>\$3,160</b>      | <b>\$4,340</b> |
| <b>Savings from Shared Appreciation</b> |                     | <b>\$1,180</b> |
| Required Household Income               | \$88,110            | \$121,030      |
| <b>% California Median Income</b>       | <b>114%</b>         | <b>156%</b>    |

Figure 22: Illustrative Example of Shared Appreciation Loan in Downside and Upside Scenarios



Sources: HR&A Advisors

Figure 23: Impacts on Borrower Equity - Shared Appreciation vs. Fixed Rate

|                   | Shared Appreciation (17%) |                 | Fixed-Rate (17%) |                 |
|-------------------|---------------------------|-----------------|------------------|-----------------|
|                   | Homebuyer Equity          | Equity Multiple | Homebuyer Equity | Equity Multiple |
| Downside Scenario | \$79,357                  | 3.4 x           | \$39,257         | 1.7 x           |
| Upside Scenario   | \$480,525                 | 20.4 x          | \$532,586        | 22.6 x          |

Sources: HR&A Advisors

## Downside Risk Sharing

A well-designed SAL product provides both a wealth building opportunity and downside protection when home values drop. That is, if the value of a home is less than the purchase price then there is no appreciation to share with the SAL; the SAL principal is repaid, but the effective interest rate is zero. This allows the SAL principal to be recycled to a new borrower. At the same time, the borrower is protected from additional debt burdens that a more conventional interest rate structure creates. As a result, with a SAL and decreasing property values a borrower can still build wealth due to an amortizing first mortgage that reduces the loan amount over time.

In contrast, a fixed rate mortgage does not offer downside risk sharing. Even if home price appreciation is lower than the interest rate on the fixed interest rate, the full payment is due. The value of the fixed interest rate is the same regardless of market fluctuations, leading to worse financial outcomes for a borrower when appreciation rates are lower or more negative than a SAL.

## Recycling Public Funding

An initial public investment in a SAL will generate revenue that can be recycled to fund loans for multiple rounds of homebuyers over time. The public sector does not have to write off the value of the SAL to make the home affordable, as they do with forgivable down payment assistance, which increases the number of homebuyers who can be supported. Because the payment on a SAL is not due until sale or a repayment event (cash-out refinancing, etc.), the reduction in the cost of homeownership for the homebuyer is like a grant. A SAL combines the benefit of improved affordability with recycling public funding by tying payment to appreciation.

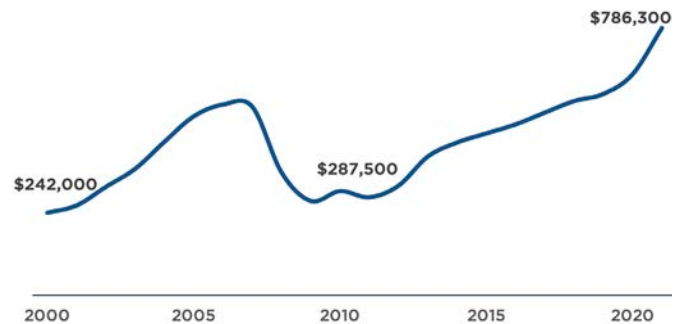
Because a SAL payment is tied to the appreciation of home prices, it will remain equally effective as it recycles, even in a rapidly appreciating housing market. During the height of COVID-19, and from 2010-2015 (see Figure 25), property values grew dramatically. The high rates of appreciation mean that when it comes time for a SAL to recycle, more funding is needed to provide the same level of support and to get a homebuyer to 20% down. While a second mortgage with a fixed rate might fail to keep up with market growth in a rapidly appreciating market, leaving insufficient funding to recycle in

order to provide equal support to later rounds of homebuyers, a SAL is tied to the market and will remain equally effective after multiple rounds or recycling. See Figure 24 for how a pro-rata SAL recycles funds over five years compared to a fixed rate, 3%, simple-interest. silent second program, assuming the purchase of a median-priced home at \$786,000 with a 6% annual price appreciation.

Figure 24: Impacts of Recycling Funds - Shared Appreciation vs. Fixed Rate

|                                                   | Shared Appreciation | Fixed-Rate |
|---------------------------------------------------|---------------------|------------|
| Initial Second Mortgage Amount                    | \$134,000           | \$134,000  |
| Repayment Amount Due at Year 10 (Upside Scenario) | \$226,000           | \$174,000  |
| Down Payment Required for Next Borrower           | \$226,000           | \$226,000  |
| Surplus/Shortfall                                 | \$0                 | (\$52,000) |

Figure 25: California Median Prices of Existing Single-Family Homes



Sources: California Association of Realtors

## Drawbacks of SAL Include Financial Complexity

A SAL is more complicated and less familiar than a conventional fixed rate mortgage. The amount that a homebuyer will have to pay is the biggest increase in complexity versus other types of public homeownership assistance products. There is neither a fixed interest rate nor a payment schedule that a homebuyer can refer to in order to understand what they will owe in the future. This uncertainty, along with other features of a SAL (setting the value for a home in a cash-out refinance, making partial payments, etc.), can be confusing and off-putting to potential homebuyers.

## IV. FUND DESIGN



### California Dream for All: Fund Goals

As outlined in AB 140, the CA Dream for All Fund (“the Fund”) should be designed to:

1. **Provide significant down payment assistance** to meaningfully expand access to homeownership through a shared appreciation loan, particularly to first-time and first-generation homebuyers;
2. **Support wealth accumulation** for homebuyers who purchase a home, particularly in communities that historically face more systemic barriers to homeownership;
3. **Maximize the number of households assisted** over time with the public funding available; and
4. **Complement existing down payment assistance and first mortgage programs at the federal, state and local levels.**

A well-designed SAL product can not only provide the initial homebuyers with sufficient upfront down payment assistance and access to competitive first mortgage options, as well as enable wealth accumulation through homeownership; it can also revolve the funds to serve new homebuyers at exit. By offering SALs, the CA Dream for All Fund could increase access to homeownership by providing homebuyers a second source of financing, which would reduce the homebuyer’s upfront down payment, the first mortgage amount and monthly debt payments.<sup>63 64</sup> The result

would be greater access to homeownership. As elaborated in the Introduction and Background section, apart from wealth accumulation, homeownership brings additional benefits to households, including increased financial health and improved educational outcomes for children.<sup>65</sup> A SAL product with loan terms that do not benefit first-time homebuyers and primarily focus on Fund returns would defeat the purpose of the program.

### Key Program Terms and Design Considerations

To ensure that the CA Dream for All Fund can meet its goals and priorities, it is critical to contemplate the following set of design considerations that will determine the type of loans made by the Fund. The following section lays out the range of options and considerations for designing the Fund and highlights some of the challenges and opportunities involved.

As the Fund moves through the State’s legislative and regulatory processes, *it should balance the mandate to meet a large range of policy objectives without creating disruptive, unintended consequences in an already tight housing market, particularly as a statewide program. Once the Fund is set up, it should have its own governance model to be responsive to a wide range of internal and external stakeholders. This will give the program administrator the ability to adjust key terms and the operational plan based on the Fund’s performance and market conditions.*

63 “Homeownership is Affordable Housing.” Urban Institute, 2021. Retrieved from: [https://www.urban.org/sites/default/files/publication/104214/homeownership-is-affordable-housing\\_0\\_0.pdf](https://www.urban.org/sites/default/files/publication/104214/homeownership-is-affordable-housing_0_0.pdf)

64 “How does homeownership contribute to wealth building?” Habitat for Humanity, 2021. Retrieved from [https://www.habitat.org/sites/default/files/Evidence-Brief\\_Wealth-building-for-homeowners.pdf](https://www.habitat.org/sites/default/files/Evidence-Brief_Wealth-building-for-homeowners.pdf)

65 “Evaluating Homeownership as the Solution to Wealth Inequality.” Federal Reserve Bank of Cleveland, 2021. Retrieved from: <https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2021-economic-commentaries/ec-202122-evaluating-homeownership-as-the-solution-to-wealth-inequality.aspx>

## Shared Appreciation Loan Terms

The degree to which the CA Dream for All Fund can build wealth and protect homebuyers from future price fluctuations in home prices is largely dependent on the following key design decisions.

### Loan Amount



#### RECOMMENDATIONS:

The Fund should enable households to make *at least a 20% down payment* with the opportunity to go up to a 30% down payment for high-cost markets or priority target homebuyer groups.



#### RANGE OF OPTIONS:

The amount of the SAL available to each individual borrower would determine *who can access* the CA Dream for All Fund, the *location of homes* that can be purchased, and the *level of income* required to support mortgage payments. There are multiple parameters that can be set to limit a homebuyer's loan amount, including the *maximum loan amount*, *maximum purchase price* and *debt-to-income ratio*.

Figure 26: Mechanisms to Limit the Loan Amount

| Mechanism                       | Description                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Absolute Maximum Loan Amount    | An absolute maximum loan limit constrains the Fund's contribution to a single borrower to a fixed amount. Assuming the loan amount represents a fixed percentage of the property value, the higher the absolute maximum, the greater the home value affordable to the borrower. This method lacks flexibility to market conditions and geographic differences in home value. |
| Purchase Price Cap              | A purchase price maximum sets a cap on the home value a borrower may purchase. Limiting the purchase price ensures borrowers are not "over-housed" and select a specific set of homes in the market. While a purchase price limit, places a ceiling on the home value, it does not offer flexibility to market volatility.                                                   |
| Minimum and Maximum Housing DTI | A maximum DTI limits the percentage of monthly income dedicated to making mortgage and other monthly housing payments to ensure a responsible portion of a borrower's income is dedicated to housing payments. The monthly mortgage expense is a function of the property purchase price, first mortgage leverage, and interest rate.                                        |
| Percentage of Property Value    | A cap on the percentage of the property value that can be funded by a SAL limits the Fund's equity stake in a borrower's property. The CA Dream Fund illustrative design restricts the loan amount to 17% of the property value.                                                                                                                                             |

Most existing public SAL programs are local, as opposed to statewide, which makes it feasible to set an *absolute maximum loan amount*. Some provide variation based on income level or other borrower characteristics (e.g., occupation). For instance, Alameda County's DPA program has two maximum loan limits based on a homebuyer's income. That is, the loan limit is \$210,000 for households earning less than 100% AMI and \$160,000 for households earning between 100% and 120% AMI. Similarly, San Francisco's DPA programs offer higher loan limits but also provide additional support for the Dream Keeper Initiative with a loan limit of \$500,000 compared

to \$375,000 for the general DPA program. Another privately funded program sets a loan limit of \$300,000 specifically for physicians relocating to Santa Barbara County.<sup>66</sup> An absolute maximum loan amount allows homebuyers to easily determine the potential support from the Fund but does not respond to changing market conditions or regional variation that is necessary at the state level.

The loan amount can also be determined through a *maximum purchase price cap* or a *maximum percentage of purchase price*. For instance, in a Santa Clara County program, SALs are limited by

66 "Resident Salaries and Benefits."Cottage Health, 2022. <https://www.cottagehealth.org/medical-professionals/residency-programs/resident-salaries-and-benefits/>

both a maximum purchase price of \$1,100,000 and a maximum percentage of 17%.<sup>67</sup> Setting both a price and percentage limit offers tighter targeting to specific homebuyers but reduces adaptability to market conditions. This is easier to manage when the program is spread across a single local jurisdiction, rather than at the state level where there are a multitude of variables influencing local markets. If the loan size is too small, a significant segment of Californians, neighborhoods or types of home can be effectively excluded from the CA Dream for All Fund.

Another option is to set a limit on the back-end *debt-to-income ratio (DTI)*, which indirectly limits the loan amount by restricting the purchase price a household can finance given their income. The back-end DTI is the share of monthly income that goes to paying all debt, including mortgage payments. For instance, Alameda County's DPA program has a back-end DTI limit of 43% as well as a minimum expenditure of 25% of income on housing costs. In this case, the DTI limit provides that homebuyers have sufficient resources for other expenses but also requires that homebuyers' housing costs are not fully subsidized by the Fund. DTI limits can help reduce the risk that borrowers are over-leveraged. DTI limits put a cap on homebuyers' leverage compared to monthly income. The first mortgage lender will have strict underwriting guidelines that cap DTI. For instance, Fannie Mae restricts DTI to 36% of monthly income with an exception of up to 45% if the homebuyer has additional reserves or a high credit score.<sup>68</sup> In other words, regardless of the Fund's cap, the first mortgage will set a DTI limit.

### Key Considerations for Loan Amount:

1. **A statewide fund will face wide regional variation in home prices, making it impossible to set an effective singular absolute maximum loan amount.** To be useful to potential homebuyers throughout the state the CA Dream for All Fund must accommodate regional variation. For instance, in 2021 the median house price in the San Francisco Bay Area was nearly double those in the Inland Empire.<sup>69</sup> A statewide maximum loan amount or maximum purchase price does not allow for this variation. It would establish a loan amount that was either too low to benefit potential homebuyers in the San Francisco Bay Area or disproportionately high in the Inland Empire.
2. **Establishing a maximum debt-to-income ratio will put borrowers using the CA Dream for All Fund at a disadvantage when they attempt to purchase a home.** First mortgage lenders, in coordination with the secondary mortgage market, establish maximum debt-to-income ratios. If the CA Dream for All Fund established a DTI ratio lower than what first mortgage lenders have set, it would reduce the amount of the first mortgage a household could access. This would undermine the primary benefit of the CA Dream for All Fund: providing financial support to help households purchase homes that could not otherwise afford. As the Fund begins operations and an administrator is selected, they will determine the list of qualified first mortgage lenders who will have their own DTI limits. This process should prevent CA Dream for All borrowers from selecting a high-risk, non-GSE conforming product. By placing the responsibility for setting the DTI limit with the first mortgage lender, the CA Dream for All Fund will increase access to sustainable homeownership and ensure that homebuyers are not entering into overly-risky mortgage products.
3. **Ensuring households reach a 20% down payment provides the greatest financial benefit to households.** A SAL larger than 20% might hinder the borrower's capacity to build wealth through homeownership. As illustrated in the Introduction and Background sections, when the loan-to-value (LTV) on the first mortgage is greater than 80%, the typical homebuyer is required to pay mortgage insurance—a burden that adds to the borrower's monthly housing payment. Therefore, it is critical that the Fund provides sufficient proceeds to enable the borrowers to reach a 20% down payment and eliminate the

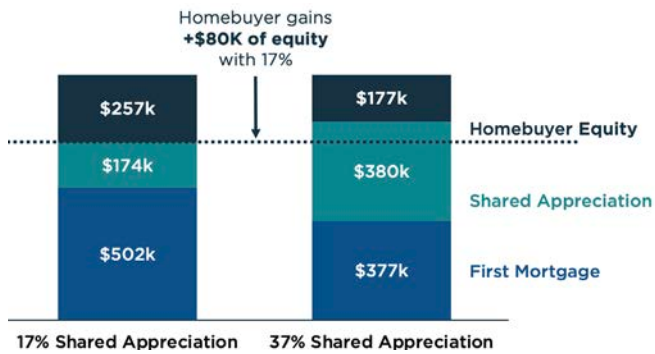
In contrast, loan limits based on a percentage of appraised property value at loan origination allows for regional price variation. House prices are growing at different rates across the state, which requires flexibility to accommodate. A universal limit, or other specific regional caps, would not allow the Fund to respond to changing market dynamics. Setting loan value as a percentage of property value will alleviate the administrative burden of adjusting limits and reduce the need to revisit Fund guidelines as economic conditions change.

67 "Empower Homebuyers SCC." Housing Trust Silicon Valley, 2022. <https://housingtrustsv.org/programs/homebuyer-assistance/empower-homebuyers-scc/>  
 68 "Selling Guide," Chapter B3-6: Liability Assessment. Fannie Mae. <https://selling-guide.fanniemae.com>  
 69 HR&A analysis of 2021 California Association of Realtors Median House Price data.

need for any mortgage insurance. It is also in the borrower’s interest to maximize their first mortgage closer to 80% LTV, since it offers the fastest route to wealth accumulation through a combination of house price appreciation and loan amortization.

To illustrate, Figure 27 shows that homebuyer wealth accumulation is more than 40% higher with a 17% SAL versus a 37% SAL.<sup>70</sup> In both scenarios, the homebuyer makes a 3% down payment, or \$24,000. With an additional SAL of 17%, after 10 years the homebuyer’s equity grows to \$279,000, or 11.8 times their initial investment. If the SAL increases to 37% of the home price, the homebuyer’s equity only grows up to \$194,000, or 8.2 times the original amount. As the amount of the SAL increases, the homebuyers might be able to afford higher priced homes, but they also accumulate wealth at a slower pace than they would if they maximized their first mortgage.

**Figure 27: Impacts on Homebuyer Equity, Shared Appreciation Loan at 17% vs. 37% of Home Price**



Source: HR&A Advisors

- A second mortgage that is more than 20% LTV results in support for fewer households through the CA Dream for All Fund.** A 25% increase in the average size of the second mortgage translates directly to a 25% decrease in the number of households assisted. Keeping the target level of assistance at 20% will benefit the greatest number of homebuyers.
- For households in high-cost areas or for populations of homebuyers that face bigger barriers to accessing homeownership, larger loans may be required.** In some circumstances, house prices are so out of reach that even with a 20% CA Dream for

All Fund loan, homeownership will still be unattainable for either first-time homebuyers in general or for specific target groups. The disadvantage of larger loans, as discussed earlier, is that it takes longer for homebuyers to accumulate wealth and to be able to pay off the SAL. Therefore, loan amounts above 20% should be exceptions that can be granted by the program administrator. The key design insight is that it will be critical that the Fund has the flexibility to review and refine the key terms as implementation experience is gained.

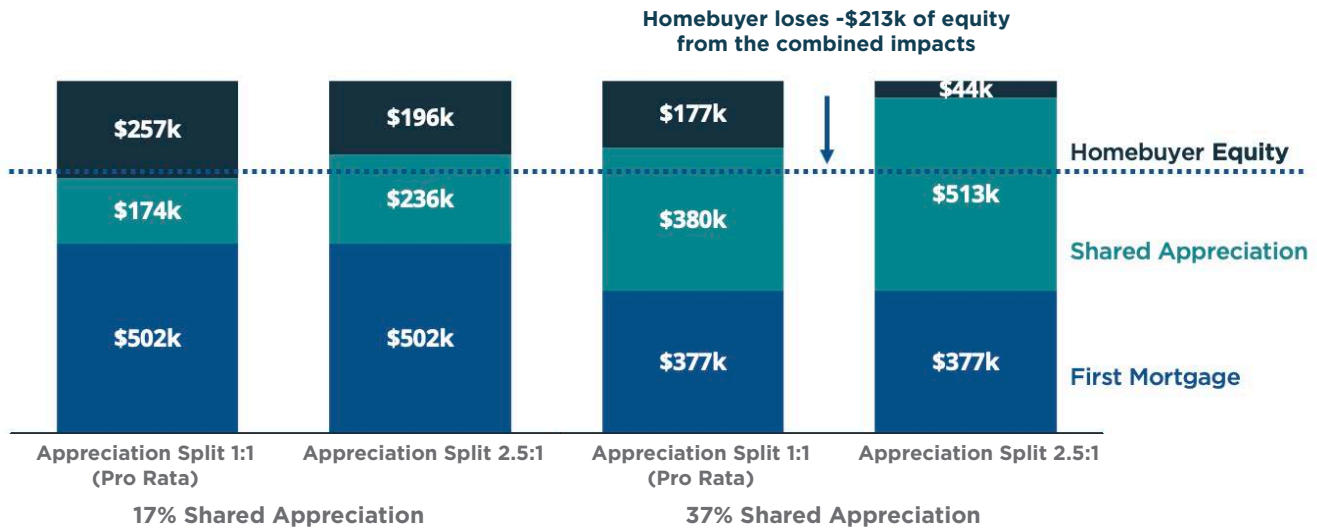
- Together, the CA Dream for All Fund loan amount and how appreciated value is distributed determine the degree to which a household can build wealth.** Figure 28 provides examples of the interaction between loan size and the distribution of appreciated value, or appreciation split.<sup>71</sup> A 17% SAL enables the borrowers to realize \$279,000 in net equity with a pro rata, or 1:1, appreciation split. With the same loan amount and a 2.5:1 appreciation split, the borrower’s net equity reduces to \$211,000. Meanwhile, with a 37% SAL, the borrower’s net equity is further reduced with an appreciation split of 2.5:1. That is, 92.5% of the appreciated value—or 37% times 2.5—goes to repay the Fund, and the homebuyer’s net equity is just \$44,000. The effect of this interaction suggests that lower loan amounts coupled with an equal appreciation split are most advantageous to building homebuyer wealth. The mechanics of the appreciation split will be further explored below.
- A final consideration is the Fund’s compatibility with other down payment assistance programs.** The Fund should not preclude homebuyers from taking advantage of existing programs where possible. For instance, the CalHFA MyHome program could be layered to reduce the CA Dream loan by \$15,000.<sup>72</sup> Allowing additional programs to layer into financing could make the Fund more efficient by lowering loan amounts and helping homebuyers cover the full cost of buying a home. Homebuyers should have access to housing counselors to help them navigate compliance between various programs.

70 Assuming the purchase of a median-priced home at \$786,275 in California with 3.0% annual appreciation over 10 years and a pro-rata SAL program

71 Assuming the purchase of a median-priced home at \$786,275 in California with 3.0% annual appreciation over 10 years and a pro rata SAL program

72 “CalHFA Conventional Loan Programs Matrix.” CalHFA. Retrieved from <https://www.calhfa.ca.gov/homeownership/programs/archive/2022/20220228/tool-matrix-conventional-02-28.pdf>

Figure 28: Combined Impacts on Household Equity from Shared Appreciation Loan Size and Appreciation Split



Source: HR&A Advisors

### Borrower Down Payment



**RECOMMENDATION:**

The CA Dream for All Fund *should not impose additional parameters regarding the amount and sources of down payment* beyond guidelines from the first mortgage lenders. The borrowers will have to follow all closing requirements as dictated by the first mortgage lender. The Fund is intended to remove barriers to homeownership, not create additional ones.



**RANGE OF OPTIONS:**

Most mortgage loan programs require a cash contribution from borrowers to ensure that homebuyers have “skin in the game” and share the lender’s risk. The minimum down payment requirement for first mortgage programs could go *as low as 3.5% for FHA loans*, which are backed by the FHA for borrowers with at least a 580 credit score, and *as low as 3.0% for conventional mortgages* backed by GSEs such as HomeReady and HomePossible or HomeOne programs.<sup>73 74</sup> There are also special loan programs—such as VA loans that are guaranteed by the VA and USDA loans that are backed by the USDA’s Rural Development program—that have *no down payment* requirement. Another common benchmark adopted by conventional loan lenders is a *20% down payment* that does not require borrowers to pay private mortgage insurance.<sup>75</sup>

Figure 29: Minimum Down Payment Requirements for Various Programs

| Loan Type        | Min. Down Payment | Conditions                                                                                                          |
|------------------|-------------------|---------------------------------------------------------------------------------------------------------------------|
| USDA / VA        | 0.00%             | Backed by U.S. Department of Veteran Affairs or U.S. Department of Agriculture                                      |
| PMI Insured GSE  | 3.00%             | Backed by government-sponsored enterprises (GSEs) – Fannie Mae and Freddie Mac; HomeReady and HomePossible programs |
| FHA              | 3.50%             | Backed by Federal Housing Administration<br>Minimum 580 credit score                                                |
| Conventional GSE | 20.00%            | Conventional borrowers are not required to pay PMI if their down payment is above or equal to 20%                   |

73 “97% Loan to Value Options.” Fannie Mae, 2022. <https://singlefamily.fanniemae.com/originating-underwriting/mortgage-products/97-loan-value-options>

74 “HomeOne.” Freddie Mac, 2022. <https://sf.freddie.com/working-with-us/origination-underwriting/mortgage-products/home-one>

75 Lam, Ken, Robert Dunsky and Austin Kelly. “Impacts of Down Payment Underwriting Standards on Loan Performance – Evidence from GSE and FHA portfolios.” Federal Housing Finance Agency, 2013. [https://www.fhfa.gov/policyprogramsresearch/research/paperdocuments/2013-12\\_workingpaper\\_13-3-508.pdf](https://www.fhfa.gov/policyprogramsresearch/research/paperdocuments/2013-12_workingpaper_13-3-508.pdf)

## Key Considerations of Borrower Down Payment Requirement:

1. Setting down payment requirements will create a major obstacle to homeownership for homebuyers with savings and wealth barriers, particularly in high-cost areas of California.<sup>76</sup> The National Association of Realtors found that first-time homebuyers put down 6% and repeat buyers put down 16% for an average 12% down payment across the country.<sup>77</sup> This implies that a homebuyer would need to put \$94,000 down to buy a California median-priced single-family home of \$786,000, which is approximately equal to the state's median income at \$81,000 as of 2021—and likely much greater than the average savings of a homebuyer. The reality of high prices, particularly in coastal cities, means that adding down payment requirements through the CA Dream for All Fund would heighten existing barriers to homeownership for first-time buyers.
2. Households of color are often disadvantaged by requirements due to pre-existing wealth disparity. Household savings are unequally distributed in the United States and in California. For instance, 60.7% of Latino households and 56.7% of Black households are

considered “liquid asset poor,” meaning that they have virtually no savings, while the term applies to just 28.2% of White households.<sup>78</sup> As a result of this inequality, Black and Latino homebuyers tend to be less able to make sizable down payments.

Figure 30 shows that Black and Latino households in general purchase lower value homes with smaller down payments. The median down payment from a Black or Latino homebuyer was more than half of that of the median White and Asian homebuyer. Without the wealth for a large down payment, homebuyer's offers are less attractive, which puts them at a disadvantage when attempting to purchase homes. This inequality persists in the distribution of borrowers with FHA loans, where Black and Latino borrowers account for 33% of all borrowers but make up 63% of all FHA loan originations.<sup>79</sup>

Households of color are also less likely to receive financial assistance from family members to help them afford a down payment.<sup>80</sup>

Figure 30: Implied Down Payment by Race

| Race         | Median Property Value | Median Loan Amount | Property-Loan Difference (Median) | Implied Down Payment |
|--------------|-----------------------|--------------------|-----------------------------------|----------------------|
| White        | \$585,000             | \$475,000          | \$110,000                         | 19%                  |
| Black        | \$445,000             | \$415,000          | \$30,000                          | 7%                   |
| Asian        | \$745,000             | \$575,000          | \$170,000                         | 23%                  |
| Latino       | \$425,000             | \$385,000          | \$40,000                          | 9%                   |
| <b>Total</b> | <b>\$555,000</b>      | <b>\$465,000</b>   | <b>\$90,000</b>                   | <b>16%</b>           |

Source: HMDA 2020

76 “An Essential Role for Down Payment Assistance in Closing America’s Racial Homeownership and Wealth Gaps.” Urban Institute, 2021. [https://www.urban.org/sites/default/files/publication/104134/an-essential-role-for-down-payment-assistance-in-closing-americas-racial-homeownership-and-wealth-gaps\\_0.pdf](https://www.urban.org/sites/default/files/publication/104134/an-essential-role-for-down-payment-assistance-in-closing-americas-racial-homeownership-and-wealth-gaps_0.pdf)

77 “2020 Downpayment Expectations and Hurdles to Homeownership Report.” National Association of Realtors Research Group, 2020. <https://cdn.nar.realtor/sites/default/files/documents/2020-downpayment-expectations-and-hurdles-to-homeownership-report-04-16-2020.pdf>

78 “Report: More than a third of California households have virtually no savings, are at risk of financial ruin.” The Mercury News, 2017. <https://www.mercurynews.com/2017/07/26/more-than-a-third-of-california-households-have-virtually-no-savings-are-at-risk-of-financial-ruin-report-says-3/>

79 HMDA, 2020.

80 Stegman, Michael “How the presence and type of down payment assistance affects the performance of affordable mortgage loans.” Joint Center for Housing Studies of Harvard University, 2019. <https://www.jchs.harvard.edu/blog/how-the-presence-and-type-of-down-payment-assistance-affects-the-performance-of-affordable-mortgage-loans>



- Because down payment requirements do not reduce risk, the program should instead encourage homebuyers to focus on building cash reserves. As an alternative to additional down payment requirements, the CA Dream for All program should explore how reserve saving accounts could be established to increase access to liquid savings. Small but successful programs like Blue Hub Capital's SUN Capital Reserve Accounts could be adapted and scaled.<sup>81</sup> Homeowners should be required to hold liquid savings not only at origination but also over the life of the loan. Instances of default were found to follow losses of liquidity "regardless of the homeowner's equity, income level, or payment burden."<sup>82</sup> To ensure borrowers retain savings specifically for home payments and improvements, some lenders require borrowers to set aside funds in emergency mortgage or home repair reserve accounts. Further, lender restrictions on reserve accounts that ensure borrowers only use funds during periods of personal financial stress or economic downturns can help reduce default rates. Borrowers can also tap into their home equity with mortgage modifications. Modifications that increased liquidity were found to reduce the rate of default while modifications that increased home equity did not have an impact on the default rate.<sup>83</sup>

## Appreciation Share



### RECOMMENDATIONS:

The Fund should offer a pro rata or 1:1 appreciation split, where the Fund is repaid the same share of the appreciated value as the initial investment, with the ability to increase the split up to 1.5. This maximum appreciation split, 1.5, combined with the maximum loan amount of 30%, ensures that the homebuyer will always have a larger share of the appreciated value than the Fund.



### RANGE OF OPTIONS:

There is a wide range of potential appreciation splits between the CA Dream for All Fund and the homebuyer, reflected in the range of terms between existing public and private programs. Most public programs offer a *pro rata* or 1:1 appreciation split. A SAL of 17% of the purchase price would result in a repayment of the original loan amount plus 17% of any increase or decrease in the property value from the date of purchase. Meanwhile, private programs tend to take a larger share of the split than their original investment to account for the returns demanded by private investors. For instance, Landed, a shared appreciation program serving mostly "essential professionals," applies an *appreciation split of 2.5:1*, while Unison, a shared appreciation program with more generous eligibility criteria, applies a *4:1 appreciation split*.<sup>84</sup>

## Key Considerations of Appreciation Share Split:

- The appreciation split should balance individual borrower wealth accumulation and the overall impact of the Fund in terms of the number of households served over time. Having a low appreciation split, such as 1:1 or pro rata, allows borrowers to benefit from a greater share of the appreciated value of their home and maximizes borrower wealth accumulation. On the other hand, a relatively high appreciation split will increase the Fund's financial performance and potentially expand the impact of the Fund by recycling more funds per borrower.

For example, when a borrower makes a 3% down payment with a 17% loan from the CA Dream for All Fund to buy a \$786,000 home, after 10 years of 3.0% price appreciation the home would be worth \$1,056,000. With a pro rata or 1:1 appreciation split, the household needs to repay the program the original loan amount plus 17% of any increase or decrease in the property value. In this case, the Fund would get \$46,000 on top of the original loan amount of \$133,000, and the household would receive a net equity of \$279,000. If the appreciation split increases to 4:1, the Fund receives 68% of the appreciated value. The Fund would get \$184,000 on top of the original loan amount compared to a net equity of \$142,000 for the homebuyer. With the higher appreciation split, the Fund can recycle an additional \$138,000 and serve more households, but the initial homebuyer would accumulate less wealth.

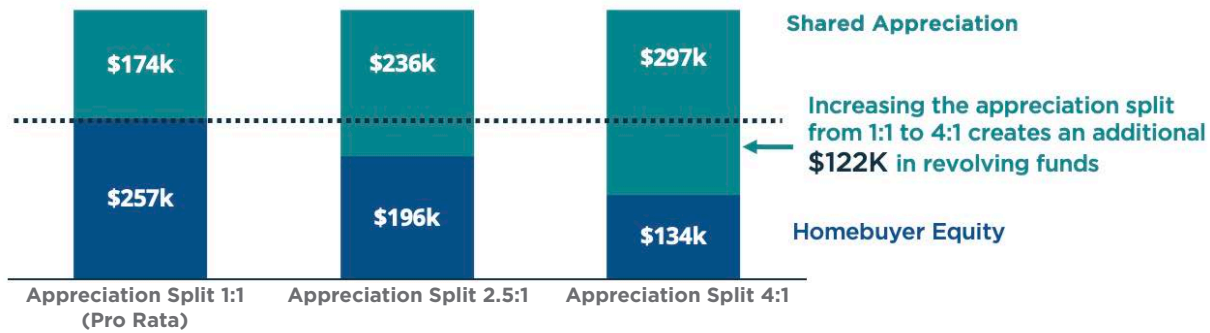
81 "Foreclosure Relief." Blue Hub Capital, 2022. <https://bluehubcapital.org/foreclosure-relief>

82 "Trading Equity for Liquidity." JP Morgan Chase. 2019. <https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-trading-equity-for-liquidity.pdf>

83 "Market Snapshot: First Time Homebuyers." Consumer Financial Protection Bureau, 2020. [https://files.consumerfinance.gov/f/documents/cfpb\\_market-snapshot-first-time-homebuyers\\_report.pdf](https://files.consumerfinance.gov/f/documents/cfpb_market-snapshot-first-time-homebuyers_report.pdf)

84 Based on information retrieved Landed and Unison website as of May 24, 2022; More detailed terms of public and private shared appreciation loan program are summarized in Appendix E.

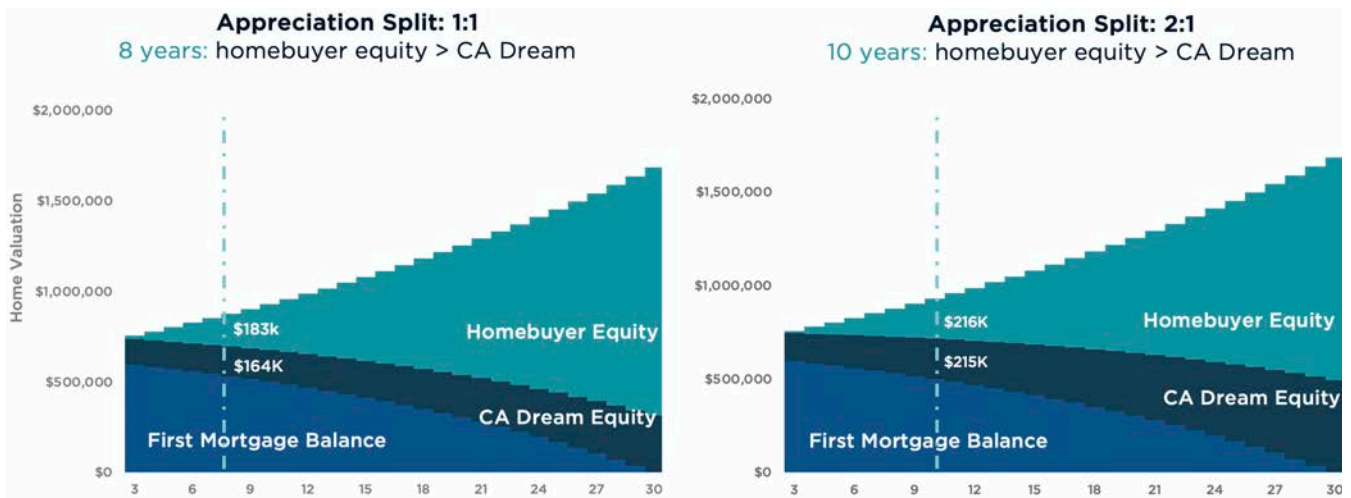
Figure 31: Impacts on Fund Recycling from Appreciation Split



Source: HR&A Advisors

- The appreciation split directly affects when the initial borrowers have sufficient equity to repay the Fund, which has an indirect impact on their repayment incentives and the amount of recycled funding available for future borrowers. For instance, Figure 32 below shows the expected equity value of the homebuyer versus CA Dream for All equity over 30 years, assuming a purchase of a median-priced home in California with a 3.0% annual price appreciation. Over time, the value of the homebuyer’s equity continues to increase compared to the CA Dream for All Fund’s equity. When the appreciation split is 1:1, the homebuyer’s equity is equal to the value of the shared appreciation loan in seven years. In contrast, when the appreciation split is 2:1, it takes ten years for the homebuyer’s equity to exceed that of the Fund. The borrower should have more incentive to repay early if the Fund takes a larger share of the appreciated value. As the Fund is implemented, it will be important to monitor borrower repayment speed to ensure that the loans are revolving at a reasonable rate.

Figure 32: The Impact of Appreciation Split on Homebuyer Equity, CA Dream for All Equity, First Mortgage Balance



Source: HR&A Advisors

- Appreciation split is a key factor in determining a borrower’s effective annual interest. As described in the Introduction and Background section, a relatively low appreciation split, such as 1:1 or pro rata, implies a low effective annual interest rate that is on par with the annual home price growth rate. In this case, homebuyers take a relatively larger share of home price appreciation in a booming real estate market, while also sharing a relatively larger risk in a market downturn. On the other hand, with a high appreciation split, the Fund will be able to relend to more households. A major advantage of a SAL is that the effective annual interest rate moves along with property valuation in different real estate market conditions and provides borrowers with more downside protection in an economic downturn compared with a fixed rate mortgage that has no downside risk sharing at all.

## Repayment Events



### RECOMMENDATIONS:

*Repayment should be due upon sale, transfer, and cash-out refinancing, and there should be no penalties for prepayment.* The CA Dream for All program should rely on an informational approach to encourage prepayment, and the program administrator should reserve the authority to establish penalties if SALs are not being repaid on time to serve future Californians.



### RANGE OF OPTIONS:

Repayment events are partial or full payments towards the borrower's mortgage principal and interest. Mortgage repayments are typically required when the borrower 1) reaches the end of loan term, 2) transfers the title of the property, typically through a sale, and 3) defaults on any outstanding mortgages. For public second mortgage programs there are often additional requirements, including refinancing the first mortgage and having the loss of primary residence status.

The term of a SAL varies based on the goals of the loan program. Most local shared appreciation programs focus on serving low-income first-time homebuyers, so the loan term is set to maximize wealth accumulation and to comply with GSE loans. As a result, they often have 30-year terms that are subordinated to first mortgages. A few public programs have even removed the loan term entirely to avoid forcing a major repayment event for homeowners who may be on a fixed income or who may have accumulated few other assets to repay the loan (the San Francisco DALP program, for example, recently removed their loan term).<sup>85</sup> In contrast, private shared appreciation programs have a wider range in loan terms depending on their investment goals—from as short as 10 years to as long as 30 years.

Some shared appreciation programs stipulate that repayment is also triggered in a cash-out refinancing event, where a borrower refinances for a new loan amount that is greater than the balance of the existing loan and receives the difference in a cash payment.<sup>86</sup> This is different from a rate refinancing event, during which a borrower refinances the first mortgage only to take advantage of a lower rate and reduce monthly mortgage payment but does not take out cash from the refinancing events.

### Key Considerations of Repayment Events:

**1. How the Fund approaches first mortgage refinancing has direct implications on a borrowers' ability to build wealth through homeownership and to access that wealth.**

The Fund assumes a 30-year loan term to match conventional loan terms, and yet the typical homeowner refinances much earlier—between years 6 and 12.<sup>87</sup> If CA Dream for All Fund borrowers behave similarly to typical homeowners, most will pay back their loan well before the end of the term. However, since there will be no monthly payments on the CA Dream for All Fund loan, some homeowners may choose to repay more slowly and will seek to resubordinate their loan.

**2. A refinance to obtain a lower interest rate is inherently different from a cash-out refinance in terms of risk and public policy benefit.** When a homeowner refinances to

obtain a lower interest rate, they are increasing their ability to afford their home and reducing their risk of default. This advances the mission of the CA Dream for All program and reduces the Fund's risk. When homeowners refinance to take equity out of the property, it changes the loan to value and increases the risk to the CA Dream for All Fund. It also indicates that the homeowner can afford to pay for a larger mortgage and pay off some or all of the CA Dream for All Fund second mortgage, which then could be recycled to another household.

**3. There will be hardship cases where households need to be able to access equity without fully repaying the CA Dream for All Fund second mortgage.**

One of the advantages of homeownership is building asset value that can be accessed to pay for other needs. In these instances, a borrower may need a cash-out refinance of their first mortgage. Still, a cash-out refinance might

85 Based on interview with city staff administering the San Francisco DALP program

86 "Recent Trends in Enterprise Cash-Out Refinances." Federal Housing Finance Agency, 2021. <https://www.fhfaog.gov/sites/default/files/WPR-2021-008.pdf>

87 "Staff Reports: Understanding Mortgage Spreads." Federal Reserve of New York, 2018. [https://www.newyorkfed.org/medialibrary/media/research/staff\\_reports/sr674.pdf](https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr674.pdf)



not generate sufficient capital to repay the full outstanding SAL amount. Forcing the homebuyer to fully repay in these scenarios could add to a household's financial hardship and eventually result in a default. The program will need a process to evaluate requests under these scenarios, and ongoing financial counseling may help to identify these cases and enable alternative solutions.

- 4. Prepayment incentives are critical in order to increase the pace of recycling and the overall impact of the Fund.** Encouraging homebuyers to prepay before the 30-year term will enable the Fund to reinvest in new borrowers. Yet given the loan amount under consideration, it is expected that borrower's prepayment speed will be slower than existing DPA programs.<sup>88</sup> Furthermore, first-time homebuyers also have lower prepayment rates than repeat homebuyers.<sup>89</sup>

As discussed previously, a higher appreciation share split is one option to provide a stronger incentive for borrowers to repay the Fund earlier. A higher split might be viable as long as it ensures that borrowers still maintain a fair share of the home price appreciation and complies with Fannie Mae guidelines. However, a higher appreciation split also increases the amount a household must repay, which will limit the ability of some households to repay faster. Any use of a higher split would need to be carefully evaluated.

There are international precedents to charge an annual fee or interest rate after a prescribed period to encourage fund recycling. By increasing the minimum required

payment over time, borrowers are incentivized to purchase back their equity early and retain more ability to build wealth.<sup>90</sup> A program in the United Kingdom, for example, charges interest after five years in addition to shared appreciation—but because this approach would pose compliance concerns with existing Fannie Mae underwriting guidelines, it has not been recommended.

We can also encourage prepayment through informational outreach and homebuyer education, although this approach comes with additional administrative costs. Quarterly or annual statements could show the estimated property value compared to outstanding debt to remind homebuyers when there is likely sufficient accumulated equity to repay the loan. These informational incentives will not penalize households, and if used correctly, could help increase prepayment.

- 5. Penalty clauses should be a last resort in the event of late payment. The Fund should have a governance model in place to monitor performance and make necessary adjustments.** A clearly-defined penalty clause for late payment might be effective in incentivizing repayment, but it should only be considered after exhausting other repayment incentive options. Any penalty clause consideration should balance the need to enforce repayment, recycle funds and maximize the number of households assisted over time with the Fund's goal to support wealth accumulation through homeownership.

88 Mayer, Chris, Tomasz Piskorski and Alexei Tchisty. "The inefficiency of refinancing: Why prepayment penalties are good for risky borrowers." *Journal of Financial Economics*, 2013. <https://www0.gsb.columbia.edu/faculty/cmayer/papers/JFE-Mayer-Piskorski-Tchisty-2013.pdf>

89 Stacy, Christina, Brett Theodos and Bing Bai. "How to prevent mortgage default without skin in the game: Evidence from an integrated homeownership support nonprofit." *Journal of Housing Economics*, 2018. <https://homewise.org/wp-content/uploads/page/How-to-prevent-mortgage-default-without-skin-in-the-game-Stacy-Theodos-and-Bai-2018.pdf>

90 "Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z)." *Federal Register*, 2013. Retrieved from <https://www.federalregister.gov/documents/2013/01/30/2013-00736/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z>

## INTERNATIONAL CASE STUDY

### United Kingdom Shared Ownership Model - Prepayment Incentives

In 2016, the United Kingdom initiated “Shared Ownership,” a national down payment assistance program with a shared equity model in England. The program offers interest-bearing equity on new construction home purchases for up to 20% of the purchase price, with up to 40% in London, and requires the borrower to make a minimum 5% down payment. The program charges interest on the loan to encourage an earlier property sale and permits partial loan repayments. The interest charged on the loan increases throughout the loan term. There is no interest charged in the first five years, after which the interest rate is 1.75% in year 6, and 1.75% plus inflation tied to the CPI thereafter.<sup>91</sup>

Partial repayments are permitted using the staircasing method. The minimum voluntary repayment is 10% of the market value at repayment and carries an administrative cost.<sup>92</sup> The decision to place a floor on the partial repayment value, a minimum voluntary repayment, is due to the high cost of property appraisal and mortgage restructuring. The borrower is also required to pay outstanding loan fees at prepayment. The borrowers’ repayment speed has been faster than expected, with almost 50% of borrowers repaying in the first five years of the mortgage term.<sup>93</sup> Faster repayments reduce the expected return to the program since less interest is charged to homebuyers and appreciation over the longer term is not captured.

91 “Help to Buy scheme - everything you need to know.” Moneyhelper.org, 2022.

<https://www.moneyhelper.org.uk/en/homes/buying-a-home/help-to-buy-scheme-everything-you-need-to-know>

92 “Homebuyers’ guide to the Help to Buy: Equity Loan.” Gov.uk, 2022. <https://www.gov.uk/government/publications/help-to-buy-equity-loan-buyers-guide/homebuyers-guide-to-the-help-to-buy-equity-loan-2013-to-2021-accessible-version#:~:text=The%20Help%20to%20Buy%20scheme,less%20than%20when%20originally%20purchased>

93 Ward, Benjamin. “Designing a Nationwide Downpayment Assistance Program.” Harvard Joint Center for Housing Studies, 2020. [https://www.jchs.harvard.edu/sites/default/files/research/files/harvard\\_jchs\\_downpayment\\_assistance\\_ward\\_2021.pdf](https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_downpayment_assistance_ward_2021.pdf)



## Borrower Eligibility

Eligibility requirements will shape who the Fund serves and the degree to which it meets its goal of expanding access to homeownership among traditionally disadvantaged Californians. In determining these requirements, the program must balance serving those with the greatest needs and serving those with the ability to secure the first mortgage necessary to take advantage of the second mortgage from the Fund.

Eligibility requirements that are too restrictive will leave the Fund with unused resources and fail to serve the most Californians possible. Overly broad eligibility will result in most support going to households who could have accessed homeownership even without the Fund's loan. In order to provide appropriate support to the right populations, level of targeting will have to be actively managed over the life of the Fund.

## Income Limits



### RECOMMENDATION:

The Fund should target an income level **up to 100% of Area Median Income (AMI), with the option to go up to 150% of AMI, without any asset tests**. The program administrator should have the authority to adjust the target income up to 150% of AMI and to vary the eligible income level by county in order to reflect diversity across the state.



### RANGE OF OPTIONS:

Existing homeownership assistance programs target a range of income levels, with public programs targeting lower-income homebuyers than private programs. Publicly funded homeownership programs often set specific target ranges with additional conditions for income qualification. Several programs target homebuyers with a maximum income of 80% AMI, such as the CalHFA Forgivable Equity Builder Loan program, while others allow up to 150% AMI, such as the CalHFA MyHome program. In general, the more proceeds or subsidies that are offered, the lower the AMI target.

In contrast, many private shared appreciation programs focus on occupation groups, or those that are highly educated but not rich yet ("HENRY") rather than a specific income band. Examples of HENRY borrowers include doctors completing their training, recently-graduated lawyers and other highly-educated job categories. HENRY households typically pose a lower risk of default, and are likely to repay in a relatively short timeframe and buy homes in up-and-coming neighborhoods where appreciation is greater.

### Key Considerations of Income Limits:

- 1. Targeting homebuyers that are on the cusp of being able to access homeownership will result in the greatest increase in homeownership.** If the income target is set too low, then even with a CA Dream for All Fund loan a homebuyer will not be able to qualify for a first mortgage large enough to make a competitive offer. If the income band is set too high, then much of the CA Dream for All Fund will be used by households that would have been able to purchase a home regardless. Targeting homebuyers with an income up to 150% AMI will create a pool of eligible borrowers who have enough income to qualify for first mortgages but would struggle with down payment, closing costs and high monthly payments involved in current financing options.
- 2. The edge of the homeownership market varies greatly across California, and the CA Dream for All program will need to be flexible enough to align with the market.**

In 2020, the lowest income range to be able to access homeownership varied across the state from around 80% of AMI to nearly 150% of AMI, as shown in Figure 33. Regions with high home costs are also those with the most acute affordability challenges. For example, in the Los Angeles region, the median home value is over \$788,000; a household would require an income of at least \$111,900, or 140% of the AMI, to affordably purchase a home at that price. This suggests that the price of housing in high-cost markets is particularly inflated, even relative to their higher-earning populations. While homeownership is affordable to the median-income household in six regional markets, low-income households still face challenges; except in Sierra Nevada, the income required to purchase a home in these markets exceeds 80% AMI.

A close examination of the mortgage market in California helps to identify who is and is not getting access to mortgage financing, and

who is relying on FHA loans. Figure 33 shows that the majority of loans across California are made to borrowers with 100% AMI and above, and that, although lower-income households account for a much larger share of FHA loans than all loans, Californians across the income spectrum rely on FHA loans.

Figure 33: Statewide Mortgage Origination by Area Median Income and Type of Loan (2020)

| AMI Level     | Conventional   | FHA           | RHS or FSA   | VA            | Total          |
|---------------|----------------|---------------|--------------|---------------|----------------|
| <80% AMFI     | 30,514         | 9,906         | 430          | 3,913         | 44,763         |
| 80-100% AMFI  | 26,792         | 11,034        | 581          | 4,529         | 42,936         |
| 100-120% AMFI | 29,468         | 10,678        | 524          | 4,449         | 45,119         |
| 120-150% AMFI | 39,884         | 11,355        | 300          | 5,511         | 57,050         |
| >150% AMFI    | 113,865        | 11,362        | 121          | 9,370         | 134,718        |
| <b>Total</b>  | <b>240,523</b> | <b>54,335</b> | <b>1,956</b> | <b>27,772</b> | <b>324,586</b> |

Source: HMDA 2020

## First-Time Homebuyers



### RECOMMENDATION:

The program should require that borrowers are first-time homebuyers—but it should adopt a broad definition of “first-time.” The program administrator should have the ability to add a preference for first-generation homebuyers in order to further target the CA Dream for All Fund to potential homebuyers who require additional assistance to access homeownership.



### RANGE OF OPTIONS:

First-time homebuyers are a natural target population of the program—but although “first-time homeowner” sounds like a straightforward concept, housing programs define the term in a wide range of ways. On the most conservative end, it is defined as having never owned a home. Yet very few housing programs apply this strict definition, because it excludes a large number of households that do not currently own homes and are in need of assistance to access homeownership. The more common definition, set by the Department of Housing and Urban Development (HUD) and used by most programs is, “An individual who has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the property.”<sup>94</sup> Accordingly, we recommend that the program consider adopting this definition as a starting point.

Creating a first-generation requirement is a newer concept that has only been attempted in a limited number of homeownership assistance programs. The intent is to target households that have never benefited from homeownership and cannot draw on the intergenerational wealth homeownership often creates. The exact definition for first-generation homeowner varies across programs; in some cases, it might mean that none of the homebuyers’ parents have previously owned homes, and in others, it might simply mean that one of the parents of the homebuyers is not currently a homeowner. In Massachusetts, the Saving Toward Affordable Homeownership (STASH) program matches borrower savings for homebuyers below the area median income who are “first-time homebuyers whose parents or guardians have never owned a home or owned a home that was foreclosed on.”<sup>95</sup> <sup>96</sup> STASH is a “race-conscious” pilot program intending to help those without intergenerational assets to close Massachusetts’ acute homeownership and wealth gaps. In the City of Boston, the First-Gen Partnership matches up to \$5,000 for savings up to \$2,500.

Just as important as the definition of “first generation” is the documentation required to prove it. A variety of documentation requirements are being applied by different programs, and it will be incumbent upon the administrator of the CA Dream for All program to establish a standard that is credible for discouraging false claims but also feasible for those who are not in contact with their parents.

94 “First-Time Homebuyers.” HUD HOC Reference Guide, U.S. Department of Housing and Urban Development. Retrieved from <https://archives.hud.gov/offices/hsg/sfh/ref/sfhp3-02.cfm>

95 Harrington, Elizabeth et al. “Enabling First-Generation Homeownership in Massachusetts.” Northeastern University, 2020. [https://cssh.northeastern.edu/policyschool/wp-content/uploads/sites/2/2020/07/First-Gen-Presentation\\_NEU-1.pdf](https://cssh.northeastern.edu/policyschool/wp-content/uploads/sites/2/2020/07/First-Gen-Presentation_NEU-1.pdf)

96 “Saving Toward Affordable Sustainable Homeownership.” Massachusetts Affordable Housing Alliance, 2022. <https://mahahome.org/STASH>

## Key Considerations of First-time Homebuyers Requirement:

1. **Serving existing homeowners does not advance the CA Dream for All program's mission to expand access to homeownership to homebuyers who have been marginalized historically.**
2. **HUD's definition of first-time homebuyers is appropriate for homeownership programs,** as it allows for households who went through foreclosure to access the fund and begin building wealth again. The program administrator should also adapt and apply existing carve-outs for individuals who were separated from their spouse and are purchasing a home for the first time as an individual.
3. **Intergenerational wealth has a meaningful impact on homeownership access, but a first-generation only requirement would exclude too many potential homebuyers and limit the impact of the Fund.** In a Bank of America survey, only 37% of first-generation homebuyers received help from their parents (compared to 51% of all first-time homebuyers surveyed in a separate study).<sup>97 98</sup>With down payments forming one of the greatest barriers to homeownership access, children of non-homeowners may be at a significant disadvantage when searching for one of their own. Still, a focus on only first-generation homebuyers necessarily leads to a significantly smaller pool of eligible households and blunt the program's mission. To remedy this issue, the administrator should be able to create a preference for first-generation homebuyers if given guidance by policy makers to do so.
4. **Restricting borrower eligibility to first-generation homebuyers presents documentation issues.** Not all homebuyers are in touch with their parents, and many cannot offer documentation on their family's ownership history. Furthermore, the documentation process presents additional administrative burdens and can slow down the underwriting process and increase costs. These documentation and administration issues may end up excluding the homebuyers the Fund is intended to target.

## PROPERTY TYPE RESTRICTIONS

Given the supply constraints in the California housing market, the Fund should allow for a board range of property types including the following:

**Primary Residence:** The property should not be an investment property or a second home for the duration of the CA Dream Fund loan. This may imply additional oversight and monitoring costs, but it will ensure that the program serves those with the most need.

**New and Existing Properties:** Restricting to new properties would create an additional incentive for reducing the supply gap. However, there are a multitude of other issues facing new construction projects that it is not with the scope of the CA Dream for All Program to address. The program would be available to both new and existing properties.

**Up to 4 Units:** While the vast majority of the housing stock in California is single family homes, recent legislation aims to encourage accessory dwelling unit production. The CA Dream Fund should encourage this type of division and purchasing, even for first time homebuyers. Therefore, the housing types should include detached single family, townhomes and condominiums.

97 "2021 Homebuyer Insights Report. First-Generation Homeowner Spotlight." Bank of America, 2021.

98 "Affordability Surprises First-Time Homebuyers While Parental Assistance, Savings and Wishlist Compromises Prove Common, Survey Finds." Realtor.com, 2021. <https://news.move.com/2021-02-03-Affordability-Surprises-First-Time-Homebuyers-While-Parental-Assistance-Savings-and-Wishlist-Compromises-Prove-Common-Survey-Finds>



## Priority Communities



### RECOMMENDATION:

**The CA Dream for All program should have the ability to adjust the terms and requirements of the second mortgage and prioritize specific communities of Californians.** The barriers to homeownership vary for different groups of Californians, and to be effective at overcoming those barriers, the CA Dream for All program will need to adjust terms and requirements. To serve those with the greatest need, as determined by policy makers, the program will need to prioritize the allocation of mortgages to them.

### Key Considerations to Approach Priority Communities:

Some groups have for decades been unable to meaningfully build wealth because of who they are, where they live or what they can afford. Homeownership can be a powerful means by which to support these households, but policymakers must determine which communities should be prioritized. For the purposes of this report, **low-income households, people of color, environmental justice communities** and **student debt holders** are described as potential priority communities.

#### Communities of Color

Many of the income-based barriers described above disproportionately impact communities of color. Since the onset of urbanization in the early 20th century, nonwhite households have been repeatedly denied the ability to build wealth. Racial and exclusionary zoning first emerged as legal mechanisms by which to preserve racial segregation, prohibiting landowners from selling, leasing or renting properties to Black and minority households. As this practice peripheralized Black communities to live in disinvested neighborhoods, redlining subsequently denied these households the chance to purchase a home and build intergenerational wealth. Between 1934 and 1968, White households received 98% of all home loans.<sup>99</sup>

Today, communities of color are still underrepresented in mortgage lending. Despite forming 39% and 5% of California's population, respectively, Latino and Black households access just 22% and 3% of all home purchase loans.<sup>100</sup> This may be partly attributed to income disparities rooted in the racial wealth gap; a 2021 report from the Center for Responsible Lending

(CRL) found that while median-income White households typically require nine years of savings to afford a 5% down payment, median-income Black and Latino households require 14 and 11 years, respectively.<sup>101</sup>

As a result of these systemic issues, racial disparities in homeownership access persist in California. Across the state, White households are more likely to be able to afford a home than Black households. In the Bay Area, only 5% of Black renters earn sufficient income to afford a median-price home, compared to 21% of White renter households.<sup>102</sup> These disparities persist even after controlling for income; in most regions, the White homeownership rate exceeds the Black homeownership rate even within the same income band. Such disparities signal systemic barriers to homeownership, which limit opportunities for households of color and perpetuate the racial wealth gap.

#### Environmental Justice Communities

Environmental justice issues pose another major challenge. Many low-income households live in areas that expose them to high levels of pollution and other environmental hazards, including poor air quality, water contamination, lead and chemical waste. Individuals in these areas are also more likely to be characterized by vulnerabilities like pre-existing health conditions, poverty and poor health care access that put them at even higher risk of experiencing health complications arising from pollution exposure. As of 2013, the community of West Oakland suffered from diesel pollution at an average rate 90 times that of the rest of California per square mile; as a result, residents were found to suffer at disproportionately high rates from asthma, stroke and congestive heart failure.<sup>103 104</sup>

99 Kahlenberg, R.D and K. Quick, K. "Attacking the Black-White Opportunity Gap That Comes from Residential Segregation." The Century Foundation, 2019.

100 "Home Lending to Communities of Color in California." Greening Institute, February 2022.

101 "Hardship for Renters: Too Many Years to Save for Mortgage Down Payment and Closing Costs." Center for Responsible Lending, April 2021.

102 HR&A Advisors

103 Palaniappan, M., Wu, D., Kohlreiter, J. "Clearing the Air: Reducing Diesel Pollution in West Oakland." Pacific Institute, 2003.

104 "How pollution impacts health in West Oakland." Environmental Defense Fund. <https://www.edf.org/airqualitymaps/oakland/pollution-and-health-concerns-west-oakland>

The “environmental justice” movement has emerged in an effort to address precisely these harms. As part of this effort, the State has established the CalEnviroScreen tool that scores each California census tract based on environmental hazards and exposures, public health factors and socioeconomic issues. Local governments have followed suit by advancing several strategies to address land use issues in highly-burdened areas, such as by establishing “buffer zones” that distance polluting industries from sensitive land uses like schools and residential neighborhoods.

Homeownership programs can play an important role in this movement, too. By targeting homebuyers living in tracts scoring highly on the CalEnviroScreen index, the State can provide households a chance to move to safer, healthier neighborhoods.

### Student Loan Debtors as Homeowners

After mortgages, student loans form the greatest household debt category in the nation, affecting more than 43 million borrowers who owe a collective \$1.7 trillion in loan debt.<sup>105</sup> California is no stranger to this issue, as nearly four million borrowers owe a collective debt of \$147 billion.<sup>106</sup> Among debtholders, this amounts to an average loan payment of \$221.17 per month—the fifth highest of any state in the nation.<sup>107</sup>

As is the case with low-income households, student debt holders may struggle to access mortgage financing and may have difficulty saving for a down payment. Student debt naturally contributes to a household’s overall debt portfolio, and missing a monthly loan payment can negatively impact a household’s credit score. Given high debt-to-income (DTI) ratios, limited savings and potentially lower credit scores, mortgage underwriters may be less likely to preapprove households with high outstanding debt obligations.

These factors likely underpin the negative impact of student debt on homeownership. A 2020 study from the Federal Reserve found that a \$1,000 increase in student loan debt among recent public college graduates was associated with a 1.8% reduction in the rate of homeownership within the same group.<sup>108</sup> In a separate survey conducted by

the National Association of Realtors, 60% of non-homeowning millennials claimed that student debt has delayed their ability to purchase a home.<sup>109</sup> While a shared appreciation program may not be able to impact a household’s DTI or credit score, it can increase the size of its down payment to increase the odds of mortgage preapproval.

### Other Priorities

The terms of the CA Dream for All program can be flexibly designed to accommodate changing needs and priorities. As requirements and preferences change, the State can periodically reassess the terms of the program to ensure that it targets the households in greatest need.

## Approach to Prioritization

**The program administrator will need to evaluate how best to provide additional support to a specific community, as the barriers they face and thus the support the Fund can offer will vary.** Any term in the CA Dream for All program might be adjusted—from eligible income levels, to maximum loan sizes, to appreciation splits. If households with high student debt were selected as a priority, then allowing for a larger loan size—for example, up to 30% of purchase price—might be appropriate. A larger loan amount from the Fund would help offset the smaller first mortgage a household could qualify for as a result of outstanding student debt payments. If the typical appreciation split was set to 1.5:1, the program administrator might allow for a lower split of 1:1 for first-generation homebuyers to help them build wealth faster and offset the lack of intergenerational wealth available.

Besides adjusting the terms of the loan, the Fund could support specific communities by setting aside a portion of total funding for them. For example, of a \$1 billion allocation, \$100 million might be reserved for households currently living in neighborhoods with environmental contamination. This type of support will be most important if the CA Dream for All Fund receives more demand than it can satisfy with the resources it has available.

105 “Student Loan Debt Statistics.” Education Data Initiative, 2020. <https://educationdata.org/student-loan-debt-statistics>

106 “California DFPI Hosts Webinar to Help Student Loan Borrowers.” California Department of Financial Protection and Innovation, 2022. <https://dfpi.ca.gov/2022/03/28/california-dfpi-hosts-webinar-to-help-student-loan-borrowers/>

107 Brown, Mike. “How Big is the Average Monthly Student Loan Payment in Your State?” LendEDU, 2021. <https://lendedu.com/blog/average-student-loan-payment/>

108 Mezza, A., Ringo, D., Sherlund, S., Sommer K. “Student Loans and Homeownership.” Journal of Labor Economics, 2019.

109 “Student Loan Debt Holding Back Majority of Millennials from Homeownership.” National Association of Realtors, 2021. <https://www.nar.realtor/newsroom/student-loan-debt-holding-back-majority-of-millennials-from-homeownership>

# V. FUNDING AND FINANCING

How can the program design outlined in Chapter III be most effectively funded and financed? In particular, how can the State use the key programmatic benefit of shared appreciation mortgages—that loan repayments help keep pace with the cost of assisting subsequent homebuyers—to create an ongoing program for future generations even if prices keep rising dramatically? How can non-taxpayer funds be most effectively leveraged to create a self-sustaining model?

To answer these questions, we:

1. **Defined what any funding approach for such a program would need to do to be successful**, including key requirements and the scale and timing of funding involved;
  2. **Evaluated a wide range of funding options** from both taxpayer and non-taxpayer sources to understand their implications for the program, the State, and borrowers;
  3. **Outlined a financing approach**, based on this evaluation, that is likely to be practical and efficient both in the short- and long-run, identified potential risks and how they can be mitigated and created and tested a financial model under a range of future economic environments; and
  4. **Compared shared appreciation to a fixed interest rate approach** to see the impact on borrowers, the total appreciation they are projected to earn and the efficiency of the State's investment.
- **The funding approach must be compatible with Fannie Mae and Freddie Mac underwriting requirements** and not prevent borrowers from using GSE first mortgages.
  - **The funding approach should provide an ongoing way to help first-time buyers over many years to come**, rather than only helping buyers in the next few years, given future affordability pressures anticipated in California.
  - **Investments of taxpayer funds need to be sustainable**, without significantly impacting the State's borrowing capacity, ability to promote housing that is affordable or ability to meet other critical needs.
  - **The funding approach should not expose the State to any meaningful future financial risk**—for example, by requiring the State to cover shortfalls because of the CA Dream for All portfolio's performance.
  - **The State should leverage taxpayer monies with non-taxpayer monies so as to expand the number of borrowers who are ultimately served—consistent with the purposes of the program**, without narrowing who can be helped, violating other minimum thresholds or reducing borrower equity.

## Parameters for Funding and Financing to Be Successful

### Minimum Requirements for How the Program is Funded

The many possible ways of trying to use taxpayer and non-taxpayer monies for shared appreciation lending make it especially important to **first define the key requirements** for any funding approach. This helps assure that the program drives financing choices, not the other way around.

From AB 140, discussions with the State Treasurer's Office and legislative staff, secondary market sources and experience of first-time homebuyer programs both in California and other states, we identified several **minimum thresholds** for any type of CA Dream for All financing.

- **The funding approach should not limit who the program can help**, such as excluding areas of the state or preventing the program from assisting lower-income borrowers or those who need larger amounts of assistance.

These basic minimum thresholds may seem simple, but they operate as extremely important guardrails when evaluating different financial approaches and structures.

### Annual Scale

At the heart of determining potential funding needs for the program is estimating a practical and appropriate annual scale for the CA Dream for All program. With limits on taxpayer resources and a risk of inflaming California's housing markets, how many borrowers should the program be designed to help each year? How much annual shared appreciation lending would that involve?

In considering a reasonable potential scale for designing funding and financing options, we took several factors into consideration:

- The importance of CA Dream for All not itself further inflating real estate prices;
- An annual number of loans that would be both meaningful and administratively feasible; and
- The sustainability of State resources for an ongoing multi-year program.

### Sizing to Not Inflate Home Prices

**Potential demand.** There is little limit to the potential demand for a program providing significant SALs. After all, the number of eligible California renter households who could potentially buy homes with a SAL for approximately 20% of the purchase price is vast. The Harvard Joint Center for Housing Studies has estimated that about 12% of all households nationally could purchase a home with significant down payment assistance.<sup>110</sup> Landed has indicated that, in offering shared equity programs through school districts and other essential employers in California, almost 14% of employees showed interest in such down payment assistance.

**Limiting impact on prices.** The very magnitude of this potential demand shows how important it is to set a reasonable limit on the number of buyers that the CA Dream for All program might serve in a year. The CA Dream for All program is essentially designed to help many potential buyers who are now largely excluded from the market. If it dramatically increases the number of buyers competing for homes in a given region, the CA Dream for All program—like any new product that significantly increases homebuyer purchasing power—could itself affect the affordability it is designed to address.

**Number of borrowers.** To take this market impact concern into account, we looked at what the program volume might be if the CA Dream for All program was limited to assisting 2% of the home purchase mortgage transactions in a region.

- While 2% might translate into about 5% to 6% of entry-level home purchases in a region, the impact on increasing competition for any given home is likely to be quite modest. For example, in the entire Bay Area, 2% would be about 1,300 home purchases, or about 300 in a given quarter, in a region where more than 60,000 homes were sold in 2020.
- Another way to consider this 2% potential increase in the number of buyers is that much of what has driven the recent escalation of home prices in California and nationally has

been a more than 20% reduction in inventory from 2020 to 2021. This extraordinary drop in supply has created a widely-publicized level of buyer competition that has further driven demand and offers, fueling additional price increases.

- The CA Dream for All program, by contrast, would simply make a limited number of additional buyers able to shop for particular homes they look at as part of the general market. Rather than having a highly visible impact on buyer and seller behavior in a concentrated time frame, such CA Dream for All assistance would slightly and gradually expand the number of potential buyers each year.

From a statewide perspective, 2% would mean assisting about 7,700 home purchases per year. We then looked at how this approximate level of sizing might compare with other ways of evaluating program scale.

### Sizing to be Meaningful and Administratively Feasible

**Relative program scale.** A key standard of comparison for a program to help homebuyers in California is CalHFA's existing single-family program. CalHFA's program, which provides first mortgage financing and down payment assistance loans, has served approximately 8,000 homebuyers a year in the last two years (6,557 in 2021 versus 9,372 in 2020).

Thus, a CA Dream for All program designed to help some 7,700 first-time buyers annually would be about the same size as CalHFA's current lending program, and would roughly double the number of buyers that the State is currently helping each year.

**CA Dream for All program impact.** More important than simply doubling the total number of borrowers is the different impact that the CA Dream for All program would have. CalHFA's current program links first mortgages with down payment assistance loans of 3% to 3.5% of the purchase price (3% on Fannie and Freddie loans, and 3.5% on FHA-insured loans). This limited amount of down payment assistance per borrower makes it difficult to serve borrowers in higher-cost areas of the state. As a result, although CalHFA's program has higher income limits than the proposed CA Dream for All program, it serves relatively few borrowers in coastal California, and is more successful in lending in less expensive parts of the state.

<sup>110</sup> Kristin Perkins, et al. "The Potential for Shared Equity and Other Forms of Down Payment Assistance to Expand Access to Homeownership." Joint Center for Housing Studies of Harvard University, October 21, 2019.

Figure 34: Geography of CalHFA lending and of home sales in California

| Area                                                | CalHFA lending in 2021 | % of CalHFA total 2021 lending | % of homes being sold statewide <sup>111</sup> | Difference in number of homes |
|-----------------------------------------------------|------------------------|--------------------------------|------------------------------------------------|-------------------------------|
| Bay Area                                            | 234                    | 4%                             | 13%                                            | - 526                         |
| Los Angeles County                                  | 359                    | 5%                             | 17%                                            | - 862                         |
| Orange County                                       | 60                     | 1%                             | 7%                                             | - 360                         |
| San Diego County                                    | 169                    | 3%                             | 9%                                             | - 338                         |
| <b>Subtotal</b>                                     | <b>822</b>             | <b>13%</b>                     | <b>47%</b>                                     | <b>- 2,086</b>                |
| Kern County                                         | 758                    | 12%                            | 3%                                             | +2,274                        |
| Fresno, Merced, San Joaquin and Stanislaus Counties | 1,455                  | 22%                            | 8%                                             | +2,546                        |
| Inland Empire                                       | 1,504                  | 23%                            | 18%                                            | +418                          |
| <b>Subtotal</b>                                     | <b>3,717</b>           | <b>57%</b>                     | <b>29%</b>                                     | <b>+5,238</b>                 |

The difficulty of helping low- and moderate-income buyers in higher-cost parts of the state reflects the unaffordability of homes in these parts of the state without substantially greater assistance than current programs.

Ultimately, the CA Dream for All program's SALs could not only help approximately double the number of buyers assisted by the State; they could also complement the existing program by enabling the State to help buyers in precisely those areas where it has become extremely difficult.

This comparison suggests that a CA Dream for All program helping roughly as many borrowers as CalHFA's existing program—while relatively modest given the overall homeownership problem in California—would be significant in terms of the impact of State efforts.

**Administratively feasible scale.** That a new program would be similar in number of borrowers to CalHFA's existing program also makes it easier to gauge the administrative feasibility of operating at this scale. The CA Dream for All program would follow the same basic model as CalHFA's existing program in purchasing first mortgages in the form of AAA-rated mortgage-backed securities together with deferred payment second mortgages.

### Sizing to be Financially Sustainable

An important consideration for this program is the level of total funding that would be needed for a SAL program to help this many borrowers, given increases in home prices throughout California.

### Annual shared appreciation lending amount.

Assuming that SALs average about 20% of the purchase price (with some being smaller and some as much as 30% depending on program targeting), a program assisting in about 2% of home purchases in each region could require about **\$1 billion** of SALs a year.

Translated into individual SALs, \$1 billion would be able to fund 7,700 loans at an average of 20% of a \$650,000 purchase price (this purchase price level, which we have used in our financial modeling for the CA Dream For All program, is slightly above 90% of the statewide median purchase price of \$700,000). In terms of total home purchases, such shared appreciation loans and linked Fannie Mae/Freddie Mac first mortgages would help homebuyers purchase about \$5 billion of homes a year, or about \$25 billion in homes over five years.

Over time, if house prices increase, the average dollar amount of a CA Dream for All loan would need to be higher (and the program would receive appreciation when loans are repaid). Thus, if possible, the program should be designed so that through repayments, the program can keep assisting roughly the same number of borrowers each year.

**Geographic allocation.** This funding level and number of borrowers assisted assumes the program is designed to assist homebuyers proportionately throughout the state, both in high-cost and lower-cost areas—that is, assisting approximately the same percentage of home sales in each of the regions of the state.

<sup>111</sup> "California Home Sale Activity by City." CoreLogic, February 2022 [https://www.corelogic.com/wp-content/uploads/sites/4/2022/03/CA-Home-Sale-Activity-by-City-February-2022\\_.pdf](https://www.corelogic.com/wp-content/uploads/sites/4/2022/03/CA-Home-Sale-Activity-by-City-February-2022_.pdf)

The program could instead be designed to provide more of its lending in lower-cost areas at a lower average dollar amount per borrower, thereby helping more borrowers with the same \$1 billion. However, this allocation would assist borrowers in those regions where there is less of an affordability gap for first-time buyers. Such a program would replicate the same difficulties faced by CalHFA's existing program by working disproportionately in less expensive parts of California.

To meet the unique needs that a California SAL program can serve—providing significant assistance that is repaid in a way that allows the State to help future borrowers regardless of rising prices—we have conservatively assumed a program sizing to help 7,700 borrowers would require about \$1 billion of SALs.

**Sustainable level of public resources.** Along with identifying ways to leverage taxpayer funds with non-taxpayer monies, we wanted to be certain that **even if the program had to rely solely on taxpayer funds** it would involve a level of State funding that could be sustained over many years. To achieve this program sizing, the maximum amount of taxpayer funds invested each year would be \$1 billion for SALs, plus 10%, or \$100 million, for administrative and servicing costs.

The program is intended to be a multi-year program, with at least the same amount of shared appreciation lending for many years, given the nature of the housing affordability crisis in California. To ensure the program is financially sustainable for the State, program sizing should be evaluated on the assumption that in the most conservative case—without any non-taxpayer funds—the investment of taxpayer funds would total **\$1 billion for SALs each year for 10 years, plus an ongoing \$100 million per year for administrative and servicing costs.**

This long-term funding cost estimate is not intended to limit future State decisions. The State may, of course, decide to continue funding loans beyond 10 years, or reduce or terminate funding for new loans at any time based on program experience and results. Rather, this level and period is designed to enable legislators, the State Treasurer's Office and the Administration **to determine whether the State can invest in a program of this scale without significantly affecting the State's borrowing capacity, ability to promote housing that is affordable or ability to meet other critical needs.**

### **Sustainability and future price appreciation.**

The very purpose of creating a SAL program is to be able to continue assisting first-time buyers each year even though home prices may continue to rise. Over the long run, repayments of SALs (both the original loan principal amount and the program's share of appreciation) are intended to keep pace with home price appreciation. This can only happen, of course, as homes are resold and initial SALs are repaid many years later. In the interim, the number of buyers assisted each year (with ever-larger SALs as prices rise) is likely to drop gradually unless new funding increases.

Rather than try to create a funding plan where new funding increases each year based on unknown rates of future home appreciation, we have conservatively assumed the same \$1 billion per year of shared appreciation lending, supplemented by revolving payments as they are received.

### **Conclusion: Using These Parameters**

Given these minimum requirements for what funding needs to achieve and an estimated annual scale of \$1 billion a year of funding needed for the CA Dream for All program, we evaluated a range of funding options to see how they might operate in practice.

### **Funding Options**

In order to consider the variety of ways the CA Dream for All program could be funded, we looked at a wide range of approaches in three broad categories:

- Options that are 100% taxpayer funded;
- Options that are funded from a combination of taxpayer and non-taxpayer moneys; and
- Options that use almost entirely non-taxpayer funding of the SALs, together with taxpayer dollars for administrative and other costs.

Our aim was to understand how each of these options might work, their ability to fund the annual scale of SALs, the expected cost of funds, and, most importantly, the extent to which each option would meet key threshold requirements. The aim was to narrow down the options to those that seem most feasible for carrying out the purposes of the program. Figure 40 summarizes the options across these categories.

Figure 35: Funding Options for the CA Dream for All Program

|                             | 100% Taxpayer Funded                       |                                                        | Hybrid Funding                                                                                                                                             |                                                                                          |                                                                                          | Limited State Investment                                                        |
|-----------------------------|--------------------------------------------|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| Method                      | Revolving Fund                             | Repay Taxpayer Monies                                  | Taxpayer Funds with Revenue Bonds                                                                                                                          | Blended Taxpayer Funds and Private Capital                                               | Private Fund with Significant State Investment                                           | Private Funds with Limited, Indirect State Assistance                           |
| Reason to consider          | Endowment for future buyers                | Ultimately repay taxpayers, with limited cost to State | Leverage taxpayer monies                                                                                                                                   | Leverage taxpayer monies                                                                 | Leverage taxpayer monies                                                                 | Minimize cost to taxpayers                                                      |
| Program                     | State-run                                  | State-run                                              | State-run                                                                                                                                                  | State-run                                                                                | Privately run                                                                            | Privately run                                                                   |
| Financing                   | State-run                                  | State-run                                              | State-run with revenue bonds                                                                                                                               | State-run with blended capital                                                           | Private, with significant taxpayer monies                                                | Private with State administrative cost support, tax benefits or risk mitigation |
| How Funding Works Over Time | Loan repayments are used to make new loans | Loan repayments pay back State General Fund            | Loan principal pays down revenue bonds first. Appreciation and subsequent revenue bonds fund new loans.<br><br>State pays annual interest on revenue bonds | Loan repayments pay back private capital first. Any return to State helps make new loans | Loan repayments pay back private capital first. Any return to State helps make new loans | Loan repayments back private capital. No financial repayment to State           |

### 100% Taxpayer-Funded Approaches

By **taxpayer funding**, we mean any source—whether budget appropriations or General Obligation (GO) bonds—that is paid for by, or imposes an obligation on, the State’s General Fund. **Non-taxpayer funding** includes all other sources not derived from or backed by the General Fund, from revenue bonds to private debt or private equity.

There are two distinct ways that the State can utilize 100% taxpayer funding.

- The State uses repayments of loans to make future loans. This enables the State, after an initial period of funding loans with State appropriations, to no longer do so. Instead, the program would become self-sustaining up to the level of loan repayments.
- Alternatively, the State would use loan repayments to reimburse the General Fund for monies spent to make those loans (through

the debt service on GO bonds or annual appropriations that funded loans directly). This reimbursement would occur many years in the future, as loans are repaid. Once the initially funded loans had been made, the program would no longer make future loans.

In both cases, as outlined in AB 140, long-term “ongoing State support [would be] limited to nominal administrative costs.”

These two approaches serve very different purposes and accomplish very different objectives. The revolving fund approach is designed to enable the State to help subsequent borrowers, and to do so in a way that keeps pace with the rate of home appreciation. The reimbursement approach is designed to help the first borrowers, and then to recover the State’s investment.

## Option 1. Revolving Investment Fund

**Purpose of approach.** The purpose of this option is to create an ongoing endowment for future first-time homebuyers, with repayments of CA Dream for All loans re-lent to subsequent borrowers. It reflects the way that public shared appreciation programs such as San Francisco's, and down payment assistance programs of CalHFA and many other state housing finance agencies, use repayments to continue making loans to future buyers.

**How it would work.** The State would create a separate, independent governing body to oversee the Fund and engage a program administrator to implement the Fund's objectives. Examples of such an approach include the various committees established under GO bond acts, which typically include the State's three primary financial and fiscal officers—the Director of Finance, the State Controller and the State Treasurer. These ex officio roles are sometimes supplemented by appointees with specialized subject matter experience, such as the case for bonds sold for the Department of Veterans' Affairs, the High-Speed Rail Authority and the like.

The Fund would receive annual budget appropriations and/or proceeds of State GO bonds authorized by the voters. These monies would be deposited as received in (a) a loan account to purchase SALs, and (b) an administrative/servicing reserve fund to pay all administrative, origination, marketing and outreach, counseling, and servicing costs, with the Program Administrator contracting with outside firms to carry out such tasks. The program administrator would thus be responsible to the board or committee for the efficient use of the funds.

Repayments of principal and of appreciation on all SALs would be redeposited in the Fund, and amounts not needed to replenish the administrative/servicing reserve fund would be dedicated to making new SALs each year.

**Precedent.** This approach is generally similar to that used by San Francisco for funding its Downpayment Assistance Loan Program (DALP) over the last 40 years, but it would operate on a much larger scale.

**Taxpayer investment.** An annual scale of \$1 billion in SALs would require that amount of funding plus 10%, or \$100 million, for origination, administrative and servicing costs.

The program can be envisioned to provide such funding on an annual basis for 10 years, and thereafter rely on loan repayments to provide loans to future buyers. The State could also choose at

any time not to continue providing new loan funds, so long as it continues providing funds for ongoing administrative costs for loans already made and those recycled from such loan repayments.

The taxpayer funds can be provided either through the annual budget or through issuance of GO bonds to be repaid by the State, or through a combination of the two options.

**Ability to meet programmatic needs.** The funding approach would not limit who can be helped, in terms of areas of the state, lower-income borrowers or those needing larger amounts of assistance. The program would receive pro rata appreciation or could set a higher share of appreciation to provide more funds to help future borrowers, but there is no requirement or pressure from any investor to do so. This financing method is thus highly compatible with enhancing borrower household wealth.

**Compatibility with Fannie Mae and Freddie Mac first mortgages.** Both Fannie Mae and Freddie Mac require that shared appreciation seconds linked with their first mortgages must be publicly funded, so this approach would fully meet their rules.

**Ongoing way to help future first-time buyers.** This funding approach is designed precisely to help first-time buyers over many years to come.

**Sustainable investment for the State.** The intent is to set an annual projected scale of State investment that the State expects would not significantly adversely affect its ability to meet other needs or obligations. The State, however, is not obligated to make any new budget appropriation for funding loans or to issue additional GO bonds (but would still need to provide administrative costs).

**No future financial risk to the State.** There is no financial impact on the State from any defaults or losses on any SALs. If there are any losses, they reduce the total amount of repayments that can be used to make loans to future buyers. The State is never out of pocket beyond the investment it originally made. This approach, if funded from proceeds of GO bonds, would require repayment of such bonds without regard to the success (or lack thereof) of the Program

**Leverage taxpayer monies with non-taxpayer monies to expand the number of borrowers ultimately served.** This financing approach expands the number of borrowers ultimately served by relending the repayments received from borrowers over many years, rather than utilizing non-taxpayer monies that need to be repaid with a rate of return to investors.



## Option 2. Repayment of State Capital

**Purpose of approach.** This financing method is intended to repay taxpayer money and thus be relatively costless to the State.

**How it would work.** The State would typically issue GO bonds, providing proceeds to purchase SALs. Origination, servicing and administrative costs would either be paid from bond proceeds or by an annual budget appropriation. The State would pay principal and interest on the GO bonds each year (together with any appropriation for ongoing administrative costs).

Repayments of principal and of appreciation on all SALs would be deposited in the State's General Fund, thus helping reimburse the State for its GO bond payments. (Such amounts could also be used to redeem the GO bonds directly).

Because the timing of loan repayments is uncertain, as is the amount of appreciation, there is no necessary relationship between when funds are received or the amount of funds received each year and the regularly-required payments on the GO bonds. The State will typically be out of pocket for many years since loan repayments are likely to be very slow, depending largely on when borrowers with these large SALs sell their homes.

The long-run objective of this approach is that loan repayments ultimately enable the State to recoup its funds spent on loans and administrative costs. Whether this will happen depends on the rate of home appreciation compared to the interest rate on the bonds, plus what is needed for origination, servicing and administrative costs and any loan losses. In an ideal case, the State might ultimately recover its costs for the program. If the appreciation is less or there are significant loan losses, the State will be unlikely to recover its costs fully.

**Precedent.** This financing method is similar conceptually to the way State GO bonds have long been used to fund certain CalVets farm and home loans to veterans. However, the Cal Vets loans are regular interest-bearing, fully amortizing loans, so the State is never expected to be out of pocket on its bond payments. A portfolio of SALs is very different, and the State, at best, would be out of pocket for many years.

**Taxpayer investment.** The State would issue GO bonds, up to a maximum amount authorized by the voters, to fund an annual scale of \$1 billion of SALs. The origination, administrative and servicing costs would be funded either by bond proceeds or by the State providing annual budget appropriations.

**Ability to meet programmatic needs.** As with a revolving fund, this approach would not limit in any way who can be helped, in terms of areas of the state, lower-income borrowers, or those needing larger amounts of assistance. The program could be designed to receive pro rata appreciation, but the intent of this method—to fully recover the cost of the GO bonds—could lead the State to seek a higher share of appreciation.

**Compatibility with Fannie Mae and Freddie Mac first mortgages.** This funding method would be compatible with Fannie Mae and Freddie Mac requirements.

**Ongoing way to help future first-time buyers.** This funding approach would **not** recycle any loan repayments into new loans. It would thus only help initial buyers. It does not provide an endowment for future homebuyers.

**Sustainable investment for the State.** The total authorized amount of the bonds would impact the State's borrowing capacity (even if they are not fully issued for many years). Neither investors nor rating agencies would count on the State receiving loan repayments at the times or amounts needed to repay the bonds, and so would view the bonds as a net cost to the State. Thus, the full amount of the authorization would significantly affect the State's ability to borrow for other purposes.

**No future financial risk to the State.** The purpose of this funding method is to avoid any long-term cost to the State, and any loan losses will impede the ability to accomplish that goal. In effect, the State will have borrowed funds that may not be fully repaid.

**Leverage taxpayer monies with non-taxpayer monies to expand the number of borrowers ultimately served.** This financing approach does not leverage taxpayer funds nor recycle them to help subsequent generations of borrowers.

## Methods Combining Taxpayer and Non-Taxpayer Funds

These methods are intended to leverage taxpayer monies together with non-taxpayer monies to reduce at least the initial burden on taxpayer funds and/or ultimately help more borrowers with the same amount of taxpayer monies, with the aim, as set forth in AB 140, of “evolving the program over time to be self-sustaining utilizing private investments to create a self-sustaining model.”

The most important, and perhaps most surprising finding, however, is that although there is widespread investor interest in participating in the rising prices of housing in California, there are **crucial challenges** to relying on many types of private capital to:

- Consistently help fund the scale of the CA Dream for All Program; and
- Help fund CA Dream for All loans while meeting the program’s key requirements.

Understanding the nature of these challenges is important in considering financing options with non-taxpayer monies.

**Scale of funding.** For more than five years, highly-sophisticated financial technology companies have been working with a wide range of private investors to fund home purchase SALs in California and nationally. They have worked extensively with hedge funds, pension funds, real estate investment trusts, foundations and major banks. These companies have received venture capital for their internal costs, structured offering documents, worked through legal issues, designed securitizations and established a lending track record.

Yet raising significant large-scale amounts of capital to invest in home purchase SALs has been difficult. Landed provides one example. Despite its focus on essential professionals buying homes in high-cost areas, seed capital from the Chan Zuckerberg Initiative, a special waiver from Fannie Mae, partnerships with 143 school districts and other employers and indications of interest from 23,000 potential borrowers, Landed was able to raise a total of \$53 million in seven rounds of funding through last September.<sup>112</sup>

As we sought lessons from Landed and other fintech companies, what became clear is that there is a divergence in the market.

- There is extensive investor interest in home price appreciation in many areas of California

and elsewhere, as witnessed by the billions of dollars that hedge funds and others have raised to buy and rent out single-family homes.

- But shared appreciation lending, in addition to being relatively new, creates unique challenges for investors. The loans are in second mortgage position and thus are inherently riskier than first mortgages, of course, but it is not the risk of principal loss that makes it difficult to attract investors. Rather, it is the deferred repayment of such loans. The investor does not know, and has no control over, when SALs will be repaid, nor what their return will be. Nor do they receive any ongoing interest or other interim income. These fundamental uncertainties make it very difficult for most investors to value such investments or consider committing large amounts of capital to them.

Even with fintech companies setting their share of appreciation at 2.5 times their percentage of the original purchase price and projecting investor rates of return between 9% and 15%, this basic uncertainty makes it hard to reliably raise the kind of large-scale amounts of capital that the CA Dream for All program would need.

As part of our outreach efforts, we also examined government-sponsored enterprises (GSEs). GSEs are vast participants in the mortgage markets, have enormous amounts of capital, face significant duty-to-serve requirements that the CA Dream for All program can help meet, and could potentially see a CA Dream for All program as a national model for increasing affordability. Federal Home Loan Banks, however, have generally been unwilling to accept even amortizing second mortgages simply as collateral for advances to their member institutions. Discussions with Fannie Mae, Freddie Mac and their regulator, the Federal Housing Finance Agency, indicated that the CA Dream for All program could be highly compatible with their missions. But their interest was limited to GSE first mortgage products that would be used in conjunction with such a program—not in their own investing in a shared appreciation product.

Discussions with major CRA banks also did not indicate any interest in directly investing in a State SAL program. These banks did, however, see a large ongoing market for revenue bonds they could underwrite for such a program at relatively low interest rates—if such bonds were effectively overcollateralized and had a way of assuring interest payments.

<sup>112</sup> “Landed.” Crunchbase. [https://www.crunchbase.com/organization/landed/company\\_financials](https://www.crunchbase.com/organization/landed/company_financials)

As a result, we believe that at least for the foreseeable future, the most realistic and low-cost way to raise significant amounts of non-taxpayer money for the CA Dream for All program would be through revenue bonds. These investments would be debt rather than equity, offer a fixed interest rate to the investor (rather than a share of home appreciation) and make payment of such interim interest highly predictable. Option 3 shows one way this could be accomplished.

**Integrating private capital in the CA Dream for All program.** The second challenge in using funds other than revenue bonds is the difficulty in meeting key CA Dream for All objectives. This challenge turned out to be more fundamental and structural than expected.

We started, for example, with the assumption that while different types of private capital might require high rates of return, such monies could be blended with taxpayer monies that would receive a much lower return. For example, if private capital by itself requires receiving a share of appreciation that is 2.5 times its percentage of the purchase price (e.g., for putting up 10% of the home price, the investor receives 25% of the appreciation), we thought such private capital could be used with enough taxpayer monies to charge the borrower pro rata appreciation. The taxpayer monies could in theory take the first risk position, or fund a loan loss reserve, that would lower risks for the private investor.

During discussions with several fintech companies, however, we encountered significant challenges in trying to use monies they might raise together with taxpayer money to meet CA Dream for All objectives. One concern is structural. It would be difficult to structure two tiers of funding for a common pool of loans. More importantly, there are parts of the state—particularly areas with lower population density—where a dearth of home sale data makes it difficult to raise and use any private investor capital at all.

Even more significantly, the private equity model is based on relatively quick repayments of borrower loans, with an expected average life of five years. This may be possible where the amount of the SAL is a relatively small percentage of the purchase price (e.g., 10%) and can potentially be refinanced with the first mortgage. When the SAL is much larger, however—as in the CA Dream for All program—quick repayment is extremely unlikely. Thus, it would be very difficult to use any

private equity capital to fund the larger loans that the CA Dream for All program would be designed to make. The problem is not merely that private investors in SALs are seeking a high rate of return; they are making investments that they expect to be repaid quickly. In short, these sources of capital can be thought of as “less patient” and more demanding of certainty of both return and timing.

**Implications.** For reasons of scale and challenges in integrating taxpayer and non-taxpayer monies to fund a common pool of CA Dream for All loans, we believe that if the State wants to leverage taxpayer monies with non-taxpayer monies, it is most practical to do so with revenue bonds.

A program using revenue bonds can meet some of the objectives of AB 140, “evolving over time to be self-sustaining utilizing private investments” to fund future loans. But ongoing State financial support would not be “limited to nominal administrative costs.” To make such revenue bonds marketable, the State would need to provide ongoing State appropriations to assure interest payments on revenue bonds.

From a broader perspective, we recognize that one of the implicit reasons for seeking to use non-taxpayer monies is not only to reduce the taxpayer investment per borrower but to validate the State’s efforts—that is, to show that parties other than the State itself are willing to invest in these loans.

Sales of revenue bonds can help do this. But when it comes to private equity capital, the validation may work the other way. Those raising capital for private shared appreciation lending hope that a large-scale CA Dream for All program will help validate and promote the idea of shared appreciation lending in general, including with capital markets, GSEs, lenders and the real estate industry. This seems more likely than the State validating its own program by integrating significant amounts of private equity.

## Conclusions

The first of these methods, Option 3, a revolving investment fund with revenue bonds can potentially meet the CA Dream for All program’s overall purposes in the way it assists borrowers, and is detailed below. The specifics of the other methods, Options 4 and 5, that have fundamental problems in meeting the needs of the program, are included in Appendix D.

### Option 3. Revolving Investment Fund with Revenue Bonds

**Purpose of approach.** The purpose of this option is to supplement taxpayer funds with revenue bonds to finance SALs.

**How it would work.** The state agency that would oversee and administer the CA Dream for All Fund would issue revenue bonds backed by the entire pool of SALs made by the CA Dream for All program. In the first several years, all loans would be funded by taxpayer monies; as a portfolio and track record is established, revenue bonds would be issued annually. The net proceeds of the revenue bonds, together with a reduced amount of new taxpayer monies would help fund new loans.

Security for revenue bonds. The total amount of revenue bonds would be limited to a maximum percentage of all CA Dream for All loans. Based on initial discussions with investment bankers, we expect this could be 60% of all CA Dream for All loans. This provides significant overcollateralization for the revenue bonds. All principal recoveries on loans would be used to pay down revenue bonds, enabling further revenue bonds to be issued up to the same percentage limit. The appreciation received would provide revolving taxpayer monies to help fund a portion of the cost of new loans together with new revenue bond proceeds.

Monies for new loans. Under this leveraged approach:

In years 1 through 3, new taxpayer monies would be provided for \$1 billion of SALs each year.

In years 4 through 12, the amount needed from new taxpayer monies would drop to \$400 million per year. This would be used together with new proceeds from revenue bonds to make loans.

After year 12, no more new taxpayer monies would be appropriated for loans. All future loans would be based on repayments of outstanding loans. Loan principal would pay down revenue bonds, allowing a similar amount of 'replacement' revenue bonds. Such proceeds together with appreciation received on past loans would fund new CA Dream for All loans.

As a result, instead of \$10 billion in taxpayer monies for the revolving fund without revenue bonds, the amount of taxpayer monies for SALs would be approximately \$6.6 billion (\$1 billion per year for three years plus \$400 million per year for nine years).

Interest payments on revenue bonds. CA Dream for All loans do not make regular interest

payments, but rather are paid off together with appreciation. But since the timing of loan payoffs is many years in the future and uncertain, there must be a mechanism to pay interest on the revenue bonds.

To make the revenue bonds marketable, it is important that the bonds pay regular interest each year (the alternative of using capital appreciation bonds where the interest accretes over the years is unattractive to investors in taxable revenue bonds and rarely used for such bonds. Such bondholders would owe income tax each year on the accreting interest without receiving cash to pay such tax).

In order to pay this interest on an assured and regular basis—without waiting for appreciation to be received on CA Dream for All loans—the legislation for the program would include a pledge to include in each year's state budget proposal the amount needed to pay interest due on such bonds up to a maximum annual limit. While the Legislature cannot bind future state legislatures, this appropriation pledge is commonly used by California and many other states for lease payments and other purposes; such pledge is rated one notch below the State's GO bond rating (which is presently listed as AA- by S&P, Aa2 by Moody's and AA by Fitch).

The total amount of revenue bonds outstanding is thus limited both to 60% of outstanding loans and by the maximum annual interest pledge by the State. We have assumed this pledge would not exceed \$380 million per year (which should allow somewhat over \$6 billion of revenue bonds to be outstanding at any one time). Interest would be paid up to this limit on all revenue bonds as long as they are outstanding.

Origination, servicing and administrative costs. As with the revolving fund approach in Option 1, the State would appropriate \$100 million.

**Precedent.** Revenue bonds backed by pools of mortgages, including in some cases second mortgages, have long been sold by state housing finance agencies. Deferred payment second mortgages have been collateral for some of these bonds, but we are not aware of revenue bonds where the only collateral is such mortgages. The revenue bonds are intended to have a low investment grade rating. Even if the bonds are unrated, this was true of over \$5 billion of housing revenue bonds issued by California joint powers authorities over the last two years for workforce rental housing, whose repayment depended on future rent growth.

Option 3 continued from page 56

The annual appropriation pledge, in this case only for interest payments, has been utilized on many types of state and local financings in California and nationally. One example of its use for housing is Minnesota's State Appropriation Bonds for Housing Infrastructure, which has included 26 series of bonds over the last nine years. New York City recently used such a pledge for infrastructure bonds for its Hudson Yards project.

**Taxpayer investment.** The total taxpayer investment would be similar to that for Option 1—a revolving fund without revenue bonds—but the timing and types of payment would be different. Although much less taxpayer money would be needed for funding SALs, the State would be appropriating funds each year to pay interest on the revenue bonds as long as they were outstanding.

**Ability to meet programmatic needs.** The funding approach would not limit in any way who can be helped, in terms of areas of the state, lower-income borrowers or those needing larger amounts of assistance.

The program would receive pro rata appreciation or could set a higher share of appreciation to provide more funds to help future borrowers, but there is no requirement or pressure to do so to make payments on the revenue bonds, since appreciation payments are not used to pay down the revenue bonds. This financing method is thus highly compatible with enhancing borrower household wealth.

Including revenue bonds would, however, limit program flexibility in at least one key way. If the State did not want to set a fixed 30-year maturity on SALs (but instead, like San Francisco, wanted to simply define the “maturity date” as the date of sale, transfer or non-compliance) it could easily do so if all the loan funds are provided by taxpayers. Long-time owners who had not sold their home in 30 years could simply wait to pay off the CA Dream for All loan instead of refinancing it with a new first mortgage. But any use of revenue bonds would require a clear, stated 30-year maturity on CA Dream for All loans.

**Compatibility with Fannie Mae and Freddie Mac first mortgages.** Since both revenue bonds and direct taxpayer monies are publicly funded, this financing method should meet Fannie Mae and Freddie Mac requirements.

**Ongoing way to help future first-time buyers.**

This funding approach, like the revolving fund itself, is designed to help first-time buyers over many years to come.

**Sustainable investment for the State.** This option would set an annual projected scale of State investment that the State expects would not significantly adversely affect its ability to meet other needs or obligations. The amount needed for new loans would be significantly below that in Option 1, without revenue bonds. However, the State would be committed to making annual interest payments for many decades to come on all revenue bonds, up to the maximum annual amount of the pledge, as well as providing annual funds for administrative costs.

**No future financial risk to the State.** There would be no financial impact on the State from any defaults or losses on any SALs. If there are any losses, they reduce the total amount of repayments that can be used to make loans to future buyers. The State is never out of pocket beyond the budgeted appropriations. The State would have no liability to make principal payments on the revenue bonds, which are backed solely by the principal on the CA Dream for All loans themselves. We note that this approach creates the potential for a “moral hazard” to the State. In this circumstance, even in the absence of a legal requirement to apply other State resources to the repayment of the bonds, the political pressure on State leaders to take remedial action could force them into unwelcome choices.

**Leverage taxpayer monies with non-taxpayer monies to expand the number of borrowers ultimately served.** The total number of borrowers ultimately served is likely to be similar to the number served by Option 1, the revolving fund itself. Including revenue bonds is unlikely to increase the number of borrowers served, so long as the State makes a similar overall investment (in both loans and annual interest payments) as in Option 1.

## Methods With Limited State Investment

Finally, we looked at ways that the State could encourage, incentivize and promote the use of private capital to fund SALs that meet CA Dream for All program objectives—without the State itself needing to invest taxpayer monies in funding such loans.

Our analysis suggests this is extremely unlikely. The difficulty is not simply one of the State spending less and getting less in return. Rather, the two challenges of using private capital—of scale and especially of using private capital to meet CA Dream for All program objectives—are even more fundamental when such capital fully funds the SALs.

The State can provide all manner of indirect support to encourage certain types of shared appreciation lending—paying origination, servicing and administration costs, providing relief from state capital gains tax and creating a reserve fund against loan losses. But this will not change the fundamental problem that, given the uncertain timing of loan repayment, investors are looking for early repayments that make it hard to serve those needing larger SALs. In other words, it is impossible to gauge how “patient” the capital must be when it is contributed by private investors.

The benefits that the State would provide may not significantly increase the number of eligible borrowers who actually receive SALs. Indeed, since a significant portion of current borrowers under private SAL programs would meet CA Dream for All program income and first-time buyer requirements, the State would be providing benefits for some borrowers who would have received the same SAL anyway.

While State support may help validate and promote the concept of shared appreciation lending in general, it is unlikely to make much difference in the ability of first-time buyers to purchase homes in California.

Option 6 with limited State investment is detailed in Appendix D.

## Funding Options To Consider

Based on this analysis of a wide range of potential funding options for the CA Dream for All program, the two that are most likely to be practical—to raise the annual scale of funds, meet the borrowing and household wealth needs of first-time buyers and provide ongoing lending for subsequent generations of such buyers even as prices continue to rise—are:

- A revolving investment fund (Option 1), and
- A revolving investment fund combined with revenue bonds (Option 3).

## Feasible Financial Approach

### Comparing Selected Funding Options

How do these two options—a revolving investment fund or a revolving investment fund combined with revenue bonds—compare? Does leveraging revenue bonds enable the State to serve more borrowers?

**Projections.** In order to determine answers to these questions, we created a long-term financial model to show how these options would perform under a variety of scenarios. These projections include both a conservative “expected” case and a “more conservative” case. They are designed to indicate the projected amount of CA Dream for All loans each year, how many borrowers might be served, the amount of taxpayer monies needed and its timing and the sustainability of the program. The aim is not to predict the future, but to indicate a reasonable range of impacts these funding options may have in order to inform legislation.

**Comparison of options.** In order to make these options comparable, we modeled each using approximately the same aggregate total present value of taxpayer investment. This approach makes it easier to see the different impacts of these options themselves.

To preview the results, we found that while revenue bonds change the timing of when taxpayer monies are needed and how such monies may be budgeted, there is little difference in the number of borrowers assisted over a 30-year period.

While the successful sale of such revenue bonds would help indicate that investors are willing to join with the State in funding the CA Dream for All program, they bring several disadvantages. They add significant complexity, require marketing a new financing structure at a very large scale and are subject to the interest rates at the time of each bond sale, which rates may turn out to be higher or lower than the ultimate appreciation on the loans they help finance.

**Share of appreciation.** As part of these projections, we also tested the impact of requiring that borrowers pay 1.5 times the program’s percentage of the home purchase price versus pro rata appreciation. This helped show how a higher required repayment would affect the number of future homebuyers the State can assist with the same original amount of taxpayer monies.

## Assumptions

Figure 36 shows key assumptions. Differences between the expected and conservative cases are bolded, as are differences introduced by revenue bonds. Some important assumptions are discussed below.

**CA Dream for All lending.** The analysis is based on the approach to annual scale of CA Dream in the first section of this chapter, including that CA Dream for All loans fund on average 20% of the purchase price. The program lending volume is limited to \$1 billion per year plus the increase in the home appreciation rate and is assumed to initially serve approximately 7,700 borrowers per year.

In later years, after the State is no longer providing new taxpayer monies for loans, the dollar amount and number of loans will depend on repayments of outstanding loans.

**Figure 36: Key Assumptions under Financial Approaches**

|                                                                                 | Expected                                                                       | More Conservative                           |
|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------|---------------------------------------------|
| Average home purchase price in first year of program                            | 650,000                                                                        | same                                        |
| Portion financed by CA Dream for All loan                                       | 20%                                                                            | same                                        |
| Average CA Dream for All loan in first year of program                          | 130,000                                                                        | same                                        |
| Borrowers assisted by \$1billion of program loans in first full year of program | 7,692                                                                          | same                                        |
| Max. amount of CA Dream for All loans per year                                  | \$1 billion increasing at appreciation rate                                    | \$1 billion increasing at appreciation rate |
| Home price appreciation (annual rate)                                           | 4.5%                                                                           | <b>3.0%</b>                                 |
| Weighted average life of CA Dream for All loans                                 | 15.8 years                                                                     | <b>17.3 years</b>                           |
| <b>Losses on CA Dream for All loans</b>                                         |                                                                                |                                             |
| Annual %                                                                        | 0.20%                                                                          | <b>3.2%</b>                                 |
| Cumulative                                                                      | 0.35%                                                                          | <b>6.3%</b>                                 |
| <b>Administrative/origination/servicing costs</b>                               |                                                                                |                                             |
| Administration                                                                  | 10 million increasing at 3% per year                                           | same                                        |
| Loan servicing (as % of loan balance)                                           | 1.0% annual                                                                    | same                                        |
| Loan origination                                                                | 5% of loan amount                                                              | same                                        |
| Pre-purchase counseling                                                         | \$1,125 per new loan                                                           | same                                        |
| Post-purchase counseling                                                        | 250 per outstanding loan per year, counseling increases 3% per year            | same                                        |
| <b>Taxpayer Funding: No revenue bonds</b>                                       |                                                                                |                                             |
| For new loans                                                                   | \$1 billion per year for 10 years                                              | same                                        |
| For administrative costs                                                        | \$50 million start-up, \$100 million per year, Increasing at 3% per year       | same                                        |
| <b>Taxpayer Funding: With Revenue bonds</b>                                     |                                                                                |                                             |
| For new loans                                                                   | \$1 billion per year for <b>3 years</b><br><b>\$400 mill. for years 4 - 12</b> | same                                        |
| For administrative costs                                                        | \$50 million start-up, \$100 million per year                                  | same                                        |
| For interest on revenue bonds                                                   | <b>\$380 million max. per year</b>                                             | same                                        |
| <b>Revenue bond assumptions</b>                                                 |                                                                                |                                             |
| Years issued for new loans (plus issued for new loans                           | years 4 - 12                                                                   | same                                        |
| Interest rate                                                                   | 5%                                                                             | <b>6%</b>                                   |
| Maximum par outstanding as % of loan balance                                    | 60%                                                                            | same                                        |
| Maximum annual interest cost                                                    | \$380 million                                                                  | same                                        |

**Home price appreciation.** We have assumed two different long-term compounding rates of price appreciation on a geographically diversified portfolio of loans throughout the state. The expected case uses 4.5%, slightly below the 4.7% average rate for the last 40 years for homes in California. The conservative case is set about 36% lower, at a 3% annual rate.

The actual rate will, of course, fluctuate from year to year, with price declines as in the Great Recession and periods of very high appreciation as in the last several years. The natural incentives to maximize their own gains on their homes encourages borrowers to wait out periods when prices have fallen, rather than sell into a downmarket, and to sell their homes (and repay SALs) when prices have recovered.

**Average life of CA Dream for All loans.** We have assumed that CA Dream for All second loans pay off on average in 15.8 years in the expected case and 17.3 years in the conservative case. An analysis of San Francisco's shared appreciation portfolio from 1998 through 2015 showed an average life of slightly over 16 years. These assumptions reflect the fact that borrowers with large SALs are unlikely to be able to refinance them (especially before they have significantly paid down their first mortgage amount) and are generally expected to repay CA Dream for All loans only when they sell or transfer their home.

These average lives on deferred payment loans can generally be compared to 23% PSA prepayment speed\* on borrowers' first mortgages (at an assumed loan rate of 5%) in the expected case and 0% PSA prepayment speed\* in the conservative case.<sup>113</sup>

**Losses on CA Dream for All loans.** Loan losses can arise—that is, the program can fail to recover the original principal amount of a CA Dream for All loan—if two things happen together:

- The borrower defaults on the payments due on the first mortgage, leading to foreclosure or forced sale, and
- The proceeds at foreclosure or forced sale are insufficient to pay off the first mortgage, the borrower's original cash down payment and the full original principal amount of the CA Dream for All loan.

In such an event, the program would not fully recover its original investment.

Loss levels. We have estimated the magnitude of this risk under a range of scenarios, by first looking back at public agency deferred payment loan portfolios that went through the Great Recession. In the case of San Francisco's shared appreciation portfolio, the cumulative losses on its 440 SALs made from 1998 through 2015 were 0.3% of the original principal amount (this 0.3% figure assumes conservatively that as with the CA Dream for All program, the loans had been subordinate to the borrower's original cash down payment. San Francisco, in fact, had zero actual losses).

We then looked at the losses on Colorado's deferred payment loan portfolio for loans made from 2003 to 2010, which had among the highest loss experiences on public down payment assistance loans linked to 30-year first mortgages that were conservatively underwritten. The cumulative losses on Colorado's portfolio was 14%. Looked at more closely, we found two key factors that distinguish its portfolio from the kinds of loans that the CA Dream for All program would make:

- The vast majority of the Colorado deferred loans were made in conjunction with FHA first mortgages, on which default rates have generally been two to three times higher than on Fannie Mae or Freddie Mac first mortgages that CA Dream for All program borrowers would be required to use. Fannie Mae and Freddie Mac first mortgages require significantly higher credit scores and much lower front-end and back-end ratios than FHA first mortgages. Indeed, of the deferred loans made in conjunction with Fannie Mae loans in that period (some 52 loans), far from a 14% cumulative loss, there were zero losses.
- Equally important, the Colorado deferred loans (like those of most down payment assistance programs nationally) were quite small, at approximately \$5,000. Thus, there was little reason for the agency to bid at foreclosure or forced sale to protect its position; the cost and effort would not have been worthwhile. On very large second mortgages, like those the CA Dream for All program would provide, it would be worthwhile for a program with a 20% second mortgage to seek to recover half of its principal balance even if there had been a 10% decline in property value.

Taken together, the estimated equivalent cumulative loss for a CA Dream for All portfolio that goes through the same depth of recession as Colorado's program is likely to be about one

<sup>113</sup> The standard method of referring to and calculating prepayment speeds of mortgages is the model established by the Public Securities Association, currently the Bond Market Association, or "PSA" model based on an assumed rate of prepayment each month of the then unpaid principal balance of a pool of mortgages.



quarter as severe, or about 3.5%. The conservative case assumption of 6.3% is much higher than this figure.

Borrower incentives. Another feature of CA Dream for All is likely to further reduce borrower defaults that can lead to loan losses. Repayment of the principal amount of the CA Dream for All loan would be subordinate to the borrower recovering his or her original cash down payment. This can make a significant difference in how borrowers deal with their first mortgage debt.

- In a normal high-to-loan first mortgage (for example, 97% of the purchase price), if home prices go down by 5% or more, a borrower who is financially stretched to make the mortgage payment and all other expenses may have little incentive to keep making first mortgage payments. Since the value of home is less than has to be repaid, the borrower may see little point in essentially throwing good money after bad, since there may seem to be little prospect of recovering the borrower's down payment.
- The same logic applies if the borrower has an 80% first mortgage and a deferred payment second mortgage that is not subordinate to the borrower's down payment.
- Under the CA Dream for All approach, however, even if the value of the home is reduced by 20%, the borrower has every incentive to keep making first mortgage payments, since the down payment will not be at risk.
- Thus, the value of the home could drop by **five times as much** as with a typical down payment assistance loan (20% vs. 4%), and the borrower would still have a full incentive to keep making first mortgage payments.

This incentive makes little difference, of course, to a borrower that has no other choice but to default on their first mortgage. But as mortgage lenders found during the Great Recession, loans being underwater had a very strong impact on loan defaults occurring in the first place.

#### **Administrative, origination and servicing costs.**

Recognizing that the details of how a CA Dream for All program would operate have not been pre-decided, we have made assumptions about what may be adequate amounts to carry out all the functions required.

Administration and setup. We have assumed that administration of the program itself, including setting up the program and annual oversight of third parties carrying out specific functions, would not exceed \$50 million in start-up costs, plus \$10 million a year, increasing at 3% annually.

Loan origination. For costs of loan origination, we have assumed 5% of the original principal amount of the CA Dream for All loans (e.g., \$50 million on \$1 billion of lending in the first full program year). Third-party functions include tracking loan reservations, marketing and outreach, communications and explanations with borrowers and homebuyer counseling (it should be noted that lenders originating first mortgages and associated seconds, like CA Dream for All loans, cannot receive additional compensation for such seconds under Federal rules).

#### Homebuyer and homeowner counseling.

Counseling is a key component of the CA Dream for All program. We have assumed homebuyer counseling for all borrowers, with a per loan cost of \$1,125. Ongoing counseling for borrowers with outstanding loans is assumed to cost \$250 per outstanding loan per year. Both of these costs are assumed to increase at 3% per year.

Loan servicing. For loan servicing, we have assumed 1% of the original principal amount of the CA Dream for All loans (since the loan does not amortize, the dollar amount for servicing a loan typically remains the same). The servicing function on these loans can include:

- Quarterly updates to the program and borrowers on not only the principal balance of the loan (so the borrower is fully aware that there is a debt to be repaid) but also of the estimated amount that would be due for appreciation if the home was re-sold (based on automated home value estimates for that geographic area);
- Working with borrowers who may be delinquent on their first mortgage, including making referrals for loan counseling, in order to reduce the chances of default; and
- Dealing with loan repayments.

The 1% figure is similar to what state housing finance agencies have paid for servicing modest-sized amortizing second loan portfolios, where the servicer has to collect monthly payments. It has also been proposed by a fintech experienced in SALs.

**Revenue bonds.** The revenue bond approach, timing, security and other limits reflect Option 3. Based on input from investment bankers and increasing rates in the current bond market, we have assumed that these taxable revenue bonds could be sold at an average of 5% in the expected case and 6% in the more conservative case. Costs of issuance, including underwriter discount and agency issuance fees, are assumed at 0.75%.

## Results and Implications

We have compared Option 1, a revolving investment fund with all taxpayer money that invests \$1 billion a year for 10 years, and Option 3, a revolving investment fund that starting in year 3 uses revenue bonds to reduce the amount of taxpayer money needed for new loans in each year. The present value cost of taxpayer monies for these two options is approximately the same, so it is easier to see how this choice affects the program's ability to assist borrowers.

In addition, to see what happens to the long-term sustainability and endowment created by a revolving fund, we also showed the impact of a revolving fund where taxpayer money is invested for an extra five years—15 years in total.

Figure 37 shows high-level results under the expected case. The revolving fund for 10 years is bolded because it provides a baseline against which other financing options can be measured.

Note: This analysis does not include a terminal value of residual assets and liabilities after the 40-year projection period. The borrower share of home appreciation is (a) for loans paid off, the total appreciation on homes at time of payoff minus the appreciation owed to the program, and (b) for loans outstanding at end of 40 years, the total appreciation on homes with loans at that

time minus the amount that would be owed to the program if the loan was paid off at that time.

**Overall impact.** The most important finding from this analysis is that a significant investment in CA Dream for All lending over the first 10 years of the program creates a powerful endowment to help future borrowers.

- By investing \$1 billion a year in new loans for 10 years and helping approximately 77,000 first-time homebuyers directly over that period, the State creates a revolving fund that would assist **80,000 additional** first-time buyers over the following 30 years.
- Because these are SALs, the appreciation paid back to the program lets the CA Dream for All Fund provide buyers each year the larger amounts they need to keep pace with rising home prices. The greater the rate of home price appreciation, the more important this is.
- Beyond this initial funding period, the total cost to the State is limited to \$100 million per year for administrative, origination and servicing costs.
- The State can, of course, choose to continue funding such a program. By doing so for 15 years, it will increase the number of first-time buyers it supports **from 157,000 to 200,000**.

Figure 37: Expected Case Over 40 Years

|                                             | Funding Approach                           |                                                  |                                    |
|---------------------------------------------|--------------------------------------------|--------------------------------------------------|------------------------------------|
|                                             | Taxpayer Funding of New Loans for 10 years | Taxpayer Funding with Revenue Bonds for 12 years | Taxpayer Funding Only for 15 years |
|                                             | <b>Option 1</b>                            | <b>Option 3</b>                                  | <b>Option 1 plus 5 years</b>       |
| <b>Taxpayer Funding</b>                     |                                            |                                                  |                                    |
| For loans                                   | \$10.0 billion                             | \$ 6.6 billion                                   | \$15.0 billion                     |
| For revenue bond interest                   | 0                                          | 5.3 billion                                      | 0                                  |
| For admin, origination and servicing costs  | 4.1 billion                                | 4.1 billion                                      | 4.1 billion                        |
| Total over 40 years                         | 14.1 billion                               | 16.0 billion                                     | 19.1 billion                       |
| <i>Present value at 3.0%</i>                | 10.8 billion                               | 11.4 billion                                     | 14.3 billion                       |
| <b>CA Dream for All loan originations</b>   |                                            |                                                  |                                    |
| Total over 40 years                         | 47.6 billion                               | 46.5 billion                                     | 62.5 billion                       |
| <i>Present value at 3.0%</i>                | 25.3 billion                               | 25.4 billion                                     | 32.6 billion                       |
| <b>Borrowers Assisted</b>                   |                                            |                                                  |                                    |
| Total over 40 years                         | 157,200                                    | 159,800                                          | 199,700                            |
| Average annual                              | 3,930                                      | 4,000                                            | 4,990                              |
| <b>Total over 40 years</b>                  |                                            |                                                  |                                    |
| <i>Present value at 3.0%</i>                | 64.2 billion                               | 65.6 billion                                     | 81.6 billion                       |
| PV of borrower appreciation / taxpayer cost | 5.9x                                       | 5.8x                                             | 5.7x                               |

- After the 40-year period shown in these projections, repayments of CA Dream for All loans would continue to revolve to help future borrowers as well.

**Key differences among financing options.** A few insights stand out from this comparison of various options:

- A revolving fund program and a revenue bond program with approximately the same present value of taxpayer investment would make about the same dollar amount of CA Dream for All loans and assist a similar number of borrowers over the course of 40 years.
  - Including revenue bonds starting in the fourth year changes the timing of taxpayer investment. Instead of \$1 billion in taxpayer monies annually from years four through 10 for new loans, this amount drops to about \$400 million a year. However, taxpayer monies are needed to pay interest on revenue bonds. The net result is that the total cost to taxpayers is about the same in present value terms.
  - The form in which taxpayer money is budgeted is different among these options. To support the interest payments on revenue bonds, State legislation establishes an annual appropriation pledge, building ongoing support for the program into future budgeting. This is separate from the amounts being spent in early years to fund new CA Dream for All loans.
  - Revenue bonds introduce an added element of interest rate sensitivity. The more expensive the actual interest rate on a series of revenue bonds, the less the total amount of revenue bonds that can be outstanding at any one time with the same maximum annual appropriation pledge. If revenue bond interest rates are higher, as assumed in the more conservative case, it will reduce the number of borrowers that the CA Dream for All program will ultimately help.
  - If the State wants to expand the number of first-time homebuyers who are ultimately assisted, it can do so not by including revenue bonds in the program but simply by continuing to fund new loans for additional years.**
- More conservative assumptions.** An important part of this analysis is understanding the sensitivities of these results to different economic environments and prepayment speeds.
- These financing structures have been designed so that there is no unexpected or additional cost to the State depending on the economic environments or prepayment speeds.
  - Rather, the result of larger loan losses, slower prepayment speeds, less home price appreciation or higher interest rates is on the number of subsequent buyers the CA Dream for All program can assist.
  - The total dollar amount of CA Dream for All loans that would be funded over 40 years in this more conservative case is significantly less—\$31 billion compared to \$48 billion—but still more than double the amount of taxpayer monies spent on new loans (and interest payments in the case of revenue bonds).
  - The number of borrowers in the more conservative case is only slightly smaller (144,000 compared to 157,000). While the lower assumed home appreciation rate means less total appreciation payments to be recycled into new loans, it also means that the amount needed to help new homebuyers is smaller as well. If prices rise much more slowly than they have historically, less money is needed to help the same number of buyers purchase the same homes.
  - This analysis shows how a shared appreciation program responds over many years to a variety of future trends, ultimately providing more money to assist new buyers when home prices increase quickly and less money when prices rise more slowly.
  - One factor that could significantly reduce the number of future buyers assisted would be a severe reduction in California home values, resulting in larger-than-projected loan losses. In this case, there may be less of a need for CA Dream for All loans to fund as much of the purchase price of homes that first-time buyers are seeking to buy.

Figure 38: More Conservative Case Over 40 Years

|                                                     | Taxpayer Funding<br>of New Loans<br>for 10 years | Taxpayer Funding<br>with Revenue Bonds<br>for 12 years | Taxpayer Funding<br>Only<br>for 15 years |
|-----------------------------------------------------|--------------------------------------------------|--------------------------------------------------------|------------------------------------------|
|                                                     | Option 1                                         | Option 3                                               | Option 1 plus 5 years                    |
| <b>Taxpayer Funding</b>                             |                                                  |                                                        |                                          |
| For loans                                           | \$10.0 billion                                   | \$6.6 billion                                          | \$15.0 billion                           |
| For revenue bond interest                           | 0                                                | 6.8 billion                                            | 0                                        |
| For administration, origination and servicing costs | 4.1 billion                                      | 4.1 billion                                            | 4.1 billion                              |
| Total over 40 years                                 | 14.1 billion                                     | 17.4 billion                                           | 19.1 billion                             |
| <i>Present value at 3.0%</i>                        | <i>10.8 billion</i>                              | <i>12.2 billion</i>                                    | <i>14.3 billion</i>                      |
| <b>CA Dream for All loan originations</b>           |                                                  |                                                        |                                          |
| Total over 40 years                                 | \$31.4 billion                                   | \$30.0 billion                                         | \$42.0 billion                           |
| <i>Present value at 3.0%</i>                        | <i>18.1 billion</i>                              | <i>18.1 billion</i>                                    | <i>23.6 billion</i>                      |
| <b>Borrowers Assisted</b>                           |                                                  |                                                        |                                          |
| Total over 40 years                                 | 144,000                                          | 144,000                                                | 188,000                                  |
| Average annual                                      | 3,600                                            | 3,600                                                  | 4,700                                    |
| <b>Borrower Share of Home Appreciation</b>          |                                                  |                                                        |                                          |
| Total over 40 years                                 | 61.8 billion                                     | 61.3 billion                                           | 81.4 billion                             |
| <i>Present value at 3.0%</i>                        | <i>31.2 billion</i>                              | <i>32.1 billion</i>                                    | <i>40.2 billion</i>                      |
| PV of borrower appreciation / taxpayer cost         | 2.9x                                             | 2.6x                                                   | 2.8x                                     |

Note: This analysis does not include a terminal value of residual assets and liabilities after the 40-year projection period. The borrower share of home appreciation is (a) for loans paid off, the total appreciation on homes at time of payoff minus the appreciation owed to the program, and (b) for loans outstanding at end of 40 years, the total appreciation on homes with loans at that time minus the amount that would be owed to the program if the loan was paid off at that time.

**Impact on borrower household wealth.** In addition to comparing the impact of the program in helping buyers purchase homes, the model provided a way to project the impact on the household wealth generated for such households over a 40-year period.

In the expected case, the net appreciation received or accrued by borrowers over the 40-year period (after subtracting the portion of appreciation due back to the program) is about \$133 billion for both the 10-year taxpayer funding and the revenue bond approach. On a present value basis, this is about \$65 billion.

**This means that for a present value investment of \$10.8 billion, the State helps generate about six times that amount in household wealth for low- and moderate-income homebuyers, while still continuing to receive future repayments to assist later borrowers.**

In the more conservative case, the net appreciation received or accrued by borrowers over a 40-year period is about \$61 billion in the 10-year taxpayer funding and revenue bond approaches. The present value is about half that. Even if appreciation over this period is two thirds what it has historically averaged over the last 40 years, the \$10.8 billion present value taxpayer investment in the CA Dream for All Fund will help generate about three times that amount in household wealth.

Figure 39: Projected Borrowers Served Under the Expected Case

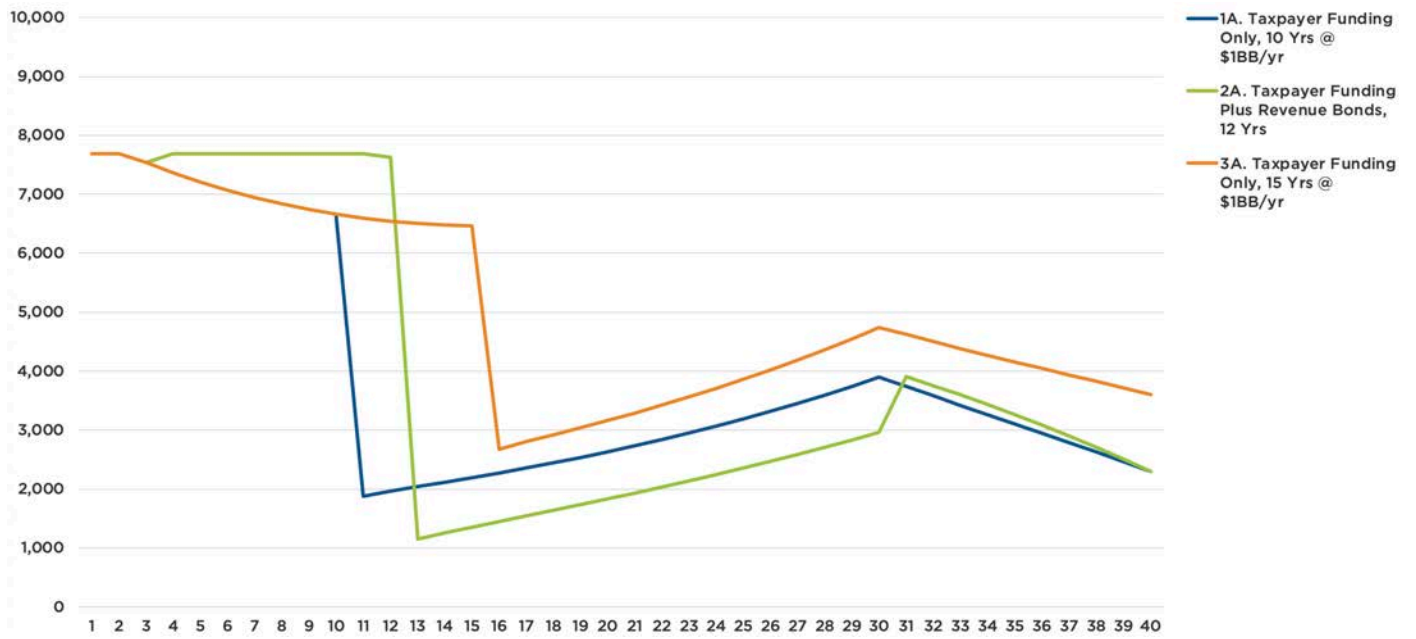


Figure 40: Projected Borrowers Served More Conservative Case

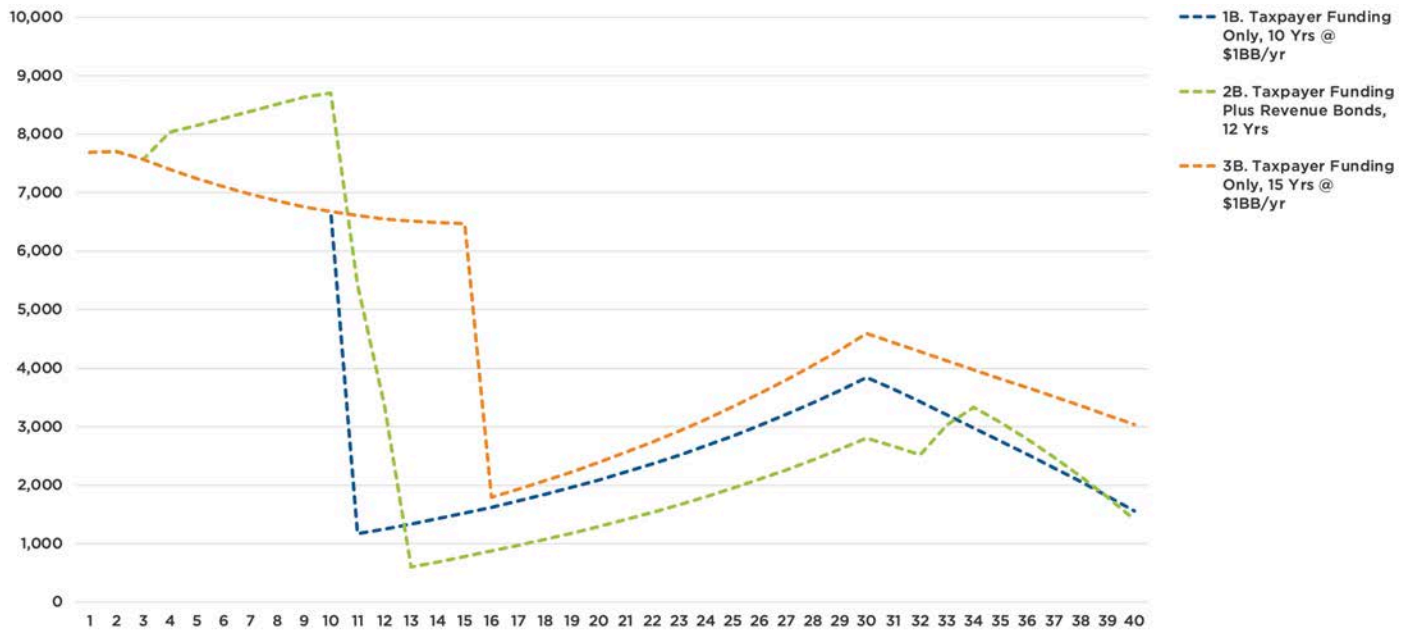


Figure 41: Dollar Amount of Projected CA Dream for All Originations Expected Case (# Billions) Annual

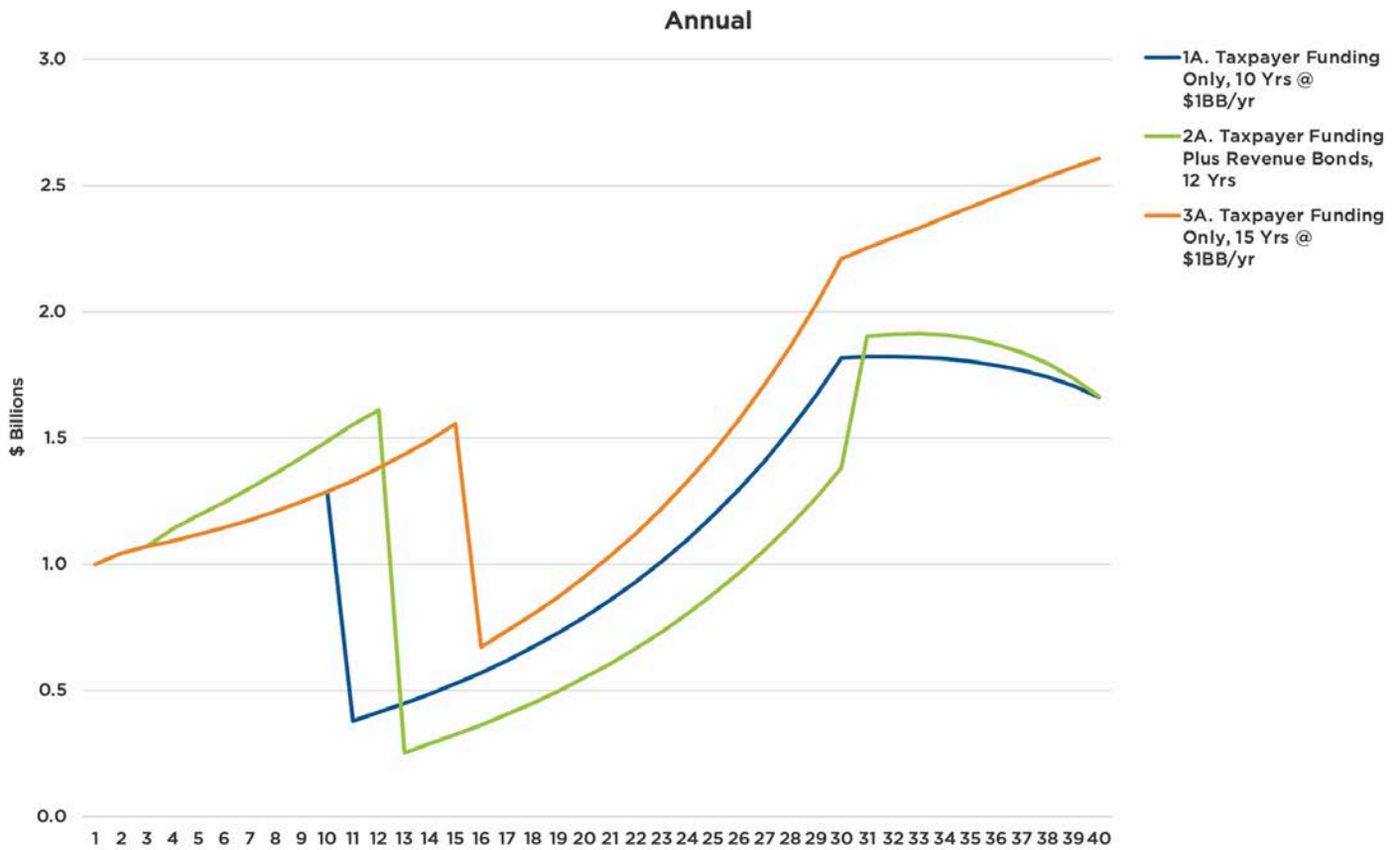


Figure 42: Dollar Amount of Projected CA Dream for All Originations Expected Case (\$ Billions) Cumulative

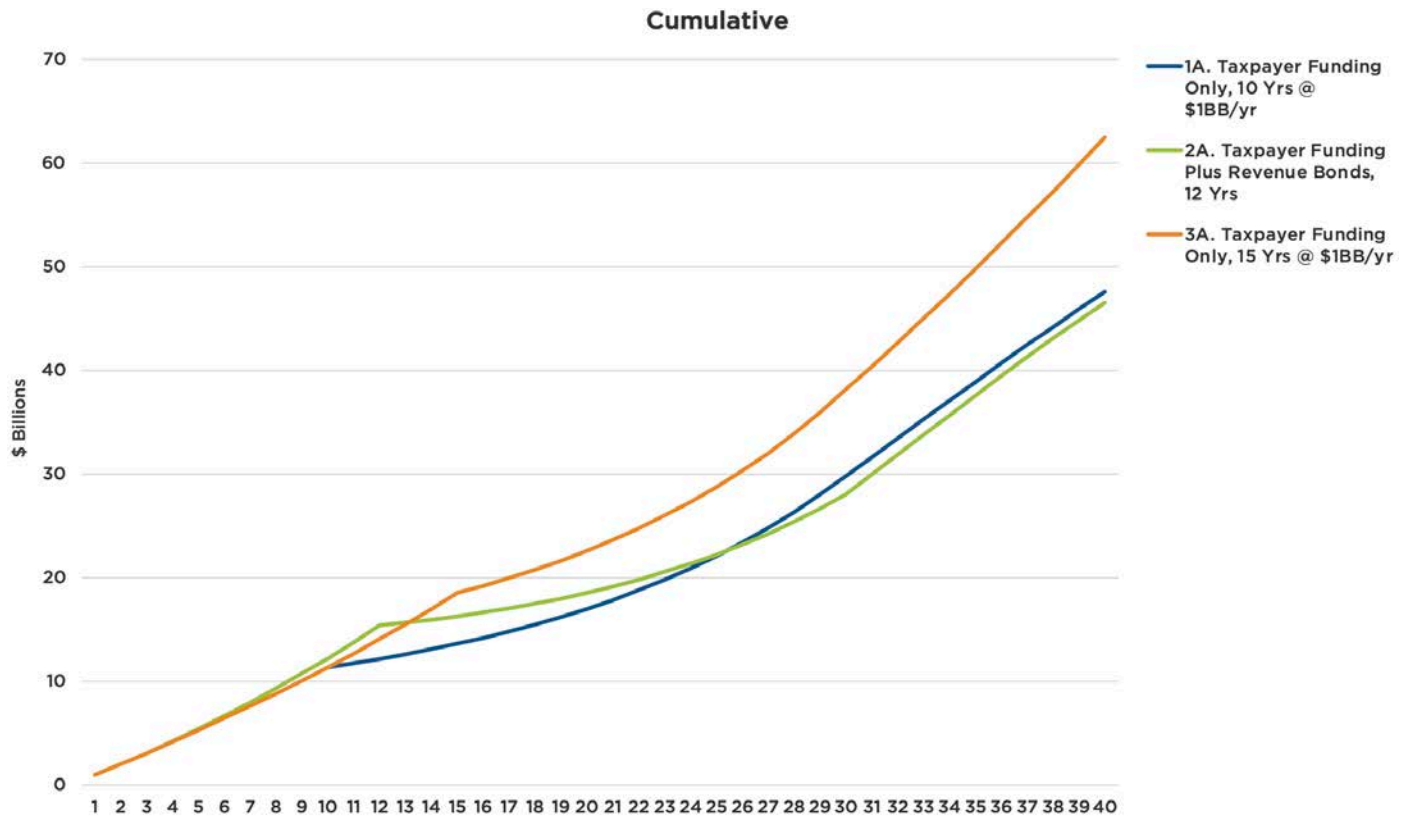


Figure 43: Dollar Amount of Projected CA Dream for All Loan Originations More Conservative Case (\$ Billion) Annual

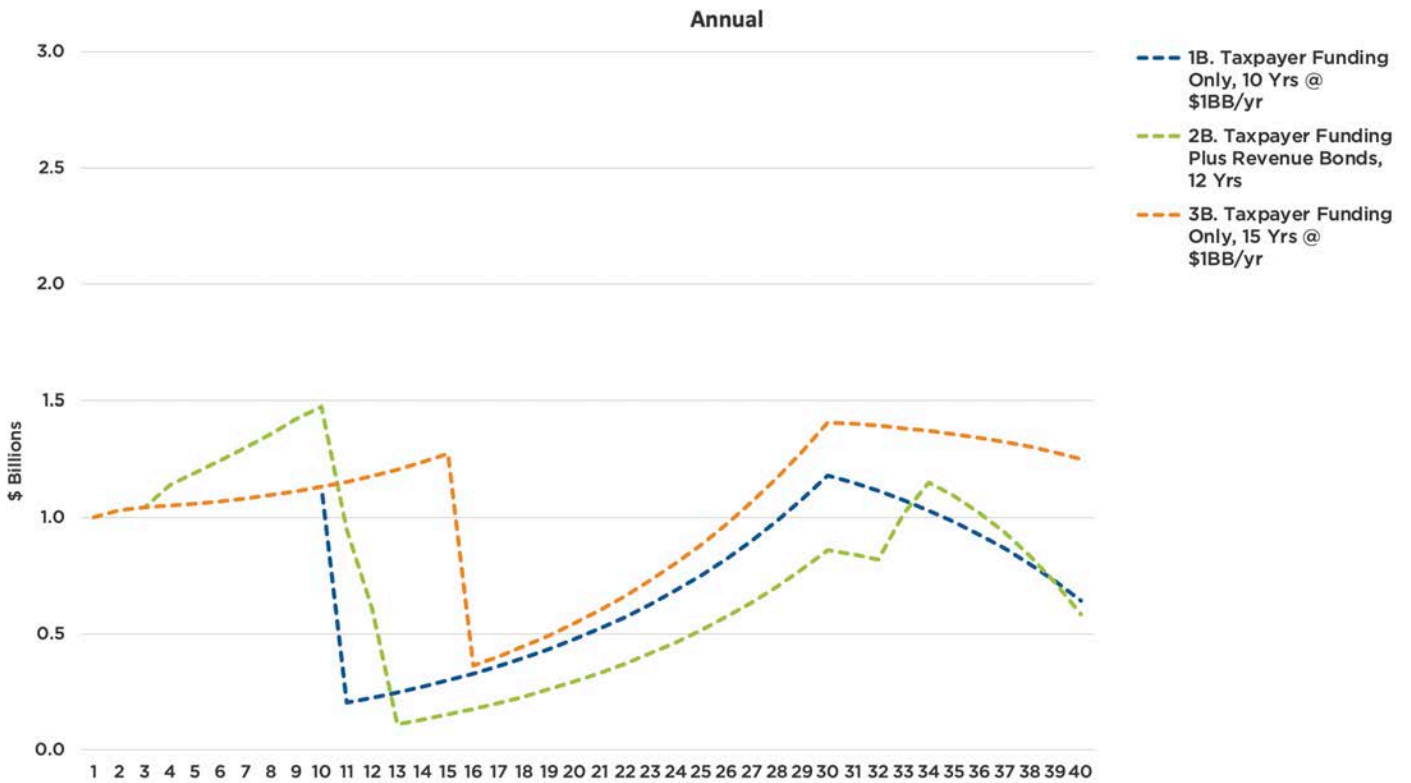


Figure 44: Dollar Amount of Projected CA Dream for All Loan Originations More Conservative Case (\$ Billion) Cumulative

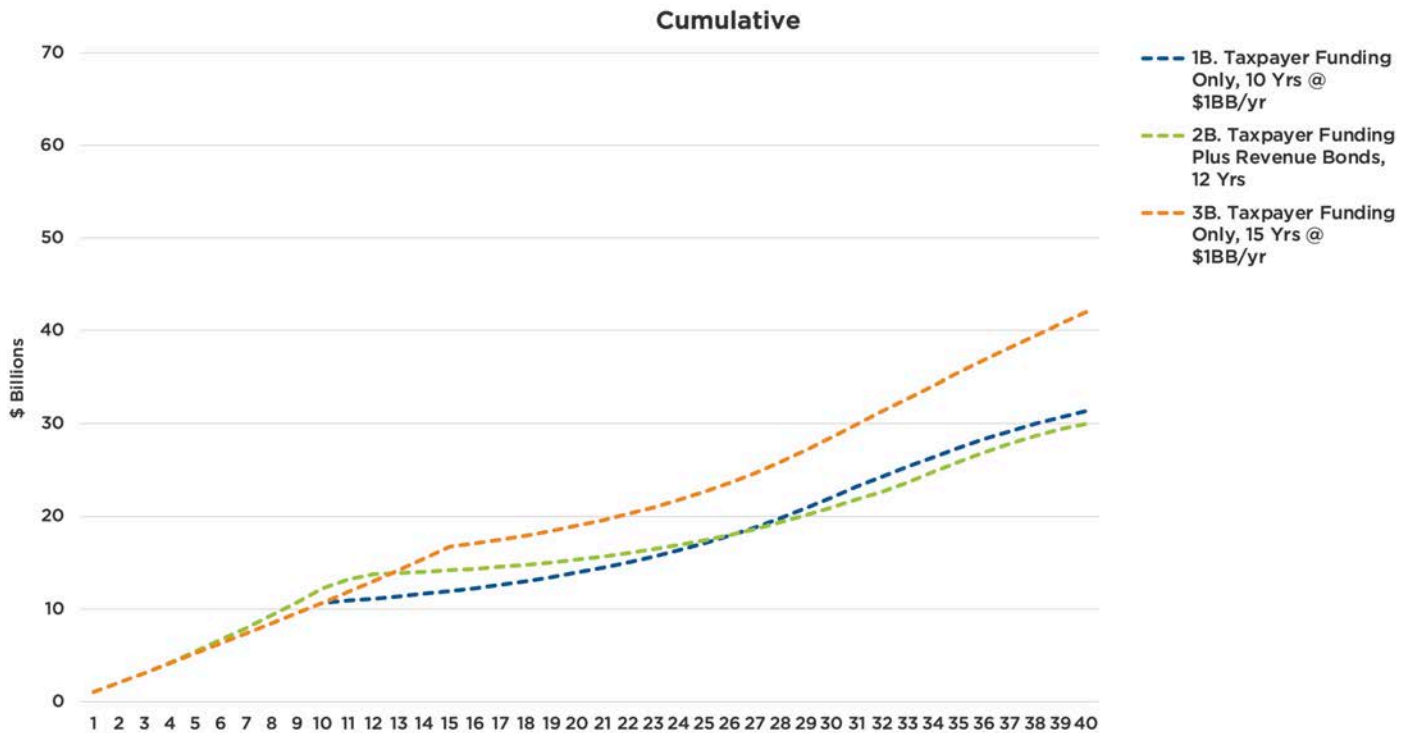


Figure 45: Borrower Share of Home Price Appreciation Expected Case (\$ Billions) Annual

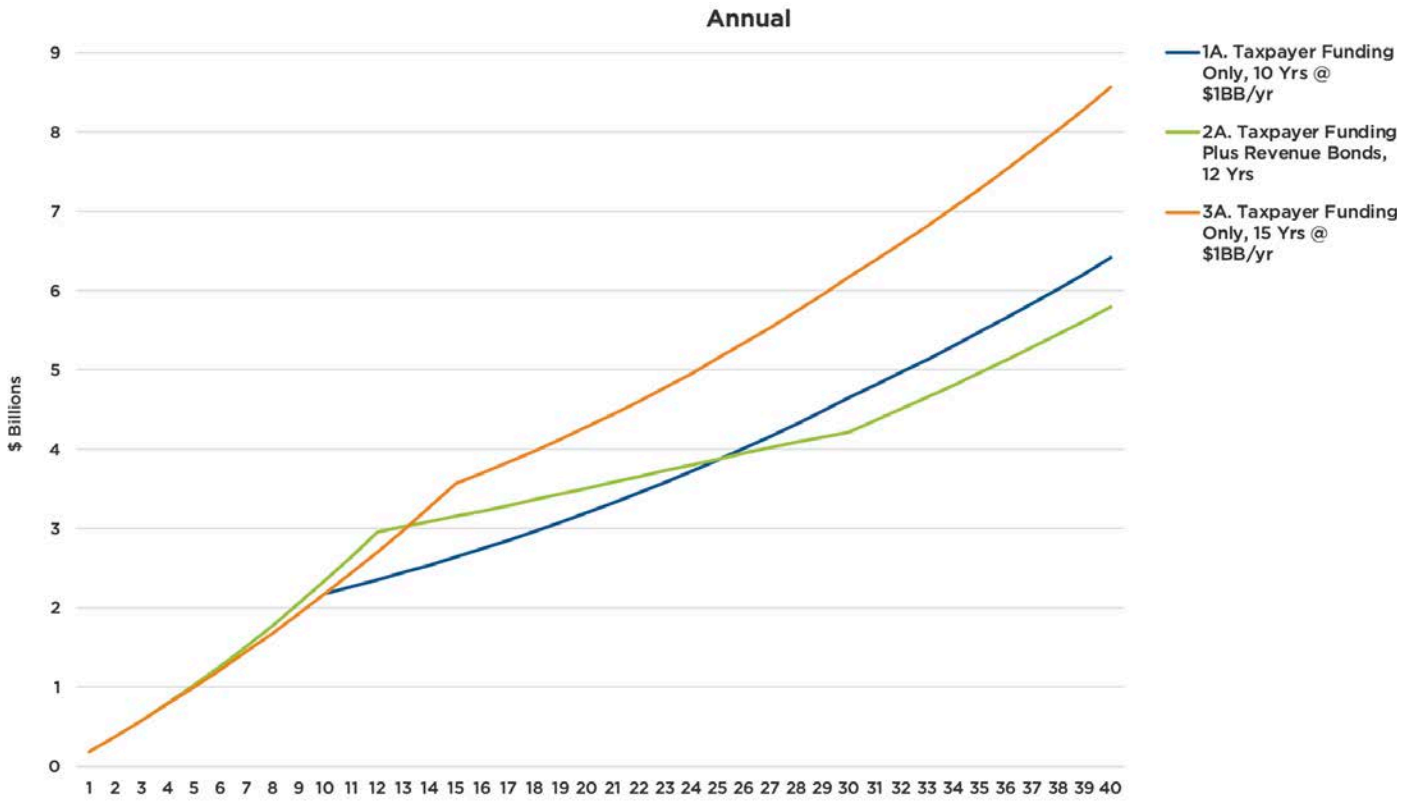


Figure 46: Borrower Share of Home Price Appreciation Expected Case (\$ Billions) Cumulative

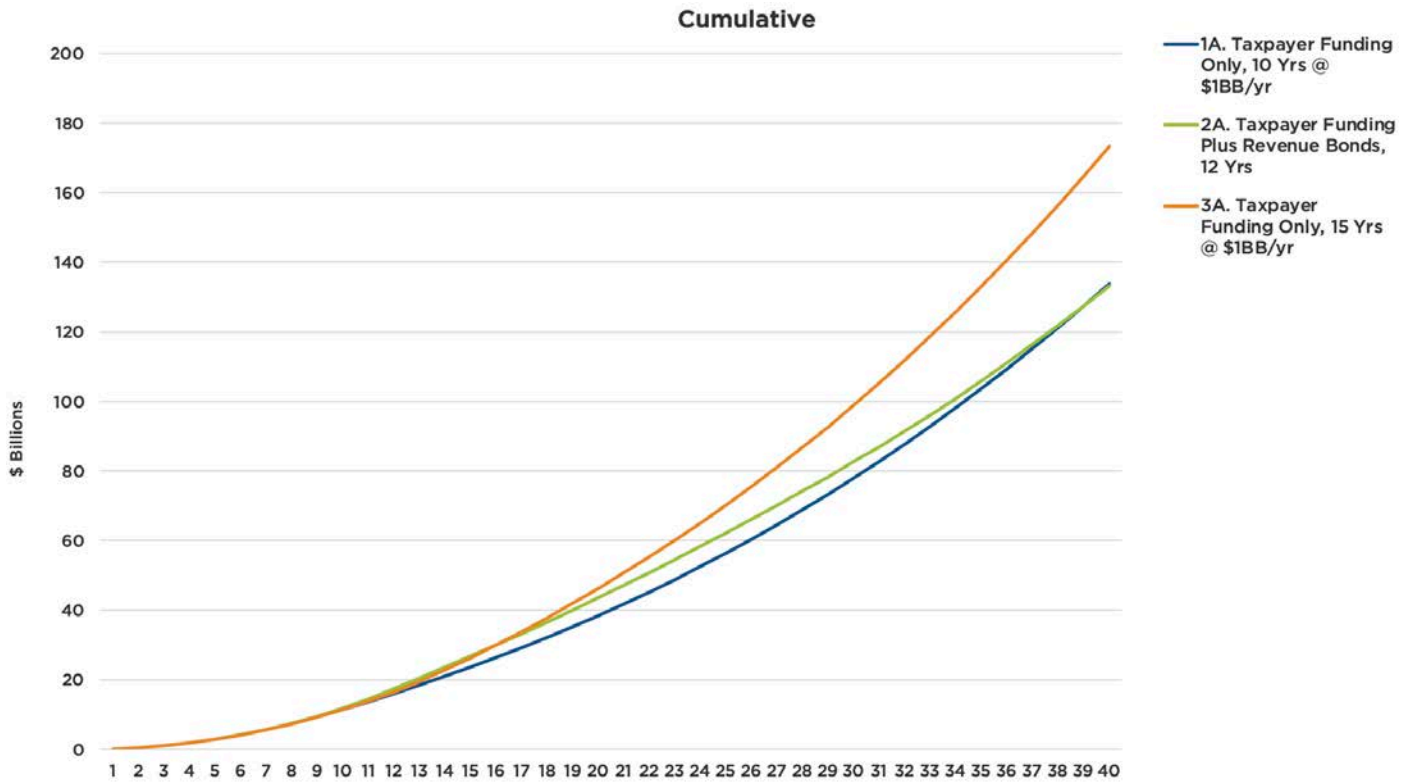




Figure 47: Borrower Share of Home Price Appreciation: More Conservative Case (\$ Billions) Annual

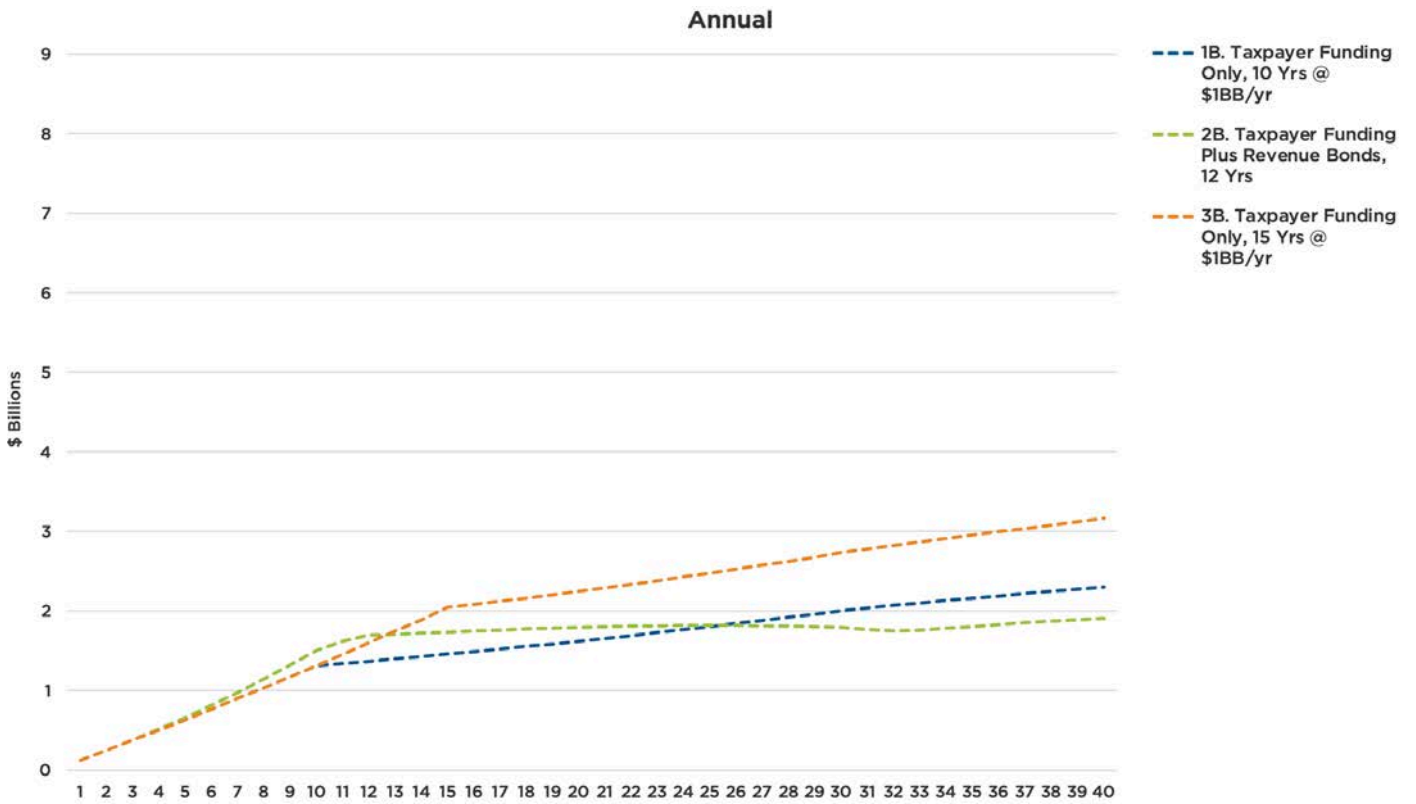
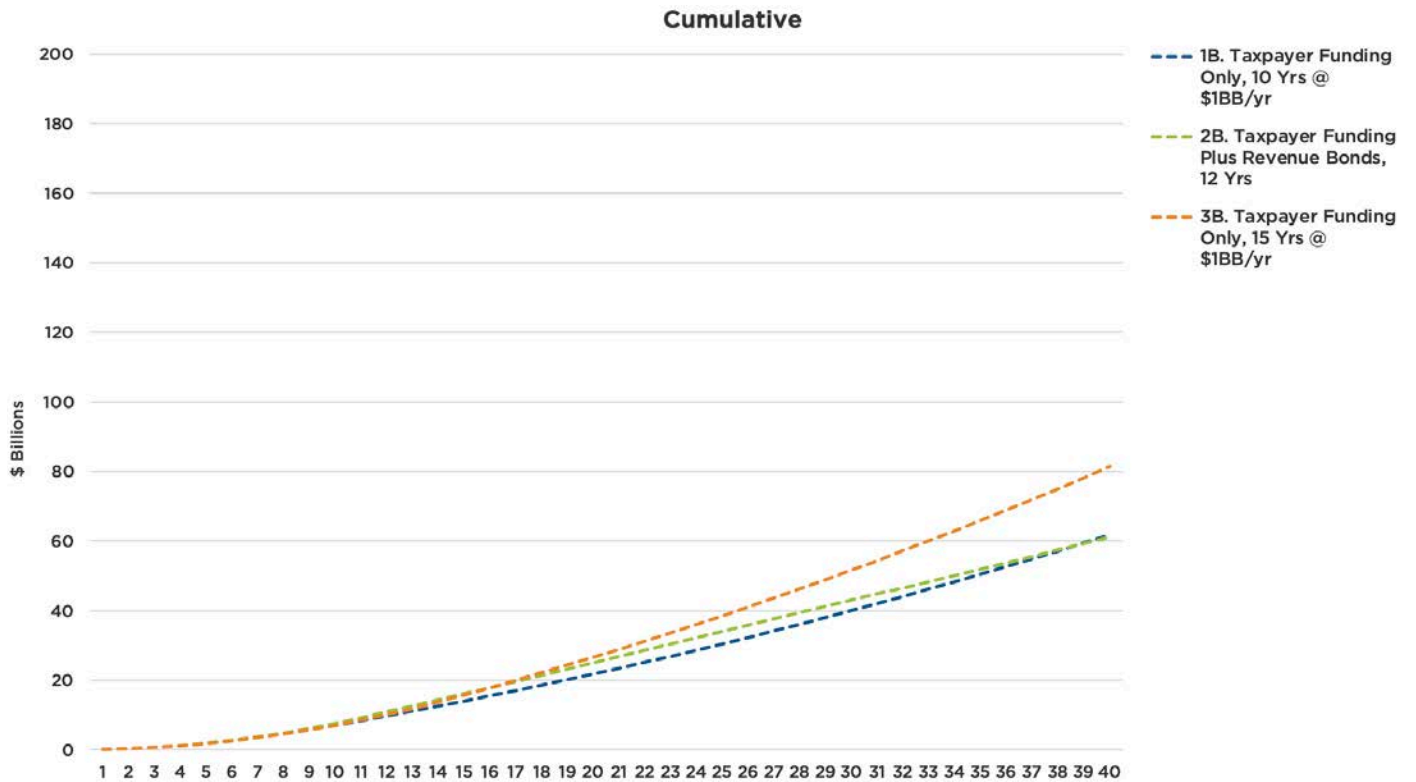


Figure 48: Borrower Share of Home Price Appreciation: More Conservative Case (\$ Billions) Cumulative



**Impact of requiring higher share of home appreciation.** All these analyses have assumed the simplest version of SALs, in which CA Dream for All receives a pro rata share of appreciation. We also looked at what the impact would be if CA Dream for All received 1.5 times pro rata appreciation.

Using the expected case for a basic revolving fund (Option 1), the total number of borrowers helped would likely increase. Instead of 131,000 first-time buyers, CA Dream for All might be able to assist 14% more buyers and increase the dollar amount of loans by about 20%.

Given the relatively modest additional amount of CA Dream for All lending that would result from a higher share of appreciation and the impact on borrower household wealth, we do not think the decision on the share of appreciation should be based on trying to help more borrowers in the future, but rather on policy grounds.<sup>114</sup>

## Limiting Financial Risks

A final key dimension for how the program is designed and funded is to limit risks to the State. Since the possibility of any such risks ever arising is ultimately based on what happens on the underlying SALs, it is instructive to consider risks at the individual borrower level.

**Borrower risks.** The program is designed to avoid creating any risks for buyers beyond those in conventional mortgage lending and homeownership. The most important feature of the program in this regard is that it requires Fannie Mae or Freddie Mac first mortgages. Such mortgages involve a significantly higher standard of loan underwriting, credit scores and front-end and back-end ratios than FHA, VA and Rural Development loans used by the vast majority of first-time homebuyers. This underwriting protects the borrower as well as the mortgage lender (and because a default on the first mortgage is what would trigger a default on the SAL, it protects the program as well).

Because the SAL is deferred and only due upon sale or cash-out refinancing, it does not involve any monthly payments or create any ongoing financial costs or burdens on the homebuyer.

As with any mortgage lending, there is naturally a risk that if the borrower defaults on the first mortgage, the home value may not be sufficient to repay the first mortgage and the

second mortgage. To limit such exposure to the homeowner, the CA Dream for All SAL would be designed to provide three protections:

- There is no possible deficiency judgment against any borrower;
- There is no appreciation payment unless the property has increased in value; and
- Even if the property has dropped in value, the CA Dream for All loan is subordinated to the borrower recovering the full amount of their original cash down payment.

The homeowner has every incentive to continue making first mortgage payments and maintenance on the home, since the borrower receives the vast majority of the gain on the property.

One natural question is what happens if the borrower does not sell the home, pays off the first mortgage at the end of 30 years and still owes the SAL. At that point, since the borrower has no monthly payments on the original first mortgage, they can take out a new first mortgage that pays off the SAL. Alternatively, the borrower can always sell the home, pay off the shared appreciation loan and receive the remaining gain on the property.

A further, more basic question is whether the program is putting the borrower at risk by making it possible to buy a larger or more expensive home than would otherwise be possible. Helping overcome the financial barriers to homeownership is, of course, the very purpose of any down payment assistance program, from CalHFA's MyHome assistance to larger SALs. The question is whether being able to access a larger amount of assistance may create a greater risk for the potential buyer, in a way that is not reflected in the loan underwriting. Since the major possible risk is that of unanticipated repairs, one benefit of the CA Dream for All Program is that it enables buyers to have a wider range of choice and thus be able to buy homes with less deferred maintenance or current repair needs.

**Risks to the State of California.** The program itself and the funding options we have modeled are designed to avoid creating future or unanticipated financial risks to the State. If loan losses are greater than projected, there is no additional financial cost to the State's General Fund. Rather, the amount of future CA Dream for All lending from loan repayments will be reduced.

<sup>114</sup> Adding to the uncertainty is that a higher share of appreciation may affect the average life of CA Dream for All loans in ways that are hard to project. Some borrowers may be incentivized to pay off their loans earlier as they see the amount potentially due increase more rapidly. Others, looking at these larger amounts, may decide to live in their house longer.

We recognize that including revenue bonds in the program may raise additional questions about risk. If revenue bonds are included, the principal on them will be payable solely from a senior security interest in a highly overcollateralized level of SALs (and the interest by a state appropriation pledge). As a result, there is no financial or legal risk to the General Fund. Nevertheless, having such a large outstanding amount of such revenue bonds issued by a state agency, ultimately over \$6 billion, secured by second mortgage loans brings reputational concerns. Very large loan losses, even if far below the 40% loss level that could affect ultimate repayment of principal, would make it more difficult to sell additional series of revenue bonds and continue funding CA Dream for All loans in this way. For these reasons, and because inclusion of revenue bonds does not increase the number of borrowers who can be assisted with the same amount of taxpayer monies, we advise using taxpayer money to fund the program.

There is a final reputational concern about whether borrowers will clearly understand the nature of the loan obligations they are assuming. The program would need to make an exceptional effort to educate potential buyers about the loan obligation and what is due upon payment, and to inform borrowers regularly about the estimated amount that would be due under their loan if paid off in the current market. The websites and educational efforts of several fintech companies offer models for how this can be done.

Perhaps most important to note in thinking about perceptions by borrowers is to compare SALs with other ways of assisting the same potential buyers. SALs subordinate to the borrower's original down payment pose far less risk to the borrower than a deferred second mortgage with an accruing interest rate, since no appreciation is due if the house does not increase in value, unlike accrued interest at a fixed interest rate.

Finally, SALs provide a way for the State to reduce the risk to itself (and future homebuyers) of being unable to provide resources that keep up with the rate of home appreciation, and to reduce cost of making homes affordable in the future. The funding options described here are based on the State providing the same fixed amount of taxpayer funds each year (\$1 billion for new loans during the initial phase of the program and \$100 million for ongoing administrative costs), without any increases, while also being in a position to provide larger and larger CA Dream for All loans to buyers as California house prices increase. The program can therefore provide the same level of affordability without requiring more and more taxpayer dollars each year.

## Recommended Funding Option

Based on this extensive analysis, the recommended approach for funding the CA Dream for All Program is also the simplest: investing state taxpayer monies in a revolving investment fund, without requiring revenue bonds secured by CA Dream for All loans. This approach would involve the State investing \$1 billion per year for new loans for 10 years, together with an ongoing contribution of \$100 million per year for administrative costs.

## Methods of Funding Taxpayer Investment

There are three funding methods by which the State can provide these taxpayer monies: budget funds for new loans each year, issue GO bonds or issue bonds backed by a state annual appropriation pledge.

**State annual budget fund.** The Legislature can directly appropriate the monies to fund CA Dream for All loans in each year's budget (for example, by including \$1 billion in each year's budget for the first 10 years). This method has the highest annual cost during those years, but avoids requiring the State to pay interest on any bonds.

**General Obligation Bonds.** The State can request voter authorization of GO bonds to fund CA Dream for All loans. Such bonds could then be issued in the amount needed each year, up to the maximum total amount approved by the voters. Interest on the bonds would be federally taxable. Each series of bonds would typically be issued with annual maturities through a final 20-year maturity. The State would be obligated to fund the annual debt service on these bonds as a GO of the State. This approach spreads out the cost to the State of its investment in each year's CA Dream for All lending over many years.

**State appropriation pledge bonds.** This method is frequently used to fund state investments by spreading out the cost over many years without requiring voter authorization. California and other states have often issued bonds backed by a state appropriation pledge for capital facilities.

Under this approach, the Legislature authorizes the issuance of state appropriation pledge bonds for the CA Dream for All program and establishes a maximum annual limitation on the debt service that the State will pay on such bonds. The State is committed to making such debt service payments, but only to the extent that they are budgeted and appropriated each year by the Legislature. These bonds are effectively viewed as 'moral obligations' of the State, and are typically rated by rating agencies one notch below the rating on the State's GO bonds.

This type of State pledge is the same as that described earlier for revenue bonds for the CA Dream for All program, but would cover both principal and interest on the bonds. As a result, bondholders would receive scheduled principal payments funded by the State’s budget—not from principal repayments of CA Dream for All loans. This is an important distinction in several ways.

This appropriation pledge approach is commonly used for certificates of participation and lease revenue bonds for major projects, and it has been used successfully over the last 10 years by the State of Minnesota for housing infrastructure bonds. The principal and interest on the bonds are paid by the State, and the proceeds are used to make soft second loans for permanent supportive housing and other types of housing projects.

Under the appropriation pledge approach, the Legislature would decide on a maximum annual debt service. For example, if the maximum annual amount was initially set at \$480 million, this would enable the State to issue bonds for \$1 billion per year of CA Dream for All lending over the course of approximately seven years. In the future, the Legislature could decide to increase the cap amount in order to continue investing in the CA Dream for All program.

Like GO bonds or revenue bonds for the CA Dream for All Program, appropriation pledge bonds would be federally taxable.

**Choice of funding method.** Any of these methods for investing taxpayer monies could be used for the CA Dream for All Fund. Ultimately, they simply reflect different ways of authorizing and spreading out the cost of the same investment.

Figure 49: Comparison of State Appropriation Pledge Bonds and Revenue Bonds Overcollateralized by CA Dream for All Fund

|                                                                                                         | State Appropriation Pledge Bonds                                  | Revenue Bonds Overcollateralized by CA Dream for All Fund                                                                                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Purpose                                                                                                 | Fund the full amount of CA Dream for All loans made in a year     | Fund a portion of the cost of CA Dream for All loans (together with direct taxpayer monies)                                                                                                                                                                                     |
| Security for the Bonds                                                                                  | State annual appropriation pledge for both principal and interest | Principal is secured by and depends on borrower repayments of CA Dream for All loans. Bonds must be overcollateralized (e.g., can only be issued for up to approx. 60% of the amount of CA Dream for All loans).<br><br>Interest is paid by a state annual appropriation pledge |
| Are Bondholders Affected by:                                                                            |                                                                   |                                                                                                                                                                                                                                                                                 |
| Timing of Repayment of CA Dream for All loans?                                                          | No                                                                | Yes                                                                                                                                                                                                                                                                             |
| Losses on CA Dream for All loans?                                                                       | No                                                                | Yes                                                                                                                                                                                                                                                                             |
| Would there need to be a fixed 30-year maturity on CA Dream for All loans?                              | No                                                                | Yes                                                                                                                                                                                                                                                                             |
| Do bondholders have a lien on repayments of CA Dream for All loans?                                     | No                                                                | Yes                                                                                                                                                                                                                                                                             |
| Maturity on Bonds                                                                                       | Serial bonds through a final maturity (such as 30 years)          | Single term bond in 30 years that would be redeemed earlier from CA Dream for All loan repayments                                                                                                                                                                               |
| Rating on Bonds                                                                                         | One notch below California’s general obligation rating            | Significantly lower, investment grade rating                                                                                                                                                                                                                                    |
| Is this a type of credit and security that bond investors and rating agencies are highly familiar with? | Yes                                                               | No. Deferred payment second mortgage loans have rarely been security for large-scale bond issues                                                                                                                                                                                |

## Comparing Shared Appreciation to Fixed Interest

Beyond the funding option itself, we compared the process and impact of using those same taxpayer monies for two different types of second loans to homebuyers:

- a) Deferred payment second mortgages with a fixed simple interest rate, such as 3%, and
- b) SALs, where there is no interest and the borrower repays a pro rata portion of the appreciation on the home.

In exploring these options, we considered a range of questions, including the differences in risks involved, the total number of households who could buy homes with CA Dream for All loans, the total amount of these loans and the net appreciation received by borrowers.

### Risk

Loans that accrue interest at a fixed rate are fundamentally different from SALs. With a fixed interest rate loan, the borrower has to pay *the same amount* of accrued interest at the loan rate regardless of what happens to the value of the home. The interest that accrues each year is “hard,” meaning that it is due regardless of what happens to the value of the home.

Accruing fixed rate loans creates two significant risks compared to a shared appreciation loan. One is a risk to the individual borrower; the other is a risk to the ability of the CA Dream for All program to help future borrowers.

**Risk to the Borrower.** A fixed interest rate on a CA Dream for All loan creates considerably more risk to individual homeowners if prices don’t increase significantly.

Consider a scenario in which a home purchased for \$650,000 doesn’t increase in value when re-sold 10 years later—for example, during a recession. With shared appreciation, the borrower owes nothing beyond paying back the original CA Dream for All loan principal amount. With a 3% simple fixed interest rate, however, the borrower owes \$39,000 in accrued interest, even though there is no gain on the house. This amount is about twice the value of a typical borrower’s original down payment.

**Risk to CA Dream for All being able to help future borrowers.** On the other hand, consider a scenario in which home prices increase dramatically—for example, by 6% a year over the course of 10 years. With shared appreciation, the

CA Dream for All Fund would receive enough to help a similar buyer purchase an equivalent home. With a 3% simple fixed interest rate, however, the Fund would be \$64,000 short in trying to help a new buyer.

The bottom line is that if home prices increase at a faster rate than that on a fixed rate loan, repayments will not be enough to help subsequent buyers buy equivalent homes.

The last few years have underscored this risk. Between 2018 and 2021, home prices in California increased by 38%. A SAL program would have allowed the CA Dream for All program to keep pace during this time in order to help future first-time homebuyers. Under a 3% fixed interest rate loan program, however, the amount that the CA Dream for All program would ultimately be able to help future buyers would have gone up by only 9% at a time when prices increased by more than four times that amount.

**Nature of the risk.** Setting a different rate on a fixed interest rate loan does not eliminate these risks. An interest rate of 5% instead of 3%, for example, would increase borrower risk. If a borrower purchases a home for \$650,000 and the value has not increased when reselling the home 10 years later, a buyer with a 5% simple interest loan would lose \$65,000, reducing their household wealth by \$65,000. The same buyer with a shared appreciation loan would not have lost anything, and would recover their initial down payment. Meanwhile, if home prices were to rise faster than the fixed interest rate, the Fund would not be able to help a new buyer afford an equivalent home.

The higher one sets the fixed interest rate in order to assist future buyers, the greater the risk to any individual borrower. The risks created by an accruing fixed interest rate on large deferred payment second mortgage loans are thus fundamental. If appreciation turns out to be less than the fixed rate, the low/moderate-income borrower loses money, compared to shared appreciation. On the other hand, if appreciation turns out to be more than the fixed rate, the CA Dream for All Fund will not have enough to help the next buyer purchase a similar home.

In essence, an accruing fixed rate second loan creates a greater upside and a greater downside for the borrower, while also making it much more difficult for the State’s investment in the CA Dream for All program to keep pace with inflation. Shared appreciation creates fewer risks to individual homebuyers and to the CA Dream for All program’s ability to help families overall, because it is linked to what actually happens to the price of each borrower’s home.

## Overall Impact of Fixed Interest vs. Shared Appreciation

**Expected case.** Figure 50 shows key overall impacts of these two different types of lending, with the same amount of State investment in the CA Dream for All Fund in the expected case.

If homes appreciate at 4.5% per year—slightly less than the statewide average for the last 40 years—a shared appreciation CA Dream for All program will assist approximately 32,000 more borrowers than a 3% fixed interest rate loan program. That number represents 26% more first-time buyers who could purchase homes.

More striking still, a shared appreciation program would provide \$15 billion more in CA Dream for All loans—46% more than the fixed rate program. This program would help future borrowers keep up with the increasing price of homes in California, allowing buyers to purchase homes costing a total of \$238 billion compared to \$163 billion.

Perhaps the most important part of this comparison is the impact on borrower household wealth; that is, how much borrowers receive from the total appreciation of their homes after subtracting what would be owed to the program, either as a share of appreciation or as accrued interest. The aggregate appreciation that borrowers would be able to realize under a shared appreciation program would be \$133.8 billion—about 10% more than with a fixed rate loan program.

Why does a shared appreciation program help borrowers realize more total appreciation? After all, any individual borrower in an escalating housing market would be better off owing a low interest rate rather than a pro rata share of appreciation. But because a shared appreciation program helps so many more borrowers, the total borrower share of appreciation the CA Dream for All program can generate over 40 years is significantly greater.

Figure 50: Shared Appreciation and 3% Fixed Interest Loans Over 40 Years: Expected Case

|                                                            | Shared Appreciation | Fixed Simple Interest 3% | Difference   |
|------------------------------------------------------------|---------------------|--------------------------|--------------|
| <b>CA Dream Loan Originations</b>                          |                     |                          |              |
| Borrowers assisted over 40 years                           | 157,200             | 124,800                  | 32,400       |
| \$ of homes purchased                                      | \$238 bill.         | \$163 bill.              | \$75 bill.   |
| CA Dream loans                                             | 47.6 bill.          | 32.6 bill.               | 15.0 bill.   |
| <i>Present value at 3.0%</i>                               | 25.3                | 19.2                     | 6.1          |
| <b>Borrower Share of Home Appreciation Through Year 40</b> |                     |                          |              |
| Borrower share                                             | \$133.8 bill.       | \$120.6 bill.            | \$13.2 bill. |
| <i>Present value at 3.0%</i>                               | 64.2                | 60.8                     | 3.4          |



Figure 51: Shared Appreciation v. 3% Fixed Interest Loans Over 40 Years: More Conservative Case

|                                                            | Shared Appreciation | Fixed Simple Interest 3% | Difference  |
|------------------------------------------------------------|---------------------|--------------------------|-------------|
| <b>CA Dream Loan Originations</b>                          |                     |                          |             |
| Borrowers assisted over 40 years                           | 144,000             | 133,900                  | 10,100      |
| \$ of homes purchased                                      | \$157 bill.         | \$141 bill.              | \$16 bill.  |
| CA Dream loans                                             | \$31.4 bill.        | \$28.2 bill.             | \$3.2 bill. |
| <i>Present value at 3.0%</i>                               | <i>18.1</i>         | <i>16.9</i>              | <i>6.1</i>  |
| <b>Borrower Share of Home Appreciation Through Year 40</b> |                     |                          |             |
| Borrower share                                             | \$ 61.8 bill.       | \$ 61.8 bill.            | \$0 bill.   |
| <i>Present value at 3.0%</i>                               | <i>31.1</i>         | <i>31.6</i>              | <i>-0.4</i> |

**More conservative case.** Figure 51 shows the results in the more conservative case, where home prices rise at 3%—the same rate as that on an assumed fixed rate loan program.

If home prices rise slowly—at about the same rate as that on accruing fixed rate loans—there is much less of a difference between shared appreciation and fixed rate programs. In this case, shared appreciation helps about 10,000 more first-time buyers, or about 8% more. There is virtually no difference in the total borrower share of home appreciation over this 40-year period.

This point underscores the very purpose of a shared appreciation program: to be able to keep pace with the changing price of homes and thus reduce the risk that loan repayments will not be enough to help a similar buyer purchase a home.

In the same way that the fundamental purpose of the CA Dream for All program is to help insulate families from rising housing costs, the shared appreciation feature helps insulate the CA Dream for All program from being unable to help future buyers in the kind of escalating market California has experienced for decades.

**Residual long-term benefits.** The analysis up to this point has only considered the impact on appreciation by borrowers through 40 years.

Perhaps the most significant difference between shared appreciation and fixed interest is in *the residual amount* accrued by the CA Dream for All Fund at the end of 40 years. These are the repayments the CA Dream for All Fund would ultimately receive from loans outstanding at that date.

In the expected case, a shared appreciation program would generate five times more resources from repayments after year 40 than a fixed rate program: \$35.8 billion versus \$7.6 billion. This difference is the extra amount that a shared appreciation program would have to help subsequent buyers.

In the conservative case, the difference is less but still substantial. A shared appreciation program in this case would generate about 75% more residual resources than a fixed rate program, or about \$13.0 billion versus \$7.5 billion.

## Efficiency of State Investment in Generating Household Wealth

Figure 52 takes into account these various impacts. It envisions the program making loans through year 40, but with any repayments received after that date acting as repayments to the State for its investment.

Figure 52: Present Value Comparison of State Investment in Generating Household Wealth

|                               | State Investment | Residual to State After Year 40 | Net State Investment | Borrower Appreciation Through Year 40 | Borrower Appreciation Divided by Net State investment |
|-------------------------------|------------------|---------------------------------|----------------------|---------------------------------------|-------------------------------------------------------|
| <b>Expected Case</b>          |                  |                                 |                      |                                       |                                                       |
| Shared appreciation           | \$10.8 billion   | \$7.5 billion                   | \$3.3 billion        | \$64.2 billion                        | 19.4x                                                 |
| Fixed interest                | \$10.8 billion   | \$1.7 billion                   | \$9.1 billion        | \$60.8 billion                        | 6.7x                                                  |
| <b>More Conservative Case</b> |                  |                                 |                      |                                       |                                                       |
| Shared appreciation           | \$10.8 billion   | \$2.7 billion                   | \$8.1 billion        | \$31.2 billion                        | 3.9x                                                  |
| Fixed interest                | \$10.8 billion   | \$ 1.6 billion                  | \$9.2 billion        | \$31.6 billion                        | 3.4x                                                  |

What this shows is that in the expected case, in present value terms, the State's net investment in a *shared appreciation* CA Dream for All Fund would have been \$3.3 billion, and would have generated *more than 19 times that amount in borrower household wealth*. The State's net investment in a *fixed rate* CA Dream for All Fund, on the other hand, would have been \$9.1 billion, and would have generated *6.7 times that investment*.

In the more conservative case, the State would generate 3.9 times its investment using a shared appreciation approach versus 3.4 times its investment under a fixed rate approach.

## Conclusions: Appreciation vs. Fixed Interest Loans

In all these analyses, a few insights into fixed rate programs stand out.

- If the fixed interest rate turns out to be **lower than the average rate of appreciation** (such as in the expected case, with 3% simple interest vs. 4.5% compounded appreciation), a fixed rate program will help significantly fewer buyers and generate much less household wealth.

- If the fixed interest rate turns out to be **close to the average rate of appreciation**, such as in the more conservative case (e.g., 3% simple interest vs. 3% compounded home appreciation), the differences from shared appreciation are more modest. In the more conservative case, shared appreciation helps about 8% more borrowers over 40 years than a fixed rate program and accrues significantly more resources for helping subsequent borrowers or for repaying the State. It is also somewhat more efficient in generating household wealth.
- If the fixed interest rate turns out to be **higher than the actual appreciation on an individual borrower's home**, there is a significant adverse impact on that borrower's household wealth. Shared appreciation does not pose this risk.

By being linked to what actually happens to borrower homes, shared appreciation can be seen as creating fewer risks both to individual borrowers and to the program's ability to generate household wealth overall.



# VI. OUTREACH, EQUITY AND IMPLEMENTATION

## Community and Stakeholder Feedback

### Summary of Community Comments and Themes

California Community Builders staff spoke to stakeholders throughout the state from January through March of 2022. These stakeholders included housing counseling agencies, community development corporations, mortgage originators, Community Development Financial Institutions (CDFI), real estate brokers and representatives of community land trusts.<sup>115</sup>

Interviewees almost universally supported the program at a high level. In fact, even those who did not think the program would be directly applicable to their organizations and/or target communities were supportive.

Two organizations brought up notable structural questions. One organization asked whether the proposed CA Dream for All program would do enough to prioritize wealth building overall and in all cases—and specifically, whether the CA Dream for All program should ensure that in all cases, including early home sales and cases of hardship, the borrower's financial equity is maximized. On the other end of the spectrum, a separate organization asked whether the program's intended flexibility would protect against highly-educated-but-not-rich-yet borrowers (HENRYs) over-subscribing to the program, and specifically whether the CA Dream for All program would inadvertently over-subsidize borrowers from higher wealth communities that have already historically been able to access homeownership.

These critiques were in the minority, and the program team is confident that an equitable approach informed by community input—as described below—will address these more systemic concerns. The remainder of the feedback primarily addressed smaller-scale program details, and even those interviewees with the strongest concerns did not disagree with the overall concept or argue that a shared appreciation mortgage program should not exist.

### Primary Interview Themes

**California needs more tools to meet our homeownership crisis.** Stakeholders all voiced the need and support for a new tool to address the homeownership crisis.

**Equity for disadvantaged communities needs to be prioritized.** Stakeholders agreed that historically redlined and other marginalized communities have specific needs and are not well served by the existing mortgage market, while existing down payment assistance programs leave significant room for improvement. It's clear that any new mortgage product must ensure outcomes that maximize accessibility, protection and wealth building for these populations.

**Housing practitioners need flexibility and support.** Stakeholders agreed that housing professionals need diverse options to serve diverse communities, and that programs with built-in flexibility allow them to serve a variety of unique borrower needs. Housing counselors, who are on the front lines of supporting low- and moderate-income families, need increased resources to ensure maximal help to communities that are often hard to reach, experience language access issues or have little experience successfully attaining homeownership. Stakeholders often remarked during interviews that housing counselors do two to three times more work than they are compensated to perform.

**The CA Dream for All program must work within the context of the market as it exists today.** Stakeholders continually acknowledged the extreme disadvantage facing low- and moderate-income borrowers in every region of the state, including those considered “low-cost.” A successful program will need to ensure that borrowers can compete in the private market efficiently and effectively. Considerations like the timing of funds, ease of execution and competition from borrowers using only private-sector mortgages (as well as all-cash buyers) must be taken into account.

<sup>115</sup> A special thanks goes to those experts that agreed to be interviewed for the purpose of this report. These individuals include Blanca Arellano, Hope Through Housing Foundation; Carolyn Patton, West Angeles CDC; Al Abdullah at the San Diego Urban League; Sergio Szyrko at Fairway Independent Mortgage Corporation; Anne Vilagut, Montebello Housing Development Corporation; Maureen Sedonaen, Habitat for Humanity San Francisco; Dennis Santiago, National Asian American Coalition; Hye-pin Im, Faith and Community Empowerment; Kaith Berghold, Fresno Metro Ministries; Clemente Mojica, Neighborhood Partnership Housing Services; Leah Miller, Habitat for Humanity Sacramento; Nikki Beasley, Richmond Neighborhood Housing Services; Bertha Garcia, Ventura County Community Development Corporation; Esther Carver, Lowell CDC; Leo Goldberg, California Community Land Trust Network; Farrah Wilder, California Association of Realtors.

## Areas of Significant Support

**Income flexibility.** In general, interviewees were most pleased with the flexibility the program would provide around eligible borrower incomes, since existing programs are very restrictive and often targeted at families at or below 80% AMI. Interviewees felt that this flexibility would either be a tool to serve existing clients or an alternative for those clients that would otherwise have been turned away for having an income that is too high. Further, several interviewees brought up the lack of existing programs to serve 80-120% AMI families.

**Student debt relief.** Interviewees generally supported a potential set-aside to help borrowers convert expensive student loan debt into low-cost, non-interest-bearing CA Dream for All debt, although the issue was less pertinent for some populations. Several interviewees suggested that student debt could be a constraining factor for their clients. Feedback from down payment assistance administrators in Illinois indicated that adding direct student debt support lowered the average age of their borrowers and brought in more diverse populations.

**Average size of a CA Dream for All loan.** Most interviewees noted that one of the biggest, most straightforward benefits of the program is that it would remove the need for Private Mortgage Insurance (PMI), which would result in significant cost savings for borrowers and a larger overall loan. The size of the CA Dream for All's average loan, approximately 17%, is big enough to ensure that the majority of borrowers avoid an often large and unnecessary cost.

**CBO and nonprofit participation.** Interviewees thought a program that provided the above benefits and included a significant role for nonprofit community organizations could serve populations and potential homeowners that are not currently well served. Interviewees generally spoke very highly of CalHFA's community collaboration structure and thought a continuation of that approach would be beneficial and necessary for this type of program.

## Areas of Concern and Potential Approaches to Address Those Concerns

**Complexity.** Interviewees flagged the complexity of the program as a potential obstacle to maximizing positive benefits for targeted families. While shared appreciation is relatively simple in some ways (e.g., no interest paid, loan amount is directly tied to purchase price, not payable until sale, etc.), target borrowers will likely come from families where homeownership may not be

common. Several interviewees suggested that most borrowers will forget about the second mortgage if they are not paying it, especially after more than 10 years. Perhaps even more importantly, SALs are not widely available, and so borrowers, real estate professionals, housing counselors and administrators will generally be unfamiliar with the structure and concept at the outset of the program.

To address the complexity of this program, the CA FWD team recommends that a CA Dream for All program maximize pre-and post-purchase counseling. During the homebuying process, the program should prioritize clear, simple marketing materials, loan descriptions and documents, and should resource home counseling organizations to provide enhanced support to borrowers. Post-purchase outreach and counseling will be especially critical for inexperienced buyers if problems arise. This should include regular written communications to borrowers indicating that they have a shared appreciation obligation, as well as annual check-ins with housing counselors. It will be useful to contact borrowers periodically (ideally through post-purchase counseling) to ensure this detail is not lost.

**First-generation set-aside.** The CA FWD team was asked to evaluate a potential set-aside for first-generation homebuyers, or buyers who had not owned a home in the past three years and whose parents had not owned a home in three years. Interviewees were generally neutral or opposed to the first-generation component. Feedback indicated that a first-generation component would be impractical to verify, would further complicate an already complicated program and would not add much value since the majority of first-time homebuyers are already likely to be first-generation.

To address what could be a significant administrative burden for small overall equity impacts, the CA FWD team recommends the CA Dream for All program focus primarily on first-time homebuyers to avoid a logistical quagmire. If a first-generation set-aside is included, it should be structured as a self-certification to reduce the administrative burden.

**Down payment and closing costs.** Most interviewees mentioned the overall cost of a down payment and closing costs being an impediment, especially in high-cost markets. While a CA Dream for All loan would only leave 3% for a borrower to contribute as a down payment, even this amount could be prohibitive for low-wealth borrowers and communities, considering the average home cost in the Bay Area, Los Angeles and most areas of the state.

To address the remaining down payment cost, the CA Dream for All program should maximize flexibility so that it can be paired with other programs providing down payment assistance and financial support. This could mean educating housing counselors so that they can help potential buyers with all existing subsidy programs for which they are eligible, increasing the size of the CA Dream for All loan up to 30% for lower-income borrowers, or some combination of the two

## Marketing and Outreach

The RFP stated that “Outreach efforts to target beneficiaries of the Program will be made to: (1) underrepresented homeownership communities, (2) those who have not returned to homeownership after losing homes in the Great Recession and (3) those with high student debts.”

### Issues and Needs in Targeting Disadvantaged Communities

**Keep in mind lack of experience.** Stakeholders, especially housing counselors, emphasized the importance of understanding that first-time homebuyer programs target individuals who have no personal experience in the homebuying process and who likely come from communities that have been formally and informally shut out of homeownership. In addition, many potential borrowers may come from families negatively impacted by the Great Recession, and so their only personal connection to homeownership may be through the lens of foreclosure and its aftermath.

**Simplicity will be key.** A shared appreciation mortgage is a new concept for most housing professionals, so outreach and marketing to first-time homebuyers (who have almost certainly never heard the term) must use plain language, simple visuals and a clear articulation of the process (including benefits and drawbacks of the program). Resources should be set aside for the design of clear, explanatory visual materials.

**Leverage existing networks and nonprofit organizations.** A critical component to success will be the program’s ability to work with existing organizations and networks that are based in and trusted by disadvantaged populations. To do so, it will be important that these organizations and networks, especially housing counselors, be educated on the program and understand how to relay and guide potential borrowers. Resources must be set aside to help these organizations and their staff learn about the programs.

**Cultural competency.** A new statewide program—especially one based on targeting disadvantaged communities, non-English speaking communities,

communities that have been historically targeted by predatory lenders and those from families that have never owned homes—will need to prioritize cultural competency in marketing and outreach, service delivery and administration of the program. Suggestions to promote this outcome include:

- **Translation services:** A successful CA Dream for All program needs to ensure adequate resources for translation services and prioritize culturally competent marketing and outreach. Language access was a common theme throughout our interviews, especially related to the Asian American and Pacific Islander community. There are numerous economically and culturally diverse communities within the Asian American and Pacific Islander community whose unique language needs often go overlooked.
- **Ethnic media:** Often, first-time borrowers come from communities that are not well served by the mainstream media. It is important that ethnic media—both English and non-English outlets—be incorporated into the outreach and marketing of the CA Dream for All program.
- **Big impact of digital divide:** Digital access and the impact of the digital divide vary greatly across communities. The CA Dream for All program should balance the need for efficiency through digital and online services with the understanding that, for many families, particularly those that come from disadvantaged and formerly redlined communities, these services are not always as readily accessible.

**Educate the real estate community on the program.** Several interviewees working in the for-profit real estate sector noted that the flexibility built into this program would likely be appealing to brokers and mortgage originators, but that there should still be a concerted effort to reach out to and educate real estate professionals, including real estate brokers. There was consensus that this program could be underutilized and less effective without buy-in from the realtor community.

**Marketing and outreach need to be resourced to facilitate effective partnerships.** Interviewees consistently noted that without resources dedicated to marketing and outreach, the onus will fall on nonprofit and community-based organizations that are often stretched thin. Interviewees pointed out that some local down payment assistance programs, such as San Francisco’s program, include marketing as a reimbursed cost, and recommended that the CA Dream for All program follow that model.

## Housing Counseling

### Primary Themes We Heard From Counselors

**Complexity.** All interviewees agreed this would be a very complex program to explain, with borrowers who know less than average compared to the typical buyer. The program needs to maximize outreach, education and support for these borrowers. Participants also emphasized making the program as simple as possible so that buyers who have never purchased a home, and potentially come from families that have never purchased homes, can easily understand and evaluate the program. That said, one interviewee noted that the proposed program is not especially more complicated than other public DPA programs that require repayment and that many of the fundamental issues were the same: lack of general borrower knowledge, excitement to purchase a home obscuring critical issues that need consideration and the likelihood that borrowers will forget the specifics of what they agreed to post-purchase.

#### **Protection against predatory instruments.**

A number of interviewees noted that, in their experience, families that have recently purchased a home often begin to receive offers for home renovation loans, reverse mortgages and other costly products that do not necessarily benefit the borrower. Interviewees reported that people who are unfamiliar with the process and excited to own a home can be very trusting and overwhelmed with information. Since most housing counselors do not see first-time homebuyer clients again unless they need foreclosure prevention help, new homebuyers are often left without support. Further, since everyone in the real estate industry aside from housing counselors works on commission, there is a real need to protect borrowers. The simplest, most effective way to protect against these predatory financial instruments is for the CA Dream for All program to invest in resource-enhanced, long-term access to housing counselors and homeowner education.

**Resources for Housing Counselor Services and Capacity Building.** Interviewees consistently noted that the lack of resources for housing counselors is a significant inhibiting factor in the number of families helped and support provided. Stakeholder feedback called for current homebuyer education funds to be significantly increased due to the high-touch nature of the work and inherently inefficient process of working with people who are both low/moderate income and have never purchased a home. Language barriers and the digital divide also require more time and energy to serve clients. Interviewees also called for additional funds for

capacity building. Lastly, numerous interviewees mentioned that there should be investment in capacity building for nonprofit organizations serving these populations since the current funding structure is not conducive to helping these organizations grow the infrastructure needed to serve clients in the long term.

#### **Leverage housing counselors, CDFIs, and other community groups beyond just homebuyer education and outreach.**

The most straightforward way to engage housing groups is through their role in marketing, outreach and homebuyer education, but numerous interviewees also requested that the broader housing community be engaged on issues around administration of the program and given the opportunity to provide feedback on operations through formal administrative channels.

**Timing and ease of execution.** Real estate is a field full of deadlines, and in almost all markets in California there is no room for error. For the program to work, it must be run by people who understand how these transactions operate and who recognize that delays hurt the people the program intends to help, in addition to harming the program's reputation among real estate professionals.

**CA Dream for All must be accepted by the real estate industry to be successful.** Several interviewees noted that if the CA Dream for All program does not successfully integrate the realtor community, mortgage originators and other real estate professionals then many families that could otherwise benefit may miss out. There were also examples given of how existing programs were not favored by realtors representing home sellers due to timing inefficiencies, and so families with down payment assistance loans were often left with few options. At least one interviewee stated there should be an incentive for realtors and sellers to work with this program. Interviewee sentiment was that the CA Dream for All program will only reach its maximum potential if it is seen as an effective and efficient program by the real estate community.

### Additional Feedback We Received

Interviewees also shared additional observations that did not arise as consistent themes in every interview, but were still valuable and worthwhile to consider as the program is implemented.

- **“Low-cost areas”:** Even “low-cost” regions of the state have expensive markets where buyers at 120% AMI have a difficult time finding opportunities.

- **The reality of the market:** Buyers in Los Angeles and other high-cost markets are routinely asked to engage in a bidding war with other buyers. It is important that CA Dream for All borrowers are able to compete effectively in the market as it exists today.
- **Lender participation:** Large banks do participate widely in existing down payment assistance programs, and these programs often have high-cost fees.
- **Reporting:** Reporting can be burdensome on small nonprofits, and streamlining should be prioritized. CalHFA was highlighted as a reasonable reporting agency.
- **Implementation:** For some down payment assistance programs that were not structured well, money does not actually make it out to borrowers and allocated funds are not used.
- **Hardship and mortgage modification:** If a borrower is selling to pay for hardship such as medical debt, the CA Dream for All program could carve out an exception and lower the requirement on some or all of the shared appreciation paid back.
- **Community Land Trusts:** The CA Dream for All program should be structured to ensure that limited equity co-ops and Community Land Trusts can participate fully, including allowances for long term ground leases and other cooperative structures.
- **Prioritizing wealth building:** The CA Dream for All program should strike a balance between providing as much support to families as needed without over subsidizing and eliminating the wealth building potential of the program.
- **Bank participation:** Large bank participation would significantly improve the program's reach, effectiveness and uptake by borrowers. The administrator of the CA Dream for All program should explore ways to ensure large bank participation.
- **Synergy with existing programs:** There are numerous down payment assistance programs at the state and local levels, especially in large cities. The CA Dream for All program should consider how these programs can integrate into its statewide program and add value where possible to borrowers.
- **Multifamily homeownership:** The CA Dream for All program should be flexible in the type of home purchased and be useful for condo and co-op buyers, along with more traditional single-family homes.
- **Geographic awareness:** While a buyer may live in a high-cost market like Los Angeles, many low- and moderate-income borrowers are looking to purchase in lower-cost areas, such as the Inland Empire.

## Monitoring and Evaluation

### Post-Purchase Counseling

The project team has intentionally designed the CA Dream for All program to be as accessible, affordable and adopted as broadly as possible throughout the state's various regions and communities. Since examples of well-run pre-purchase and outreach counseling programs exist throughout the state, traditional housing counseling is not likely to be especially difficult for the program administrator to institute and run. What may require more time, effort and innovation will be a new post-purchase counseling program that can be a resource for buyers—ideally throughout the life of their CA Dream for All loan.

Housing counselors interviewed reported that most of the financial support for their work was limited to pre-purchase counseling. When available for post-purchase counseling, most resources were limited to pre-foreclosure support or restricted to the first few years after the home purchase. Housing counselors also reported that even for pre-purchase counseling, resources did not cover the full time and energy spent to qualify first-time buyers. One interviewee noted that, once a program ends, borrowers have old phone numbers and emails to reach out to, and often receive no response from the administering agency.

With additional resources, housing counselors can remain a touch point for homebuyers as they navigate the process, especially if there is no additional support from loan servicers.

### Trade-Offs of Long-Term Housing Counseling and Support

While long-term, well-resourced housing counseling and borrower outreach can address issues around program unfamiliarity and complexity, they also involve significant financial costs. That said, the driving purpose of the CA Dream for All program is to create wealth through homeownership in a safe and sustainable manner. To truly achieve that primary objective, adequate resources—detailed in other sections of this report—must be set aside for the administration of this program, including all necessary funding for long-term, appropriate counseling and outreach for borrowers who have taken out a CA Dream for All loan.

## Additional Efforts to Ensure Equity: HMDA Disclosure and Community Advisory Board

There are additional ways in which a program administrator can ensure equitable implementation of the CA Dream for All program during the monitoring and evaluation phase. First, the project team recommends that the program administrator release an annual report using Home Mortgage Disclosure Data to disclose, in the aggregate, the program's uptake among different geographies throughout the state by ethnicity, gender and income. This information is already collected by mortgage lenders and should not be particularly onerous to aggregate and publish annually, especially considering the overall size and cost of the program. If the annual HMDA data shows that the program is not reaching priority disadvantaged communities, then solutions can be proposed and implemented to address that misalignment.

Second, the CA FWD team strongly recommends the program administrator create a community advisory committee made up of housing professionals—including nonprofit housing counselors, realtors, CDFI professionals and mortgage originators—directly serving low- and moderate-income clients to ensure that the implementation of the program meets its strategic vision and goals. Consistent feedback provided during stakeholder interviews noted that programs are often well designed on paper but do not meet the realities of the housing market in different regions. By creating an advisory council of nonprofit and for-profit organizations, the CA Dream for All program administrator can ensure that feedback from stakeholders essential to the success of the program is given a formal channel to be evaluated and potentially implemented.

## Equity Analysis

Building on 2021's successful [CA House Resolution 39 \(Gipson\)](#) – “Equity Impact Analysis of Legislation,” the CA Dream for All program can use an equity analysis framework to help ensure it is reducing or eliminating inequities experienced by historically marginalized communities. The equity analysis below, adapted from questions that could also be asked by a committee consultant reviewing potentially enabling legislation, is intended to: provide space to consider specific, structural questions concerning the program and the equity outcomes it could produce; summarize the feedback received

from stakeholder interviewees and proposals from the project team into recommendations that will provide a minimum baseline for the project to achieve equitable outcomes; and offer suggestions for the CA Dream for All program that will provide enhanced equity outcomes in excess of what would be accomplished by only adopting the baseline.<sup>116</sup>

### **TARGETED SUPPORT: Will the CA Dream for All program increase opportunities, services or support for low- or moderate-income communities?**

Baseline: The underlying and structural goal of the CA Dream for All shared appreciation mortgage program is to directly target low- and moderate-income communities, including enhanced support for borrowers that struggle with student debt and other significant obstacles to achieving homeownership.

Enhancement: To maximize equity and benefits delivered to disadvantaged communities, the CA Dream for All program administrator should track borrower demographics through annual HMDA demographics information and make that data public. While the unequivocal goal of the program is to support low- and moderate-income communities, the implementation of public policy goals can often fall short. Annual HMDA data disclosures directly tied to the CA Dream for All program would allow for adjustments to be made to the program's targeting and improvements to its overall adoption by target communities.

### **WEALTH BUILDING: If implemented, will this program help close the wealth gap for communities historically impacted by redlining?**

Baseline: The program framework has been structured to maximize wealth building opportunities for current disadvantaged borrowers while still protecting the ability of the program to generate enough returns to serve future borrowers. For instance, the project team has not imposed resale restrictions related to income on CA Dream for All borrowers, which would have limited the homeowner's ability to realize the equity they have built in their home.

Enhancement: To further enhance wealth building, housing counselors should be provided with long-term resources (direct and capacity building) to support buyers in making financial decisions that will most benefit them. Annual contact and long-term relationships between borrowers and housing counselors will mean that homebuyers

will have at least one resource to call on that is not motivated by profit. This is especially important since the wealth building benefits of the CA Dream for All program accrue slightly more slowly than those of standard fixed interest rate down payment programs, and it is important that homeowners understand the benefits and drawbacks of paying off their CA Dream for All mortgage in the first ten years.

***BORROWER PROTECTIONS: Are there protections embedded in the program to ensure that borrowers are educated and protected from predatory lending?***

Baseline: Pre-purchase borrower education through accredited housing counselors will be required, and the program has been structured so that it will be limited to lenders approved by the public agency administering the program. As discussed earlier in this report, shared appreciation mortgages ensure that borrowers are also more protected in a market downturn compared to traditional fixed interest rate down payment assistance programs.

Enhancement: In the same way that long-term access to housing counseling can help to maximize wealth creation for CA Dream for All borrowers, long-term counseling can also help to protect borrowers from the type of predatory offers that interviewees indicated often start to appear after a borrower purchases a home. Investing the resources necessary to create a strong, long-term infrastructure of borrower resources and support—primarily through long-term access to housing counselors—will be vital.

***LANGUAGE DIVERSITY: Will this program have any limitations or negative impacts for households that are predominantly non-English speaking?***

Baseline: No, but there should be resources to ensure cultural competency, including translation services for outreach, counseling organizations and all program materials. Without specific targeted

resources for non-English speaking communities, the CA Dream for All program will not be able to reach all Californians, especially those that come from low- and moderate-income communities the program is directly charged with serving.

Enhancement: Maximize the use of ethnic media to advertise and outreach to non-English speaking communities and other communities not well served by mass media outreach strategies, especially those in languages other than English. This approach will not only expand outreach to eligible borrowers; it will also offer Californian communities that are often left out of housing conversations information about the benefits of a shared appreciation mortgage program.

***HEALTH AND QUALITY OF LIFE: If implemented, will this program reduce health inequities and disparities in quality of life for communities that have been historically impacted by redlining and environmental injustice?***

Baseline: As noted earlier in this chapter, neighborhoods that were previously redlined still have higher poverty rates, less economic mobility for children,<sup>117</sup> reduced housing supply,<sup>118</sup> lower life expectancy, higher incidence of chronic diseases<sup>119</sup> and lower quality broadband access as well as lower house values and homeownership rates.<sup>120</sup> The CA Dream for All program intends to implement special targeting to areas identified by CalEnviroScreen as Disadvantaged Communities, which are defined as areas with higher rates of pollution and illness and lower socioeconomic assets.

Enhancement: Identify additional resources for Disadvantaged Communities that can be used to strengthen the CA Dream for All program, such as additional funds that can be used for environmental remediation or other issues directly related to past environmental injustice.

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## Conclusion & Final Recommendations

The stakeholders we interviewed broadly agreed that the CA Dream for All program could fill a critical need in California's difficult housing market, in which 20% down payments have become a nearly insurmountable obstacle for otherwise qualified buyers. Sustainable down payment assistance can make it possible for many who otherwise have no viable path to homeownership to make use of this critical avenue for building wealth and financial security. We discovered considerable consensus around elements the program will need in order to be truly successful and maximize benefits to disadvantaged communities. In brief, these crucial recommendations are:

- **Prioritize disadvantaged communities,** including previously redlined neighborhoods and historically marginalized groups.
- **Support and fund housing counseling and incorporate counseling into every stage of the program.** Because this program revolves around a concept that is unfamiliar to many, participants will need ongoing support and information, not just during the initial purchase but long after. The CA Dream for All program must ensure that counseling efforts are adequately resourced and should work closely with nonprofits and CDFIs.
- **Make marketing and other program materials clear and easy to understand.** Use plain language and clear, straightforward visuals. Ensure that the benefits and drawbacks of participation are explained in a way that is easy to grasp.
- **Emphasize cultural competency.** Use of translation services will be critical, as many in the target audience do not speak or read

English as their first language, but that is just a start. Cultural knowledge and awareness will also be crucial. Make use of ethnic media outlets, which may be the most trusted in certain communities and can reach those not well served by the mainstream media. To do all of this properly, marketing efforts must be adequately resourced.

- **Make sure the real estate industry understands and accepts the program.** This goal will require education and outreach. Real estate professionals need to be able to trust that the program will be run efficiently and not cause unnecessary delays in transactions—meaning that administration and operations must be well-planned and adequately resourced. If the program works well, they will use it; if it does not, they will not use it.
- **Build equity analysis into the program and its evaluation.** Following the lead of HR-39, passed in 2021, the program must systematically examine its impact in delivering benefits to disadvantaged communities. Existing data collection and analysis tools such as the Home Mortgage Disclosure Act and CalEnviroScreen can be used to help facilitate this process.

The CA Dream for All program can go a long way toward alleviating one major obstacle to homeownership that has disproportionately impacted marginalized communities, but getting the details right will make the difference between a program that creates a positive impact and a disappointing effort with only marginal benefits. The concerns and recommendations that emerged from these stakeholder interviews provide important guidance to help ensure maximum impact as the program is finalized.



# APPENDIX A

## Glossary

**Acquisition Price:** The purchase price of the real property, including closing costs, prepaid costs, and commissions, if paid by the purchaser, but not including the cost of any repairs that the purchaser makes to the property subsequent to acquisition.<sup>121</sup>

**Administrative Cost:** Costs incurred to support the functioning of a program or fund, but which are not directly related to the production or servicing of a mortgage.<sup>122</sup>

**Accessory Dwelling Units (ADUs):** Housing options also known as granny flats, in-law units, backyard cottages, secondary units and more. ADUs are an innovative, affordable, effective option for adding much-needed housing in California.<sup>123</sup>

**Amortization:** Paying off a loan with regular payments over time, so that the amount a borrower owes decreases with each payment. Most home loans amortize, but some mortgage loans do not fully amortize, meaning that a borrower would still owe money after making all of a borrower's payments. Some home loans allow payments that cover only the amount of interest due, or an amount less than the interest due. If payments are less than the amount of interest due each month, the mortgage balance will grow rather than decrease.<sup>124</sup>

**Amortizing Loan:** An amortized loan is a type of loan with scheduled, periodic payments that are applied to both the loan's principal amount and the interest accrued. An amortized loan payment first pays off the relevant interest expense for the period, after which the remainder of the payment is put toward reducing the principal amount.<sup>125</sup>

**Annual Income:** Annual income is a factor in a mortgage loan application and generally refers to a borrower's total earned, pre-tax income over a year. Annual income may include income from full-time or part-time work, self-employment, tips, commissions, overtime, bonuses or other sources. A lender will use information about a borrower's annual income and a borrower's existing monthly debts to determine if borrowers can repay the loan. Whether a lender will rely upon a specific income source or amount when considering a borrower for a loan will often depend upon whether a borrower can reasonably expect the income to continue.<sup>126</sup>

**Appraisal:** An independent assessment of the value of a property. The appraisal gives a borrower useful information about the property, and describes what makes it valuable. It may also show how the property compares in value to other properties in the neighborhood.<sup>127</sup>

**Appraisal Fee:** The cost of a home appraisal of a house a borrower plans to buy or already owns. In most cases, the selection of the appraiser and any associated costs is up to the lender.<sup>128</sup>

**Appreciation:** The increased value of a property determined by subtracting the purchase price from the sales price at the time of resale or the fair market value upon other events triggering repayment.<sup>129</sup>

**Appreciation Share:** The share of the appreciated home value split between a SAL originator and the homebuyer.<sup>130</sup>

**Area Median Income (AMI):** The Area Median Income (AMI) describes the midpoint of an area's income distribution, where 50% of households earn above the median figure while 50% earn less than the median. The Department of Housing and Urban Development (HUD) defines "area" as a Metropolitan Statistical Area (MSA).<sup>131</sup>

**Back-End Ratio:** A ratio that indicates what portion of a person's monthly income goes toward paying debts. Total monthly debt includes expenses, such as mortgage payments (principal, interest, taxes, and insurance), credit card payments, child support, and other loan payments. Back-End Ratio = (Total monthly debt expense / Gross monthly income) x 100.<sup>132</sup>

121 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. <https://www.hud.gov/sites/documents/40001GAHSGH.PDF>

122 Lush, Minnie. *California Real Estate Finance, 9th Edition*. 2016.

123 "Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs)." California Department of Housing and Community Development. 2021. <https://www.hcd.ca.gov/policy-research/accessorydwellingunits.shtml#adu>

124 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

125 Cornell Legal Information Institute. <https://www.law.cornell.edu/>

126 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

127 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

128 Ibid.

129 Ibid.

130 Lush, Minnie. *California Real Estate Finance, 9th Edition*. 2016.

131 "What is Area Median Income?" Planetizen, 2022. <https://www.planetizen.com/definition/area-median-income-ami>

132 Lush, Minnie. *California Real Estate Finance, 9th Edition*. 2016.

**Balloon Payment:** A balloon payment is a larger-than-usual one-time payment at the end of the loan term. A mortgage with a balloon payment may charge lower payments in the years before the balloon payment comes due, but a large amount at the end of the loan.<sup>133</sup>

**Borrower Share of Appreciation:** (or Wealth Accumulation) The portion of the increase in the value of the home that would be retained by the borrower after repaying the Fund's share of appreciation at the particular date of calculation.

**CalHFA:** The California Housing Finance Agency is an independent state agency within the California Department of Housing and Community Development that provides low-rate housing financing.<sup>134</sup>

**California Comeback Plan:** An outline of major strategic state investments, including \$3 billion towards affordable housing development.<sup>135</sup>

**Cash-Out Refinance:** A mortgage refinance option that allows homeowners to convert their equity into cash, increasing borrower liquidity and taking out a new mortgage at a higher value than the previous balance.<sup>136</sup>

**Capitalization:** A property appraisal method that determines property value by dividing annual net operating income by a capitalization rate.<sup>137</sup>

**Closing Costs:** All of the costs paid at closing. This includes origination charges, appraisal fees, credit report costs, title insurance fees, and any other fees required by the lender or paid as part of a real estate mortgage transaction.<sup>138</sup>

**Combined Loan-to-Value (CLTV):** The first mortgage principal at origination plus the outstanding principal balance of all subordinate mortgage(s) divided by the Adjusted Value.<sup>139</sup>

**Conforming Loan:** A mortgage that is below the conforming loan limit established by the Federal Housing Finance Agency (FHFA) and abides by other restrictions of Fannie Mae (Federal National Mortgage Association) and Freddie Mac (Federal Home Loan Corporation). These agencies reduce the risk to creditors, driving down interest rates for home loans.<sup>140</sup>

**Conventional Loan:** Any mortgage loan that is not insured or guaranteed by the government (such as under Federal Housing Administration, Department of Veterans Affairs, or Department of Agriculture loan programs).<sup>141</sup>

**Conventional Financing:** In real estate, mortgage financing that is not insured or guaranteed by a government agency such as HUD, FHA, VA, or the Rural Housing Service.<sup>142</sup>

**Cost Approach:** A real estate valuation method that estimates the price a buyer should pay for a piece of property is equal to the cost to build an equivalent building. In the cost approach, the property's value is equal to the cost of land, plus total costs of construction, less depreciation. It yields the most accurate market value for when a property is new than through alternative methods.<sup>143</sup>

**Credit Score (or FICO Score):** A credit score predicts how likely a borrower is to pay back a loan on time. Companies use a mathematical formula—called a scoring model—to create a credit score from the information in a borrower's credit report. There are different scoring models, so a borrower does not have just one credit score. A score depends on a borrower's credit history, the type of loan product, and even the day when it was calculated.<sup>144</sup>

**Community Land Trust (CLT):** A non-profit organization that holds land and acts as a long-term steward of retaining housing that is affordable in the communities they represent.<sup>145</sup>

**Debt-to-Income Ratio:** All borrower monthly debt payments divided by their gross monthly income. This number is one way lenders measure a borrower's ability to manage the monthly payments to repay borrowed funds.<sup>146</sup>

133 "Balloon Mortgage Loans." Fannie Mae, 2022. <https://mfguide.fanniemae.com/node/8406>

134 California Housing Finance Agency. <https://www.calhfa.ca.gov/>

135 "California Roars Back: Governor Newsom Presents \$100 Billion California Comeback Plan." Office of Governor Gavin Newsom, 2021. <https://www.gov.ca.gov/2021/05/14/california-roars-back-governor-newsom-presents-100-billion-california-comeback-plan/>

136 Lush, Minnie. *California Real Estate Finance, 9th Edition*. 2016.

137 Ibid.

138 Ibid.

139 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. <https://www.hud.gov/sites/documents/40001GAHSGH.PDF>

140 Cornell Legal Information Institute. <https://www.law.cornell.edu/>

141 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

142 "Mortgage Loans." Fannie Mae, 2022. <https://mfguide.fanniemae.com/node/10711>

143 Lush, Minnie. *California Real Estate Finance, 9th Edition*. 2016.

144 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

145 Lush, Minnie. *California Real Estate Finance, 9th Edition*. 2016.

146 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

**Deed-Restricted:** a provision in a real property conveyance that limits the grantee's use of the property. The beneficiaries of a restrictive covenant obtain rights from such covenants, and this may be the parties who agreed to the restrictive covenant or adjunct property owners who benefit from the restrictive covenant.<sup>147</sup>

**Default:** The failure to make payments on a mortgage, triggering the remaining loan balance to be due in full.<sup>148</sup>

**Delinquent:** Late on mortgage payments. A loan can become delinquent when a borrower misses a payment or does not make a full payment by the due date. After a loan becomes delinquent for a certain period of time, a lender or servicer may begin the foreclosure process. The amount of time can vary by state.<sup>149</sup>

**Denial Rate:** The share of home mortgage applications denied a loan.<sup>150</sup>

**Depreciation:** A sum representing presumed loss in the value of a building or other real estate improvement, resulting from physical wear and economic obsolescence.<sup>151</sup>

**Down Payment:** The difference between the sale price of a property and the sum of outstanding loan principal at property acquisition. A borrower puts a percentage of the home's value down and borrows the rest through a mortgage loan. Generally, the larger the down payment a borrower makes, the lower the interest rate received and the more likely a borrower is to be approved for a loan.<sup>152</sup>

**Down Payment Assistance:** A down payment grant or program typically refers to assistance provided by an organization such as a government or non-profit agency, to a homebuyer to assist them with the down payment for a home purchase. The funds may be provided as an outright grant or may require repayment, such as when the home is sold.<sup>153</sup>

**Effective Interest Rate (EIR):** An EIR reflects the real percentage rate owed in interest on a loan when the effects of compounding are taken into account. The more frequent the compounding periods, the higher the rate.<sup>154</sup>

**Eligible Borrower:** A borrower meeting the financial requirements to qualify for a mortgage at the property of their choice.<sup>155</sup>

**Environmental Justice:** The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.<sup>156</sup>

**Equity:** Ownership interest in a property. This is the difference between the home's market value and the outstanding balance of the mortgage loan (as well as any other liens on the property).<sup>157</sup>

**Escrow:** An escrow account is set up by a mortgage lender to pay certain property-related expenses, like property taxes and homeowner's insurance. A portion of a borrower's monthly payment goes into the account. If a mortgage doesn't have an escrow account, a borrower pays the property-related expenses directly.<sup>158</sup>

**Essential Professional:** Essential professions in the report specifically referred to healthcare professions, municipal employees, education professions that are qualified for a private shared appreciation program, Landed.<sup>159</sup>

**Fair Market Value (FMV):** The value of property as determined by the marketplace (or objective purchasers) rather than as determined by a subjective individual. This is what an informed and unpressured buyer would pay to an informed, unpressured seller.<sup>160</sup>

**Freddie Mac (FHLMC):** Also known as the Federal Home Loan Mortgage Corporation, a Government-Sponsor Enterprise which provides a secondary market for savings banks and other institutions.<sup>161</sup>

**Federal Housing Administration (FHA):** A division of the U.S. Department of Housing and Urban Development (HUD) that insures residential mortgage loans issued by approved lenders against loss through foreclosure. FHA loans have lower down payment and financing requirements and are popular among first-time homebuyers.<sup>162</sup>

147 Cornell Legal Information Institute. <https://www.law.cornell.edu/>

148 Lush, Minnie. *California Real Estate Finance, 9th Edition*. 2016.

149 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

150 "Mortgage Glossary." Mortgage Bankers Association, 2022. <http://mbabluegrass.org/mortgage-glossary/>

151 "Mortgage Loans." Fannie Mae, 2022. <https://mfguide.fanniemae.com/node/10711>

152 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

153 Ibid.

154 "Effective Annual Interest Rate." Investopedia. <https://www.investopedia.com/terms/e/effectiveinterest.asp#:~:text=What%20is%20an%20Effective%20Annual,card%2C%20or%20any%20other%20debt.>

155 Lush, Minnie. *California Real Estate Finance, 9th Edition*. 2016.

156 Cornell Legal Information Institute. <https://www.law.cornell.edu/>

157 "Mortgage Loans." Fannie Mae, 2022. <https://mfguide.fanniemae.com/node/10711>

158 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

159 Landed. <https://www.landed.com/>

160 Cornell Legal Information Institute. <https://www.law.cornell.edu/>

161 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

162 "Mortgage Loans." Fannie Mae, 2022. <https://mfguide.fanniemae.com/node/10711>

**Fannie Mae (FNMA):** The Federal National Mortgage Association (Fannie Mae) purchases and guarantees mortgages from lending institutions in an effort to increase affordable lending. Fannie Mae is not a federal agency. It is a government-sponsored enterprise under the conservatorship of the Federal Housing Finance Agency (FHFA).<sup>163</sup>

**Financial Counseling:** A course to help households develop financial literacy skills and establish strong financial habits.<sup>164</sup>

**Finder's Fee:** A fee paid by a lender or broker for referring a borrower to a certain lending institution or real estate office.<sup>165</sup>

**First Mortgage:** Also known as the primary loan or senior loan; the first recorded loan. As the primary loan that pays for a property, it has priority over all other liens or claims on a property in the event of default.<sup>166</sup>

**Fixed Rate Loans:** A type of home loan for which the interest rate is set when a borrower takes out the loan and will not change during the term of the loan.<sup>167</sup>

**Forbearance:** A loss mitigation measure when the servicer allows a borrower temporarily to pay their mortgage at a lower rate or temporarily to stop paying their mortgage altogether. A servicer may grant a borrower forbearance if, for example, a borrower has suffered a recent job loss, disaster, illness or injury that increased health care costs.<sup>168</sup>

**Foreclosure:** When the lender or servicer takes back property after the homeowner fails to make mortgage payments. In some states, the lender must go to court to foreclose on a borrower's property (judicial foreclosure), but other states do not require a court process (non-judicial foreclosure). Generally, borrowers must be notified if the lender or servicer begins foreclosure proceedings.<sup>169</sup>

**Forgivable Loan:** A loan that allows borrowers to partially or completely forgive the balance upon meeting tenure or equity requirements.<sup>170</sup>

**Fund Sustainability:** The ability of the Fund to continue making new loans without relying on increasing new contributions from the State.

**Freddie Mac (FHLMC):** The Federal Home Loan Mortgage Corporation (Freddie Mac) is a private corporation founded by Congress. Its mission is to promote stability and affordability in the housing market by purchasing mortgages from banks and other loan makers. The corporation is currently under conservatorship, under the direction of the Federal Housing Finance Agency (FHFA).<sup>171</sup>

**Front-End Ratio:** A ratio representing the borrower's mortgage payment divided by gross monthly income.<sup>172</sup>

**Government-Backed Loan:** A government mortgage is a federal, state, or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank, the Federal Home Loan Mortgage Corporation (FHLMC, or Freddie Mac), or the Federal National Mortgage Association (FNMA, or Fannie Mae).<sup>173</sup>

**Government-Sponsored Enterprise (GSE):** A corporate entity created by a law of the United States that— (i) has a federal charter authorized by law; (ii) is privately owned, as evidenced by capital stock owned by private entities or individuals; (iii) is under the direction of a board of directors, a majority of which is elected by private owners.<sup>174</sup>

**Gross Income:** The broad total of all income sources for the taxable year which above-the-line deductions are subtracted from to get a person's adjusted gross income. Gross income includes essentially all income such as from wages, dividends, alimony, capital gains, and pensions. Many deductible items such as charitable giving must still be included in gross income. Deductions are applied after calculating gross income.<sup>175</sup>

**Homebuyer Education:** A course to help prospective homebuyers or new homeowners understand the path to homeownership and responsibilities as a homeowner.<sup>176</sup>

**Housing Expense Ratio:** A calculation of how much of a borrower's monthly gross income is going toward their monthly mortgage payment, including principal, interest, taxes and mortgage insurance. Ideally, a borrower's housing expense ratio should be less than 28%.

163 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

164 "Mortgage Glossary." Mortgage Bankers Association, 2022. <http://mbabluegrass.org/mortgage-glossary/>

165 "Mortgage Loans." Fannie Mae, 2022. <https://mfguide.fanniemae.com/node/10711>

166 Ibid.

167 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

168 Ibid.

169 Ibid.

170 "Mortgage Glossary." Mortgage Bankers Association, 2022. <http://mbabluegrass.org/mortgage-glossary/>

171 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

172 "Mortgage Glossary." Mortgage Bankers Association, 2022. <http://mbabluegrass.org/mortgage-glossary/>

173 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. <https://www.hud.gov/sites/documents/40001GAHSGH.PDF>

174 Cornell Legal Information Institute. <https://www.law.cornell.edu/>

175 Ibid.

176 U.S. Department of Housing and Urban Development. <https://www.hud.gov/>

**HUD:** The Department of Housing and Urban Development (HUD) is a federal agency that administers national programs aimed at reducing homelessness, providing housing that is safe and affordable to all persons, improving opportunities to access affordable homeownership, and granting subsidies to lower-and moderate-income families to give them equal opportunities in the rental and purchase housing markets.<sup>177</sup>

**HMDA:** Abbreviated term for the Home Mortgage Disclosure Act, enacted in 1975 to provide home mortgage data to the public to help determine if financial institutions are serving the housing needs of their communities, to help public officials distribute public investments and to identify possible lending discrimination.<sup>178</sup>

**Income Approach:** A type of real estate appraisal method that allows investors to estimate the value of a property based on the income the property generates. It's used by taking the net operating income (NOI) of the rent collected and dividing it by the capitalization rate. (Investopedia)

**Inflation:** The rate of change in the price of goods and services resulting from a change in the supply of money and/or cost of resources.<sup>179</sup>

**Interest Rate:** An interest rate on a mortgage loan is the cost a borrower will pay each year to borrow the money, expressed as a percentage rate. It does not reflect fees or any other charges borrowers may have to pay for the loan. For example, if the mortgage loan is for \$100,000 at an interest rate of 4 percent, that consumer has agreed to pay \$4,000 each year he or she borrows or owes that full amount.<sup>180</sup>

**Junior Mortgage:** A mortgage that is subordinate to a first or prior (senior) mortgage. A junior mortgage often refers to a second mortgage, but it could also be a third or fourth mortgage. In the case of a foreclosure, the senior (first) mortgage will be paid down first. (Investopedia)

**Lender:** An organization or person that lends money with the expectation that it will be repaid, generally with interest.<sup>181</sup>

**Leverage:** The use of borrowed money or debt to purchase assets or undertake an investment creating the relationship between an owner's equity and total debt on a property. The higher the leverage, the higher the debt in relation to the value of the property.<sup>182</sup>

**Lien:** A legal hold or claim of a creditor on the property of another as security for a debt. Liens are always against property, usually real property.<sup>183</sup>

**Limited Equity Cooperative (LEC):** A homeownership model in which a resident purchases a share in a collection of units opposed to an individual unit. LECs often restrict the future sale value of a property to maintain housing affordability.<sup>184</sup>

**Liquidity:** The measure of readily available assets that can be converted into cash.<sup>185</sup>

**Loan Assumption:** The lender's approval of a new borrower who takes over an existing loan.<sup>186</sup>

**Loan Closing:** The time agreed upon by the borrower and lender when the execution of the loan documents by the borrower occurs.<sup>187</sup>

**Loan Commitment:** An agreement by a commercial bank or other financial institution to lend a business or individual a specified sum of money.<sup>188</sup>

**Loan Exit:** (or Exit) The termination of a loan agreement often through sale of the asset, refinance, transfer, or default.<sup>189</sup>

**Loan Origination:** The multi-step process that every individual must go through to obtain a mortgage or home loan. The term also applies to other types of amortized personal loans. Origination is often a lengthy process and is overseen by the Federal Deposit Insurance Corporation (FDIC).<sup>190</sup>

**Loan Origination Fee:** A charge, usually 1% of the loan, that is intended to compensate the lender for the work involved in the process.<sup>191</sup>

**Loan Servicer:** A loan servicer typically processes loan payments, responds to borrower inquiries, keeps track of principal and interest paid and manages escrow accounts. The loan servicer may initiate foreclosure under certain circumstances. A servicer may or may not be the same company that originated a loan.<sup>192</sup>

177 "Mortgage Loans." Fannie Mae. 2022. <https://mfguide.fanniemae.com/node/10711>

178 "Download HMDA Data." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/data-research/hmda/historic-data/>

179 "Mortgage Glossary." Mortgage Bankers Association, 2022. <http://mbabluegrass.org/mortgage-glossary/>

180 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

181 "Mortgage Loans." Fannie Mae. 2022. <https://mfguide.fanniemae.com/node/10711>

182 Cornell Legal Information Institute. <https://www.law.cornell.edu/>

183 "Mortgage Loans." Fannie Mae. 2022. <https://mfguide.fanniemae.com/node/10711>

184 "Limited equity cooperatives." 2021. Local Housing Solutions. [https://localhousingsolutions.org/housing-policy-library/limited-equity-cooperatives/#:~:text=A%20limited%20equity%20cooperative%20\(LEC,and%20over%20the%20long%20term.](https://localhousingsolutions.org/housing-policy-library/limited-equity-cooperatives/#:~:text=A%20limited%20equity%20cooperative%20(LEC,and%20over%20the%20long%20term.)

185 "Mortgage Glossary." Mortgage Bankers Association, 2022. <http://mbabluegrass.org/mortgage-glossary/>

186 Cornell Legal Information Institute. <https://www.law.cornell.edu/>

187 Ibid.

188 Investopedia. <https://www.investopedia.com/>

189 Ibid.

190 Ibid.

191 Ibid.

192 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

**Loan Servicing:** Supervising and administering a loan after it has been made. This process involves collecting payments, conducting property inspections, foreclosing on defaulted loans, and all other processes after escrow.<sup>193</sup>

**Loan-to-Value Ratio:** The loan-to-value (LTV) ratio is a measure comparing the outstanding mortgage amount with the appraised value of the property. The higher the down payment, the lower the LTV ratio. Mortgage lenders may use the LTV in deciding whether to lend to a borrower and to determine if they will require private mortgage insurance.<sup>194</sup>

**Loss Mitigation:** The steps mortgage servicers take to work with a mortgage borrower in order to avoid foreclosure. Loss mitigation refers to a servicer's responsibility to reduce or "mitigate" the loss to the investor that can come from a foreclosure. Certain loss-mitigation options may help borrowers stay in their homes. Other options may help borrowers leave their homes without going through foreclosure. Loss mitigation options may include deed-in-lieu of foreclosure, forbearance, repayment plan, short sale or a loan modification.<sup>195</sup>

**Low-Income Household:** Persons and families whose gross income is greater than 50% up to 80% of area median income, adjusted for household size appropriate for the unit.<sup>196</sup>

**Market Price:** An estimate of what a property would sell for in a competitive market based on the features and benefits of that property (the value), the overall real estate market, supply and demand and what other similar properties have sold for in the same condition.<sup>197</sup>

**Maturity Date:** The date that an investor's investment is to be paid back in full in accordance with its agreement.<sup>198</sup>

**Moderate Income Household:** Persons and families whose gross income is greater than 80% and does not exceed 120% of area median income, adjusted for household size appropriate for the unit.<sup>199</sup>

**Monthly Mortgage Payments:** Monthly mortgage obligations including principal and interest and possibly taxes and insurance.<sup>200</sup>

**Mortgage:** An agreement between a borrower and a lender that allows a homebuyer to borrow money to purchase or refinance a home and gives the lender the right to seize the property if the borrower fails to repay the money borrowed.<sup>201</sup>

**Mortgage Credit Availability Index (MCAI):** A barometer on the availability or supply of mortgage credit at a point in time, using criteria from institutional investors who purchase loans through the broker and/or correspondent channels. The MCAI is calculated using several factors related to borrower eligibility (credit score, loan type, loan-to-value ratio, etc.) using data made available by ICE Mortgage Technology.<sup>202</sup>

**Mortgage Insurance (MI):** Protections for lenders in the event a borrower falls behind on their payments. Mortgage insurance is typically required if a borrower's down payment is less than 20 percent of the property value. Mortgage insurance is typically required on FHA and USDA loans. However, with a conventional loan and down payment less than 20 percent, a borrower will most likely have private mortgage insurance (PMI).<sup>203</sup>

**Mortgage Insurance Premium (MIP):** The annual premium on an FHA-required mortgage insurance policy required over the life of the loan and equal to -0.45-1.05% of the loan amount. MIPs protect FHA against higher-risk borrowers who are more likely to default on loans.<sup>204</sup>

**Upfront Mortgage Insurance Premium (UPMIP):** The upfront fee on an FHA-required mortgage insurance policy equal to 1.75% of the loan amount.<sup>205</sup>

**Mortgage Modification:** A change made to the terms of a loan because the borrower is unable to meet the payments under the original terms. The modification is a type of loss mitigation. A modification can reduce monthly payments to an amount affordable to the borrower. Modifications may involve extending the repayment term, reducing the interest rate, and/or forbearing or reducing the principal balance.

**Mortgage-Backed Securities:** Investment securities representing an interest in a pool of mortgages.<sup>206</sup>

193 Ibid.

194 Ibid.

195 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

196 "Income Limits." California Department of Housing and Community Development. <https://www.hcd.ca.gov/income-limits>

197 Cornell Legal Information Institute. <https://www.law.cornell.edu/>

198 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

199 "Income Limits." California Department of Housing and Community Development. <https://www.hcd.ca.gov/income-limits>

200 "Mortgage Loans." Fannie Mae. 2022. <https://mfguide.fanniemae.com/node/10711>

201 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

202 "Mortgage Glossary." Mortgage Bankers Association, 2022. <http://mbabluegrass.org/mortgage-glossary/>

203 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

204 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. <https://www.hud.gov/sites/documents/40001GAHSGH.PDF>

205 Ibid.

206 "Mortgage Loans." Fannie Mae. 2022. <https://mfguide.fanniemae.com/node/10711>

**Mortgage Servicer:** The company that sends borrowers their mortgage statements and handles the day-to-day tasks of managing mortgages.<sup>207</sup>

**Nominal Interest Rate:** Also known as the note rate. The interest rate before taking inflation into account that appears on the mortgage note.<sup>208</sup>

**Non-recurring Closing Costs:** Costs that are one-time charges paid at the close of escrow. One-time costs include the appraisal fee, title insurance, origination fees, underwriting fee, notary fee, recording fee, and transfer taxes, among other items.<sup>209</sup>

**Operating Costs:** The recurring owner's expenses to maintain a property in good condition, such as utilities, repairs and replacement of furnishings.<sup>210</sup>

**Origination Fee:** What the lender charges the borrower for making the mortgage loan. The origination fee may include processing the application, underwriting and funding the loan, and other administrative services. Origination fees generally can only increase under certain circumstances.<sup>211</sup>

**Outstanding Principal Amount:** The amount of principal due under a loan after taking into account prior payments of principal.

**PITI:** An abbreviation for principal, interest, taxes and insurance, commonly used when referring to the monthly loan obligation.<sup>212</sup>

**Points:** Amount paid by the borrower or the seller, with each point equal to one percent of the loan.<sup>213</sup>

**Pre-approval:** Pre-approval is a bigger step than pre-qualification, but it is a better commitment from the lender. This involves borrowers completing a mortgage application and providing the lender with income documentation and personal records. If the borrower qualifies, the lender can provide the amount of financing, potential interest rate, estimated monthly payment (before taxes and insurance because the property is unspecified).<sup>214</sup>

**Pre-qualification:** With pre-qualification the lender provides the borrower's qualifying mortgage amount (and the process is usually quick and free) but does not actually qualify a borrower for a mortgage until pre-approval.<sup>215</sup>

**Prepayment Penalty:** A fee that lenders may charge if a borrower pays off all or part of their mortgage early. A prepayment penalty is agreed upon at closing and not all mortgages have a prepayment penalty.<sup>216</sup>

**Primary Mortgage Market:** The market where borrowers can directly obtain a mortgage loan from a primary lender. Banks, mortgage brokers, mortgage bankers and credit unions are all primary lenders and are part of the primary mortgage market.<sup>217</sup>

**Principal Residence:** A dwelling where the borrower maintains or will maintain their permanent place of abode, and which the borrower typically occupies or will occupy for the majority of the calendar year. A person may have only one principal residence at any one time.<sup>218</sup>

**Principal:** The amount of a mortgage loan that a borrower has to pay back. When a payment is made towards a borrower's principal, the borrower owes less, and will pay less interest based upon a lower loan size.<sup>219</sup>

**Private Mortgage Insurance (PMI):** A type of mortgage insurance that benefits the lender. Borrowers may be required to pay for PMI if their down payment is less than 20% of the property value on a conventional loan. Borrowers may be able to cancel PMI upon accumulating 22% equity in their home.<sup>220</sup>

**Property Taxes:** Taxes charged by local jurisdictions, typically at the county level, based upon the value of the property being taxed. Often, property taxes are collected within the homeowner's monthly mortgage payment, and then paid to the relevant jurisdiction one or more times each year. This is called an escrow account. If the loan does not have an escrow account, then the homeowner will pay the property taxes directly.<sup>221</sup>

**Purchase Price:** A borrower's cost of purchasing the property excluding usual and reasonable settlement or financing costs.<sup>222</sup>

**Rate Lock:** A lender's written guarantee that allows the borrower to lock in the interest rate on a mortgage for a specified time period at the prevailing market interest rate.<sup>223</sup>

207 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

208 "Mortgage Glossary." Mortgage Bankers Association, 2022. <http://mbabluegrass.org/mortgage-glossary/>

209 "Mortgage Loans." Fannie Mae. 2022. <https://mfguide.fanniemae.com/node/10711>

210 Cornell Legal Information Institute. <https://www.law.cornell.edu/>

211 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

212 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

213 "Mortgage Loans." Fannie Mae. 2022. <https://mfguide.fanniemae.com/node/10711>

214 Ibid.

215 Ibid.

216 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

217 Investopedia. <https://www.investopedia.com/>

218 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. <https://www.hud.gov/sites/documents/40001GAHSGH.PDF>

219 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

220 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

221 Ibid.

222 Lush, Minnie. *California Real Estate Finance, 9th Edition*. 2016.

223 "Mortgage Glossary." Mortgage Bankers Association, 2022. <http://mbabluegrass.org/mortgage-glossary/>

**Real Property:** (or Property) A parcel of land and everything that is permanently attached to the land. The owner of real property has all of the rights of ownership, including the right to possess, sell, lease and enjoy the land.<sup>224</sup>

**Recycling:** Using the proceeds from sales of some properties in a portfolio to finance loans to new borrowers.<sup>225</sup>

**Recurring Closing Costs:** Repeating expenses paid by the borrower at close of escrow such as tax reserves, hazard insurance, and prepaid interest.<sup>226</sup>

**Refinance:** When a new loan is taken out to pay off and replace an old loan. Common reasons to refinance are to lower the monthly interest rate, lower the mortgage payment, or to borrow additional money. Upon refinance, borrowers typically pay closing costs and fees. If borrowers refinance and get a lower monthly payment there should be an understanding of what portion of the reduction is from a lower interest rate and because the loan term is longer.<sup>227</sup>

**Regulation Z:** Federal rule prohibiting compensation to a loan originator based on a mortgage transaction's terms or conditions (except the amount of credit extended) and prohibiting a mortgage originator steering a consumer to a loan that provides greater compensation.

**Replacement Cost:** Amount required to replace improvements of comparable quality at today's prices.<sup>228</sup>

**Second Mortgage:** A second mortgage or junior lien is a loan taken out using the house as collateral while another loan is secured by the house.<sup>229</sup>

**Secondary Mortgage Market:** The purchasing and selling of existing mortgages secured by deeds of trust promoting a constant flow of funds allowing lenders to continue to provide new loans to ready borrowers.<sup>230</sup>

**Securitization:** The procedure through which an issuer designs a marketable financial instrument by merging or pooling various financial assets into one group. The issuer then sells this group of repackaged assets to investors.<sup>231</sup>

**Shared Equity:** An arrangement under which a borrower receives a portion but not all of the increased value of the home, whether through terms of the loan or other restriction on the property.

**Shortage:** The deficit compared to what would be required, such as in housing construction related to demand or to be able to provide an equivalent loan to a new borrower.

**Significant Student Debt:** Outstanding debt on a prospective homebuyer's student loans such that the aggregate monthly payments exceed an amount specified in the rules for the CA Dream for All Fund, such as \$100 per month.

**Silent Second Mortgage:** A second mortgage loan with no monthly payments that is due upon sale of the property or maturity together with accrued interest (if any) at a fixed interest rate. The second mortgage is called "silent" because the borrower does not disclose its existence to the original mortgage lender.

**Single-Family Home:** A property with one dwelling unit, whether detached or attached, including a condominium or townhome.

**Surplus:** The amount beyond what is required, such as to meet statewide requirements or to be able to provide an equivalent loan to a new borrower.

**Term:** The term of the mortgage loan is how long a borrower has to repay the loan. For most types of homes, mortgage terms are typically 15, 20 or 30 years.<sup>232</sup>

**Title Insurance:** Insurance written by a legal reserve title company and lenders against losses due to title defects.<sup>233</sup>

**Truth in Lending Act (TILA):** Title I of the Consumer Credit Protection Act protects borrowers against inaccurate and unfair credit billing and credit card practices. It requires lenders to provide loan cost information so that borrowers can comparison shop for certain types of loans.<sup>234</sup>

**Underwriting:** In mortgage banking, the analysis of the risk involved in making a mortgage loan to determine whether the risk is acceptable to the lender. Underwriting involves the evaluation of the property as outlined in the appraisal report and of the borrower's ability and willingness to repay the loan.<sup>235</sup>

**Underwriting Requirement:** Rules and requirements of a lender, secondary market institution (such as Fannie Mae and Freddie Mac) or mortgage insurer for determining if a loan is credit-worthy, such as maximum loan-to-value or loan-to-price ratio, debt to income ratio, etc.<sup>236</sup>

224 Cornell Legal Information Institute. <https://www.law.cornell.edu/>

225 Ibid.

226 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. <https://www.hud.gov/sites/documents/40001GAHSGH.PDF>

227 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

228 Lush, Minnie. *California Real Estate Finance, 9th Edition*. 2016.

229 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

230 "Secondary Mortgage Market." Investopedia. [https://www.investopedia.com/terms/s/secondary\\_mortgage\\_market.asp](https://www.investopedia.com/terms/s/secondary_mortgage_market.asp)

231 "Securitization." Investopedia. <https://www.investopedia.com/terms/s/securitization.asp>

232 "Mortgage Loans." Fannie Mae. 2022. <https://mfguide.fanniemae.com/node/10711>

233 Ibid.

234 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

235 "Mortgage Loans." Fannie Mae. 2022. <https://mfguide.fanniemae.com/node/10711>

236 "Underwriting Standards." Investopedia. <https://www.investopedia.com/terms/u/underwriting-standards.asp>



**Upfront Cost:** One-time expenses in connection with the purchase of or loan on a property. These out-of-pocket costs, which include a down payment and various closing costs, occur before a home buyer can take title on a piece of property.<sup>237</sup>

**Upfront Mortgage Insurance**

**Premium (UPMIP):** A one-time payment equal to 1.75% of the base loan amount due when closing on a home that is financed with an FHA home loan. Given the lower down-payment requirements for an FHA loan, UFMIP helps protect lenders if a borrower is unable to repay their mortgage.<sup>238</sup>

**USDA Loan:** The Rural Housing Service, part of the U.S. Department of Agriculture (USDA) offers mortgage programs with no down payment and generally favorable interest rates to rural homebuyers who meet the USDA's income eligibility requirements.<sup>239</sup>

**VA Loan:** A loan program offered by the Department of Veterans Affairs (VA) to help servicemembers, veterans, and eligible surviving spouses buy homes. The VA does not make the loans but sets the rules for who may qualify and the mortgage terms. The VA guarantees a portion of the loan to reduce the risk of loss to the lender. The loans generally are only available for a primary residence.<sup>240</sup>

237 "Upfront Cost." Investopedia. <https://www.investopedia.com/terms/u/upfront-pricing.asp#:~:text=What%20is%20Upfront%20Pricing%3F,the%20onset%20of%20the%20relationship>.

238 "FHA Single Family Housing Policy Handbook: Glossary." Federal Housing Administration, 2016. <https://www.hud.gov/sites/documents/40001GAHSGH.PDF>

239 "Mortgage Key Terms." Consumer Financial Protection Bureau. <https://www.consumerfinance.gov/consumer-tools/mortgages/answers/key-terms/>

240 Ibid.

# APPENDIX B

## Case Studies

Case study research on public and private shared appreciation models operating both within the state and beyond provided invaluable context in the design of the fund. Research focused on identifying the general parameters of a shared appreciation program, including underwriting standards, terms of appreciation sharing, investment timeline, maximum investment amount, and property eligibility criteria. On top of desktop research, interviews with relevant public agencies, program administrators, and private firms further supplemented our research.

## Private Programs

|                                                          | Hometap                                                                                                                                                                 | Unison                                                                                        | Landed                                                                                                                                                                                         | The Point                                                                                                        |
|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
|                                                          | (Various locations, U.S.)                                                                                                                                               |                                                                                               |                                                                                                                                                                                                |                                                                                                                  |
| Funding Type                                             | Unknown                                                                                                                                                                 | Institutional investors, including pension funds and university endowments                    | Chan Zuckerberg Initiative, others                                                                                                                                                             | Endowments, pension funds, insurers, REITs, and investment managers                                              |
| Fees                                                     | 3%                                                                                                                                                                      | 2.5%                                                                                          | 1.25% of home purchase price if not using a Landed partner agent                                                                                                                               | 3%-5%                                                                                                            |
| Maximum Investment                                       | Between 5% and 30% of home value (up to \$600k)                                                                                                                         | Up to 17.5% of home value (up to \$500k)                                                      | Up to 15% of home value (up to \$120k)                                                                                                                                                         | \$25k to \$500k                                                                                                  |
| Underwriting Standards/<br>Borrower Eligibility Criteria | <ul style="list-style-type: none"> <li>• 600+ credit score</li> <li>• Max. 75% LTV</li> </ul>                                                                           | <ul style="list-style-type: none"> <li>• 620+ credit score</li> <li>• Max. 80% LTV</li> </ul> | <ul style="list-style-type: none"> <li>• 620+ credit score</li> <li>• Max. 95% LTV</li> <li>• “Essential Professionals” (educators, healthcare professionals, government employees)</li> </ul> | <ul style="list-style-type: none"> <li>• 500+ credit score</li> <li>• Max. 80% LTV</li> </ul>                    |
| Property Eligibility Criteria                            | Single-family homes and condos. Must be primary residence.                                                                                                              | Single-family homes, condos, and townhomes. Must be primary residence.                        | Single-family homes, condos, townhomes, and duplexes. Must be primary residence.                                                                                                               | Single-family homes, condos, townhomes, missing middle (1-4 units) structures.<br><br>Minimum \$155k home value. |
| Investment Term                                          | 10 years                                                                                                                                                                | 30 years                                                                                      | 30 years                                                                                                                                                                                       | 30 years                                                                                                         |
| Shared Appreciation Terms                                | Structured on a case-by-case basis depending on property value and initial investment amount but may range between 13.9 – 16.7% of home value at the time of repayment. | Appreciation split: 4:1                                                                       | Appreciation split: 2.5:1                                                                                                                                                                      | Principal investment + ~15% – 40% of appreciation                                                                |
| Program Webpage                                          | <a href="https://www.hometap.com/">https://www.hometap.com/</a>                                                                                                         | <a href="https://www.unison.com/">https://www.unison.com/</a>                                 | <a href="https://www.landed.com/">https://www.landed.com/</a>                                                                                                                                  | <a href="https://point.com/">https://point.com/</a>                                                              |

## Public Programs

|                                                          | Homeownership Opportunities Program<br>(Pasadena, CA)                                                                                                       | Help to Buy: Equity Loan<br>(England)                                                                                                                     | Down payment Loan Assistance Program (General)<br>(San Francisco, CA)                                                                                                                                                                                                             | AC Boost<br>(Alameda County, CA)                                                                                                                                                                                                                                                                      | Empower Homebuyers<br>(Santa Clara County, CA)                                                                                                                                                                                                                | Downpayment Assistance Program<br>(Seattle, WA)                                                                                                                                                                                                                        |
|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Funding Type                                             | Public: Local funds (redevelopment or inclusionary)                                                                                                         | Public: Homes England                                                                                                                                     | Public: local funds                                                                                                                                                                                                                                                               | Public: \$580 million general obligation bond                                                                                                                                                                                                                                                         | Public: Initially funded in 2016 through affordable housing bond                                                                                                                                                                                              | Public: initially funded from federal HOME \$, later by affordable housing tax levy, linked with funds from Washington State Housing Finance Commission<br><br>Shared appreciation feature was used from 2004 - 2017 (funding 3 to 4 loans annually before terminated) |
| Maximum Investment                                       | Unknown                                                                                                                                                     | Varies by region. program will fund up to 20% of the home value (increases to 40% in London)                                                              | \$375k-\$500k                                                                                                                                                                                                                                                                     | \$210K for households <= 100%AMI<br><br>\$160K for households >100% AMI                                                                                                                                                                                                                               | Up to 17% down payment; Home price up to \$1.1 million                                                                                                                                                                                                        | Up to \$45,000 from Seattle, and \$60,000 total<br><br>Maximum purchase price of 95% of area median (due to HOME requirements)                                                                                                                                         |
| Underwriting Standards/<br>Borrower Eligibility Criteria | <ul style="list-style-type: none"> <li>• First time homebuyer</li> <li>• Income eligible households (income ranges determined by household size)</li> </ul> | <ul style="list-style-type: none"> <li>• First time homebuyer</li> <li>• Min. 5% down payment contribution</li> <li>• 75% mortgage maximum LTV</li> </ul> | <ul style="list-style-type: none"> <li>• First-time homebuyer</li> <li>• Annual income up to 175% AMI</li> <li>• Min. 3% down payment contribution</li> <li>• Min. LTV 50%</li> <li>• 30%-40% front end debt ratio</li> <li>• Max. \$300k liquid assets before closing</li> </ul> | <ul style="list-style-type: none"> <li>• First-time homebuyer</li> <li>• Annual income up to 120% AMI</li> <li>• Min. 0-3% down payment contribution to a max. of 50%</li> <li>• Min. LTV 50%</li> <li>• Min. 25% front end debt ratio</li> <li>• Max. \$300k liquid assets before closing</li> </ul> | <ul style="list-style-type: none"> <li>• First-time homebuyer</li> <li>• Annual income up to 120% AMI</li> <li>• Min. 3% down payment contribution</li> <li>• 70%-87% LTV</li> <li>• 28%-38% front end debt ratio</li> <li>• &gt;=620 credit score</li> </ul> | <ul style="list-style-type: none"> <li>• First-time homebuyer</li> <li>• Annual income up to 80% AMI</li> <li>• Minimum cash contribution of greater of 1% or \$2,500</li> </ul>                                                                                       |
| Property Eligibility Criteria                            | Unknown                                                                                                                                                     | New construction by approved homebuilders                                                                                                                 | <ul style="list-style-type: none"> <li>• Single family homes</li> <li>• Condominiums</li> <li>• Townhomes</li> </ul>                                                                                                                                                              | <ul style="list-style-type: none"> <li>• Single family homes</li> <li>• Condominiums</li> <li>• Townhomes</li> </ul>                                                                                                                                                                                  | <ul style="list-style-type: none"> <li>• Single family homes</li> <li>• Condominiums</li> <li>• Townhomes</li> </ul>                                                                                                                                          | <ul style="list-style-type: none"> <li>• Single family homes</li> <li>• Condominiums</li> <li>• Townhomes</li> </ul>                                                                                                                                                   |
| Investment Term                                          | 30-45 years                                                                                                                                                 | 15 years                                                                                                                                                  | Upon sale or transfer (had originally been limited to 30 years)                                                                                                                                                                                                                   | 30 years                                                                                                                                                                                                                                                                                              | 30 years                                                                                                                                                                                                                                                      | 30 years                                                                                                                                                                                                                                                               |

|                                       | Homeownership Opportunities Program                             | Help to Buy: Equity Loan                                                                                                                                                      | Down payment Loan Assistance Program (General)                  | AC Boost                                                        | Empower Homebuyers                                                                                                                                                              | Downpayment Assistance Program                                                                                                                                                                                                          |
|---------------------------------------|-----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Appreciation Sharing/ Repayment Terms | Appreciation split 1:1 (Pro-rata)                               | Interest free for the first 5 years; then 1.75% interest annually with an increase of CPI plus 2%; Pro-rata at time of sale plus interest on the balance of the equity state. | Appreciation split 1:1 (Pro-rata)                               | Unknown                                                         | Appreciation split 1:1 (Pro-rata)                                                                                                                                               | Borrower owed both: <ul style="list-style-type: none"> <li>• 3% simple interest, plus</li> <li>• pro rata appreciation (forgiven 1/9 per year over 9 years),</li> </ul> With combination not to exceed equivalent of 6% simple interest |
| Program Webpage                       | <a href="https://www.pasahop.com/">https://www.pasahop.com/</a> | <a href="https://www.gov.uk/help-to-buy-equity-loan">https://www.gov.uk/help-to-buy-equity-loan</a>                                                                           | <a href="https://sfmohcd.org/dalp">https://sfmohcd.org/dalp</a> | <a href="https://www.acboost.org/">https://www.acboost.org/</a> | <a href="https://housingtrustsv.org/programs/homebuyer-assistance/empower-homebuyers-scc/">https://housingtrustsv.org/programs/homebuyer-assistance/empower-homebuyers-scc/</a> | <a href="https://www.wshfc.org/buyers/Seattle.htm">https://www.wshfc.org/buyers/Seattle.htm</a>                                                                                                                                         |

## STAKEHOLDERS INTERVIEWED

**\*A special thanks goes to the following individuals that agreed to be interviewed for the purpose of this report.**

### ORGANIZATION

Landed  
Noah  
City of San Francisco  
The Point  
Mortgage Bank Association  
City of Pasadena  
Heritage Housing Partners  
Chan Zuckerberg Initiative  
Silicon Valley Housing Trust  
Help to Buy: Equity Program

### INTERVIEWEES

Alex Lofton, Ian Magruder, Annee Kim and Jack Woodruff  
Rahul Parulekar  
Aneka Harrell, Cissy Yin, and Tammie Little  
Eoin Matthews  
Susan Milazzo and Pete Mills  
Jim Wong and William Huang  
Charles Loveman  
Ruby Bolaria Shifrin  
Noni Ramos, Julie Mahowald, and Fathia Macauley  
Simon Walley

# APPENDIX C

## Program Guidelines

Below is a summary of how a CA Dream for All program can provide Shared Appreciation Second Loans. This overview is provided to suggest how detailed program features could be designed.

### ILLUSTRATIVE PROGRAM GOALS & TERMS

#### Program Purpose

The purpose of the program is to make homeownership more accessible and affordable to income-qualified first-time homebuyers in California and promote diversity—and *to do so in such a way that the State can continue to sustainably assist future generations of first-time buyers despite rising home prices.*

**Investment:** Shared appreciation second mortgage loans are intended to enable the State to invest in affordable homeownership in a way that can help future eligible buyers.

**Experience:** The shared appreciation approach outlined here reflects and is meant to work with the long-standing requirements of both

Fannie Mae and Freddie Mac for publicly funded shared appreciation second mortgages. Shared appreciation second mortgages for first-time homebuyers have been used successfully by San Francisco for almost four decades, and more recently by both Alameda County and Santa Clara County.

**How a State Shared Appreciation Program Can Work:** These suggested terms are meant as a starting point for decisions on detailed program specifics. They indicate how a shared appreciation program can be used to address homeownership needs, meet secondary market requirements, and can be financially structured.

#### Shared Appreciation Second Loan Terms

**Overview:** The program would provide a shared appreciation second loan (SASL) with no monthly payments, paired with a Fannie Mae/Freddie Mac first mortgage.

The SASL would mature and be due when the property is sold or transferred, there is a cash out refinancing, or program requirements are violated.

Upon repayment, the program receives the original principal amount of the SASL plus a share of the property's price appreciation in order to be able to provide SASLs to subsequent first-time homebuyers.

#### Basic Terms

- **Appreciation Share:** The program's share of appreciation could initially be the program's percentage of the original purchase price (pro rata appreciation). This approach is the simplest to market, explain and administer.
  - After several years of experience with this basic model, the program could consider increasing the percentage on new SASLs,
- but not to exceed 1.5 times the program's percentage of the original purchase price. The purpose of considering such higher shares would be to enable the State to assist more buyers over time.
- A single multiple should be applicable to all SASLs being offered.
- In no case would the program's share of appreciation ever exceed 45% of the total appreciation.
- **Repayment Events:** Repayment will be due upon sale, transfer or cash-out refinancing, or upon violation of program requirements as determined by the program administrator.
- **Prepayment:** The homebuyer may prepay the loan at any time based on a fair market appraisal by the program without penalty.
- **Loan Amount:** The amount of the SASL would be subject to limits established by the administrator. The loan amount for a borrower would not exceed the lesser of:

- The program's maximum specified percentage of the purchase price. This maximum percentage would generally not exceed 17%, but could be increased up to [27%] for borrowers below 100% AMI. We would recommend that these percentages could be increased up to an additional [3%] for borrowers with significant student loan debt.
- The amount needed together with the borrower's minimum down payment and a Fannie/Freddie first mortgage based on a "front-end ratio" of [30%].
- The maximum specified percentage times the median purchase price of homes in the region.
- **Borrower Minimum Down Payment:** The homebuyer must meet Fannie Mae/Freddie Mac requirements for cash down payment and closing costs. The borrower can use local down payment assistance, gifts or other sources permitted by Fannie Mae/Freddie Mac (but not the SASL or other state funds) to meet Fannie Mae/Freddie Mac minimum requirements.
- **Borrower Protections:**
  - Repayment of the principal amount of the SASL is subordinate to the outstanding first mortgage and to the borrower's original cash down payment.
  - There is never any deficiency judgment against the borrower.
  - If the program's share of appreciation is set higher than pro rata, in order to meet Fannie Mae requirement the borrower would receive all of the following before the program receives any share in the appreciation: recovery of the borrower's original down payment, amortization of the first mortgage, and the appreciated value resulting from capital improvements that increased livable square footage by at least 10%.
  - There are no program restrictions on property resale.

## Key Considerations

**Purpose of SASL Amount:** The SASL in combination with the borrower's minimum down payment is intended to allow households to utilize a conforming Fannie/Freddie first mortgage without private mortgage insurance.

**Significant Student Loan Debt.** Increasing the maximum SASL loan percentage for borrowers with significant student loan debt payments (e.g., more than \$100 per month) can help offset the negative impact of this debt on the borrower's maximum first mortgage amount.

**Purchase Price Cap:** The program does not include a purchase price cap on properties being acquired. However, the program's loan amount restrictions constrain the amount of the SASL.

**Repayment:** The financing for the program recognizes that many borrowers will only repay

the SASL when the home is sold. The program allows non-cash out refinancing to enable borrowers to take advantage of lower-rate first mortgages. The program administrator would also provide access to ongoing mortgage counseling and quarterly updates on estimated potential repayment to ensure that homebuyers are fully aware of the benefits of repaying their SAL.

### **Program Descriptions and Homebuyer**

**Counseling:** Since many borrowers are unfamiliar with SALs, it is essential that all program materials and documents be extremely clear as to the nature of the borrower's repayment obligation. In addition, the program would provide and pay for both pre-purchase and post-purchase counseling for buyers.

## ELIGIBLE BORROWERS & PURCHASES

### Borrower Eligibility Requirements

To qualify for a shared appreciation loan, the prospective homebuyer would need to meet all of the following criteria:

- **Residency:** The homebuyer has been a resident of the State of California for at least one year.
- **First-Time Homebuyer:** No member of the homebuyer's household has had an ownership interest in a residential property for three prior years (the program will make exceptions for a legally separated head of household who was displaced from a jointly-owned property through the separation process).
- **Principal Residence:** The homebuyer is purchasing the property for use as their principal residence.
- **Income Limit:** The program administrator would set and update the maximum income limits for the program. This could initially be 150% of the median income for each high-cost Region of the state as determined by FHFA and 120% for other Regions. Income could be based on the first mortgage lender's underwriting income and in accordance with a standard existing methodology (such as CalHFA's income methodology for regions of the State).
- **Higher Loan Amounts for Lower-Income Borrowers.** As described under "Loan Amount," the program administrator may set a higher maximum specified percentage of the purchase price for borrowers in lower-income tiers such as those below 100% AMI in order to meet program objectives (target populations, regional/geographic considerations, etc).
- **Homebuyer Education Course:** All homebuyers must participate in and complete a certified homebuyer education program.

### Key Considerations

**Adjustable Income Limit:** The program administrator would have the ability to adjust income limits to meet program targets.

**Not Limiting Borrower Assets as Condition for Eligibility:** The program would not require borrowers to meet asset limits. Household assets

are administratively difficult to assess, and an asset test would both narrow the range of potential homebuyers and serve as a disincentive to saving for low- and moderate-income households.

### Priority Homebuyers

**Prioritization:** The program is designed to allow the program administrator to target support to priority households. These can include such categories as households that are first generation homebuyers, those who have been long-term tenants in historically low-income communities, and those who have high student debt. The program can prioritize households either through the reservation process (described in the reservation process below) and through product terms.

To illustrate how this can work:

- **Long-Term Residents of Low-Income Communities** who have resided for at least five of the last ten years in low-income census tracts could be eligible for a priority set-aside in reservations to help buy in their community or elsewhere as they wish. This provides a way for the program to increase opportunities for households who have lived in areas that have historically faced discrimination (such as red-lined areas).
- **First Generation Homebuyers,** whose parents have not owned a home, could be eligible for a priority set-aside in reservations.
- **Homebuyers with Significant Student Debt** that reduces the amount of the first mortgage for which the borrower can qualify for (e.g., with monthly student debt payments greater than \$100) could obtain a larger SASL.

### Key Considerations

**Future Priorities:** While priorities could shift over time, administering and marketing the program benefits from program parameters that remain stable from one year to the next.

### Property Eligibility Requirements

To qualify for the program, the property must be a pre-existing or newly constructed one- to four-unit residential property or condominium (under

Fannie/Freddie guidelines, borrower cash down payment requirements are higher for purchasing a two to four unit property).

### Key Considerations

**Housing Unit Limit:** Allowing the purchase of buildings up to four units would accommodate AB1550 and incentivize the construction, financing and purchase of small infill homes that increase residential density.

### First Mortgage Requirements

Homebuyers must obtain a first mortgage loan that meets the following criteria:

- **Loan Type:** The first mortgage must be a fixed rate, fully amortizing 30-year mortgage, that conforms with Government-Sponsored Enterprise (GSE) requirements and is includable in GSE mortgage-backed securities that can be sold TBA.

- **Loan to Value:** The first mortgage may not exceed 80% of property value.
- **Participating Lenders:** The first mortgage lender must be a qualified lender under CalHFA requirements.

The program can be designed so that both the first mortgage and the SASL are sold to the administering agency and are serviced jointly.

### Key Considerations

**Program Approval from GSEs:** The program will need to be approved by GSEs based on precedents for similar approvals. This is a key step to navigate before finalizing detailed features.

## STATEWIDE PROGRAM

### Program

The program is designed to be operated across and assist first-time buyers in all regions of the state. The number of borrowers assisted would be approximately the same percentage of mortgage purchase transactions in each region of the state (such as 2%); this will help assure that program lending does not itself inflame housing prices.

To reflect and operate effectively in the wide range of housing markets in the state:

- Income limits would be set as a higher percentage of AMI in high-cost areas of the state.
- By limiting the loan amount to the maximum specified percentage of the median purchase price of homes in each region, the program would reflect the differences in housing prices in regions across the state.

### Key Considerations

These features help assure that the program can be useful for borrowers in each region of the state while having a single standard operating system.



## REVOLVING INVESTMENT FUND

### Program Funding

**Overall Design:** The program has been structured to be an ongoing sustainable program that would make loans over many years, given the long-term housing affordability pressures in California. It is designed to make loans throughout economic cycles, rather than making all loans at the peak of the market.

**Annual Scale:** The scale of the program needs to be limited not only because of limitations on State resources but so that it does not itself drive up the prices of homes in California.

For purposes of estimating needed funding sources, it is assumed that the program could provide approximately \$1 billion of SASL's in the first full year after a ramp-up period. This amount could help approximately 7,500 households if the average SASL is \$130,000. This accounts for a small share of the state's 300,000 mortgage originations per year, but a larger share of the 100,000 mortgages currently originated for households that earn less than 120% of AMI. It is approximately the same number of buyers that CalHFA currently assists, but would provide significantly deeper assistance for borrowers who need it, including in the state's higher cost areas.

**Over Ten Years:** The program is designed so that the average loan amount can increase by about 4.5% per year, and the annual total amount of SASLs would grow accordingly. Over a 10 year period, this would provide over \$10 billion of SASL's, helping first-time buyers who need such assistance purchase approximately \$50 billion of homes.

**Sources of Money: After extensive analysis, the simplest and effective way to fund a program**

**of this annual scale is from taxpayer funds.**

These can come from annual state budget appropriations and/or from voter-authorized GO bond issues.

**Investment Fund.** The State would establish a separate, independent CA Dream for All Fund (such as that used for tobacco securitization). This investment fund would receive annual budget appropriations and/or proceeds of State GO bonds authorized by the voters.

These monies would be deposited as received into:

- A loan account to purchase SALs, and
- An administrative/servicing reserve account to pay all administrative, origination, marketing and outreach, counseling and servicing costs with respect to such SALs.

Repayments of principal and of appreciation on all SALs would be redeposited in the Fund, and amounts not needed to replenish the administrative/servicing reserve fund would be dedicated to making new SALs each year.

It may be up to ten or fifteen years before the program produces a significant reliable stream of repayments to make additional new loans. As a result, it is appropriate to plan for annual state appropriations for 10 years (that could be continued thereafter).

This revolving investment fund is thus a dedicated endowment for assisting future first-time homebuyers in California, and would be held in trust by the State for this purpose.

### Key Considerations

Legislation now or in the future could also authorize the potential use of revenue bonds by the administering agency as a way to supplement taxpayer monies—if *this proves able to increase the total future number of borrowers served with no higher present value expenditure of taxpayer monies*. Discussions with a range of major investment banks and other sources suggest that the marketability of such revenue bonds would require over-collateralization (such as by funding SASLs 60% from revenue bonds and 40% from taxpayer monies), and an ongoing assured source of annual interest payments (through a state

appropriation pledge, the typical way the state finances lease appropriation bonds). Such revenue bonds—while reducing the taxpayer funds needed directly for making SASLs—would require taxpayer monies for annual interest payments. Detailed modeling does **not** indicate that inclusion of revenue bonds would significantly increase the number of borrowers assisted with the same present value of taxpayer monies. Given the complexity and scale of issuance involved, such an additional approach is not recommended at this time. Such revenue bonds, if any, would be secured by the CA Dream for All Fund.

## Administrative Costs

Annual state appropriations would provide funds to be deposited in the administrative/servicing reserve account in order to pay for program administration, start-up, homeowner counseling

and servicing. An estimated \$100 million would need to be deposited annually on an ongoing basis.

## ADMINISTRATIVE PROCESS

### Program

**Administering Agency:** A statewide program administrator would be selected to develop a detailed operating plan for the program, including a detailed program manual and procedures guide for use of Fund resources, a start-up plan, and proposed system and parties for marketing/outreach, origination of SASLs, homeowner counseling, and servicing of SASLs.

The detailed operating plan would indicate how the overall program would establish priorities and a reservation system to help achieve program objectives; as well a quarterly reporting system on program demographics, operations, SASL performance and use of Fund resources.

### Key Considerations

**Ongoing Oversight:** The program administrator will play a key role in day-to-day oversight of loan reservations to help assure statewide distribution of the program and meeting program targets, so

that the program does not end up concentrated in a few markets where it may be easiest to make such loans..

### Marketing, Outreach and Homeowner Counseling

**Central Importance:** Marketing, outreach and clear explanation of shared appreciation mortgages to potential borrowers, lenders and real estate agents is crucial to the success of the program.

State taxpayer funds will provide important funding for such marketing and outreach efforts, including by non-profit groups and housing

counselors, who can help prepare potential homebuyers.

Homebuyer education, including a special section on how the shared appreciation mortgage works, will be mandatory for all borrowers. Monies are budgeted for pre-purchase counseling and post-purchase counseling.

### Reservation System

**Purpose:** The reservation system would need to do three things:

- Enable eligible buyers to reserve SASLs in conjunction with related first mortgages so that buyers can move quickly in a highly competitive housing market to purchase a home.
- Make it easy and convenient for lenders to reserve and originate SASLs in conjunction with related first mortgages, with assurance that qualified loans are timely purchased by or on behalf of the program administrator.

- Assure that the Program meets overall priorities and targeting objectives.

One way to accomplish these goals is to have a reservation system that provides set-asides by region of the state, as well as by priority categories, such as first generation homebuyers and long-term residents of low-income areas.

## Servicing

In addition to collecting loan repayments, the servicer engaged by the program administrator will provide ongoing information to borrowers about their shared equity mortgage, including estimated amount to be repaid, and how and when it may be in their interest to pay it off sooner if possible.

The program will be designed to work together with other programs for affordable homeownership, including:

- **Below Market Units:** The program can be, but is not required to be, used for the purchase of below-market units, such as those created through inclusionary zoning or Community Land Trusts.

- **Local Down Payment Assistance Programs:** The program can be used with local down payment assistance programs
- **Local Shared Appreciation Programs:** For counties with their own shared appreciation programs (such as Alameda, San Francisco and Santa Clara), the program would pay for up to half of the amount of any county shared appreciation loan that meets program requirements, subject to other loan amount requirements.



# APPENDIX D

## Regions of Analysis

Evaluating existing conditions at the regional level helps establish a baseline understanding of geographic variations in income, housing tenure, and housing market activity. Differing regional circumstances can inform how a shared appreciation program might be tailored to respond to unique regional circumstances. The analysis and program framework in this report divide the state into 11 regional markets which consist of aggregations of counties. These regions align with those in California Forward’s “California Dream Index”.

Figure 53: Regions Considered in Analysis



Source: HR&A Advisors

## Financial Analysis

We conducted a comparative analysis of the household and fund level impacts from various financing options as well as home price appreciation rates. The median price of existing single-family homes in California has increased more than 225% over the last 20 years, from \$241,800 in 2000 to \$786,000 in 2021, which implies a historic compound annual growth rate (CAGR) at 5.8% over the course of the past two decades. Most of the growth occurred in the last 10 years, while the historic CAGR from 2000 to 2010 was only at 2.37%.<sup>241</sup> To be conservative, we utilize the following home price appreciation assumptions for three scenarios.

- Base Scenario: Annual home price appreciation at 3.0%
- Upside Scenario: Annual home price appreciation at 6.0%
- Downside Scenario: Annual home price appreciation at 0.0%

We also looked at the financial tradeoffs for a borrower and the program or fund as the financing structure changes. We analyzed the following structures:

- 1. Shared Appreciation:** This structure represents the recommended terms for a CA Dream for All loan with a 17% down payment and a 1:1, or pro rata, appreciation split between the homebuyer and the fund.
- 2. Fixed Rate:** The second mortgage with deferred payment carries an annual simple interest rate payment obligation of 3.00% and offers a 17% down payment.<sup>242</sup> There is currently no program with this level of down payment support.
- 3. FHA:** This structure reflects the current costs to homebuyers with limited down payment savings, where they are required to make monthly insurance premium payments as well as an upfront mortgage insurance premium.
- 4. Conventional:** This structure reflects what is currently available to homebuyers who can make a 20% down payment which eliminates the need for either a second mortgage or monthly mortgage insurance premium payments.

The analysis shows that a SAL has the following tradeoffs compared to other financing options:

- **Fixed Rate:** There is no difference in the level of income served by either a fixed interest or a SAL because both allow the borrower to avoid mortgage insurance premium and significantly lower monthly payments. Under our baseline growth assumption, homebuyers and the state would receive approximately the same returns, because the assumed interest rate on the loan is equal to our growth rate assumptions. In our upside scenario, homebuyers have a lower rate of return, but the fund would make a sufficient return to be able to support the next homebuyer at the higher prevailing median price. In our downside scenario, the homebuyer has a higher return because they have no interest payment liability while the fund would have sufficient funds to lend on to the next buyer because house prices would be similar.
- **FHA:** Without the support of any public down payment assistance programs, homebuyers who resort to FHA loans with a minimum down payment of 3.5% carry much higher monthly mortgage payments due to a larger first mortgage loan size and the required FHA mortgage insurance premium. This requires borrowers to have a higher level of income to get income qualified for the mortgage and sustain a healthy debt-to-income ratio. Due to its high leverage, the homebuyer's initial down payment realizes higher return in all scenarios, but at the expense of higher monthly payments. Shared appreciation allows borrowers to put down the same amount of down payment with a much lower monthly mortgage payment.
- **Conventional:** Homebuyers who put down a 20% down payment without any public down payment assistance program, incur the same monthly mortgage payment as those with shared appreciation since they are no longer required to pay any mortgage insurance premium. There is no difference in the level of income required but a significant difference in the required upfront down payment. Due to its low leverage, the homebuyer's initial down payment realizes the lowest return in all scenarios despite the benefits of lower monthly payments. Shared appreciation provides the down payment funding gap and enables borrowers with limited savings to access median priced homes and achieve a much higher return.

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242 CalHFA's MyHome Assistance Program is a silent second fixed rate program, currently charging 3% simple interest, while the loan size is much smaller, up to 3.5% of the purchase price or appraised value.

Figure 54: Household Level Loan Calculation Base Scenario

## California Dream for All – Household Level Loan Calculation

## BASE SCENARIO

| KEY ASSUMPTIONS                                 |           | MORTGAGE ASSUMPTIONS <sup>3</sup>          |            |           |  |
|-------------------------------------------------|-----------|--------------------------------------------|------------|-----------|--|
| Property Purchase Price <sup>1</sup>            | \$786,275 | Amortization                               | 360 months |           |  |
| Annual Price Appreciation                       | 3.00%     | Conforming Loan Base Rate                  | 4.42%      |           |  |
| Cost of Sales                                   | 9.00%     | Annual Private Mortgage Insurance (PMI)    | 0.58%      | FICO 760+ |  |
| California Median Household Income <sup>2</sup> | \$77,358  | FHA Loan Base Rate                         | 4.40%      |           |  |
| Down Payment Required for Next Borrower         | 17.00%    | Upfront Mortgage Insurance Premium (UFMIP) | 1.75%      |           |  |
|                                                 |           | Annual Mortgage Insurance Premium (MIP)    | 0.85%      |           |  |

| HOUSEHOLD OPTIONS                               | 1                   |                | 2                 |                | 3                |                | 4                |                |
|-------------------------------------------------|---------------------|----------------|-------------------|----------------|------------------|----------------|------------------|----------------|
|                                                 | Shared Appreciation | 17%            | Fixed-Rate Second | 17%            | FHA              | Conventional   |                  |                |
|                                                 | Multiple            | 1              | Simple Interest   | 3.00%          | Down Payment     | 3.50%          | Down Payment     | 20.00%         |
| Homebuyer Down Payment                          | \$23,588            | 3.00%          | \$23,588          | 3.00%          | \$27,520         | 3.50%          | \$157,255        | 20.00%         |
| 1st Mortgage Amount                             | \$629,020           | 80.00%         | \$629,020         | 80.00%         | \$758,755        | 96.50%         | \$629,020        | 80.00%         |
| 2nd Mortgage Amount                             | \$133,667           | 17.00%         | \$133,667         | 17.00%         | \$0              | 0.00%          | \$0              | 0.00%          |
| Upfront Mortgage Insurance Premium              |                     |                |                   |                | \$13,278         |                |                  |                |
| <b>Total Purchase Price</b>                     | <b>\$786,275</b>    | <b>100.00%</b> | <b>\$786,275</b>  | <b>100.00%</b> | <b>\$799,553</b> | <b>100.00%</b> | <b>\$786,275</b> | <b>100.00%</b> |
| 1st Mortgage Monthly Payment                    | \$3,157             |                | \$3,157           |                | \$3,800          |                | \$3,157          |                |
| Mortgage Insurance Premium                      | \$0                 |                | \$0               |                | \$537            |                | \$0              |                |
| <b>Total 1st Mortgage Monthly Payment</b>       | <b>\$3,157</b>      |                | <b>\$3,157</b>    |                | <b>\$4,337</b>   |                | <b>\$3,157</b>   |                |
| Debt-to-Income Ratio                            | 43%                 |                | 43%               |                | 43%              |                | 43%              |                |
| Required Household Income                       | \$88,111            |                | \$88,111          |                | \$121,033        |                | \$88,111         |                |
| Percent of California Median Household Income % | 114%                |                | 114%              |                | 156%             |                | 114%             |                |

| EXIT (YEAR 10) – Homebuyer Impact    |                    |  |                    |  |                  |  |                  |
|--------------------------------------|--------------------|--|--------------------|--|------------------|--|------------------|
| Projected Property Sales Price       | \$1,025,911        |  | \$1,025,911        |  | \$1,025,911      |  | \$1,025,911      |
| Repayment to First Mortgage          | (\$502,487)        |  | (\$502,487)        |  | (\$605,734)      |  | (\$502,487)      |
| Repayment to Second Mortgage         |                    |  |                    |  |                  |  |                  |
| Principal                            | (\$133,667)        |  | (\$133,667)        |  |                  |  |                  |
| Shared Appreciation / Fixed Interest | (\$40,738)         |  | (\$40,100)         |  |                  |  |                  |
| <b>Total Second Mortgage Due</b>     | <b>(\$174,405)</b> |  | <b>(\$173,767)</b> |  |                  |  |                  |
| Cost of Sales                        | (\$92,332)         |  | (\$92,332)         |  | (\$92,332)       |  | (\$92,332)       |
| <b>Borrower Net Equity</b>           | <b>\$256,687</b>   |  | <b>\$257,325</b>   |  | <b>\$327,845</b> |  | <b>\$431,092</b> |
| Borrower Equity Multiple             | 10.9 x             |  | 10.9 x             |  | 11.9 x           |  | 2.7 x            |
| Borrower Rate of Return (RoR)        | 27.00%             |  | 27.00%             |  | 28.10%           |  | 10.60%           |

| EXIT (YEAR 10) – Fund Impact (Second Mortgage) |             |  |              |  |            |  |            |
|------------------------------------------------|-------------|--|--------------|--|------------|--|------------|
| Effective Annual Interest Rate                 | 2.70%       |  | 2.66%        |  | N/A        |  | N/A        |
| Funds Recycled                                 | \$174,405   |  | \$173,767    |  | N/A        |  | N/A        |
| Down Payment Required for Next Borrower        | (\$174,405) |  | (\$174,405)  |  | N/A        |  | N/A        |
| <b>Surplus/Shortfall</b>                       | <b>\$0</b>  |  | <b>\$638</b> |  | <b>N/A</b> |  | <b>N/A</b> |

Source

- Median priced existing single-family home in California in 2021 according to data available to the California Association of Realtors
- U.S. Census Bureau, Median Household Income in California for 2020, retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/MEHOINUSCAA646N>, June 6, 2022.
- Genworth Mortgage Insurance, Ginnie Mae, and Urban Institute. FHA rate from MBA Weekly Applications Survey. Conforming rate from Freddie Mac Primary Mortgage Market Survey. Note: Rates as of March 24, 2022.

Figure 55: Household Level Loan Calculation Upside Scenario

## California Dream for All - Household Level Loan Calculation

## UPSIDE SCENARIO

| KEY ASSUMPTIONS                                 |           | MORTGAGE ASSUMPTIONS <sup>3</sup>          |            |           |  |
|-------------------------------------------------|-----------|--------------------------------------------|------------|-----------|--|
| Property Purchase Price <sup>1</sup>            | \$786,275 | Amortization                               | 360 months |           |  |
| Annual Price Appreciation                       | 6.00%     | Conforming Loan Base Rate                  | 4.42%      |           |  |
| Cost of Sales                                   | 9.00%     | Annual Private Mortgage Insurance (PMI)    | 0.58%      | FICO 760+ |  |
| California Median Household Income <sup>2</sup> | \$77,358  | FHA Loan Base Rate                         | 4.40%      |           |  |
| Down Payment Required for Next Borrower         | 17.00%    | Upfront Mortgage Insurance Premium (UFMIP) | 1.75%      |           |  |
|                                                 |           | Annual Mortgage Insurance Premium (MIP)    | 0.85%      |           |  |

| HOUSEHOLD OPTIONS                               | 1                   |                | 2                 |                | 3                |                | 4                |                |
|-------------------------------------------------|---------------------|----------------|-------------------|----------------|------------------|----------------|------------------|----------------|
|                                                 | Shared Appreciation | 17%            | Fixed-Rate Second | 17%            | FHA              | Conventional   |                  |                |
|                                                 | Multiple            | 1              | Simple Interest   | 3.00%          | Down Payment     | 3.50%          | Down Payment     | 20.00%         |
| Homebuyer Down Payment                          | \$23,588            | 3.00%          | \$23,588          | 3.00%          | \$27,520         | 3.50%          | \$157,255        | 20.00%         |
| 1st Mortgage Amount                             | \$629,020           | 80.00%         | \$629,020         | 80.00%         | \$758,755        | 96.50%         | \$629,020        | 80.00%         |
| 2nd Mortgage Amount                             | \$133,667           | 17.00%         | \$133,667         | 17.00%         | \$0              | 0.00%          | \$0              | 0.00%          |
| Upfront Mortgage Insurance Premium              |                     |                |                   |                | \$13,278         |                |                  |                |
| <b>Total Purchase Price</b>                     | <b>\$786,275</b>    | <b>100.00%</b> | <b>\$786,275</b>  | <b>100.00%</b> | <b>\$799,553</b> | <b>100.00%</b> | <b>\$786,275</b> | <b>100.00%</b> |
| 1st Mortgage Monthly Payment                    | \$3,157             |                | \$3,157           |                | \$3,800          |                | \$3,157          |                |
| Mortgage Insurance Premium                      | \$0                 |                | \$0               |                | \$537            |                | \$0              |                |
| <b>Total 1st Mortgage Monthly Payment</b>       | <b>\$3,157</b>      |                | <b>\$3,157</b>    |                | <b>\$4,337</b>   |                | <b>\$3,157</b>   |                |
| Debt-to-Income Ratio                            | 43%                 |                | 43%               |                | 43%              |                | 43%              |                |
| Required Household Income                       | \$88,111            |                | \$88,111          |                | \$121,033        |                | \$88,111         |                |
| Percent of California Median Household Income % | 114%                |                | 114%              |                | 156%             |                | 114%             |                |

| EXIT (YEAR 10) - Homebuyer Impact    |                  |  |                  |                  |                  |
|--------------------------------------|------------------|--|------------------|------------------|------------------|
| Projected Property Sales Price       | \$1,328,395      |  | \$1,328,395      | \$1,328,395      | \$1,328,395      |
| Repayment to First Mortgage          | (\$502,487)      |  | (\$502,487)      | (\$605,734)      | (\$502,487)      |
| Repayment to Second Mortgage         |                  |  |                  |                  |                  |
| Principal                            | (\$133,667)      |  | (\$133,667)      |                  |                  |
| Shared Appreciation / Fixed Interest | (\$92,160)       |  | (\$40,100)       |                  |                  |
| Total Second Mortgage Due            | (\$225,827)      |  | (\$173,767)      |                  |                  |
| Cost of Sales                        | (\$119,556)      |  | (\$119,556)      | (\$119,556)      | (\$119,556)      |
| <b>Borrower Net Equity</b>           | <b>\$480,525</b> |  | <b>\$532,586</b> | <b>\$603,106</b> | <b>\$706,353</b> |
| Borrower Equity Multiple             | 20.4 x           |  | 22.6 x           | 21.9 x           | 4.5 x            |
| Borrower Rate of Return (RoR)        | 35.20%           |  | 36.60%           | 36.20%           | 16.20%           |

| EXIT (YEAR 10) - Fund Impact (Second Mortgage) |             |  |                 |            |            |
|------------------------------------------------|-------------|--|-----------------|------------|------------|
| Effective Annual Interest Rate                 | 5.38%       |  | 2.66%           | N/A        | N/A        |
| Funds Recycled                                 | \$225,827   |  | \$173,767       | N/A        | N/A        |
| Down Payment Required for Next Borrower        | (\$225,827) |  | (\$225,827)     | N/A        | N/A        |
| <b>Surplus/Shortfall</b>                       | <b>\$0</b>  |  | <b>\$52,060</b> | <b>N/A</b> | <b>N/A</b> |

Source

- Median priced existing single-family home in California in 2021 according to data available to the California Association of Realtors
- U.S. Census Bureau, Median Household Income in California for 2020, retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/MEHOINUSCAA646N>, June 6, 2022.
- Genworth Mortgage Insurance, Ginnie Mae, and Urban Institute. FHA rate from MBA Weekly Applications Survey. Conforming rate from Freddie Mac Primary Mortgage Market Survey. Note: Rates as of March 24, 2022.

Figure 56: Household Level Loan Calculation Downside Scenario

## California Dream for All - Household Level Loan Calculation

## DOWNSIDE SCENARIO

| KEY ASSUMPTIONS                                 |           | MORTGAGE ASSUMPTIONS <sup>3</sup>          |            |           |  |
|-------------------------------------------------|-----------|--------------------------------------------|------------|-----------|--|
| Property Purchase Price <sup>1</sup>            | \$786,275 | Amortization                               | 360 months |           |  |
| Annual Price Appreciation                       | 0.00%     | Conforming Loan Base Rate                  | 4.42%      |           |  |
| Cost of Sales                                   | 9.00%     | Annual Private Mortgage Insurance (PMI)    | 0.58%      | FICO 760+ |  |
| California Median Household Income <sup>2</sup> | \$77,358  | FHA Loan Base Rate                         | 4.40%      |           |  |
| Down Payment Required for Next Borrower         | 17.00%    | Upfront Mortgage Insurance Premium (UFMIP) | 1.75%      |           |  |
|                                                 |           | Annual Mortgage Insurance Premium (MIP)    | 0.85%      |           |  |

| HOUSEHOLD OPTIONS                               | 1                            |                | 2                                 |                | 3                |                | 4                         |                |
|-------------------------------------------------|------------------------------|----------------|-----------------------------------|----------------|------------------|----------------|---------------------------|----------------|
|                                                 | Shared Appreciation Multiple | 17%            | Fixed-Rate Second Simple Interest | 17%            | FHA Down Payment | 3.50%          | Conventional Down Payment | 20.00%         |
| Homebuyer Down Payment                          | \$23,588                     | 3.00%          | \$23,588                          | 3.00%          | \$27,520         | 3.50%          | \$157,255                 | 20.00%         |
| 1st Mortgage Amount                             | \$629,020                    | 80.00%         | \$629,020                         | 80.00%         | \$758,755        | 96.50%         | \$629,020                 | 80.00%         |
| 2nd Mortgage Amount                             | \$133,667                    | 17.00%         | \$133,667                         | 17.00%         | \$0              | 0.00%          | \$0                       | 0.00%          |
| Upfront Mortgage Insurance Premium              |                              |                |                                   |                | \$13,278         |                |                           |                |
| <b>Total Purchase Price</b>                     | <b>\$786,275</b>             | <b>100.00%</b> | <b>\$786,275</b>                  | <b>100.00%</b> | <b>\$799,553</b> | <b>100.00%</b> | <b>\$786,275</b>          | <b>100.00%</b> |
| 1st Mortgage Monthly Payment                    | \$3,157                      |                | \$3,157                           |                | \$3,800          |                | \$3,157                   |                |
| Mortgage Insurance Premium                      | \$0                          |                | \$0                               |                | \$537            |                | \$0                       |                |
| <b>Total 1st Mortgage Monthly Payment</b>       | <b>\$3,157</b>               |                | <b>\$3,157</b>                    |                | <b>\$4,337</b>   |                | <b>\$3,157</b>            |                |
| Debt-to-Income Ratio                            | 43%                          |                | 43%                               |                | 43%              |                | 43%                       |                |
| Required Household Income                       | \$88,111                     |                | \$88,111                          |                | \$121,033        |                | \$88,111                  |                |
| Percent of California Median Household Income % | 114%                         |                | 114%                              |                | 156%             |                | 114%                      |                |

| EXIT (YEAR 10) - Homebuyer Impact    |                 |  |                 |                  |                  |
|--------------------------------------|-----------------|--|-----------------|------------------|------------------|
| Projected Property Sales Price       | \$786,275       |  | \$786,275       | \$786,275        | \$786,275        |
| Repayment to First Mortgage          | (\$502,487)     |  | (\$502,487)     | (\$605,734)      | (\$502,487)      |
| Repayment to Second Mortgage         |                 |  |                 |                  |                  |
| Principal                            | (\$133,667)     |  | (\$133,667)     |                  |                  |
| Shared Appreciation / Fixed Interest | \$0             |  | (\$40,100)      |                  |                  |
| Total Second Mortgage Due            | (\$133,667)     |  | (\$173,767)     | \$0              | \$0              |
| Cost of Sales                        | (\$70,765)      |  | (\$70,765)      | (\$70,765)       | (\$70,765)       |
| <b>Borrower Net Equity</b>           | <b>\$79,357</b> |  | <b>\$39,257</b> | <b>\$109,777</b> | <b>\$213,023</b> |
| Borrower Equity Multiple             | 3.4 x           |  | 1.7 x           | 4.0 x            | 1.4 x            |
| Borrower Rate of Return (RoR)        | 12.90%          |  | 5.20%           | 14.80%           | 3.10%            |

| EXIT (YEAR 10) - Fund Impact (Second Mortgage) |             |                   |            |            |
|------------------------------------------------|-------------|-------------------|------------|------------|
| Effective Annual Interest Rate                 | 0.00%       | 2.66%             | N/A        | N/A        |
| Funds Recycled                                 | \$133,667   | \$173,767         | N/A        | N/A        |
| Down Payment Required for Next Borrower        | (\$133,667) | (\$133,667)       | N/A        | N/A        |
| <b>Surplus/Shortfall</b>                       | <b>\$0</b>  | <b>(\$40,100)</b> | <b>N/A</b> | <b>N/A</b> |

Source

- Median priced existing single-family home in California in 2021 according to data available to the California Association of Realtors
- U.S. Census Bureau, Median Household Income in California for 2020, retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/MEHOINUSCAA646N>, June 6, 2022.
- Genworth Mortgage Insurance, Ginnie Mae, and Urban Institute. FHA rate from MBA Weekly Applications Survey. Conforming rate from Freddie Mac Primary Mortgage Market Survey. Note: Rates as of March 24, 2022.



# APPENDIX E

## Analysis of Alternative Funding Options

### Option 4. Blended Taxpayer Funds and Private Capital

**Purpose of approach.** The aim is to supplement taxpayer funds with private capital to finance SALs.

**How it would work.** The state agency that would oversee and administer the CA Dream for All Fund would seek to sell participation interests in the pools of SALs it is making. In the first several years, all loans would be funded by taxpayer monies. As a portfolio and track record is established, the state agency would structure and sell senior tranches to investors. The net proceeds received, together with a reduced amount of new taxpayer monies, would help fund new loans.

Security for private investors. Private investors would receive the first return from all loan repayments, including appreciation up to a specified minimum rate of return; additional repayments would be split between the CA Dream for All Fund and investors. If useful in attracting private investors, taxpayer monies could also fund a specific loss reserve fund to cover losses of principal on the loans.

Monies for new loans. Under this leveraged approach:

In years 1 through 3, new taxpayer monies would be provided for \$1 billion of SALs each year.

In years 4 through 12, the amount needed from new taxpayer monies would be reduced and used together with private capital to make loans.

After year 12, no more new taxpayer monies would be appropriated for loans. All future loans would be funded from a combination of residual repayments retained by the CA Dream for All Fund and new private equity capital.

Origination, servicing and administrative costs. As with the revolving fund approach in Option 1, the State would appropriate \$100 million per year.

**Precedent.** We are not aware of any precedent for this approach.

**Taxpayer investment.** The total taxpayer investment would be designed to be similar to that for Option 1.

**Ability to raise adequate capital, feasibility and legal concerns.** There are little grounds, today, to think that this option can reliably raise significant amounts of capital for the program. There also appear to be fundamental structural issues in seeking to use these two sources together in funding common pools of loans. Finally, there are significant potential risks to the State or state agency in soliciting private equity capital from multiple investors.

**Ability to meet programmatic needs.** Utilizing private equity capital would significantly limit who can be helped in terms of areas of the state, lower-income borrowers and those needing larger amounts of assistance. Such larger amounts of assistance run exactly counter to investors' need for early repayment of SALs.

The program would need to receive well more than pro rata appreciation in order to provide expected rates of return to the private investors, and it would thus significantly limit household wealth.

The program would have to set and enforce a fixed 30-year maturity on SALs.

The concern is therefore that a program designed to raise private investor funds would still rely heavily on taxpayer monies but would not meet key program needs.

**Compatibility with Fannie Mae and Freddie Mac first mortgages.** The Freddie Mac Affordable Seconds checklist attached to Section 4204 of the Freddie Mac guide specifically prohibits sharing of appreciation with for-profit entities, and discussion by CSG Advisors with Freddie Mac staff indicates they would not approve such a program. It is unclear if Fannie Mae would approve such a program.

**Ongoing way to help future first-time borrowers.** The high rate of return required by private investors, and their early time horizon, would significantly reduce the amount of loan repayments that can be used to make new loans. As a simple example, if the rate of home appreciation is 4.5% (similar to the statewide average for the last 40 years) and investors

require a 9% return on their investment, that would dramatically reduce the amount of appreciation available to help subsequent buyers.

**Sustainable investment for the State.** The amount of taxpayer funding would be designed to be sustainable, but the investors' expected rate of return would reduce the ability of the State to help future borrowers.

**No future financial risk to the State.** There would be no financial impact on the State from any defaults or losses on any SALs. If there are

any losses, they reduce the total amount of repayments that can be used to make loans to future buyers.

**Leverage taxpayer monies with non-taxpayer monies to expand the number of borrowers ultimately served.** The total number of borrowers ultimately served is likely to be less than that of Option 1, given the rate of return needed for private investors.



## Option 5. Private Fund with Significant State Investment

**Purpose of approach.** Taxpayer monies would pay a portion of the purchase price of those loans originated by a private fund which meet CA Dream for All program requirements. The aim is to make it possible for the private fund to provide deeper assistance (e.g., a larger SAL) than it otherwise would if it were operating solely with private capital.

**How it would work.** The State would enter into a leveraging agreement with a private fund that originates SALs and is raising private capital. State would fund a portion of the loan amount for loans that meet CA Dream for All program requirements.

Consider a fintech company that has a program for California essential professionals, many of whom might meet CA Dream for All program's income limits, but need deeper assistance than the amount that private capital can profitably lend (say 10% of the home purchase price, in return for 25% of the appreciation). Such borrowers might receive additional resources (say another 7%) from taxpayer funds on which they only pay pro rata appreciation.

Security for private investors. Private investors would receive the first return from all loan repayments, including appreciation up to a specified minimum rate of return. Additional repayments would be allocated between the fund manager, the private investors and the State (which would reinvest monies it receives in a subsequent tranche of new loans).

Monies for new loans. Loans would be originated by the private fund. The State would provide funds for a specified portion of those loans that meet CA Dream for All program requirements, up to a maximum annual amount of taxpayer funding.

Origination, servicing and administrative costs. These are incurred by and paid by the sponsoring entity.

**Precedent.** We are not aware of any precedent for this approach.

**Taxpayer investment.** The total taxpayer investment is likely to be much smaller than in Option 1, simply because the number of loans would likely be quite small, given the difficulties in raising private capital.

**Ability to raise adequate capital, feasibility and legal concerns.** There are little grounds,

today, to think that this option can reliably raise significant amounts of private capital. There also appear to be fundamental structural issues in seeking to use these two sources together in funding common pools of loans. Finally, while the purpose of the State investment is to help lower-income and other borrowers who need a larger SAL than would be funded by private capital, the use of State funds to make a larger loan would significantly lengthen the expected prepayment. Therefore, it is unlikely that State and private funds could be used together.

**Ability to meet programmatic needs.** Private equity capital would significantly limit who can be helped, in terms of areas of the state and those needing deeper assistance. Borrowers would pay for more than pro rata appreciation given the private capital utilized. The program would have to set and enforce a fixed 30-year maturity on SALs.

**Compatibility with Fannie Mae and Freddie Mac first mortgages.** Freddie Mac would not approve such a program, as it specifically prohibits sharing of appreciation with for-profit entities. If the sponsoring entity has a waiver from Fannie Mae rules, it could use that for loans made with taxpayer monies as well as private capital.

**Ongoing way to help future first-time buyers.** Return on the State's investment would be highly limited and would unlikely be relied on for making new loans. Rather, the State would need to continue to use General Fund monies to purchase its participations in subsequent pools of loans.

**Sustainable investment for the State.** The amount of taxpayer funding would be designed to be sustainable, but there would be limited return on the State's investment or its ability to help subsequent borrowers.

**No future financial risk to the State.** There would be no financial impact on the State from any defaults or losses on any SALs. If there are any losses, they reduce the total amount of repayments that can be used to make loans to future buyers.

**Leverage taxpayer monies with non-taxpayer monies to expand the number of borrowers ultimately served.** Total number of borrowers ultimately served is likely to be less than that of Option 1, given the rate of return needed for private investors.

## Option 6. Private Funds with Limited, Indirect State Investment

**Purpose of approach.** Taxpayer monies, without funding any SALs, would be used to support private shared appreciation lending, so that such lending could help the borrowers that the CA Dream for All program is intended to assist.

**How it would work.** The State would incentivize private SALs for those borrowers who meet CA Dream for All program income and first-time buyer requirements. It would enter into an agreement with the private shared appreciation entity (fintech, investment bank, hedge fund etc.) under which it provides specified benefits with respect to the amount of loans that meet CA Dream for All program requirements (“eligible loans”). In addition to borrower eligibility, the agreement would specify that the loan’s share of appreciation not exceed a certain ratio (such as 2.5 times its share of the purchase price).

These benefits could include:

- Payment/reimbursement of a portion of loan origination, administration or servicing costs (most easily paid as a single up-front payment with respect to the eligible loans made in a given month or quarter);
- A loan loss reserve fund that would cover the first (say 5%) loss on any eligible loan; or
- Tax benefits such as relief to investors from state capital gains tax on the percentage of its investment that was made for eligible loans.

Private shared appreciation entities would raise all monies for all SALs. They would make and service eligible loans in the same way and under the same standards by which it makes other SALs.

**Precedent.** We are not aware of any precedent for this overall approach. With respect to taxation, New York State provides a business income tax credit to servicers of first-time homebuyer mortgages made by the state housing finance agency.<sup>243</sup> There are many examples of loan loss reserve funds established by local and state governments for second mortgage housing rehabilitation loans.

**Taxpayer investment.** The total taxpayer investment is limited to the benefits provided under such agreements.

**Ability to raise adequate capital.** The total amount of private capital raised for shared appreciation lending has been very limited. This ability is unlikely to be significantly affected by State incentives for a subset of such loans.

**Ability to meet programmatic needs.** Reliance on private equity capital significantly limits who can be helped, in terms of areas of the state, lower-income borrowers and those needing deeper assistance. Borrowers would pay 2.5 times pro rata appreciation, affecting their ability to build household wealth. There would be a fixed 30-year maturity on loans, and, as at present with private shared appreciation lending, concerted servicing efforts to encourage early repayment of loans.

**Compatibility with Fannie Mae and Freddie Mac first mortgages.** Private shared appreciation loans cannot be used with Freddie Mac first mortgages. If the sponsoring entity has a waiver from Fannie Mae rules, it could use that for eligible loans as well as its broader portfolio of SALs in general.

**Ongoing way to help future first-time buyers.** Under this approach, the State provides benefits for each year’s new eligible loans. The State does not receive any repayments for its benefits, and there is no need for revolving any funds. Loan repayments are used to pay private investors.

**Sustainable investment for the State.** The amount of taxpayer funding would be designed to be sustainable, taking into account both out-of-pocket costs and tax benefits.

**No future financial risk to the State.** There would be no financial impact on the General Fund from any defaults or losses on any SALs. If the State were to provide a first loss reserve on eligible loans, actual losses would diminish that reserve. They reduce the total amount of repayments that can be used to make loans to future buyers.

**Leverage taxpayer monies with non-taxpayer monies to expand the number of borrowers ultimately served.** The total number of eligible borrowers is likely to be modest compared to a State revolving fund (Option 1). Many of those might be ones who would have received the same SAL with or without the State incentives.

243 “Servicing Mortgages Credit.” New York State Department of Taxation and Finance. [https://www.tax.ny.gov/bus/ct/service\\_mortgage\\_credit.htm](https://www.tax.ny.gov/bus/ct/service_mortgage_credit.htm)

# APPENDIX F

## Detailed Financial Comparison of Shared Appreciation vs. Fixed Interest Second Loans

### Borrower's Repayment Obligation.

Before modeling the cumulative effects on the CA Dream for All program as a whole based on these two different lending approaches, it is important to understand the key differences for the borrower between shared appreciation and a fixed interest rate.

With shared appreciation, the borrower repays the original principal amount of the CA Dream for All loan (say \$130,000 on a \$650,000 home purchase) plus a pro rata share of the gain. If the home is resold in 10 years with no increase in value after sales costs, then a shared appreciation borrower repays only the \$130,000 principal of the CA Dream for All loan, since there has been no gain.

With a fixed interest rate loan, the borrower has to pay *the same amount* of accrued interest at the loan rate regardless of what happens to the value of the home. The interest that accrues each year is “hard,” meaning that it is due regardless of what happens to the value of the home. If the home resells for \$650,000 with no increase in value, the borrower has to repay both the \$130,000 principal plus the \$39,000 of interest accrued over 10 years, and would thus owe a total of \$169,000. Since the home did not increase in value, the borrower's household wealth would be reduced by \$39,000, which is double the amount of the typical 3% down payment for the purchase of the home.

If home prices rise dramatically, on the other hand, a borrower with a fixed interest loan still only pays back the same \$39,000 in interest while receiving all the appreciation on the home. A borrower with a SAL owes the same share of appreciation on the home, whether that appreciation was small or large.

### Comparing Impacts at the Individual Loan Level.

Figure 57 shows how this works under various home price rise situations for borrowers who receive either shared appreciation or fixed interest rate loans and resell their home at the end of 10 years.

What stands out from this simple set of examples is that a fixed interest rate loan creates two types of risks not present with shared appreciation.

**Risk to borrower.** If a home does not increase in value, the borrower still owes the accrued interest on a fixed rate loan. As proposed for a CA Dream for All SAL, even the recovery of the principal of the loan (e.g., the \$130,000) would be subordinate to the borrower recovering their original down payment. This provides significantly more risk protection to the borrower than with a fixed rate loan.

**Risk to helping future borrowers.** With a SAL, whatever happens to the rate at which homes go up in value, the CA Dream for All Fund has sufficient monies to help a similar new buyer purchase an equivalent home. With a fixed rate loan, if home prices rise more than the fixed rate, the CA Dream for All Fund does not have enough monies to help the next borrower.

**Nature of these risks.** These two risks are inherent to CA Dream for All Fund investing in fixed rate loans. If appreciation turns out to be less than the fixed rate, the low- or moderate-income borrower loses money, compared to shared appreciation. If appreciation turns out to be more than the fixed rate, the CA Dream for All Fund does not have enough to help the next buyer purchase a similar home. As shown in figure 58, these potential problems cannot be solved by setting a high fixed interest rate.

Figure 57: Impact of Individual Average CA Dream for All Loan of \$130,000

|                                                                              | 0% home price rise |                    | 3% home price rise |                    | 4.5% home price rise |                    | 6% home price rise |                    |
|------------------------------------------------------------------------------|--------------------|--------------------|--------------------|--------------------|----------------------|--------------------|--------------------|--------------------|
|                                                                              | Fixed interest     | Shared Apprec'n    | Fixed interest     | Shared Apprec'n    | Fixed interest       | Shared Apprec'n    | Fixed interest     | Shared Apprec'n    |
| Original price                                                               | 650,000            | 650,000            | 650,000            | 650,000            | 650,000              | 650,000            | 650,000            | 650,000            |
| Resale price                                                                 | 650,000            | 650,000            | 874,000            | 874,000            | 1,009,000            | 1,009,000          | 1,164,000          | 1,164,000          |
| <b>Total gain</b>                                                            | <b>0</b>           | <b>0</b>           | <b>224,000</b>     | <b>224,000</b>     | <b>359,000</b>       | <b>359,000</b>     | <b>514,000</b>     | <b>514,000</b>     |
| Repay to CA Dream for All Principal                                          | 130,000            | 130,000            | 130,000            | 130,000            | 130,000              | 130,000            | 130,000            | 130,000            |
| Int / Apprec'n                                                               | 39,000             | 0                  | 39,000             | 44,800             | 39,000               | 71,800             | 39,000             | 102,800            |
| <b>Total due</b>                                                             | <b>169,000</b>     | <b>130,000</b>     | <b>169,000</b>     | <b>174,800</b>     | <b>169,000</b>       | <b>201,800</b>     | <b>169,000</b>     | <b>232,800</b>     |
| Impact on borrower's household wealth                                        | -39,000            | 0                  | 185,000            | 179,200            | 320,000              | 287,200            | 475,000            | 411,000            |
| Multiple of borrower's down payment                                          | -2x                | 0x                 | 9.5x               | 9.2x               | 16.4x                | 14.7x              | 24.3x              | 21.1x              |
| Amount needed for CA Dream for All to help next borrower buy equivalent home | 130,000            | 130,000            | 174,800            | 174,800            | 201,800              | 201,800            | 232,800            | 232,800            |
| Surplus or shortfall to fund next loan                                       | 39,000             | All funds required | -5,800             | All funds required | -32,800              | All funds required | -63,800            | All funds required |

Figure 58: Impact of Individual Loan Fixed interest at 3% and at 5% vs. Shared Appreciation

|                                                                              | 0% home price rise   |                      |                    | 6.0% home price rise |                      |                    |
|------------------------------------------------------------------------------|----------------------|----------------------|--------------------|----------------------|----------------------|--------------------|
|                                                                              | Fixed interest at 3% | Fixed interest at 5% | Shared Apprec'n    | Fixed interest at 3% | Fixed interest at 5% | Shared Apprec'n    |
| Original price                                                               | 650,000              | 650,000              | 650,000            | 650,000              | 650,000              | 650,000            |
| Resale price                                                                 | 650,000              | 650,000              | 650,000            | 1,164,000            | 1,164,000            | 1,164,000          |
| <b>Total gain</b>                                                            | <b>0</b>             | <b>0</b>             | <b>0</b>           | <b>514,000</b>       | <b>514,000</b>       | <b>514,000</b>     |
| Repay to CA Dream for All Principal                                          | 130,000              | 130,000              | 130,000            | 130,000              | 130,000              | 130,000            |
| Int / Apprec'n                                                               | 39,000               | 65,000               | 0                  | 39,000               | 65,000               | 102,800            |
| <b>Total due</b>                                                             | <b>169,000</b>       | <b>195,000</b>       | <b>130,000</b>     | <b>169,000</b>       | <b>195,000</b>       | <b>232,800</b>     |
| Impact on borrower's household wealth                                        | -39,000              | -65,000              | 0                  | 475,000              | 449,000              | 411,000            |
| Multiple of borrower's downpayment of \$19,500                               | -2.0x                | -3.3x                | 0x                 | 24.3x                | 23.0x                | 21.1x              |
| Funds repaid to CA Dream for All                                             | 169,000              | 195,000              | 130,000            | 169,000              | 195,000              | 195,000            |
| Amount needed for CA Dream for All to help next borrower buy equivalent home | 130,000              | 130,000              | 130,000            | 232,800              | 232,800              | 232,800            |
| Surplus or shortfall to fund next loan                                       | + 39,000             | +65,000              | All funds required | -63,800              | -37,800              | All funds required |

If the rate is set at 5%, then:

- If home prices are flat, the borrower owes far more accrued interest and risks losing four times their original down payment.
- If home prices increase at 6% per year, the CA Dream for All Fund is still short in helping the next borrower.

In essence, an accruing fixed rate second loan creates a greater upside and a greater downside

for the borrower, and makes it much more difficult for the State's investment in the CA Dream for All program to keep pace with inflation. This is especially visible when home prices increase as they have by about 40% in the last two years. A shared appreciation investment would increase in value to help future buyers; a fixed rate investment—whether at 3% or 5%—would not, meaning the CA Dream for All program could help fewer and fewer buyers with each passing year.

## Overall Impact of Fixed Interest vs. Shared Appreciation on CA Dream for All's Ability to Help Borrowers

Having seen how fixed interest compares with shared appreciation on the same initial \$130,000 investment by the CA Dream for All Fund, we can now look at the cumulative impact on the Fund itself and its ability to assist borrowers.

**Time horizon.** For helping borrowers overall, the differences between the fixed interest rate and shared appreciation approaches emerge over time.

The differences occur, not when loans are initially made, but as they are repaid with different

amounts due back to the CA Dream for All Fund, and the CA Dream for All Fund then uses those repayments to help subsequent buyers. In the first year, the two approaches by definition help an identical number of borrowers; it is the different payoff amounts over time that show what happens to the total number of borrowers helped and to their household wealth.

Figure 59 shows, in the expected case, the impacts of loans made through year 40 (30 years after the 10 years of state funding of initial loans) to see what happens to the CA Dream for All program's ability to help borrowers as loans are repaid.

Figure 59: Overall Impact of Shared Appreciation and Fixed Interest Over 40 Years: Expected Case

|                                                                               | Shared Appreciation    | Fixed Simple Interest at 3% |
|-------------------------------------------------------------------------------|------------------------|-----------------------------|
| <b>Taxpayer Funding</b>                                                       |                        |                             |
| For loans                                                                     | \$10.0 billion         | \$10.0 billion              |
| For administration, origination, counseling and servicing costs for 40 years  | 4.1                    | 4.1                         |
| Total taxpayer funding over 40 years                                          | <b>14.1</b>            | <b>14.1</b>                 |
| <i>Present value at 3.0%</i>                                                  | 10.8                   | 10.8                        |
| <b>CA Dream for All Loan Originations</b>                                     |                        |                             |
| Borrowers assisted over 40 years                                              | <b>157,200</b>         | <b>124,800</b>              |
| \$ price of homes purchased                                                   | <b>\$238 billion</b>   | <b>\$163 billion</b>        |
| Loans to borrowers                                                            | <b>\$47.6 billion</b>  | <b>\$32.6 billion</b>       |
| <i>Present value at 3.0%</i>                                                  | 25.3                   | 19.2                        |
| <b>Borrower Share of Home Appreciation Through Year 40</b>                    |                        |                             |
| Borrower share of appreciation through year 40                                | <b>\$133.8 billion</b> | <b>\$120.6 billion</b>      |
| <i>Present value at 3.0%</i>                                                  | 64.2                   | 60.8                        |
| \$ price of homes purchased                                                   | <b>\$238 billion</b>   | <b>\$163 billion</b>        |
| Loans to borrowers                                                            | <b>\$47.6 billion</b>  | <b>\$32.6 billion</b>       |
| <i>Present value at 3.0%</i>                                                  | 25.3                   | 19.2                        |
| Borrower share of home appreciation thru year 40                              | <b>\$133.8 billion</b> | <b>\$120.6 billion</b>      |
| <i>Present value at 3.0%</i>                                                  | 64.2                   | 60.8                        |
| <b>Overall Impact</b>                                                         |                        |                             |
| Residual value of program receipts after year 40 to help subsequent borrowers | <b>\$35.8 billion</b>  | <b>\$7.6 billion</b>        |
| <i>Present value at 3.0%</i>                                                  | \$7.5                  | \$1.7                       |
| Net cost to State for 40 years of program                                     | \$10.8 - \$7.5 =       | \$10.8 - 1.7 =              |
| <i>Present value at 3.0%</i>                                                  | \$3.3 bill.            | \$9.1 bill.                 |
| <b>Net cost to State for investing with borrowers</b>                         |                        |                             |
| Borrower share of appreciation / net cost to State                            | \$64.2 / 3.3 billion = | \$60.8 / 9.1 billion =      |
| Each present value at 3.0%                                                    | <b>19.5 x</b>          | <b>6.7 x</b>                |

**Borrowers assisted through year 40.** In the expected case, shared appreciation helps considerably more borrowers and provides greater assistance than fixed rate seconds. SALs would help 157,200 borrowers compared to 124,800 with fixed interest loans, and would help them buy \$238 billion of homes compared to \$163 billion.

In the more conservative case (Figure 61 below), the shared appreciation approach helps more borrowers and provides greater assistance than fixed rate seconds, but the difference is less marked. SALs would help 144,000 borrowers compared to 134,000 with fixed interest loans and help them buy \$157 billion of homes compared to \$141 billion. These smaller differentials reflect the fact that, in the more conservative case, the fixed interest rate is much closer to the appreciation rate.

One perhaps surprising finding is that **the higher the appreciation, the fewer the borrowers a fixed interest program can help.** A fixed interest program would help 134,000 in the more conservative case and 125,000 in the expected case. This is because the fixed interest the Fund receives back is the same in the more conservative and expected cases, but the cost of buying a subsequent home in the expected case

is much greater. A shared appreciation program, by contrast, is able to help **more** borrowers in the expected case than in the more conservative case.

**Borrower appreciation through year 40.**

The direct impact on household wealth generated through a given time horizon, such as 40 years, consists of (a) the household wealth of borrowers who will have paid off their loans by that date (e.g., their gain after paying the program its fixed interest or share of appreciation) and (b) the accreted wealth of borrowers who have outstanding loans on that date (e.g., what their homes are projected to be worth on that date less the accrued fixed interest or what CA Dream for All Fund’s share of appreciation would be as of that date).

In the expected case, shared appreciation generates significantly greater total household wealth during this time period than fixed interest—\$134 billion versus \$121 billion, or about 11% more. This reflects the much greater number of borrowers that a shared appreciation program helps.

In the more conservative case (where home appreciation is very similar to the fixed interest rate), there is no difference in total household wealth through the 40 year date.

Figure 60: Overall Impact of Shared Appreciation and Fixed Interest Over 40 Years: More Conservative Case

|                                                                               | Shared Appreciation      | Fixed Simple Interest at 3% |
|-------------------------------------------------------------------------------|--------------------------|-----------------------------|
| <b>Taxpayer Funding</b>                                                       |                          |                             |
| For loans                                                                     | \$10.0 billion           | \$10.0 billion              |
| For administration, origination, counseling and servicing costs for 40 years  | 4.1                      | 4.1                         |
| Total taxpayer funding over 40 years                                          | <b>14.1</b>              | <b>14.1</b>                 |
| Present value at 3.0%                                                         | 10.8                     | 10.8                        |
| <b>CA Dream for All Loan Originations</b>                                     |                          |                             |
| Borrowers assisted over 40 years                                              | 144,000                  | 133,900                     |
| \$ price of homes purchased                                                   | \$157 billion            | \$141 billion               |
| Loans to borrowers                                                            | <b>\$31.4 billion</b>    | <b>\$28.2 billion</b>       |
| Present value at 3.0%                                                         | 18.1                     | 16.9                        |
| <b>Borrower Share of Home Appreciation Through Year 40</b>                    |                          |                             |
| Borrower share of appreciation thru year 40                                   | <b>\$61.8 billion</b>    | <b>\$61.8 billion</b>       |
| Present value at 3.0%                                                         | 31.2                     | 31.6                        |
| <b>Overall Impact</b>                                                         |                          |                             |
| Residual value of program receipts after year 40 to help subsequent borrowers | <b>\$13.0 billion</b>    | <b>\$7.5 billion</b>        |
| Present value at 3.0%                                                         | \$2.7                    | \$1.6                       |
| Net cost to State for 40 years of program                                     | \$10.8 - \$2.7 billion = | \$10.8 - 1.6 billion =      |
| Present value at 3.0%                                                         | <b>\$8.1 billion</b>     | <b>\$9.2 billion</b>        |
| <b>Net cost to State for investing with borrowers</b>                         |                          |                             |
| Borrower Share of Appreciation / Net cost to State                            | 31.2 / 81 billion =      | 31.6 / 9.2 billion =        |
| Each present value at 3.0%                                                    | <b>3.9 x</b>             | <b>3.4 x</b>                |



*Beyond the borrower appreciation generated through this time horizon, there is a major difference in the ability of CA Dream for All Fund to continue helping borrowers*

**Resources to help additional borrowers.** A shared appreciation program creates far more accrued public resources to help subsequent buyers generate household wealth. The amount of accrued interest or shared appreciation accrued by the Fund at the end of 40 years is a cost to current borrowers—but it is also a resource for helping future first-time buyers.

In the expected case, a shared appreciation program will generate five times more resources from repayments after year 40 to help future buyers than a fixed interest program (\$35.8 billion versus \$7.6 billion). In the more conservative case, shared appreciation will accrue two times more resources than a fixed interest program.

Why is this important? Whether the State charges fixed interest or shared appreciation, investing alongside borrowers generates a much larger amount of household wealth than the amount of state dollars invested. On a present value basis, the \$10 billion initially invested in program loans generates about six times that amount of borrower household wealth over 40 years in the expected case or about three times that amount of borrower household wealth in the more conservative case.

Therefore, the amount due back to the Fund from loans that are outstanding in year 40 is very significant: those monies helps the State assist many more subsequent borrowers generate household wealth **thereafter**.

In a shared appreciation approach, the amount of this residual is five times greater than in the fixed interest approach. In the conservative case, the shared appreciation residual is two times greater than with fixed interest.

This residual impact can be viewed in two different ways:

**Efficiency of State investment in generating household wealth.** One way is to picture the Fund not making new loans after year 40, but rather paying back to the State what the Fund receives from outstanding loans. The net effect can be considered on a present value basis, as shown in Figure 57 of the body of the report.

**Fund continuing to make new loans.**

Alternatively, one can picture the program continuing after 40 years and making new loans, and compare the household wealth generated under shared appreciation versus fixed interest.

The following charts show the effect on borrower appreciation of the Fund continuing to make loans through year 60. In the expected case, the cumulative impact on borrower appreciation is far greater with shared appreciation. In the more conservative case, there is little difference.



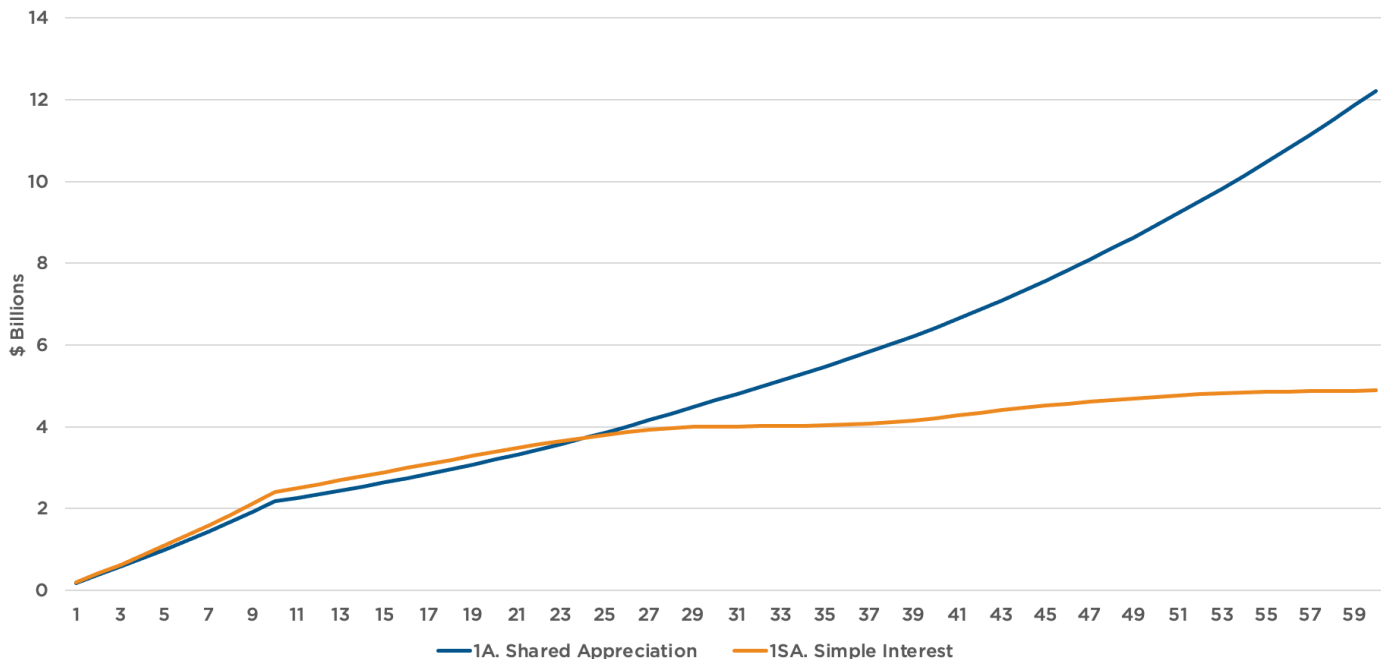
Figure 61: Borrower Share of Home Price Appreciation Expected Case

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### Borrower Share of Home Price Appreciation (net of second mortgage shared appreciation or simple interest obligation)

#### EXPECTED CASE

Annual



Cumulative

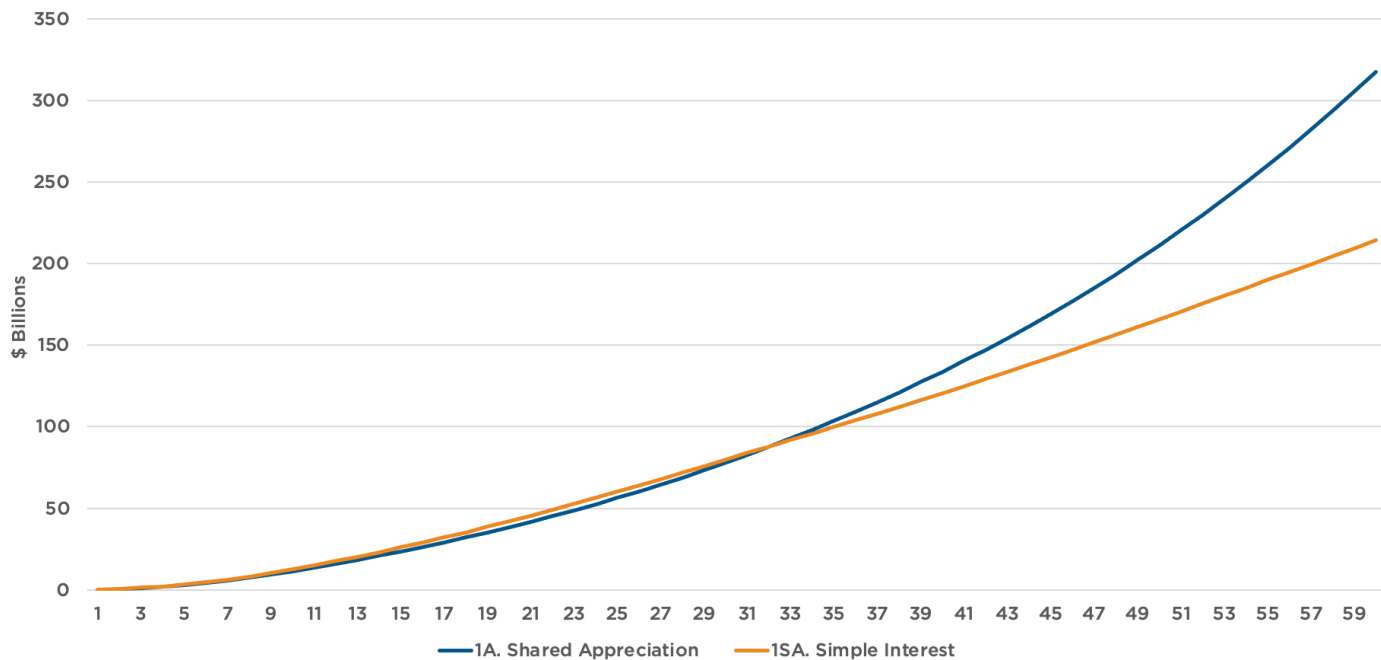


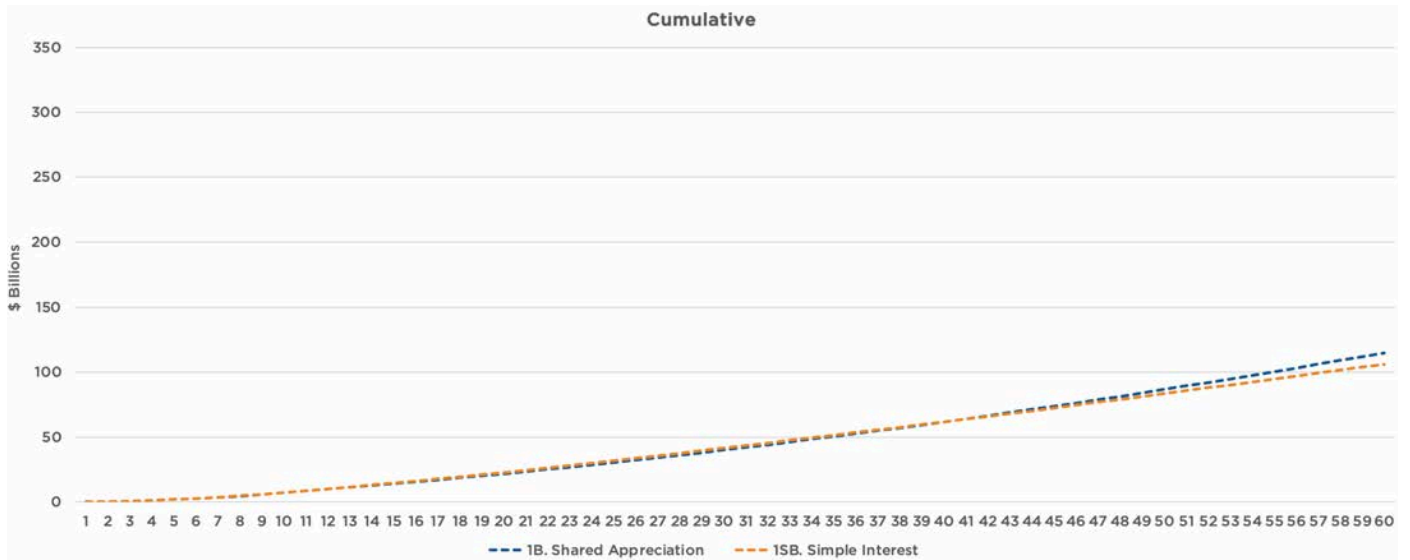
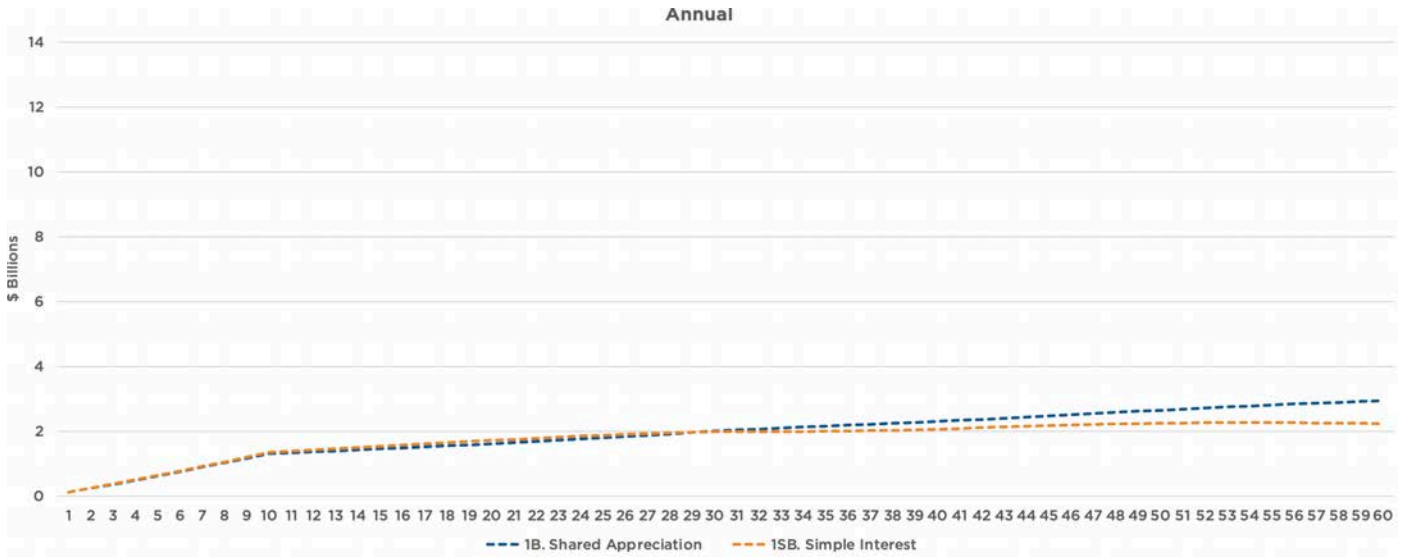
Figure 62: Borrower Share of Home Price Appreciation Conservative Case

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## Borrower Share of Home Price Appreciation

(net of second mortgage shared appreciation or simple interest obligation)

### MORE CONSERVATIVE CASE





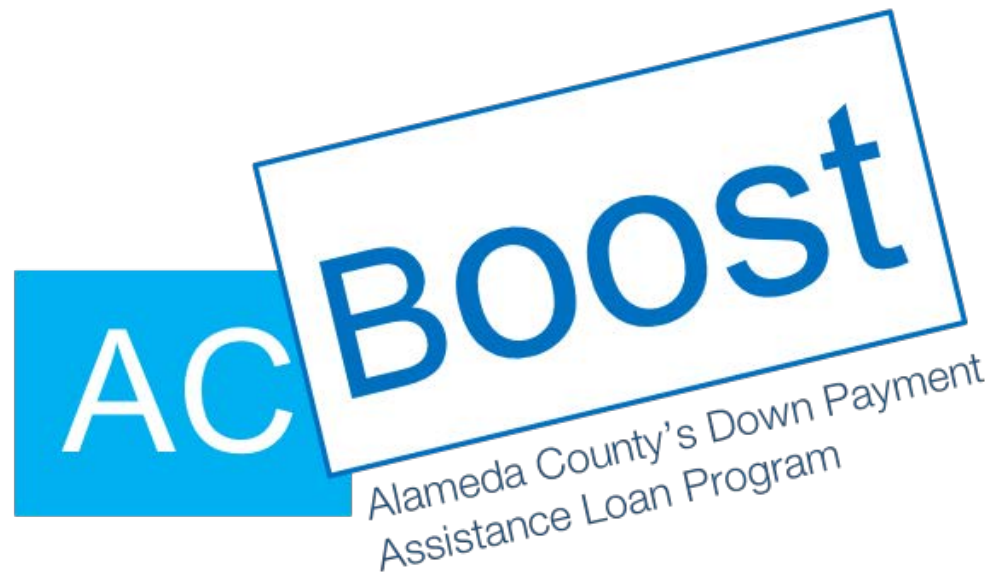


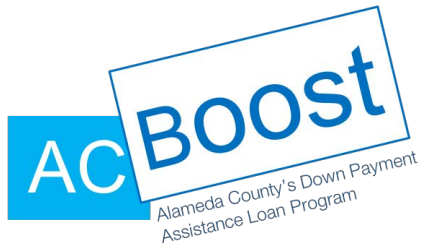
# Measure A1 Oversight Committee Presentation

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Measure A1 Down Payment Assistance Loan Program

March 24, 2022

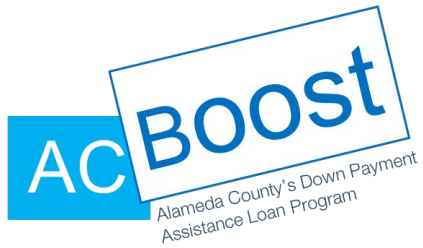




## Original Program Framework

The Alameda County Board of Supervisors adopted a policy framework in 2018 which drove the Program Design. The program was designed to:

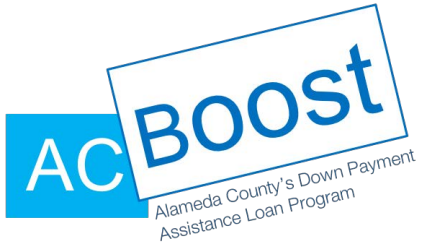
- Assist **First Time Home Buyers** to purchase homes in Alameda County
- Serve households earning **≤120% AMI** (with ability to go up to 150% AMI)
- Include design features that:
  - encourage Alameda County residents to **purchase homes near work or transit** that takes them to work.
  - benefit former Alameda County residents that have been **displaced**.
  - benefit **educators** and **first responders** so they may live in the communities in which they work.
- Loan to be structured as a **shared appreciation, silent second mortgage**.



## Equity-Centered Policies

Included in the original program design:

- Tiered levels of assistance based on household income and market-based need
- Multilingual outreach and interpretation services
- Shared appreciation loan to balance wealth-building for individuals with long-term program sustainability
- Robust race data collection throughout the process.



# Measure A1 Funding at Work

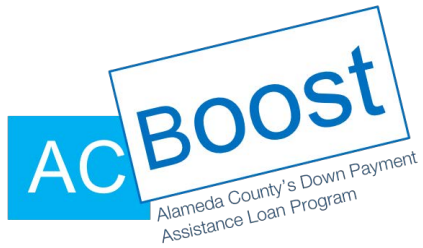
Program launched March 2019;  
Outcome Data as of March 2022

Measure A1 – Down Payment Assistance Loan Program  
AC Boost – \$50 million of the total \$580 million in Measure A1

|                  |                          |   |                                 |
|------------------|--------------------------|---|---------------------------------|
| Closed Loans:    | 41.9%<br>in 36<br>months | } | \$11.41 million (86 homebuyers) |
| Funds Reserved:  |                          |   | \$7.43 million (38 applicants)  |
| Funds Remaining: |                          |   | \$26.16 million*                |

\*Expect remaining funds to be spent within the next three to four years. Page 424

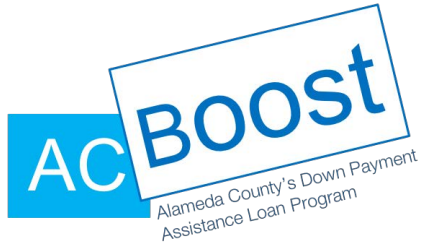




## Funding Cycle 2 Update

Significant policy changes were approved by the Board of Supervisors in April 2021

- Increased loan amounts – up to \$160k or \$210k
- Reduction in required cash to close
- 1.5% Seasoned Funds no longer required
- Layering with other subordinate loan programs allowed, if approved in advance by the County
- Front-end ratio minimum of 25% waived for Section 8 homeownership voucher recipients



## Funding Cycle 2 Update

The 2<sup>nd</sup> Pre-Application Period opened from July 15<sup>th</sup>-August 30<sup>th</sup>, 2021.

6,081 Pre-applications received (*2,294 during funding cycle #1*)

1,000 attendees joined the virtual public lottery held on September 17<sup>th</sup>, 2021

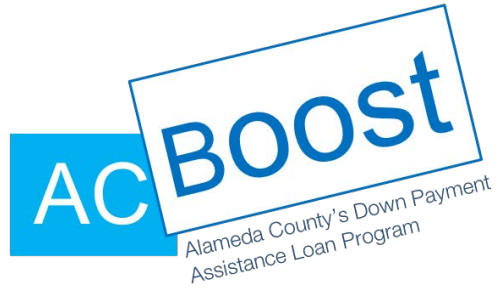
306 applicants have attended the 5 application workshops we have held to date.

86 full applications have been submitted for underwriting.

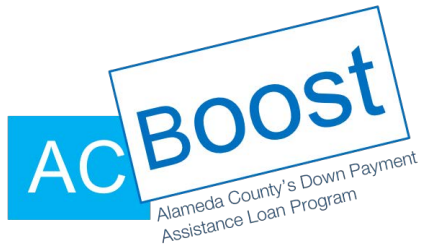
36 applicants have been approved for a Reservation of Funds to date

8 applicants are currently in contract to purchase a home.

2 Loans have closed



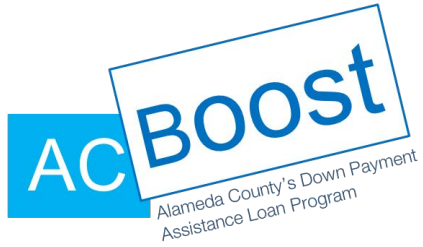
# Policy Changes in Funding Cycle #2



## Funding Cycle 1 Analysis

Analysis performed with a goal of increasing the success rates for BIPOC households in Funding Cycle 2.

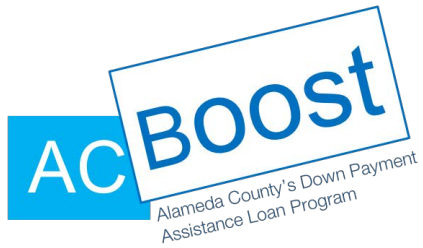
- Reviewed race data collected at key milestone of the initial Pre-Application.
  - The data suggested that marketing and outreach strategies were highly effective in reaching Black, Asian and Multi-Racial households, with room for improvement for reaching Latinx, American Indian and Pacific Islander households.
  - The data showed significant attrition for Black and Latinx households between attending a workshop and submitting a Full Application.
- Administered Survey to households who attended a workshop but did not submit a Full Application.
- Updated research into the racial wealth gap, disparities in homeownership rates by race, and potential policy solutions.
- Updated analysis of countywide home values, home supply, and necessary loan sizing to ensure AC Boost buyers have access to higher-opportunity neighborhoods.



## Changes to Policy

1. Reduction in the amount of cash savings households need to contribute in order to participate in the program.

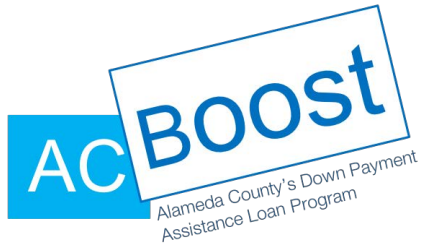
- *The maximum combined loan-to-value (“CLTV”) increased from 97% to 100% to reduce the Buyer’s cash-to-close requirements. The required down payment can now range from 0-3% based on need.*
  - *Seasoned funds are no longer required.*
  - *The Buyer’s contribution is required to cover closing costs which can come from gift funds, grants, lender credits and/or seller credits.*
- ✓ So far, 6 households have purchased homes with 0% down payment.



## Changes to Policy

2. Increase in the total down payment assistance available to help low- and moderate-income buyers find success.

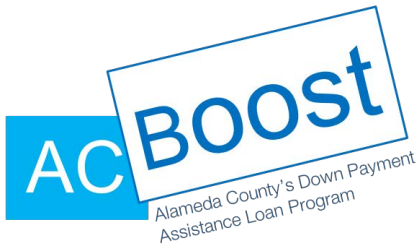
- *Maximum AC Boost loan amount increased from \$100K to \$160K for households earning less than 120%*
  - *Maximum AC Boost loan amount increased \$150K to \$210K for households earning less than 100%*
  - *AC Boost is now allowed to layer with other subordinate down payment assistance programs*
- ✓ So far, 9 households have purchased homes with the higher loan amounts.
  - ✓ The program can now be layered with the WISH and NeighborhoodLIFT down payment assistance loan programs and any grant programs.



## Changes to Policy

3. Modification to income ratio requirements to ensure AC Boost can help Section 8 homeownership voucher holders find success in Alameda County.

- Waive AC Boost's 25% front-end ratio requirement for buyers who are Section 8 homeownership voucher recipients.
- ✓ In an effort to increase Section 8 voucher participation, Hello Housing has engaged with the Participating Lender List to identify lenders that are able to provide loans to Section 8 homeownership voucher
- ✓ Hello Housing is reaching out to Homebuying Counseling agencies to ensure any Section 8 Applicants can receive support with additional lender requirements.



## Changes to Process in Funding Cycle 2

1. Increase marketing & outreach to Latinx, American Indian and Pacific Islander buyers.

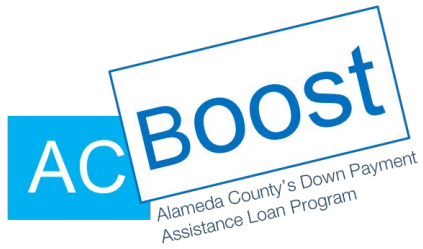
Hello Housing engaged in targeted outreach to get the word out about the Pre-Application period for Funding Cycle #2 to more Latinx, American Indian and Pacific Islander households.

- ✓ Public health, community service, and faith-based organizations that primarily serve these communities
- ✓ Presented at an event hosted by the National Association of Hispanic Real Estate Professionals
- ✓ Program Interview with KSTS Telemundo 48 Bay Area and KDTV Univision 14 in Spanish for their viewers.

2. Provide applicants with more time and more support to complete their application.

- ✓ Application period was increased from 3 weeks to 4 weeks.
- ✓ Applicants receive a link to set up one-on-one appointments to speak with program staff directly after the application workshops.





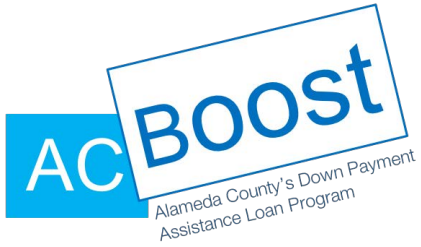
## Changes to Process in Funding Cycle 2

### 3. Provide more support to applicants when choosing a Participating Lender.

- ✓ Applicants now receive a Lender Outreach Guide and Checklist after the application workshop.
- ✓ Hello Housing identified Participating Lenders who offer loans to ITIN holders and listed this information on the AC Boost website.
- ✓ Are collecting information from lenders about their available grant programs
- ✓ Identifying lenders with Section 8 homeowner voucher experience and loan underwriting ability. This information will be listed on the website once complete.

### 4. Update the marketing and outreach plan to reflect the impact of COVID on outreach practices.

- ✓ Hello Housing engaged in a robust social media marketing strategy, which had a sizable impact on the number of pre-applications received (6,081 as compared to 2,294 in the first Funding Cycle).



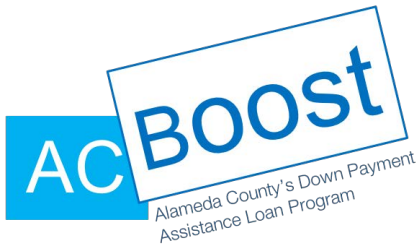
## Changes to Process in Funding Cycle 2

5. Continue, post-pandemic, to offer workshops by Zoom to accommodate the schedules of a diverse applicant pool and to minimize childcare-related barriers.

- ✓ All application workshops are now held on Zoom. If applicants can't attend, they are allowed to reschedule to the following workshop date.

6. Provide approved buyers with additional time to get into a contract for a home.

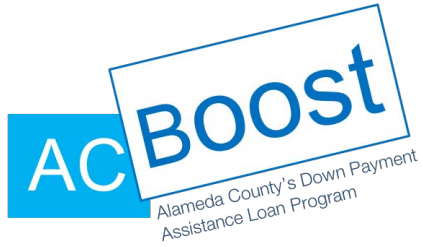
- ✓ Reservation of Funds period was increased from 90 days to 120 days.



## Changes to Process in Funding Cycle 2

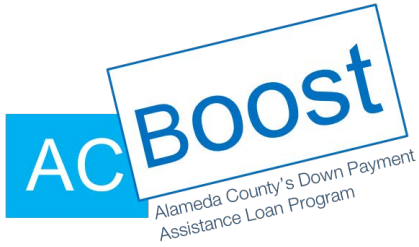
7. Increase awareness about program requirements such as potential buyer down payment, closing costs, debt-to-income ratio, lender pre-approval, supporting documents required, etc. sooner in the process.

- ✓ Hosted 2 Community Roundtable meetings via Zoom during the Pre-Application period, where any interested community members could join to learn about buying a home and how to apply.
- ✓ Links to informational resources were added to the Pre-Application submission auto-responses and the lottery position notification emails, including:
  - Consumer Financial Bureau's Home Loan Toolkit
  - 1-page infographic on the AC Boost application process (in 5 languages)
  - List of application required supporting documents
  - List of homebuyer counseling agencies
  - Participating Lender List



## Changes to Process in Funding Cycle 2

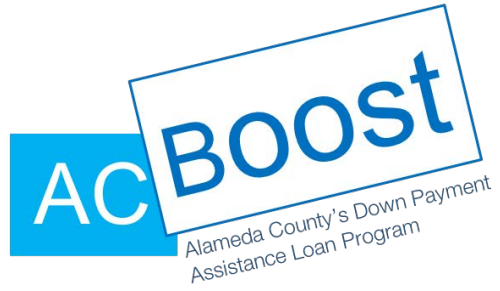
8. Increase transparency/accessibility of information about the program online.
  - ✓ Posted the current status of lottery positions that have been invited to apply to-date, which is available from the home page - [www.acboost.org/lottery-position-status](http://www.acboost.org/lottery-position-status).
  - ✓ Recording of the lottery was posted to the home page of program website - [www.acboost.org](http://www.acboost.org).



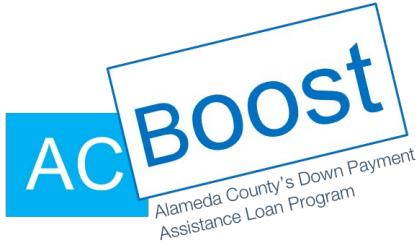
# Affirmative Marketing Strategies

## Key marketing strategies included:

- Outreach to organizations and public agencies with close ties to communities that include underrepresented homebuyers.
- Partnering with Alameda County to push information through their social media channels which included NextDoor, Twitter, and Facebook.
- Working with diverse realtors, lenders and housing counseling agencies that serve underrepresented homebuyers.
- Working with “connector” individuals and presenting at meetings to encourage meeting participants to become champions of the program.
- Media advertising based on audience demographics in multiple languages (English, Spanish, Chinese, Vietnamese and Tagalog).



# AC Boost Outcomes to Date

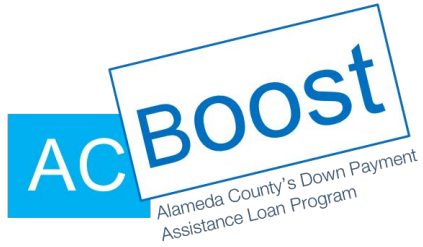


# AC Boost by the Numbers

86 homes purchased as of March 2022

| Key Statistics                             | Average   | Median    |
|--------------------------------------------|-----------|-----------|
| AC Boost Loan Amounts                      | \$132,704 | \$150,000 |
| Household Size                             | 2.5       | 2         |
| Percent of Area Median Income              | 98.12%    | 97.14%    |
| <i>Based on Median Household Size of 2</i> |           | \$97,626  |

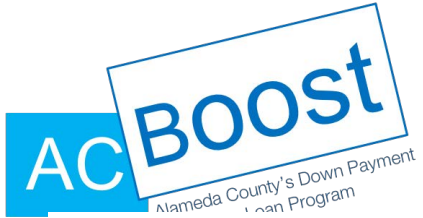
*BOS-adopted program objective was to serve 120% AMI and below which is \$120,550 for household size of 2 in 2021.*



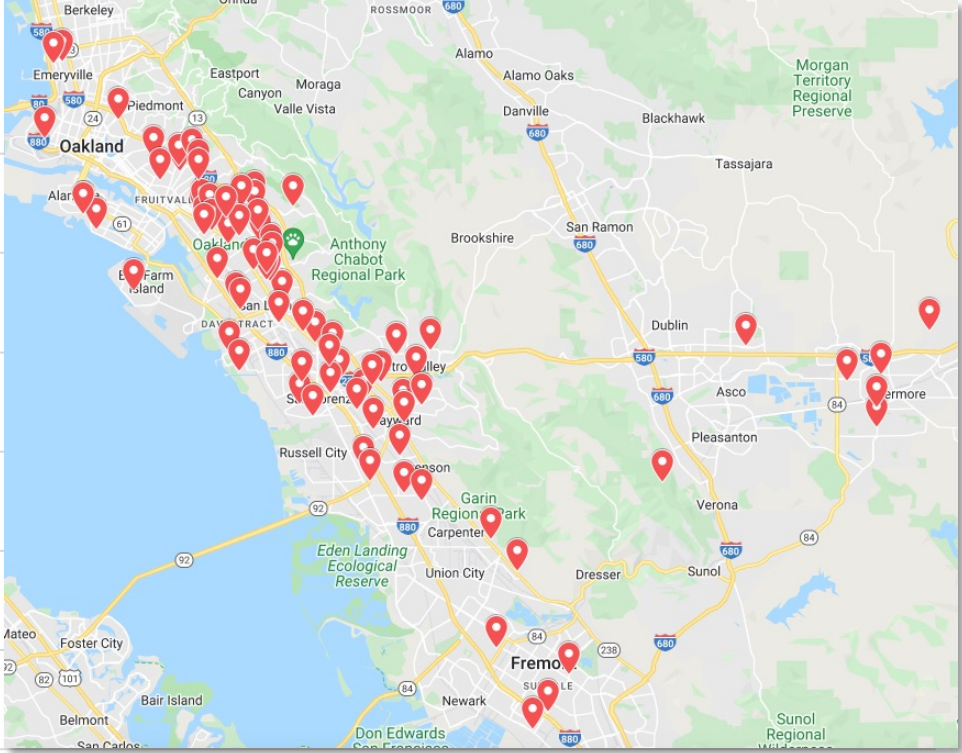
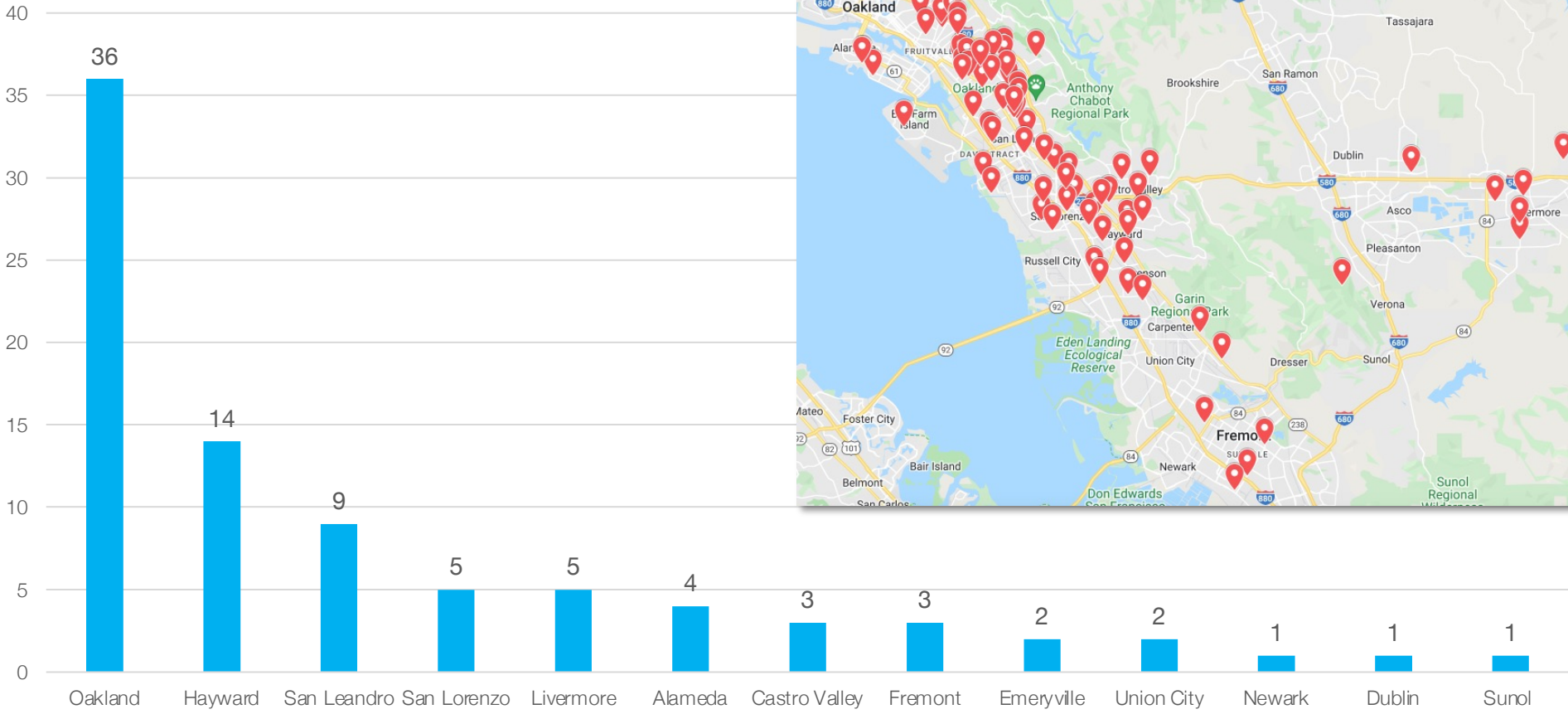
# Home Purchase Prices to Date

| Purchase Prices      | Condo     | Single-Family |
|----------------------|-----------|---------------|
| Lowest (BMR)         | \$290,029 | \$475,000     |
| Lowest (Market Rate) | \$332,000 | \$410,500     |
| Median               | \$457,500 | \$552,500     |
| Highest              | \$750,000 | \$860,000     |

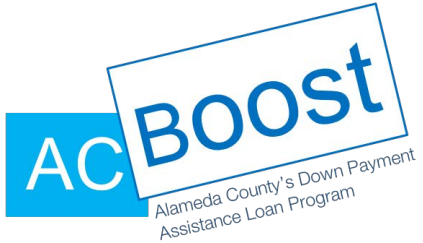




# Locations of Purchased Homes\*

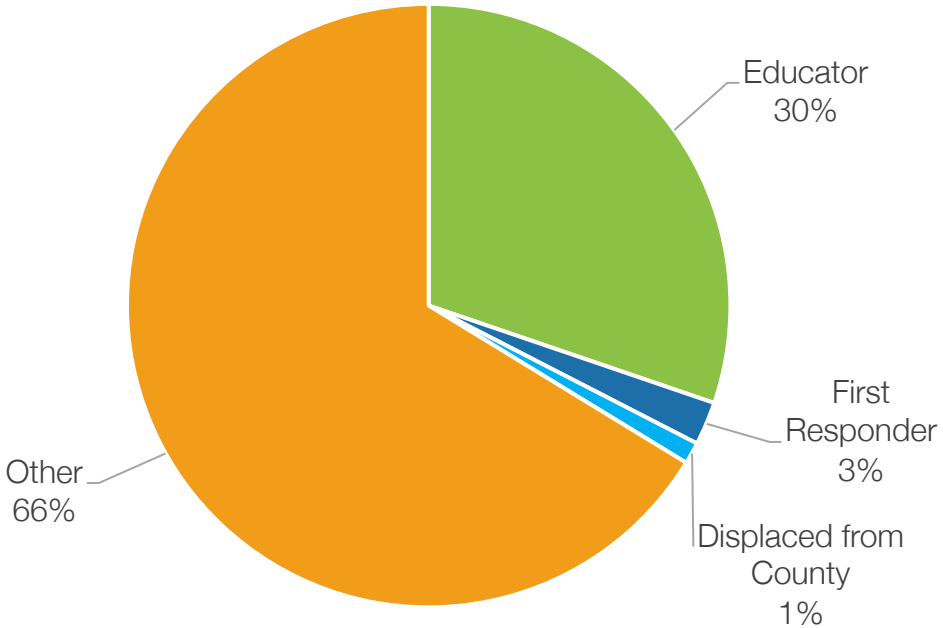


\* No purchases yet in Albany, Berkeley, Piedmont, and Pleasanton.

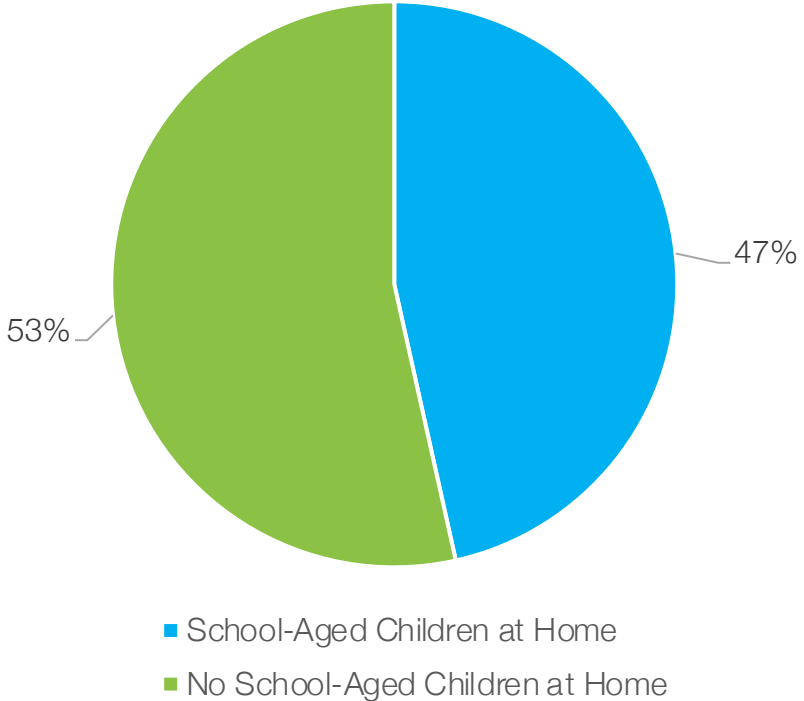


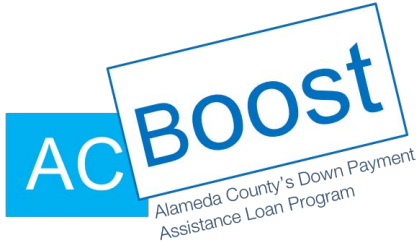
# Household Composition of Successful Purchasers

86 Households



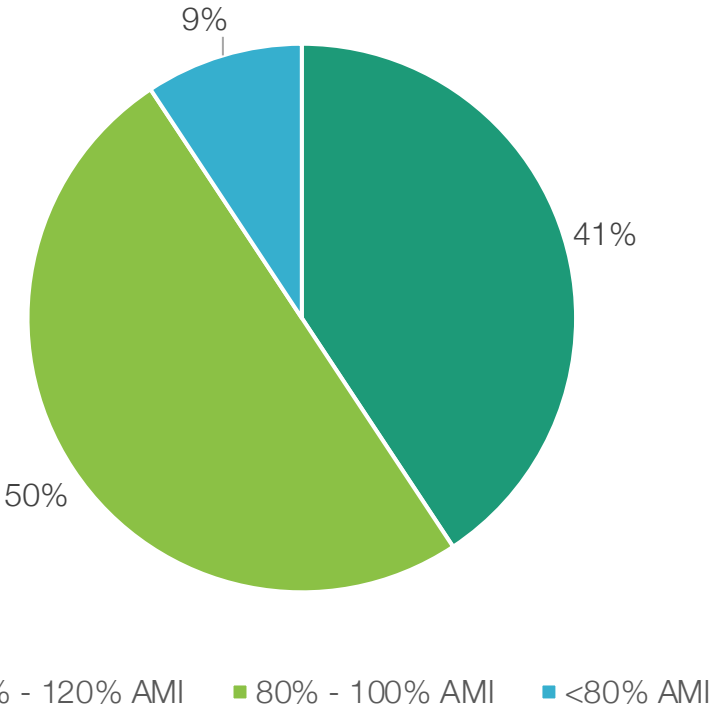
86 Households



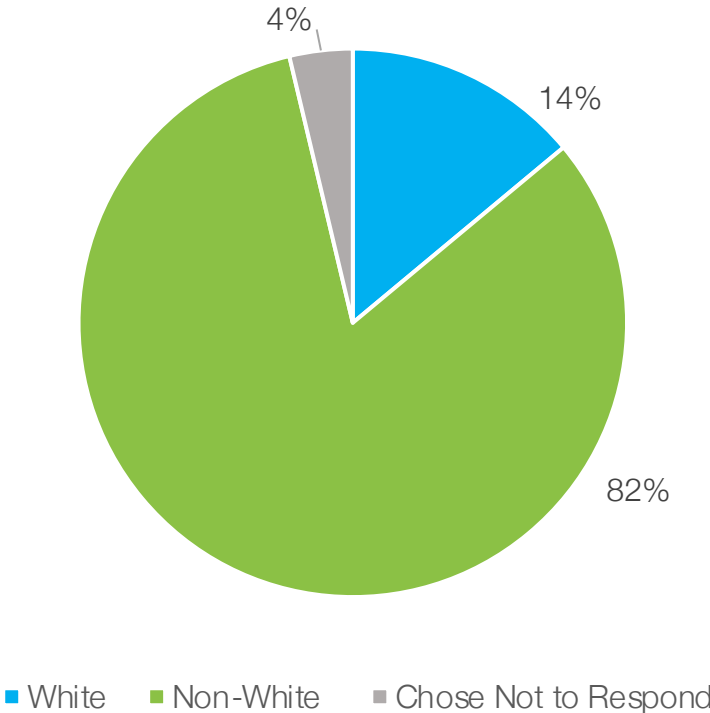


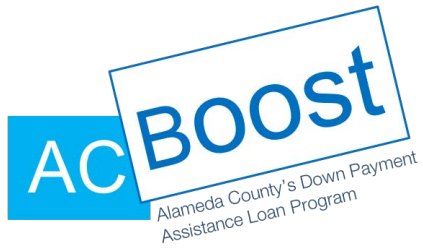
# Household Composition of Successful Purchasers

86 Households



86 Households



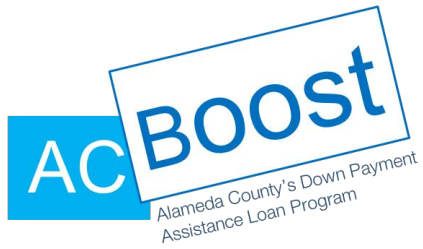


# Race composition of Pre-Applicants

*compared to Alameda County 2021 Data*

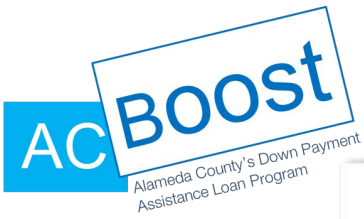
| Race                            | Funding Cycle 1:<br>Submitted Pre-Application* | Funding Cycle 2:<br>Submitted Pre-Application* | Funding Cycle 1:<br>Submitted Pre-Application* | Funding Cycle 2:<br>Submitted Pre-Application* | Compared to Alameda County General Population |
|---------------------------------|------------------------------------------------|------------------------------------------------|------------------------------------------------|------------------------------------------------|-----------------------------------------------|
|                                 | Raw Numbers                                    |                                                | By Total %                                     |                                                |                                               |
| Total Households                | 2294                                           | 6081                                           |                                                |                                                |                                               |
| Asian                           | 1365                                           | 3483                                           | 22.13%                                         | 23.54%                                         | 32.3%                                         |
| Black or African American       | 1750                                           | 4302                                           | 28.38%                                         | 29.08%                                         | 11.0%                                         |
| White                           | 643                                            | 1268                                           | 10.43%                                         | 8.57%                                          | 30.6%                                         |
| Multi-Racial                    | 849                                            | 2172                                           | 13.77%                                         | 14.68%                                         | 5.4%                                          |
| Latinx                          | 1064                                           | 2577                                           | 17.25%                                         | 17.42%                                         | 22.3%                                         |
| American Indian                 | 29                                             | 66                                             | 0.47%                                          | 0.45%                                          | 1.1%                                          |
| Pacific Islander                | 69                                             | 176                                            | 1.12%                                          | 1.19%                                          | 0.9%                                          |
| Middle Eastern or North African | 86                                             | 275                                            | 1.39%                                          | 1.86%                                          | N/A                                           |
| Other Race                      | N/A                                            | 7                                              | N/A                                            | 0.05%                                          | N/A                                           |
| Chose Not to Respond            | 312                                            | 469                                            | 5.06%                                          | 3.17%                                          | N/A                                           |

\*Race data reported at the individual level. This includes 6,167 household members for Funding Cycle 1 and 14,795 household members for Funding Cycle 2. Page 444



## Funding Cycle 2 Next Steps

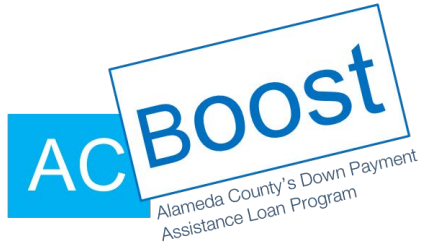
- Application Workshop #6 to be held on 3/30
- Additional monthly application workshops
- Approximately \$12 million in loan funds anticipated to be disbursed
- Sign up for our Stay Connected newsletter to receive updates - [www.hellohousing.org/stay\\_connected](http://www.hellohousing.org/stay_connected)



“Before AC Boost, **we could not imagine being able to afford a 3-bedroom home in the Bay Area.** Everything was just too expensive. **My wife and I considered moving out of the area** so we could afford to leave our cramped 1-bedroom apartment, but she’s a healthcare worker and there are more jobs here. **Thanks to AC Boost, our mortgage payment is less than many families pay to rent a 2-bedroom apartment.** We are so happy that this program is here to help first time homebuyers like us.”

“Before AC Boost, **I was renting** and unexpectedly the owner passed away. The new **property management out of the blue tripled my rent.** I had to move out and was couch surfing with my daughter for a while. We were uncomfortable. **A friend encouraged me to apply to AC Boost and so I did.** The process was scary, but in retrospect only because it was an unknown for me. I had to trust the process, and the victory was in the end when we got our keys. **I had reservations about purchasing a home as a single mother, but I am so happy that I did.** I am grateful for AC Boost, not only because of the funding but also because the program’s structure made homeownership less daunting and a possibility for my daughter and I”.

“I applied for the AC Boost Down Payment Assistance Loan Program to be both **competitive and a smart homebuyer.** I’m a first generation college graduate have dedicated himself to work that reflects my values. However, **becoming a homeowner in Alameda County in recent years felt like a distant dream.** Being able to set down roots has given me an incredible sense of stability – a stability that has allowed me to plan for my **family and career long term.** It feels incredible knowing the relationships and memories I have cultivated in Oakland will be a permanent part of my life. I love Oakland, and being able to set roots here kinda feels like Oakland loves me too”.



# Hello Housing's AC Boost Team



Florence Szeto  
Loan Closing  
Specialist



Jennifer Duffy  
President



Karen  
Khomsonerasinh  
Loan Underwriting and  
Compliance Specialist



Paxcelli Flores  
Special Projects  
Manager



Sarah Shimmin  
Senior Program  
Manager

If you have any questions or suggestions, please email our team at [ACBoost@hellohousing.org](mailto:ACBoost@hellohousing.org) or call (510) 500-8840.





## Frequently Asked Questions

### ***Black Wealth Builders Fund***

**A component fund of the Richmond Community Foundation (RCF Connects), established by Arlington Community Church.**

#### **What is the Black Wealth Builders Fund?**

The Black Wealth Builders Fund is a Donor Fund established at RCF Connects by Arlington Community Church (UCC), to support homeownership opportunities for Black/African American first-time home buyers.

#### **How does the fund support homeownership?**

Home ownership is one way to build wealth and preserve it for future generations. A major barrier to home ownership is the lack of funds required for a down payment or closing costs. The fund will provide a no-interest loan of up to \$15,000.00 for closing costs, down payment assistance, or other financial needs to ensure the close of escrow on a buyer's first home.

#### **Where can I purchase my home?**

The Black Wealth Builders Fund will provide funds for first time home buyers purchasing homes in Alameda and Contra Costa Counties

#### **How can I apply for the funds?**

The first step is to register for the first-time home buyer program with one of our partner agencies:

- Neighborhood Housing Services: (510) 237-6459 x 1601

Once you complete the program and have an accepted offer on your first home, our partner agency will submit an application to RCF Connects on your behalf to close any gaps you might have in your financing package.

#### **Do I have to pay back the funds I receive?**

Yes, you will have to repay the funds, but only when you sell or refinance your home in the future. At that time, the loan will be repaid in full (remember, no interest is charged) so that we can recycle the funds and provide this opportunity to the next group of first-time home buyers.

#### **How can I get more information?**

Contact one of our partner agencies or call **RCF Connects** at 510-234-1200.



CONSENT CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin, Councilmember Susan Wengraf

Subject: Budget Referral: No Right on Red Signs

RECOMMENDATION

That the City Council refers to the City Manager the implementation of "No Right on Red" signs to all intersections with traffic lights. Refer the necessary appropriations of \$135,000 to the 2022 November Annual Appropriations Ordinance.

FISCAL IMPACTS

An estimated \$250 per sign at a total of 135 intersections with four signs per intersection.

CURRENT SITUATION AND ITS EFFECTS

In living memory, the fundamental character of transportation planning and urban design of the United States has been the prioritization of the ease of travel of personal automobiles. From the way we design our roads to the rules we set for them, cars are given priority in the public right of way at the express detriment to pedestrians and cyclists. One such example is the de facto right given to cars to turn "Right on Red" at signalized intersections. This allows cars to drive through pedestrian crosswalks to make their turn in the same signal phase when pedestrians are directed to cross the street. On a daily basis, most drivers will yield to pedestrians before making their right turn and no harm occurs. This rule, however, puts pedestrians at immense risk nonetheless.

Right on Red was illegal in many parts of the country up until the gas crisis of the 1970's, when the rule was adopted in part to reduce car idling at intersections and promote fuel efficiency.<sup>1</sup> The repercussions for pedestrians and cyclists occurred almost immediately. In the 1980's, allowing Right on Red was found to cause an increase in pedestrian crashes by 60% and an increase in bicycle crashes by 100%.<sup>2</sup> This is a stark jump in injuries, especially when compared to the supposed benefits, which came out to between 1 and 4.6 seconds of saved driving time in a 1981 study.<sup>3</sup> Many cities have

<sup>1</sup> <https://www.energy.gov/articles/right-turn-red>

<sup>2</sup> <https://usa.streetsblog.org/2018/05/15/its-time-for-cities-to-rethink-right-turns-on-red/>

<sup>3</sup> <https://www.energy.gov/articles/right-turn-red>

begun the process of limiting Right on Red in the name of their Vision Zero goals. This has taken the form of restricting the turn at specific intersections, such as in Seattle and Washington D.C., as well as an outright ban in New York City.



*Berkeley had 133 signalized intersections as of the 2020 Pedestrian Plan, with two more added since.<sup>4</sup>*

Berkeley can join these cities in taking a new approach to achieving its Vision Zero goals by eliminating the ability of cars to turn right on red at all signalized intersections. Beyond the construction of new pedestrian and cyclist infrastructure and the slowing down of car traffic, policies like eliminating Right on Red are smart and easy ways to begin the process of deprioritizing car use in Berkeley and placing lives about driver convenience.

## BACKGROUND

Section 14.16.20 of the Berkeley Municipal Code states as follows:

- A. The City Traffic Engineer is authorized to determine those intersections at which it shall be unlawful for the operator of any vehicle to make a right, left, or U-turn, and shall

<sup>4</sup>[https://www.cityofberkeley.info/uploadedFiles/Public\\_Works/Level\\_3\\_-\\_Transportation/2020%20Pedestrian%20Plan%20Chapter%202%20adopted.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Transportation/2020%20Pedestrian%20Plan%20Chapter%202%20adopted.pdf)

place appropriate signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours in which event the same shall be plainly indicated on the signs.

B. Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, it is unlawful for the operator of any vehicle to disobey the directions of any such sign. (Ord. 3262-NS § 4.1, 1952)

#### ALTERNATIVES CONSIDERED

The City Council could approach Right on Red injuries by way of an explicit ban on such turns. However, given that Section 21453(b) of the California Vehicle Code allows such turns “except when a sign is in place prohibiting a turn”<sup>5</sup>, the City is likely preempted from implementing a ban of its own. Considering this, a policy of placing signs prohibiting turns at lighted intersections is proposed in this item.

#### ENVIRONMENTAL IMPACTS

Establishing a network of safe streets for pedestrians and bicycles incentivizes nonautomobile travel, reducing greenhouse gas emissions. The City estimates that transportation-related emissions accounts for approximately 60% of our community’s total annual greenhouse gas emissions.<sup>6</sup> By encouraging alternatives to car transportation by making pedestrian and cyclist infrastructure safer and more accessible, this policy stands to lower the emissions from our community’s dominant source of carbon emissions.

#### CONTACT

Terry Taplin, Councilmember, District 2, (510) 981-7120

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<sup>5</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=VEH&sectionNum=21453](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=VEH&sectionNum=21453).

<sup>6</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/12\\_Dec/Documents/2018-12-06\\_WS\\_Item\\_01\\_Climate\\_Action\\_Plan\\_Update\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/12_Dec/Documents/2018-12-06_WS_Item_01_Climate_Action_Plan_Update_pdf.aspx)





CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett, Mayor Jesse Arreguin,  
 Councilmember Sophie Hahn  
 Subject: Budget Referral: Commitment to La Peña Cultural Center

RECOMMENDATION

Refer to the AAO#1 Budget Process \$150,000 to support the recovery and renovations of La Peña Cultural Center, a cultural hub and historic community building space within the city of Berkeley.

BACKGROUND/CURRENT SITUATION

La Peña Cultural Center (La Peña) is a nonprofit 501(c)3 organization located in South Berkeley that has served as a multicultural hub for diasporic communities since 1975. La Peña uplifts underrepresented artists and art forms, promotes arts education, and supports community-led social justice movements. The word “Peña” refers to community gatherings centered around music, food, drink, and culture that foster dialogue around current issues. La Peña employs over 40 people, including teaching artists, sound engineers, light technicians and other event staff, administrative staff, interns, and contractors. Through this array of employment opportunities, La Peña focuses on creating job pipelines for its community, which includes many Berkeley residents of color. Through its tenant restaurant program, La Peña provides further job opportunities for small business entrepreneurs and restaurant workers. For the past 8 years, La Peña has leased its restaurant space to Los Cilantros, a family-owned restaurant spearheaded by Chef/Owner Dilsa Lugo, a West Berkeley resident for over a decade.

La Peña has reopened and revitalized its programming after closing during the COVID-19 pandemic. La Peña used the time it was closed to buckle down, dig deep, and improve its internal infrastructure to create a more resilient organization that can weather future storms. Due to this work, La Peña is in a period of recovery and growth; however, it has hit a roadblock in its reopening journey and is asking for the city’s support.

La Peña owns its 7,000-square-foot building, with four primary areas: the restaurant space, lounge, community room, and main theater. The building is quite old and in need of multi-phase repairs. La Peña successfully fundraised to update its roof in 2019. Since then, it has been fundraising for the next phase of critical repairs to bring its kitchen up to code. This phase also supports seismic retrofitting in the restaurant area to ensure the safety of the staff and patrons. If La Peña cannot break ground on this project this year, the negative economic impacts on La Peña, its employees, its tenant restaurant, its artists, and the community it serves will be disastrous. Not only would the inability to make repairs cause permanent layoffs of the Los Cilantros staff, but it would also force La Peña to substantially cut its programming. Such

decreases in programming would greatly lower the number of economic opportunities La Peña offers the hundreds of artists of color that teach and perform there.

Over the past year and a half, La Peña has organized a reputable project team consisting of an architect, a general contractor, and a project manager. La Peña has worked with the project team to build out its scope of work and budget to renovate the space. La Peña’s comprehensive budget for this project consists of professional fees, the general contractor’s scope of work, equipment costs, permit fees, soft costs and a 10% contingency. The total cost is broken down by category below for reference:

| <b>La Peña Renovation - Cost Breakdown by Category</b> |                  |
|--------------------------------------------------------|------------------|
| <b>Category</b>                                        | <b>Cost</b>      |
| General Contractor’s Bid                               | \$435,000        |
| Equipment Costs                                        | \$100,000        |
| Soft Costs                                             | \$36,500         |
| Contingency                                            | \$63,500         |
| <b>Total</b>                                           | <b>\$635,000</b> |

La Peña has fundraised twice to keep up with the rising costs of supplies and labor due to COVID-19 and inflation. Thus far, La Peña has raised \$435,000 towards its necessary renovations and secured the permits to break ground this year. La Peña’s most recent bid came in this month at over 45% higher than the estimated amount just months ago, bringing the project cost to \$635,000. La Peña is working with a highly recommended general contractor in the area, Cookline, which specializes in building and renovating restaurants. Because La Peña is a nonprofit with limited resources, Cookline has compared the bids from multiple subcontractors and asked for discount rates or donated time when possible. Additionally, La Peña’s project manager, Bright Street, has reviewed and approved all bids, confirming that the rising costs align with the cost increases experienced throughout the construction industry. This \$635,000 bid is thus La Peña’s best offer and covers only the necessary work.

Having already raised \$435,000, La Peña has exhausted its fundraising sources for this project from its network of funders and donors, and is thus asking the City of Berkeley to contribute the remaining \$150,000. With the City’s aid, La Peña can begin the necessary repairs and thrive again in this post-pandemic environment.

RATIONALE FOR RECOMMENDATION

La Peña’s restaurant space is a critical revenue stream for the organization’s financial security. These renovations will ensure that La Peña can continue to fulfill its mission: operating a thriving restaurant space that employs Berkeley community members, primarily people of color and immigrants. La Peña is a family business that serves as a pipeline for young people to gain experience in the hospitality industry and grow their careers. Over the years, La Peña’s restaurant partners have worked in tandem with La Peña’s diverse multicultural programming to support the community and unite people in art, activism, and movement building. La Peña is a historic multicultural hub rooted in the Latinx diaspora and serves as a bridge-building and advocacy center. La Peña relies on its restaurant space to create a table where people can gather and break bread while attending events, dancing, enjoying live music, or learning at a lecture series.

In conclusion, these renovations must happen as soon as possible if La Peña is to operate at its full capacity and preserve a vital portion of its income. These renovations are necessary to maintain safety, comply with health codes, and ensure efficiency. They are not merely for beautification. These upgrades must be undergone to keep the restaurant operating and keep La Peña afloat. La Peña serves underrepresented communities in the Bay Area. By supporting this project, the City of Berkeley would be directly supporting those communities.

FINANCIAL IMPLICATIONS

\$150,000 from revenue allocations through the AAO#1 process.

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Councilmember Ben Bartlett  
James Chang  
Kyle Tang

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jchang@cityofberkeley.info  
ktang@cityofberkeley.info





**BEN BARTLETT**

CITY COUNCILMEMBER, DISTRICT 3

CONSENT CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett and Mayor Jesse Arreguín (Authors),  
 Councilmember Kate Harrison (Co-Sponsor, Councilmember Sophie Hahn (Co-Sponsor)  
 Subject: Budget Referral: Commitment to the Completion of Affordable Housing at  
 1638 Stuart Street

RECOMMENDATION

Refer to the AAO#1 Budget Process \$50,000 to support the Completion of Affordable Housing at 1638 Stuart Street so it can complete exterior renovations and continue to provide eight units of permanently affordable housing for households earning less than 80% of area median income.

BACKGROUND/CURRENT SITUATION

In 2022, the 1638 Stuart Street Apartments project restored eight long-vacant apartments. The McGee Avenue Baptist Church (McGee) and the Bay Area Community Land Trust (BACLТ) partnered to lead the project. McGee has served the South Berkeley community by providing religious services and community services at this location since the 1930s. BACLТ has been preserving affordable housing in Berkeley since 2005.

The project restored one studio apartment and seven one-bedroom apartments, one of which is an ADA-compliant, wheelchair-accessible unit. BACLТ marketed the apartments in June and July 2022 and leased up all units by September 1, 2022. The property currently serves eight adults and two children, with household incomes ranging from 30-80% of the area median income (AMI).

The recent lease-up of this project attracted attention and celebration from across the region, including news coverage by KQED, KCBS, Berkeleyside, The Daily Cal, and the Berkeley Times. KQED’s article “‘Yes, in God’s Backyard’: Berkeley Church Spearheads New Approach to Affordable Housing” highlighted a new resident, Ms. Betty Gray, whose two-year-long struggle to find affordable, accessible housing in Berkeley has also been covered by Berkeleyside. Ms. Gray said, “for people to go out of their way to be kind to help you ... it’s new, and it makes you feel wanted and not hopeless.” “[Ms. Gray] said she feels a sense of community with her neighbors. The proximity of the church has allowed her to benefit from church services, like food and plant drives.”<sup>1</sup>

However, due to unexpected physical rehabilitation challenges, unexpected delays due to the COVID-19 pandemic, and unplanned cost inflation, the project went over time and exceeded the budget by nearly \$100,000. BACLТ has raised private donations to cover a portion of the financial gap and is requesting \$50,000 from the City’s excess revenue allocations to cover the remaining gap to complete the project’s exterior components. These components include exterior landscaping,

<sup>1</sup> Anaïs-Ophelia Lino, ‘Yes, in God’s Backyard’: Berkeley Church Spearheads New Approach to Affordable Housing, KQED (Sep. 15, 2022), <https://www.kqed.org/news/11925690/yes-in-gods-backyard-berkeley-church-pioneers-new-approach-to-affordable-housing>.

walkways, and a driveway. The driveway includes a parking pad for the apartment's shared electric vehicle—donated by the Berkeley Rotary Club—which will provide transportation access to lower-income households which otherwise could not afford it.

#### RATIONALE FOR RECOMMENDATION

The cost to preserve these eight units was \$3,324,000 (about \$415,500 per unit), which is about 40% of the cost of building new affordable units. Recent data from the CA Department of Housing and Community Development show that the average cost of building an affordable housing unit in the Bay Area is over \$1,000,000 per unit. The Stuart Street project received \$2,054,000 from the City's Small Sites Program (62% of total project costs). BACLT is requesting \$50,000 to ensure it can cover the final costs of exterior concrete and landscaping. The original City investment was approximately \$257,000 subsidy per unit. An additional \$50,000 (\$6,250 per unit) would bring the total City investment to \$263,000 per unit. All eight units are permanently affordable for households earning less than 80% AMI.

The City's additional funding commitment would enable the project to be completed as envisioned, with plans to convert it into a permanently affordable housing cooperative in which lower-income residents will have stability and pride. Additionally, this project will serve as a regional model for other community partnerships between faith-based organizations and affordable housing developers.

#### FINANCIAL IMPLICATIONS

\$50,000 from excess revenue allocations through the AAO#1 process. The City of Berkeley stands to benefit from the completion of eight permanently affordable housing units at 1638 Stuart Street.

#### ENVIRONMENTAL SUSTAINABILITY

Not applicable

#### CONTACT PERSON

Councilmember Ben Bartlett  
James Chang  
Kyle Tang

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jchang@cityofberkeley.info  
ktang@cityofberkeley.info



Kate Harrison  
Vice Mayor, District 4

CONSENT CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Vice Mayor Harrison, Councilmember Hahn, and Mayor Arreguin

Subject: Resolution and Referral Supporting Local Implementation of SB 379: Online Instant Solar Permitting Process For Residential Solar And Solar-Plus-Storage Energy Systems

RECOMMENDATION

1. Adopt resolution supporting local implementation of SB 379 requiring cities to adopt online instant solar permitting process for residential solar and solar-plus-storage energy systems; and
2. Refer to the City Manager and Planning Department, consistent with SB 379 and climate goals, to explore and move swiftly to apply for applicable grants and implement automated solar permitting platforms to reduce permit review time for solar energy and battery storage systems.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Consistent with prior state law, the City of Berkeley approves administratively within one day applications to install solar energy systems through the issuance of low-cost building permits or similar non-discretionary permits for small residential rooftop solar energy systems. However, the new SB 379 law requires permits to be approved instantly by next year using an online and automated permitting platform that verifies code compliance and issues permits in real time. Non-competitive state grant monies are now available to help Berkeley with the transition, and it is in the public interest to apply for these grants and swiftly comply with the new law consistent with the City's ambitious climate goals.

BACKGROUND

Berkeley is committed as part of its Climate Action Plan and related policies to reduce greenhouse emissions, including through deploying renewable electric technology locally. Local clean and reliable energy is key to a more resilient electric grid in the face of increasing power shutoffs and electricity shortages. Berkeley's electric load is expected to increase significantly as a result of vehicle and building electrification policies and trends.

California State Senate Bill (SB) No. 379, signed into law on September 16, 2022, requires most cities and counties in California to implement an online, automated permitting platform that verifies code compliance and issues permits in real time for a

solar energy system that is no larger than 38.4 kilowatts alternating current nameplate rating and an energy storage system paired with a solar energy system that is no larger than 38.4 kilowatts alternating current nameplate rating.

The goal of the law is to decrease approval times for residential solar and solar-plus-storage systems, cut permitting costs for local governments and homeowners, and help California meet its greenhouse gas emission reduction goals.

The law prescribes a compliance schedule for satisfying these requirements, with cities with populations greater than 50,000 required to satisfy the requirements by September 30, 2023. The law also requires cities to report to the California Energy Commission (CEC) when it is in compliance with specified requirements, and to self-certify their compliance with the law's provisions when applying for certain funds from the CEC.

In 2020, the National Renewable Energy Laboratory (NREL), a federal research center sponsored by the U.S. Department of Energy, released free software called SolarAPP+ that cities and counties can adopt to process permits for residential solar energy systems. In addition, the CEC is operating a program as part of the Senate Bill 129 (Skinner, Budget Act of 2021) budget to deploy \$20 million in non-competitive grants to help cities and counties adopt and integrate online automated permitting systems such as SolarAPP+ into existing Berkeley permitting systems like Accela, thereby streamlining compliance and recordkeeping. Funding is intended to help local governments in California recover the cost of establishing an eligible automated, online solar permitting platform. In most cases, most of the funding will be used to reimburse staff or consultant time associated with implementing the software.

Berkeley is eligible for a maximum funding award of \$80,000 based on its population size. The application deadline is May 1, 2023.

Jurisdictions such as Pleasant Hill, San Ramon, Sonoma County, Stockton, and Benicia have successfully deployed SolarAPP+ and San Jose, Los Angeles, Alameda County and Vacaville have adopted similar automated permitting software and reduced permit review time.

It is in the public interest to move swiftly to apply for applicable grants and implement automated solar permitting platforms to reduce permit review time for solar energy and battery storage systems consistent with SB 379. This item includes a resolution in support of this objective and a referral to staff to apply for non-competitive grants as appropriate.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time will be needed to complete the referral, but costs may be offset by non-competitive CEC grants.

**ENVIRONMENTAL SUSTAINABILITY**

Supporting expeditious permitting of local renewable energy is key to achieving the City's greenhouse gas reduction goals.

**CONTACT PERSON**

Vice Mayor Kate Harrison, (510) 981-7140

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

SUPPORTING LOCAL IMPLEMENTATION OF SENATE BILL NO. 379, ONLINE  
INSTANT SOLAR PERMITTING PROCESS FOR RESIDENTIAL SOLAR  
AND SOLAR-PLUS-STORAGE ENERGY SYSTEMS

WHEREAS, Berkeley is committed as part of its Climate Action Plan and related policies to reduce greenhouse emissions, including through deploying renewable electric technology locally; and

WHEREAS, local clean and reliable energy is key to a more resilient electric grid in the face of increasing electric shutoffs and electricity shortages; and

WHEREAS, Berkeley's electric load is expected to increase significantly as a result of vehicle and building electrification policies and trends; and

WHEREAS, state law requires cities to approve administratively applications to install solar energy systems through the issuance of low-cost building permits or similar non-discretionary permit and develop a streamlined permitting process for the installation of small residential rooftop solar energy system; and

WHEREAS, California State Senate Bill (SB) No. 379, signed into law on September 16, 2022, requires most cities and counties in California to implement an online, automated permitting platform that verifies code compliance and issues permits in real time for a solar energy system, as defined, that is no larger than 38.4 kilowatts alternating current nameplate rating and an energy storage system, as defined, paired with a solar energy system that is no larger than 38.4 kilowatts alternating current nameplate rating; and

WHEREAS, the law prescribes a compliance schedule for satisfying these requirements, with cities with populations greater than 50,000 required to satisfy the requirements by September 30, 2023; and

WHEREAS, the law requires cities to report to the California Energy Commission (CEC) when it is in compliance with specified requirements, and to self-certify their compliance with the law's provisions when applying for specified funds from the CEC, as specified; and

WHEREAS, In 2020, the National Renewable Energy Laboratory (NREL), a federal research center sponsored by the U.S. Department of Energy, released free software called SolarAPP+ that cities and counties can adopt to process permits for residential solar energy systems; and

WHEREAS, the CEC is operating a program to deploy \$20 million in non-competitive grants to help cities and counties adopt and integrate online automated permitting systems such as SolarAPP+ into existing Berkeley permitting systems like Accela,

thereby streamlining compliance and recordkeeping; and

WHEREAS, jurisdictions such as Pleasant Hill, San Ramon, Sonoma County, Stockton, and Benicia have successfully deployed SolarAPP+ and San Jose, Los Angeles, Alameda County and Vacaville have adopted similar automated permitting software and reduced permit review time; and

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that it hereby refers to the City Manager and Planning Department to move swiftly to apply for applicable grants and implement automated solar permitting platforms to reduce permit review time for solar energy and battery storage systems consistent with SB 379.







Housing Advisory Commission

### ACTION CALENDAR

November 3, 2022

*(Continued from October 11, 2022)*

To: Honorable Mayor and Members of the City Council  
 From: Housing Advisory Commission  
 Submitted by: Libby Lee-Egan, Chairperson, Housing Advisory Commission  
 Subject: Harriet Tubman Terrace Tenant Support

### RECOMMENDATION

Recommend City Council take the following actions:

- Review the video created by tenants about conditions at Harriet Tubman Terrace that was shown at the July 7, 2022 Housing Advisory Commission meeting;
- Direct the City Manager to investigate health and safety violations and other grievances identified by tenants at Harriet Tubman Terrace; and
- City Council request Harriet Tubman Terrace provide tenants with a dedicated tenant advocate to assist with relocation and other needs.

### FISCAL IMPACTS OF RECOMMENDATION

Staff time to research, investigate, report and enforce with ongoing follow up, making sure that tenants experience continued safety, protections, reparations and compliance from the contractors, vendors, management and all responsible parties.

### CURRENT SITUATION AND ITS EFFECTS

At the Housing Advisory Commission (HAC) meeting on July 7, 2022 the Commission heard and took 2 actions on an item regarding an ongoing situation at Harriet Tubman Terrace (HTT) affecting the low income seniors and disabled tenants residing there. At the meeting the Commission heard testimony and watched video evidence that showed appalling treatment and neglect of HTT's tenants by staff and subcontractors. Residents and community members created a video of the conditions at HTT that was presented at the July 7, 2022 HAC meeting. The video is available at the following link: [bit.ly/HTT-Renewal](https://bit.ly/HTT-Renewal). A Dropbox account is not required to view the video (if prompted).

At the July 7, 2022 meeting, the HAC took the following actions:

Action: M/S/C (Potter/Mendonca) to send a letter to the City Council requesting the following:

- City Council review the video created by tenants about conditions at Harriet Tubman Terrace that was shown at the July 7, 2022 Housing Advisory Commission meeting;
- City Council directs the City Manager to investigate health and safety violations and other grievances identified by tenants at Harriet Tubman Terrace;
- City Council request Harriet Tubman Terrace provide tenants with a dedicated tenant advocate to assist with relocation and other needs; and
- Council request Harriet Tubman Terrace owners/management and tenants report back to the Housing Advisory Commission in September to report progress with addressing the grievances identified by tenants.

Vote: Ayes: Lee-Egan, Mendonca, Potter, Rodriguez, and Sanidad, and Noes: None. Abstain: None. Absent: Calavita (excused), Fain (excused), Johnson (unexcused), and Simon-Weisberg (unexcused).

Action: M/S/C (Mendonca/Potter) to recommend City Council take the following actions:

- Review the video created by tenants about conditions at Harriet Tubman Terrace that was shown at the July 7, 2022 Housing Advisory Commission meeting;
- Direct the City Manager to investigate health and safety violations and other grievances identified by tenants at Harriet Tubman Terrace; and
- City Council request Harriet Tubman Terrace provide tenants with a dedicated tenant advocate to assist with relocation and other needs.

Vote: Ayes: Lee-Egan, Mendonca, Potter, Rodriguez, and Sanidad, and Noes: None. Abstain: None. Absent: Calavita (excused), Fain (excused), Johnson (unexcused), and Simon-Weisberg (unexcused).

### BACKGROUND

Staff and contractors associated with Harriet Tubman Terrace (HTT) have been relocating residents and remodeling individual units since September 2021. The residents at HTT are low income, elderly, and many are disabled. The construction work requires residents to move out of their unit with their possessions, move to another unit in the building while their original unit is under construction. Once construction is complete they are then ideally moved back into their original move-in ready unit. Relocation professionals have been hired to complete this work but accounts from residents have revealed that almost every step of this process has been handled poorly, which has caused undue stress on these elderly residents, many of whom are also disabled.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

### RATIONALE FOR RECOMMENDATION

The residents of Harriet Tubman Terrace represent multiple constituencies who need protection: all are low income and elderly but many are also disabled and people of color. People in these groups can become disenfranchised and exploited by those with more power. The hope is that the investigation recommended in this report will correct and repair all violations and act as a force that will put an end to these types of abuses in our community and a disgrace to our humanity and our society's legal structures.

### ALTERNATIVE ACTIONS CONSIDERED

Commission discussion included other avenues HTT's tenants have to address these issues. Supplemental communication from HTT management referred to a grievance process but tenants' testimony implied multiple barriers for disenfranchised residents to use that effectively.

### CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

Staff recognize the importance of ensuring the residents of Harriet Tubman Terrace are well-supported and maintain a high-quality of living. Staff also appreciate the Commission's work to understand and take action regarding the tenant concerns identified in an effort to improve the living conditions for vulnerable seniors. The following information is intended to provide additional context for Council's consideration of this matter.

Harriett Tubman Terrace is an affordable development subject to requirements from the U.S. Department of Housing and Urban Development and California's tax exempt bond program. However, it is not funded by the City through the Housing Trust Fund or other affordable housing funding and regulatory program. This means that the property is not in the Department of Health, Housing, and Community Services' Housing and Community Services Division (HHCS/HCS) monitoring portfolio and HHCS has no oversight authority.

Following notification to the HAC of the building's condition, HHCS/HCS immediately contacted the City's Building Services' Housing Code Enforcement Program, and the property ownership, Foundation Housing, to receive an update. Building Services reported that Foundation Housing complied with all of the designated City inspections and permits for the scope of rehabilitation work taking place at the property.

The Housing Code Enforcement program also indicated they conducted inspections on 17 units and the common area at this property since 2019 (Foundation Housing acquired the property in 2021 from a housing investment group that purchased the property in 2019). At the time of writing this report, there are two open cases and the remainder are closed, meaning Housing Code Enforcement found the property to be in compliance with code requirements and /or building permits related to the complaints filed. The latest request for service was received on March 2022 for Unit 401. No housing violations were observed during the inspection and the case was closed.

The two open cases are for Units 503 and 603 (both opened on July 2020) and have been assigned to a Housing Inspector. For both units, the Housing Inspector has directed the owner to correct an inoperable exhaust fan and the required building permit has been issued.

HHCS/HCS coordinated Foundation Housing representatives attendance at the July 7, 2022 to provide the HAC, Harriet Tubman Terrace residents, and public with direct updates on their work and the responses to tenant claims. Following the July meeting, Foundation Housing representatives (based in Washington, DC) flew out to visit the site and meet directly with tenants, advocates, and HAC commissioners. At the time of writing this report in August 2022, Foundation Housing representatives indicated they will attend the September 1, 2022 HAC meeting to provide additional updates on their rehabilitation work and efforts to support residents. A statement from Foundation Housing is included as Attachment 3.

All investigations into health and safety violations fall under the purview of the City's Planning and Building Services Department. Council may endorse the HAC's recommendation for HTT to provide tenants with an advocate but this is not an action HHCS/HCS has the authority to implement or enforce. Staff are encouraged by the actions taken by property ownership to correct the tenant complaints. Tenants may also seek out mediation and other services from the Rent Board if they feel their rights are not honored or treatment is discriminatory. At the time of writing this report in August 2022, HHCS/HCS is coordinating with HHCS/Aging Services to conduct outreach to HTT residents to connect them with City services and opportunities for support.

#### CONTACT PERSON

Mike Uberti, Secretary, Health, Housing and Community Services, (510) 981-5114

#### Attachments:

- 1: HAC Supplemental Communication 2022.07.07.pdf
- 2: HAC Letter to council July 2022.pdf
- 3: Statement from Foundation Housing

Date: July 6, 2022  
To: Housing Advisory Commission  
Submitted By: Cassandra Palanza, Foundation Housing on Behalf of Harriet Tubman Renewal LP (the "Owner") of Harriet Tubman Apartments (the "Property")

To Whom It May Concern:

We submit this for the Housing Advisory Commission ("HAC") to have in its record in response to the recommendations made by Ms. Mendonca of District 8. We welcome open communication with any organization but ask the specifics are provided in order for us to respond appropriately. Many of the responses below are being done based on speculation of specific things we have resolved in the last few months with acknowledgement of some unresolved matters since much of the memo supplied, only intimates at things with no specificity. We hope that resources that can be spent on serving our residents are not mired in "investigations", that we strongly believe will be unfounded based on the amount of time doing our own investigation and research in response to any previously raised issues. We recognize that sometimes, resident populations go to their local officials whom they have a relationship with and they trust. We encourage that. All we ask is that information is immediately reported to us so we may address it with as specific as possible details to ensure full resolution. Management cannot respond in generalities. We strongly feel we have a team in place that is responding to a myriad of circumstances at the Property and working with the residents is and will remain to be one of our top priorities. Our hope is over the next several weeks with additional resources being added, the residents will begin to feel more at ease with all the improvements and management of the Property.

Regarding many of the allegations, first and foremost, we take allegations of violating health and safety seriously. Any tenant that lives at Harriet Tubman that feels their life is in danger should report such danger to the police. Any tenant that experiences a grievance or is displeased with something, may submit a grievance in accordance with the Properties grievance policy attached hereto for reference. Any intimation that our residents are having crimes committed against them, specifically elder abuse, by anyone in Management or Ownership is categorically false and if a perceived crime is believed to be committed it should be reported immediately for a full investigation. Allegations of elder abuse are not taken lightly and deemed a serious matter.

Residents should feel safe in reporting anything they are displeased with and if they feel strongly about these allegations then they should be written up and provided to a trusted person who can work with Ownership on any allegations. Again, to date, we have no reported cases of elder abuse that are being investigated by any channel of authority over such matter and our hope is with continued communication the relationship between management and the residents will continue to improve, which we feel has in the last several weeks.

Violations that may exist are from the Planning and Development Department (the "PDD"). As violations are received, they are addressed. There are currently two open violations that we are aware of. We have confirmed that these matters are being repaired during the construction work and completion will be submitted to the PDD. All tenants are encouraged to report all matters to management. In order for things to be addressed timely, management should be the first point of contact. Absent substantive violations to which we can respond, which we are happy to do so, we are not aware of the allegations alleged by Ms. Mendonca in the first paragraph of her memo.

Additionally, we are in receipt of a video produced and submitted to HAC regarding the ongoing construction work at Harriet Tubman Apartments. The scope of work for the accessibility units meet the federal standard for accessibility and have been signed off on by local and state officials through our application process for Bonds and LIHTC's. We are happy to provide the City Inspection Log wherein these units were inspected ,passed, and deemed suitable for occupancy. If a resident has a mobility impairment or need for something outside the scope of their apartment or an accessible designed apartment, they should submit a Section 504 reasonable accommodation ("RA") request to management for management to carry out. Reasonable accommodations can be made at any time and if a resident cannot fill out the paperwork or does not want to, management will assist them. Please be aware, since this video was submitted to Management and some of the residents intimate in the video that they may or may not need accommodation, Management will reach out to them to see if we can assist in any RA request they may need. This is not a retaliatory action but required by management when a resident asserts a need for an accommodation.

Rodent, roaches and filth should absolutely be reported to management immediately. We have pest control services that can mitigate these issues. Pest control is the second Friday of the month and as needed or requested by management. We are going to schedule a 100% walk with pest control and some residents have requested frequent pest control in their units. We will continue to monitor the pest situation and if additional services are warranted we will provide them. If residents follow the grievance policy on reporting things for habitability matters and they are not resolved to the resident's satisfaction, the regulators of our property will ensure oversight so that matters are responded to. We cannot stress enough the importance of reporting all things to management first. They are our first line of defense for fixing and maintaining habitability. In addition to the Grievance Policy, if residents feel they are not being heard, at the end of this response is a communications tree for residents to work with which includes all of the contact information of management up to an owner's representative throughout the duration of construction. This does not circumvent the Grievance Policy but rather provides additional points of contact for residents to try and expedite their requests. It should be noted, while Owner is committed to rectifying all issues, if residents do not go to management first, then there could be continued delay of resolving their concerns.

To date, we have received inquiries from CAHI regarding asbestos abatement and security matters. Below is our official response to CAHI regarding asbestos concern:

“With respect to your inquiry – asbestos testing was completed prior to the work commencing. During the rehab work that is ongoing, whenever the scope of work being performed includes disturbing asbestos containing materials the work is only performed after the resident has been temporarily relocated to another unit. While the asbestos abatement work is being performed, the unit is closed and sealed off – please see attached photos. In situations in which the asbestos containing materials or suspected asbestos containing materials (“ACMs”) being disturbed are classified as “friable” ACMs, the units have air clearance testing completed by a licensed 3<sup>rd</sup> party environmental services provider prior to the containment being removed and the unit reoccupied. All ACM abatement work is being performed by contractor licensed to do this work

in CA. The abatement contractor posted all of the required notices with the state, local jurisdiction and residents prior to the abatement work at the property. Attached for your reference is the notice that was posted prior to the asbestos work beginning (please note that in this word document the date is set to automatically update to the current date on the day the document is opened).”





With respect to security in the building, Owner does not provide a security company. The building is controlled by controlled fob access and there are plans to improve the camera system within the building. Simultaneously with the issuance of this response, we are working on response to CAHI regarding security.

We empathize with the disruption that construction can cause. It can be very taxing for residents and we understand that, truly we do. We have, for the duration of construction, funded a relocation coordinator and moving company. Residents should feel that, while an inconvenience, they are only temporarily relocating to another apartment for the duration of their in-unit work. We did this plan because this property in particular has many residents with extreme quantities of contents in their apartments and it would have been challenging for our construction team to work in the units with all the belongings in there. We have consistently evaluated our relocation plan and if it makes sense to adjust it, we do. We have evaluated in recent weeks and recognize there were some hiccups and construction delays. Our accessible units, which were the most complicated to construct, were renovated first and we incurred numerous delays that we should not have going forward. Additionally, there were cosmetic issues that were not satisfactorily completed (ie. Toilet paper holder, mirror, blinds, etc) prior to returning a resident to their unit. We acknowledge and apologize for this. We have high standards for our community and strive to meet them every day. While I thought we were moving on from some of the displeasure we recognize some of the residents may still be upset or unhappy and we will work to foster that trust with more communication to them and in person meetings over the following weeks to discuss.

While we cannot address every item in the video in a written response to the Commission, at this time, we can highlight a few items that we know residents were upset with and work on a list of responses if the Commission would like additional matters answered. The electrical chord noted in the video is a cosmetic issue and not a safety issue. We are working with our construction team on a solution that limits the visibility of any chord. There is no electrical or fire hazard with respect to the chord mentioned in the video. We will communicate to residents that a solution to the chord in the kitchen light is still being figured out to provide for the best cosmetic solution this week via an FAQ that we are putting together for our residents. Management also maintains a binder of all notices sent to residents during construction and we are happy to show anyone all of the notices communicated to residents.

Blinds and screens – everyone will return to their unit with blinds. Due to shipping delays, a resident may return to their unit with their existing blinds. We have been working to have all materials stored and available at each unit being constructed but may have to return to install the blinds. Screens have been ordered and arrived damaged and are being reproduced. Again, we know this is frustrating and going forward, while not ideal, no resident will return to their unit without blinds installed. While many of these are inconvenient and hassles residents should not have to deal with, we have put processes in place with management and relocation actively communicating with our residents. We are walking units prior to each resident moving back and creating a pre-inspection report to address any concerns prior to a resident moving back as well as managing expectations. Our relocation coordinator and management agent have been empowered to push back and not accept units if they are not acceptable as well as work with our contractor to determine if there are items residents are not happy with are in the scope or routine maintenance items that should be added to the scope of work.

**Additionally, we have weekly meetings with the following positions relevant to Harriet Tubman where we discuss all things construction and relocation:**

**Foundation Housing:** Asset Manager, Director of Asset Management, Project Manager (Cassandra Palanza)

**Development Partner:** Pennant Housing Group (2-3 individuals)

**Precision Construction:** Superintendent, General Contractor, Project Manager

**FPI Management:** Community Director, Portfolio Manager, Senior Director and Relocation Coordinator

Our hope is the amount of staff committed to the completion of this project and its future preservation is not lost in a residents pursuit of “justice” for their concerns. Below is the contact information of personnel here to serve and respond to our residents through the duration of construction. The below team will reach out to the residents in the video supplied and confirm that all of their issues highlighted in the video are resolved. Cosmetic issue or things that a reasonable person who saw them should think to fix them (under the bathroom holes, backboard of the sink) will be addressed.

LaTonya Glover, Property Management, FPI Management  
[harriettubmanterrace.cd@fpimgt.com](mailto:harriettubmanterrace.cd@fpimgt.com), 510-843-0134

Brandon Heezen, Portfolio Manager, FPI Management  
[Brandon.heezen@fpimgt.com](mailto:Brandon.heezen@fpimgt.com)

Brandi Hutchinson, Senior Director, FPI Management  
[brandi.hutchinson@fpimgt.com](mailto:brandi.hutchinson@fpimgt.com)

Tamara Couto, Relocation Specialist, Advanced Relocation Services  
[advancedrelo11@gmail.com](mailto:advancedrelo11@gmail.com) / 559-903-3800

Jordan Bobb, Asset Manager, Foundation Housing  
[jordanb@foundationhousing.com](mailto:jordanb@foundationhousing.com)

Cassandra Palanza, Project Manager and Landlords Representative, Foundation Housing  
[Cassandra@foundationhousing.com](mailto:Cassandra@foundationhousing.com) /

Lastly, we are beginning to implement some things to try and assist our residents further with communication and supportive services during the rehab and after conclusion of the rehab. We have approved a TV monitor for updates and important information for residents. We are putting our resident services under review to see how many additional hours of resident services we can add to the property to give our residents additional support. We are ordering computers for a computer center for the residents to utilize. We are trying to see if we can add the layout to our scope but the approval to order these computers was granted and we look forward to giving residents access to these as soon as possible. In addition to moving assistance during the rehab, we are offering appointments with assistance for residents to go through their things and eliminate/donate unwanted items. See attached flyer. This service is completely voluntary but we recognize that there are many of our residents who lack the capability or physical strength to resolve the building amount of contents in their homes. To date, we have had three residents utilize the services and will look to establish this as an annual or semi-annual event. Rounding out all of the things we continue to work on, Management is sending out a survey to residents asking for feedback. It is voluntary and vital that we hear from everyone. Despite some of the challenges we also have many residents who are pleased with the progress this community is making and as we move forward we feel it is important to share all the information so that those stake holders involved can make informed decisions.

We recognize that in elderly populations, packing, moving, moving, unpacking is stressful. We are working to find additional resources for additional packing assistance and unpacking. No resident is asked to move anything except for their things they consider extremely valuable (jewelry, passport, documents and any other valuables that they do not want touched). If a resident feels they are not getting the assistance they need, then they should immediately notify the relocation coordinator. If the responsiveness is not there then Management should be notified followed by the Owners Representative.

To date we have completed 22 units. As of July 6, we have 5 tenants who have been temporarily relocated to other units. These residents are scheduled to return to their homes Friday, July 8, subject to management inspection and approval.

Thank you for your time. We look forward to completing this project and the residents being able to enjoy their improved community in a peaceful manner.

## Management Relations

### Grievance Procedures

Our goal at this apartment community is to provide outstanding customer service, responsive management and build good resident/management relations.

On occasion a dispute or problem may arise between a resident(s) and management. If there is a dispute, a discussion is encouraged on a one-to-one basis. If discussion does not provide a resolution, a resident may use the Grievance Procedure outlined in an effort to provide resolution.

The Grievance Procedure is designed to ensure that there is a fair and equitable process for addressing resident concerns and to ensure fair treatment of residents in the event that an action or inaction by a management representative adversely affects the resident of this apartment community.

Individuals, who feel they have been treated unfairly, may submit a grievance to management. Management will respond to valid requests involving concerns about conditions or quality of life at the apartment community. An informal review of issues and concerns will be conducted.

In order to clearly understand the issues, management will request a written statement of the issue for all parties to review. Management may need to obtain written statements from witness or other outside parties to fully review the concerns. An informal meeting will then be scheduled to review the concerns in an attempt to resolve the conflict. If this process does not resolve the matter, the resident may seek resolution through the process outlined below.

#### Example of Complaint Process

|                                                                                                                                                                                                                                                        |                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Step 1.</b> Resident notifies Community Director/Manager to discuss complaint, provides complaint in writing (Form available), (Reasonable Accommodations may be made for persons with disabilities) and discusses possible solutions.</p>       | <p><b>Step 2.</b> Community Director/Manager discusses matter with resident and replies in writing to complaint within 10 working days. If dispute is not resolved, proceed to the next step.</p> | <p><b>Step 3.</b> Resident appeals to Portfolio Manager in writing within 5 working days of the receipt of the written response. (Reasonable Accommodations may be made for persons with disabilities). Portfolio Manager will contact parties within 10 working days of receiving appeal. If dispute is not resolved, proceed to the next step.</p> |
| <p><b>Step 4.</b> Portfolio Manager will discuss grievance with resident and within 10 working days, provides decision and written statement on the grievance and take any necessary action. If dispute is not resolved, proceed to the next step.</p> | <p><b>Step 5.</b> Resident appeals to the Contract Administrator within 10 days. Contract Administrator responds to the Resident. If dispute is not resolved, proceed to the next step.</p>       | <p><b>Step 6.</b> Resident appeals to the HUD office within 10 days. HUD responds to the Resident</p>                                                                                                                                                                                                                                                |

#### Contact Information

|                                                                         |                                                                                                                                                                                               |                                                            |                                       |
|-------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|---------------------------------------|
| <p><b><u>Step One &amp; Two</u></b><br/>Community Director/Manager:</p> | <p><b><u>Step Three &amp; Four</u></b><br/>Management Agent:</p> <p><b>FPI Management, Inc.</b><br/>Regional Portfolio Manager<br/><b>800 Iron Point Road</b><br/><b>Folsom, CA 95630</b></p> | <p><b><u>Step Five</u></b><br/>Contract Administrator:</p> | <p><b><u>Step Six</u></b><br/>HUD</p> |
|-------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|---------------------------------------|

I hereby acknowledge that I have received a copy of the Grievance Procedure and understand the process described above. I also understand that a Complaint Form is available in the Rental Office and Community Bulletin Board.

\_\_\_\_\_  
Resident Name

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Resident Name

\_\_\_\_\_  
Resident Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Management Representative

\_\_\_\_\_  
Date



Libby Lee-Egan (Chairperson) & Mari Mendonca (Vice Chairperson)  
*Berkeley Housing Advisory Commission*

July 15, 2022

Mayor Arreguín and Berkeley City Councilmembers,

We write to you today to express deep concern and inspire urgent action on an issue affecting some of Berkeley's most vulnerable residents. At the Housing Advisory Commission (HAC) meeting on July 7, 2022 we heard and took action on an item regarding an ongoing situation at Harriet Tubman Terrace (HTT) affecting the low income seniors and disabled tenants residing there. For reference, see item #5 on the [agenda](#) and supplemental communication [here](#). At the meeting the Commission heard testimony and watched [video evidence](#) that showed appalling treatment and neglect of HTT's tenants by staff and subcontractors.

Most of the grievances were related to relocation to/from and construction in individual units. Commissioners and members of the public expressed distress at what these seniors were being subjected to, including:

- Inadequate relocation services. The video shows the home of a disabled tenant whose possessions were not unpacked from their boxes and equipment necessary to help him move about his home was not installed.
- Shoddy construction and poorly-planned improvements ill-suited to each home's resident. The video shows a tenant whose newly-remodeled bathroom has a hole in the wall where a toilet paper holder should be and a bathtub that is not usable for her as someone who has had a hip replacement.
- Overall lack of trust between staff and tenants. It was clear from testimony and video that tenants do not feel comfortable submitting complaints or requests. There are many reasons for this discomfort, including fear of retaliation. This is the primary reason for our 3rd recommendation below for a tenant advocate to assist the HTT residents.

Members of the HAC also received supplemental communication and heard public comment from HTT's project manager/landlord representative which insufficiently addressed some of these concerns.

During the meeting on July 7, the Commission voted unanimously to send this letter, requesting the mayor and City Councilmembers take action:

1. [Review the video](#) created by tenants about conditions at Harriet Tubman Terrace that was shown at the July 7, 2022 Housing Advisory Commission meeting;
2. Direct the City Manager to investigate health and safety violations and other grievances identified by tenants at Harriet Tubman Terrace;

3. Request Harriet Tubman Terrace provide tenants with a dedicated tenant advocate to assist with relocation and other needs; and
4. Request Harriet Tubman Terrace owners/management and tenants report back to the Housing Advisory Commission at our regular meeting in September to report progress with addressing the grievances identified by tenants.

At the same meeting, the Commission also unanimously approved a motion to put together an official recommendation on this matter. This report is under development right now and is forthcoming. Staff advised that this could take time for this to get on the council's calendar and because these Berkeley residents need help *now*, the HAC opted to send this letter before the report is finished.

If you have any follow up questions or require any additional information, please do not hesitate to reach out to the submitter of the item and Vice Chair Mari Mendonca ([marimendonca71@gmail.com](mailto:marimendonca71@gmail.com)) and Chair Libby Lee-Egan ([libbyco@gmail.com](mailto:libbyco@gmail.com)).

Sincerely,

*Libby Lee-Egan*

*Housing Advisory Commission Chairperson*

*Mari Mendonca*

*Housing Advisory Commission Vice Chairperson*

Links:

Agenda: [bit.ly/HAC7722-Agenda](https://bit.ly/HAC7722-Agenda)

Supplemental Communication: [bit.ly/HAC7722-SuppComm](https://bit.ly/HAC7722-SuppComm)

Video: [bit.ly/HTT-Renewal](https://bit.ly/HTT-Renewal)

**The following update from Foundation Housing was provided by to HHCS staff via email on August 24, 2022.**

The Landlord [Foundation Housing] continues with the renovations in accordance with local, state and federal guidelines and does not have open code violations as it pertains to any of the renovations.

Landlord, in response to tenant input has addressed, in landlords opinion, most items. Where landlord and tenant(s) differ we continue to work through those matters on an individual basis with each tenant. Landlord has added services including but not limited to more than doubling the resident services contract that will begin in September, changed the cleaning contract of the building and had the building deep cleaned twice with daily cleaning occurring in all common areas and public spaces, done a 100% unit pest inspection and begun regular pest control of units identified with housekeeping issues, offered residents 2 hours of cleaning of their apartments by a cleaning company at landlords expense, offered decluttering and unloading of residents items they do not want or want to dispose of (at landlords expense), paused relocation with the exception of deemed necessity in August, hired a new relocation coordinator (AutoTemps) set to resume tenant relocation in September and continued to focus on the completion of the much needed renovations of the building.

An open item that we acknowledge and realize is not resolved is the matter pertaining to the stoves in the one bedrooms and resolution is still pending on that item. Construction continues to experience supply chain issues and we continue to accommodate as necessary to make sure units are delivered completed with little to no disruption upon returning home. The screens to the windows arrived in early August and began installation on all newly installed windows. Approximately 40% of the apartment homes are completed. Landlord and management will be available on the next Housing Advisory Council call [September 1, 2022] to take questions and give additional updates on the status of things at Harriet Tubman Apartments.





Office of the City Manager

ACTION CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police  
Liam Garland, Director of Public Works  
LaTanya Bellow, Deputy City Manager

Subject: Resolution Accepting the Annual Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, Unmanned Aerial Vehicles (UAV's) and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code

RECOMMENDATION

Adopt a Resolution Accepting the Surveillance Technology Report for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, Unmanned Aerial Vehicles (UAV's) and the Street Level Imagery Project Pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance ("Ordinance"). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy the annual reporting requirement as outlined in Section 2.99.070.

One of the reporting categories of the surveillance technology use is whether complaints have been received by the community about the various technologies. To

date Berkeley Police Department Internal Affairs Bureau (IAB) has not received any external personnel complaints surrounding these technologies. External complaints from community members can be made in writing, via email, in person or via telephone. Complaints can be received with direct communication to Internal Affairs from the complainant and/or be received by any member of the Department and then forwarded through the chain of command. If a community member initiates a complaint against a subject employee and during the investigation it is determined the subject employee violated policy regarding the misuse of technology, an additional complaint is initiated by the Chief of Police.

Community members also have the right to initiate complaints against employees of BPD by reporting directly to the Police Accountability Board (PAB). The Director of Police Accountability notifies the Chief of Police when an investigation into a complaint is initiated by the PAB, which would prompt a parallel IAB investigation.

Attached to this staff report are Surveillance Technology Reports for Automatic License Plater Readers, GPS Trackers, Body Worn Cameras, and the Street Level Imagery Project. Additionally, this year the Berkeley Police Department had three exigent uses pursuant to BMC 2.99.040 in which the City Manager authorized the Police Department to temporarily use an Unmanned Aerial Vehicle, commonly referred to as a drone, for critical incidents. These incidents were reported by the City Manager to Council pursuant to 2.99.040(2) and are included in this annual report pursuant to BMC 2.99.040(3). At this time the Berkeley Police Department does not intend to acquire this technology but is actively consulting with the City Attorney's Office regarding developing a Use Policy.

#### BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the four technologies, the Surveillance Technology Reports were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report. Also attached is the Surveillance Technology Report for the temporary uses of an Unmanned Aerial Vehicle commonly referred to as a drone pursuant to BMC 2.99.040.

The Surveillance Technology Use Policy for ALPR technology was unanimously adopted at Council on September 13<sup>th</sup>, 2022 under Resolution 70,524\_N.S..

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the content of this report.

RATIONALE FOR RECOMMENDATION

City Council is being requested to adopt the attached resolution for the City to be in compliance with the Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution.

CONTACT PERSON

Jennifer Louis, Interim Chief of Police, (510) 981-5700  
LaTanya Bellow, Deputy City Manager, (510) 981-7012

ATTACHMENTS

1. Resolution
2. Body Worn Cameras
  - a) Surveillance Technology Report: Body Worn Cameras
  - b) Retention Schedule
3. Global Positioning System (GPS) Tracking Devices  
Surveillance Technology Report
4. Automated License Plate Readers  
Surveillance Technology Report
5. Street Level Imagery Project  
Surveillance Technology Report
6. Unmanned Aerial Vehicle (UAV's)  
Surveillance Technology Report

RESOLUTION NO. XX,XXX-N.S.

ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT FOR AUTOMATIC LICENSE PLATE READERS, GPS TRACKERS, BODY WORN CAMERAS, UNMANNED AERIAL VEHICLES (UAV'S) AND THE STREET LEVEL IMAGERY PROJECT

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance ("Ordinance"); and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Technology Reports satisfy the requirements of the Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby accepts the Surveillance Technology Reports for Automatic License Plate Readers, GPS Trackers, Body Worn Cameras, Unmanned Aerial Vehicles (UAV's) and the Street Level Imagery Project.

ORDINANCE NO. 7,592–N.S.

ADDING CHAPTER 2.99 TO THE BERKELEY MUNICIPAL CODE, ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Title

This ordinance shall be known as the Surveillance Technology Use and Community Safety Ordinance.

Section 2. That Chapter 2.99 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 2.99**

**Acquisition and Use of Surveillance Technology**

- 2.99.010 Purposes**
- 2.99.020 Definitions**
- 2.99.030 City Council Approval Requirement**
- 2.99.040 Temporary Acquisition and Use of Surveillance Equipment**
- 2.99.050 Compliance for Existing Surveillance Technology**
- 2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns**
- 2.99.070 Oversight Following City Council Approval**
- 2.99.080 Public Access to Surveillance Technology Contracts**
- 2.99.090 Enforcement**
- 2.99.100 Whistleblower Protections**
- 2.99.110 Severability**

**2.99.010 Purposes**

- A. Through the enactment of this Chapter, the City seeks to establish a thoughtful process regarding the procurement and use of Surveillance Technology that carefully balances the City’s interest in protecting public safety with its interest in protecting the privacy and civil rights of its community members.
- B. Transparency is essential when the City is considering procurement and use of Surveillance Technology.
- C. Although such technology may be beneficial to public order and safety, it has the potential to put both privacy and civil liberties at risk.
- D. Decisions relating to Surveillance Technology should occur with strong consideration of the impact such technologies may have on civil rights and civil liberties, as with all rights guaranteed by the California and United States Constitutions.
- E. Surveillance Technology may involve immediate, as well as ongoing, financial costs. Before the City acquires any Surveillance Technology, it must evaluate all costs associated with the procurement, installation, use and maintenance of the technology.

F. Decisions regarding whether and how Surveillance Technologies should be funded, acquired, or used should be governed by the City Council as the elected representatives of the City.

G. In addition to applicable local, state, and federal law, legally enforceable safeguards, including robust transparency, oversight, and accountability measures, are important in the protection of civil rights and civil liberties.

H. Data reporting measures will enable the City Council and public to confirm that mandated civil rights and civil liberties safeguards have been strictly observed.

### **2.99.020 Definitions**

The following definitions apply to this Chapter:

1. "Surveillance Technology" means an electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of covered Surveillance Technology include, but are not limited to: cell site simulators (Stingrays); automatic license plate readers; body worn cameras; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems, except as allowed under Section 2(d); social media analytics software; gait analysis software; and video cameras that record audio or video and can remotely transmit or can be remotely accessed.

"Surveillance Technology" does not include the following devices or hardware, unless they have been equipped with, or are modified to become or include, a Surveillance Technology as defined in Section 2 (above):

- a. Routine office hardware, such as televisions, computers, and printers, that is in widespread public use and will not be used for any surveillance functions;
- b. Handheld Parking Citation Devices, that do not automatically read license plates;
- c. Manually-operated, portable digital cameras, audio recorders, and video recorders that are not to be used remotely and whose functionality is limited to manually capturing, viewing, editing and downloading video and/or audio recordings, but not including body worn cameras;
- d. Devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles or thermal imaging cameras used for fire operations, search and rescue operations and missing person searches, and equipment used in active searches for wanted suspects;
- e. annually-operated technological devices that are not designed and will not be used to surreptitiously collect surveillance data, such as two-way radios, email systems and city-issued cell phones;
- f. Municipal agency databases;
- g. Medical equipment used to diagnose, treat, or prevent disease or injury, including electrocardiogram machines;
- h. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect

technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity;

i. Stationary security cameras affixed to City property or facilities.

2. "Surveillance Technology Report" means an annual written report by the City Manager covering all of the City of Berkeley's Surveillance Technologies that includes all of the following information with regard to each type of Surveillance Technology:

a. Description: A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing;

b. Geographic Deployment: Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically;

c. Complaints: A summary of each complaint, if any, received by the City about the Surveillance Technology;

d. Audits and Violations: The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response;

e. Data Breaches: Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response;

f. Effectiveness: Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes;

g. Costs: Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.

3. "Surveillance Acquisition Report" means a publicly-released written report produced prior to acquisition or to proposed permanent use after use in Exigent Circumstances pursuant to Section 2.99.040 (2), of a type of Surveillance Technology that includes the following:

a. Description: Information describing the Surveillance Technology and how it works, including product descriptions from manufacturers;

b. Purpose: Information on the proposed purposes(s) for the Surveillance Technology;

c. Location: The general location(s) it may be deployed and reasons for deployment;

d. Impact: An assessment identifying potential impacts on civil liberties and civil rights including but not limited to potential disparate or adverse impacts on any communities or groups;

e. Mitigation: Information regarding technical and procedural measures that can be implemented to appropriately safeguard the public from any impacts identified in

subsection (d);

- f. Data Types and Sources: A list of the sources of data proposed to be collected, analyzed, or processed by the Surveillance Technology, including “open source” data;
- g. Data Security: Information about the steps that can be taken to ensure adequate security measures to safeguard the data collected or generated from unauthorized access or disclosure;
- h. Fiscal Cost: The fiscal costs for the Surveillance Technology, including initial purchase, personnel and other ongoing costs, including to the extent practicable costs associated with compliance with this and other reporting and oversight requirements, as well as any current or potential sources of funding;
- i. Third Party Dependence and Access: Whether use or maintenance of the technology will require data gathered by the technology to be handled or stored by a third-party vendor on an ongoing basis, and whether a third-party may have access to such data or may have the right to sell or otherwise share the data in aggregated, disaggregated, raw or any other formats;
- j. Alternatives: A summary and general assessment of potentially viable alternative methods (whether involving the use of a new technology or not), if any, considered before deciding to propose acquiring the Surveillance Technology. ; and,
- k. Experience of Other Entities: To the extent such information is available, a summary of the experience of comparable government entities with the proposed technology, including any unanticipated financial or community costs and benefits, experienced by such other entities.

4. "Surveillance Use Policy" means a publicly-released and legally-enforceable policy for use of each type of the Surveillance Technology that shall reflect the Surveillance Acquisition Report produced for that Surveillance Technology and that at a minimum specifies the following:

- a. Purpose: The specific purpose(s) that the Surveillance Technology is intended to advance;
- b. Authorized Use: The uses that are authorized, the rules and processes required prior to such use, and the uses that are prohibited;
- c. Data Collection: Information collection that is allowed and prohibited. Where applicable, list any data sources the technology will rely upon, including “open source” data;
- d. Data Access: A general description of the title and position of the employees and entities authorized to access or use the collected information, and the rules and processes required prior to access or use of the information, and a description of any and all of the vendor’s rights to access and use, sell or otherwise share information for any purpose;
- e. Data Protection: A general description of the safeguards that protect information from unauthorized access, including encryption and access control mechanisms, and safeguards that exist to protect data at the vendor level;
- f. Civil Liberties and Rights Protection: A general description of the safeguards that protect against the use of the Surveillance Technology and any data resulting from



- its use in a way that violates or infringes on civil rights and liberties, including but not limited to potential disparate or adverse impacts on any communities or groups;
- g. Data Retention: The time period, if any, for which information collected by the surveillance technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s), the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond such period;
  - h. Public Access: How collected information may be accessed or used by members of the public;
  - i. Third Party Data Sharing: If and how other City or non-City Entities can access or use the information, including any required justification or legal standard necessary to do so and any obligations imposed on the recipient of the information;
  - j. Training: Training required for any employee authorized to use the Surveillance Technology or to access information collected;
  - k. Auditing and Oversight: Mechanisms to ensure that the Surveillance Use Policy is followed, technical measures to monitor for misuse, and the legally enforceable sanctions for intentional violations of the policy; and
  - l. Maintenance: The mechanisms and procedures to ensure maintenance of the security and integrity of the Surveillance Technology and collected information.

5. "Exigent Circumstances" means the City Manager's good faith belief that an emergency involving imminent danger of death or serious physical injury to any person, or imminent danger of significant property damage, requires use of the Surveillance Technology or the information it provides.

### **2.99.030 City Council Approval Requirement**

1. The City Manager must obtain City Council approval, except in Exigent Circumstances, by placing an item on the Action Calendar at a duly noticed meeting of the City Council prior to any of the following:

- a. Seeking, soliciting, or accepting grant funds for the purchase of, or in-kind or other donations of, Surveillance Technology;
- b. Acquiring new Surveillance Technology, including but not limited to procuring such technology without the exchange of monies or consideration;
- c. Using new Surveillance Technology, or using Surveillance Technology previously approved by the City Council for a purpose, or in a manner not previously approved by the City Council; or
- d. Entering into an agreement with a non-City entity to acquire, share or otherwise use Surveillance Technology or the information it provides, or expanding a vendor's permission to share or otherwise use Surveillance Technology or the information it provides.

2. The City Manager must present a Surveillance Use Policy for each Surveillance Technology to the Police Review Commission, prior to adoption by the City Council. The Police Review Commission shall also be provided with the corresponding Surveillance Acquisition Report that had been presented to council for that Surveillance Technology.

No later than 30 days after receiving a Surveillance Use Policy for review, the Police Review Commission must vote to recommend approval of the policy, object to the proposal, recommend modifications, or take no action. Neither opposition to approval of such a policy, nor failure by the Police Review Commission to act shall prohibit the City Manager from proceeding with its own review and potential adoption.

3. The City Manager must submit for review a Surveillance Acquisition Report and obtain City Council approval of a Surveillance Use Policy prior to engaging in any of the activities described in subsection (1) (a)-(d).

#### **2.99.040 Temporary Acquisition and Use of Surveillance Equipment**

Notwithstanding the provisions of this Chapter, the City Manager may borrow, acquire and/or temporarily use Surveillance Technology in Exigent Circumstances without following the requirements in Sections 2.99.030 and 2.99.040. However, if the City Manager borrows, acquires or temporarily uses Surveillance Technology in Exigent Circumstances he or she must take all of the following actions:

1. Provide written notice of that acquisition or use to the City Council within 30 days following the commencement of such Exigent Circumstance, unless such information is confidential or privileged;
2. If it is anticipated that the use will continue beyond the Exigent Circumstance, submit a proposed Surveillance Acquisition Report and Surveillance Use Policy, as applicable, to the City Council within 90 days following the borrowing, acquisition or temporary use, and receive approval, as applicable, from the City Council pursuant to Sections 2.99.030 and 2.99.040; and
3. Include the Surveillance Technology in the City Manager's next annual Surveillance Technology Report.

#### **2.99.050 Compliance for Existing Surveillance Technology**

The City Manager shall submit to the Action Calendar for the first City Council meeting in November of 2018, a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each Surveillance Technology possessed or used prior to the effective date of this ordinance.

#### **2.99.060 Determination by City Council that Benefits Outweigh Costs and Concerns**

The City Council shall only approve any action described in Section 2.99.030, 2.99.040, or Section 2.99.050 of this Chapter after making a determination that the benefits to the community of the Surveillance Technology, used according to its Surveillance Use Policy, outweigh the costs; that the proposal will appropriately safeguard civil liberties and civil rights to the maximum extent possible while serving its intended purposes; and that, in the City Council's judgment, no feasible alternative with similar utility and a lesser impact on civil rights or civil liberties could be implemented.

#### **2.99.070 Oversight Following City Council Approval**

The City Manager must submit to the Council Action Calendar a written Surveillance

Technology Report, covering all of the City's Surveillance Technologies, annually at the first regular Council meeting in November. After review of the Surveillance Technology Report, Council may make modifications to Surveillance Use Policies.

**2.99.080 Public Access to Surveillance Technology Contracts**

To the extent permitted by law, the City shall continue to make available to the public all of its surveillance-related contracts, including related non-disclosure agreements, if any.

**2.99.090 Enforcement**

This Chapter does not confer any rights upon any person or entity other than the City Council to cancel or suspend a contract for a Surveillance Technology. The Chapter does not provide a private right of action upon any person or entity to seek injunctive relief against the City or any employee unless that person or entity has first provided written notice to the City Manager by serving the City Clerk, regarding the specific alleged violations of this Chapter. If a specific alleged violation is not remedied within 90 days of that written notice, a person or entity may seek injunctive relief in a court of competent jurisdiction. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous manner on the City's website that describes, to the extent permissible by law, the corrective measures taken to address the violation. If it is shown that the violation is the result of arbitrary or capricious action by the City or an employee or agent thereof in his or her official capacity, the prevailing complainant in an action for relief may collect from the City reasonable attorney's fees in an amount not to exceed \$15,000 if he or she is personally obligated to pay such fees.

**2.99.100 Whistleblower Protections**

All provisions of Berkeley's Protection of Whistleblowers Workplace Policy, as promulgated by the City Manager on November 2, 2016 and including any updates or replacements thereto, shall apply.

**2.99.110 Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on March 13, 2018, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

**Surveillance Technology Report: Body Worn Cameras**

**October 1, 2021 – Sept. 30, 2022**

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Description</p> | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Body Worn Cameras are used to capture video recordings of contacts between department personnel and the public, to provide an objective record of these events. These recording are used in support of criminal prosecutions, to limit civil liability, increase transparency and enhance professionalism and accountability in the delivery of police services to the community. Body Worn Camera (BWC) files are shared with the Alameda County District Attorney’s office in support of prosecution for crime, and may be shared with other law enforcement agencies to support criminal investigations.</p> <p><b>Policy regarding activation of the Body Worn Camera BPD Policy 425.7</b></p> <p>Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.</p> <p>The BWC shall be activated in any of the following situations:</p> <ul style="list-style-type: none"> <li>(a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.</li> <li>(b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.</li> <li>(c) Self-initiated field contacts in which a member would normally notify the Communications Center.</li> <li>(d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.</li> <li>(e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.</li> <li>(f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.</li> </ul> <p><b>What data is captured by this technology:</b></p> <p>BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings</p> |
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|                                     | <p>protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.</p> <p><b>How the data is stored:</b></p> <p>BWC videos are stored on a secure server. All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.</p> <p><b>Retention period of data:</b></p> <p>See attached retention schedule.</p> <p>Summary of Body Worn Camera Videos Uploaded Oct. 1, 2021 to Sept. 30, 2022:</p> <table data-bbox="592 947 1024 1050"> <tr> <td>Total Number of Videos</td> <td>64,688</td> </tr> <tr> <td>Total Hours of Videos</td> <td>17,520</td> </tr> <tr> <td>Total GB of BWC Videos</td> <td>30,420</td> </tr> </table> <p>Summary of Digital Evidence Uploaded, Oct. 1, 2021 to Sept. 30, 2022:</p> <table data-bbox="659 1161 982 1430"> <thead> <tr> <th>Type</th> <th>File Count</th> </tr> </thead> <tbody> <tr> <td>Audio</td> <td>8,425</td> </tr> <tr> <td>Document</td> <td>1,804</td> </tr> <tr> <td>Image</td> <td>496,694</td> </tr> <tr> <td>Other</td> <td>2,807</td> </tr> <tr> <td>Video*</td> <td>79,303</td> </tr> <tr> <td><b>Total</b></td> <td><b>138,716</b></td> </tr> </tbody> </table> <p>* Includes all uploaded BWC videos and all other videos booked into the evidence management system. Other videos include iPhone videos uploaded, security camera video, copies of BWC videos (for redaction, etc.), and any other videos.</p> | Total Number of Videos | 64,688 | Total Hours of Videos | 17,520 | Total GB of BWC Videos | 30,420 | Type | File Count | Audio | 8,425 | Document | 1,804 | Image | 496,694 | Other | 2,807 | Video* | 79,303 | <b>Total</b> | <b>138,716</b> |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|--------|-----------------------|--------|------------------------|--------|------|------------|-------|-------|----------|-------|-------|---------|-------|-------|--------|--------|--------------|----------------|
| Total Number of Videos              | 64,688                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                        |        |                       |        |                        |        |      |            |       |       |          |       |       |         |       |       |        |        |              |                |
| Total Hours of Videos               | 17,520                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                        |        |                       |        |                        |        |      |            |       |       |          |       |       |         |       |       |        |        |              |                |
| Total GB of BWC Videos              | 30,420                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                        |        |                       |        |                        |        |      |            |       |       |          |       |       |         |       |       |        |        |              |                |
| Type                                | File Count                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                        |        |                       |        |                        |        |      |            |       |       |          |       |       |         |       |       |        |        |              |                |
| Audio                               | 8,425                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |        |                       |        |                        |        |      |            |       |       |          |       |       |         |       |       |        |        |              |                |
| Document                            | 1,804                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |        |                       |        |                        |        |      |            |       |       |          |       |       |         |       |       |        |        |              |                |
| Image                               | 496,694                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |        |                       |        |                        |        |      |            |       |       |          |       |       |         |       |       |        |        |              |                |
| Other                               | 2,807                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |        |                       |        |                        |        |      |            |       |       |          |       |       |         |       |       |        |        |              |                |
| Video*                              | 79,303                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                        |        |                       |        |                        |        |      |            |       |       |          |       |       |         |       |       |        |        |              |                |
| <b>Total</b>                        | <b>138,716</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                        |        |                       |        |                        |        |      |            |       |       |          |       |       |         |       |       |        |        |              |                |
| <p><b>Geographic Deployment</b></p> | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Body Worn Cameras are worn by all BPD uniformed officers city-wide at all times; BWC's are not deployed based on geographic considerations.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                        |        |                       |        |                        |        |      |            |       |       |          |       |       |         |       |       |        |        |              |                |
| <p><b>Complaints</b></p>            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Body Worn Cameras.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                        |        |                       |        |                        |        |      |            |       |       |          |       |       |         |       |       |        |        |              |                |

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| <p><b>Audits and Violations</b></p> | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>File meta-data are routinely reviewed by our BWC manager, to ensure required metadata fields are completed. There have been no complaints with regards to violations of the Surveillance Use Policy.</p>                                                                                                                                      |
| <p><b>Data Breaches</b></p>         | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to BWC data.</p>                                                                                                                                                                                       |
| <p><b>Effectiveness</b></p>         | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>Body Worn Cameras have proven effective in supporting criminal prosecutions, as video footage is available for all criminal prosecutions. Body Worn Cameras have been effective for training purposes, as footage can be reviewed in incident de-briefs. Body Worn Cameras have been extremely effective in support of Internal Affairs investigations and Use of Force Review.</p> |
| <p><b>Costs</b></p>                 | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the Body Worn Cameras, including cameras, replacement cameras, software, and Axon's secure digital evidence management system is \$222,442 per year over a five-year, \$1,112,213 contract. There is one full-time employee assigned to the BWC program, an Applications Programmer Analyst II, at a cost of \$168,940 per year, including benefits.</p>                                                |

## Surveillance Technology Report: Global Positioning System Tracking Devices

October 1, 2021 – Sept. 30, 2022

|             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Description | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Global Positioning System Trackers are used to track the movements of vehicles, bicycles, other items, and/or individuals.</p> <p><b>What data is captured by this technology:</b><br/>A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker identification label. The data does not contain any images, names of subjects, vehicle information or other identifying information on individuals.</p> <p><b>How the data is stored:</b><br/>The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.</p> <p><b>Retention period of data:</b><br/>Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.</p> <p>The Global Positioning System “Electronic Stake Out” (ESO) devices were not deployed during this reporting period. This program was suspended in mid-March 2020 due to the COVID-19 pandemic. In June of 2022, we renewed our service with the company and paid for new updated equipment with the intent of restarting the program. The program was not reimplemented during the dates specific to this report.</p> <p>GPS “Slap-N-Track” (SNT) devices were used in three separate investigations during this reporting period:</p> <ol style="list-style-type: none"> <li>(1) An investigation into individuals for their involvement in shootings that occurred in Berkeley. The case resulted in the arrest of two individuals involved in the shootings and the recovery of 2 rifles and 4 handguns.</li> <li>(2) An investigation into individuals involved in a shooting that occurred in Berkeley. The case resulted in 2 individuals being arrested for their involvement in the shooting and the recovery of gun parts, ammunition and various drugs.</li> <li>(3) An investigation into an armed robbery and shooting that occurred in Berkeley. The case resulted in the recovery of 1 shotgun, 2 handguns and drugs. The suspect currently has an outstanding warrant for his arrest.</li> </ol> <p>Data may be shared with the District Attorney’s Office for use as evidence to aid in prosecution, in accordance with laws governing evidence; other law enforcement</p> |
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|                       | <p>personnel as a part of an active criminal investigation; and other third parties, pursuant to a court order.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Geographic Deployment | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>GPS SNT devices are deployed with judicial pre-approval, based on suspect location, rather than geographical consideration.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Complaints            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There were no complaints made regarding GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Audits and Violations | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There were no audits and no known violations relating to GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Data Breaches         | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There were no known data breaches relating to GPS Trackers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Effectiveness         | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>The GPS ESO trackers were not used during this time period. The program was suspended in mid-March 2020 due to the COVID-19 pandemic. Our subscription was renewed and we upgraded our equipment. We have not used them during this reporting period.</p> <p>GPS SNT trackers are effective in that they provide invaluable information on suspect vehicle location during the investigation of complex cases where suspects may be moving around the Bay Area and beyond.</p> <p>GPS Trackers greatly reduce costs associated with surveillance operations. A bike may be left for days. Surveillance operations generally involve four or more officers for the entire duration of an operation. A moving surveillance is extremely resource-intensive, requiring multiple officers in multiple vehicles for extended periods of time. Using both types of GPS trackers eliminates the need for officers' immediate presence until officers are ready to apprehend the suspect(s).</p> |
| Costs                 | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the GPS "Slap-N-Track" (SNT) data service is \$1,800.</p> <p>The annual cost for the GPS "Electronic Stake Out" (ESO) devices this year was \$2,353.85. This was to upgrade our devices and for three years of tracking service for the devices.</p> <p>There are staff time costs associated with preparing and placing SNT trackers. The investigator must prepare a search warrant and obtain a judge's approval, and a small number of officers must place the tracker on the suspect's car. The total number of hours</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

is a fraction of the time it would take to do a full surveillance operation involving numerous officers.

There are staff time costs associated with preparing ESO trackers and placing ESO tracker-equipped bikes for bait bike operations. These are on the order of two-four hours per operation. The total number of hours is extremely small, given the large number of operations, and resulting arrests.

**Surveillance Technology Report: Automated License Plate Readers**

**October 1, 2021 – Sept. 30, 2022**

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <p>Description</p> | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Automated License Plate Readers (ALPRs) are used by Parking Enforcement Bureau vehicles for time zone parking and scofflaw enforcement. The City’s Transportation Division uses anonymized information for purposes of supporting the City’s Go Berkeley parking management program. ALPR use replaced the practice of physically “chalking” tires, which is no longer allowed by the courts.</p> <p><b>What data is captured by this technology:</b><br/>ALPR technology functions by automatically capturing an image of a vehicle's license plate, transforming that image into alphanumeric characters using optical character recognition software, and storing that information, along with relevant metadata (e.g. geo-location and temporal information, as well as data about the ALPR).</p> <p><b>How the data is stored:</b><br/>The data is stored on a secure server by the vendor.</p> <p><b>Retention period of data:</b><br/>During this reporting period collected images and metadata of hits werestored no more than 365 days. Metadata of reads were not stored more than 30 days. Current use policy adopted September 13, 2022 sets new retention periods that are now in effect.</p> <p style="text-align: center;"><b>Summary of ALPR Time Zone Enforcement Data</b></p> <p style="text-align: center;">Read Data (only retained for 30 days per prior policy)<br/>There was a total of 3,117,058 reads</p> <p style="text-align: center;">From 10/1/2021 to 9/30/2022<br/>Hit Data<br/>There were 76,650 “Hits”<br/>34,976 “Enforced Hits” resulted in citation issuance.<br/>1,134 “Not Enforced” valid, enforceable hits resulted in no citation issued, based on PEO discretion.</p> <p>40,540 Hits were not acted upon for a variety to reasons including but not limited to:</p> <ol style="list-style-type: none"> <li>1) Customer comes out to move a vehicle. PEO’s are directed not to issue that citation.</li> <li>2) Officer gets to the dashboard and sees a permit not visible from a previous location.</li> </ol> |
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|                                     | <p>3) Officer does a vehicle evaluation and confirms that the vehicle moved from the hit location (e.g. across the street within GPS range).</p> <p>4) Stolen car.</p> <p>5) Similar Plates.</p> <p>6) 600-700 GIG cars- 100 revel scooters.</p> <p>7) Officers mistakenly leave their LPR “on” collecting time zone enforcement data, but leave the area being enforced to drive to another location on another assignment, such as a traffic post at a collision scene. These hits are not enforced.</p> <p>Genetec is the vendor for the ALPR Time Zone enforcement system. A “read” indicates the ALPR system successfully read a license plate. The information that is generated when a plate is viewed by the ALPR camera is the license plate number, state and geographical (GPS) location it was viewed. A “hit” indicates the ALPR system detected a possible violation, which prompts the Parking Enforcement Officer to further assess the vehicle. At “hit” is when the “read” information is recognized as a license plate that matches, or does not match an entry in a list such as permit list or the stolen vehicle “hot list”. In many cases, hits are “rejected” or “not enforced”, meaning no enforcement action is taken, because the Parking Enforcement Officer determines the vehicle has an appropriate placard or permit, or there is other information or assignment which precludes citation.</p> <p style="text-align: center;"><b>Summary of ALPR Booting Scofflaw Enforcement Data</b></p> <p style="text-align: center;">0 vehicles booted from 10/1/21-9/30/22</p> <p>The Berkeley Police Department no longer maintains the ALPR Booting Scofflaw Enforcement Program. The contract to provide this service became cost prohibitive and the city opted not to renew the contract with the vendor. The city returned to having each PEO working a beat again become responsible for recognizing when a license plate has accumulated five or more unpaid parking tickets.</p> <p style="text-align: center;"><b>Summary of ALPR Law Enforcement Investigative Inquiry Data</b></p> <p style="text-align: center;">0 vehicle inquiries from 10/1/21-9/30/22</p> <p>All BPD ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes, or as otherwise permitted by department policy and law. All ALPR data is subject to the provisions of BPD Policy 415 - Immigration Law, and therefore may not be shared with federal immigration enforcement officials.</p> |
| <p><b>Geographic Deployment</b></p> | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>Only Parking Enforcement Vehicles are equipped with ALPRs. ALPRs are deployed based on areas where there are parking time restrictions. ALPRs are not deployed based on geographic considerations not related to parking and scofflaw enforcement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Complaints            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>There have been no complaints about the deployment and use of Automated License Plate Readers.</p>                                                                                                                                                                                                                                                                                                                                                                                                         |
| Audits and Violations | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>There have been no complaints of violations of the ALPR Surveillance Use Policy.</p>                                                                                                                                                                                                                                                                                                                                     |
| Data Breaches         | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to Automated License Plate Reader data.</p>                                                                                                                                                                                                                                       |
| Effectiveness         | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>ALPRs have proven effective in parking enforcement for time zone enforcement.</p> <p>ALPRs have proven effective in supporting enforcement upon vehicles which have five or more unpaid citations. The ALPR's ability to read and check license plates while being driven greatly increases efficiency, allowing an operator to cover larger areas more quickly without having to stop except to confirm a hit.</p>                                            |
| Costs                 | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual system maintenance cost for Genetec is \$51,720. This cost is borne by the Transportation Division, which covers warranties, support, and cellular connection costs.</p> <p>Genetec ALPR units are installed on 22 Parking Enforcement vehicles. Parking Enforcement personnel perform a variety of parking enforcement activities, and are not limited solely to time zone enforcement. Therefore, personnel costs specifically attributable to time zone enforcement are not tracked.</p> |

**Surveillance Technology Report: Street Level Imagery Project**

**October 1, 2021 – Sept. 30, 2022**

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <b>Description</b>           | <p><b>A description of all non-privileged and non-confidential information about the use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report will include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</b></p> <p>Street level imagery is utilized exclusively by authorized City staff for infrastructure asset management and planning activities. The street level imagery of City infrastructure assets in the Public Right of Way that is provided to the City will not consist of information that is capable of being associated with any individual or group.</p> |
| <b>Geographic Deployment</b> | <p><b>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</b></p> <p>Street level imagery was collected by driving through the entire community over a three week period. It is accessible to the City through a proprietary third-party application, Street SmartTM.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Complaints</b>            | <p><b>A summary of each complaint, if any, received by the City about the Surveillance Technology.</b></p> <p>There have been no complaints about the use of Street Smart TM.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Audits and Violations</b> | <p><b>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</b></p> <p>There have been no complaints with regards to violations of the Surveillance Use Policy.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Data Breaches</b>         | <p><b>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</b></p> <p>There have been no known data breaches or other unauthorized access to Cyclomedia Street Level Imagery data.</p>                                                                                                                                                                                                                                                                                                                                                                                                                               |

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| <p><b>Effectiveness</b></p> | <p><b>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</b></p> <p>Staff considered hiring contractors to use GPS in the field to create and update the infrastructure asset GIS data. This method is costly and time consuming. Cyclomedia’s unique and patented processing techniques allow positionally-accurate GIS data to be collected in a cost-effective way and over a shorter period of time than a “boots on the ground” GPS field survey.</p> <p>The Imagery extracted the following Citywide Infrastructure assets to create accurate and current Geographic Information Systems (GIS) data inventories:</p> <ul style="list-style-type: none"> <li>• Bus pads / stops</li> <li>• Maintenance Access Holes</li> <li>• Pavement Striping</li> <li>• Curb paint color</li> <li>• Parking meters</li> <li>• Pedestrian Signal</li> <li>• Pavement marking</li> <li>• Storm drains</li> <li>• Signs</li> <li>• Street trees</li> <li>• Traffic lights</li> </ul> <p>The street level imagery captured was also being used to:</p> <p>Created a street sign GIS layer with condition assessment to support compliance with the Manual on Uniform Traffic Control Devices Code and provide an accurate inventory of City signs. The existing sign inventory is contained in a spreadsheet that does not have accurate location data.</p> <p>Created a curb color layer with condition assessment to indicate where there are red, yellow, blue, white and green colors. This is critical to support Public Safety.</p> <p>Created pavement striping and paint symbol layers to support Transportation Planning and Vision Zero.</p> <p><b><u>Benefits Projected:</u></b></p> <p>The data from the street level imagery is being integrated into the City’s work order and asset management system for planning activities and to document repair and maintenance.</p> <p>Planners can use the street level imagery provided to the City to take measurements remotely, such as sidewalk width and public right of way impacts at proposed development locations.</p> <p>City staff can use the street level imagery to plan the location of road markings for pedestrian crossings, bike lanes or other striping.</p> |
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|              | <p>City staff can remotely take accurate measurements of infrastructure assets to adequately plan for repair and replacement.</p> <p>City staff can use street level imagery to enhance community engagement. The street level imagery can be used to identify and depict the impact of development such as an intersection restriping plan in order to article before and after conditions.</p> |                                            |                                    |                                    |
| <b>Costs</b> | <p><b>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</b></p>                                                                                                                                                                                                                                                                                   |                                            |                                    |                                    |
|              | <p>The total cost of the system is \$232,611 and is itemized below.</p>                                                                                                                                                                                                                                                                                                                          |                                            |                                    |                                    |
|              | <b>Year No.</b>                                                                                                                                                                                                                                                                                                                                                                                  | <b>Description</b>                         | <b>Cost</b>                        | <b>Notes</b>                       |
|              | 1                                                                                                                                                                                                                                                                                                                                                                                                | Licenses                                   | \$48,000                           | Resolution No: 69,482-N.S. 30JUN20 |
|              | 1                                                                                                                                                                                                                                                                                                                                                                                                | Professional Services for asset extraction | \$139,401                          | Resolution No: 69,482-N.S. 30JUN20 |
| 2            | Licenses and Support – One-Time                                                                                                                                                                                                                                                                                                                                                                  | \$41,100                                   | Resolution No: 70,487-N.S. 26JUL22 |                                    |
| 3            | License and Support – Ongoing Annual Costs                                                                                                                                                                                                                                                                                                                                                       | \$4,110                                    | Resolution No: 70,487-N.S. 26JUL22 |                                    |



**Surveillance Technology Report: Unmanned Aerial Equipment, Drone**

**October 1, 2021 – Sept. 30, 2022**

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| <p>Description</p> | <p>A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.</p> <p>Unmanned Aerial Vehicle (UAV) also commonly referred to as a drone are requested pursuant to our Mutual Assistance protocols. If a situation arises wherein the safety to the community, officers, or the offender can be increased through the means of de-escalation (adding time and distance to the situation) a supervisor can make the request. All requests go to the Chief of Police and then escalate to the City Manager for final approval. During this period, on three occasions the Police Department sought mutual assistance for drones.</p> <p><b>What data is captured by this technology:</b><br/>                 Unmanned Aerial Vehicles are owned and operated by the respective agency. While each piece of equipment is unique, generally UAV’s can both record video and audio, while transmitting the data to the operator, thereby qualifying as a piece of Surveillance Technology pursuant to BMC 2.99.020.</p> <p><b>How the data is stored:</b><br/>                 During this reporting period Alameda County Sheriff’s Office (ACSO) assisted the Berkeley Police Department by providing drones on three occasions. Per their policy, ACSO retains images captured during a UAV mission if there is reasonable suspicion of criminal activity. BPD personnel would request that evidence from ACSO if it was needed in support of criminal activity. During this rating period no data was stored by BPD. The Department will set storage and retention periods in a Drone Use Policy.</p> <p><b>Retention period of data:</b><br/>                 During this rating period no data was stored by BPD. At this time the Berkeley Police Department does not intend to acquire this technology but is actively consulting with the City Attorney’s Office regarding developing a Drone Use Policy. That policy, when complete, will include data retention.</p> <p style="text-align: center;"><b>Summary of Uses of UAV’s</b></p> <p style="text-align: center;"><b>BPD Case 22-31368 (USE OF UAV)</b><br/>                 On 07/09/22 BPD officers responded to a robbery with gunfire at 2625 San Pablo Ave. The offenders fled into 1100 block of Carleton Street. Officers secured the perimeter and requested mutual assistance from the ACSO drone team. Officers were able to safely detain and arrest four suspects, and recovered four guns (2 ghost guns including a short-barreled rifle, and 2 Glock semi-automatic firearms- all loaded).<br/> <i>Subsequently the City Council was notified of the temporary use of surveillance technology in exigent circumstances.</i></p> |
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|                                     | <p><b>BPD Case 22-35231 (USE OF UAV)</b><br/>                 On 08/02/22 BPD attempted to detain a person who was wanted in connection with a murder in another jurisdiction. The offender fled on foot from BPD officers. Officers secured a perimeter and requested mutual assistance including the request for a drone. ACSO responded and assisted BPD. With the assistance of the drone officers were able to locate the suspect in the 1100 block of Chaucer Street. No injuries were sustained by the officers. The offender had minor injuries as a result of jumping over fences while fleeing from BPD officers, however no injuries were sustained from the detention and arrest. <i>Subsequently the City Council was notified of the temporary use of surveillance technology in exigent circumstances.</i></p> <p><b>Solano Stroll Event (USE OF UAV)</b><br/>                 On September 10, 2022, Berkeley and Albany hosted the Solano Stroll street event. Solano Stroll is a long-standing family event that draws tens of thousands to the Solano Avenue Street fair. At the request of Albany PD, the Alameda County Sheriff’s Office Drone Team responded to conduct routine checks of the rooftops for potential shooting threats during the event. This was conducted to ensure the event was not targeted by an active shooter in public space, as was the case in Highland Park earlier in the year and a number of other locations in recent years. <i>Subsequently the City Council was notified of the temporary use of surveillance technology in exigent circumstances.</i></p> |
| <p><b>Geographic Deployment</b></p> | <p>Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.</p> <p>One instance it was deployed in the area of 1100 block of Carleton Street. Another instance it was deployed in the 1100 block of Chaucer Street. The final deployment was along Solano Avenue from the Berkeley/Albany border on the west to The Alameda on the east.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>Complaints</b></p>            | <p>A summary of each complaint, if any, received by the City about the Surveillance Technology.</p> <p>The City received one complaint about the deployment and the use of Unmanned Aerial Vehicles (UAV), AKA Drones, specifically related to the Solano Stroll.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><b>Audits and Violations</b></p> | <p>The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.</p> <p>The City received one complaint about the deployment of a drone at Solano Stroll not meeting the exigent circumstances threshold of the Surveillance Use Policy. At this time the Berkeley Police Department does not intend to acquire this technology but is actively consulting with the City Attorney’s Office regarding developing a Use Policy. It is unclear from the ordinance whether an Acquisition Report is also appropriate so we began consulting with the City Attorney’s Office on this matter last month.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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| <p>Data Breaches</p> | <p>Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.</p> <p>There have been no known data breaches or other unauthorized access to any of the data from the Unmanned Aerial Vehicles (UAV), AKA Drones.</p>                                                                                                                                                                                        |
| <p>Effectiveness</p> | <p>Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.</p> <p>In two instances the use of the Unmanned Aerial Vehicles (UAV), AKA Drones led to the safe apprehension of violent offender(s), and in one instance aided in the safe recovery of four firearms, including a short-barreled assault rifle. The final instance augmented the police in providing a safe environment for a large-scale public gathering and ensured a rapidly evolving situation could be addressed with speed and precision.</p> |
| <p>Costs</p>         | <p>Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.</p> <p>The annual cost for the Unmanned Aerial Vehicles (UAV), AKA Drones is zero as the uses were covered by the responding agencies under the Mutual Assistance agreement. The only costs associated is staff time at each respective incident, however no costs for the use of the technology was incurred.</p>                                                                                                                                                                             |





Office of the City Manager

PUBLIC HEARING

November 3, 2022

*(Continued from October 11, 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: 2018 Blake Street, Use Permit #ZP2021-0095

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0095 to construct a six-story, multi-family residential building with 12 units (including two Low-Income units), and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On June 3, 2021, Huan Fang submitted an application for Use Permit #ZP2021-0095 to construct a six-story, multi-family residential building with 12 units.

On March 16, 2022, the application was deemed complete.

On May 26, 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 8-0-0-1 (Yes: Duffy, Kahn, O' Keefe, Olson, Sanderson, Thompson, Vincent, Tregub; No: None; Abstain: None; Absent: Kim).

On June 7, 2022, staff issued the ZAB Notice of Decision.

On June 21, 2022, the City Clerk received an appeal filing from John De Domenico, resident at 2020½ Blake Street.

On September 22, 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

The immediate environs of the project site consist of one-story commercial/industrial buildings on parcels to the north; one- and two-story, single- and multi-family dwellings on parcels to the west, immediately east (R-4 Multi-Family Residential District) and to the south (R-2A, Restricted Multi-Family Residential District); and one- and two-story commercial buildings (C-AC, Adeline Corridor Commercial District) on parcels beyond the R-4 district, further east of the site. The parcel across the street and to the northeast at 2029 Blake Street (C-AC) is occupied by a recently-constructed, five-story, 82-unit, mixed-use building. Use permits for other large projects were approved within the past two years on the same block: a six-story, 113-unit, community care facility for seniors at 2000 Dwight Way, and a seven-story, 155-unit, multi-family building at 2015 Blake.

The proposed project would involve the removal of remnants of a single-family dwelling and accessory structure that were damaged by fire in 2019, and ordered to be demolished after being deemed unsafe and an immediate threat to health and safety by the City Building Official. In its place, the project proposes to construct a residential building of six stories and 64 feet, 6 inches in height and 12 dwelling units.

The project is eligible for a density bonus under Government Code Section 65915, by including two Low-income units (25 percent of the base project), and qualifies for a 50 percent density bonus, or four bonus units, resulting in a 12-unit density bonus project, with waivers of the side and rear yard setbacks minimums and the lot coverage maximum. The project is also compliant with all applicable, objective general plan and zoning standards, and was approved without reductions to project's density, pursuant to the State Housing Accountability Act (HAA), Government Code Section 65589.5(j)<sup>1</sup> (see further discussion of the HAA in Appeal Issue 1, below).

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

## RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's 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 assert that the six-story building would be taller than existing buildings on nearby properties on its block (which are generally one- and two- story development), and would be incompatible with the land uses,**

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<sup>1</sup> The Housing Accountability Act (HAA), Government Code Section 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 the development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

**architectural design and scale of neighboring properties on the south side of Blake street. Shadow impacts from the project on dwellings to west, east and northeast are not reasonable, and can be avoided. These impacts from the project would be detrimental and injurious to property and improvements of adjacent properties, the surrounding area, neighborhood and to the general welfare of the city. Neighbors were told at the ZAB hearing that the decision was already made and was irreversible.**

Response 1: As a residential building with 12 dwelling units, 200 square feet of usable open space per unit, and six stories/65 feet of height, that shares a city block with the C-AC Adeline Corridor Commercial District, the proposed project is consistent with the purposes of the R-4 Multi-Family Residential District and adjacent land uses. The R-4 District provides for relatively high-density residential development; housing for persons who desire both convenience of location and a reasonable amount of usable open space; and protection of adjacent properties from unreasonable obstruction of light and air. The R-2A Restricted Multiple-Family Residential District, which borders the south side of the project site, encourages similar types of development – medium-density residential areas characterized by small multiple-family and garden-type apartment structures with a maximum of open space. Projects have been approved by the City in the past two years in the R-4 District, on sites across Blake Street (on the north side) that are much larger in scope than the 2018 Blake project – a six-story, 113-unit, community care facility for seniors at 2000 Dwight Way, and a seven-story, 155-unit, multi-family building at 2015 Blake. As discussed in the staff report, the ZAB was able to make findings for non-detriment, noting that the project would be consistent with the trend of increasing density in the neighborhood.

Though the Berkeley Municipal Code (BMC) requires findings of general non-detriment<sup>2</sup> for approval of discretionary permits, and each zoning district has district purposes to guide development, non-detriment findings are not objective standards and cannot provide a basis for denial or reduction in density for a housing project, due to protections provided by the State Housing Accountability Act (HAA). Pursuant to Government Code Section 65589.5(j) the City cannot deny or reduce the density of a housing development that is compliant with objective standards, unless it can meet the strict finding of specific adverse impact on public health or safety – a level of impact which the State Department of Housing and Community Development considers to be rare.<sup>3</sup> Analyses of the compatibility of architectural design, building massing and scale,

<sup>2</sup> The findings for approval of use permits, sometimes referred to as “general non-detriment findings” are described in BMC Section 23.406.040(E)(1) Findings for Approval:

“To approve a Use Permit, the ZAB shall find that the proposed project or use:

- (a) Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use; and
- (b) Will not 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.”

<sup>3</sup> Housing Accountability Act Technical Assistance Advisory (Government Code Section 65589.5), p. 20; State Department of Housing and Community Development.

and shadow impact on the surrounding neighborhood are only provided in the staff report for public interest and informational purposes. Additionally, the project is a residential development in a residential district, and is not subject to design review. The ZAB determined that the project is compliant with all applicable, objective general plan and zoning standards and that the findings to deny or reduce the project could not be made, and approved the project with direction to the applicant to refine and enhance the building design at Final Design Review before the DRC.

In accordance with Section 65589.5(j)(3) of the HAA, compliance with State Density Bonus waiver and concession provisions is consistent with the ZAB's determination of project compliance with objective standards.<sup>4</sup> Pursuant to Government Code Section 65915 State Density Bonus, in exchange for providing affordable units on site, a project is entitled to density bonus units, as well as modifications to zoning standards that can expand the building's massing, in the form of waivers and concessions to accommodate the full density bonus project on the site. Waivers of the side and rear setbacks, and lot coverage, were requested for the project. As discussed in the ZAB staff report, the requested waivers were granted because findings of specific adverse impact<sup>5</sup> to health and safety could not be made. No waivers for height were requested, and no concessions were requested. In the R-4 District where the project site is located, the proposed building of six stories and 65 feet is allowed by right in the base project (the objective standards-compliant project, before the density bonus is added) and no additional height permit or waiver is required.<sup>6</sup>

In summary, the ZAB was able to make the findings for non-detriment to approve the project. Additionally, State laws for housing developments that were established to facilitate the production of new housing, such as the HAA and State Density Bonus, impose limitations to local discretion over project entitlements, and allow projects to have larger building envelopes than would be permissible through the base district zoning standards, in the interest of constructing more housing in the immediate future.

**Issue 2: The appellants assert that several neighbors within 300 feet of the project site attest that they did not receive notice of the proposed development or notice**

<sup>4</sup> Section 65589.5(j)(3) in the HAA 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."

<sup>5</sup> 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". This definition is also used for applying HAA findings.

<sup>6</sup> The City has determined that the "protections afforded by the HAA and the definition of a base project for density bonus calculations apply to a housing development project up to and including the maximum development allowed with use permits and/or administrative use permits." (Housing Accountability Act & Density Bonus – Objective Standards Memorandum, August 2, 2021; Land Use Planning Division) Therefore, the use permits to extend the district height limit to 65' and six stories and to allow rooftop elements to exceed height limits are included in the Base Project for the purpose of determining compliance with objective standards.



**of the ZAB public hearing. Neighbors were told they would receive a direct link to the hearing and did not. The email address for the ZAB hearing notice was incorrect. Neighbors feel they were denied meaningful opportunity to comment and denied the right to be involved in the planning and development process.**

Response 2: City staff followed public noticing protocols that were in place at the time of each noticing period. The permit application was submitted to the Land Use Planning Division on June 3, 2021.<sup>7</sup> On June 10, 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, and posted a notice at the project site. The notices contained weblinks to the application materials, a permit status webpage, and the email addresses for the applicant and project planner. A mailing list was generated for the postcard mailings that day.

On May 11, 2022, in accordance with BMC Section 23.404.040 Public Notice, and in preparation for the ZAB hearing scheduled for May 26, 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 posted notices within the neighborhood in three locations – on the project site and at two other locations near the project site. The notices contained weblinks to the ZAB agenda, the hearing materials, application materials, and email addresses for the project planner and the ZAB secretary. The online ZAB agenda contained the direct live link to attend the public hearing.

A new mailing list was generated for the ZAB hearing notices, per Land Use Planning Division policy that a new list should be generated if a previous list is six months or older, and notices were sent out that day. Any differences between the two mailing lists are expected because address assignments can change over the course of time due to new addresses or the deletion of existing addresses. Occasionally also, the City's Parcel Notifier software can temporarily malfunction and cause some inaccuracies in the generation of mailing lists. A software malfunction could have been the cause of some neighbors not receiving a notice.

The ZAB public hearing notice listed email addresses for the project planner and for the ZAB Secretary using a new email suffix, [\\_@berkeleyca.gov](mailto:zab@berkeleyca.gov), because the new City website was launched at the end of April 2022, and with the launch, new email suffixes for all City email addresses were implemented. Preliminary testing of the new suffix indicated that it was working properly for City staff. For instance, the new email address for the project planner was working properly.

On May 26, 2022, the day of the hearing, staff was notified through an email from one of the project site neighbors that the [zab@berkeleyca.gov](mailto:zab@berkeleyca.gov) address was returning an email

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<sup>7</sup> 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.

delivery failure notice. It was too late to resend or repost physical hearing notices, but staff immediately corrected the email address in the online ZAB agenda to list the old address – [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info), which was still working.

Staff followed all noticing procedures and immediately corrected errors when alerted to them, and despite some technical trouble that may have occurred with the mailing list generation and ZAB email address, members of the public were able to reach staff and the applicants with comments, and were able to attend the public hearing to express their concerns. Staff received a total of eight comment letters from the public during the course of project review, and several neighbors spoke at the project's hearing.

#### 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 June 21, 2022
3. May 26, 2022 ZAB Hearing Staff Report
4. Index to Administrative Record
5. Administrative Record
6. Public Hearing Notice

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD APPROVAL OF USE PERMIT #ZP2021-0095 TO CONSTRUCT A SIX-STORY, MULTI-FAMILY RESIDENTIAL BUILDING WITH 12 UNITS (INCLUDING TWO LOW-INCOME UNITS), AND DISMISS THE APPEAL.

WHEREAS, on June 3, 2021, Huan Fang (“applicant”), submitted an application for Use Permit #ZP2021-0095 to construct a six-story, multi-family residential building with 12 units, including two Low-Income units (“project”); and

WHEREAS, on March 16, 2022, 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 May 11, 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 May 26, 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 8-0-0-1 (Yes: Duffy, Kahn, O’ Keefe, Olson, Sanderson, Thompson, Vincent, Tregub; No: None; Abstain: None; Absent: Kim); and

WHEREAS, on June 7, 2022, staff issued the notice of the ZAB decision; and

WHEREAS, on June 21, 2022, the City Clerk received an appeal filing of the ZAB decision from John De Domenico, resident at 2020 ½ Blake Street; and

WHEREAS, on or before September 22, 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 October 6, 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 #ZP2021-0095, 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**  
OCTOBER 6, 2022

## 2018 Blake Street

**Use Permit #ZP2021-0095 to construct a six-story, multi-family residential building with 12 units (including two Low-Income units).**

### **PERMITS REQUIRED**

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- Use Permit under Berkeley Municipal Code (BMC) Section 23.202.020(A) to construct a multifamily residential building
- Use Permit under BMC Section 23.202.110(E)(2) to construct a main building that exceeds 35 feet in average height and three stories, up to 65 feet and six stories
- Administrative Use Permit under BMC Section 23.304.050(A) to construct rooftop projections, such as mechanical appurtenances or architectural elements which exceed the maximum height limit for the district.

### **CONCESSIONS/ WAIVERS UNDER GOVERNMENT CODE SECTION 65915-65918**

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- No concessions
- Waiver of BMC Section 23.202.110(E)(1) to reduce minimum side setback (above the 2<sup>nd</sup> floor) and rear yard setback (above the 3<sup>rd</sup> floor)
- Waiver of BMC Section 23.202.110(E)(2) to exceed lot coverage

### **I. CEQA FINDINGS**

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1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to §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 cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

**II. DENSITY BONUS FINDINGS**

1. Pursuant to Government Code Section 65915, the City Council finds that:
  - A. Under the City's methodology for implementing density bonuses, the "base project" consists of 8 units;
  - B. The project will provide two Low-Income qualifying units in the eight-unit "base project", as more fully set forth in Conditions 48 to 52;
  - C. The project is entitled to a density increase of 50 percent 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). This equates to a density bonus of four units above the Base Project, for a total of 12 units.
2. In accordance with Government Code Section 65915(e) the City Council hereby grants the following waivers:
  - A. Waiver of BMC Section 23.202.110(E)(1) to reduce minimum side setback (above the 2nd floor) and rear yard setback (above the 3rd floor)
  - B. Waiver of BMC Section 23.202.110(E)(2) to exceed lot coverage

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.

3. 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 finds approval of waivers is required 1) 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**

4. The Housing Accountability Act, Government Code Section 65589.5(j) requires that when a proposed housing development 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) does apply 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. The project includes construction of 12 dwelling units.

5. 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 R-4 District standards and qualifies for waivers of the listed district standards granted pursuant to State Density Bonus, Government Code, Section 65915;
  - B. The project follows a trend of increasing density in the neighborhood, including the recently-constructed, five-story, mixed-use building at 2029 Blake Street, the approved use permit for a six-story, community care facility for seniors at 2000 Dwight Way, and the approved use permit for a seven-story, multi-family building at 2015 Blake. The proposed project will provide new housing in a location with easy access to public transit and nearby commercial services and stores, and will fulfill the purpose of the R-4 Multi-Family Residential District by providing high-density residential development with sufficient usable open space at a convenient location for desirable services.
  - C. Shadow impact on adjacent dwellings to the west, east, and northeast will result from the new building, especially from the additional height above the district limits, which will cast shadows in the affected directions further than if the project were limited to the base district height standards. However, the shadow impacts on any one adjacent property will occur during limited hours and times of the year. Furthermore, shadow impacts on adjacent dwellings are difficult to avoid given the lot widths, height and building-to-building separations permitted in the R-4 district. Therefore, the shadow impacts are found to be reasonable and non-detrimental.
  - D. 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.
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**IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS**

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

**1. Conditions and 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 of Zoning Adjustments. 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.

**V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD**

Pursuant to BMC 23.404.050(H), 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 was referred by ZAB to the Design Review Committee (DRC) for design review. The applicant shall obtain approval of a Final Design Review (FDR) application by the DRC. The applicant shall present plans at FDR that incorporate visual enhancements to the east and west facades of the building, as discussed by the ZAB at the May 26<sup>th</sup> hearing.

**16. 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 in accordance with BMC 16.28.030, and entered into the City's database after the building permit is issued but prior to final inspection.

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

17. 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.
18. 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](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**

19. Percent for Public Art: Consistent with BMC Section 23.316, 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.
20. Affordable Housing Mitigation Fee: Consistent with BMC Section 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.
21. 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.
22. 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.
23. 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.

- 24. 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<sub>o</sub>) for Berkeley is 41.8.
- 25. 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).
- 26. 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).
- 27. 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.

#### **During Construction:**

- 28. 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.
- 29. 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.

- 30. 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.
- 31. 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.
- 32. 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.

- 33. 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.

- 34. 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.
- 35. 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.
- 36. 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.

- 37. 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.
- 38. 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 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.
- 39. 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.
- 40. 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.
- 41. 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.
- 42. 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.

- 43. 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.
- 44. 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:**

- 45. 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.
- 46. 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.
- 47. 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**

48. Number of Below Market Rate Units. The project shall provide **two 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.
49. 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](mailto:affordablehousing@cityofberkeley.info) for review and approval.
50. 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.
51. 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:

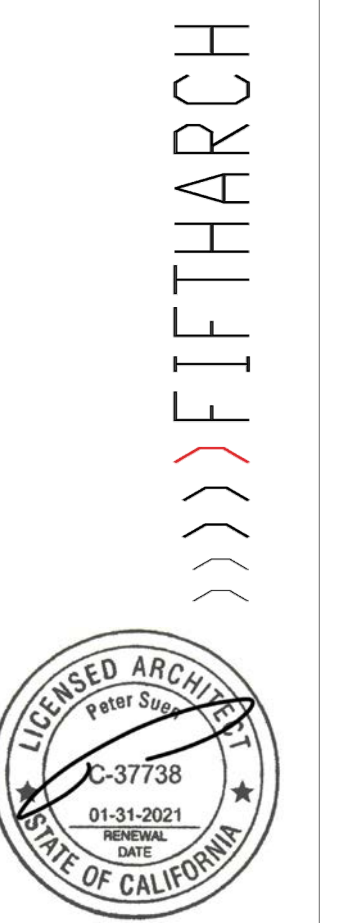
| Unit Size          | AMI Standard                     |
|--------------------|----------------------------------|
| Studio unit        | AMI for a one-person household   |
| One-bedroom unit   | AMI for a two-person household   |
| Two-bedroom unit   | AMI for a three-person household |
| Three-bedroom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

52. 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:**

53. 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).
54. 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.
55. 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.
56. 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.
57. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
58. 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 project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
59. 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.

- 60.** All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
-



PROJECT  
2018 BLAKE STREET  
2018 BLAKE STREET  
BERKELEY, CA 94704

**PROJECT TEAM**

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510-887-4086

**LANDSCAPE ARCHITECT**  
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WALNUT CREEK, CA 94596

**TRAFFIC CONSULTANT**  
W-TRANS  
7901 OAKPORT STREET, SUITE 1500  
OAKLAND, CA 94621  
510-444-2600

**DRAWING LIST INDEX**

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A0.2 NOTES & LEGEND  
A0.3 DENSITY BONUS STATEMENT  
A0.4 SITE PHOTOGRAPHS & VICINITY MAP  
A0.5 CALGREEN CHECKLIST  
A0.6 CALGREEN CHECKLIST  
A0.7 CONSTRUCTION BMPS  
A0.8 BAY-FRIENDLY BASICS LANDSCAPE CHECKLIST  
A0.9 SITE PHOTOS

A1.1 EXISTING SITE PLAN  
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A2.1 GROUND FLOOR PLAN  
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A3.1 PROPOSED BUILDING ELEVATIONS  
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A3.3 STREET ELEVATION

A4.1 BUILDING SECTIONS

**SURVEY**  
SU1 TOPOGRAPHIC SURVEY

**LANDSCAPE**  
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L1.2 PLANT LIST, IMAGES AND WELO  
L1.3 PRELIMINARY IRRIGATION PLAN  
L1.4 IRRIGATION NOTES AND DETAILS

**TRAFFIC STUDY**  
Draft Focused Traffic Study for the  
2018 Blake Street Project\_2021-08-31.pdf

**PROJECT SCOPE**

THE SCOPE OF WORK UNDER THIS PERMIT:  
PROPOSED HOUSING DEVELOPMENT PROJECT TO  
REPLACE THE EXISTING BURNED DOWN STRUCTURE  
WITH A SIX (6) STORIES, IN TOTAL OF TWELVE (12)  
UNITS RESIDENTIAL BUILDING, INCLUDING  
AFFORDABLE HOUSING UNITS AND STATE DENSITY  
BONUS UNITS.

**APPLICABLE BUILDING CODES**

ALL WORK NOTED SHALL BE IN FULL ACCORD &  
COMPLY WITH THE LATEST RULES, REGULATIONS,  
ORDINANCES, CODES & STANDARDS LISTED  
BELOW & ANY AND ALL LOCAL CODES AND  
ORDINANCES CURRENTLY IN EFFECT IN THE  
COUNTY OF SAN MATEO.

2019 CALIFORNIA BUILDING CODE (CBC)  
2019 CALIFORNIA RESIDENTIAL CODE (CRC)  
2019 CALIFORNIA GREEN BUILDING CODE (CGBC)  
2019 CALIFORNIA PLUMBING CODES (CPC)  
2019 CALIFORNIA MECHANICAL CODE (CMC)  
2019 CALIFORNIA ELECTRICAL CODE (CEC)  
2019 CALIFORNIA ENERGY CODE  
2019 CALIFORNIA ENERGY EFFICIENCY STANDARDS  
2019 CALIFORNIA FIRE CODE (CFC)  
BERKELEY MUNICIPAL CODE (BMC)

**PROJECT DATA**

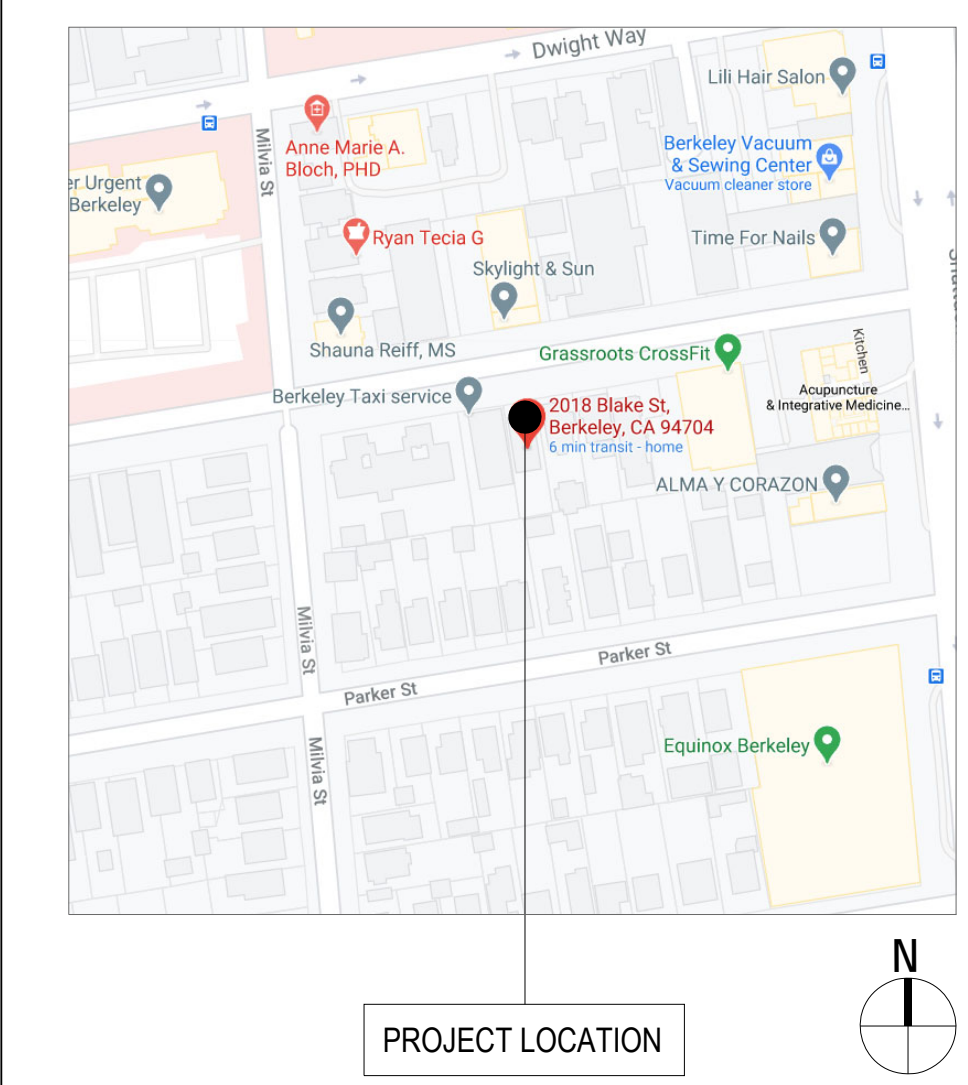
**LEGAL**  
LOCATION: 2018 BLAKE STREET, BERKELEY, CA 94704  
APN: 055182102100  
ZONING: R-4  
GENERAL PLAN AREA: HDR  
FIRE ZONE: 1  
FLOOD ZONE: NO

**OCCUPANCY GROUP**  
R-2, MULTI-RESIDENTIAL

**CONSTRUCTION TYPE**  
TBD

**ACCESSIBILITY:**  
THIS IS A MULTI-LEVEL, ELEVATOR BUILDING.  
IT IS FULL COMPLIANCE WITH CBC SECTION 11-B,  
ACCESSIBLE IN ALL COMMON AREA ACCESSED BY THE  
ELEVATOR AND ACCESSIBLE ADAPTABLE IN PRIVATE  
DWELLING UNITS ON ACCESSIBLE FLOORS

**SITE LOCATION MAP**



| ISSUES & REVISIONS |            | DESCRIPTION                    |
|--------------------|------------|--------------------------------|
| NO.                | DATE       |                                |
| 1                  | 04/28/2021 | PLANNING APPROVAL SUBMITTAL    |
| 2                  | 07/05/2021 | PLANNING APPROVAL 1ST COMMENTS |
| 3                  | 09/25/2021 | PLANNING APPROVAL 2ND COMMENTS |
| 4                  | 12/20/2021 | PLANNING APPROVAL 3RD COMMENTS |

|                  |                |
|------------------|----------------|
| DATE: 11/15/2022 | DRAWING BY: YZ |
| SCALE: AS NOTED  | CHECKED BY: PS |

**TITLE SHEET**

**A0.1**

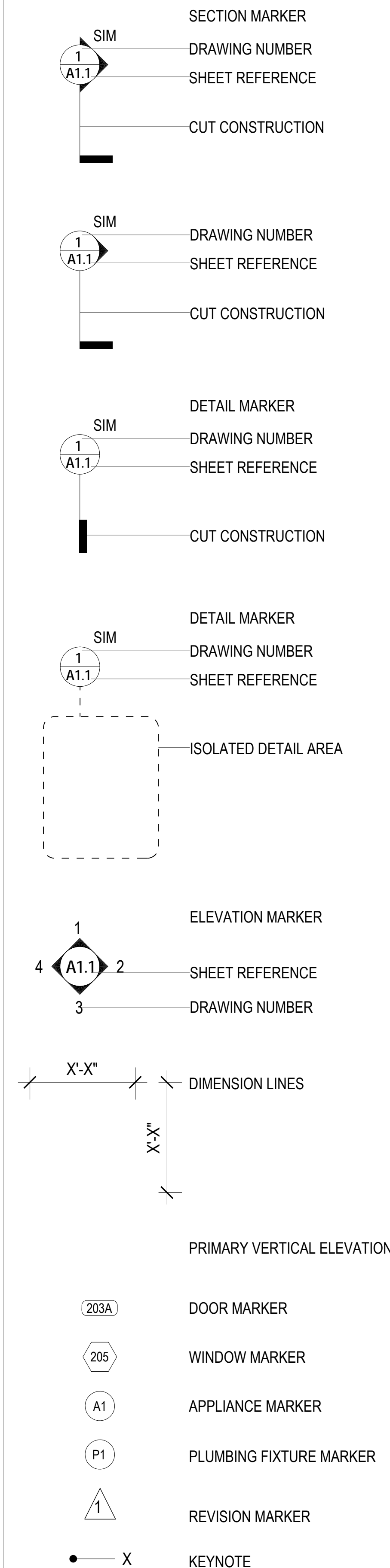
GENERAL NOTES & CONDITIONS

- NOTIFY ARCHITECT PROMPTLY IF ANY CONDITIONS CONFLICT WITH CONSTRUCTION DOCUMENTS.
  - FIELD VERIFY ALL EXISTING CONDITIONS AND DIMENSIONS PRIOR TO FABRICATION/ CONSTRUCTION.
  - NOTIFY ARCHITECT OF ANY DISCREPANCIES BETWEEN DOCUMENTS, INCLUDING DISCREPANCIES BETWEEN ENGINEERING DOCUMENTS AND CONSTRUCTION DOCUMENTS.
  - PROVISIONS SHALL BE MADE FOR THE UNDERGROUNDING OF ALL UTILITIES SERVING THE PROPERTY, INCLUDING BUT NOT LIMITED TO ELECTRICAL, TELEPHONE, AND CABLE TELEVISION, BY THE INSTALLATION OF APPROPRIATELY SIZED UNDERGROUND CONDUITS EXTENDING FROM THE STREET PROPERTY, AS PER BBC 705A.1.
  - ALL PERSONS WORKING AT THIS SITE MUST IMPLEMENT APPLICABLE PORTIONS OF THE STATE STORM WATER BEST MANAGEMENT PRACTICES MANUAL FOR CONSTRUCTION TO THE MAXIMUM EXTENT PRACTICABLE TO PREVENT EROSION AND SEDIMENT FROM ENTERING INTO THE STORM DRAIN SYSTEM. FAILURE TO UTILIZE ADEQUATE CONTROLS IS A VIOLATION OF BMC 17.20. A COPY OF THE MANUAL IS AVAILABLE UPON REQUEST AT THE PERMIT SERVICE CENTER AND AVAILABLE ONLINE AT WWW.CABMPHANDBOOKS.COM.
  - APPROVAL OF THIS PERMIT FOR WORK IN THE PUBLIC RIGHT-OF-WAY OR EASEMENT DOES NOT RELIEVE THE APPLICANT OF THE RESPONSIBILITY OF OBTAINING PERMISSION TO ENTER NEIGHBORING PROPERTY OR PROPERTIES IN THE COURSE OF THIS WORK IF NECESSARY. IT SHALL NOT BE CONSTRUED AS A LICENSE TO ALTER OR ADVERSELY IMPACT ANY FACILITIES LOCATED IN THESE EASEMENTS WHICH ARE PRIVATELY OWNED. FULL RESTITUTION AND RESTORATION SHALL BE THE RESPONSIBILITY OF THE PERMITTEE. PERMITTEE SHALL NOTIFY PROPERTY OWNER OF INTENTIONS 72 HRS PRIOR TO ENTERING THE PROPERTY.
- DIMENSIONING CONVENTIONS**
- DIMENSIONS AS NOTED IN THE PLANS SHALL TAKE PRECEDENCE OVER SCALED DIMENSIONS.
  - DIMENSIONS ARE FROM GRID LINE TO FACE OF CONCRETE OR STUD ON PLANS AND FACE OF FINISH ON ALL OTHER DRAWINGS, UNLESS OTHERWISE NOTED. ANY ERRORS, OMISSIONS, OR AMBIGUITIES IN THE PLANS ARE TO BE REPORTED TO THE ARCHITECT BEFORE PROCEEDING WITH THE WORK. SEE ENLARGED PLANS, FOR ADDITIONAL DIMENSIONS & INFORMATION.
  - DETAILS SHALL GOVERN OVER PLANS AND ELEVATIONS. LARGE SCALE PLANS GOVERN OVER SMALL SCALE PLANS. LARGE SCALE DETAILS SHALL GOVERN OVER SMALL SCALE DETAILS. IF UNABLE TO LOCATE THE DIMENSIONS FOR ANY ITEM OF WORK, CONSULT THE ARCHITECT PRIOR TO CONSTRUCTION.
  - ALL DIMENSIONS ON ELEVATIONS ARE INDICATED FROM FINISH FLOOR ELEVATION TO FIXTURE AND/OR FINISH WALL UNLESS OTHERWISE NOTED.
  - ALL HEIGHTS ARE DIMENSIONED FROM THE TOP OF PLYWOOD OR SLAB, UNLESS NOTED "A.F.F."
  - DIMENSIONS ARE NOT ADJUSTABLE, UNLESS NOTED (+/-), WITHOUT ARCHITECT'S WRITTEN APPROVAL.
  - EXCEPT WHERE SPECIFICALLY NOTED TO THE CONTRARY, ALL DIMENSIONS SHOWN ON THE ARCHITECTURAL DRAWINGS CONFORM TO THE FOLLOWING CONVENTIONS:
    - STRUCTURAL OR DIMENSIONAL GRID LINES
    - CENTERLINE OF STEEL
    - CENTERLINE OF DOOR, WINDOW, OR CASED OPENING
  - WHERE WALLS AND / OR PARTITIONS OF UNEQUAL THICKNESS ABUT, ALIGN EXPOSED FACES, UNLESS OTHERWISE NOTED.

ABBREVIATIONS

|                                          |                                             |                                  |
|------------------------------------------|---------------------------------------------|----------------------------------|
| ACT Acoustical Ceiling Tile              | ID Inside Diameter                          | SC South                         |
| BLDG Building                            | INCL Include(ed), (ing)                     | SCH Solid Core, Sealed Concrete  |
| BLKG Blocking                            | INSUL Insulation                            | SE Schedule                      |
| BOS Bottom of Steel                      | INT Interior                                | SECT Southeast                   |
| BOT Bottom                               | INV Invert                                  | SHT Section                      |
| BRG Bearing                              | JAN Janitor                                 | SHTG Sheet                       |
| CAB Cabinet                              | JT Joint                                    | SIM Sheathing                    |
| CG Corner Guard                          | KIT Kitchen/Kitchenette                     | SPEC(S) Similar                  |
| CJ Control/Construction Joint            | KO Knockout                                 | SPKLR Specification(s)           |
| CL Centerline                            | LAV Lavatory                                | SQ Sprinkler                     |
| CEIL Ceiling                             | LH Left Hand                                | SS Square                        |
| CLR Clear/Clearance                      | MANF Manufacture(r)                         | STD Stainless Steel              |
| CMU Concrete Masonry Unit                | MATL Material(s)                            | STL Standard                     |
| COL Column                               | MAX Maximum                                 | STOR Steel                       |
| CONC Concrete                            | MECH Mechanical                             | STRUCT Storage                   |
| CONST Construction                       | MED Medium                                  | SURF Structural                  |
| CONT Continuous                          | MEMBR Membrane                              | SUSP Surface                     |
| COORD Coordinate/Coordination            | MEZZ Mezzanine                              | SW Suspend(ed)                   |
| CPT Carpet                               | MTL Metal                                   | SYS Southwest                    |
| CSWK Casework                            | MIN Minimum                                 | T&GT System(s)                   |
| CP Centerpoint                           | MIR Mirror(ed)                              | TI Tongue and Groove             |
| CT Ceramic Tile                          | MISC Miscellaneous                          | TAN Tread, Thermostat            |
| DEMO Demolition                          | MO Masonry Opening                          | TBD Tenant Improvement(s)        |
| DF Drinking Fountain                     | MTD Mounted                                 | TEL Tangent                      |
| DIA Diameter                             | MULL Mullion                                | TEMP To Be Determined            |
| DIAG Diagonal                            | N North                                     | THRU Telephone                   |
| DIM Dimension                            | NE Northeast                                | TOB Temperature/Temporary        |
| DISP Dispenser                           | NIC Not in Contract                         | TOC Through                      |
| DN Down                                  | NO,# Number                                 | TOF Top of Beam                  |
| DR Door                                  | NOM Nominal                                 | TOFW Top of Curb/Coping/Concrete |
| DTL Detail                               | NTS Not to Scale                            | TOP Top of Floor                 |
| DWG(S) Drawing/Drawings                  | NW Northwest                                | TOS Top of Foundation Wall       |
| E East                                   | OC On Center(s)                             | TOW Top of Parapet               |
| EXIST Existing                           | OD Outside Diameter                         | TP Top of Steel                  |
| EIFS Exterior Insulation & Finish System | OF/CI Owner Furnished/ Contractor Installed | TYP Top of Wall                  |
| EL Elevation                             | OF/OI Owner Furnished/ Owner Installed      | UNFIN Toilet Partition           |
| ELEC Electric/Electrical                 | OFRD Overflow Roof Drain                    | UNO Typical                      |
| ELEV Elevator                            | OFS Overflow Scupper                        | V Unfinished                     |
| EPDM Elastomeric Membrane                | OH Overhead                                 | VB Unless Noted Otherwise        |
| EQ Equal                                 | OPNG Opening                                | VCT Vinyl                        |
| EQUIP Equipment                          | OPP Opposite                                | VERT Vinyl Base                  |
| EXP Exposed/Expansion                    | PERM Permanent                              | VEST Vinyl Composition Tile      |
| EJ Expansion Joint                       | PERP Perpendicular                          | VIF Vertical                     |
| EXT Exterior                             | PL Plate                                    | VNR Vestibule                    |
| FAST Fasten/Fastener                     | PLYWD Plywood                               | VT Verify in Field               |
| FD Floor Drain                           | PNL Panel                                   | VVC Veneer                       |
| FE Fire Extinguisher                     | PR Pair                                     | W/ Vinyl Tile                    |
| FEC Fire Extinguisher Cabinet            | PREFAB Prefabricate(d)                      | W/O Vinyl Wall Covering          |
| FF Finish Floor                          | PREFIN Prefinish(ed)                        | W With                           |
| FIN Finish                               | PRKG Parking                                | WC Without                       |
| FIXT Fixture                             | PROP Property                               | WD West                          |
| FL/FLR Floor                             | PT Paint(ed)                                | WDW Water Closet                 |
| FOS Face of Stud                         | QT Quarry Tile                              | WH Wood                          |
| FR Frame(s), (ing)                       | QTY Quantity                                | WFF Window                       |
| FRP Fiber Reinforced Polyester           | R Riser                                     | WH Hung Wall                     |
| FTG Footing                              | RAD/(R) Radius(ed)                          | Welded Wire Fabric               |
| FUR Furr(ed), (ing)                      | RB Rubber                                   |                                  |
| GA Gauge                                 | RCP Reflected Ceiling Plan                  |                                  |
| GALV Galvanized                          | RD Roof Drain                               |                                  |
| GBB Gypsum Backing Board                 | REC Recessed                                |                                  |
| GC General Contractor                    | RECPT Receptical                            |                                  |
| GEN General                              | REF Reference/Refrigerator                  |                                  |
| GFRC Glass Fiber Reinforced Concrete     | REINF Reinforce(d), (ing)                   |                                  |
| GL Glass/Glazing                         | REQD Required                               |                                  |
| GWB Gypsum Wallboard                     | REV Reverse                                 |                                  |
| GYP Gypsum                               | RH Right Hand                               |                                  |
| HB Hose Bibb                             | RM Room                                     |                                  |
| HC Hollow Core, Hose Cabinet             | RO Rough Opening                            |                                  |
| HM Hollow Metal                          | RT Resilient Tile                           |                                  |
| HOR Horizontal                           | RVS Roof Vent                               |                                  |
| HT Height                                |                                             |                                  |
| HTG Heating                              |                                             |                                  |
| HVAC Heating/Ventilation/AC              |                                             |                                  |
| HDW Hardwood                             |                                             |                                  |

PROJECT SYMBOLS



PROJECT NOTES & CONDITIONS

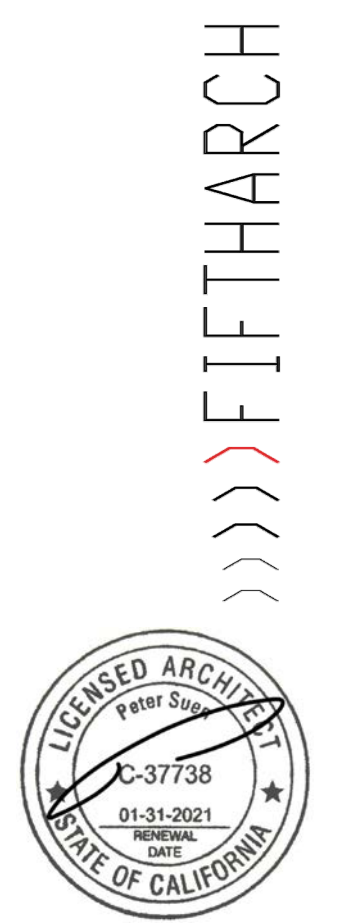
**NATURAL GAS PROHIBITION, BERKELEY ENERGY & GREEN CODE**  
THE BUILDING WILL NOT INCLUDE ANY NATURAL GAS INFRASTRUCTURE IN COMPLIANCE WITH BMC CHAPTER 12.80.

THE PROPOSED PROJECT IS DESIGNED TO COMPLY WITH THE BERKELEY ENERGY CODE (BMC CHAPTER 19.36) AND BERKELEY GREEN CODE (BMC CHAPTER 19.37), ADOPTED BY CITY COUNCIL ON DECEMBER 3RD, 2019, INCLUDING SOLAR PV SYSTEM, ELECTRIC VEHICLE CHARGING, AND LOW-CARBON CONCRETE REQUIREMENTS. BUILDING DESIGN MUST INCORPORATE ALL-ELECTRIC SYSTEMS UNLESS AN EXCEPTION OR PUBLIC INTEREST EXEMPTION TO THE NATURAL GAS PROHIBITION IS GRANTED.

**SB 407**  
NON-COMPLIANT PLUMBING FIXTURES TO BE REPLACED BY WATER-CONSERVING PLUMBING FIXTURES PER SB 407.

**CONSTRUCTION HOURS**  
WEEKDAYS: 7:00AM - 7:00PM  
SATURDAYS: 9:00AM - 6:00PM  
SUNDAYS AND HOLIDAYS: 10:00AM - 6:00PM

CONSTRUCTION HOURS IN THE CITY PUBLIC RIGHT-OF-WAY ARE LIMITED TO WEEKDAYS AND NON-CITY HOLIDAYS BETWEEN 8:00AM AND 5:00PM.



PROJECT  
2018 BLAKE STREET  
2018 BLAKE STREET  
BERKELEY, CA 94704

| ISSUES & REVISIONS | NO. | DATE       | DESCRIPTION                    |
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|                    | 4   | 12/20/2021 | PLANNING APPROVAL 3RD COMMENTS |

| NOTES & LEGEND   |                 |
|------------------|-----------------|
| DRAWING BY: YZ   | CHECKED BY: PS  |
| DATE: 11/15/2022 | SCALE: AS NOTED |

**A0.2**



**HEIGHT & STORIES**

|                                | MAXIMUM | BASE | PROPOSED W/DB |
|--------------------------------|---------|------|---------------|
| STORIES (NUMBER)               | 3       |      |               |
| STORIES W/USE PERMIT (NUMBER)  | 6       | 5    | 6             |
| MAX. HEIGHT (FT.)              | 35      |      |               |
| MAX. HEIGHT W/USE PERMIT (FT.) | 65      | 51   | 61            |

**FRONT SETBACK (BLAKE ST.)**

|         | REQUIRED MIN. FT | BASE | PROPOSED W/DB |
|---------|------------------|------|---------------|
| Level 1 | 15               | 15   | 15            |
| Level 2 | 15               | 15   | 15            |
| Level 3 | 15               | 15   | 15            |
| Level 4 | 15               | 15   | 15            |
| Level 5 | 15               | 15   | 15            |
| Level 6 | 15               | 15   | 15            |

**SIDE SETBACK**

|         | REQUIRED MIN. FT | BASE | PROPOSED W/DB |
|---------|------------------|------|---------------|
| Level 1 | 4                | 6    | 4             |
| Level 2 | 4                | 6    | 4             |
| Level 3 | 6                | 6    | 4             |
| Level 4 | 8                | 8    | 4             |
| Level 5 | 10               | 10   | 4             |
| Level 6 | 12               |      | 4             |

**REAR SETBACK**

|         | REQUIRED MIN. FT | BASE | PROPOSED W/DB |
|---------|------------------|------|---------------|
| Level 1 | 15               | 19   | 15            |
| Level 2 | 15               | 19   | 15            |
| Level 3 | 15               | 19   | 15            |
| Level 4 | 17               | 19   | 15            |
| Level 5 | 19               | 19   | 15            |
| Level 6 | 21               |      | 15            |

**LOT COVERAGE**

|         | REQUIRED MAX. % | BASE | PROPOSED W/DB |
|---------|-----------------|------|---------------|
| Level 1 | 45%             | 35%  | 49%           |
| Level 2 | 45%             | 35%  | 49%           |
| Level 3 | 40%             | 35%  | 49%           |
| Level 4 | 35%             | 35%  | 49%           |
| Level 5 | 35%             | 35%  | 49%           |
| Level 6 | 35%             |      | 49%           |

**OPEN SPACE**

|                  | REQUIRED    | BASE  | PROPOSED W/DB |
|------------------|-------------|-------|---------------|
| Level 1          | 200 SF/UNIT | 1,736 | 961           |
| Roof Top         |             | 0     | 1,469         |
| Total Open Space |             | 1,736 | 2,430         |

**BICYCLE PARKING**

|                                                        | REQUIRED | BASE | PROPOSED W/DB |
|--------------------------------------------------------|----------|------|---------------|
| Total Bedrooms                                         |          | 26   | 51            |
| Long Term Bicycle Parking 1 Space / 3 Bedrooms         |          | 9    | 17            |
| Short Term Bicycle Parking 2, or 1 space / 40 Bedrooms |          | 1    | 2             |
| Total Bicycle Parking                                  |          | 10   | 19            |

**GROSS FLOOR AREA BASE CASE**

|                              | BICYCLE PARKING | MECH/UTILITY | RESIDENTIAL | UNIT COUNT |
|------------------------------|-----------------|--------------|-------------|------------|
| Level 1                      | 96.9            | 79.9         | 1,657.1     | 2          |
| Level 2                      |                 |              | 1,631.3     | 2          |
| Level 3                      |                 |              | 1,631.3     | 2          |
| Level 4                      |                 |              | 1,485.3     | 2          |
| Level 5                      |                 |              | 1,460.0     | 0          |
| Total Residential Floor Area |                 |              | 7,865.0     |            |
| Total Floor Area             |                 |              | 8,041.8     |            |
| Total Unit Count             |                 |              |             | 8          |

**GROSS FLOOR AREA PROPOSED W/DB**

|                              | BICYCLE PARKING | MECH/UTILITY | RESIDENTIAL | UNIT COUNT |
|------------------------------|-----------------|--------------|-------------|------------|
| Level 1                      | 155.0           | 438.6        | 1,819.2     | 2          |
| Level 2                      |                 |              | 2,162.9     | 2          |
| Level 3                      |                 |              | 2,162.9     | 2          |
| Level 4                      |                 |              | 2,162.9     | 2          |
| Level 5                      |                 |              | 2,162.9     | 2          |
| Level 6                      |                 |              | 2,162.9     | 2          |
| Total Residential Floor Area |                 |              | 12,633.7    |            |
| Total Floor Area             |                 |              | 13,227.3    |            |
| Total Unit Count             |                 |              |             | 12         |

**BASE DENSITY**

|                  |         |
|------------------|---------|
| LOT SIZE SQ. FT. | 5,189.0 |
| BASE UNITS       | 8       |

**INCLUSIONARY HOUSING REQUIREMENTS**

|                                      |                     |
|--------------------------------------|---------------------|
| PERCENT REQD. TO BE AFFORDABLE       | 20% PER 23C. 12.030 |
| NUM OF AFFORDABLE UNITS CALC         | 1.6                 |
| NUM OF INCLUSIONARY UNITS (round up) | 2                   |

**DENSITY BONUS OUTCOME**

|                             |         |
|-----------------------------|---------|
| BASE UNITS                  | 8       |
| CITY REQD. AFFORDABLE UNITS | 2       |
| AFFORDABLE TYPE             | LOW     |
| TOTAL BONUS UNITS           | 4       |
| TOTAL FINAL UNITS           | 12      |
| TOTAL AFFORDABLE UNITS      | 10      |
| TOTAL REGULAR UNITS         | 10      |
| PROPOSED SQ. FT. / UNIT     | 1,052.8 |

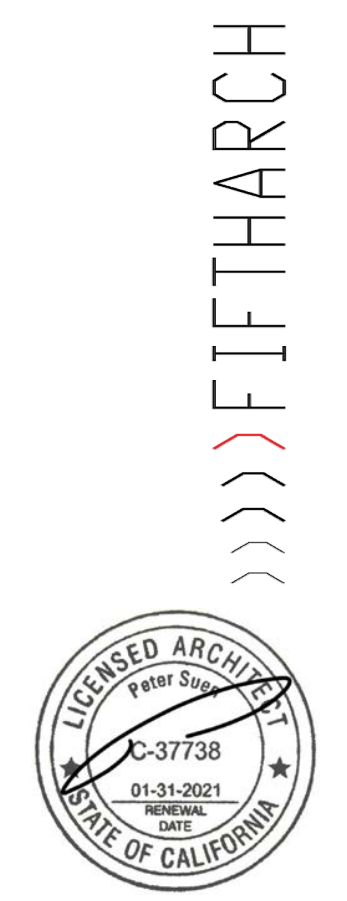
**STEP BY STEP CALCULATION METHOD**

| 1.A Determine the Base Project Area     |         | 1.B Determine the Proposed Project Avg Unit |          | 1.C Base Project Number of Units         |         |
|-----------------------------------------|---------|---------------------------------------------|----------|------------------------------------------|---------|
| Level 1                                 | 1,657.1 | Level 1                                     | 1,819.2  | 1.A Base Project Residential Floor Area  | 7,865.0 |
| Level 2                                 | 1,631.3 | Level 2                                     | 2,162.9  | 1.B Proposed project Avg Unit Size       | 1,052.8 |
| Level 3                                 | 1,631.3 | Level 3                                     | 2,162.9  | 1.C Base Project # of Units (Rounds Up)  | 8       |
| Level 4                                 | 1,485.3 | Level 4                                     | 2,162.9  | 2.A Number of Affordable Units           | 2       |
| Level 5                                 | 1,460.0 | Level 5                                     | 2,162.9  | % of Affordable Units                    | 25%     |
| Level 6                                 |         | Level 6                                     | 2,162.9  | 2.B % Granted of Density Bonus           | 50%     |
| 1.A Base Project Residential Floor Area | 7,865.0 | Proposed Project Residential Floor Area     | 12,633.7 | 2.C # of Density Bonus Units (Rounds Up) | 4       |
|                                         |         | Proposed Project # of Units                 | 12       | 2.D Density Bonus # of Units Proposed    | 4       |
|                                         |         | 1.B Proposed Project Avg Unit Size          | 1,052.8  |                                          |         |

**DENSITY BONUS TABLE**

| BASE PROJECT          | BASE # UNITS  | BASE # UNITS                         | % BMR UNITS      | # BMR UNITS          | % BONUS | # DB UNITS       | TOTAL UNITS           |
|-----------------------|---------------|--------------------------------------|------------------|----------------------|---------|------------------|-----------------------|
| Residential Area (SF) | Avg Unit Size | Base Residential Area/Avg Units Size | BMR = low income | % BMR x Base # Units | % Bonus | % Bonus x Base # | Base Units + DB Units |
| 7,865.0               | 1,052.8       | 8                                    | 25%              | 2                    | 50%     | 4                | 12                    |

WAIVERS / MODIFICATIONS  
1. SIDE SETBACKS  
2. REAR SETBACKS  
3. LOT COVERAGE



PROJECT  
**2018 BLAKE STREET**  
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**ISSUES & REVISIONS**

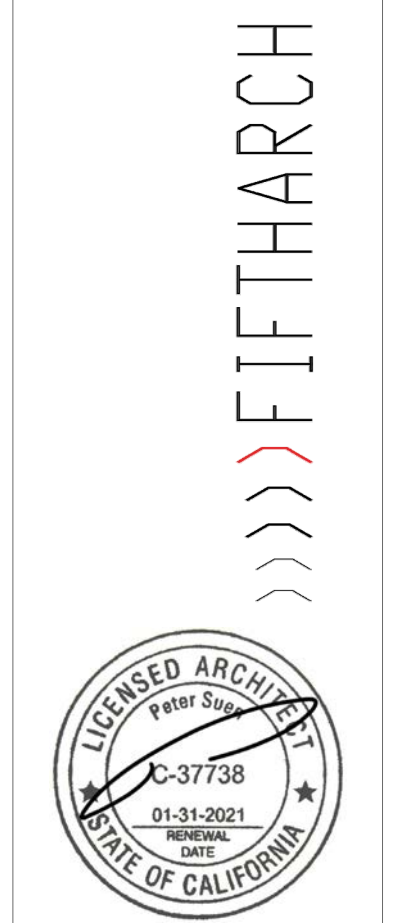
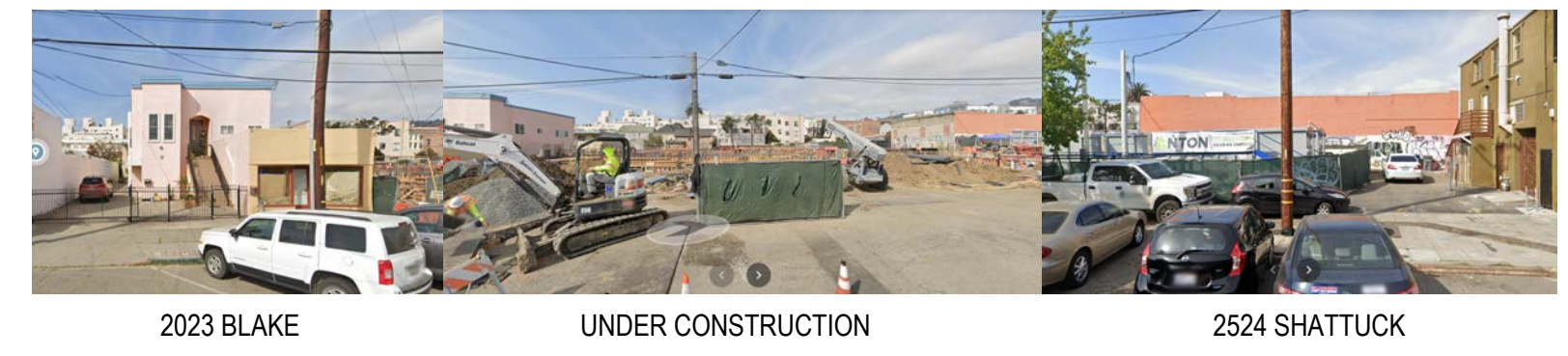
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**DENSITY BONUS STATEMENT**

DRAWING BY: YZ  
CHECKED BY: PS  
DATE: 11/15/2022  
SCALE: AS NOTED

**A0.3**





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| SITE PHOTOGRAPHS & VICINITY MAP |                |
|---------------------------------|----------------|
| DATE: 11/15/2022                | DRAWING BY: YZ |
| SCALE: AS NOTED                 | CHECKED BY: PS |

A0.4

EXISTING SITE PLAN  
SCALE: 1/30" = 1'-0" **1**



1



2



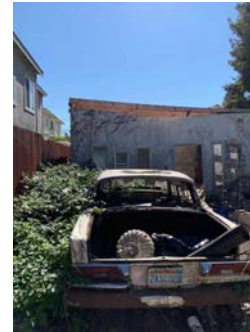
3



4



5



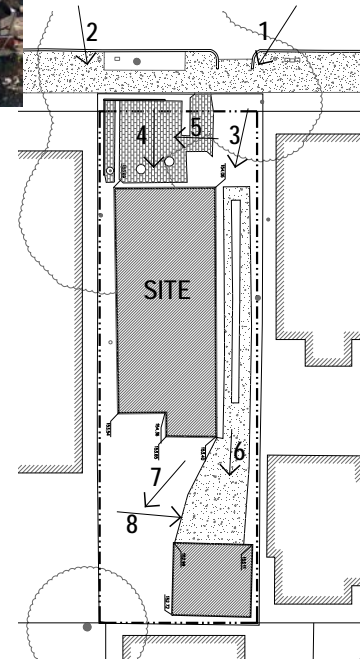
6



7



8



FIFTHARCH

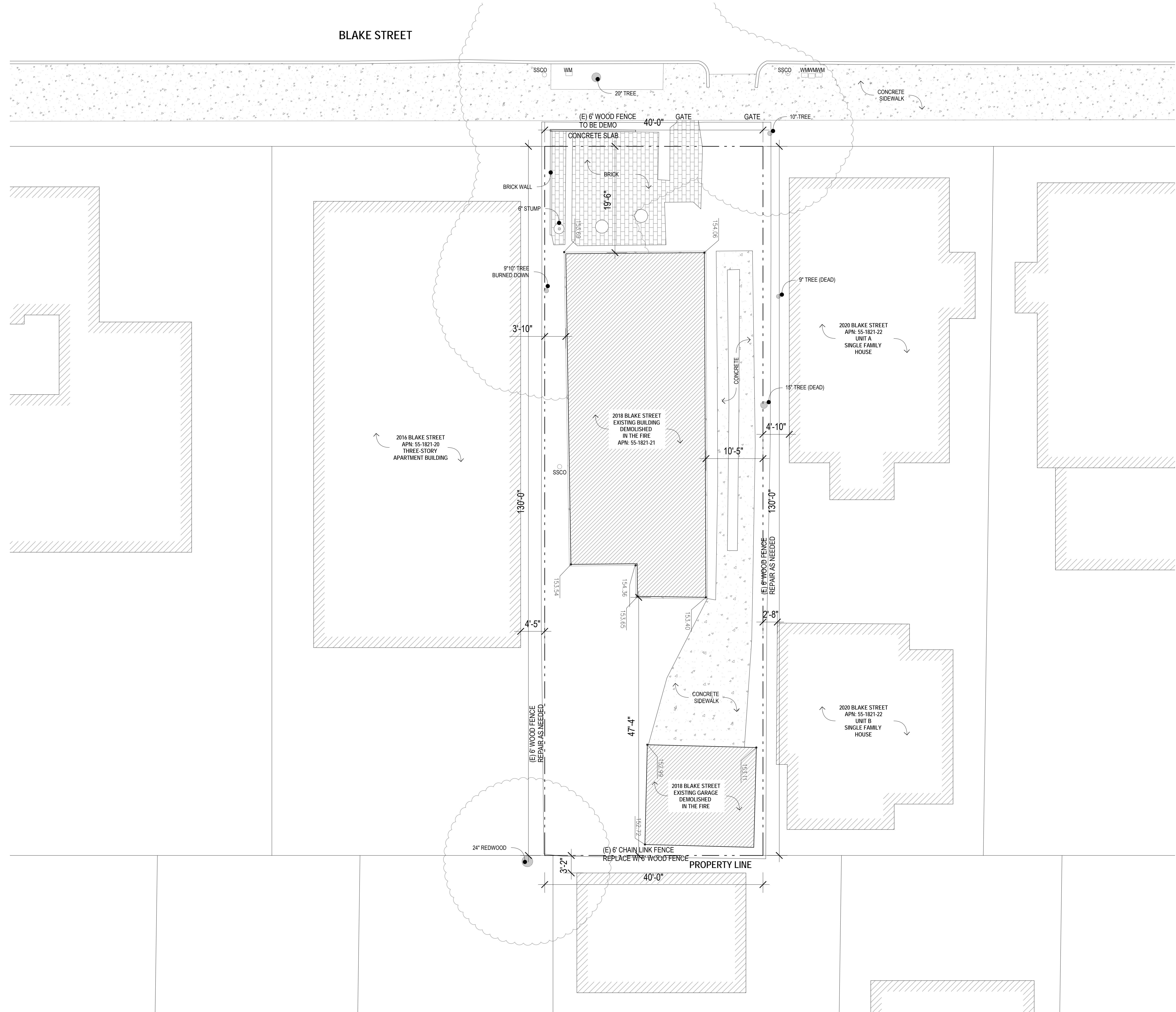
PROJECT  
2018 BLAKE STREET  
2018 BLAKE STREET  
BERKELEY, CA 94704

| ISSUES & REVISIONS | NO.      | DATE | DESCRIPTION                 |
|--------------------|----------|------|-----------------------------|
|                    | 00280201 |      | PLANNING APPROVAL SUBMITTAL |
|                    | 07050201 |      | 1ST PLANNING COMMENTS       |

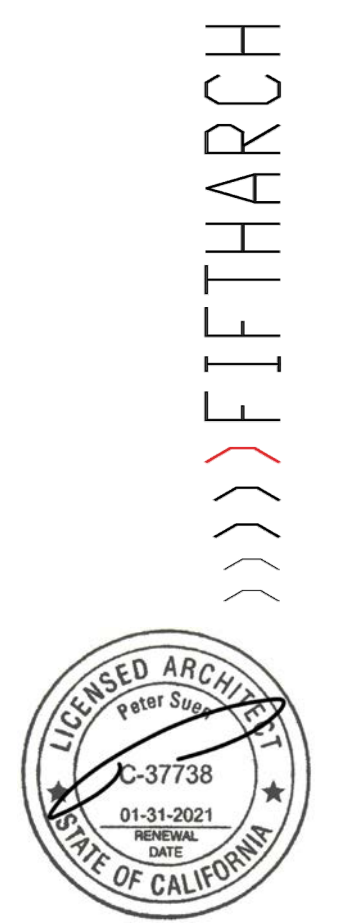
SITE PHOTO

|                 |                |
|-----------------|----------------|
| DATE: 8/11/2021 | DRAWING BY: HF |
| SCALE:          | CHECKED BY: PS |

**A0.9**



LINE TYPES:  
 ——— EXISTING WALL / ELEMENT TO REMAIN  
 - - - - - EXISTING WALL / ELEMENT TO REMOVE



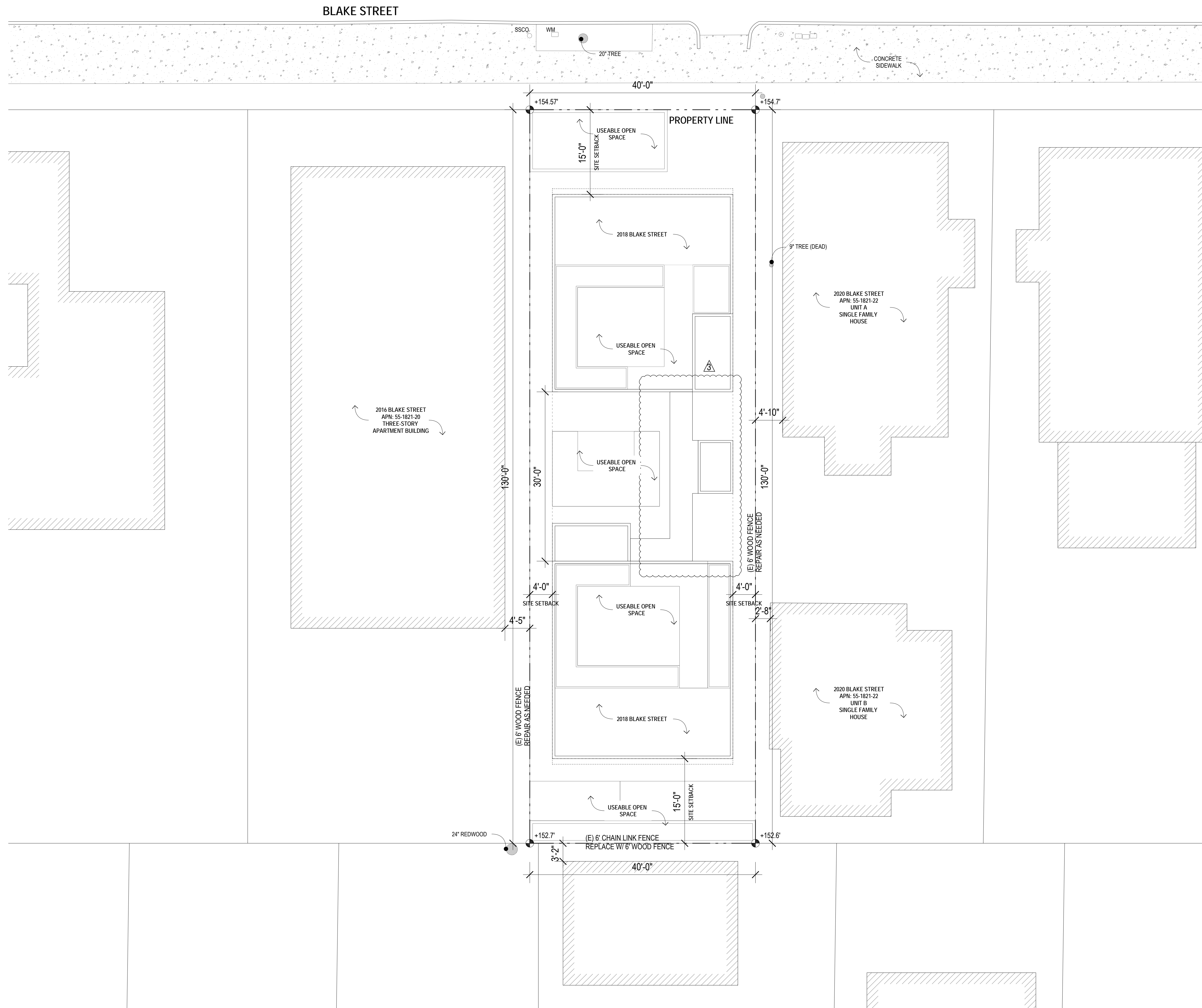
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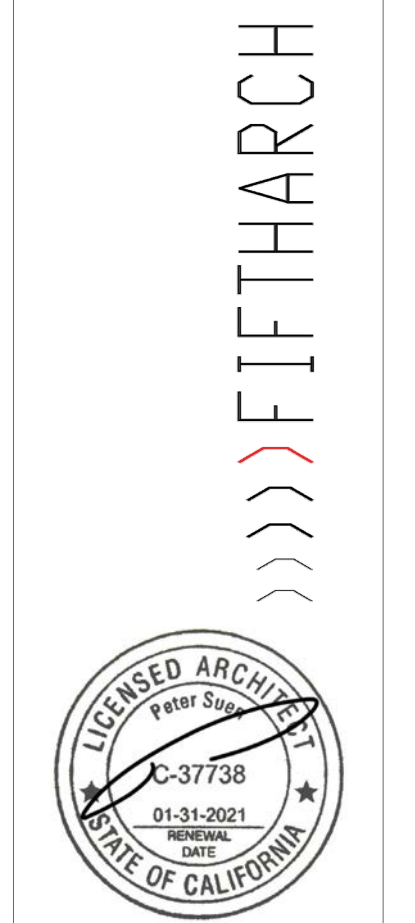
EXISTING SITE PLAN  
 DATE: 11/15/2022  
 SCALE: 1/8" = 1'-0"  
 DRAWING BY: YZ  
 CHECKED BY: PS

EXISTING SITE PLAN 1  
 SCALE: 1/8" = 1'-0"

A1.1



PROPOSED SITE PLAN 1  
SCALE: 1/8" = 1'-0"

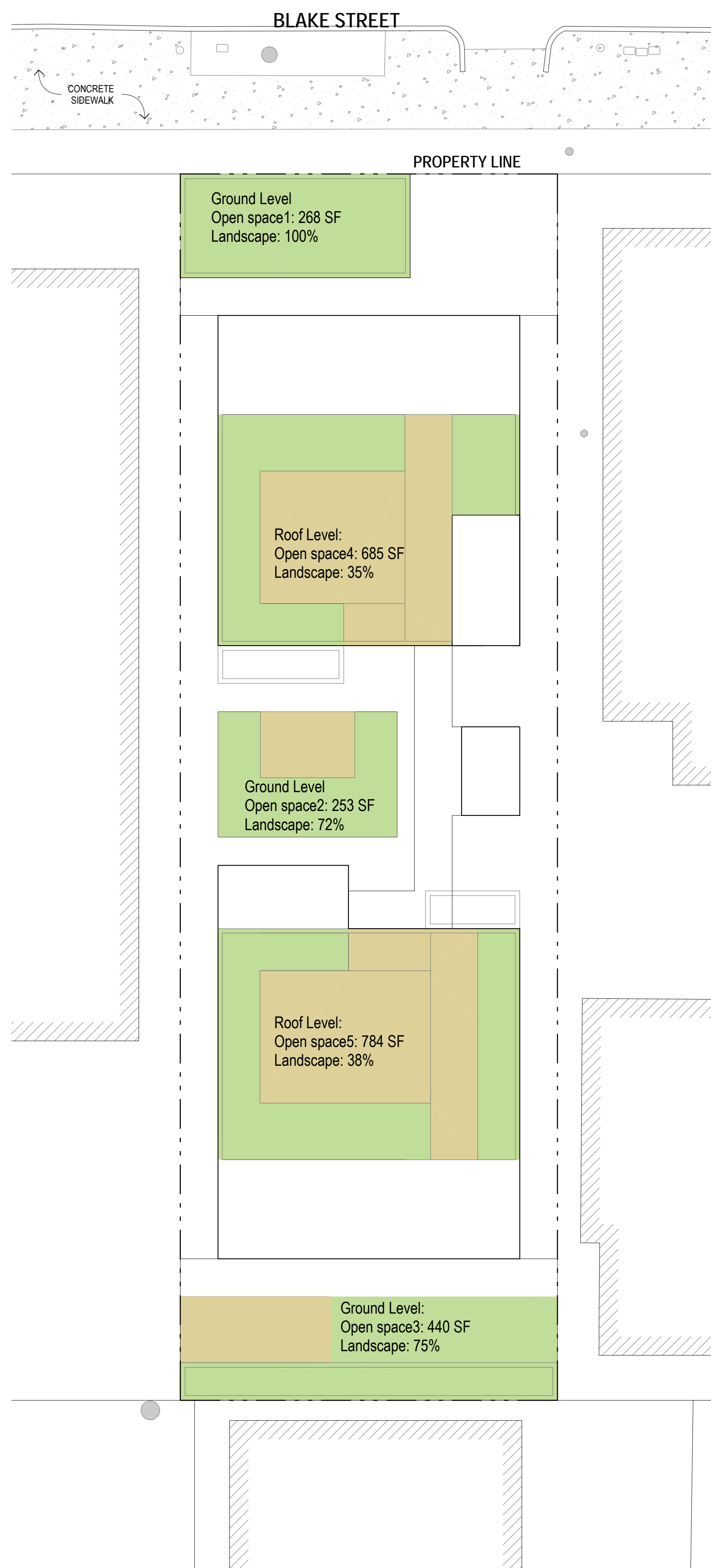


PROJECT  
2018 BLAKE STREET  
2018 BLAKE STREET  
BERKELEY, CA 94704

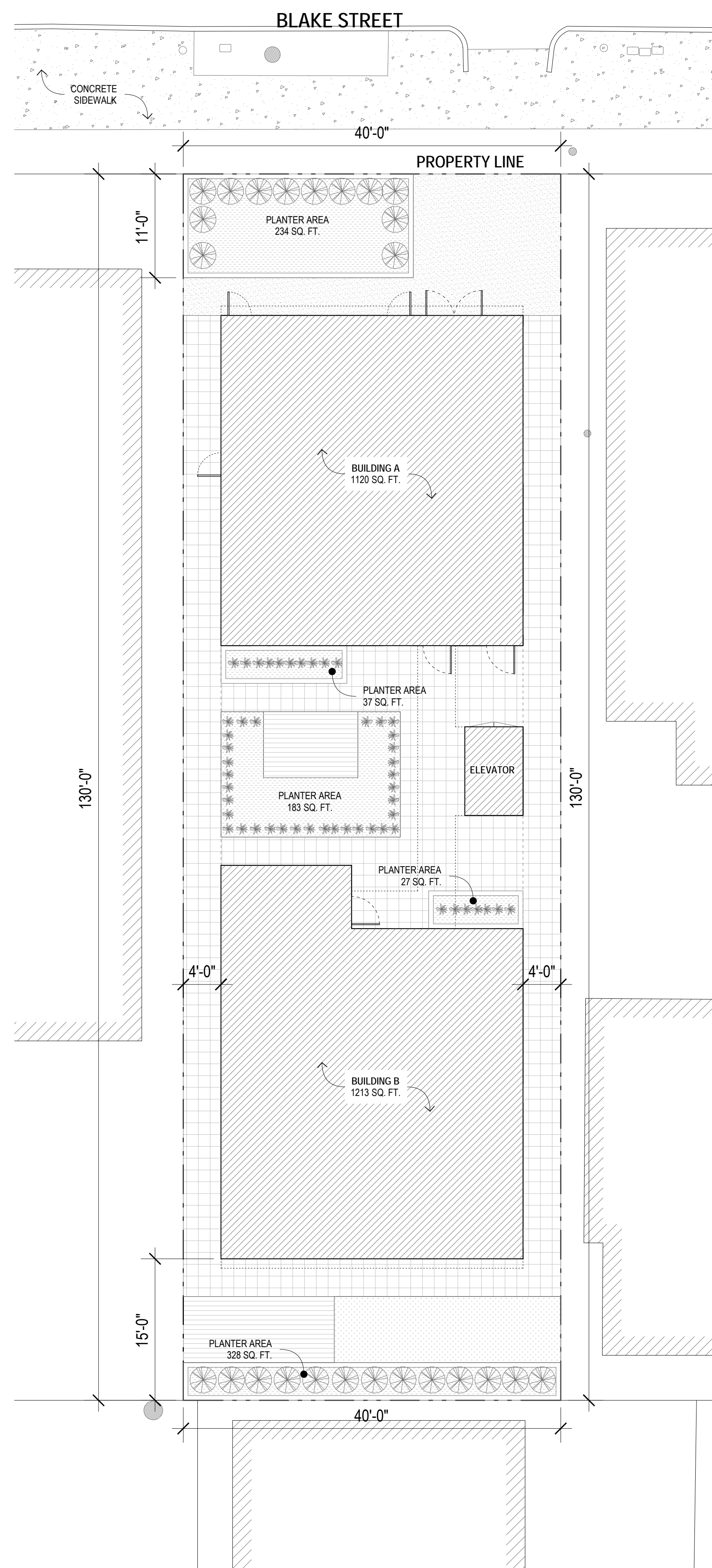
| ISSUES & REVISIONS |            | DESCRIPTION                    |
|--------------------|------------|--------------------------------|
| NO.                | DATE       |                                |
| 1                  | 04/28/2021 | PLANNING APPROVAL SUBMITTAL    |
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| 3                  | 09/25/2021 | PLANNING APPROVAL 2ND COMMENTS |
| 4                  | 12/20/2021 | PLANNING APPROVAL 3RD COMMENTS |

PROPOSED SITE PLAN  
DATE: 1/15/2022  
SCALE: 1/8" = 1'-0"  
DRAWING BY: YZ  
CHECKED BY: PS

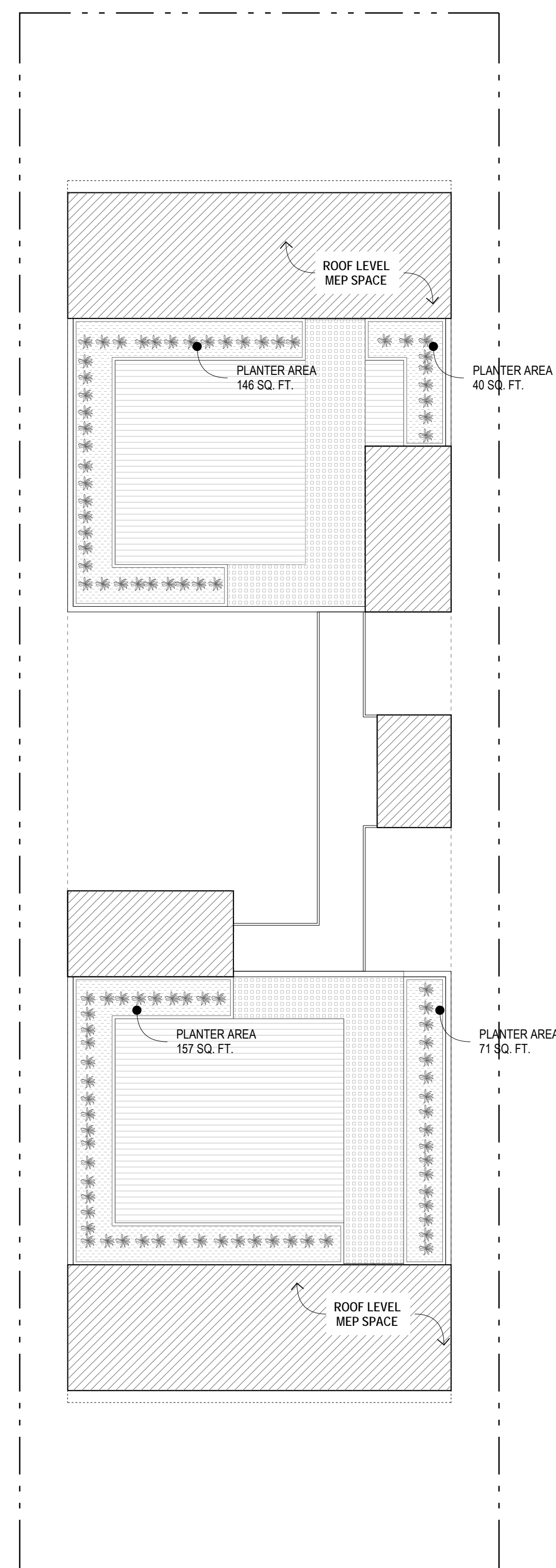
A1.2



OPEN SPACE DIAGRAM 3  
SCALE: 1/8" = 1'-0"



GROUND FLOOR LANDSCAPE DIAGRAM 2  
SCALE: 1/8" = 1'-0"



ROOF LANDSCAPE DIAGRAM 1  
SCALE: 1/8" = 1'-0"

SHEET NOTES:

- ALL (N) PLANTER AREAS TO HAVE SOIL AMENDED W/ 1" COMPOST LAYER. ALL PLANTINGS ARE TO BE SUFFICIENTLY DEVELOPED AT TIME OF INSTALLATION TO ASSURE SURVIVAL AND GROWTH OF PLANTINGS.
- ALL TREES TO HAVE SUFFICIENT CENTRAL LEADERS TO ASSURE GROWTH AND SURVIVABILITY.
- (N) LAWNS & PLANTER BEDS SHALL BE IRRIGATED W/ DRIP IRRIGATION SYSTEMS ON A DESIGN/BUILD BASIS. IRRIGATION SYSTEMS SHALL BE DESIGNED, INSTALLED AND OPERATED AT THE LOWEST PRACTICAL AMOUNT OF WATER NOT TO EXCEED 70% OF REFERENCE EVAPOTRANSPIRATION FOR THE LANDSCAPED AREA.
- IRRIGATION VALVES & CIRCUITS SHALL BE SEPARATED HYDROZONED BASED ON PLANT WATER REQUIREMENT (INCLUDING VARYING ROOT DEPTH), SUN EXPOSURE, TOP AND BOTTOM OF SLOPE, & IRRIGATION RATE AS APPLICABLE.

IMPERVIOUS COVERAGE CALCS:

|             |                               |
|-------------|-------------------------------|
| BUILDING A: | 1120 SQ. FT.                  |
| BUILDING B: | 1213 SQ. FT.                  |
| ELEVATOR:   | 58 SQ. FT.                    |
| TOTAL:      | 2391 SQ. FT. (< 2500 SQ. FT.) |

PLANTER AREA CALCS:

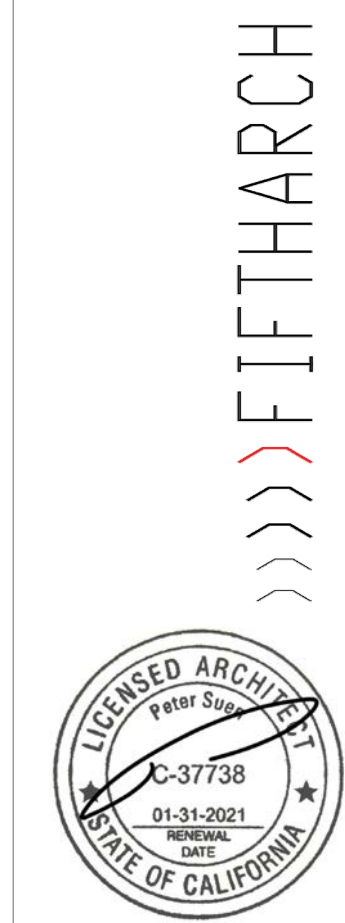
|                         |                |
|-------------------------|----------------|
| FRONT YARD PLANTER:     | 234 SQ. FT.    |
| CENTRAL YARD PLANTER 1: | 37 SQ. FT.     |
| CENTRAL YARD PLANTER 2: | 183 SQ. FT.    |
| CENTRAL YARD PLANTER 3: | 27 SQ. FT.     |
| REAR YARD PLANTER:      | 328 SQ. FT.    |
| ROOF PLANTER 1:         | 146 SQ. FT.    |
| ROOF PLANTER 2:         | 40 SQ. FT.     |
| ROOF PLANTER 3:         | 157 SQ. FT.    |
| ROOF PLANTER 4:         | 71 SQ. FT.     |
| TOTAL AREA:             | 1223 SQ. FT.   |
| MIN. 3" MULCH LAYER:    | 37 CUBIC YARDS |

OPEN SPACE LANDSCAPE AREA PERCENTAGE

|                        |               |
|------------------------|---------------|
| OPEN SPACE AREA TOTAL: | 2430 SQ. FT.  |
| LANDSCAPE AREA TOTAL:  | 1223 SQ. FT.  |
| PERCENTAGE:            | 50.3% (> 40%) |

LEGEND

- USEABLE OPEN SPACE LANDSCAPE AREA
- USEABLE OPEN SPACE: OUTDOOR ACTIVITY AREA
- COVERED SPACE



PROJECT  
2018 BLAKE STREET  
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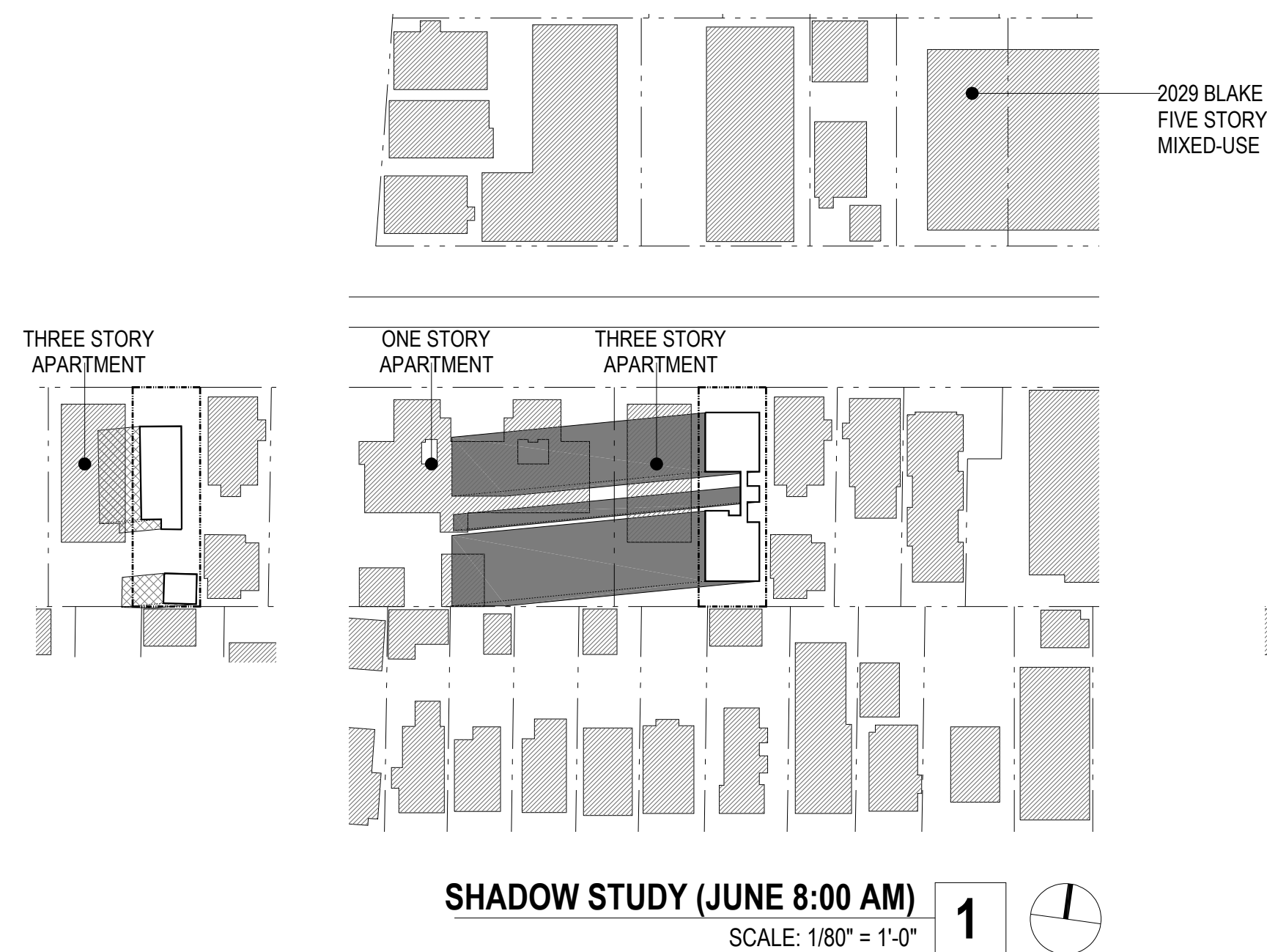
ISSUES & REVISIONS

| NO. | DATE       | DESCRIPTION                    |
|-----|------------|--------------------------------|
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LANDSCAPE AREA DIAGRAM

A1.3

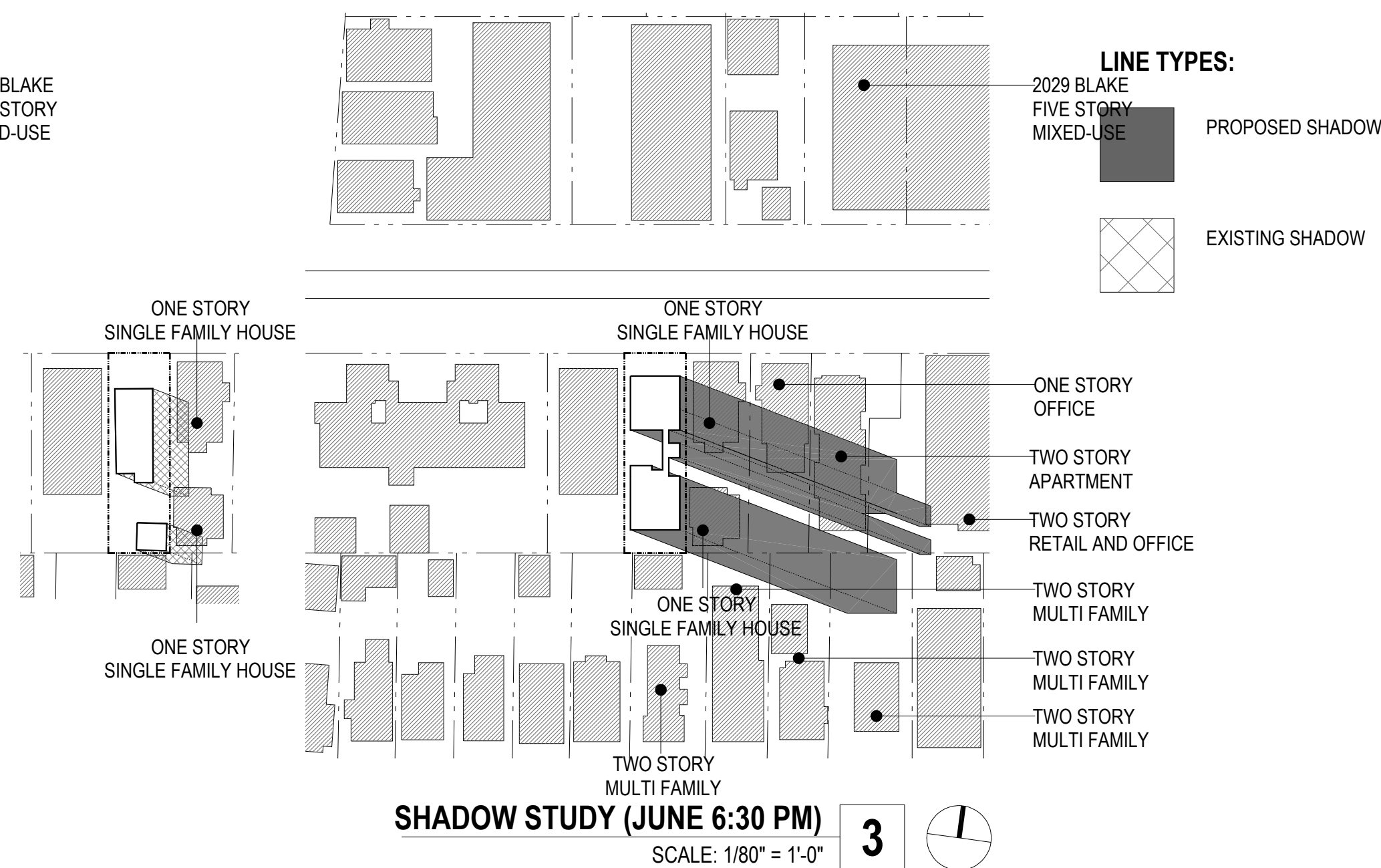
JUNE



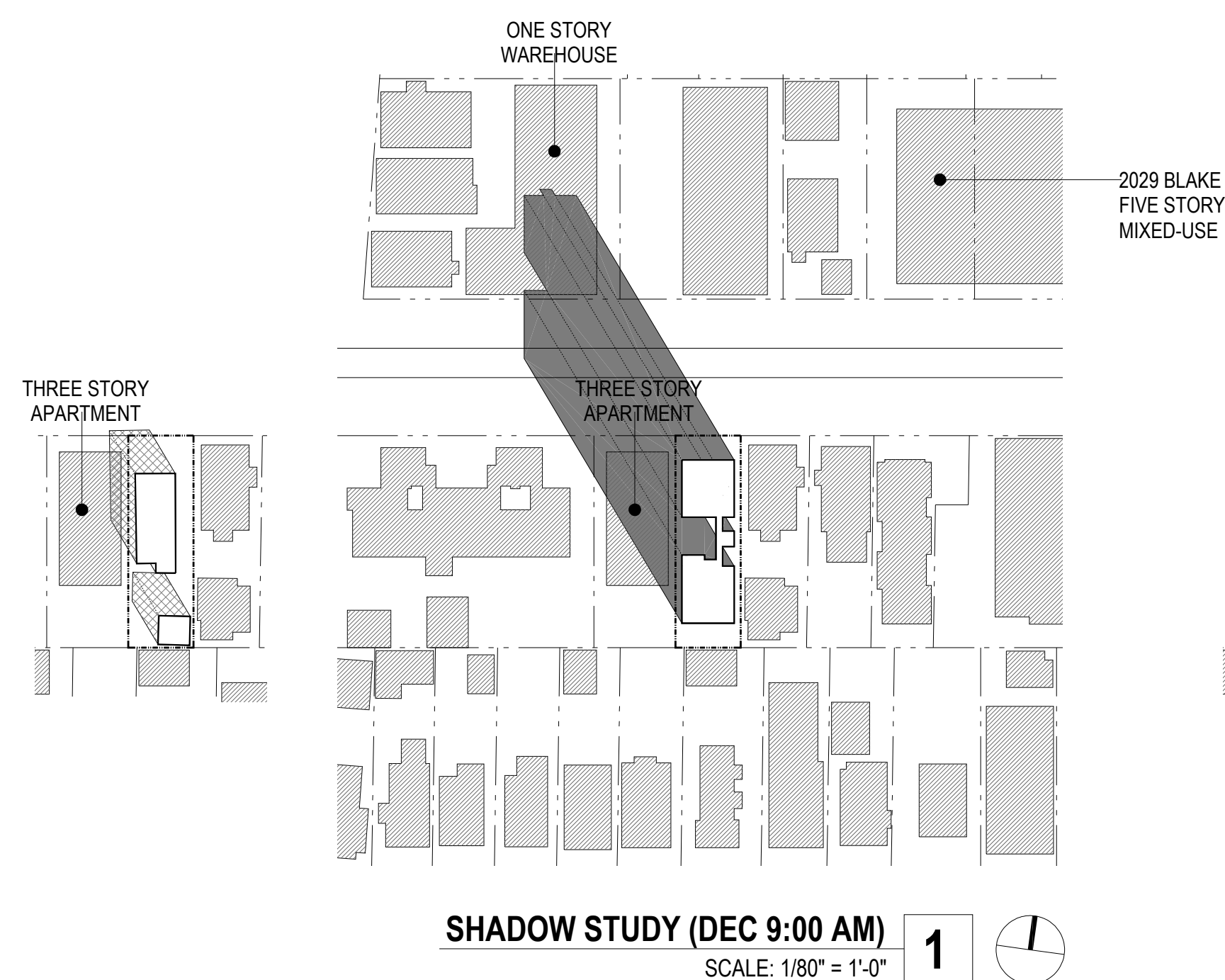
**SHADOW STUDY (JUNE NOON) 2**



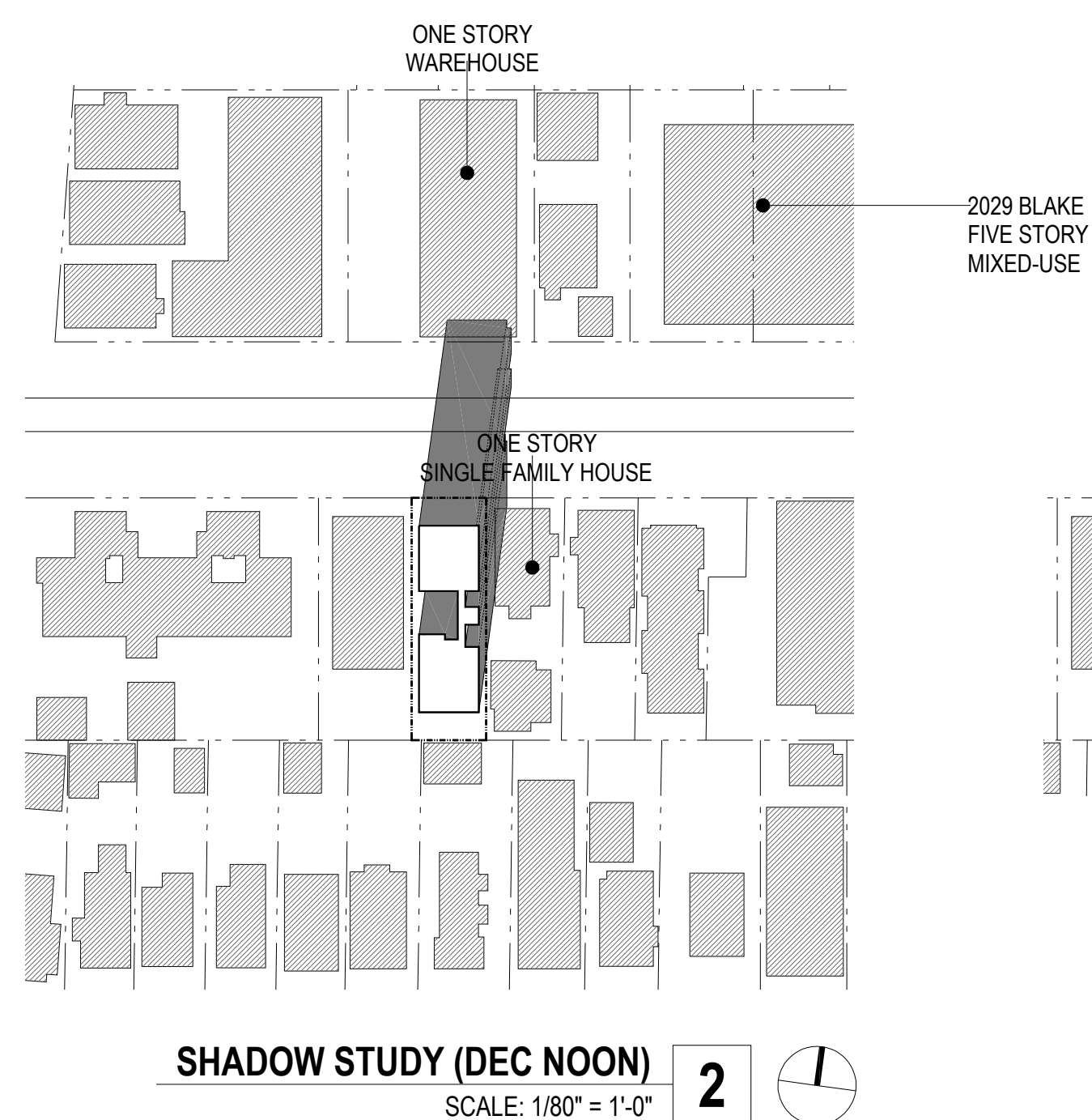
**SHADOW STUDY (JUNE 6:30 PM) 3**



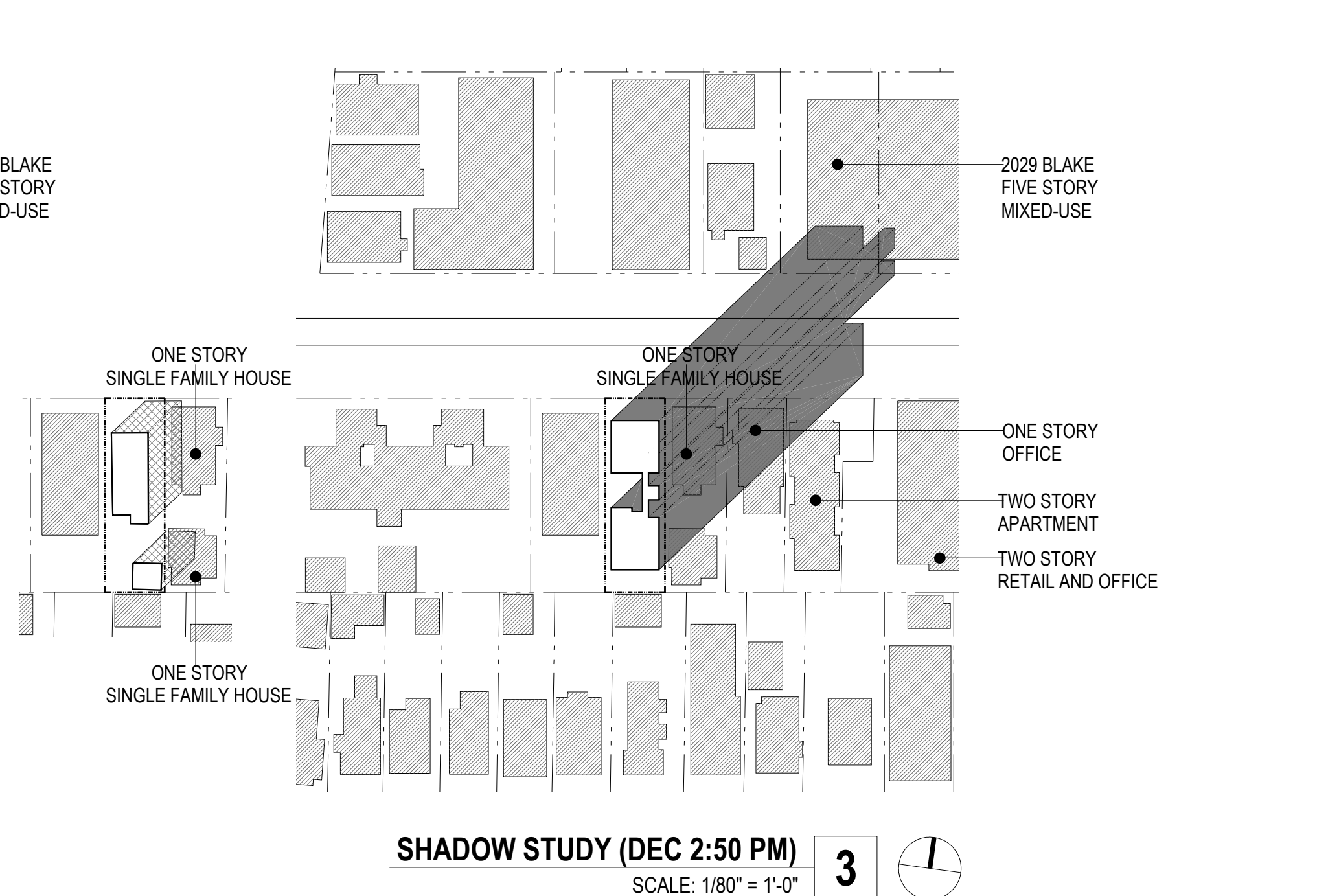
DECEMBER



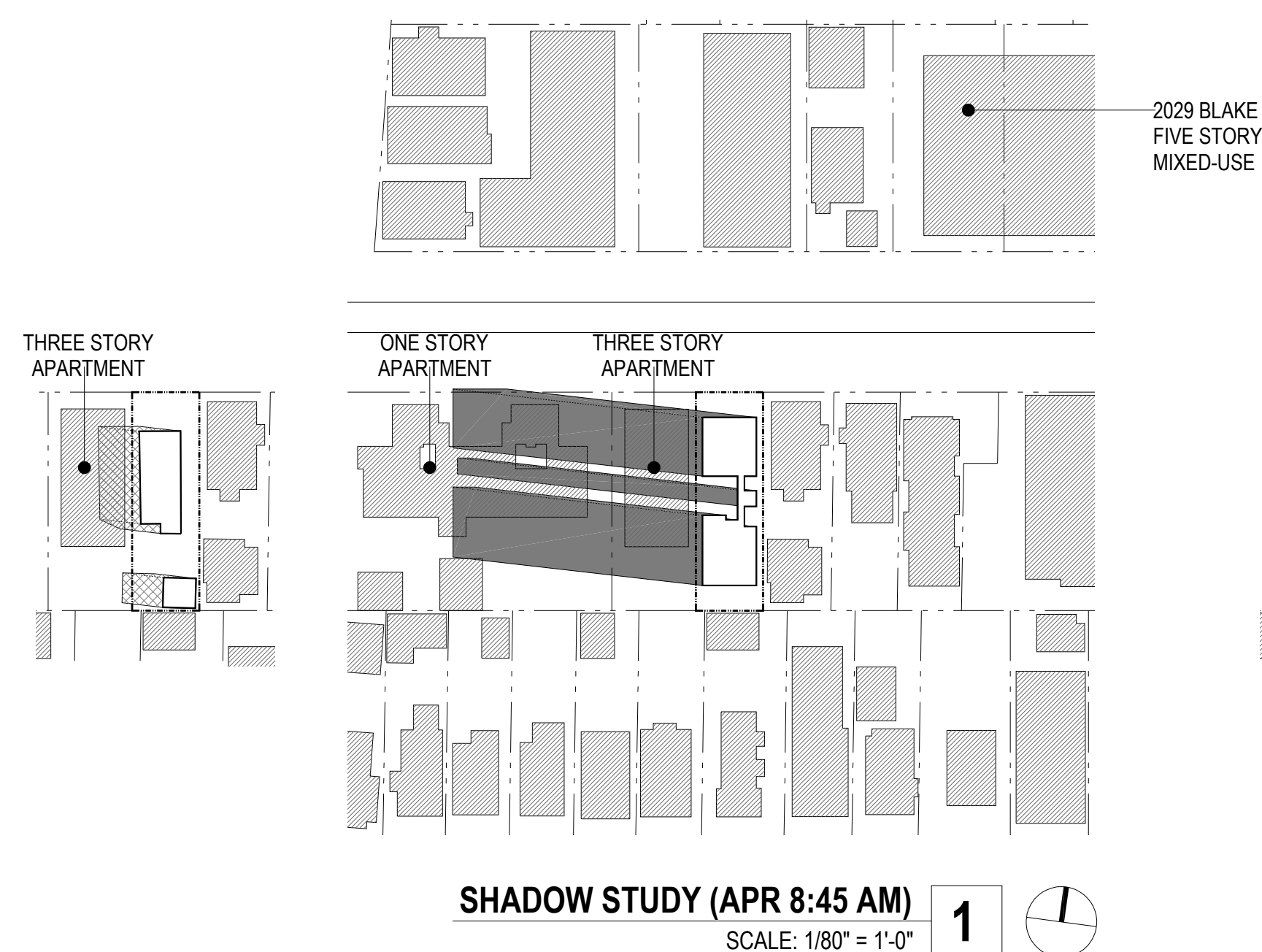
**SHADOW STUDY (DEC NOON) 2**



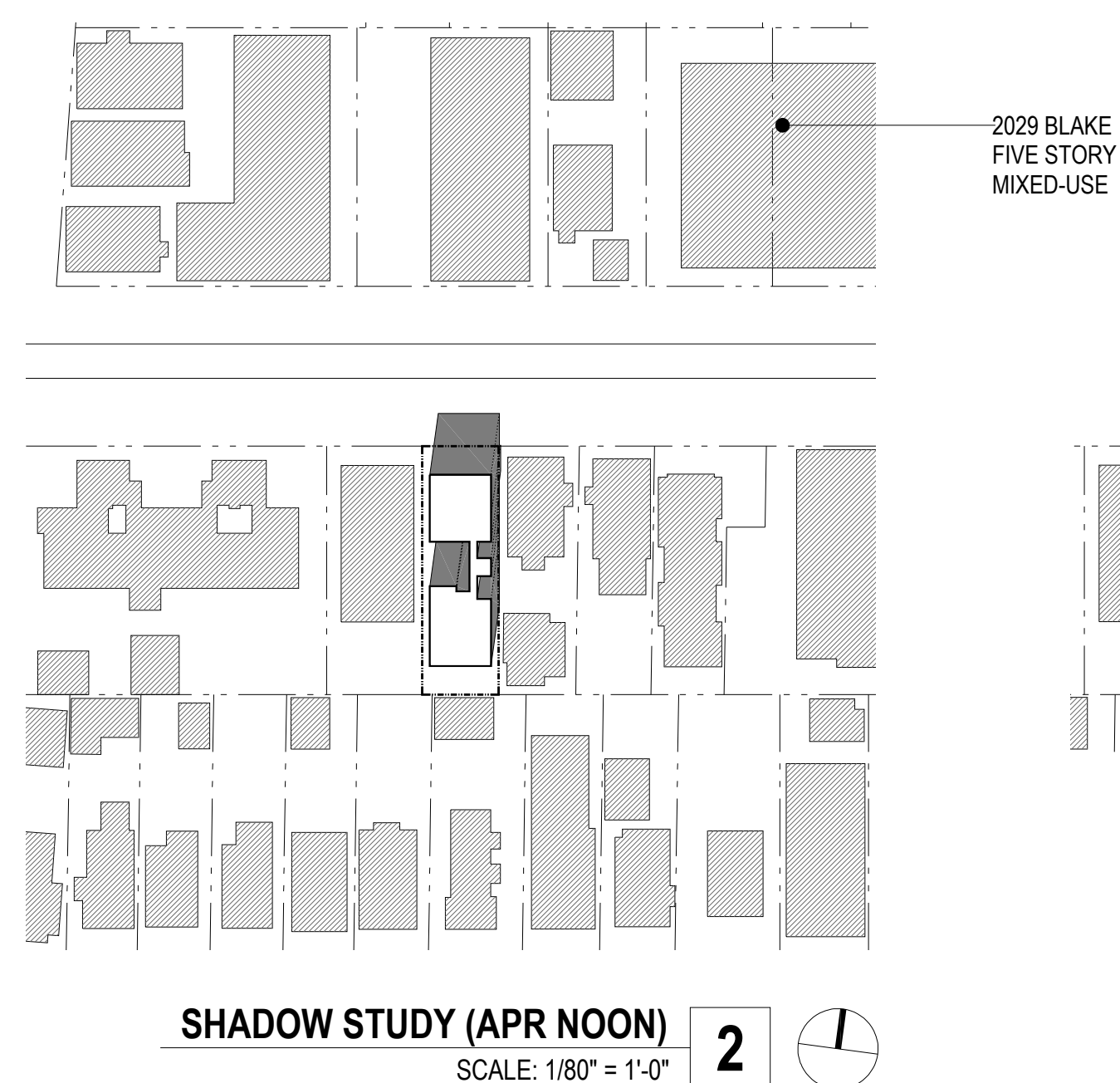
**SHADOW STUDY (DEC 2:50 PM) 3**



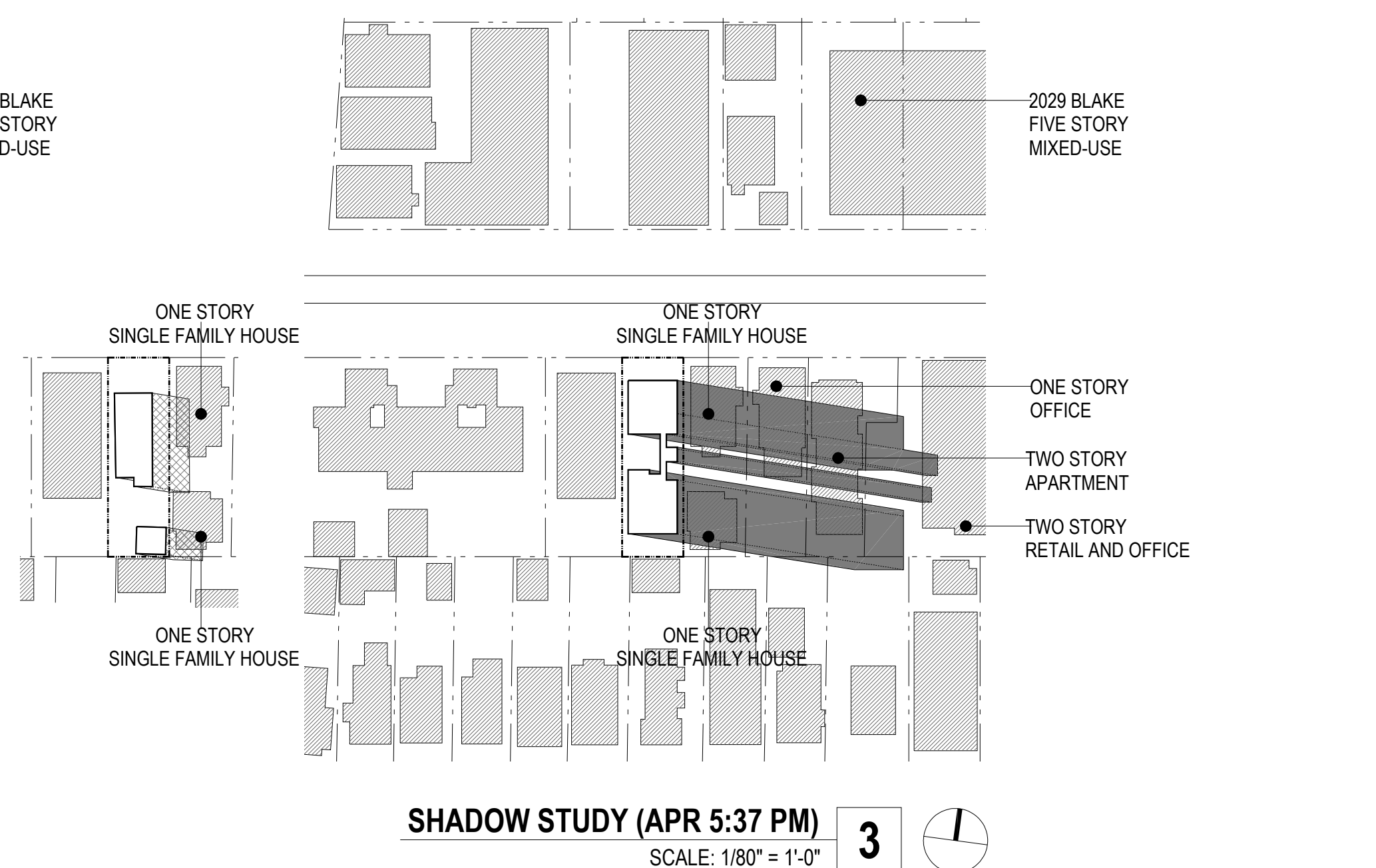
APRIL  
(SUBMITTED MONTH)



**SHADOW STUDY (APR NOON) 2**



**SHADOW STUDY (APR 5:37 PM) 3**



PROJECT

2018 BLAKE STREET  
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BERKELEY, CA 94704

ISSUES & REVISIONS

| NO. | DATE       | DESCRIPTION                    |
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SHADOW STUDIES

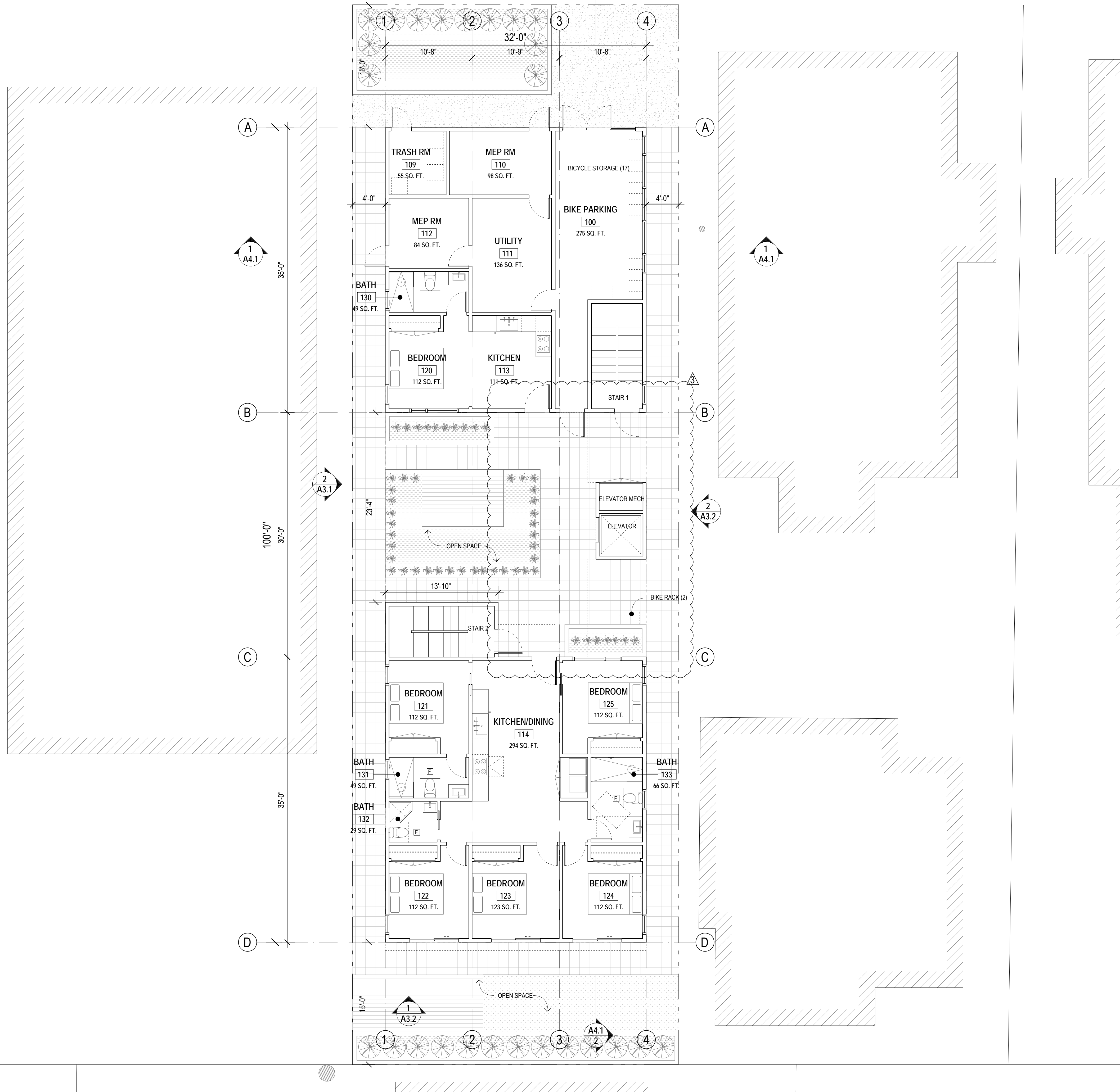
DATE: 3/6/2022  
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DRAWING BY: YZ  
CHECKED BY: PS

A1.4



BLAKE STREET

PROPERTY LINE

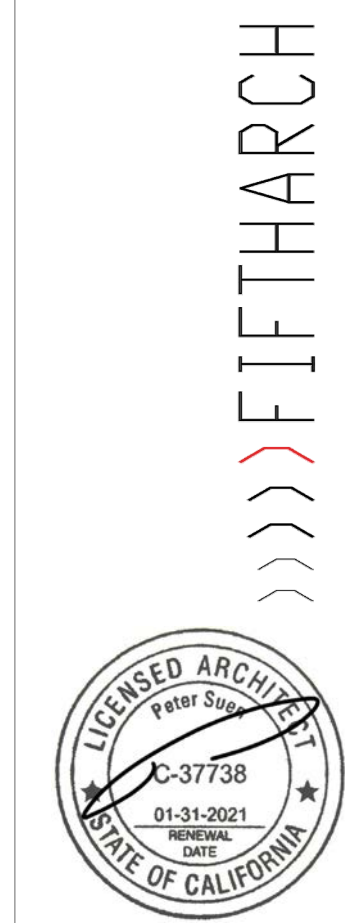


SHEET NOTES:

1. ALL NEW WINDOWS AND GLASS DOORS SHALL BE DOUBLE PANED, INSULATED W/ MAX U-VALUES AS STATED ON THE CALIFORNIA TITLE-24 REPORT. TEMP. MFGR LABELS SHOWING NEW GLAZING U-VALUES SHALL NOT BE REMOVED UNTIL BLDG. INSPECTOR AUTHORIZES TO DO SO.
2. SHOWER COMPARTMENTS AND WALLS ABOVE BATHTUBS WITH INSTALLED SHOWER HEADS SHALL BE FINISHED W/ A NONABSORBENT SURFACE TO A HEIGHT NOT LESS THAN 6 FT. ABV. THE FLOOR PER CRC R307.2.

LEGEND

- EXISTING WALL / ELEMENT TO REMAIN
- - - EXISTING WALL / ELEMENT TO REMOVE
- ▬ (N) PROPOSED WALL
- ▬ (N) 1-HR PROPOSED WALL
- ☐ FAN (PER 2013 CGC §4.506)



PROJECT  
2018 BLAKE STREET  
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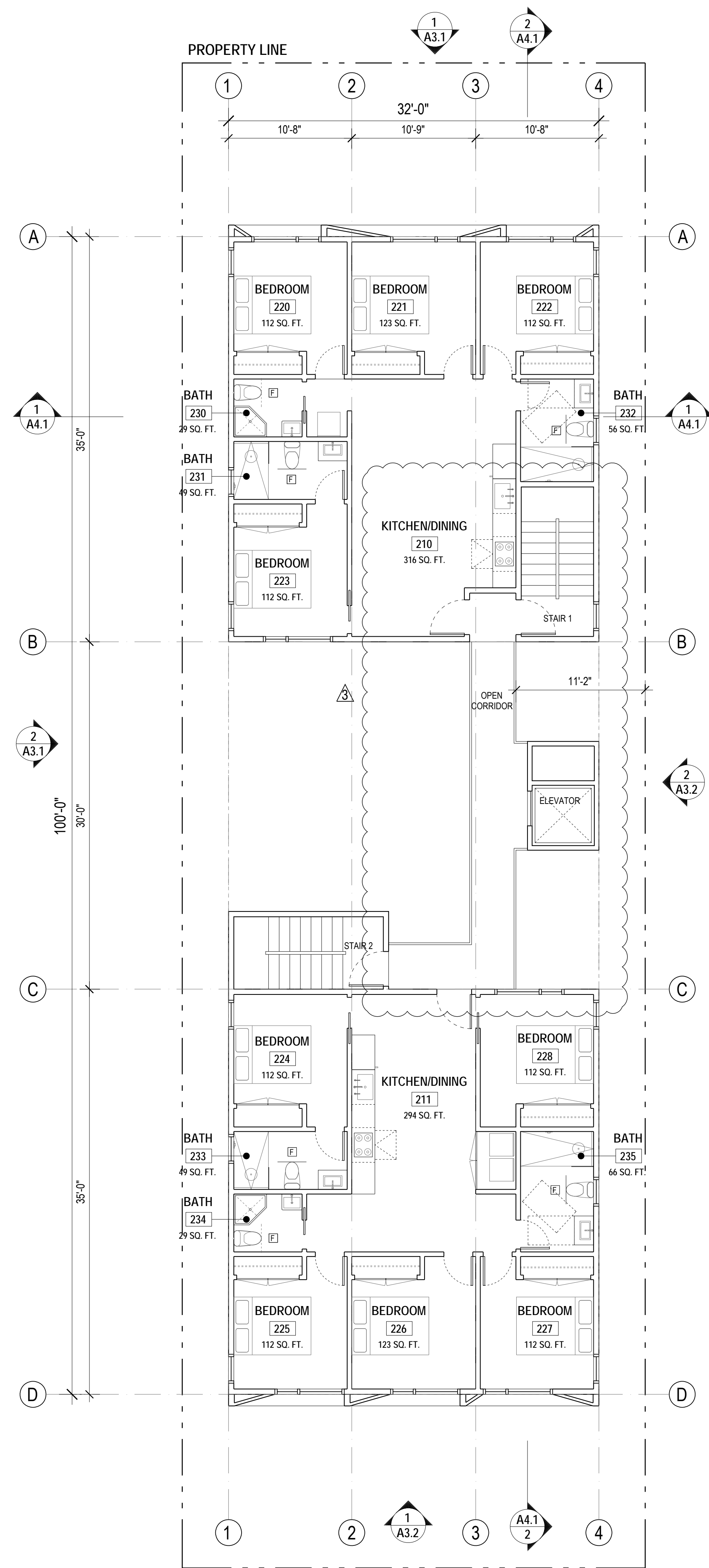
| NO. | DATE       | ISSUES & REVISIONS             |
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GROUND FLOOR PLAN  
DATE: 1/15/2022  
SCALE: 1/4"=1'-0"  
DRAWING BY: YZ  
CHECKED BY: PS

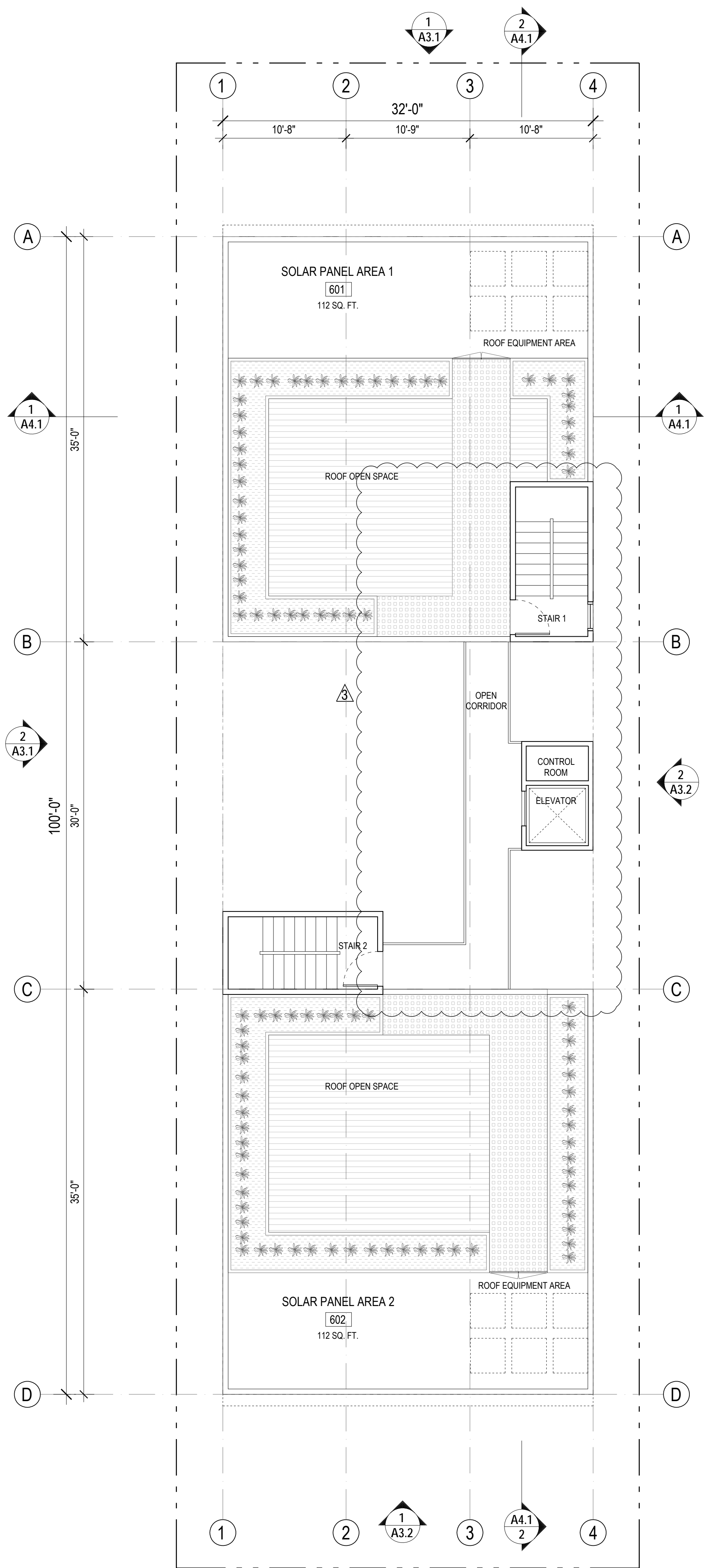
GROUND FLOOR PLAN  
SCALE: 1/8" = 1'-0"

1

A2.1



2ND - 6TH FLOOR PLAN  
SCALE: 1/8" = 1'-0" 1



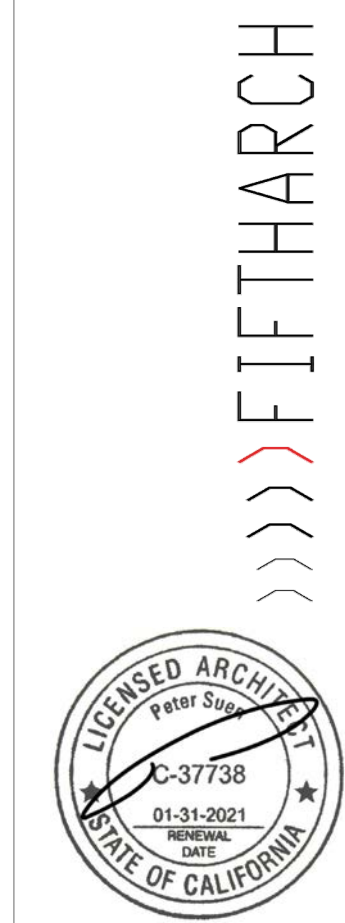
ROOF PLAN  
SCALE: 1/8" = 1'-0" 2

SHEET NOTES:

1. ALL NEW WINDOWS AND GLASS DOORS SHALL BE DOUBLE PANED, INSULATED W/ MAX U-VALUES AS STATED ON THE CALIFORNIA TITLE-24 REPORT. TEMP. MFGR LABELS SHOWING NEW GLAZING U-VALUES SHALL NOT BE REMOVED UNTIL BLDG. INSPECTOR AUTHORIZES TO DO SO.
2. SHOWER COMPARTMENTS AND WALLS ABOVE BATHTUBS WITH INSTALLED SHOWER HEADS SHALL BE FINISHED W/ A NONABSORBENT SURFACE TO A HEIGHT NOT LESS THAN 6 FT. ABV. THE FLOOR PER CRC R307.2.

LEGEND

- EXISTING WALL / ELEMENT TO REMAIN
- - - EXISTING WALL / ELEMENT TO REMOVE
- (N) PROPOSED WALL
- (N) 1-HR PROPOSED WALL
- F FAN (PER 2013 CGC §4.506)



PROJECT  
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ISSUES & REVISIONS

LEVEL 2 - 6 FLOOR PLAN & ROOF PLAN





DATE: 1/15/2022  
SCALE: 1/4" = 1'-0"

DRAWING BY: YZ  
CHECKED BY: PS

A2.2



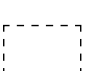
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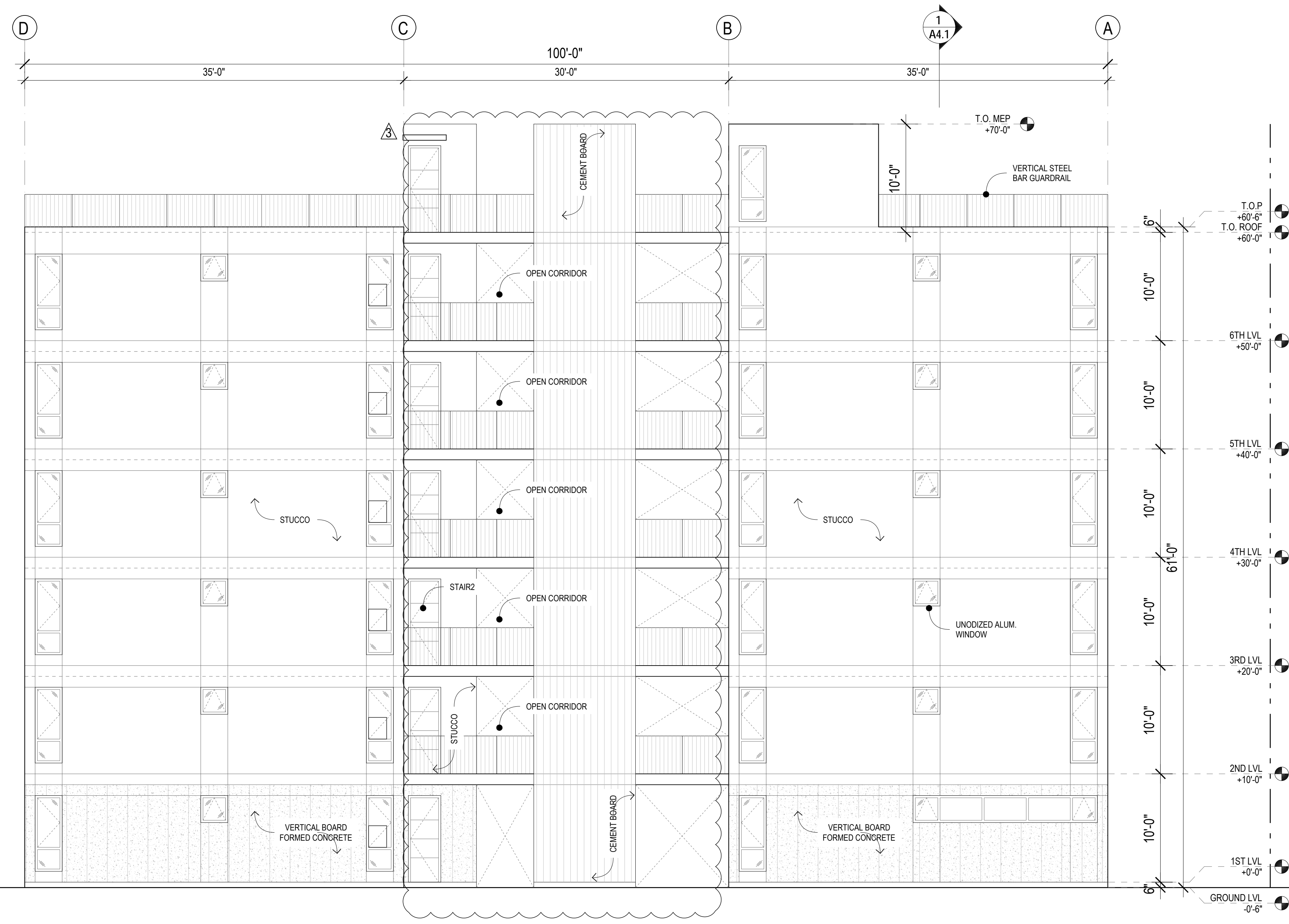
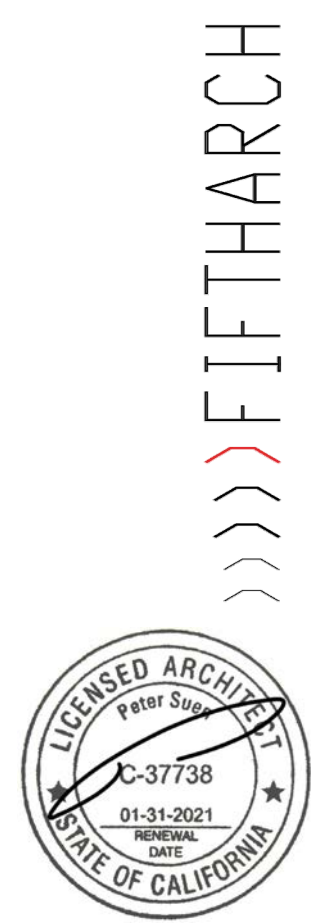
-  STUCCO
-  CEMENT BOARD
-  VERTICAL STEEL BAR GUARDRAIL
-  VERTICAL BOARD FORMED CONCRETE

SHEET NOTES:

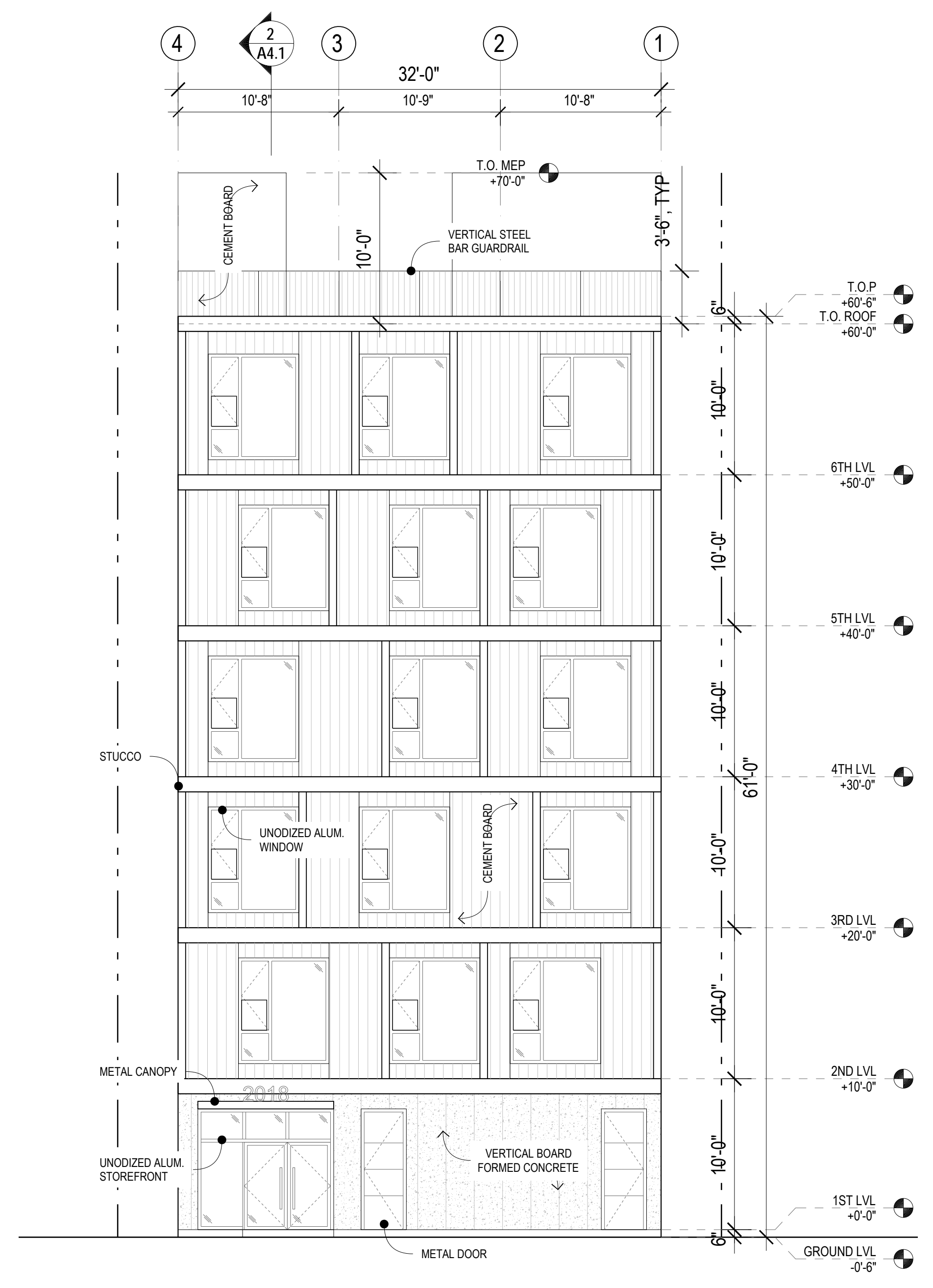
1. ALL NEW WINDOWS AND GLASS DOORS SHALL BE DOUBLE PANED, INSULATED W/ MAX U-VALUES AS STATED ON THE CALIFORNIA TITLE-24 REPORT. TEMP. MFGR LABELS SHOWING NEW GLAZING U-VALUES SHALL NOT BE REMOVED UNTIL BLDG. INSPECTOR AUTHORIZES TO DO SO.

LEGEND

 EGRESS WINDOW, MAX 44" ABV. F.F., 20" MIN. CLEAR WIDTH & 24" MIN. NET CLEAR OPENING HEIGHT



WEST ELEVATION 2  
SCALE: 1/8" = 1'-0"







NORTH ELEVATION 1  
SCALE: 1/8" = 1'-0"

|                              |                                |                                                              |                |
|------------------------------|--------------------------------|--------------------------------------------------------------|----------------|
| PROJECT                      |                                | 2018 BLAKE STREET<br>2018 BLAKE STREET<br>BERKELEY, CA 94704 |                |
| ISSUES & REVISIONS           | NO.                            | DESCRIPTION                                                  |                |
|                              | DATE                           | PLANNING APPROVAL SUBMITTAL                                  |                |
|                              | DATE                           | PLANNING APPROVAL 1ST COMMENTS                               |                |
|                              | DATE                           | PLANNING APPROVAL 2ND COMMENTS                               |                |
| DATE                         | PLANNING APPROVAL 3RD COMMENTS |                                                              |                |
| PROPOSED BUILDING ELEVATIONS |                                | DRAWING BY: YZ                                               | CHECKED BY: PS |
| DATE: 11/15/2022             | SCALE: AS NOTED                |                                                              |                |

A3.1


MATERIAL

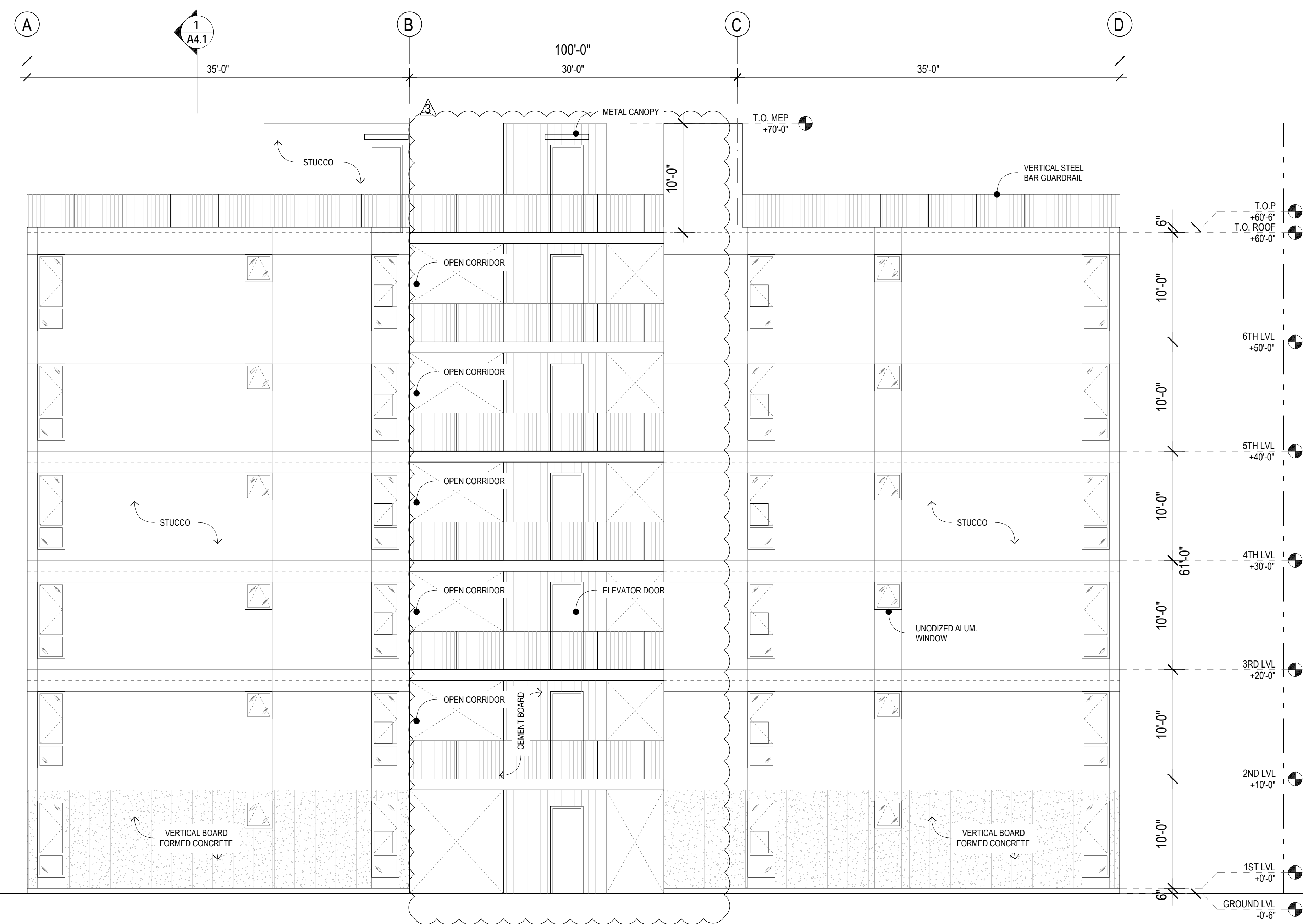
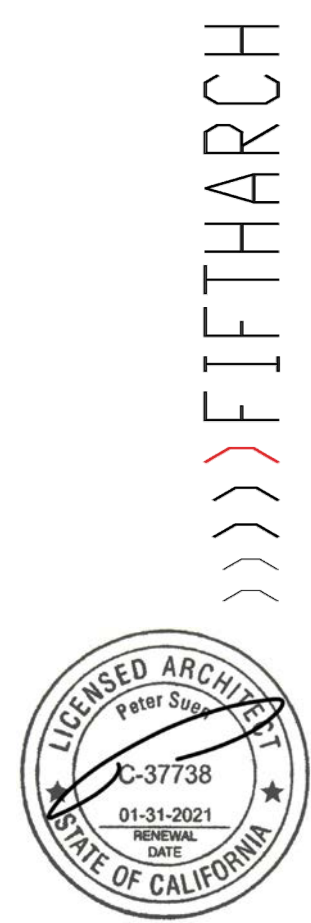
-  STUCCO
-  CEMENT BOARD
-  VERTICAL STEEL BAR GUARDRAIL
-  VERTICAL BOARD FORMED CONCRETE

SHEET NOTES:

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LEGEND

 EGRESS WINDOW, MAX 44" ABV. F.F., 20" MIN. CLEAR WIDTH & 24" MIN. NET CLEAR OPENING HEIGHT



EAST ELEVATION 2  
SCALE: 1/8" = 1'-0"



SOUTH ELEVATION 1  
SCALE: 1/8" = 1'-0"

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2018 BLAKE STREET  
2018 BLAKE STREET  
BERKELEY, CA 94704

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ISSUES & REVISIONS

PROPOSED BUILDING ELEVATIONS

DATE: 1/15/2022  
SCALE: AS NOTED

DRAWING BY: YZ  
CHECKED BY: PS

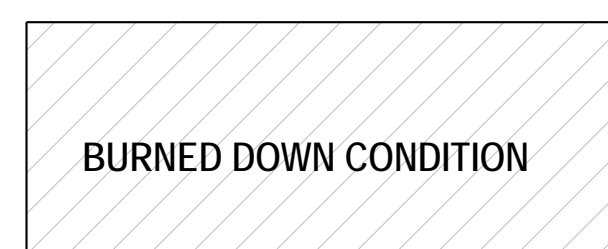
A3.2



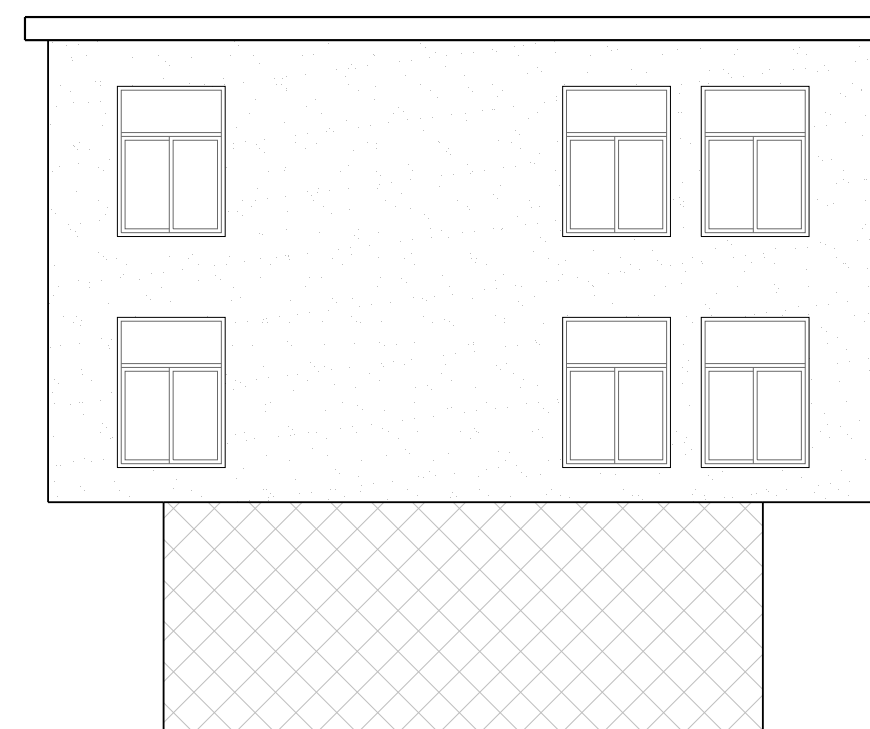
2022 BLAKE STREET



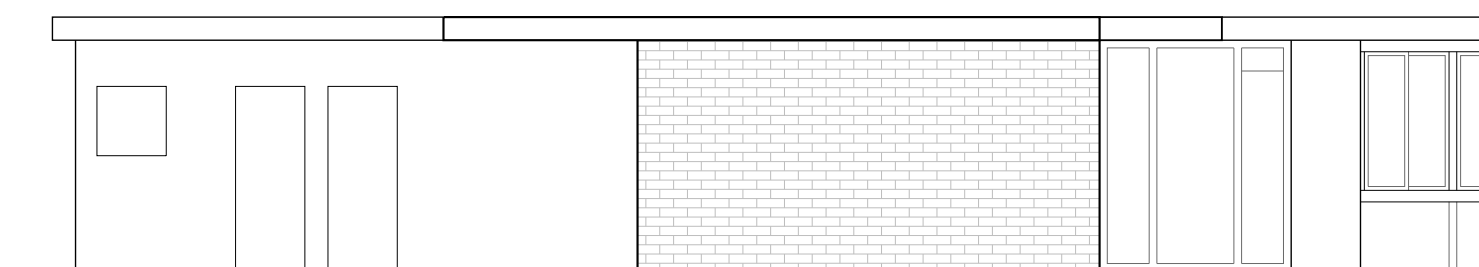
2020 BLAKE STREET



2018 BLAKE STREET



2016 BLAKE STREET



2006 BLAKE STREET

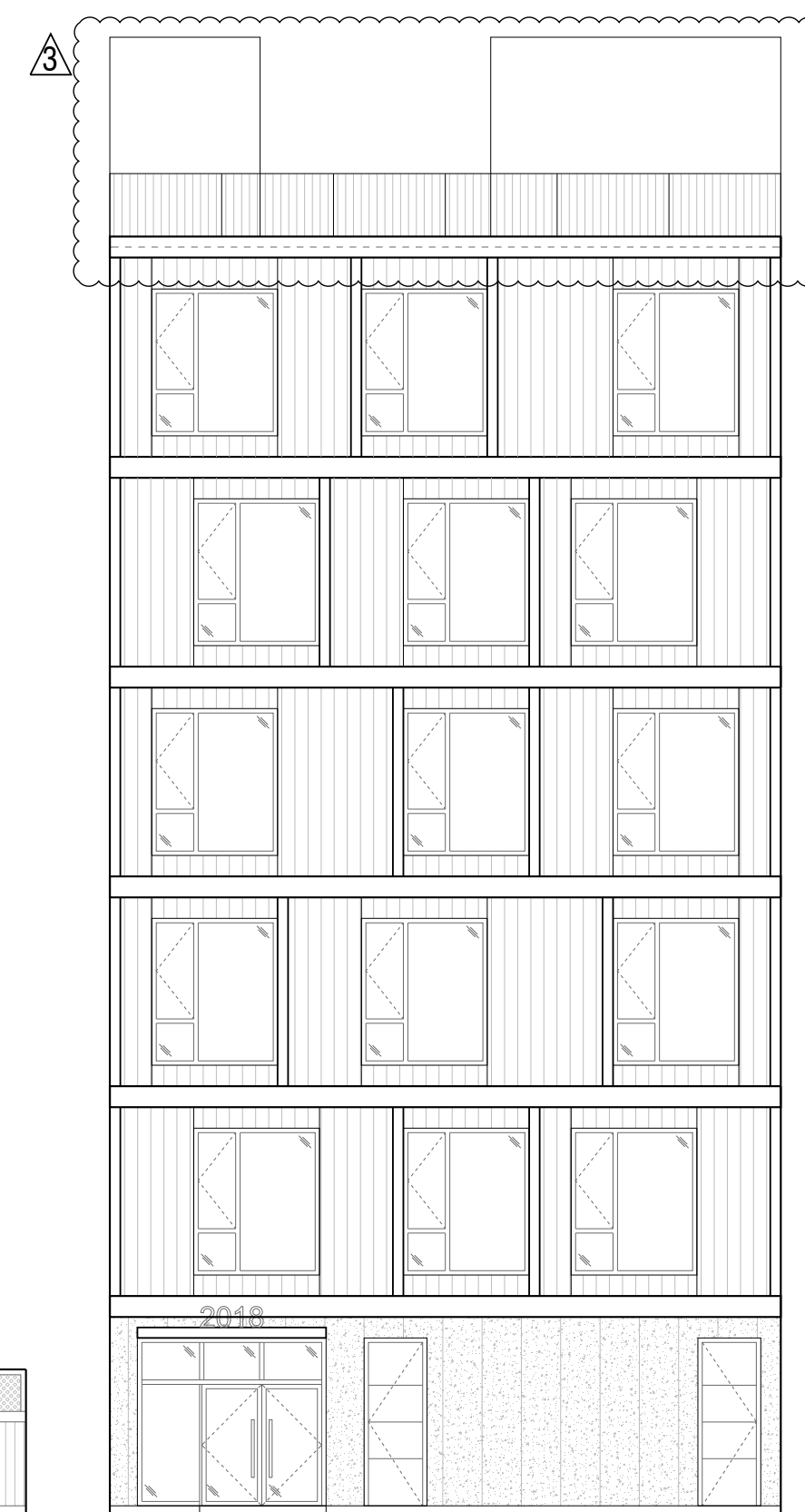
EXISTING STREET ELEVATION 1  
SCALE: 1/8" = 1'-0"



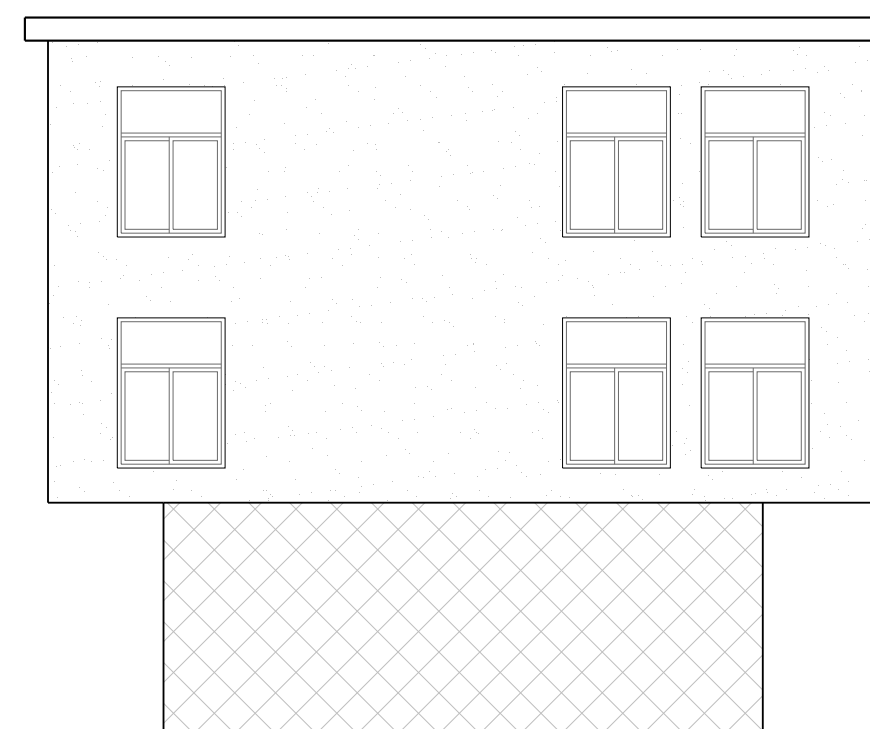
2022 BLAKE STREET



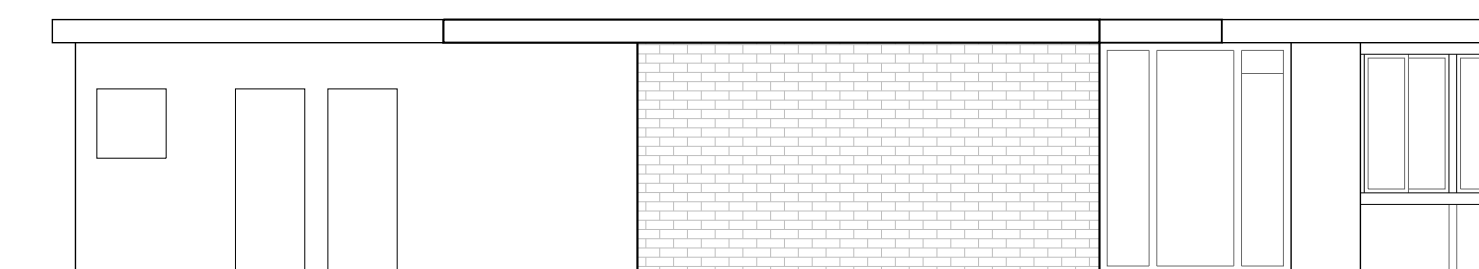
2020 BLAKE STREET



2018 BLAKE STREET

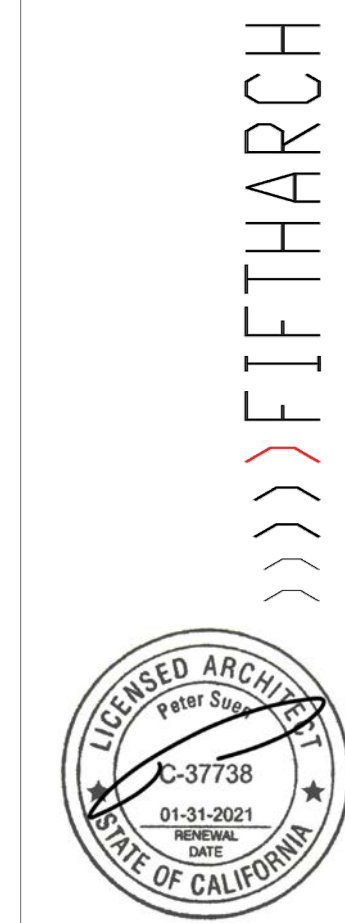


2016 BLAKE STREET



2006 BLAKE STREET

PROPOSED STREET ELEVATION 1  
SCALE: 1/8" = 1'-0"

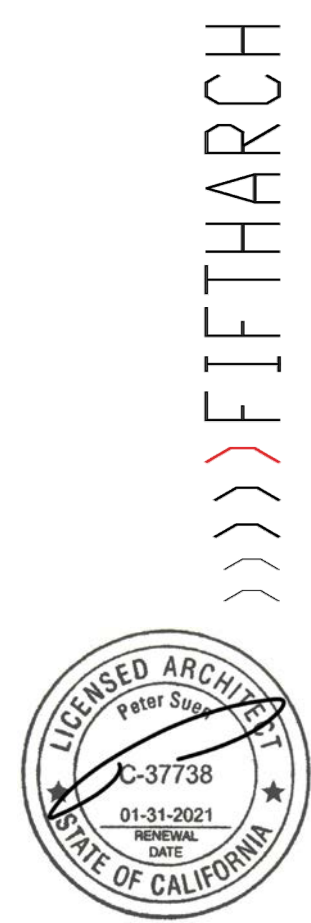


PROJECT  
2018 BLAKE STREET  
2018 BLAKE STREET  
BERKELEY, CA 94704

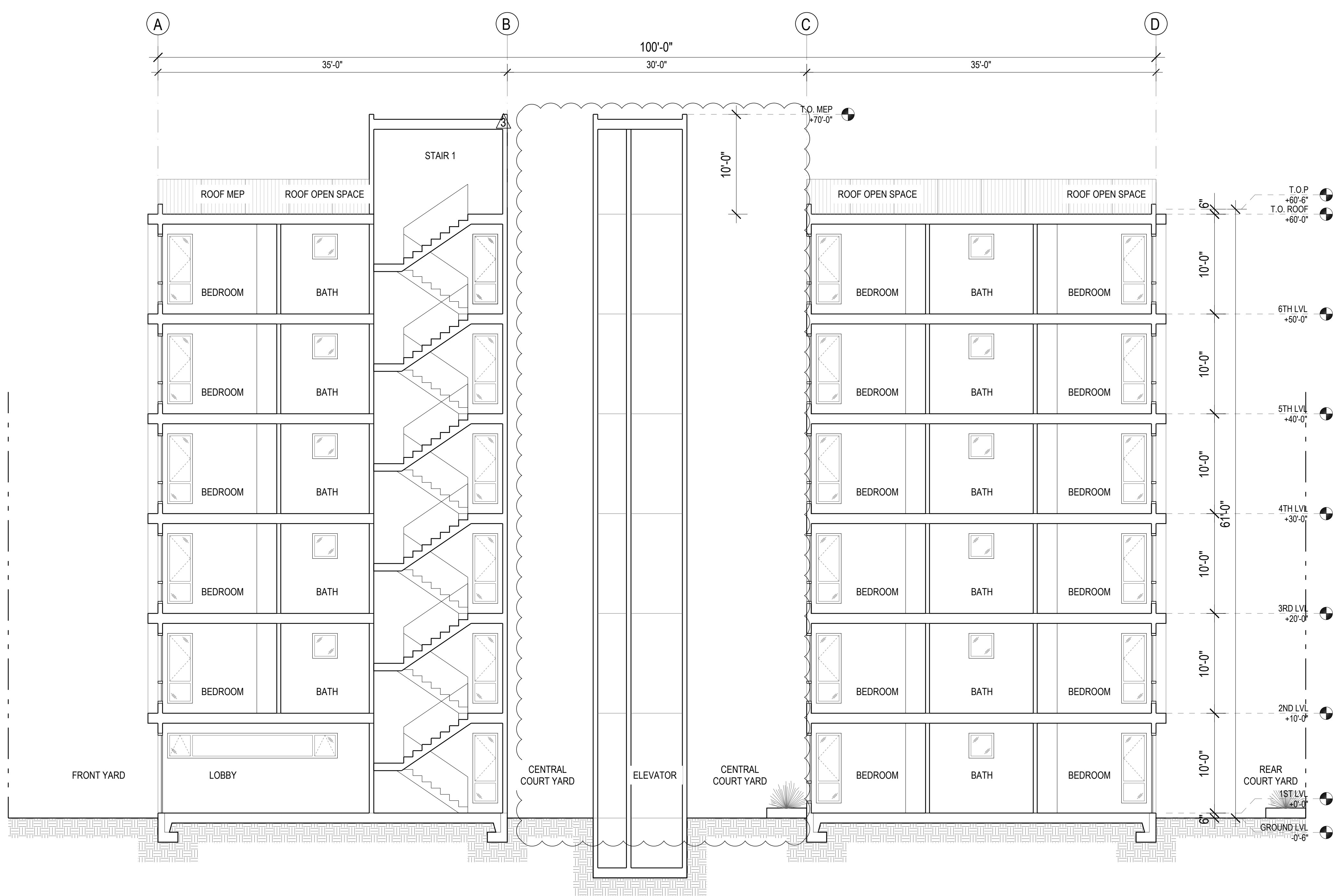
| ISSUES & REVISIONS | NO. | DATE       | DESCRIPTION                    |
|--------------------|-----|------------|--------------------------------|
|                    | A   | 04/28/2021 | PLANNING APPROVAL SUBMITTAL    |
|                    | A   | 07/05/2021 | PLANNING APPROVAL 1ST COMMENTS |
|                    | A   | 09/25/2021 | PLANNING APPROVAL 2ND COMMENTS |
|                    | A   | 12/20/2021 | PLANNING APPROVAL 3RD COMMENTS |

STREET ELEVATION  
DATE: 1/15/2022  
SCALE: AS NOTED  
DRAWING BY: YZ  
CHECKED BY: PS

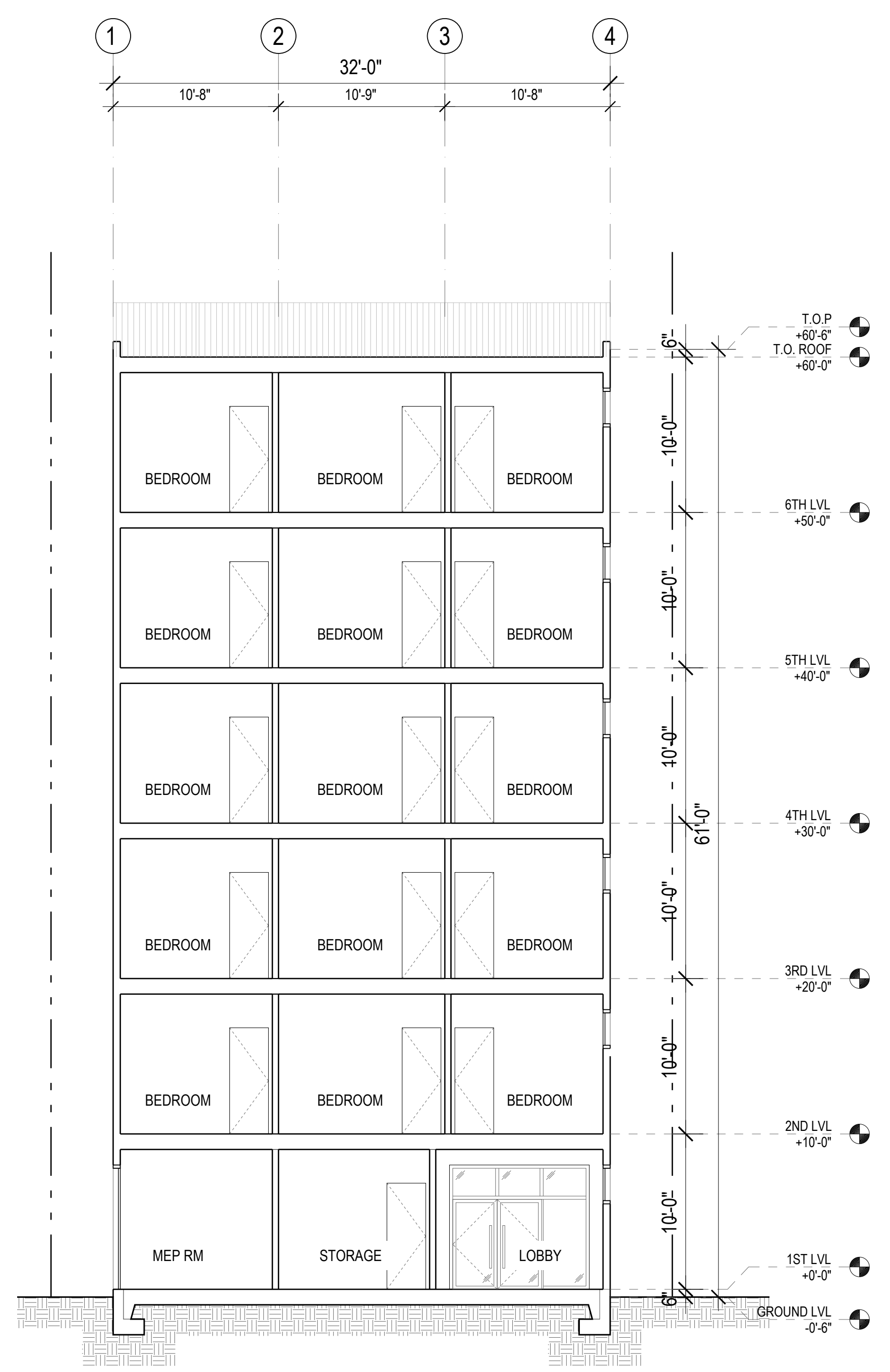
A3.3



FIFTHARCH



PROPOSED LONG SECTION  
SCALE: 1/8" = 1'-0" **2**



PROPOSED SHORT SECTION  
SCALE: 1/8" = 1'-0" **1**

PROJECT  
2018 BLAKE STREET  
2018 BLAKE STREET  
BERKELEY, CA 94704

| ISSUES & REVISIONS |                                |
|--------------------|--------------------------------|
| NO.                | DESCRIPTION                    |
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**BUILDING SECTIONS**

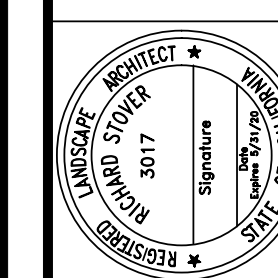
DATE: 11/15/2022  
SCALE: AS NOTED  
DRAWING BY: YZ  
CHECKED BY: PS

**A4.1**



| NO. | REVISIONS |
|-----|-----------|
|     |           |
|     |           |
|     |           |
|     |           |
|     |           |
|     |           |
|     |           |
|     |           |
|     |           |
|     |           |

RW Stover & Associates, Inc.  
Landscape Architecture  
1620 North Main Street, Suite 4  
Walnut Creek, CA 94596  
Ph: 925.937.2383

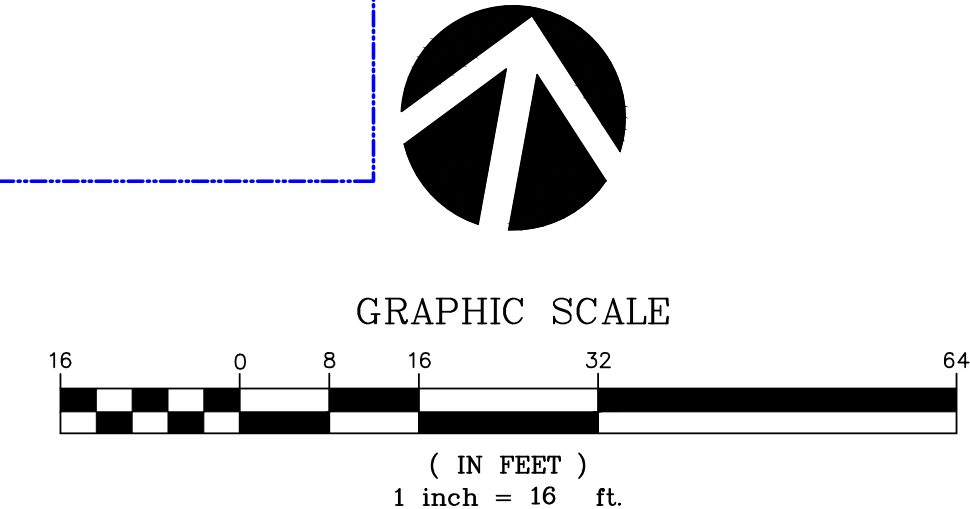
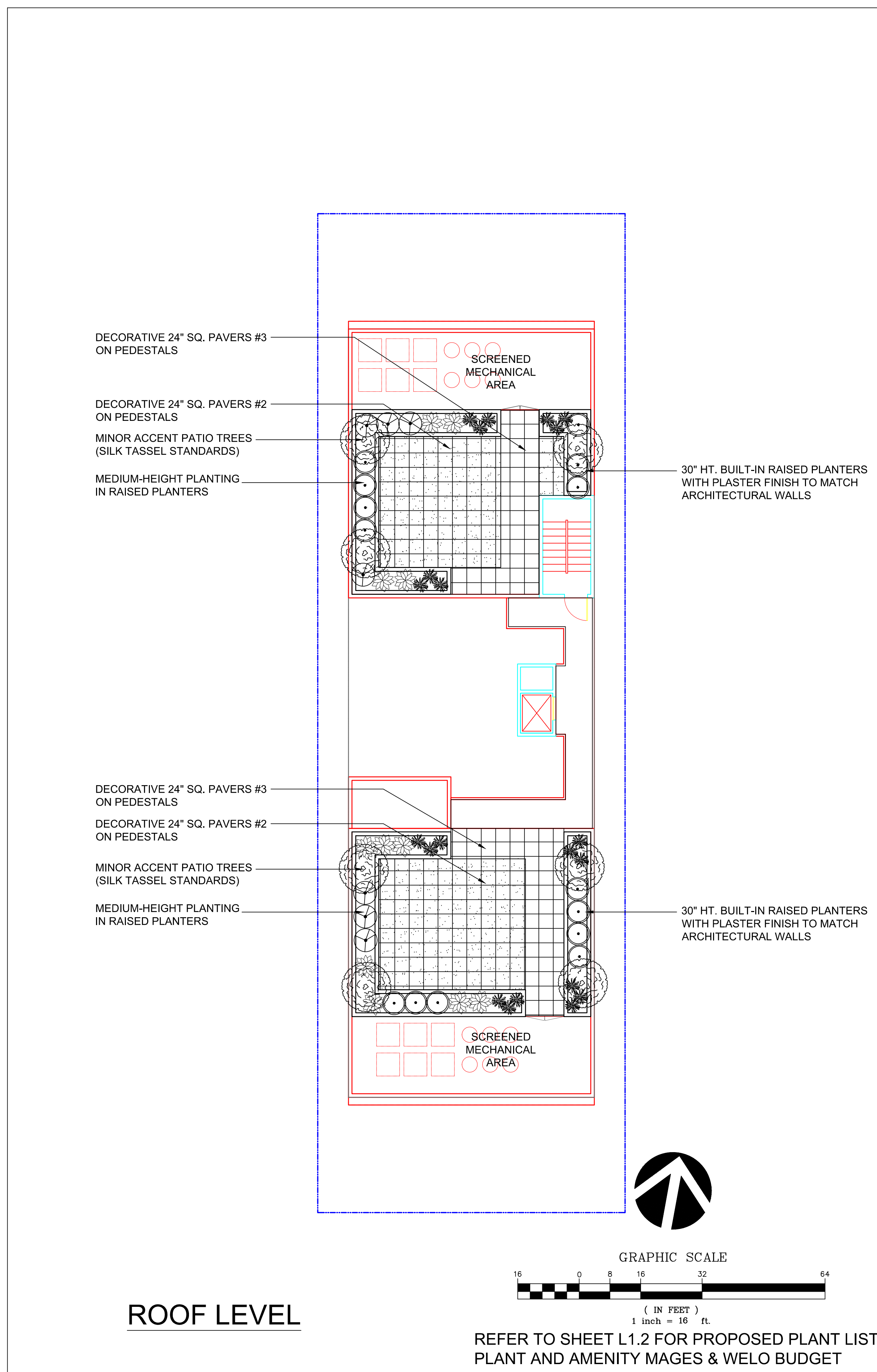
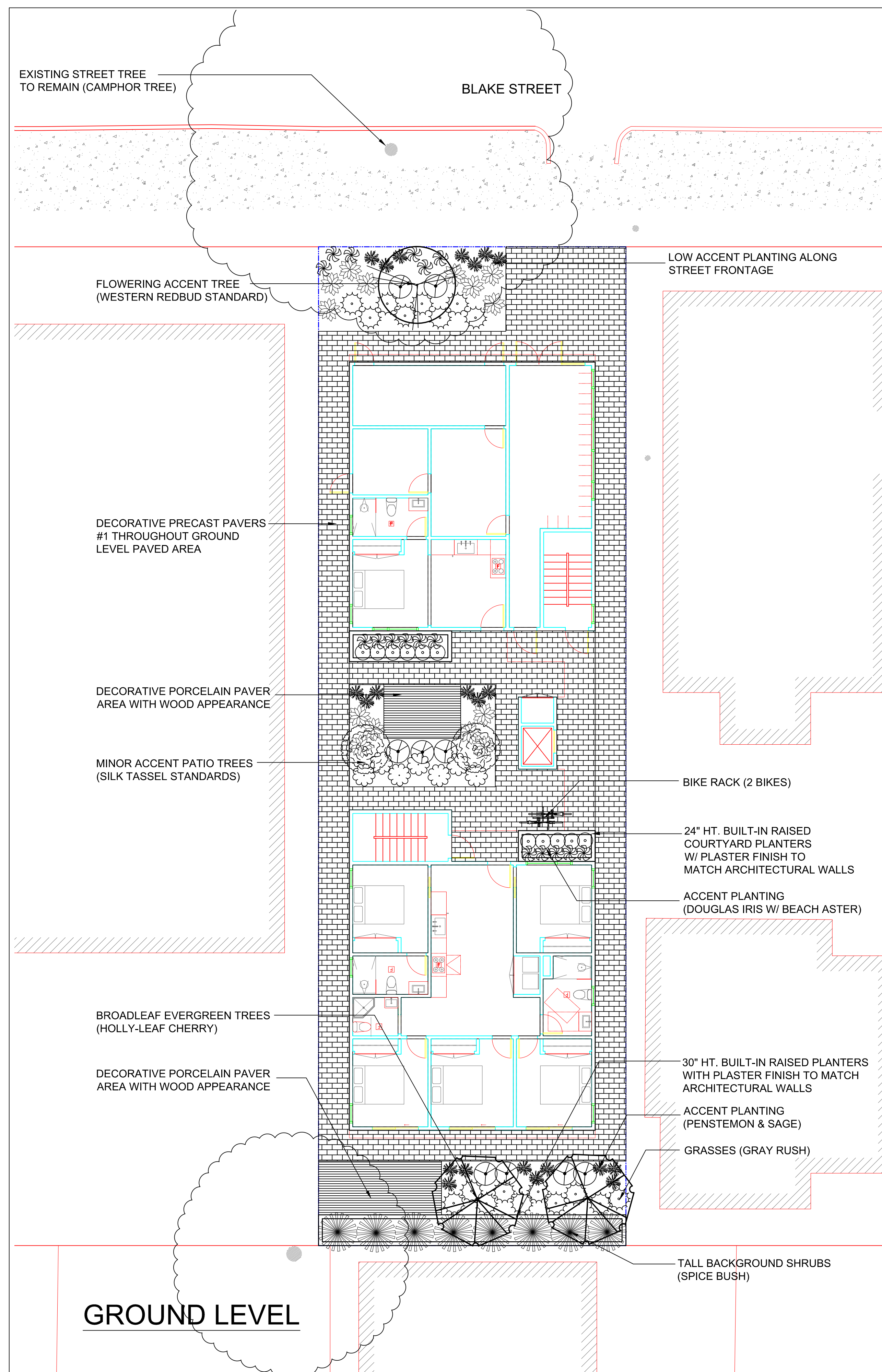


2018 BLAKE STREET  
BERKELEY, CALIFORNIA

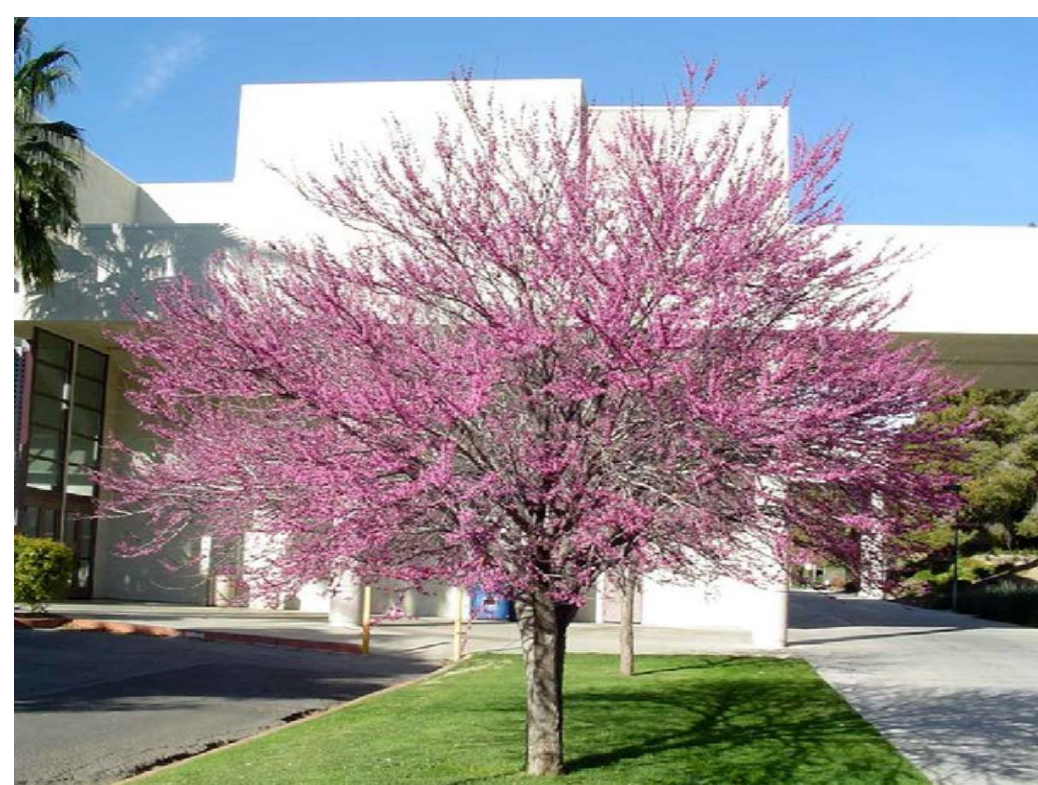
PRELIMINARY  
LANDSCAPE PLANS

|                   |              |
|-------------------|--------------|
| DESIGNED:<br>RS   | DRAWN:<br>RS |
| CHECKED:          | JOB NO.:     |
| DATE:<br>11-29-21 |              |
| SCALE:<br>NOTED   |              |

SHEET  
**L1.1**  
OF SHEETS



REFER TO SHEET L1.2 FOR PROPOSED PLANT LIST, PLANT AND AMENITY MAGES & WELO BUDGET



CERCIS OCCIDENTALIS (STANDARD FORM)  
WESTERN REDBUD



GARRYA ELLIPTICA (STANDARD FORM)  
SILKTASSEL



PRUNUS ILICIFOLIA (STANDARD FORM)  
HOLLY-LEAF CHERRY

**PROPOSED PLANT MATERIAL LIST (ALL BUILDING LEVELS):**

| BOTANICAL NAME                    | COMMON NAME          | QUANTITY | SIZE    | WUCOLS WATER USE | NATIVE |
|-----------------------------------|----------------------|----------|---------|------------------|--------|
| <b>TREES:</b>                     |                      |          |         |                  |        |
| CERCIS OCCIDENTALIS (LOW-BRANCH)  | WESTERN REDBUD       | 1        | 24" BOX | LOW              | YES    |
| GARRYA ELLIPTICA (STANDARD)       | SILKTASSEL           | 9        | 24" BOX | LOW              | YES    |
| PRUNUS ILICIFOLIA (STANDARD)      | HOLLY-LEAF CHERRY    | 2        | 24" BOX | LOW              | YES    |
| <b>SHRUBS:</b>                    |                      |          |         |                  |        |
| CALYCANTHUS OCCIDENTALIS          | SPICE BUSH           | 8        | 5 GA    | LOW              | YES    |
| ERIOGONUM ARBORESCENS             | BUCKWHEAT            | 25       | 5 GA    | LOW              | YES    |
| SALVIA CLEVE. 'WINNIFRED GILLMAN' | CALIFORNIA BLUE SAGE | 16       | 5 GA    | LOW              | YES    |
| TEUCRIUM 'COMPACTA'               | DWARF GERMANDER      | 14       | 5 GA    | LOW              | NO     |
| <b>PERENNIALS / GRASSES:</b>      |                      |          |         |                  |        |
| ERIGERON GLAUCUS                  | BEACH ASTER          | 11       | 1 GA    | LOW              | YES    |
| IRIS DOUGLASII                    | PACIFIC COAST IRIS   | 11       | 1 GA    | LOW              | YES    |
| JUNCUS PATENS                     | CALIFORNIA GRAY RUSH | 18       | 1 GA    | LOW              | YES    |
| LOMANDRA LONGIFOLIA 'BREEZE'      | DWARF MAT RUSH       | 7        | 5 GA    | LOW              | NO     |
| PENSTEMON SPECTABILIS             | BEARD TONGUE         | 43       | 1 GA    | LOW              | YES    |

POLLINATOR PLANTS NOTE: 75% OF PLANT PALETTE IS NATIVE POLLINATOR SPECIES (114 OF 153 SPECIMENS)

**WATER EFFICIENT LANDSCAPE WORKSHEET - BY HYDROZONE**

REFERENCE EVAPOTRANSPIRATION (ET<sub>0</sub>): 41.8

| HYDROZONE #                     | HYDROZONE / (PLANT WATER USE) | PLANT TYPE | PLANT FACTOR (PF) | IRRIGATION METHOD | IRRIGATION EFFICIENCY (IE) | ETAF (PF / IE) | LANDSCAPE AREA (sq. ft.) | ETAF x AREA | ESTIMATED TOTAL WATER USE (ETWU)               | % OF TOTAL LANDSCAPE AREA |
|---------------------------------|-------------------------------|------------|-------------------|-------------------|----------------------------|----------------|--------------------------|-------------|------------------------------------------------|---------------------------|
| <b>REGULAR LANDSCAPE AREAS:</b> |                               |            |                   |                   |                            |                |                          |             |                                                |                           |
| 1                               | LOW WATER USE                 | SHRUBS     | 0.3               | DRIP              | 0.81                       | 0.37037037     | 1218                     | 451.1111111 | 11891.0                                        | 92%                       |
| 2                               | LOW WATER USE                 | TREES      | 0.3               | BUBBLER           | 0.81                       | 0.37037037     | 108                      | 40          | 1036.6                                         | 8%                        |
|                                 |                               |            |                   |                   |                            |                | <b>TOTALS:</b>           | 1326        | 491                                            | 100%                      |
| <b>SPECIAL LANDSCAPE AREAS:</b> |                               |            |                   |                   |                            |                |                          |             |                                                |                           |
|                                 | REC. AREA                     |            |                   |                   |                            | 1              |                          | 0           | 0                                              |                           |
|                                 | POOL                          |            |                   |                   |                            | 1              |                          | 0           | 0                                              |                           |
|                                 | WATER FEATURE 2               |            |                   |                   |                            | 1              |                          | 0           | 0                                              |                           |
|                                 |                               |            |                   |                   |                            |                | <b>TOTALS:</b>           | 0           | 0                                              |                           |
|                                 |                               |            |                   |                   |                            |                |                          |             | <b>ETWU TOTAL:</b>                             | 12,728                    |
|                                 |                               |            |                   |                   |                            |                |                          |             | <b>MAXIMUM ALLOWED WATER ALLOWANCE (MAWA):</b> | 15,464                    |
| <b>ETAF CALCULATIONS:</b>       |                               |            |                   |                   |                            |                |                          |             |                                                |                           |
| <b>REGULAR LANDSCAPE AREAS:</b> |                               |            |                   |                   |                            |                |                          |             |                                                |                           |
|                                 |                               |            |                   |                   |                            |                | TOTAL ETAF x AREA        | 491         |                                                |                           |
|                                 |                               |            |                   |                   |                            |                | TOTAL LANDSCAPE AREA     | 1,326       |                                                |                           |
|                                 |                               |            |                   |                   |                            |                | AVERAGE ETAF             | 0.37        |                                                |                           |
| <b>ALL LANDSCAPE AREAS:</b>     |                               |            |                   |                   |                            |                |                          |             |                                                |                           |
|                                 |                               |            |                   |                   |                            |                | TOTAL ETAF x AREA        | 491         |                                                |                           |
|                                 |                               |            |                   |                   |                            |                | TOTAL LANDSCAPE AREA     | 1,326       |                                                |                           |
|                                 |                               |            |                   |                   |                            |                | SITEWIDE ETAF            | 0.37        |                                                |                           |

NOTE: AVERAGE ETAF FOR REGULAR LANDSCAPE AREAS MUST BE 0.55 OR BELOW FOR RESIDENTIAL AREAS, AND 0.45 OR BELOW FOR NON-RESIDENTIAL AREAS.



BIKE RACKS  
COLUMBIA CASCADE LOOP RACK  
WITH GALVANIZED FINISH



1 GROUND LEVEL PLAZA PLANK PAVERS  
NICOLOCK PLANK PAVERS (6"x17")  
COLORS: GRANITE CITY, RAVEN & PEWTER)



2 ACCENT PAVERS #2  
PORCELAIN PAVERS ON PEDESTALS (ROOF)  
TILE TECH QUARTZITE SERIES  
'QUARTZITE PEARL' 24" SQ.



3 ACCENT PAVERS #3  
PORCELAIN PAVERS ON PEDESTALS (ROOF)  
TILE TECH QUARTZITE SERIES  
'QUARTZITE LAGUNA' 24" SQ.

REVISIONS

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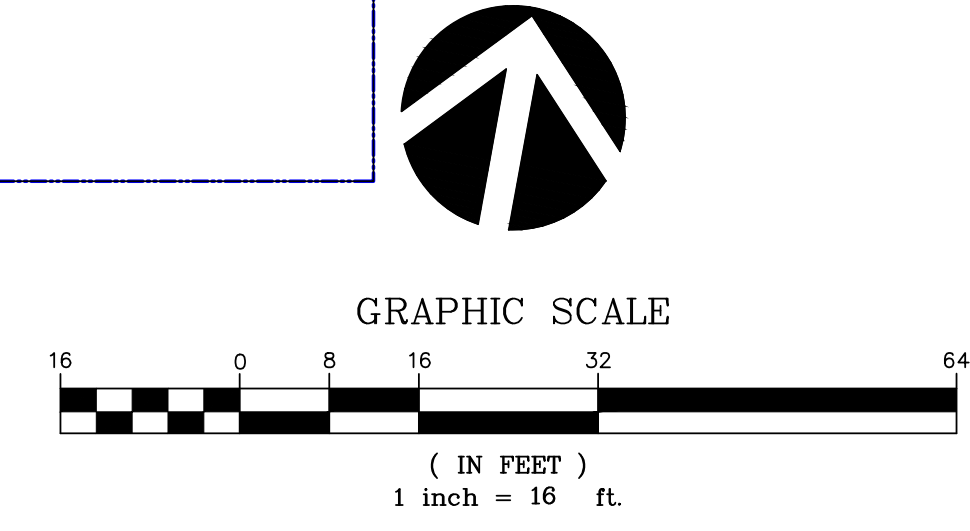
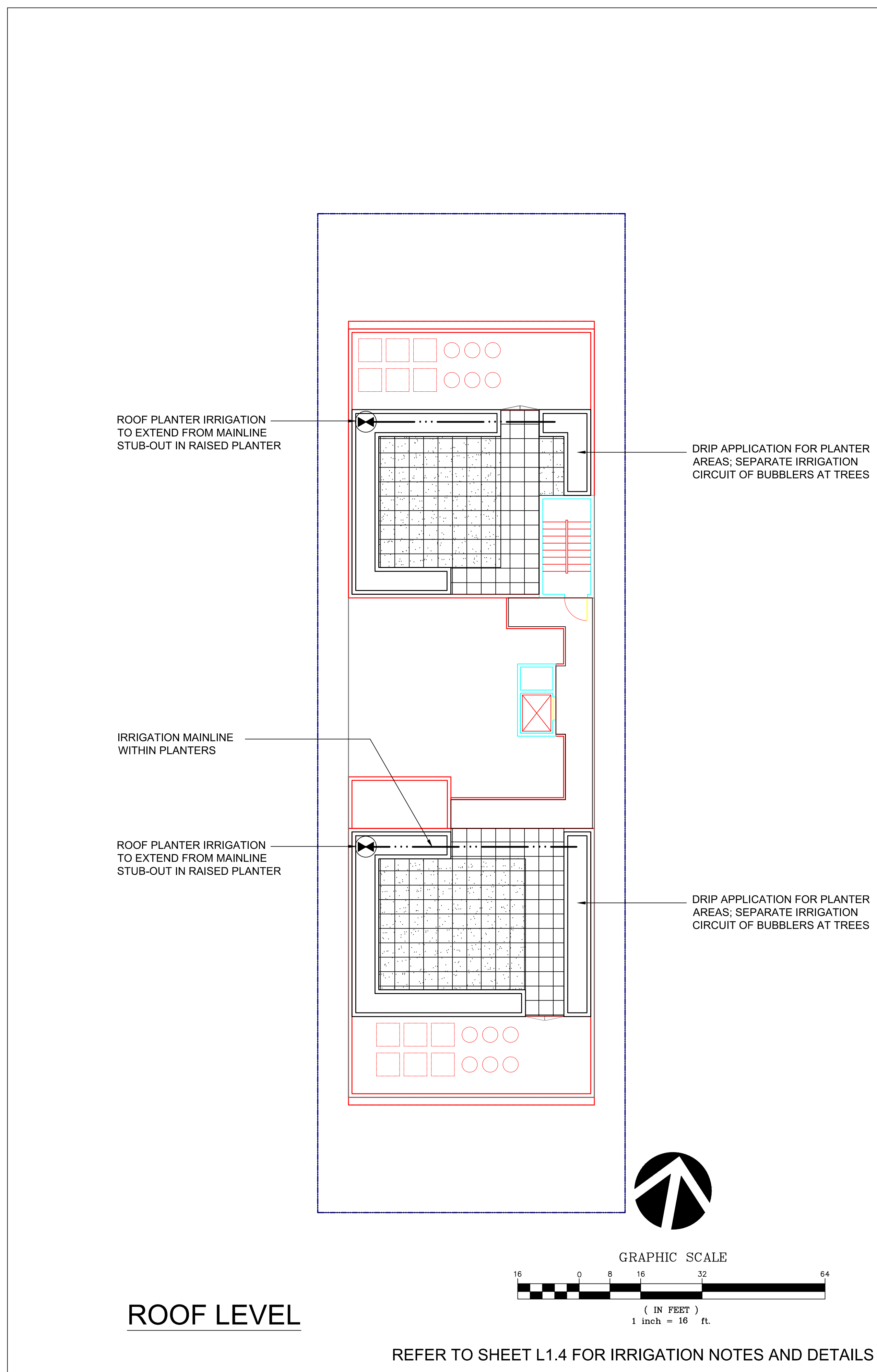
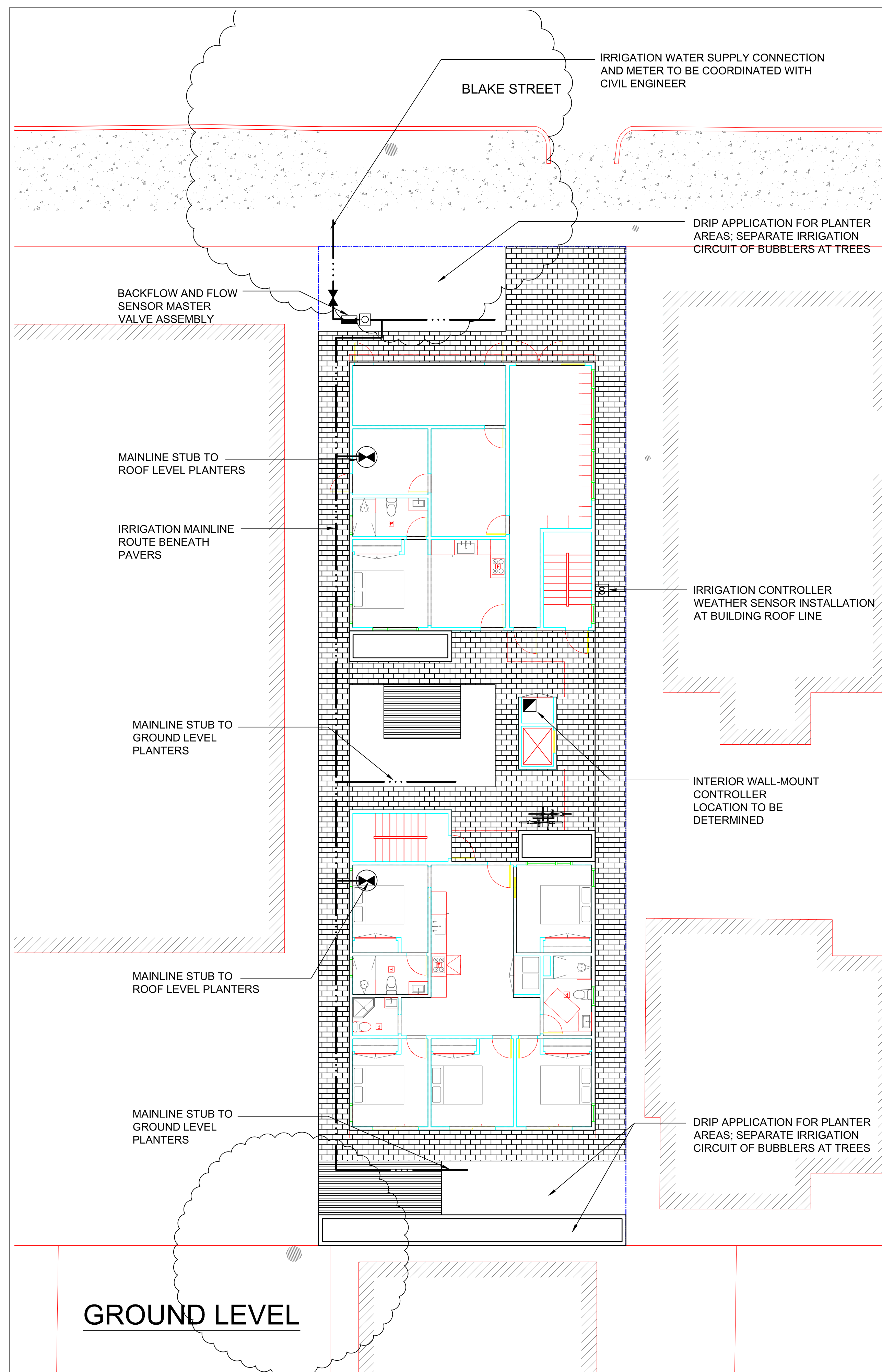
RW Stover & Associates, Inc.  
Landscape Architecture  
1620 North Main Street, Suite 4  
Walnut Creek, CA 94596  
Ph: 925.937.2383

2018 BLAKE STREET  
BERKELEY, CALIFORNIA

PLANT LIST,  
IMAGES AND WELO

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| DESIGNED:<br>RS  | DRAWN:<br>RS |
| CHECKED:         | JOB NO:      |
| DATE<br>11-29-21 |              |
| SCALE<br>NOTED   |              |

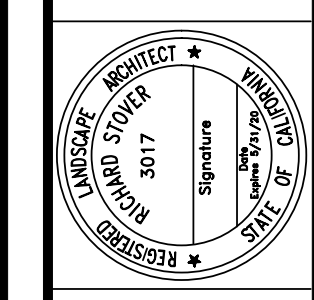
SHEET  
L1.2  
OF SHEETS



REFER TO SHEET L1.4 FOR IRRIGATION NOTES AND DETAILS

| NO. | REVISIONS |
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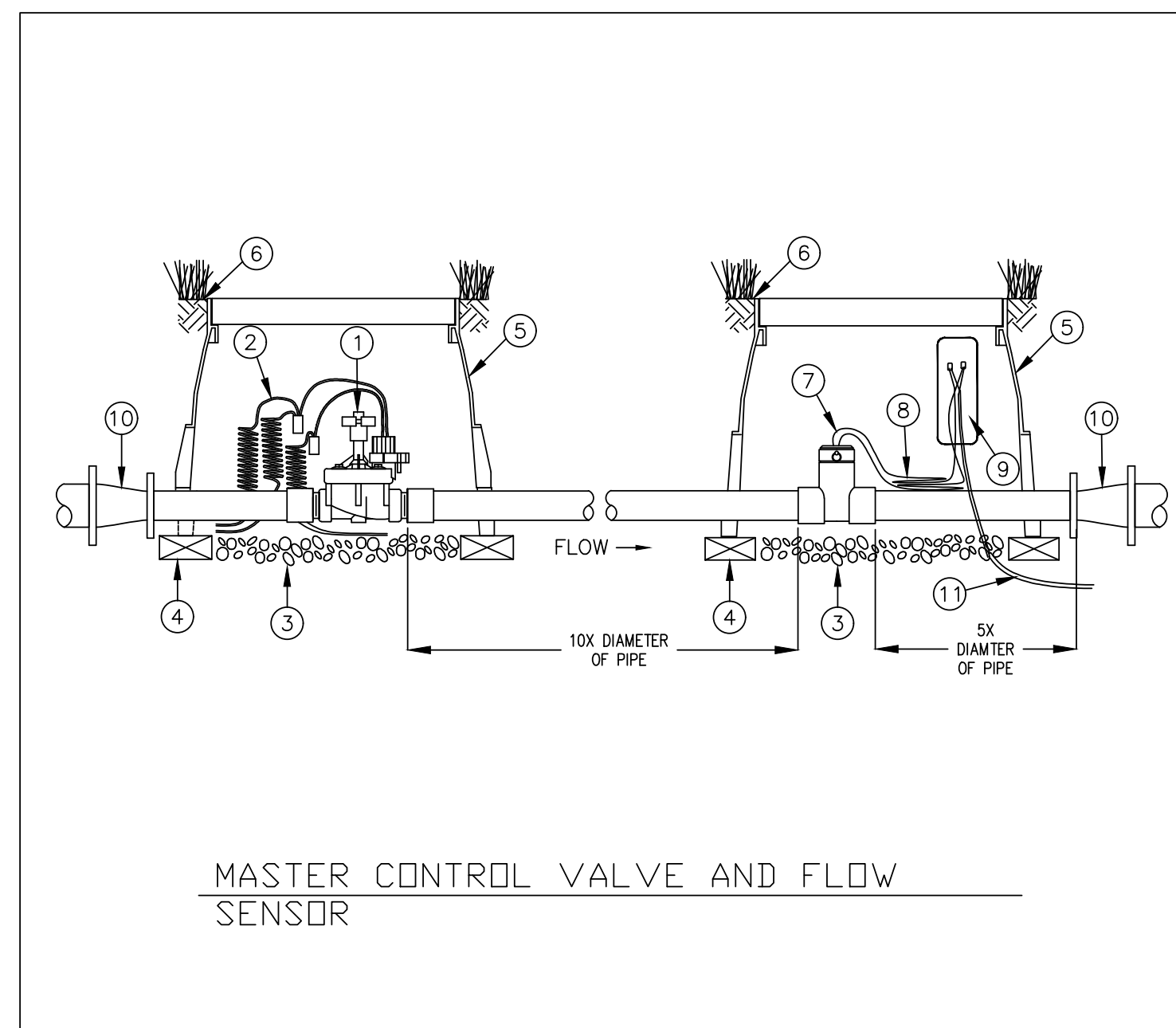
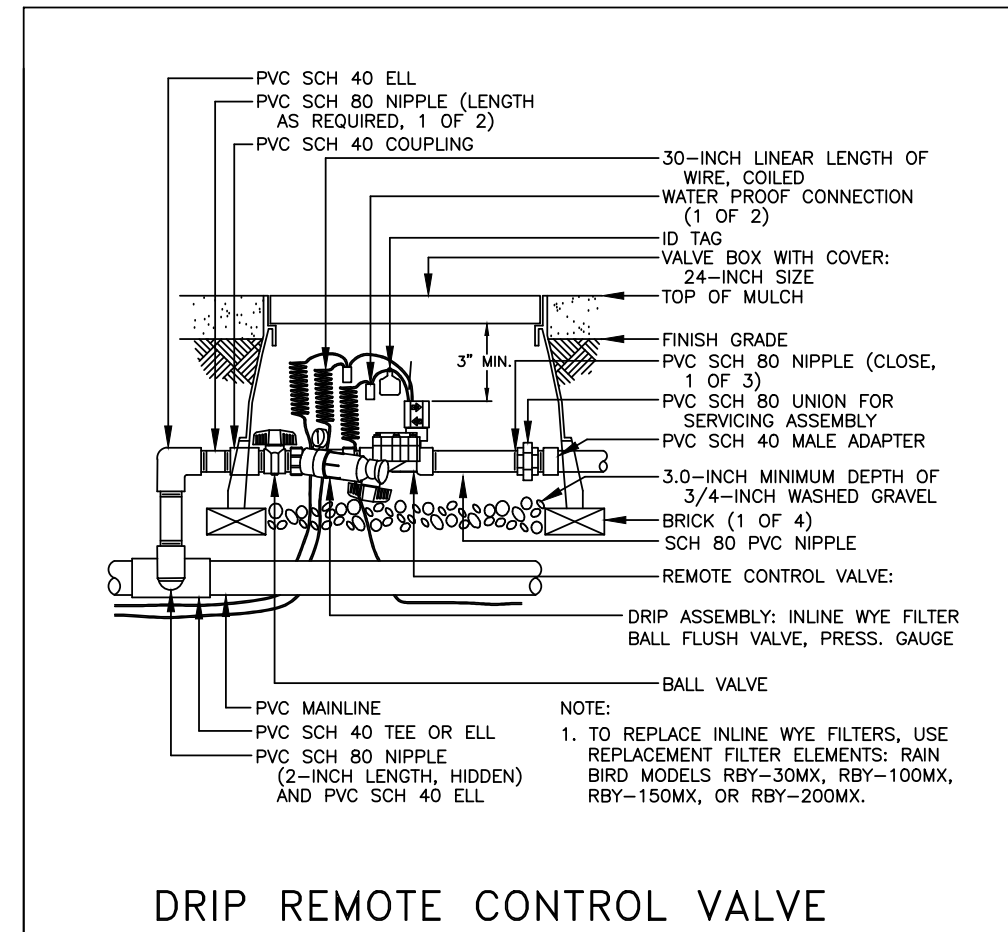
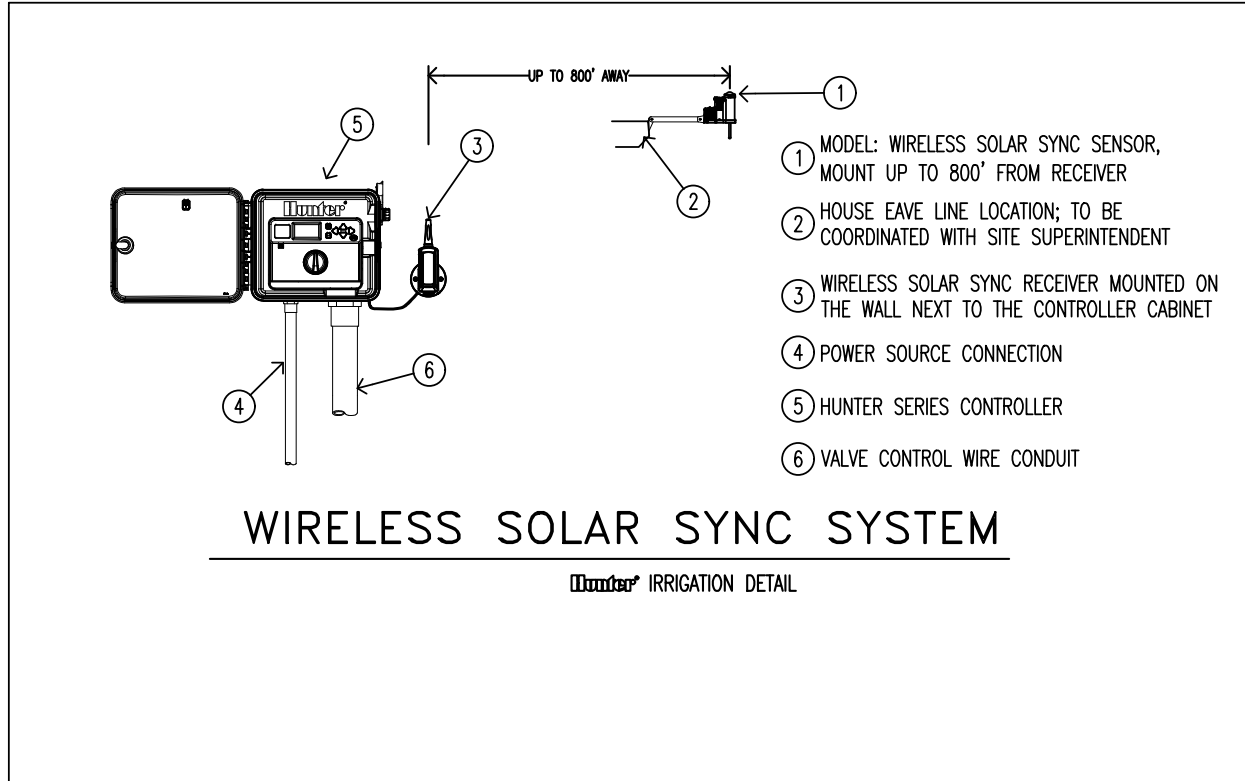
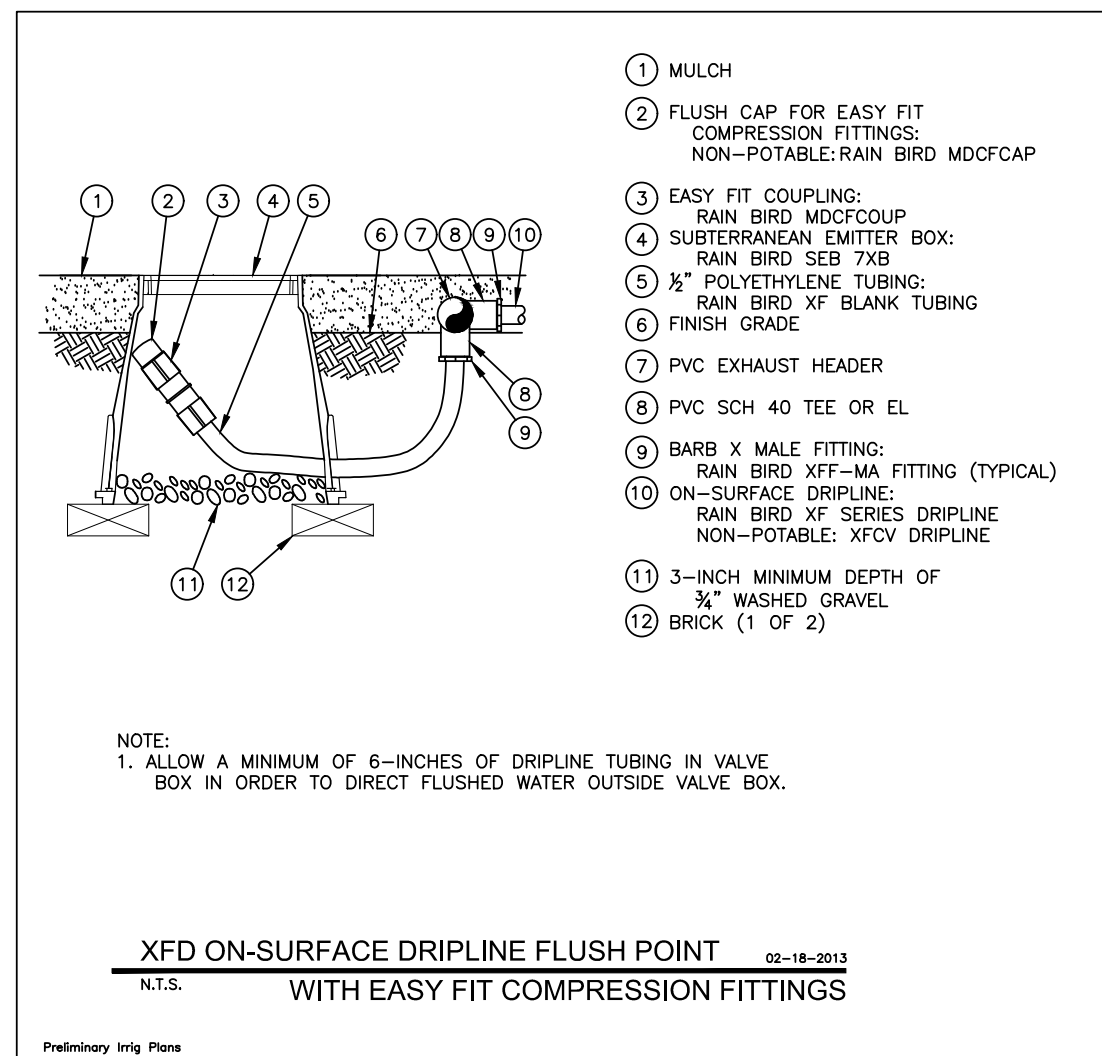
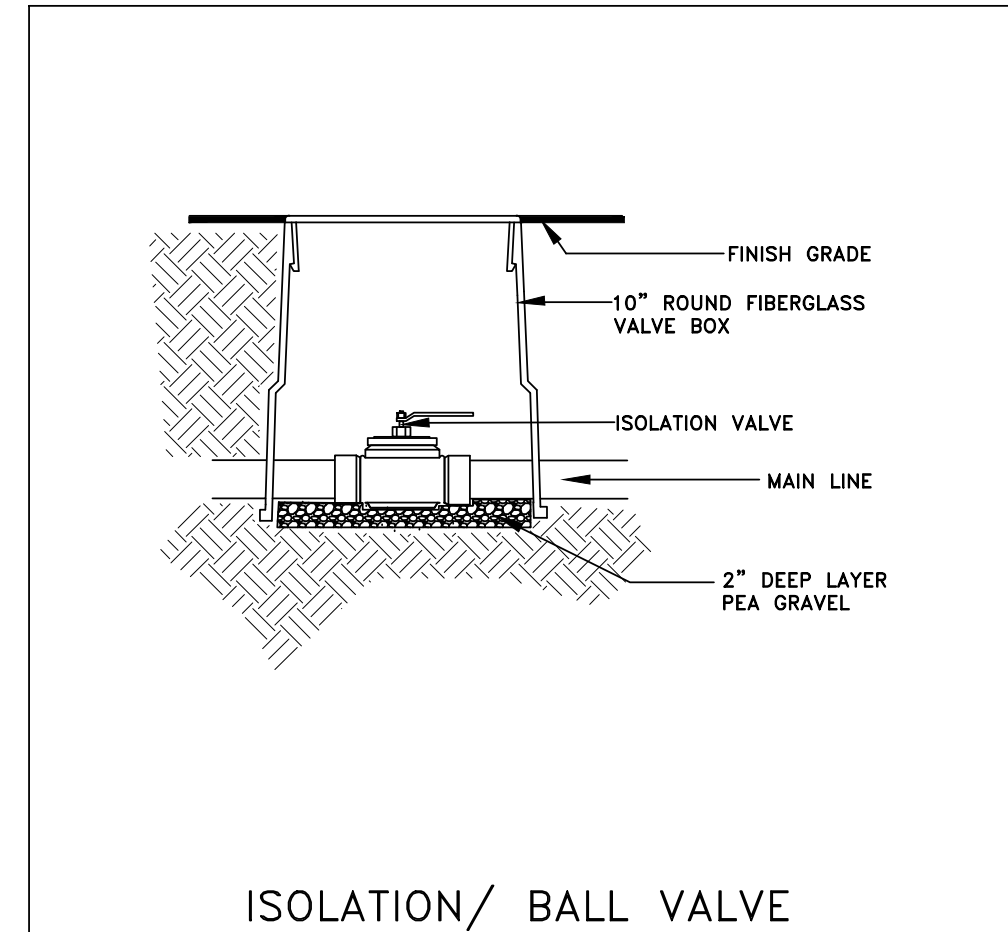
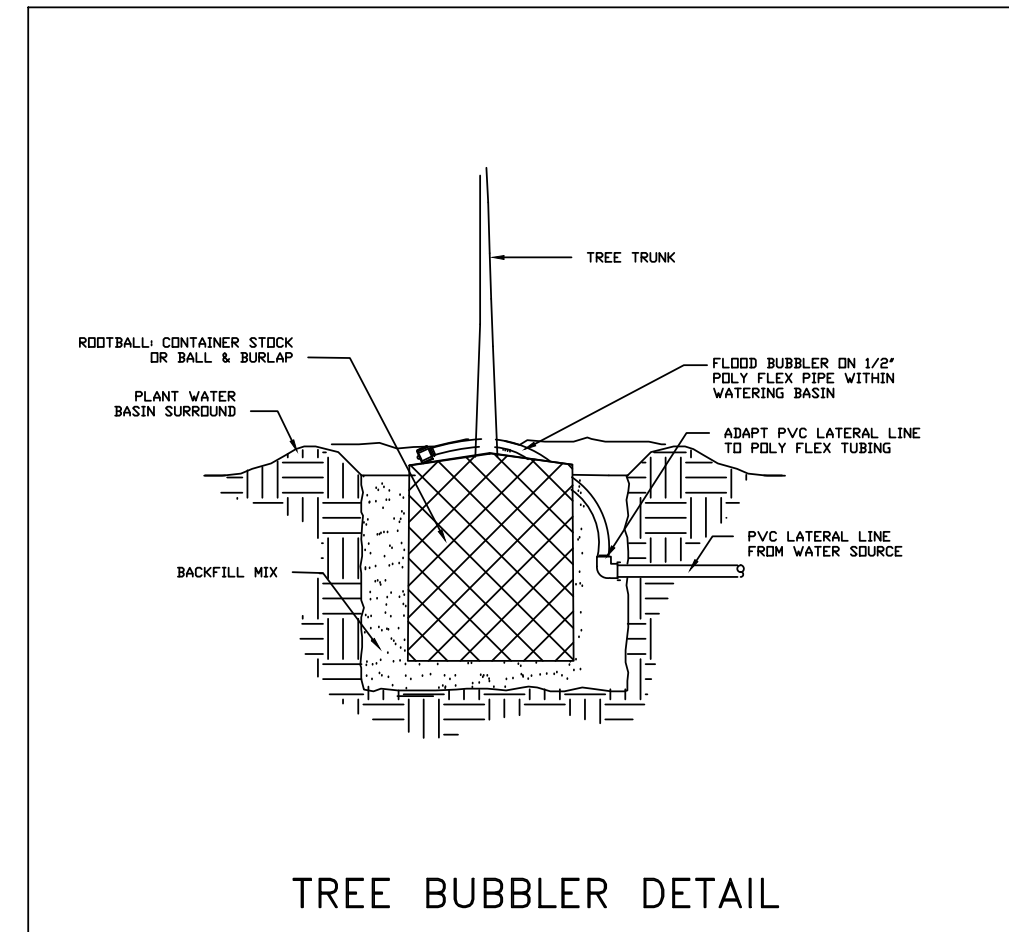
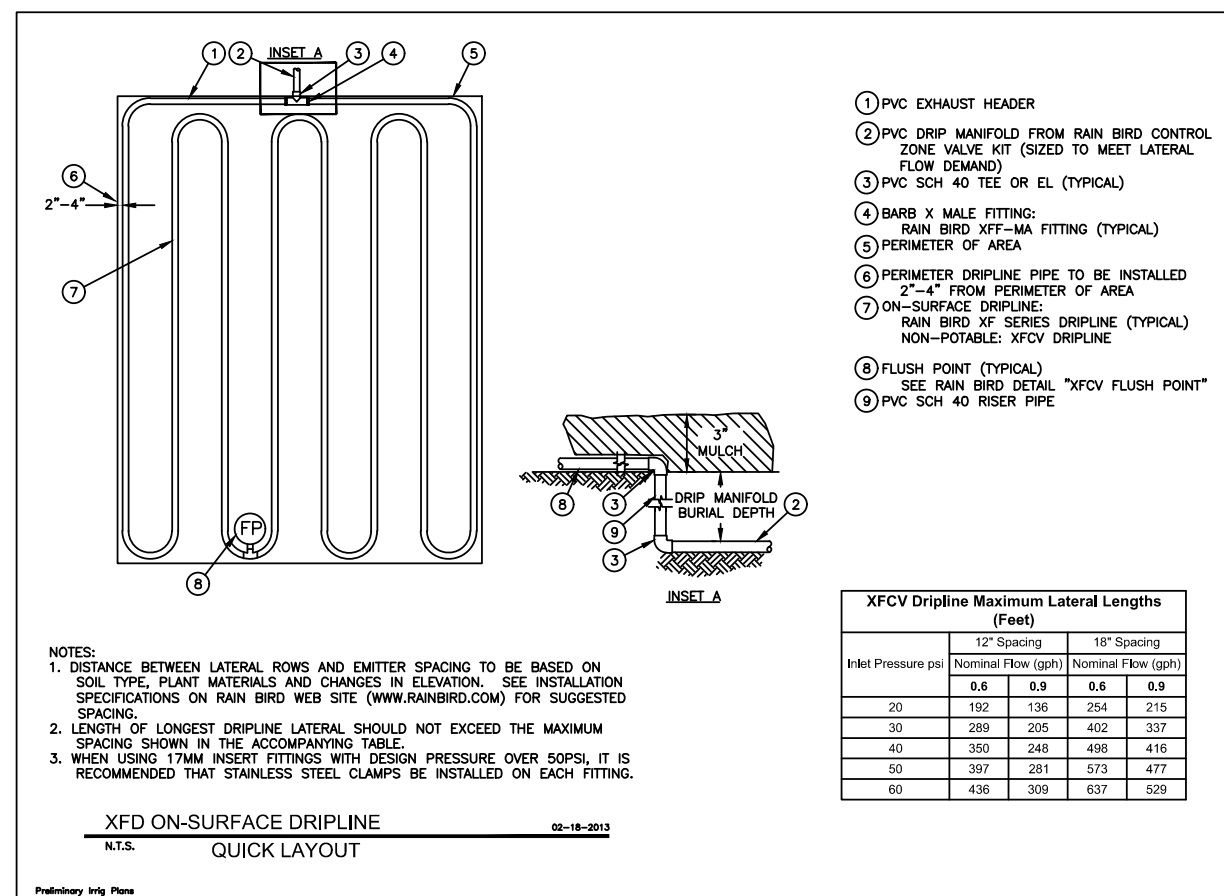
2018 BLAKE STREET  
BERKELEY, CALIFORNIA

PRELIMINARY IRRIGATION PLANS

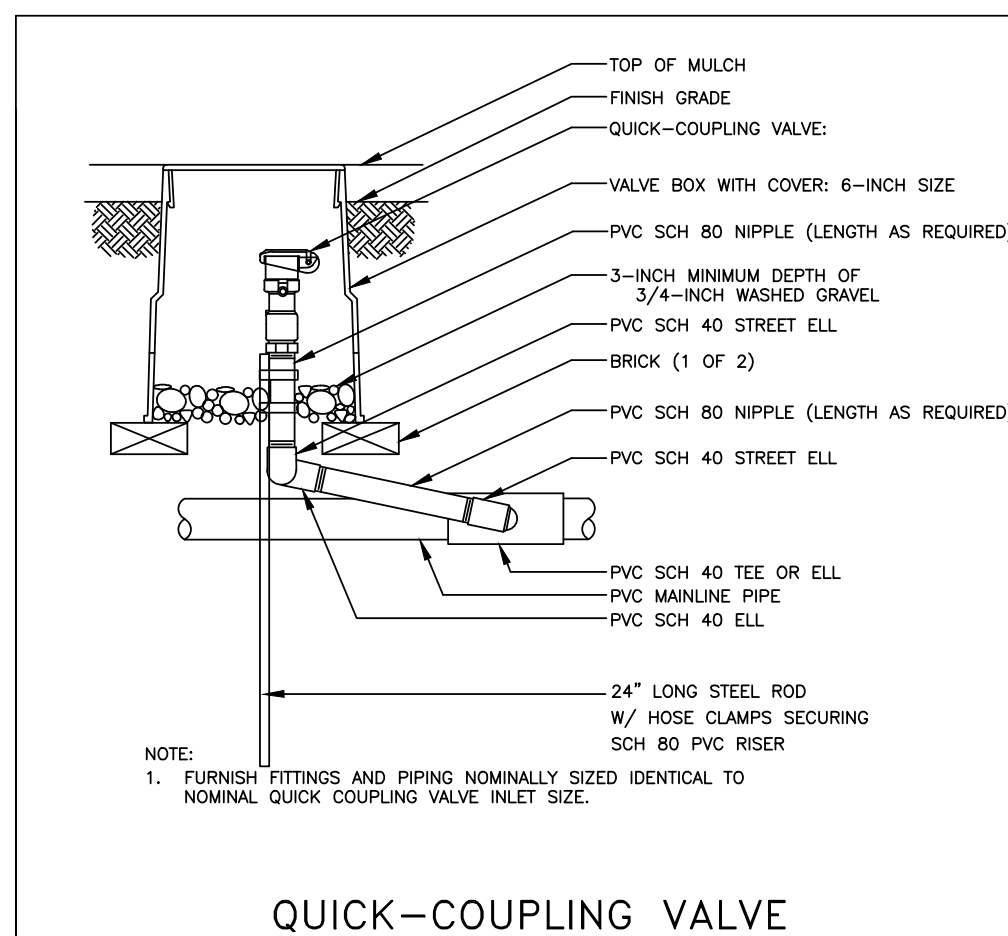
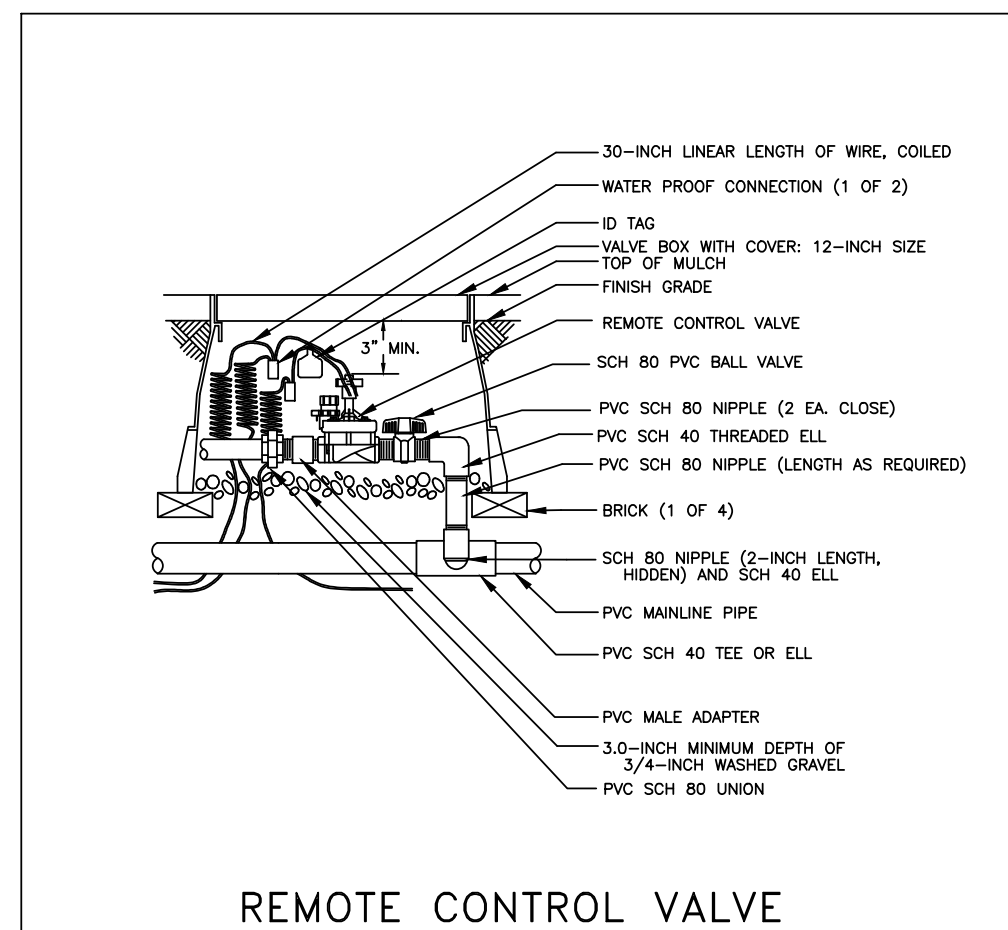
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| CHECKED:       | JOB NO:   |
| DATE: 11-29-21 |           |
| SCALE: NOTED   |           |

SHEET  
**L1.3**  
OF SHEETS





- 1 MASTER CONTROL VALVE
- 2 WIRE TO SATELLITE CONTROLLER SPARE STATION (36-INCH LOOP)
- 3 3.0-INCH MINIMUM DEPTH OF 3/4-INCH WASHED GRAVEL
- 4 BRICK (1 OF 4)
- 5 VALVE BOX WITH COVER - 12-INCH SIZE
- 6 FINISH GRADE
- 7 FLOW SENSOR
- 8 FLOW SENSOR WIRES; LEAVE 36-INCHES OF WIRE IN VALVE BOX
- 9 PREFORMED SUPER SERVICEAL WATERPROOF WIRE SPLICE KIT
- 10 CONCENTRIC REDUCER
- 11 PE-CABLE TO CONTROLLER ASSEMBLY



**IRRIGATION NOTES:**

**GENERAL NOTES:** DO NOT WILLFULLY INSTALL THE IRRIGATION SYSTEM AS SHOWN ON THE DRAWINGS WHEN IT IS OBVIOUS IN THE FIELD THAT OBSTRUCTIONS, GRADE DIFFERENCES OR DIFFERENCES IN AREA DIMENSIONS EXIST THAT MIGHT NOT HAVE BEEN CONSIDERED IN THE DESIGN OF THE SYSTEM. SUCH OBSTRUCTIONS OR DIFFERENCES SHOULD BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT. NOTIFY LANDSCAPE ARCHITECT OF ANY ASPECTS OF LAYOUT, WHICH WILL PROVIDE INCOMPLETE OR INSUFFICIENT WATER COVERAGE OF PLANT MATERIAL AND DO NOT PROCEED UNTIL THE INSTRUCTIONS ARE OBTAINED. IN THE EVENT THIS NOTIFICATION IS NOT PERFORMED, THE IRRIGATION CONTRACTOR SHALL ASSUME FULL RESPONSIBILITY FOR ANY REVISIONS NECESSARY. IT IS THE RESPONSIBILITY OF THE IRRIGATION CONTRACTOR TO FAMILIARIZE HIMSELF WITH ALL THE GRADE DIFFERENCES, LOCATION OF WALKS, RETAINING WALLS, ETC. PRIOR TO CONSTRUCTIONS. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO PROTECT IN PLACE (BY ALL MEANS NECESSARY) ALL EXISTING UTILITIES UNLESS OTHERWISE SPECIFIED ON THE PANS, CITY STANDARD DRAWINGS, SPECIFICATIONS, SPECIFIC NOTES & DETAIL DRAWINGS AND THE SOILS REPORT TAKE PRECEDENCE OVER GENERAL DRAWINGS AND PLANS UNLESS OTHERWISE DIRECTED. ANY DEVIATION FROM APPROVED PLANS DURING CONSTRUCTION WILL REQUIRE 48 HOURS PRIOR NOTICE TO THE LANDSCAPE ARCHITECT. AT LEAST ONE SET OF PLANS SHALL BE ON THE SITE AT ALL TIMES FOR INSPECTION. IRRIGATION CONTRACTOR SHALL COMPLY WITH ALL STATE, COUNTY AND CITY LAWS AND ORDINANCES, AND REGULATIONS OF THE DEPARTMENT OF INDUSTRIAL RELATIONS, O.S.H.A. AND INDUSTRIAL ACCIDENT COMMISSION RELATING TO THE SAFETY AND CHARACTER OF WORK, EQUIPMENT AND LABOR PERSONNEL. THE IRRIGATION CONSULTANT ASSUMES NO RESPONSIBILITY BEYOND THE ADEQUACY OF THE DESIGN CONTAINED HEREIN.

**DRAWINGS:** DUE TO THE SCALE OF DRAWINGS, IT IS NOT POSSIBLE TO INDICATE ALL OFFSETS, FITTINGS, SLEEVES, ETC., WHICH MAY BE REQUIRED. THE CONTRACTOR SHALL ALSO CAREFULLY INVESTIGATE THE STRUCTURAL AND FINISHED CONDITIONS AFFECTING ALL OF HIS WORK, PLAN HIS WORK ACCORDINGLY AND FURNISH SUCH FITTINGS, ETC. AS MAY BE NECESSARY TO MEET SUCH CONDITIONS. DRAWINGS ARE GENERALLY DIAGRAMMATIC AND INDICATIVE OF THE WORK TO BE INSTALLED. THE WORK SHALL BE INSTALLED IN SUCH A MANNER AS TO AVOID CONFLICTS BETWEEN IRRIGATION SYSTEM, PLANTING AND ARCHITECTURAL FEATURES. ALL PIPING, VALVES, ETC. SHOWN WITHIN PAVED AREAS ARE FOR DESIGN CLARIFICATION ONLY AND SHALL BE INSTALLED IN PLANTING AREAS WHERE POSSIBLE.

**CONTROLLER:** IRRIGATION CONTRACTOR IS TO PROGRAM TIMING OF STATIONS ON CONTROLLER TO IRRIGATE IN THE MOST EFFICIENT, WATER CONSERVING MANNER POSSIBLE. IT IS THE RESPONSIBILITY OF THE LANDSCAPE MAINTENANCE CONTRACTOR AND/OR THE OWNER TO PROGRAM THE IRRIGATION CONTROLLERS TO PROVIDE THE MINIMUM AMOUNT OF WATER NEEDED TO SUSTAIN PROPER PLANT HEALTH. THIS INCLUDES MAKING ADJUSTMENTS TO THE PROGRAM FOR SEASONAL WEATHER CHANGES, PLANT MATERIAL NEEDS, WATER REQUIREMENTS, CHANGES IN ELEVATION, SUN, SHADE AND WIND EXPOSURES. CONTRACTOR SHALL ASSUME RESPONSIBILITY FOR ANY DAMAGE, EROSION, PUDDLING, ETC. DUE TO IMPROPER PROGRAMMING. ELECTRICAL CONTRACTOR TO SUPPLY 120-VOLT A.C. (2.5 AMP) SERVICE & DISCONNECT, JUNCTION BOX AND CONDUIT, AS NECESSARY, TO CONTROLLER LOCATION. IRRIGATION CONTRACTOR TO MAKE FINAL CONNECTION FROM ELECTRICAL STUB-OUT TO CONTROLLER. INSTALL NEW 5-VOLT DURABATTERY(S) IN EACH CONTROLLER (IF REQUIRED) TO RETAIN PROGRAM IN MEMORY DURING TEMPORARY POWER FAILURES. CONTROLLER SHALL HAVE GROUND WIRE AS PER MANUFACTURER'S INSTRUCTIONS.

**VALVES:** BACKFLOW DEVICE, ISOLATION AND CONTROL VALVE LOCATIONS SHOWN ARE DIAGRAMMATIC. INSTALL IN GROUND COVER / SHRUB AREAS AT THE EDGES OF THE PLANTING AREAS SO AS TO NOT INTERFERE WITH PLANT HOLE EXCAVATION. INSTALL VALVE BOXES 12 INCHES FROM AND PERPENDICULAR TO WALKS, CURBS, ETC. AND EACH BOX SHALL BE 12 INCHES APART. THE SHORT SIDE OF VALVE BOX SHALL BE PARALLEL TO WALK, CURB, ETC. INSTALL (1) VALVE PER RECTANGULAR BOX IN LINE WITH THE LENGTH OF THE BOX. LOCATE QUICK COUPLING VALVES 2 INCHES FROM HARDSCAPE AREA.

**WIRING:** CONTROL WIRES SHALL BE ULL APPROVED FOR DIRECT BURIAL IN GROUND, COPPER SIZE #14-1. COMMON GROUND WIRE SHALL HAVE WHITE INSULATION JACKET. CONTROL WIRE SHALL HAVE INSULATION JACKET OF COLOR OTHER THAN WHITE. SPLICING SHALL BE DONE WITH 3M #3570 SCOTCHLOK SEAL CAPS. SPLICING OF 24-VOLT WIRES WILL NOT BE PERMITTED EXCEPT IN VALVE BOXES. LEAVE A 24 INCH COIL OF EXCEL WIRE AT EACH SPLICE AND AT 100 FEET ON CENTER ALONG WIRE RUN. TAPE WIRE IN BUNDLES AT 10 FEET ON CENTER. NO TAPING PERMITTED IN SLEEVES. INSTALL A CONTROL WIRE FOR EACH EXTRA STATION LEFT ON THE CONTROLLER AND A SPARE CONTROL WIRE OF A DIFFERENT COLOR ALONG THE ENTIRE MAIN LINE. LOOP 24 INCHES OF EXCESS WIRE INTO EACH SINGLE VALVE BOX AND INTO ONE VALVE BOX IN EACH GROUP OF VALVES.

**ON-GRADE DRIP LINE SYSTEM:** ALL DRIP LINE TO BE SET ON GRADE IN PARALLEL ROWS AS REQUIRED TO PROVIDE COMPLETE COVERAGE OF GROUND COVER AREAS AS WELL AS SHRUB PLANTING. EMITTERS PROVIDE 0.90 GALLONS PER HOUR FLOW (APPROXIMATELY 1.0 GALLON PER 100 LINEAL FEET OF DRIP LINE). DESIGN LIMITS RECOMMEND NOT EXCEEDING 200 FEET OF TUBING FOR ANY SINGLE LENGTH. STAKE TUBING TO GRADE WITH GALVANIZED TIE-DOWN STAKES AT 3 FT. (MAX.) SPACING. PROVIDE XF DRIPLINE INSERT FITTINGS FOR ALL CONNECTIONS. PROVIDE REMOVABLE THREADED END CAPS AT THE TERMINUS OF EACH DRIP LINE LENGTH FOR EASY FLUSHING OF SYSTEM.

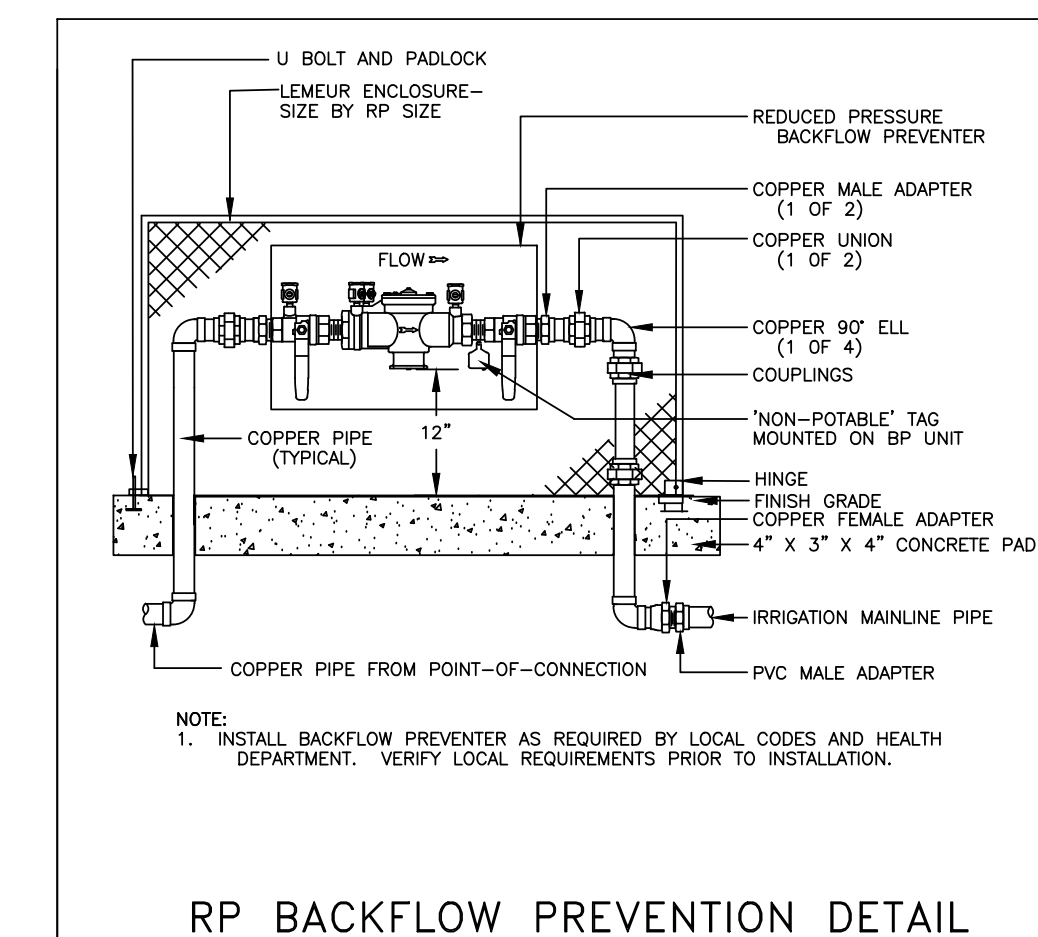
**PIPING/TRENCHING:** INSTALL MAIN LINE PIPING WITH CONCRETE THRUST BLOCKS AS PER MANUFACTURER'S RECOMMENDATION. MAIN AND LATERAL LINES SHALL BE SURROUNDING WITH A MINIMUM OF 2" OF SAND OR ROCK FREE SOIL. PIPE SEALANT COMPOUND SHALL BE RECTOR SEAL T-2, PERIMATEX 51 OR LASCO #905305. PRESSURE THE MAIN LINE @ 150 PSI FOR 2 HOURS AND THE LATERAL LINES @ 100 PSI FOR 2 HOURS, WHERE IT IS NECESSARY TO EXCAVATE ADJACENT TO EXISTING TREES, THE CONTRACTOR SHALL USE ALL POSSIBLE CARE TO AVOID INJURY TO TREES, AND TREE ROOT SYSTEMS. EXCAVATION IN AREA WHERE TWO (2) INCH AND LARGER ROOTS EXIST SHALL BE DONE BY HAND. CUT ROOTS ONE (1) INCH AND LARGER IN DIAMETER SHALL BE PAINTED WITH TWO COATS OF TREE SEAL, OR EQUAL. TRENCHES ADJACENT TO TREES SHOULD BE CLOSED WITHIN TWENTY-FOUR (24) HOURS; AND WHERE THIS IS NOT POSSIBLE, THE SIDE OF THE TRENCH ADJACENT TO THE TREE SHALL BE KEPT SHADED WITH WET BURLAP OR CANVAS.

**SLEEVES:** THE IRRIGATION CONTRACTOR SHALL COORDINATE WITH THE GENERAL CONTRACTOR AND OTHER SUBCONTRACTORS FOR THE LOCATION AND THE INSTALLATION OF SLEEVES, CONDUIT OR PIPE THROUGH WALLS, UNDER ROADWAYS, PAVING, STRUCTURES, ETC. PRIOR TO CONSTRUCTION. IN ADDITION TO THE SLEEVES AND CONDUITS SHOWN ON THE DRAWINGS, THE IRRIGATION CONTRACTOR SHALL BE RESPONSIBLE FOR THE COORDINATION AND/OR INSTALLATION OF SLEEVES AND CONDUITS OF SUFFICIENT SIZE UNDER ALL PAVED AREAS.

**IRRIGATION SYSTEM:** THE IRRIGATION SYSTEM IN CURRENTLY POTABLE. SET UP FOR POSSIBLE RETROFIT TO RECYCLED WATER SOURCE IN FUTURE. DESIGN IS BASED ON A MINIMUM OPERATING PRESSURE (PSI) AND A FLOW DEMAND (GPM) AS NOTED ON PLAN. THE IRRIGATION CONTRACTOR SHALL VERIFY WATER PRESSURE PRIOR TO CONSTRUCTION. REPORT ANY DIFFERENCE BETWEEN THE WATER PRESSURE INDICATED ON THE DRAWINGS AND THE ACTUAL PRESSURE READING AT THE IRRIGATION POINT-OF CONNECTION TO THE LANDSCAPE ARCHITECT. FAILURE TO DO SO WILL RESULT IN THE CONTRACTOR BEING RESPONSIBLE FOR ANY NECESSARY CHANGES DUE TO THIS DIFFERENCE.

**GUARANTEE:** ALL CONSTRUCTION, PARTS AND PRODUCTS BY THE LANDSCAPE CONTRACTOR AND/OR HIS SUBCONTRACTORS SHALL BE GUARANTEED FOR ONE (1) FULL YEAR AFTER THE BEGINNING OF THE MAINTENANCE PERIOD. THE CONTRACTOR SHALL REPLACE (AT NO EXPENSE TO THE OWNER) ANY AND ALL IRRIGATION PRODUCTS THAT ARE IN AN UNACCEPTABLE CONDITION FOR THE TIME OF USE. REPLACEMENT OF ANY ITEMS SHALL MATCH ORIGINAL DESCRIPTION OF ITEMS) ON CONSTRUCTION PLANS AND SHALL BE INSTALLED PER SPECIFICATION. THE CONTRACTOR SHALL NOT BE HELD LIABLE FOR LOSS OF IRRIGATION PARTS OR PRODUCTS DUE TO VANDALISM, ACCIDENTAL CAUSES, OR ACTS OF NEGLIGENCE BY OTHERS THAN THE CONTRACTOR, HIS AGENTS OR EMPLOYEES.

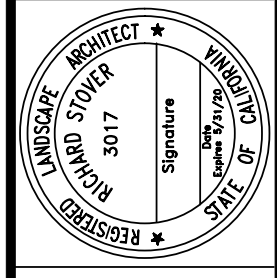
**DO NOT BID, ORDER MATERIALS OR INSTALL ANY OR ALL OF SYSTEM BEFORE READING THE IRRIGATION NOTES IN THEIR ENTIRETY. THE CONTRACTOR SHALL ASSUME FULL RESPONSIBILITY FOR ALL CHANGES, REVISIONS AND OR ADDITIONS TO SYSTEM DUE TO FAILURE TO DO SO.**



REVISIONS

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RW Stover & Associates, Inc.  
Landscape Architecture  
1620 North Main Street, Suite 4  
Walnut Creek, CA 94596  
PH: 925.951.2383



2018 BLAKE STREET  
BERKELEY, CALIFORNIA

IRRIGATION NOTES & DETAILS

|                |           |
|----------------|-----------|
| DESIGNED: RS   | DRAWN: RS |
| CHECKED:       | JOB NO:   |
| DATE: 11-29-21 |           |
| SCALE: NOTED   |           |

SHEET  
**L1.4**  
OF SHEETS

June 17, 2022

CITY OF BERKELEY - CITY CLERK  
2022 JUN 21 PM 2:20

Mr. Mark Numainville, City Clerk  
City Clerk Department  
2180 Milvia Street, 1st Floor, Berkeley, CA 94704

Mr. Jordan Klein, Director of Planning and Development  
City Planning and Development Department  
1947 Center Street, 2nd Floor, Berkeley, CA 94704

Dear Sirs,

We strongly oppose the City of Berkeley's approval of 2018 Blake Street #ZP2021-0095, a 6-story multi-family, 12 unit residential building and are setting forth the grounds for appeal.

The home at 2018 Blake was a one-story single-family wood craftsman built in 1889. 2018 Blake included parking and was in keeping with the unique character and scale of its distinctive neighborhood.

The home at 2018 Blake was burnt down on September 8, 2021, under suspicious circumstances, leaving the property to be sold to a Los Angeles LLC developer Yuhui Li  
Owner: 2018 Blake Street LLC, 2905 South Vermont Avenue, Ste 204, Los Angeles, CA 90007

Though the 'trend' for Blake Street has been increasing density, it has been on the north side (2029 and 2015 Blake). The development on the north side of Blake is inconsistent and incompatible with the scale, historic character, and surrounding uses in the south side of Blake Street. 2018 Blake is on the south side of Blake Street.

Adjacent parcels to the south of the proposed project are R-2A, Restricted Multi-Family Residential District and adjacent parcels on the south side of Blake and on Milvia Street are one- and two-story homes, although some are zoned R4.

Directly adjacent to 2018 Blake, the proposed 6-story building, is 2020 Blake, a one-story craftsman home almost identical to the original 1889 one-story craftsman that was destroyed.

The 6-story building would be taller than existing buildings on nearby properties on its block, which are generally one- and two-story residential development to the west and south, and one- and two-story residential and commercial development.

Berkeley city staff 'are aware of no specific adverse impacts that could occur with the construction of the Base Project or the density bonus units.' We, the undersigned, strongly disagree with the Berkeley city staff position and find the 2018 Blake project grossly incompatibility with one- and two-story dwellings adjacent to the site. We find the proposed 6-story tower to be detrimental and injurious to property and improvements of the adjacent properties, the surrounding area, neighborhood and to the general welfare of the City.

Shadow impact on adjacent dwellings to the west, east, and northeast will result from the new building, especially from the additional height above the district limits, which will cast shadows in the affected directions further than if the project were limited to the base district height standards.

We strongly disagree with the city's assumption that the proposed 6-story shadow impacts are difficult to avoid and are reasonable and non-detrimental next to our one and two story homes.

The proposed project is not architecturally sensitive, and not compatible with neighboring land uses, architectural design and scale on the south side of Blake Street and surrounding neighbors.

Building a 6-story tower next to our one and two-story homes will be detrimental to our health, safety, peace, morals, comfort and general welfare of the undersigned, the persons residing or working in the area or neighborhood of such proposed use.

With regard to Government Code Section 65915(e), we disagree with the assumption that approval of the 2018 Blake LLC Los Angeles developer's requested waivers to reduce the building's side and rear yard setback minimums and to exceed lot coverage would not have a specific adverse impact upon our public health and safety, physical environment, and real property. We disagree with the assumption of minimal impact on surrounding properties where we live. Besides the obvious - how a 6-story tower would adversely impact the immediate neighbors (cast shadows, block views, reduce quality of life), there are detrimental environmental, traffic, and noise consequences.

When concerned neighbors asked how they could stop the proposed 6-story tower, Senior Planner Sharon Gong responded that "neighbors within 300' of the site will

receive public hearing notices in the mail, and notices are posted in the neighborhood near the site. Anyone can speak at a public hearing, or submit letters to the Board prior to the hearing.”

Months later, some neighbors received blue public hearing notice cards; others attest to not receiving them. The email for the Zoning Adjustment Board (ZAB) on the notice cards was incorrect. Neighbors that were able to get in contact with ZAB were told that they would be directly provided with a zoom link for the hearing. They were not.

The few neighbors, who were able to find correct information in time to attend the meeting, were frustrated because they were not given any recourse to stop the 6-story tower. They were told that the decision was already made and it was irreversible.

The Planning and Development Department's mission is to enhance safety, livability and resilience in the built environment and to work with the community to promote and protect Berkeley's distinctive neighborhoods, vibrant commercial areas, unique character and natural resources for current and future generations.

As a member of the public, we are encouraged by the City's Land Use and Development Department to be involved in the planning and development process.

We were denied this right, as our 'involvement' was thwarted and limited to passive bystanders.

Our concern is both substantive and procedural; several of the neighbors within 300 feet are prepared to attest that they did not, in fact, receive notice of this proposed development and have been denied a meaningful opportunity to comment and participate in the decision-making process, despite being affected by the project. While we are aware that the failure of a given resident to receive notice does not affect the validity of the hearing, the breadth of the failure here – combined with the comments made at the hearing – raise the concern that the City did not, in fact, meaningfully comply with the permitting process.

We are aware of the need for more housing density (15332 'in-fill development projects' CEQA guideline exemptions) and also of our rights as citizens and residents of the city of Berkeley, including our right to receive accurate notices and meaningful participation in the process in the manner contemplated by the BMC.

Sincerely,

A handwritten signature in black ink, appearing to be a cursive name, possibly "John" or "John Doe", written over a horizontal line.

John DeDomenico, 2020 Blake Street  
 Xiao Hong, 2020 Blake Street  
 Rosario Manzilla, 2020 Blake Street  
 Walter Manzilla, 2020 Blake Street  
 Andrea Prichett, 2022 Blake Street  
 Lenore Sheridan, 2022 Blake Street  
 Rusty Bates, 2022 Blake Street  
 Marie Loiose Phelps, 2006 Blake Street  
 Marina Khamhaengwong, 2006 Blake Street  
 Rosa Guevara, 2002 Blake Street  
 Dario Guevara, 2002 Blake Street  
 Max Ventura, 2022 Blake Street  
 Greg Jan, 2022 Blake Street

Paul Larudee, 2022 Blake Street  
 Guy Brenner, 2545 Milvia Street *Guy Brenner*

Susanna Tadlock, 2007 Parker Street  
 Steve Edmunds, 2005A Parker Street

Chip Brimhall, 2539 Milvia Street  
 Brent Mishler, 2003 Parker Street  
 Pete Schorer, 2538 Milvia Street - *Peter Schorer*

Adirah Rodriguez, 2528 Milvia Street  
 Ali Huetter, 2528 Milvia Street *Ali Huetter*

Avery Huetter, 2528 Milvia Street - *Avery*  
 Jed Waldman, 2528 Milvia Street *Jed Waldman*

Eli Waldman, 2528 Milvia Street *Eli Waldman*  
 Joe Spitzley, 1925 Parker Street

Kaaren Spitzley, 1925 Parker Street  
 Ian Kelly, 1918 Parker Street  
 Karen Kelly, 1918 Parker Street  
 Yael Kelly, 1918 Parker Street

Cornelia St John, 2005A Parker Street  
 Maria St John 2005B, Parker Street  
 Lydia Adkins, 2005B Parker Street  
 Yasuo Tanaka, 2550 Shattuck Street  
 Rowen Naidoo, 2022 Blake Street  
 Jonathan Naidoo, 2022 Blake Street  
 Jahinder Malhatra, 2016 Blake Street

Rob Singer, 2019 Blake Street  
 Chuck Smith, 2000 Blake Street

Cindy Smith, 2000 Blake Street  
 Benny Kwong, 2568 Milvia St. *Benny Kwong*  
 Cayce Clifford - 2035 Parker St Art A *Cayce Clifford*

Mary McDonald, 2011 Blake Street  
Suchig Ls, 2023 Blake Street  
Bruno Ruhland, 2025 Blake Street  
Dan Chin, 2558 Shattuck Street  
Bruce Valde, 2022 Blake Street  
Shellie Wharton, 2022 Blake Street  
Eugene Ruyle, 2022 Blake Street

h R HUFF,  
2140 DWIGHT WAY  
94704

MARK A. NAKAHARA  
2020 PARKER ST 94704 Mark A. Nakahara

Raven Naidoo - 2020 Blake Street  
Jonathan Naidoo - 2026 Blake Street

As a member of the public, we are encouraged by the City's Land Use and Development Department to be involved in the planning and development process.

Our concern is both substantive and procedural; several of the neighbors within 300 feet are prepared to attest that they did not, in fact, receive notice of this proposed development and have been denied a meaningful opportunity to comment and participate in the decision-making process, despite being affected by the project. While we are aware that the failure of a given resident to receive notice does not affect the validity of the hearing, the breadth of the failure here – combined with the comments made at the hearing – raise the concern that the City did not, in fact, meaningfully comply with the permitting process. If the ZAB intends to rely on a notice which gave demonstrably incorrect login information for the meeting, we want for that policy to be clearly articulated.

We are aware of the need for more housing density (15332 'in-fill development projects' CEQA guideline exemptions) and also of our rights as citizens and residents of the city of Berkeley, including our right to receive accurate notices in order that we might participate in the process in the manner contemplated by the BMC.

Sincerely,

John DeDomenico, 2020 Blake Street



2026 BLAKE ST., BERKELEY, CA 94704

*[Signature]*

Grassroots House 2022 Blake St, 94704

Russ Bates

John DeDomenico 2020 1/2 Blake St 94704

2020 1/2 Blake St 94704

*[Signature]*  
Xiao, Hong

Sachin LS 2023 Blake St. 94704.

Satinder Malhotra 2016 Blake St 94704

Robert Singer 2019 Blake St 94704

Mary McDonald 2011 Blake St. 94704

DAW CHIN Auto 2558 SHATTUCK 94704

BRUNO RUTLAND 2025 BLAKE ST 94704

Greg Jan 2022 Blake St. 94704 *[Signature]*

Ely Amador 2594 Milvia St 94704 *[Signature]*

resources for current and future generations.

As a member of the public, we are encouraged by the city's land use and development department to be involved in the planning and development process.

Our concern is both substantive and procedural; several of the neighbors within 300 feet are prepared to attest that they did not, in fact, receive notice of this proposed development and have been denied a meaningful opportunity to comment and participate in the decision-making process, despite being affected by the project. While we are aware that the failure of a given resident to receive notice does not affect the validity of the hearing, the breadth of the failure here - combined with the comments made at the hearing - raise the concern that the city did not, in fact, meaningfully comply with the permitting process. If the city intends to rely on a notice which gave demonstrably incorrect login information for the meeting, we want for that policy to be clearly articulated.

We are aware of the need for more housing density (15332 'in-fill development projects' ceqa guideline exemptions) and also of our rights as citizens and residents of the city of Berkeley, including our right to receive accurate notices in order that we might participate in the process in the manner contemplated by the BMC.

Sincerely,

John Dedomenico, 2020 Blake Street

Cornelia St John  
2005 A Parker Street

Steve Edmunds  
2005 A Parker St.

Marian St. John  
2005 B Parker St.

Eydie Adams  
2005 B Parker St.

June 15, 2022  
We the owners of 2020 Beta Street,  
Berkeley, oppose the 2018 Beta  
Street project.  
Raman Thangiah  
Walter Myungilho

Cherlinga@lope  
@gmail.com



# 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  
MAY 26, 2022

## 2018 Blake Street

Use Permit #ZP2021-0095 to construct a six-story, multi-family residential building with 12 units (including two Low-Income units).

### I. Background

#### A. Land Use Designations:

- General Plan: High Density Residential (HDR)
- Zoning: Multi-Family Residential (R-4)

#### B. Zoning Permits Required:

- Use Permit under Berkeley Municipal Code (BMC) Section 23.202.020(A) to construct a multifamily residential building
- Use Permit under BMC Section 23.202.110(E)(2) to construct a main building that exceeds 35 feet in average height and three stories, up to 65 feet and six stories
- Administrative Use Permit under BMC Section 23.304.050(A) to construct rooftop projections, such as mechanical appurtenances or architectural elements which exceed the maximum height limit for the districts

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

- No concessions
- Waiver of BMC Section 23.202.110(E)(1) to reduce minimum side setback (above the 2<sup>nd</sup> floor) and rear yard setback (above the 3<sup>rd</sup> floor)
- Waiver of BMC Section 23.202.110(E)(2) to exceed lot coverage

**D. CEQA Recommendation:** It is staff's recommendation to ZAB that the project is categorically exempt pursuant to Section 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. 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 Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

#### **E. Parties Involved:**

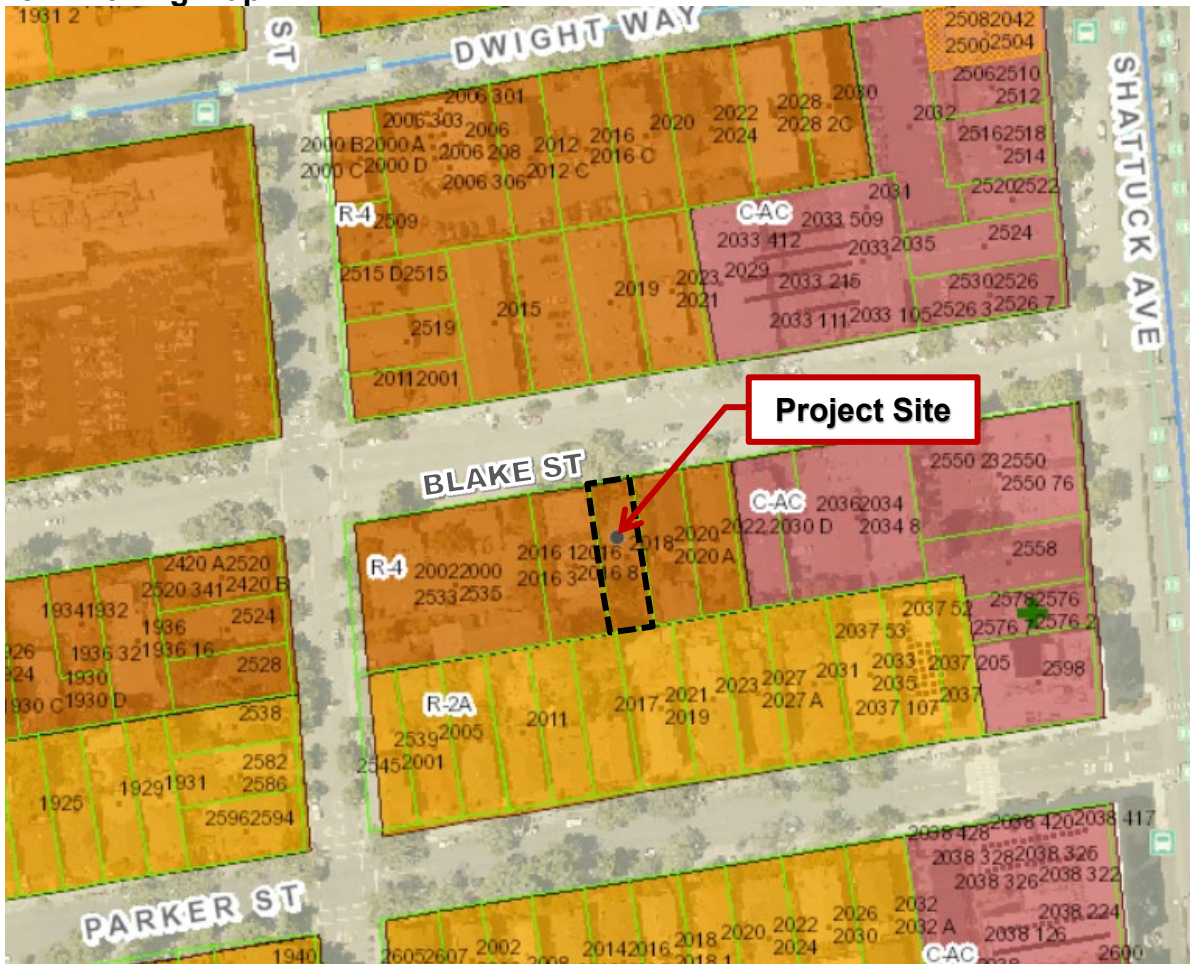
- Applicant                      Huan Fang, FIFTH ARCH, 200 Brannan Street, Apt 222, San Francisco CA 94107
- Property Owner              2018 Blake Street LLC, 2905 South Vermont Avenue, Ste 204, Los Angeles, CA 90007

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


<https://aca.cityofberkeley.info/citizenaccess/Default.aspx>

<https://cityofberkeley.info/your-government/boards-commissions/zoning-adjustments-board>

Figure 1: Zoning Map



Legend

-  AC Transit Bus Route
- R-4: Multi-Family Residential District
- C-AC: Adeline Corridor Commercial District
- R-2A: Restricted Multi-Family Residential District

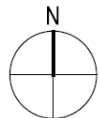
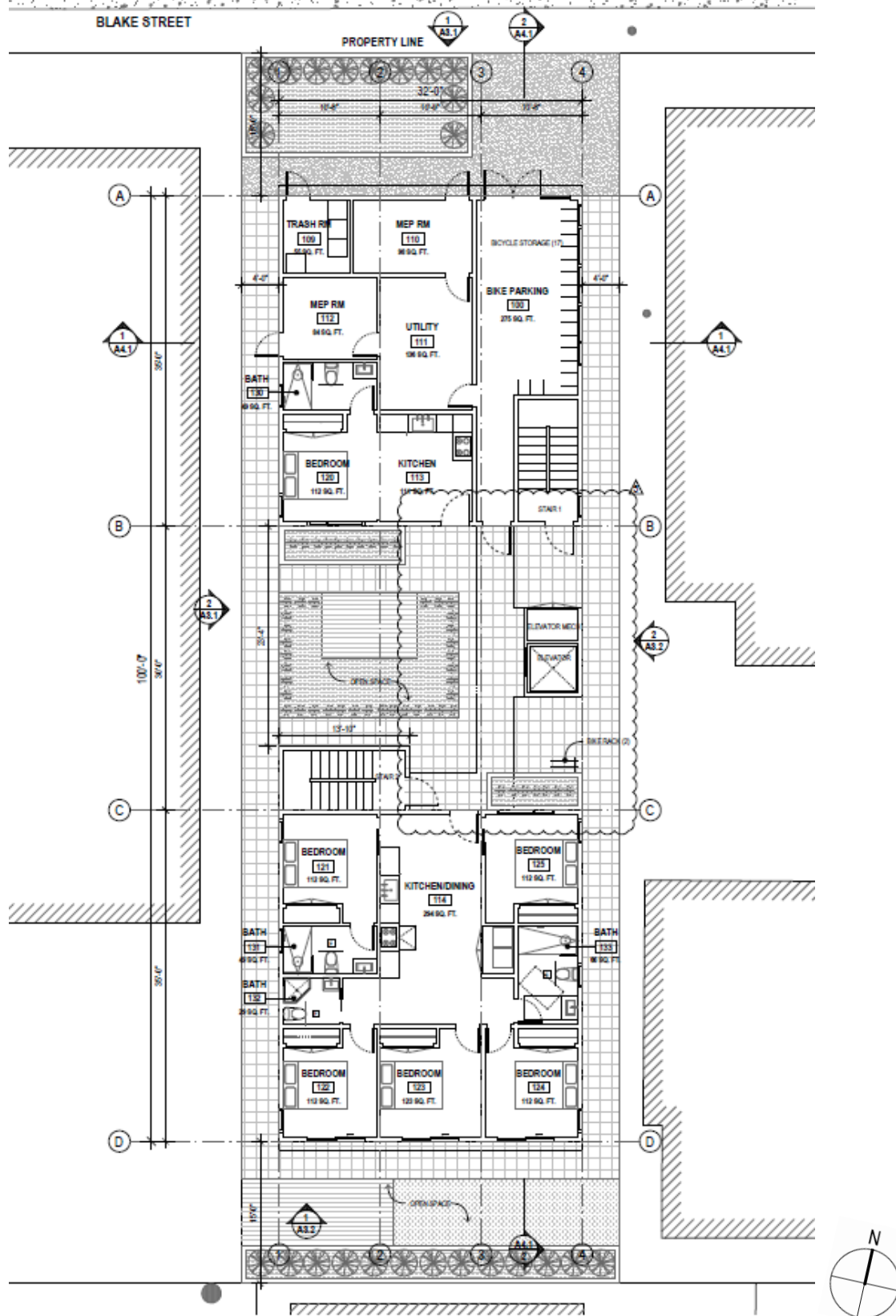


Figure 2: Site Plan





**Table 1: Land Use Information**

| Location                        |       | Existing Use                                             | Zoning District | General Plan Designation |
|---------------------------------|-------|----------------------------------------------------------|-----------------|--------------------------|
| Subject Property                |       | Vacant (remnants of fire-damaged Single-Family dwelling) | R-4             | HDR                      |
| Surrounding Adjacent Properties | North | Skylight Manufacturing                                   |                 |                          |
|                                 | East  | Multi-Family Residential                                 |                 |                          |
|                                 | South | Single / Multi-Family Residential                        | R-2A            | MDR                      |
|                                 | West  | Multi-Family Residential                                 | R-4             | HDR                      |

**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 contains no 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 Section 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 Section 22.20.065.                                                                       |
| 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 two Low-Income units, or 25% of the Base Project units, and qualifies for a 50% density bonus, or 4 bonus units. 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 (contains remnants of fire-damaged, demolished single-family dwelling), and does not contain any known historic resource.                                                                            |

| Characteristic                                         | Applies to Project? | Explanation                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Housing Accountability Act<br>(Govt. Code 65589.5(j))  | Yes                 | The project is a “housing development project” 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<br>(BMC Chapter 23.316) | 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                  | No rent-controlled units are proposed to be demolished.                                                                                                                                                                                                                                                                                                           |
| Residential Preferred Parking                          | No                  | The site is located in RPP Zone C. However, per BMC Section 14.72.080.C, no permits shall be issued to residents in the project.                                                                                                                                                                                                                                  |
| Seismic Hazards (SHMA)                                 | No                  | The project site is not located in a seismic hazard area, as defined by the State Seismic Hazards Mapping Act (SHMA). No further investigation is necessary.                                                                                                                                                                                                      |
| Soil/Groundwater Contamination                         | No                  | The project site is not located within the City’s Environmental Management Area. No further investigation is necessary. 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 Shattuck Avenue, and is approximately ½-mile from the Downtown Berkeley BART Station.                                                                                                                                                                            |

**Table 3: Project Chronology**

| Date           | Action                                                                                       |
|----------------|----------------------------------------------------------------------------------------------|
| June 3, 2021   | Application submitted                                                                        |
| March 16, 2022 | Application deemed complete; level of CEQA review determined by staff – Categorically Exempt |
| May 11, 2022   | Public hearing notices mailed/posted                                                         |
| May 26, 2022   | ZAB Hearing                                                                                  |
| July 25, 2022  | CEQA Determination Deadline                                                                  |

**Table 4: Development Standards**

| R-4 Standards,<br>BMC Section 23.202.110(E)(1) to (2)                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                       | Existing         | Proposed                       | Permitted/Required                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|------------------|--------------------------------|------------------------------------------------|
| Lot Area (sq. ft.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                       | 5,189            | 5,189                          | n/a                                            |
| Gross Floor Area (sq. ft.)                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                       | n/a <sup>1</sup> | 13,427                         | n/a                                            |
| Dwelling Units                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                       | n/a              | 12                             | n/a                                            |
| Building Height                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Average                               | n/a              | 64'-6"<br>(top of railing)     | 35' max.<br>(65' with Use Permit) <sup>2</sup> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Maximum                               | n/a              | 64'-6"<br>(top of railing)     | n/a                                            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Stories                               | n/a              | 6                              | 3 max.<br>(6 with Use Permit) <sup>2</sup>     |
| Building Setbacks                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Front                                 | n/a              | 15'                            | 15' min.                                       |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Rear<br>(by floor, 1 through 6)       | n/a              | 15'/15'/15'/15'/<br>15'/15'    | 15' /15'/15'/17'/19'/21' min.                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Left Side<br>(by floor, 1 through 6)  | n/a              | 4'/4'/4'/4'/4'/4'              | 4'/4'/6'/8'/10/12' min.                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Right Side<br>(by floor, 1 through 6) | n/a              | 4'/4'/4'/4'/4'/4'              | 4'/4'/6'/8'/10/12' min.                        |
| Lot Coverage (%)                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                       | n/a              | 49                             | 35                                             |
| Usable Open Space (sq. ft.)                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                       | n/a              | 2,430                          | 2,400 min.<br>(200 s.f./d.u.)                  |
| Parking                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                       | n/a              | 0                              | 0 min./6 max.<br>(0.5 spaces/du max.)          |
| Bicycle Parking                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Residential - Long Term               | n/a              | 17                             | 17<br>(1 space/3 bedrooms)                     |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Residential - Short Term              | n/a              | 1                              | 1<br>(1 space/40 bedrooms, or 2)               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Total                                 | n/a              | 17/1<br>(long term/short term) | 17/1<br>(long term/short term)                 |
| <p>■ = Waiver requested to modify the district standard.</p> <p><sup>1</sup> The site is considered vacant, and contains remnants of the previously existing single-family dwelling that was damaged by fire and that was demolished in 2020 after the City deemed the building unsafe.</p> <p><sup>2</sup> The use permit to allow height up to 65 feet and six stories is included in the Base Project for the calculation of the density bonus, and is not a requested waiver.</p> |                                       |                  |                                |                                                |

## II. Project Setting

**A. Neighborhood/Area Description:** The project site is located on the south side of Blake Street. Adjacent parcels to the north are occupied by one-story commercial/industrial buildings; parcels to the west, immediately east (R-4 Multi-Family Residential District) and to the south (R-2A, Restricted Multi-Family Residential District) are occupied by one- and two-story, single- and multi-family dwellings. Parcels beyond the R-4 district, further east of the site are occupied by one- and two-story commercial buildings (C-AC, Adeline Corridor Commercial District).<sup>1</sup> The parcel across the street and to the northeast at 2029 Blake Street (C-AC) is occupied by a recently-constructed, five-story, 82-unit, mixed-use building. Use permits for other large projects were approved within the past two years on the same block: a six-story, 113-unit, community care facility for seniors at 2000 Dwight Way, and a seven-story, 155-unit, multi-family building at 2015 Blake. (See Figure 1: Zoning Map.)

**B. Site Conditions/Background:** The project site is a rectangular parcel that is generally flat, with a frontage measuring 40 feet and length measuring 140 feet. The site is occupied by the remnants of a single-family dwelling and accessory structure that were damaged by fire in 2019. A Notice of Violation was issued on April 15, 2020, wherein the City Building Official deemed the building unstable, unsafe, and an immediate threat to health and safety. Hazardous portions of the building were demolished in response to the Notice shortly after. The dwelling is considered fully demolished.<sup>2</sup>

## III. Project Description

**A.** The proposed project would involve the construction of a residential building with the following main components:

- Six stories and 64 feet, 6 inches in height (measured to the top of railing)
- 12 dwelling units – 1 one-bedroom, 5 four-bedroom and 6 five-bedroom
- 51 bedrooms in total
- Two Low-Income (LI) units
- 2,433 square feet of usable open space – ground-floor landscape and patio areas and two roof decks
- 17-space bike room and two outdoor bike racks

(See Figure 2: Site Plan.)

<sup>1</sup> Parcels west of the site now designated as C-AC, Adeline Corridor Commercial District, were rezoned in 2021 from previously R-4, Multi-Family Residential District.

<sup>2</sup> A full demolition of a building is defined in the BMC Section 23.502.020.D: “A building or enclosed structure shall be considered demolished for the purposes of this chapter when, within any continuous 12-month period, such building or enclosed structure is destroyed in whole or in part or is relocated from one lot to another. For purposes of this definition, destroyed in part means when 50 percent or more of the enclosing exterior walls and 50 percent or more of the roof are removed”.

**B. Base Project and Density Bonus:** By committing to provide two LI units, the project is eligible for a density bonus under Government Code Section 65915. Under the City’s density bonus procedures, the Base Project was calculated to have eight units as the maximum allowable density for the site.<sup>3</sup> The Base Project has an average unit size of 983 square feet in a five-story building. Two LI units, or 25 percent of the Base Project, qualifies the project for a 50 percent density bonus or four bonus units. The resulting Proposed Project would be a six-story building with 12 units, with an average unit size of 1,053 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 |
|-----------------------------------------------------------------------------------------------------|---------------------|-----------------------|--------------------------------|------------------------|
| 8                                                                                                   | 2 LI<br>(25% of BP) | 50%                   | 4<br>(50%x8)                   | 12                     |
| *Per Gov’t Code Section 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 Section 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<sup>4</sup> 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, including the additional floors and rooftop elements allowed by use permits to extend the district height limit<sup>5</sup> complies with applicable, objective general plan and zoning standards. Further, Section 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

<sup>3</sup> 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, Section 65915(f).

<sup>4</sup> 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”.

<sup>5</sup> The City has determined that the “protections afforded by the HAA and the definition of a base project for density bonus calculations apply to a housing development project up to and including the maximum development allowed with use permits and/or administrative use permits”. Therefore, use permits to extend the district height limit to 65’ and six stories and to allow rooftop elements to exceed height limits are included in the Base Project for the purpose of determining the applicability of Section 65589.5(j).

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 Section 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, Section 65589.5(j) *does apply* to the Proposed Project. All findings discussed below are subject to the requirements of Government Code Section 65589.5.

#### IV. Community Discussion

**A. Neighbor/Community Concerns:** After receiving the application on June 3, 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.<sup>6</sup>

On June 23, 2021, staff received two letters from neighbors describing concerns over too much oversized development on the block; the building design exceeding the height limit; and the project’s incompatibility with one- and two-story dwellings adjacent to the site.

On September 20, 2021, staff received a letter from neighbors describing concerns that the project would exacerbate the shortage of street parking in the area, and concerns over air pollution from the construction of too many new buildings and the impact of more demand on water and electricity systems.

On May 11, 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. 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:** This application is not subject to review by the Design Review Committee.

#### 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

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<sup>6</sup> 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.

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 Section 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 Section 65920)].

The May 26, 2022 ZAB Hearing represents the first public hearing for the proposed project since the project was deemed complete. The City can hold four additional public hearings on this project, if needed, provided that one hearing must be reserved for a potential appeal to the City Council.

2. Government Code Section 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 Section 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 March 16, 2022. Staff also determined on this date that the level of CEQA review was to be "Categorically Exempt". If the ZAB determines the application is categorically exempt from CEQA at the May 26, 2022 public hearing, the application must be approved or disapproved by July 25, 2022.
4. Government Code Section 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, as the single-family dwelling that previously existed on the site was demolished after the City Building Official deemed the building unsafe and prior to the submittal of this permit application. Therefore, this section does not apply to the project.

**B. Density Bonus Waivers and Concessions:** The project is entitled to three concessions (or incentives), under Government Code Section 65915(d) for providing at least 24 percent of total units to lower-income households, and an unlimited number of waivers, under Section 65915(e). No concessions are requested.

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 of the side and rear yard setbacks minimums and the lot coverage maximum 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<sup>7</sup> 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. Use Permits for Additional Height:** BMC Section 23.406.040.E.1 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.

The project applicant proposes a 64-foot, 6-inch (maximum height), six-story building. Use Permits to exceed the height limit of 35 feet and three stories, up to 65 feet and six stories (the fourth through sixth floors), and for the rooftop elements to exceed the district height limits are included in the Base Project for the density bonus, and are subject to the findings in Section 65589.5(j) of the HAA. (See section III.C for discussion on the HAA.)

Non-Detriment: The six-story building would be taller than existing buildings on nearby properties on its block which are generally one- and two-story residential development to the west and south, and one- and two-story residential and commercial development

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<sup>7</sup> See Footnote 5.



to the east. If approved, however, the project would follow a trend of increasing density in the neighborhood, including the recently-constructed, five-story, mixed-use building at 2029 Blake Street, the approved six-story, community care facility for seniors at 2000 Dwight Way, and the approved seven-story, multi-family building at 2015 Blake. The proposed project would provide new housing in a location with easy access to public transit and nearby commercial services and stores, and would fulfill the purpose of the R-4 Multi-Family Residential District by providing high-density residential development with sufficient usable open space at a convenient location for desirable services.

Also, 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.

Shadows: According to the shadow studies submitted for the project (See Attachment 1, Project Plans – Sheet A1.4) the project would cause new shadows to affect surrounding dwellings as follows:

- multi-family dwellings to the west of the site, during the hours after sunrise in the spring months and summer months
- the newly constructed mixed-use building to the northeast, during the hours before sunset in the winter months
- the single-family dwelling to the east of the site during the hours around noon in the winter months
- single- and multi-family dwellings to the east of the site, during the hours before sunset in the summer, winter and spring months

The use permits for additional height beyond the district height limits allow a 64-foot, 6-inch, 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. However, the shadow impacts on any one adjacent property would occur during limited hours and times of the year. Furthermore, shadow impacts on adjacent dwellings are difficult to avoid given the lot widths, height and building-to-building separations permitted in the R-4 district. Staff therefore recommends that the ZAB find that shadow impacts would be non-detrimental.

**B. 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.
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.)

As discussed in section VI.A through VI.C, the project would improve the utilization of the site with infill development that is of appropriate intensity, that is compatible with the existing surrounding development. The project site is served by multiple bus lines, including local, rapid, and Transbay lines, that operate along Shattuck Avenue, and a nearby BART Station.

The project would help Berkeley meet its regional housing needs by adding 11 net new housing units, including two LI units. The project would be subject to standard conditions of approval that promote sustainable building design, including conditions for solar PV systems, 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 #ZP2021-0095, pursuant to BMC Section 23.406.040 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

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



Administrative Record

This attachment is 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: 2018 BLAKE STREET, USE PERMIT #ZP2021-0095**

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, OCTOBER 11, 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 #ZP2021-0095 to **construct a six-story, multi-family residential building with 12 units (including two Low-Income units).**

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](http://www.CityofBerkeley.info) as of **SEPTEMBER 29, 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](mailto: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](mailto:clerk@cityofberkeley.info) for further information.

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Mark Numainville, City Clerk

Mailed: **SEPTEMBER 27, 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.*





Office of the City Manager

PUBLIC HEARING  
November 3, 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: 1643-1647 California Street, Use Permit #ZP2021-0001

### RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0001 to: 1) create a new lower basement level, 2) construct a new second story, and 3) modify the existing duplex layout resulting in a 3,763 square foot duplex on an existing property, and dismiss the appeal.

### FISCAL IMPACTS OF RECOMMENDATION

None.

### CURRENT SITUATION AND ITS EFFECTS

On January 8, 2021, Sundeep Grewel (“Applicant”) submitted an application for a Use Permit (UP) to remodel and expand a duplex located at 1643 and 1647 California Street.

On January 19, 2021, the City mailed postcards to neighboring property owners and occupants within 300 feet to inform the public of the receipt of a Zoning Permit application at the site, and posted a project yellow poster.<sup>1</sup>

In response to this notification, staff received several communications regarding the project, both in support and opposition. Concerns raised included:

- a. Concerns from neighbors to the east and south due to the proposed increase in size of the house on a small lot.
- b. Concerns from each adjacent neighbor regarding the impacts to privacy and of shadows from the two-story design and increase in height.
- c. Concern with the project being out of scale with the neighborhood and surrounding properties, especially given the existing non-conformities of the property.

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<sup>1</sup> The standard protocol for installation of a Project Yellow Poster and neighborhood contact and signatures was waived from March 2020 until July 2021.

Expressions of support of the application included:

- a. Improved structure and project site.
- b. Restoration of the second dwelling unit.

On December 9, 2021, 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 9-0-0-0 (Yes: Duffy, Kahn, Kim, Gaffney, O'Keefe, Olson, Sanderson, Thompson, Tregub; No: None; Abstain: None; Absent: None).

On December 20, 2021, staff issued the notice of the ZAB decision, and on January 10, 2022, an appeal of the ZAB decision was filed with the City Clerk by Kay Bristol, the owner of 1651-1653 California Street, and Anna Cederstav and Adam Safir, the owners of 1609 Virginia Street. The Clerk set the matter for review by the Council on April 26, 2022.

On April 26, 2022, Council remanded the project to ZAB for reconsideration of the applicability of the Housing Accountability Act, and the Rent Stabilization and Eviction for Good Cause Ordinance.

On July 14, 2022, the ZAB conducted a public hearing for the remand. The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), does not apply to the proposed project because no new dwellings are proposed. The two existing dwellings would remain, and the size of the dwellings would change. Rent Board staff prepared a memorandum that analyzed whether the Rent Stabilization and Eviction for Good Cause Ordinance applies to the project. Since there are currently no tenants, there are no tenant protections at issue currently. Future tenants would be protected by the ordinance. Both units are subject to rent control when rented.

After hearing public comments and holding discussion, the ZAB approved the use permit by a vote of 7-0-0-2 (Yes: Duffy, Gaffney, Kahn, Kim, Sanderson, Thompson, Tregub; No: None; Abstain: None; Absent: O' Keefe, Olson).

On July 21, 2022, staff issued the ZAB Notice of Decision, and on August 2, 2022, an appeal of the ZAB decision was filed with the City Clerk by Kay Bristol, the owner of 1651-1653 California Street, and Anna Cederstav and Adam Safir, the owners of 1609 Virginia Street. The Clerk set the matter for review by the Council on November 3, 2022.

On October 20, 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

The project site is located in the North Berkeley neighborhood, on the east side of California Street at the corner of California and Virginia Street. It is one block east of



Sacramento Street and four blocks west of Martin Luther King Junior Way. The surrounding area consists of residential uses including one- and two-story single-family dwellings and two-story multi-family buildings.

The subject property is a small, rectangular lot, oriented in the east-west direction, and is approximately 3,100 square feet in total area. It features a one-story main building originally constructed as a duplex. The building faces west, toward California Street. At some point in the past, the kitchen of the left side unit (1643 California) was removed without permits, and a doorway was installed between the two units without the necessary approval of a Use Permit to remove a dwelling.

The property and structure are currently non-conforming for several reasons: 1) lot coverage, currently at 50 percent coverage where 45 percent coverage is the limit for a one-story structure; 2) allowable residential density, containing two units when only one unit is permitted due to the lot size; and 3) the structure is located within the required front, rear, and left setbacks.

The proposed project would make several alterations to the existing property. The existing residential structure would be shifted by 1-inch to the south to create a conforming left (north) side setback of 4 feet. The proposal would restore the kitchen of the left dwelling unit at 1643 California, and would shrink the size of this unit from 650 square feet to 501 square feet. Additionally, the floor plan of the main level of the right dwelling unit (1647 California) would be modified to serve as the main living area, with an open floor plan kitchen/dining/living room, plus a full bathroom. The structure would be expanded by creating a new basement level, contained below the existing building footprint, solely serving 1647 California. This level would contain a family room/home gym, half bath, one new bedroom with a full bathroom, and closet and storage area. The proposal would add a new second level on top of the existing structure, also solely serving 1647 California, which would contain three new bedrooms and two full bathrooms. The second story would step in at the front to provide a balcony, and would step in from the rear to comply with the required 20-foot rear yard setback. In total, 1647 California would expand by 2,612 square feet, from 650 square feet to 3,262 square feet.

Other site work includes the removal of an existing accessory shed, and the construction of an on-grade deck in the southeastern corner of the rear yard.

For additional project background, please see Attachment 3, the July 14, 2022 ZAB staff report for this project.

#### RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's 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: ZAB did not address the appellants' requested changes, including conditioning the permit to prevent post-permit modification of the upper floor of the exterior of the building.**

Response 1: Pursuant to Berkeley Municipal Code (BMC) Section 23C.04.070.C<sup>2</sup>, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of lot coverage are permitted with a Use Permit if the addition/enlargement does not increase coverage or exceed the height limit. The property is eligible for the use permit because it is non-conforming for the maximum allowable lot coverage, with 50 percent coverage where 45 percent is the maximum on this R-2 zoned property. The proposed project would remove an existing shed in the rear yard which would reduce the lot coverage to 44 percent, but the standards are different for a one-story or a two-story house, so the property would remain non-conforming for the revised allowable lot coverage of 40 percent.

While the proposed structure would still be non-conforming to the allowable lot coverage, the project would reduce the non-conformity from 5 percent over the allowable limit to 4 percent over the allowable limit. The proposed addition is located over existing covered area, and therefore does not increase the non-conforming lot coverage. Additionally, the addition consists of a second story addition, reaching a total of 23 feet, 10 inches, which complies with the maximum average height limit of 28 feet.

Pursuant to BMC Section 23C.04.070.E, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with a Use Permit if the addition/enlargement does not increase the density or exceed the height limit. The project proposes to maintain the density at two units, and the addition would comply with the allowable average height limit in the district. Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements which vertically extend or alter a portion of a building which encroaches into a non-conforming yard are permitted with an Administrative Use Permit if the existing use of the property is conforming and if the addition/enlargement would not: 1) reduce any yard below the minimum setback requirements or further reduce existing non-conforming yards; or 2) exceed the maximum or calculated height limits. The existing residential structure is non-conforming to the front, rear, and left (north) side setbacks. The proposed addition/enlargement of the house would correct the non-conforming left side setback, but is proposed to vertically extend the non-conforming front and rear setbacks. Because the enlargement of the building would comply with the permitted residential use on the property, and the vertical expansions within the non-conforming setbacks would not further reduce the non-conformity, these expansions are permissible.

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<sup>2</sup> 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\\_\(ZORP\).aspx](https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Zoning_Ordinance_Revision_Project_(ZORP).aspx)

The BMC requires findings of general non-detriment<sup>3</sup> for approval of discretionary permits, and each zoning district has district purposes to guide development. The ZAB determined that the project is compliant with all applicable, objective general plan and zoning standards. Even if neighbors are opposed to a project, ZAB may choose to not modify a project and approve it as is.

**Issue 2: Approval of the project goes against policies and statements made by City Council in regards to preventing gentrification, and protecting small, more affordable, and rent-controlled housing. The appellants contend that it is unlikely that the proposed large dwelling unit will be rented because it is subject to rent control. The appellants further contend that zoning standards and permit requirements should be used to impose conditions to force owners to preserve the nature and purpose of rent-controlled properties (Appeal Letter, page 3).**

Response 2: Whether or not a property will be rented or owner-occupied is beyond the purview of ZAB and the Land Use Planning Division. The Rent Board implements Berkeley's Rent Stabilization Ordinance. The Zoning Ordinance does not prevent property owners from applying for applicable development permits based on the tenancy of a property. ZAB considered and discussed the evidence presented at the hearing, and acted within its purview to approve the proposed project.

**Issue 3: The project does not comply with the applicable, objective zoning standards. In the absence of objective standards regarding privacy and light, and in the absence of clear guidance regarding rent-controlled properties, ZAB's decision on a project is based on subjective standards regarding what constitutes harm to neighbors and the city (Appeal Letter, page 1).**

Response 3: Per California Government Code, Section 65913.4(a)(5), objective standards are standards that involve no personal or subjective judgement by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by the applicant and the public official before submittal. The project site is existing non-conforming for residential density, lot coverage, and front, rear, and left setbacks. The lot was created and the duplex was built before the current R-2 District standards were developed; this is true of many residential properties in Berkeley, and the BMC allows property owners to apply for Use Permits to make alterations to non-conforming properties so long as non-conforming conditions are not worsened. An Administrative Use Permit is required for the addition

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<sup>3</sup> The findings for approval of use permits, sometimes referred to as "general non-detriment findings" are described in BMC Section 23.406.040(E)(1) Findings for Approval:

"To approve a Use Permit, the ZAB shall find that the proposed project or use:

- (a) Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use; and
- (b) Will not 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."

of more than 600 square feet (a major residential addition). Per BMC Section 23.202.030(A)(2)(a), to deny an AUP for a residential addition the review authority must find that the residential addition would unreasonably obstruct sunlight, air, or views. These subjective standards established in the BMC do not prevent ZAB from approving the project.

#### 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  
Allison Riemer, Associate Planner, (510) 981-7433

#### Attachments:

1. Draft Resolution
  - Exhibit A: Findings and Conditions
  - Exhibit B: Project Plans, received August 26, 2021
2. Appeal Letter, received August 2, 2022
3. July 14, 2022 ZAB Hearing Staff Report
4. Index to Administrative Record
5. Administrative Record
6. Public Hearing Notice

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD APPROVAL OF USE PERMIT #ZP2021-0001 TO: 1) CREATE A NEW LOWER BASEMENT LEVEL, 2) CONSTRUCT A NEW SECOND STORY, AND 3) MODIFY THE EXISTING DUPLEX LAYOUT RESULTING IN A 3,763 SQUARE FOOT DUPLEX ON AN EXISTING PROPERTY, AND DISMISS THE APPEAL.

WHEREAS, on January 8, 2021, Sundeep Grewel (“Applicant”) submitted an application for a Use Permit (UP) to remodel and expand a duplex located at 1643 and 1647 California Street; and

WHEREAS, on December 9, 2021, 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 9-0-0-0 (Yes: Duffy, Kahn, Kim, Gaffney, O’Keefe, Olson, Sanderson, Thompson, Tregub; No: None; Abstain: None; Absent: None; and

WHEREAS, on December 20, 2021, staff issued the notice of the ZAB decision, and on January 10, 2022, an appeal of the ZAB decision was filed with the City Clerk by Kay Bristol, the owner of 1651-1653 California Street, and Anna Cederstav and Adam Safir, the owners of 1609 Virginia Street. The Clerk set the matter for review by the Council on April 26, 2022; and

WHEREAS, on April 26, 2022, Council remanded the project to ZAB for reconsideration of the applicability of the Housing Accountability Act, and the Rent Stabilization and Eviction for Good Cause Ordinance; and

WHEREAS, on July 14, 2022, the ZAB conducted a public hearing for the remand. After hearing public comments and holding discussion, the ZAB approved the use permit by a vote of 7-0-0-2 (Yes: Duffy, Gaffney, Kahn, Kim, Sanderson, Thompson, Tregub; No: None; Abstain: None; Absent: O’ Keefe, Olson); and

WHEREAS, on July 21, 2022, staff issued the ZAB Notice of Decision, and on August 2, 2022, an appeal of the ZAB decision was filed with the City Clerk by Kay Bristol, the owner of 1651-1653 California Street, and Anna Cederstav and Adam Safir, the owners of 1609 Virginia Street. The Clerk set the matter for review by the Council on November 3, 2022; and

WHEREAS, on October 20, 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; and

WHEREAS, on November 3, 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 #ZP2021-0001, 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 August 26, 2021

# ATTACHMENT 1, EXHIBIT A

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## FINDINGS AND CONDITIONS

JULY 14, 2022

### 1643 & 1647 California Street

Use Permit #ZP2021-0001 to 1) create a new lower basement level, 2) construct a new, second story and 3) modify the existing duplex layout, resulting in a 3,763 square foot duplex.

#### PERMITS REQUIRED

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- Use Permit, under Berkeley Municipal Code (BMC) Section 23C.04.070.C, to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable lot coverage;
- Use Permit, under BMC Section 23C.04.070.E, to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable density;
- Administrative Use Permits, under BMC Section 23C.04.070.B, to horizontally extend two non-conforming yards (front and rear);
- Administrative Use Permit, under BMC section 23D.28.030, to permit a major residential addition;
- Administrative Use Permit, under BMC Section 23D.28.070.C, to allow an addition over 14 feet in height; and
- Administrative Use Permit, under BMC Section 23D.28.050, to construct a fifth bedroom

#### I. CEQA FINDINGS

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1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).
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 cumulative impacts,
  - (c) there are no significant effects,
  - (d) the project is not located near a scenic highway,
  - (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and
  - (f) the project would not affect any historical resource.

#### II. FINDINGS FOR APPROVAL

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1. As required by Section 23B.32.040.A 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 will add a second level to the home, of which there are several examples in the neighborhood.
  - B. The second story addition will step in and comply with the required front and rear yard setbacks.

- C. A basement is proposed to be added. While adding additional square footage to the building, the basement will not create any new impacts to the surrounding neighbors due to its placement partially below grade, maintaining the existing first floor level.
- D. The neighborhood is a mix of residential uses, including apartments and single-family and multi-family homes. Existing structures in the immediate neighborhood vary in height from one to two stories; and
- E. The project approval 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 will not be detrimental.

### III. OTHER FINDINGS FOR APPROVAL

2. Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of lot coverage are permitted with a Use Permit if the addition/enlargement does not increase coverage or exceed the height limit. The property is non-conforming to the maximum allowable lot coverage, with 50 percent coverage, where 45 percent is the District maximum on this R-2 property. The proposed addition will remove an existing shed in the rear yard, which will reduce the lot coverage to 44 percent, while creating a two-story house, which decreases the allowable lot coverage to 40 percent. While the proposed structure will still be non-conforming to the allowable lot coverage, the project will reduce the non-conformity from 5 percent over the allowable limit to 4 percent over the allowable limit. The proposed addition is located over existing covered area, and therefore, does not increase the non-conforming lot coverage. Additionally, while the addition consists of a second story addition, reaching a total of 23 feet, 10 inches, which complies with the maximum average height limit of 28 feet.
3. Pursuant to BMC Section 23C.04.070.E, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with a Use Permit if the addition/enlargement does not increase the density or exceed the height limit. The project proposes to maintain the density at two units, therefore, it does not increase the density. As described in Section V.C of the Staff Report, the addition will comply with the allowable average height limit in the district
4. Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements which vertically extend or alter a portion of a building which encroaches into a non-conforming yard may be of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with an Administrative Use Permit if the existing use of the property is conforming and if the addition/enlargement will not 1) reduce any yard below the minimum setback requirements, or further reduce existing non-conforming yards; or 2) exceed the maximum or calculated height limits. As described in the Staff Report, the existing residential structure is non-conforming to the front, rear, and left (north) side setbacks. The proposed addition/enlargement of the house will correct the non-conforming left side setback, but is proposed to vertically extend the non-conforming front and rear setbacks. The front setback will be vertically extended both up (with the second story) and down (with the basement), while the rear setback will be vertically extended down with the expansion of the basement. The second story at the rear will comply with the required 20-foot rear yard setback. As the enlargement of the building will comply with the permitted residential use on the property, and the vertical expansions within the non-conforming setbacks will not further reduce the non-conformity, these expansions are permissible.
5. Pursuant to BMC Section 23D.28.050, an Administrative Use Permit is required to approve the addition of a fifth bedroom to a parcel in the R-2 Zoning District. This project proposes to increase



the total number of bedrooms on the property from four to five bedrooms. The addition of this fifth bedroom will not add density to the site, or intensify the use of the residential property.

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**IV. 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. Applicant Responsible for Compliance with Conditions**

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

**3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)**

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

**4. Modification of Permits (Section 23B.56.020)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

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

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

**6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)**

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

**7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.



11. 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.
12. 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](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/>

**During Construction:**

13. 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.
14. 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.
15. 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.

- 16. 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.
- 17. 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.
- 18. 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.

19. 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.
20. 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.
- 21. 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.
- 22. 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.
- 23. 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 on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
  - H. 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.
  - I. 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.
  - J. 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.
- 24. 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.
- 25. 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.
- 26. 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.

27. 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.
28. 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.
29. 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.

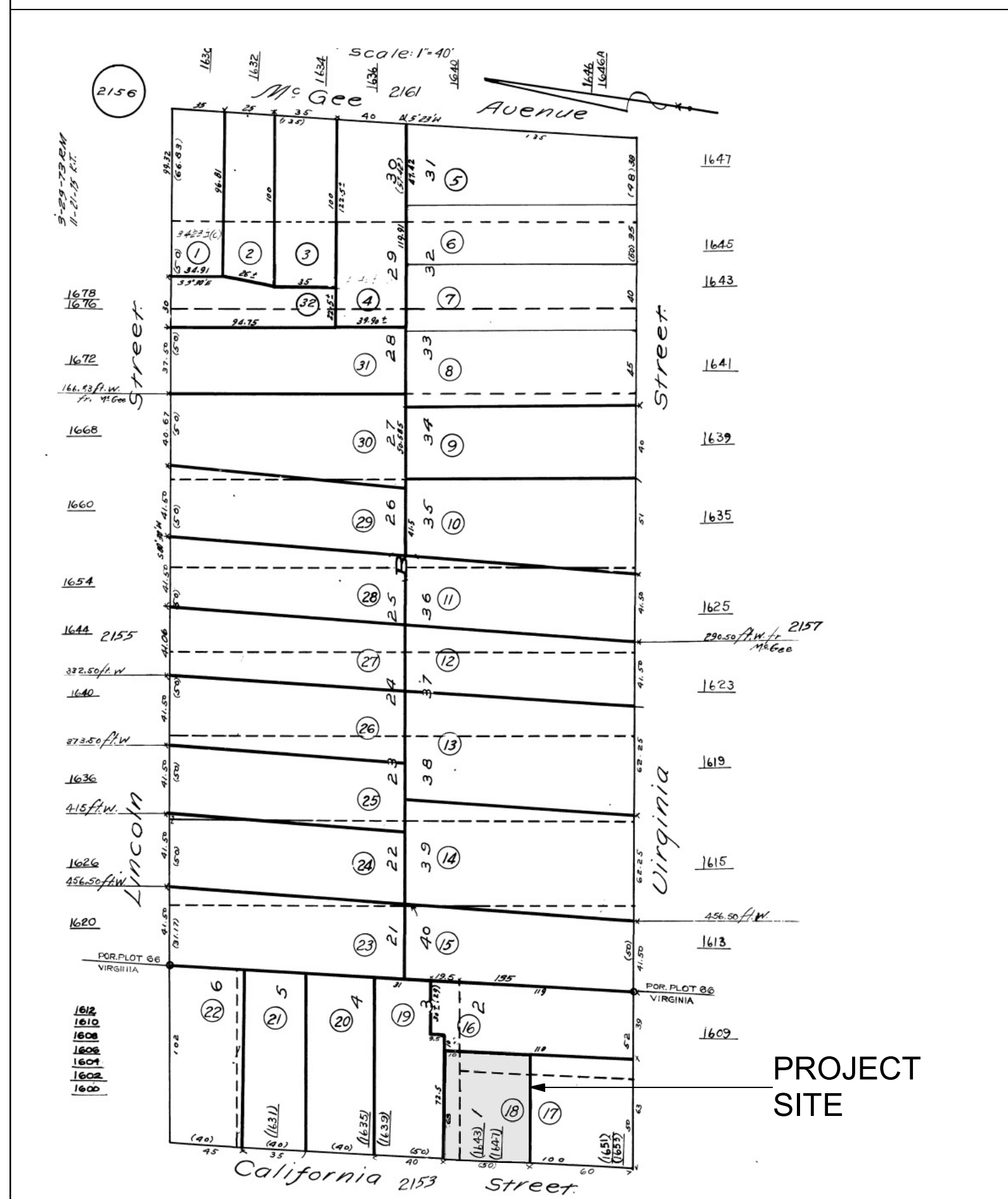
**Prior to Final Inspection or Issuance of Occupancy Permit:**

30. 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.
31. 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 August 26, 2021, except as modified by conditions of approval.

**At All Times:**

32. 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.
33. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
34. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
35. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

PARCEL MAP



PROJECT SITE

OPPENHEIMER RESIDENCE

1643 & 1647 California St. CA 94703

SCOPE OF WORK

The proposed project includes an addition to and remodel of an existing, one-story, two-family residence (duplex). Components of the project include:

Reconfigure existing duplex to create one larger unit and one smaller apartment. All work shall be within the building footprint. The building shall remain as a duplex. The preliminary program includes the following:

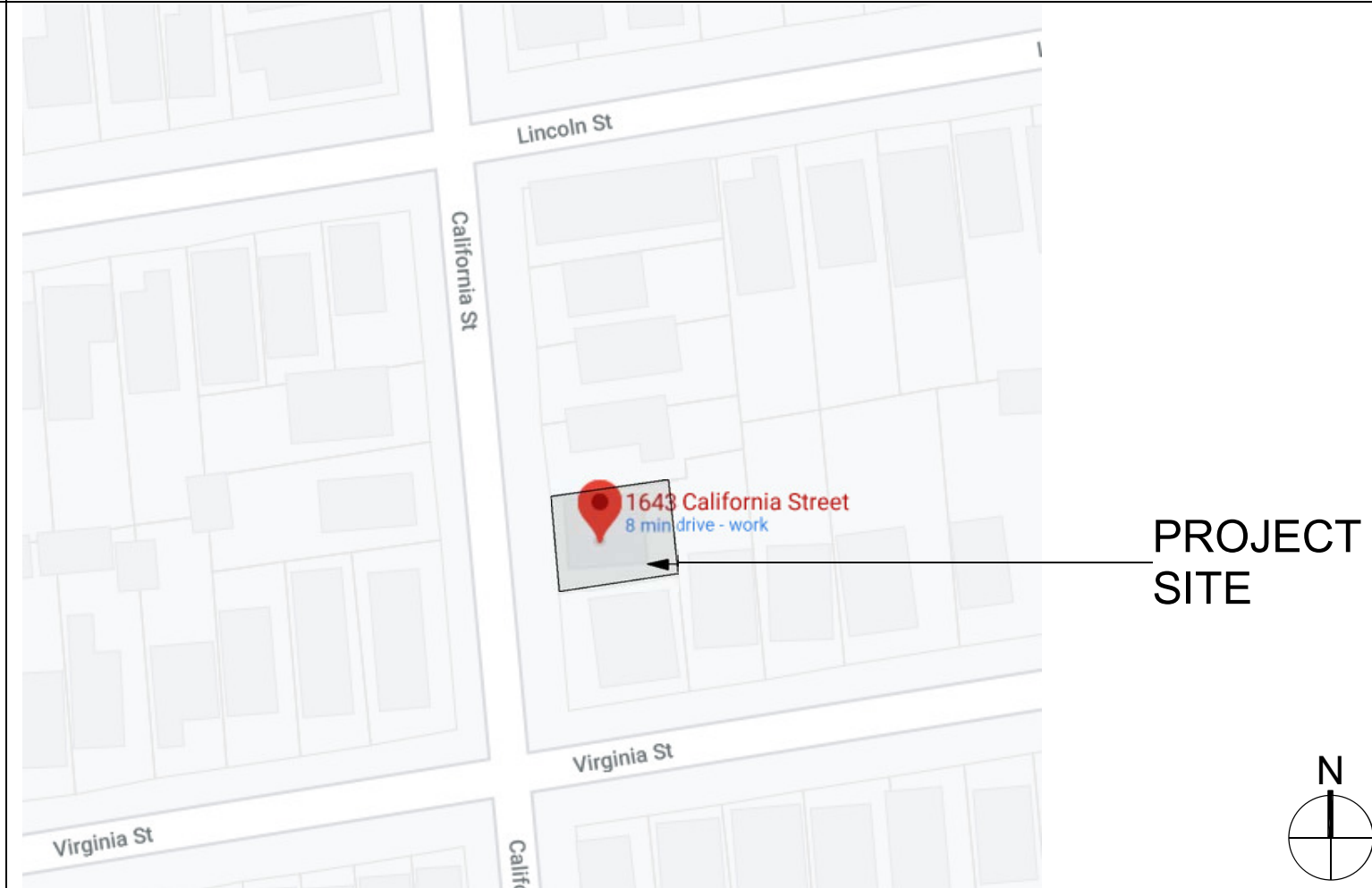
- Basement/First floor:**
- Excavate down to create new bedroom, full bath, home gym and family room and mech. room/storage

- Second floor:**
- Reconfigure layout as needed to create a larger unit with one smaller apartment
  - Rebuild/reconfigure existing porch and entry stairs as required
  - Create new stairs to basement floor and second floor addition

- Third floor:**
- Create new bedrooms, bathrooms and laundry room
  - Create new balcony at front

- Miscellaneous:**
- Update all mechanical, electrical and plumbing systems as required for new work
  - Reconfigure and rebuild front stairs per new design

VICINITY MAP



PROJECT SITE

PROJECT DIRECTORY

**Owner:**  
Ido and Tamar Oppenheimer  
1643 & 1647 California St.  
Berkeley, CA 94703  
Tel: 510 486-8387

**Architect:**  
Sundeep Grewal  
Studio G+S, Architects  
2223 5th St.  
Berkeley, CA 94710  
Tel: 510-548-7448  
sunny@sgsarch.com

**Project Address:**  
1643 & 1647 California St.  
Berkeley, CA 94703  
APN: 58-2156-18

PROJECT DATA

**Occupancy:** R-3 Duplex  
**Proposed Construction:** Type V-B  
**Fire Sprinkler System:** No

**Zoning/General Plan Regulation**  
**Zoning District:** R-2 (Restricted Two-Family Residential)  
**General Plan Area:** LMDR  
**Downtown Arts District Overlay:** No  
**Commercial District With Use Quotas:** No

**Seismic Safety**  
**Earthquake Fault Rupture(Alquist-Priolo) Zone:** No  
**Landslide (Seismic Hazards Mapping Act):** No  
**Liquefaction (Seismic Hazards Mapping Act):** No  
**Un-reinforced Masonry Building Inventory:** No

**Historic Preservation**  
**Landmarks or Structure of Merit:** No

**Environmental Safety**  
**Creek Buffer:** None  
**Fire Zone:** 1  
**Flood Zone(100-year or 1%):** No

**Wildlife Urban Interface** No

SHEET INDEX

- Architectural:**
- A0.0 Scope Of Work, Vicinity Map, Parcel Map, Project Data Sheet Index, Abbreviations, Applicable Codes Project Directory, Photos
  - A0.1 Existing Site Plan, Proposed Site Plans
  - A0.2 Site Survey
  - A1.1 Existing Floor Plan  
Existing Exterior Elevations
  - A2.1 Proposed Floor Plan
  - A2.2 Proposed Floor Plans
  - A3.1 Front Elevation Comparison, Exterior Renderings
  - A3.2 Proposed Exterior Elevations
  - A3.3 Building Section, Renderings
  - A4.1 Shadow Study
  - A4.2 Shadow Study
  - A4.3 Shadow Study
  - A5.1 Demolition Diagram

APPLICABLE CODES

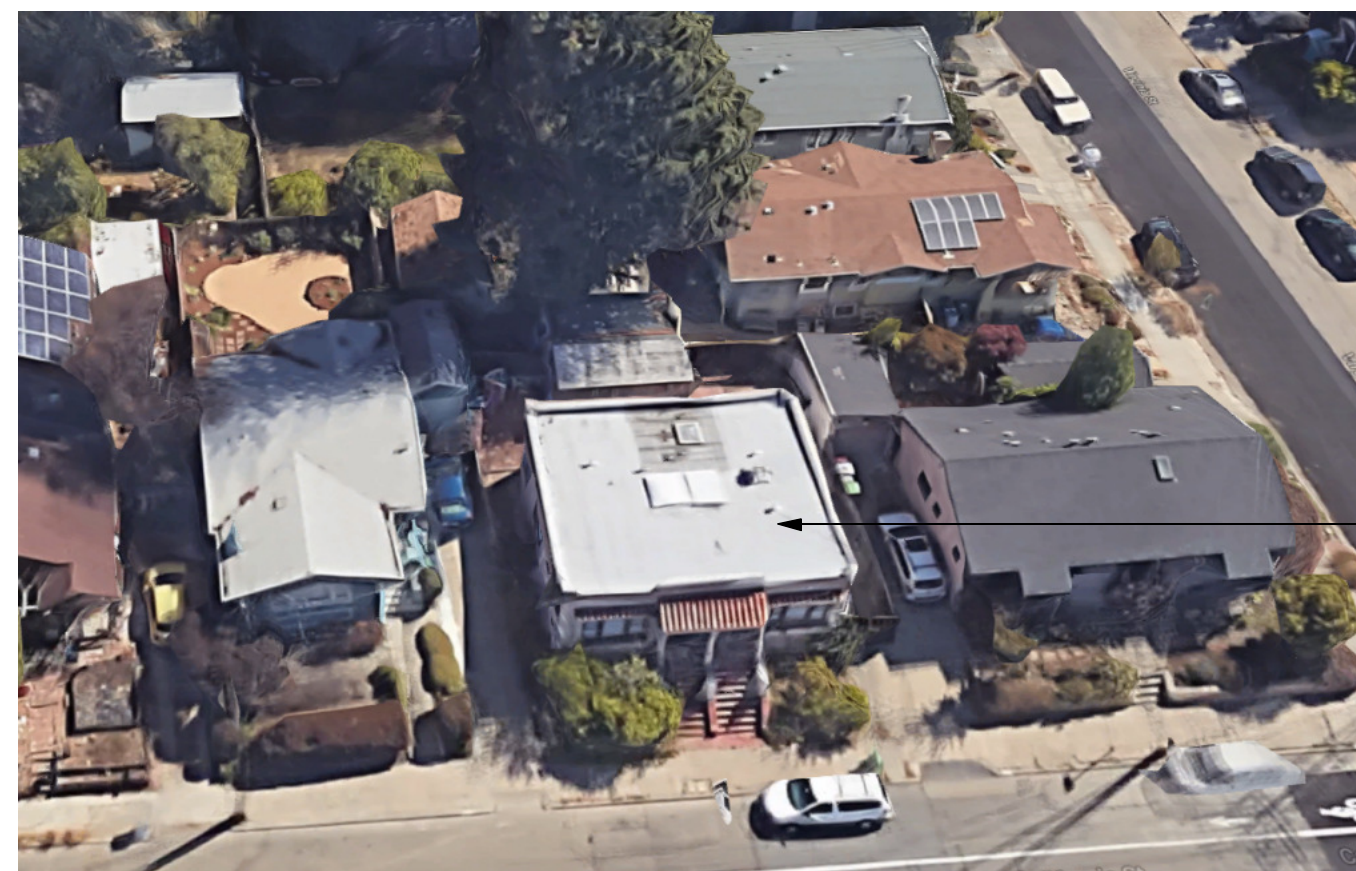
- 2019 California Building Code (CBC) Volume 1
- 2019 California Building Code (CBC) Volume 2
- 2019 California Residential Code (CRC)
- 2019 California Energy Code (CBEES)
- 2019 California Green Building Standards Code (CALGreen)
- 2019 California Electrical Code (CEC)
- 2019 California Plumbing Code (CPC)
- 2019 California Mechanical Code (CMC)

This project shall conform to all the above codes and any local and state laws and regulations adopted by the City of Berkeley, CA.

ABBREVIATIONS

|         |                       |          |                         |         |                         |
|---------|-----------------------|----------|-------------------------|---------|-------------------------|
| &       | and                   | fdn.     | foundation              | pr.     | pair                    |
| @       | at                    | fin.     | finish                  | p.s.    | plumbing stack          |
| perpen. | perpendicular         | fl.      | floor                   | pt.     | point                   |
| #       | pound or number       | flsh.    | flashing                | p.t.    | pressure treated        |
| (e)     | existing              | flur.    | fluorescent             | ptd.    | painted                 |
| (n)     | new                   | f.o.c.   | face of concrete        | r.      | riser                   |
| (r)     | renovated             | f.o.f.   | face of finish          | r.a.    | return air              |
| a.f.f.  | above finished floor  | f.o.s.   | face of studs           | ref.    | reference               |
| acous.  | acoustical            | ft.      | foot or feet            | refr.   | refrigerator            |
| adj.    | adjacent/ adjustable  | ftg.     | footing                 | rgtr.   | register                |
| alum.   | aluminum              | furn.    | furnace                 | reinf.  | reinforced              |
| approx. | approximate           | g.a.     | gauge                   | req.    | required                |
| arch.   | architectural         | gal      | gallon                  | rm.     | room                    |
| asph.   | asphalt               | g.s.m.   | galvanized sheet metal  | r.o.    | rough opening           |
| bd.     | board                 | gl.      | glass                   | rwd.    | redwood                 |
| bdg.    | building              | gnd.     | ground                  | r.w.l.  | rain water leader       |
| blk.    | block                 | gr.      | grade                   | s.      | south                   |
| blkg.   | blocking              | gyp. bd. | gypsum board            | s.c.    | solid core              |
| bm.     | beam                  | h.b.     | hose bibb               | sched.  | schedule                |
| bot.    | bottom                | hdwd.    | hardwood                | sect.   | section                 |
| b.p.    | building paper        | h.f.     | hem fir                 | sh.     | shelf                   |
| b/w     | between               | horiz.   | horizontal              | shr.    | shower                  |
| cab.    | cabinet               | hgt.     | height                  | sim.    | similar                 |
| cem.    | cement                | i.d.     | inside diameter (dia.)  | s.mech. | see mechanical drawings |
| cer.    | ceramic               | insul.   | insulation              | s.o.    | sash opening            |
| cl.     | center line           | int.     | interior                | spec.   | specification           |
| clg.    | ceiling               | jt.      | joint                   | sq.     | square                  |
| clkg.   | caulking              | kit.     | kitchen                 | s.s.d.  | see structural drawings |
| c.o.    | cleanout              | lav.     | lavatory                | sst.    | stainless steel         |
| clo.    | closet                | loc.     | location                | std.    | standard                |
| clr.    | clear                 | lt.      | light                   | sti.    | steel                   |
| col.    | column                | max.     | maximum                 | stor.   | storage                 |
| comp.   | composition           | m.c.     | medicine cabinet        | struct. | structure               |
| conc.   | concrete              | mech.    | mechanical              | sym.    | symmetrical             |
| constr. | construction          | memb.    | membrane                | t.      | tread or tempered       |
| cont.   | continuous            | manuf.   | manufacturer            | t.b.    | towel bar               |
| det.    | detail                | min.     | minimum                 | tel.    | telephone               |
| d.f.    | douglas fir           | mir.     | mirror                  | t. & g. | tongue & groove         |
| dia.    | diameter              | misc.    | miscellaneous           | thk.    | thick                   |
| dim.    | dimension             | mtd.     | mounted                 | t.b.r.  | to be removed           |
| dir.    | direction             | mtl.     | metal                   | t.o.    | top of                  |
| disp.   | disposal              | n.       | north                   | t.p.d.  | toilet paper dispenser  |
| d.w.    | dishwasher            | nat.     | natural                 | t.v.    | television              |
| dr.     | door                  | neo.     | neoprene                | typ.    | typical                 |
| drw.    | drawer                | neoprene | neoprene                | unf.    | unfinished              |
| drg.    | drawing               | n.i.c.   | not in contract         | u.o.n.  | unless otherwise noted  |
| drgs.   | drawings              | no.      | number                  | vert.   | vertical                |
| e.      | east                  | nom.     | nominal                 | v.g.    | vertical grain          |
| ea.     | each                  | n.i.s.   | not to scale            | v.i.f.  | verify in field         |
| el.     | elevation             | o.a.     | overall                 | w.h.    | water heater            |
| elec.   | electrical            | o.c.     | on center               | w.      | west                    |
| encd.   | enclosure             | o.d.     | outside diameter (dim.) | w/      | with                    |
| eq.     | equal                 | opng.    | opening                 | wd.     | wood                    |
| eqpt.   | equipment             | opp.     | opposite                | w/o     | without                 |
| ext.    | exterior              | pl.      | property line           | w.o.    | where occurs            |
| f.      | frosted               | p.lam.   | plastic laminate        | wp.     | waterproof              |
| f.d.c.  | fire dept. connection | plywd.   | plywood                 | wt.     | weight                  |

SITE PHOTOS



PROJECT SITE

Aerial of existing duplex



Front and right Side of existing duplex



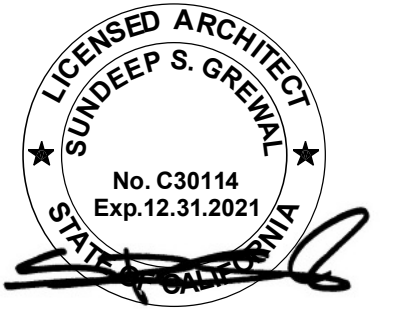
Front and left Side of existing duplex

Tabulations

|                              | Required/Allowed                                | Existing         | Proposed                    |
|------------------------------|-------------------------------------------------|------------------|-----------------------------|
| <b>Set Backs:</b>            |                                                 |                  |                             |
| Front                        | 20'-0"                                          | 10'-10"          | 10'-10" no change           |
| Rear:                        | 20'-0"                                          | 16'-10"          | 16'-10" no change           |
| Left side:                   | 4'-0"                                           | 4'-11"           | 4'-0" no change             |
| Right side:                  | 4'-0"                                           | 5'-6"            | 5'-5" no change             |
| <b>Habitable Floor Area:</b> |                                                 |                  |                             |
| <b>Unit 1:</b>               |                                                 |                  |                             |
| Basement floor:              |                                                 | 0 s.f.           | 1,342 s.f.                  |
| First floor:                 |                                                 | 667 s.f.         | 901 s.f.                    |
| Second floor:                |                                                 | 0 s.f.           | 1,019 s.f.                  |
| Total Area Unit 1:           |                                                 | 667 s.f.         | 3,262 s.f. (2,595 s.f. new) |
| <b>Unit 2:</b>               |                                                 |                  |                             |
| Basement floor:              |                                                 | 0 s.f.           | 0 s.f.                      |
| First floor:                 |                                                 | 667 s.f.         | 501 s.f.                    |
| Second floor:                |                                                 | 0 s.f.           | 0 s.f.                      |
| Total Area Unit 2:           |                                                 | 667 s.f.         | 501 s.f.                    |
| Total Area:                  |                                                 | 1,334 s.f.       | 3,763 s.f. (2,229 s.f. new) |
| <b>Bedroom Count:</b>        |                                                 | 3 total          | 5 total                     |
| <b>Non-Habitable Area:</b>   |                                                 |                  |                             |
| Accessory Structure:         |                                                 | 167 s.f.         | 0 s.f.                      |
| <b>Building Height:</b>      |                                                 |                  |                             |
| Main Building:               | 28'-0"<br>35'-0" w/ AUP                         | 13'-6"<br>13'-6" | 23'-10"                     |
| <b>Parking:</b>              | 2                                               | 0                | 0                           |
| <b>Lot Size:</b>             | 4,500 s.f.                                      | 3,142 s.f.       | 3,142 s.f.                  |
| <b>Total Foot Print:</b>     |                                                 |                  |                             |
| House:                       |                                                 | 1,342 s.f.       | 1,342 s.f.                  |
| Covered Porch:               |                                                 | 60 s.f.          | 0 s.f.                      |
| Accessory Structure:         |                                                 | 167 s.f.         | 0 s.f.                      |
| Total:                       | 1,085 for 3 stories                             | 1,569 s.f.       | 1,382 s.f.                  |
| <b>Lot Coverage:</b>         | 45% (1 story)<br>40% (2 story)<br>35% (3 story) | 49.94%           | 43.98% (5.96% reduction)    |
| <b>Usable Open Space:</b>    | 400 s.f./unit                                   | 500 s.f.         | 1,029 s.f.                  |



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Sheet Contents:

- Sheet Index
- Applicable Codes
- Abbreviations
- Vicinity Map
- Project Data
- Scope of Work
- Project Directory
- Photos

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Project No:

20-13-420

Drawn By:

SSG

Checked By:

SSG

Scale:

N/A

Revisions:

Use Permit Set: 12-10-2020

Redesign: 5-25-2021

Planning Review: 6-29-2021

Planning Review: 7-15-2021

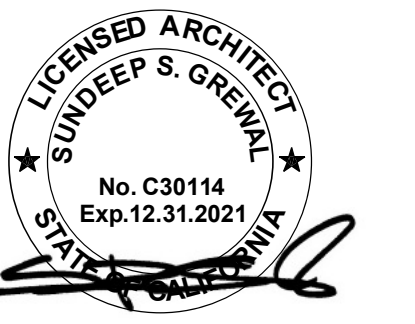
Planning Review: 8-26-2021

Sheet

A0.0



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Sheet Contents:  
Existing Site Plan  
Proposed Site Plan

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20-13-420

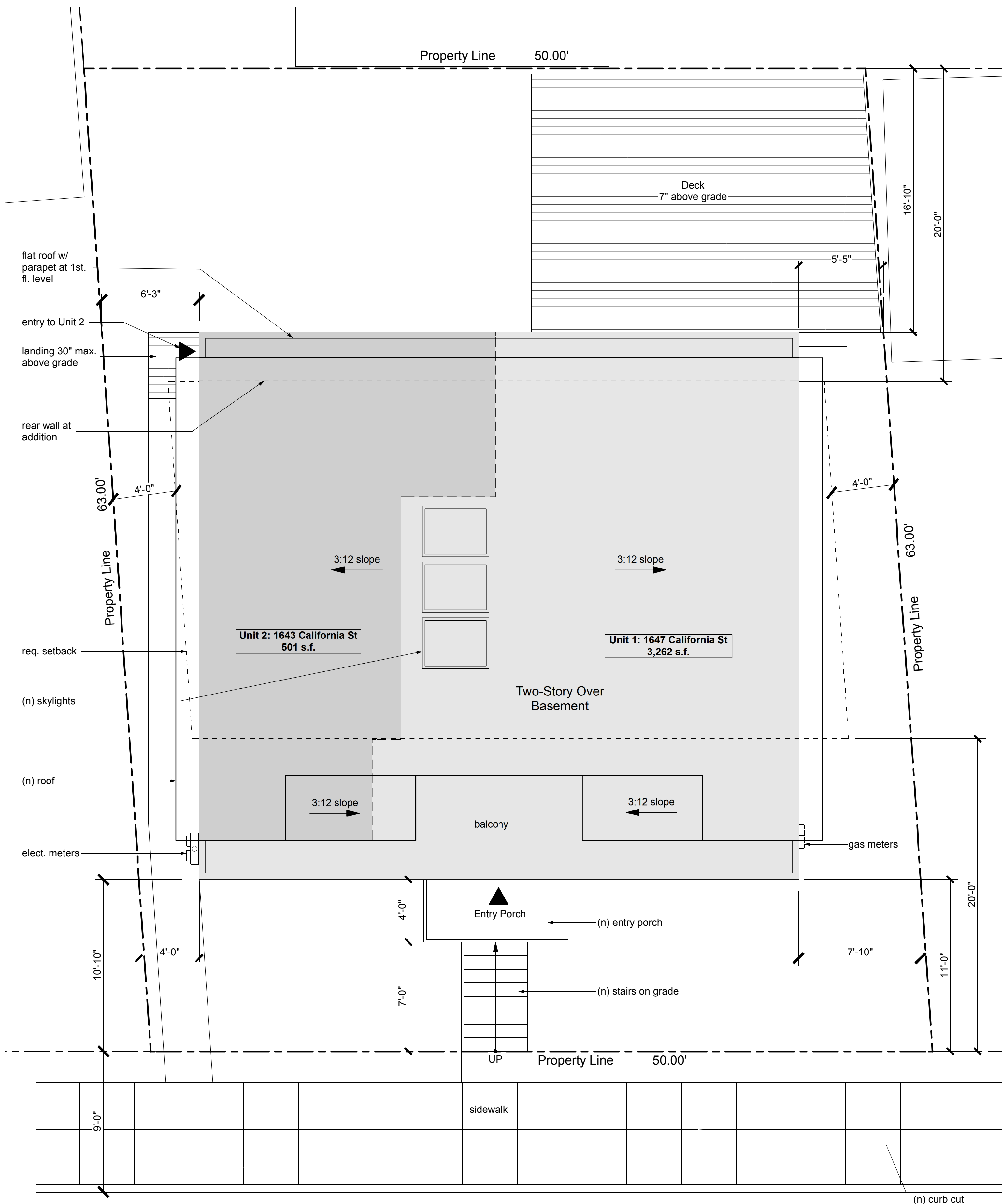
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SSG

Checked By:  
SSG

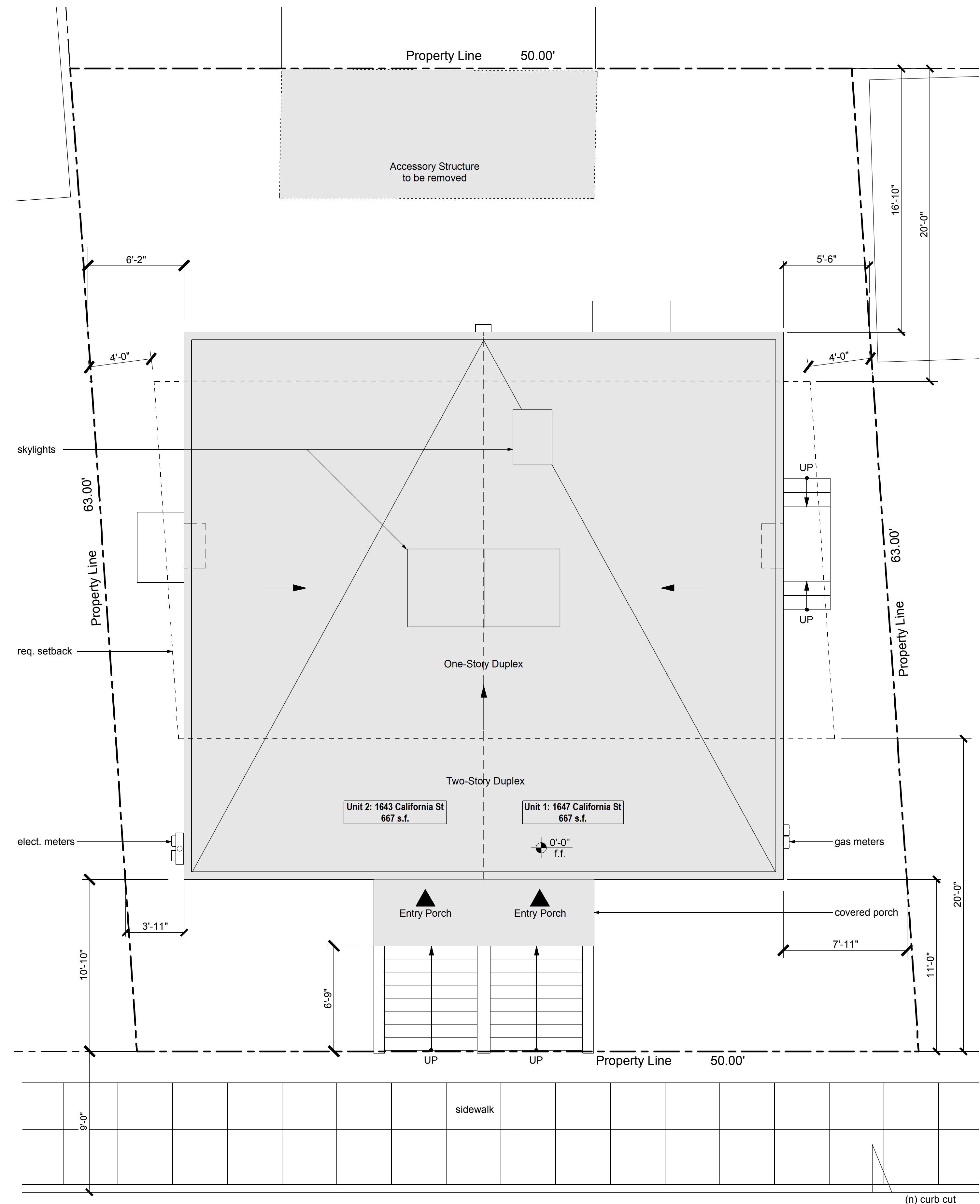
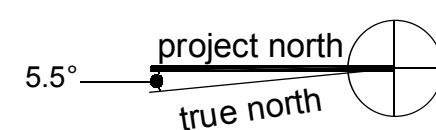
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Redesign: 5-25-2021  
Planning Review: 6-29-2021  
Planning Review: 7-15-2021

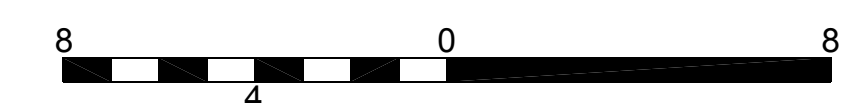
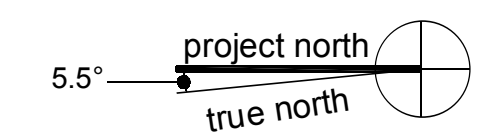
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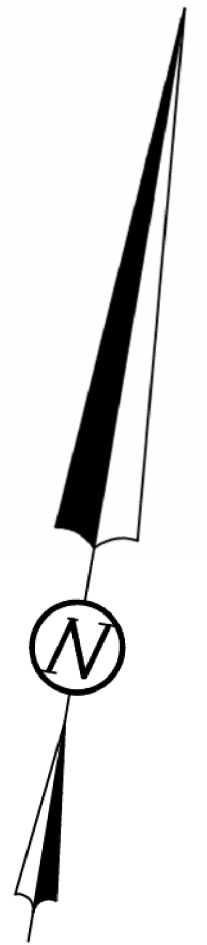


2 Proposed Site Plan

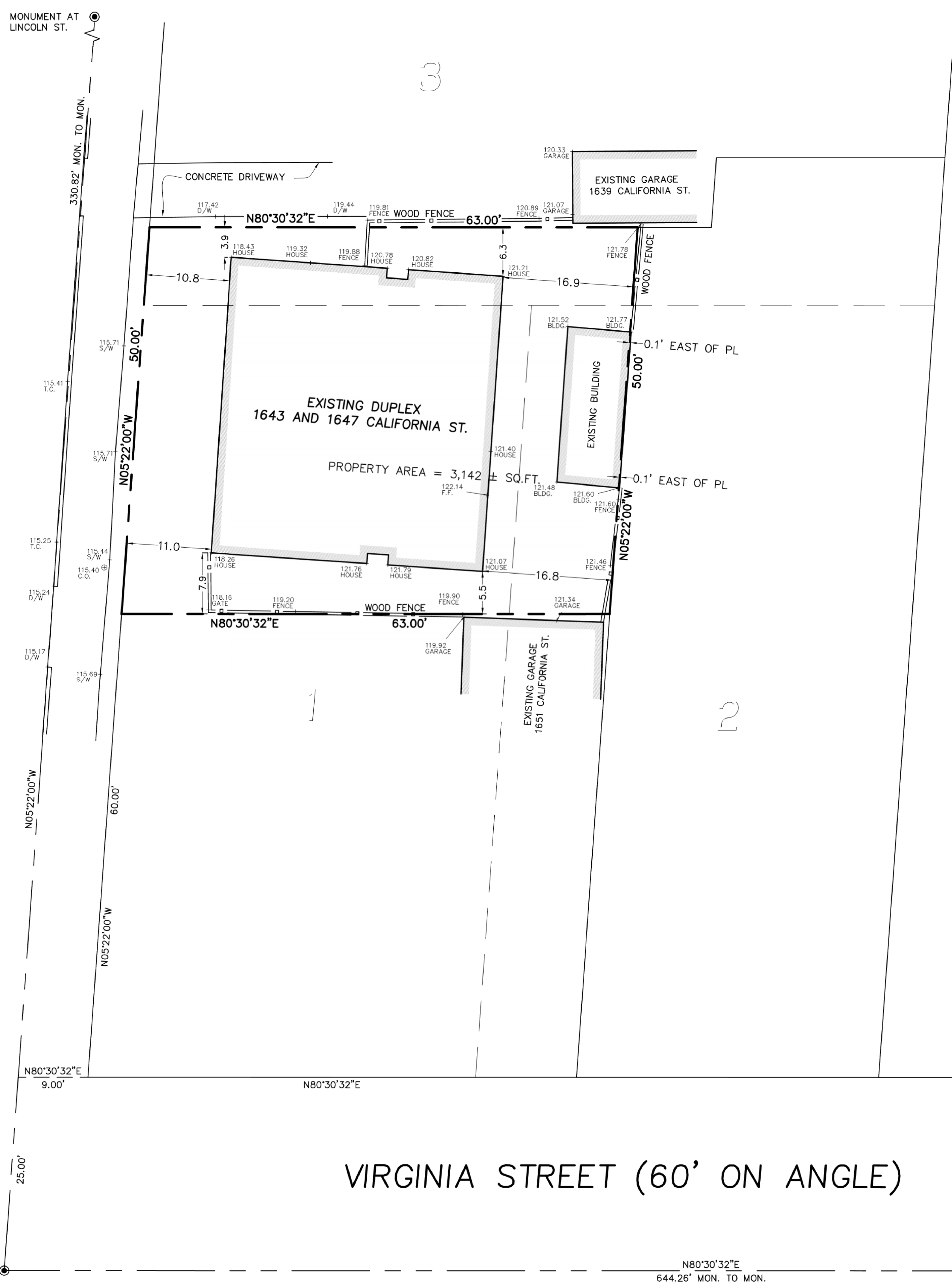


1 Existing Site Plan

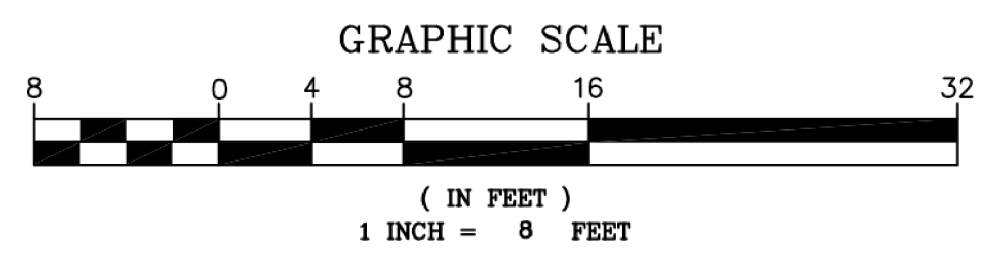




CALIFORNIA STREET (60' ON ANGLE)



VIRGINIA STREET (60' ON ANGLE)



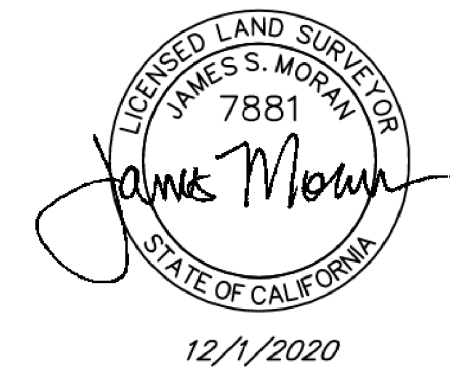
### HOUSE LOCATION SURVEY

PORTION OF LOTS 1, 2 AND 3, MAP OF VIRGINIA TRACT, FILED OCTOBER 4, 1890 (8 M 43)  
LOCATED AT 1643-1647 CALIFORNIA STREET  
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

NOVEMBER 17, 2020 SCALE: 1" = 8'

### MORAN ENGINEERING, INC.

CIVIL ENGINEERS \ LAND SURVEYORS  
1930 SHATTUCK AVENUE, SUITE A  
BERKELEY, CALIFORNIA 94704  
(510) 848-1930



- LEGEND**
- FOUND MONUMENT PER PM 6679 (213 M 50)
  - BLDG. BUILDING
  - C.O. CLEAN-OUT
  - D/W DRIVEWAY
  - F.H. FIRE HYDRANT
  - J.P. JOINT POLE
  - M.H. MAN HOLE
  - S/W SIDEWALK
  - T.C. TOP OF CURB

#### GENERAL NOTES

BENCHMARK: MONUMENT PIN ON THE WEST SIDE OF SACRAMENTO STREET AT VIRGINIA STREET. ELEVATION = 108.683 PER CITY OF BERKELEY ENGINEERING DIVISION RECORDS. ELEVATIONS ARE BASED UPON THE CITY OF BERKELEY DATUM.  
THIS SURVEY IS BASED UPON THE GRANT DEED TO LAWYERS ASSET MANAGEMENT INC. RECORDED DECEMBER 1, 1989 SERIES 89-324628, ALAMEDA COUNTY RECORDS.  
THE BEARINGS ON THIS MAP ARE BASED UPON THE MONUMENT LINE IN CALIFORNIA STREET WITH A BEARING OF N05°22'00"W AS SHOWN ON PARCEL MAP 6679 FILED MARCH 29, 1994 IN BOOK 213 OF MAPS PAGES 49-50.



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Sheet Contents:  
Site Survey

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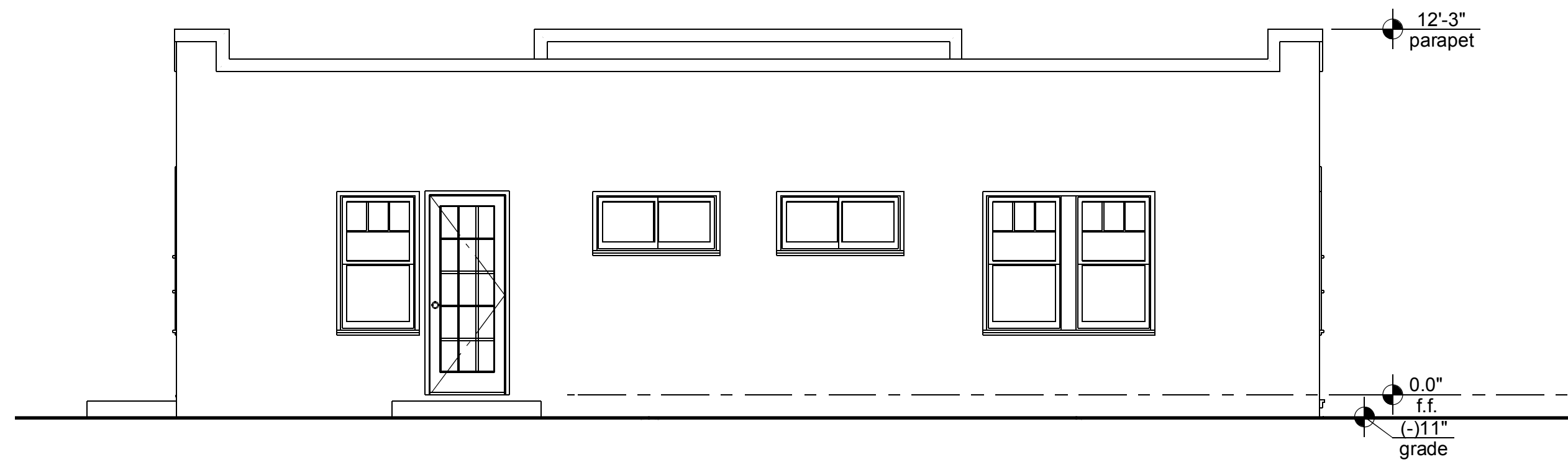
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Checked By: SSG

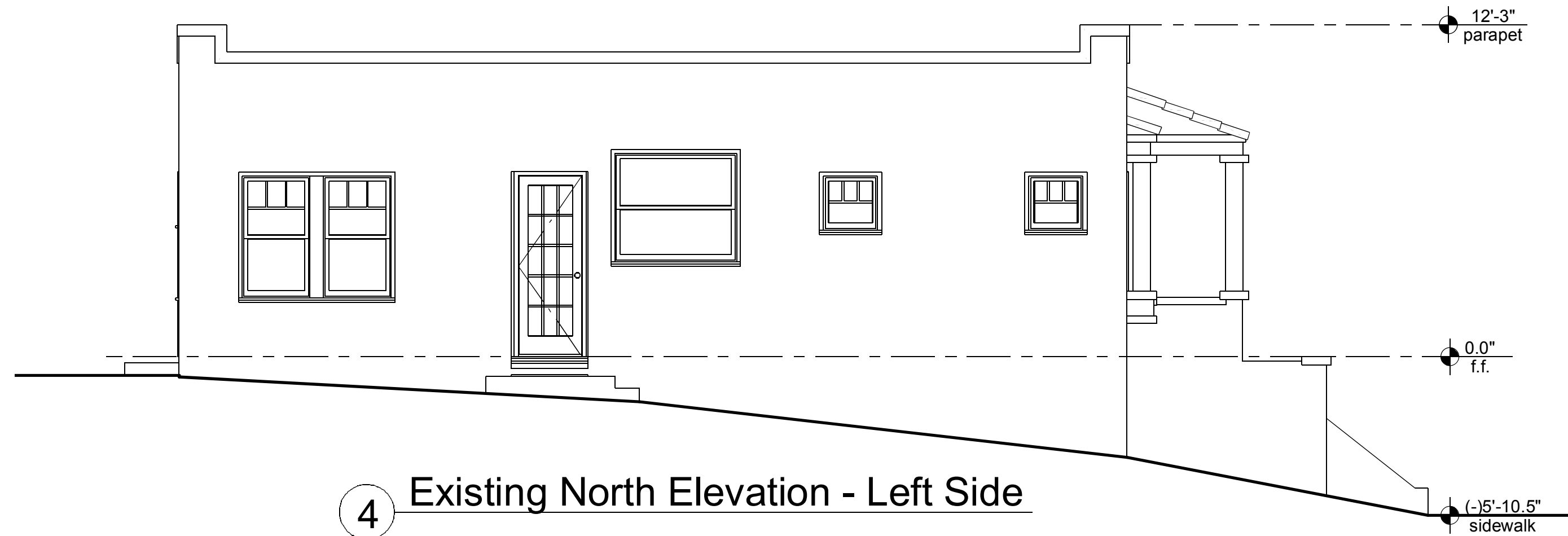
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Revisions:  
Use Permit Set: 12-10-2020  
Redesign: 5-25-2021  
Planning Review: 6-29-2021  
Planning Review: 7-15-2021

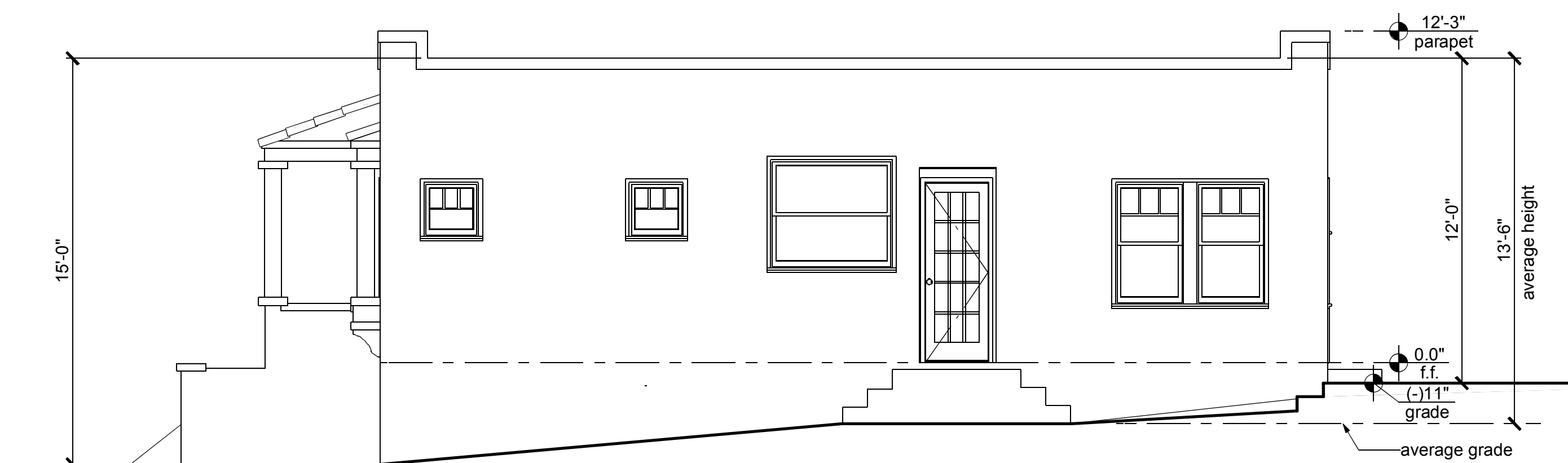
Sheet **A0.2**



5 Existing East Elevation - Rear



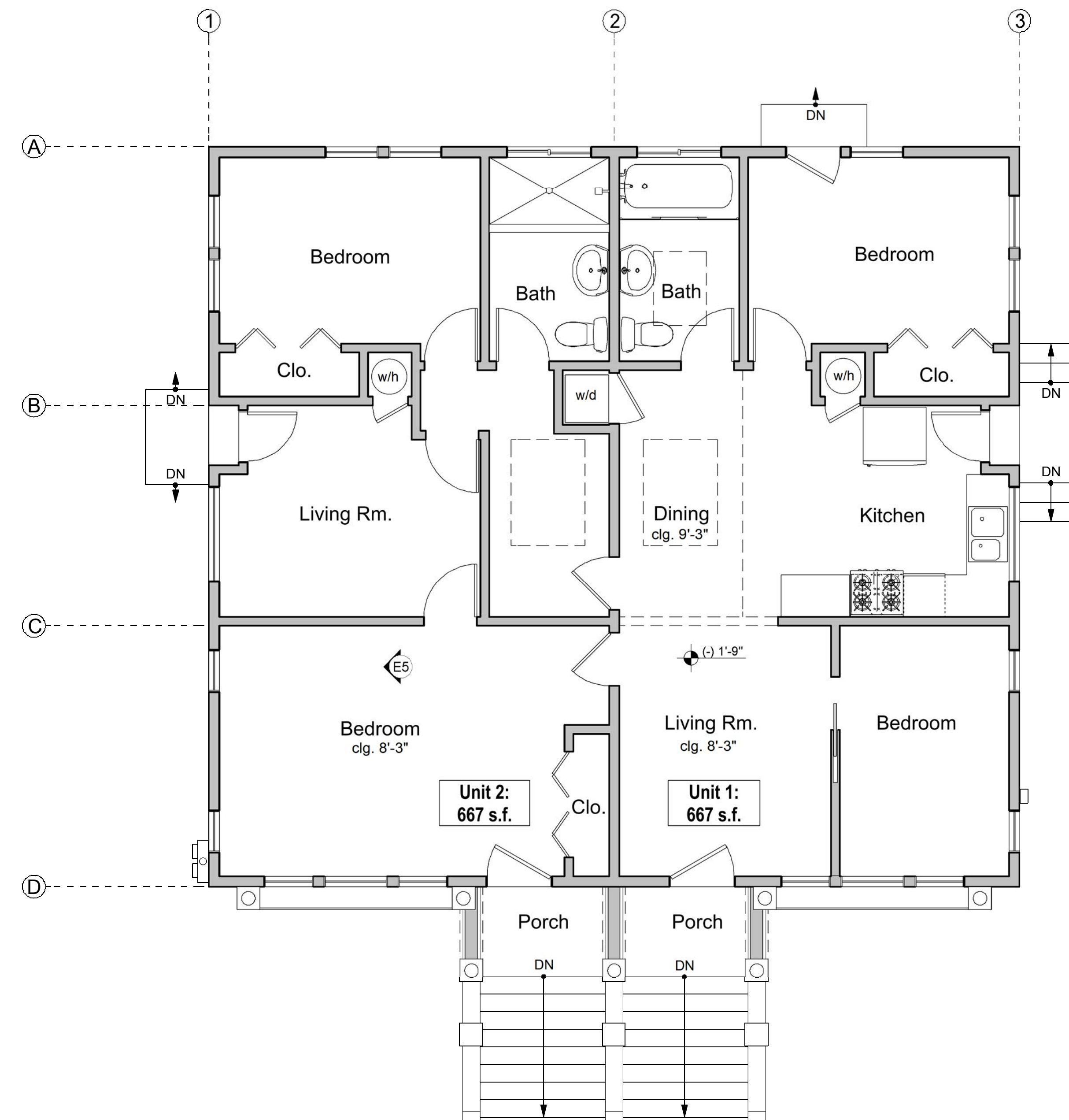
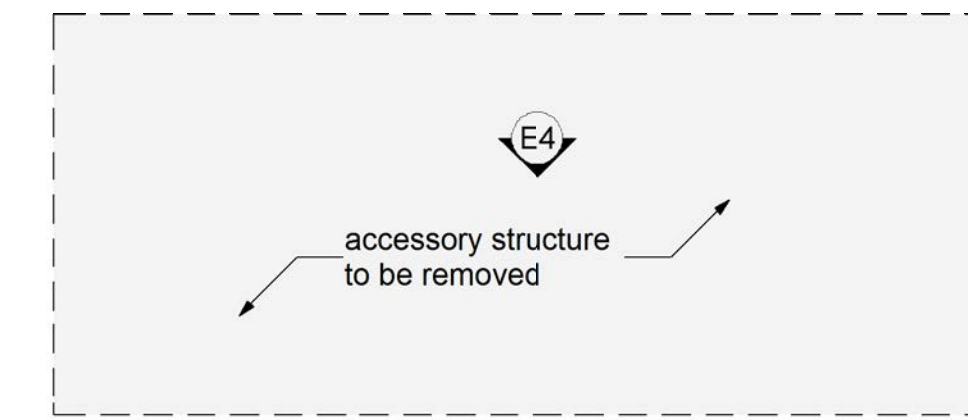
4 Existing North Elevation - Left Side



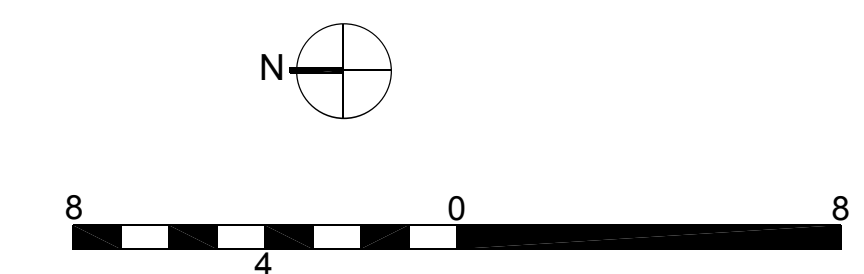
3 Existing South Elevation - Right Side



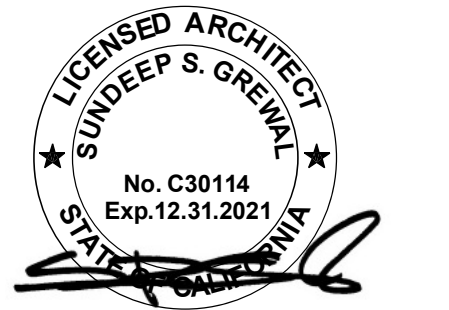
2 Existing West Elevation - Front



1 Existing First Floor Plan



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Sheet Contents:  
Existing Floor Plans  
Existing Exterior Elevations

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Drawn By: SSG

Checked By: SSG

Scale: 1/4" = 1'-0"

Revisions:  
Use Permit Set: 12-10-2020  
Redesign: 5-25-2021  
Planning Review: 6-29-2021  
Planning Review: 7-15-2021

Sheet **A1.1**



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Proposed Floor Plan  
Proposed Site Plan

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Drawn By: SSG

Checked By: SSG

Scale: 1/4" = 1'-0"

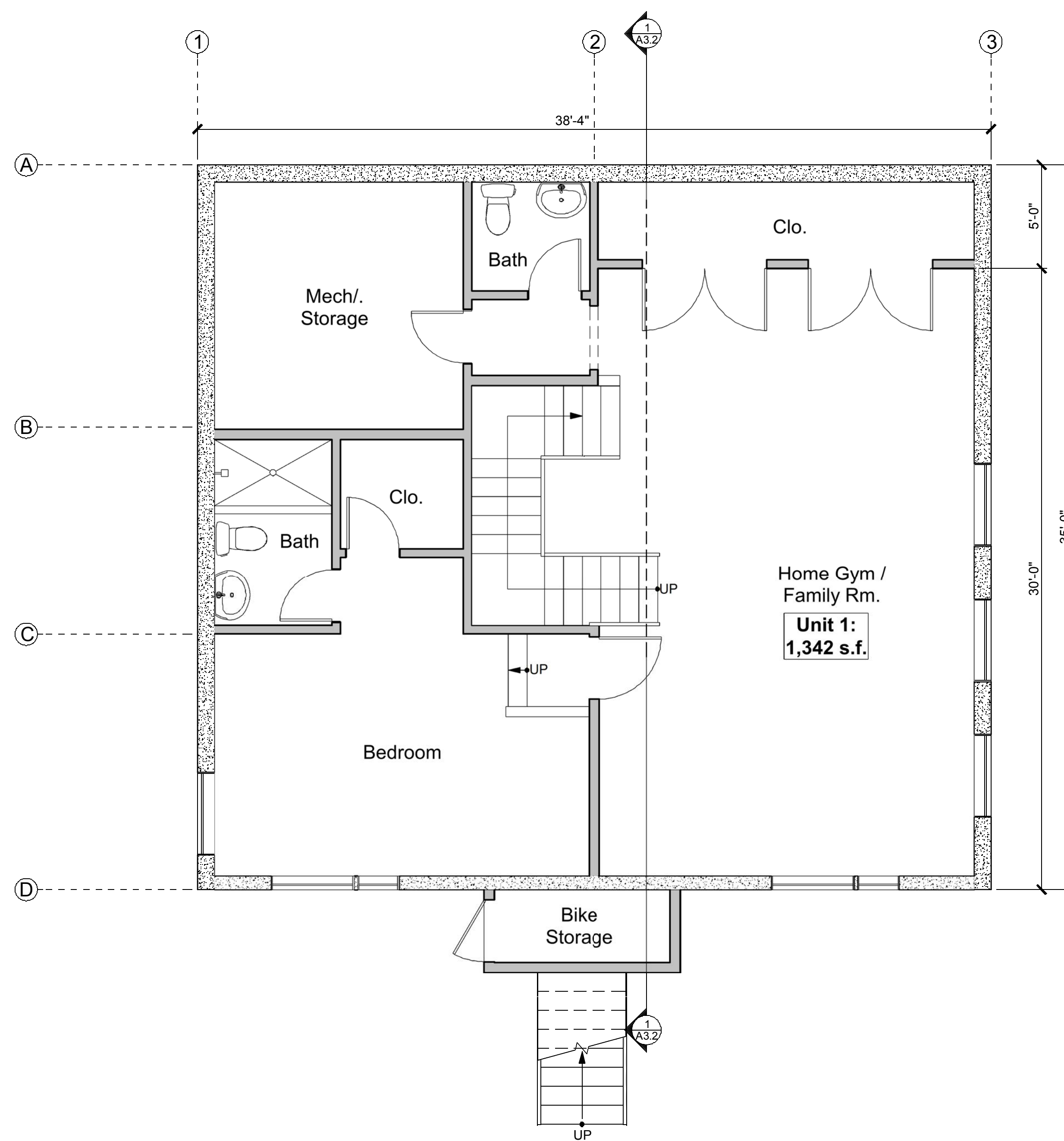
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Redesign: 5-25-2021

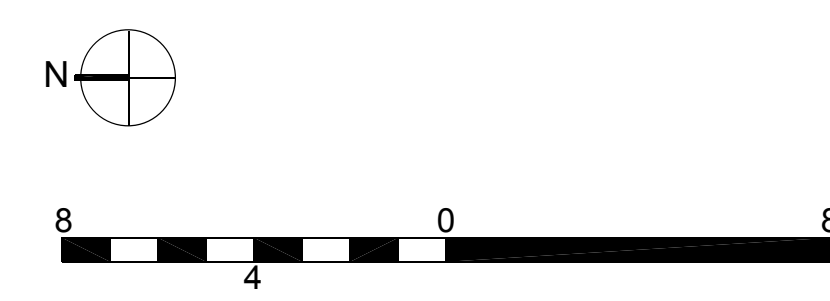
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Planning Review: 7-15-2021

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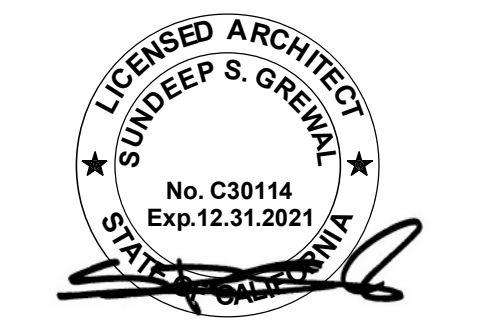


1 Proposed Basement Floor Plan





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Sheet Contents:  
Proposed Floor Plans

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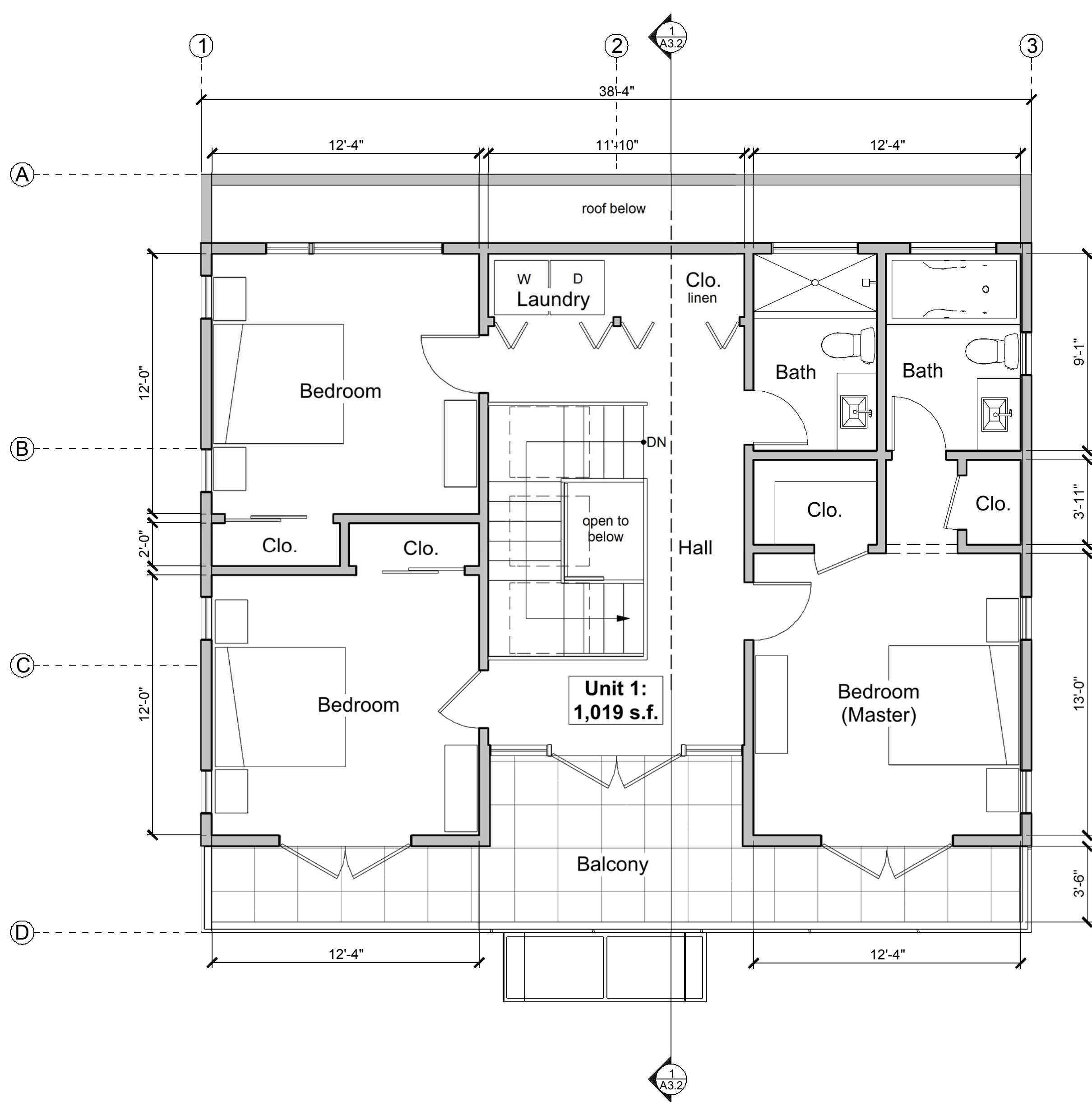
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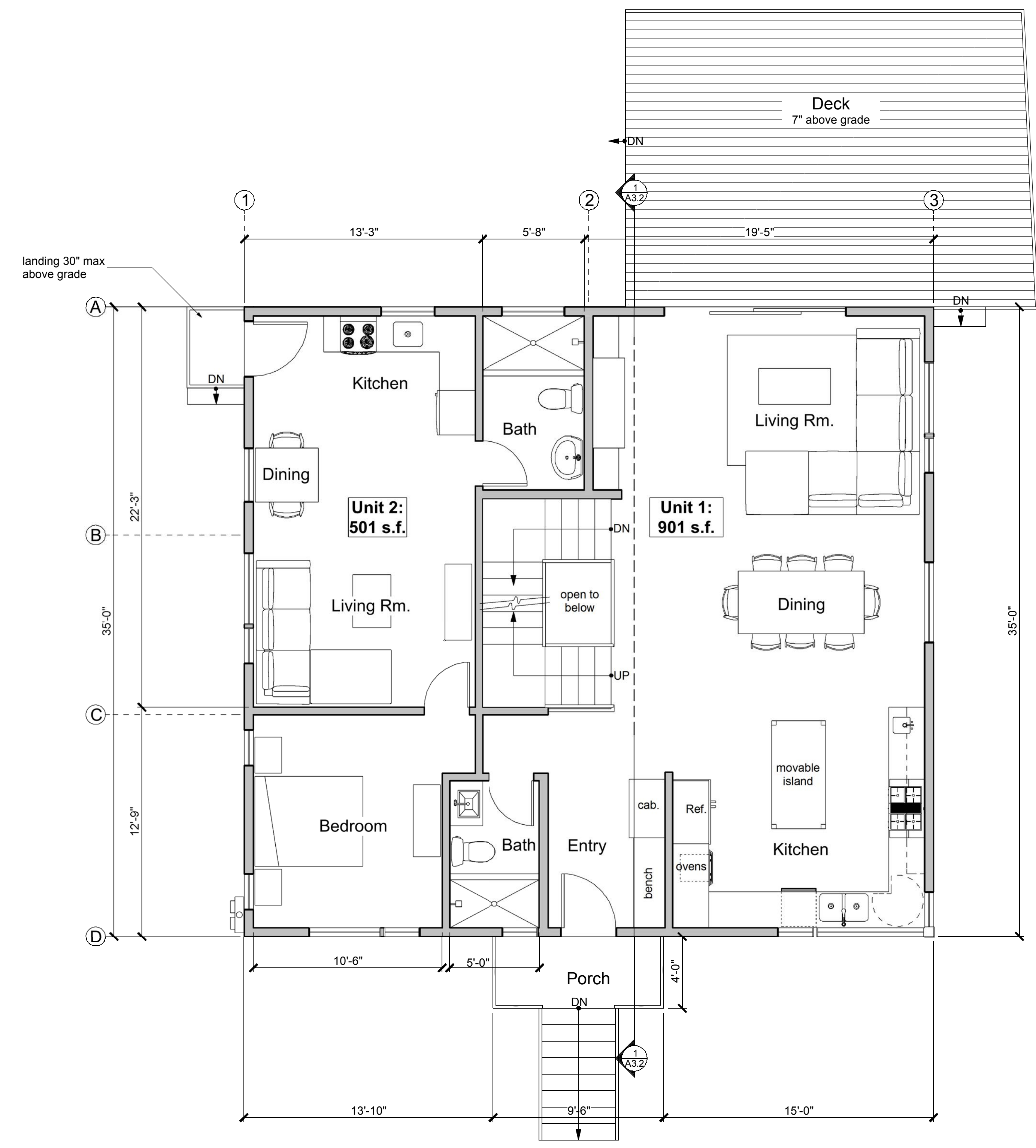
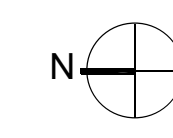
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Redesign: 5-25-2021  
Planning Review: 6-29-2021  
Planning Review: 7-15-2021

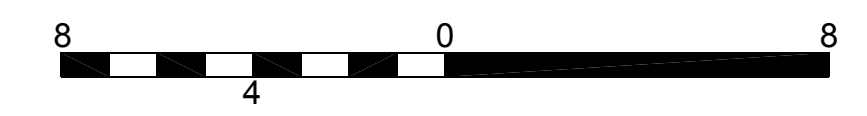
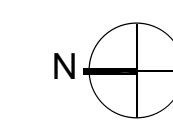
Sheet **A2.2**



2 Proposed Second Floor Plan



1 Proposed First Floor Plan







Previous Proposal



Previous Proposal



Previous Proposal



Current Proposal



Current Proposal



Current Proposal



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Sheet Contents:  
Front Elevation Comparison

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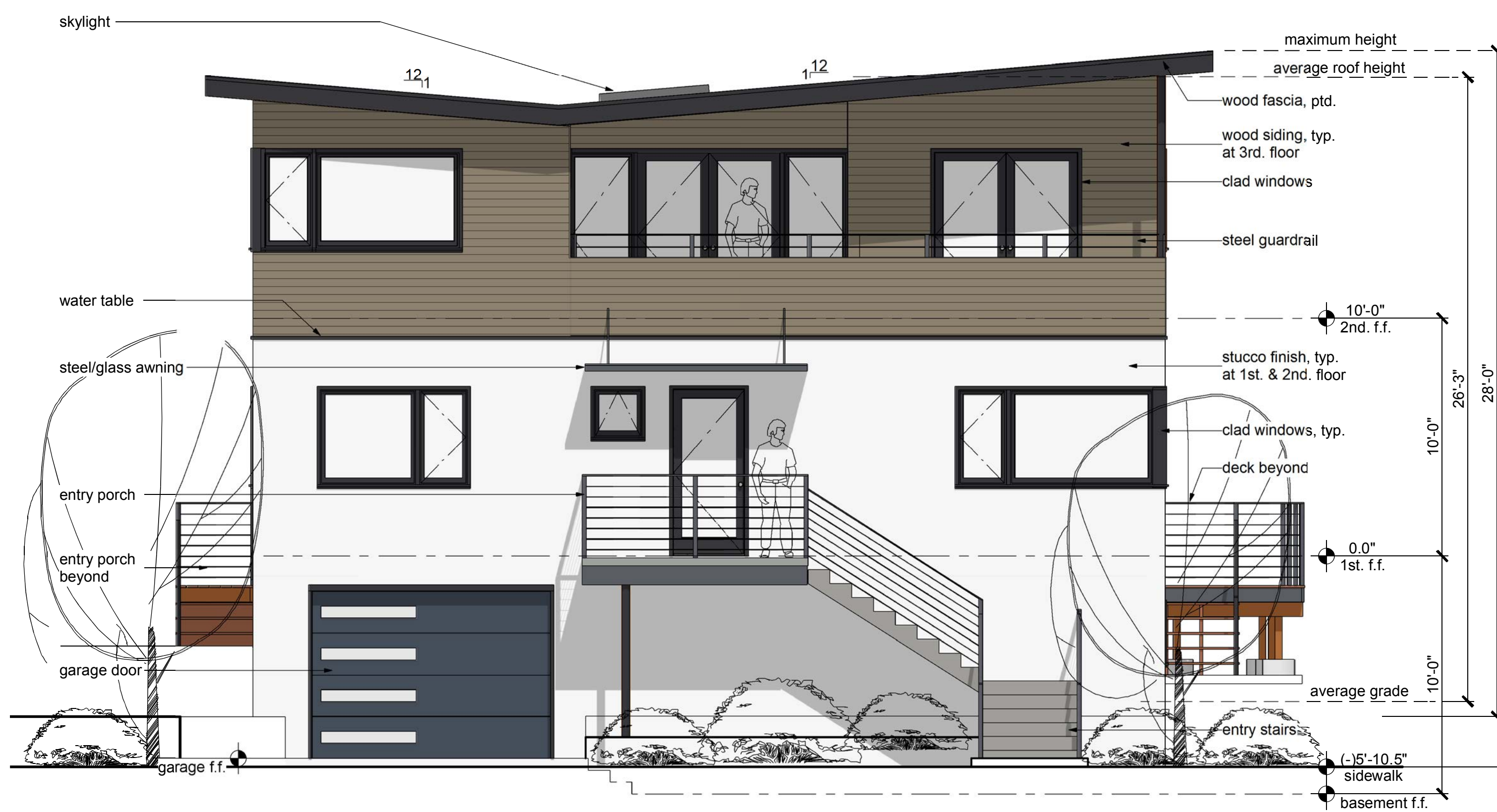
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Checked By: SSG

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Revisions:  
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Redesign: 5-25-2021  
Planning Review: 6-29-2021  
Planning Review: 7-15-2021

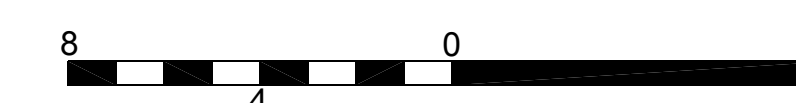
Sheet **A3.1**



② Proposed West Elevation - Front  
Original Proposal

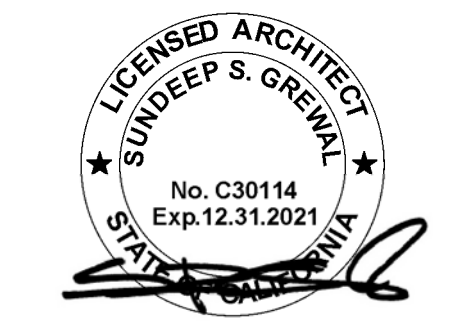


① Proposed West Elevation - Front  
Current Proposal





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Sheet Contents:  
Proposed Exterior Elevations

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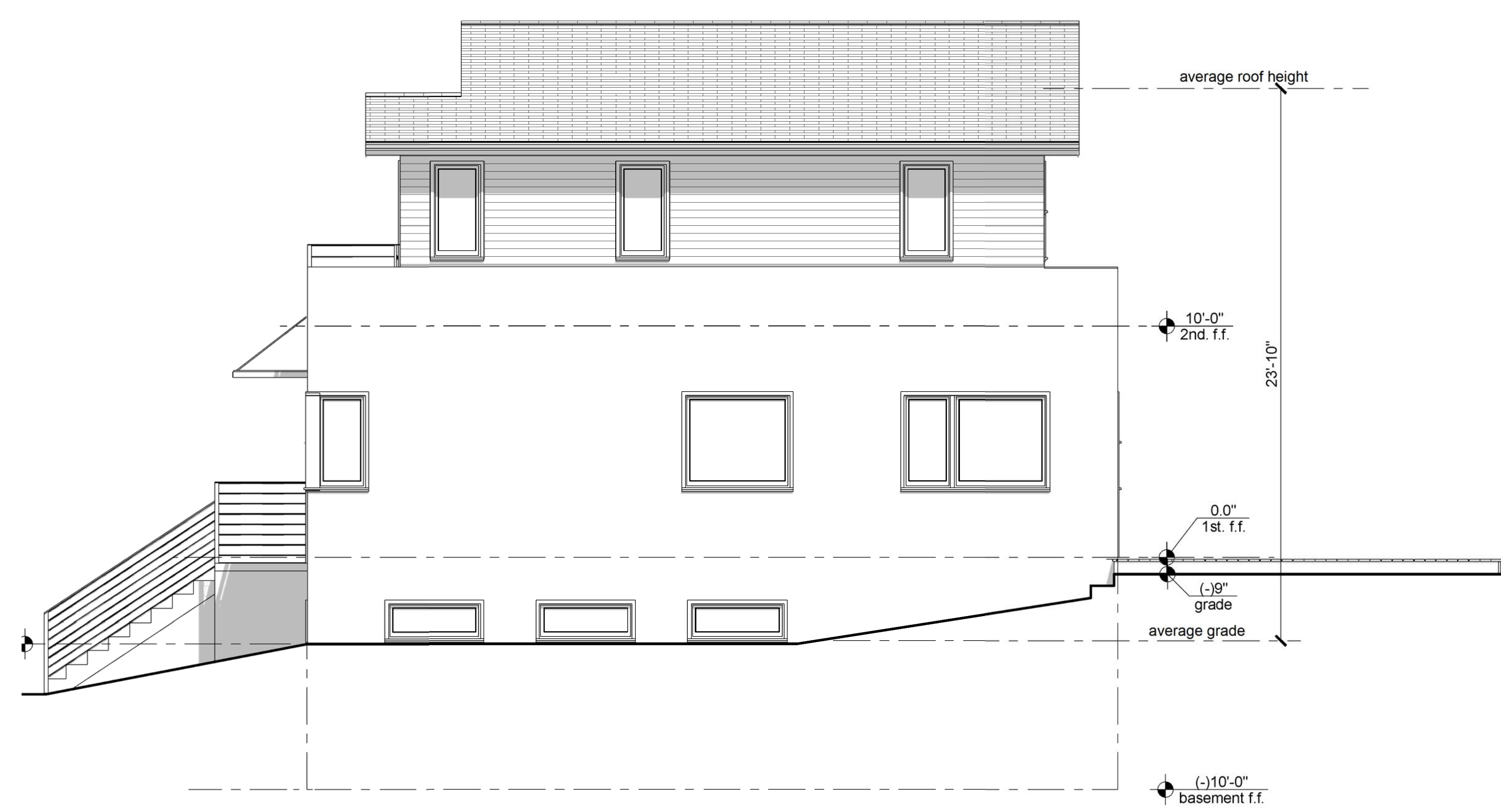
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Checked By: SSG

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Redesign: 5-25-2021  
Planning Review: 6-29-2021  
Planning Review: 7-15-2021

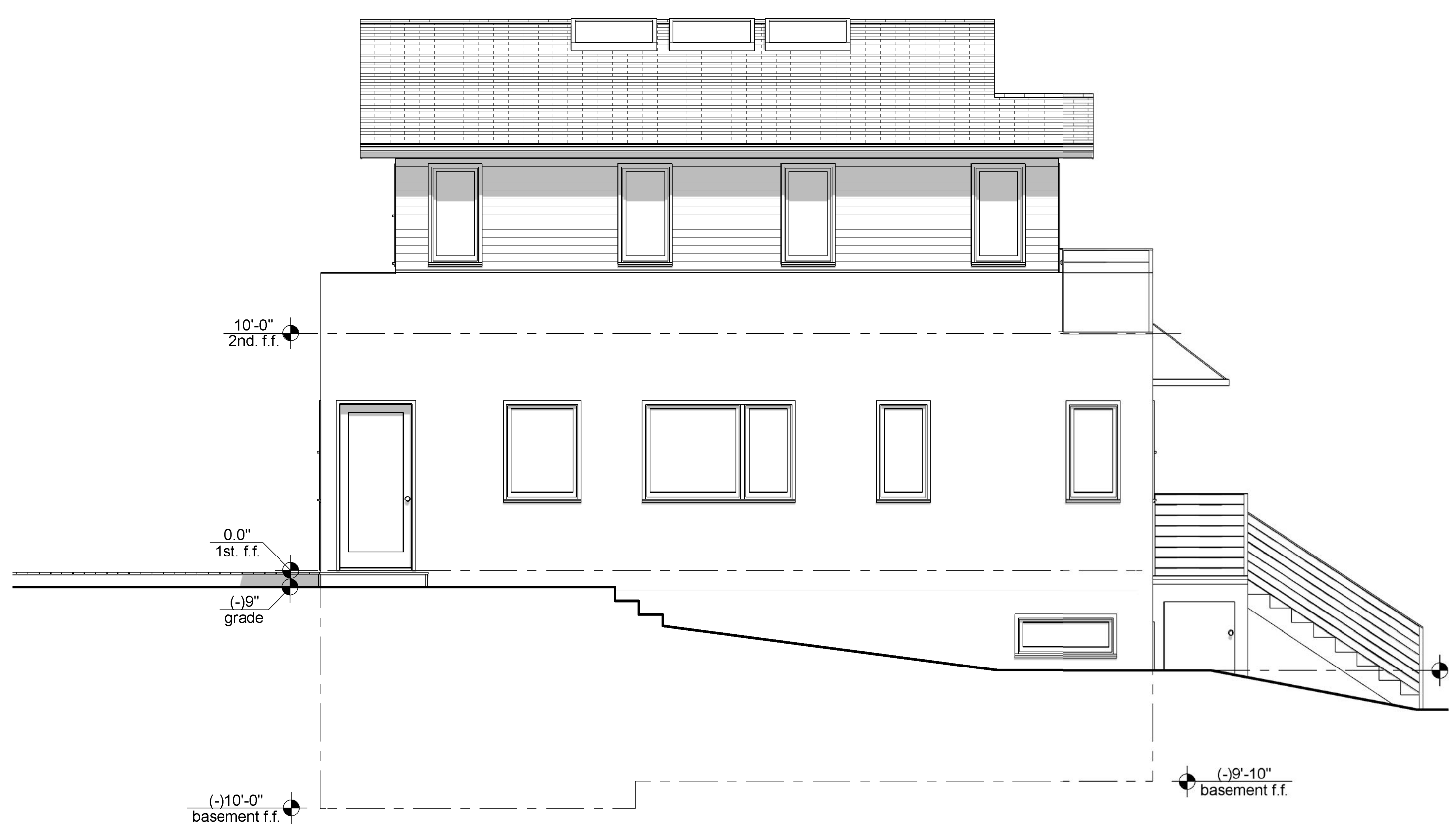
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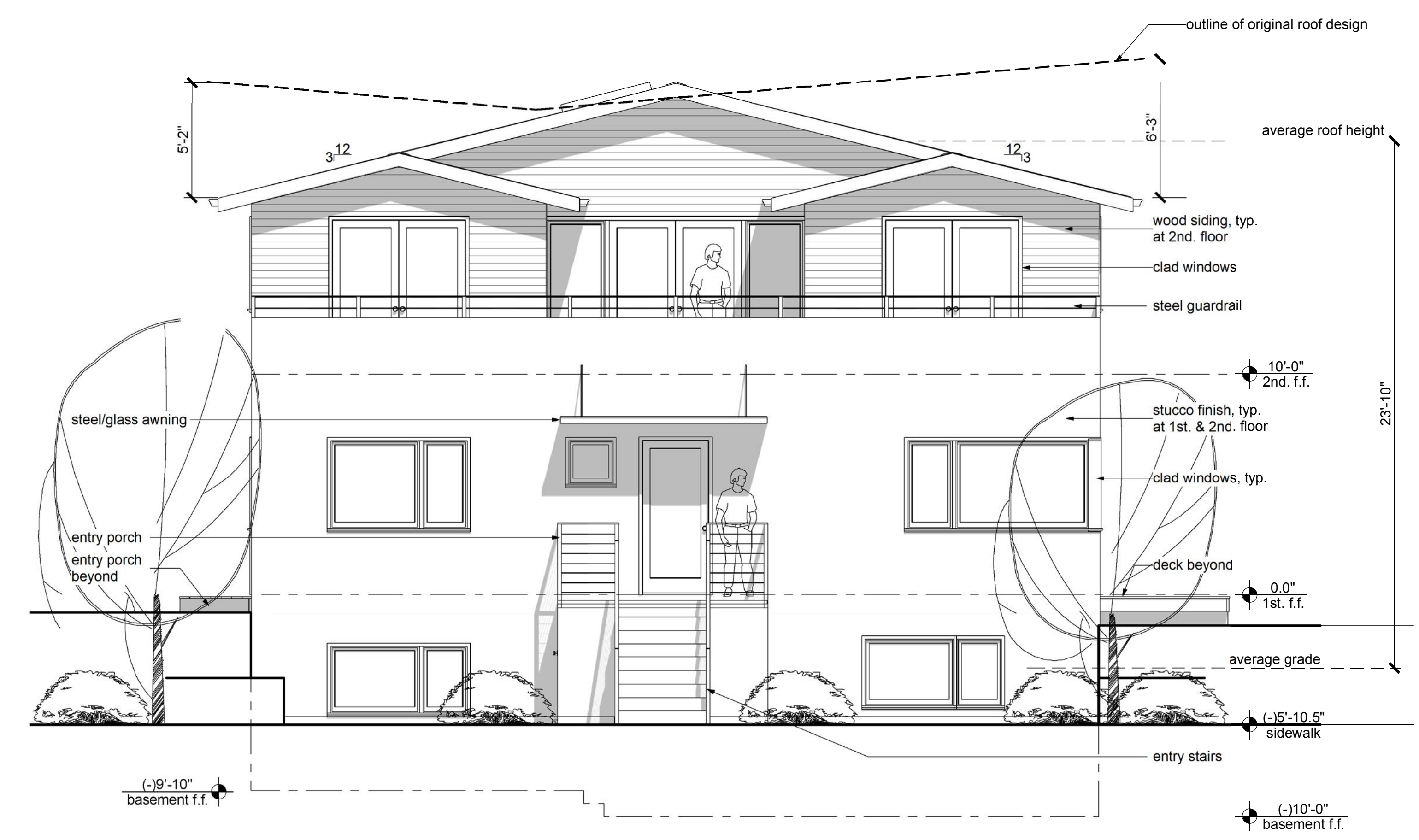
4 Proposed South Elevation - Right Side



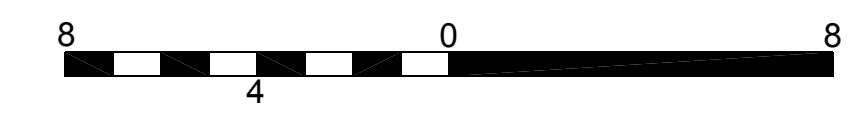
3 Proposed East Elevation - Rear



2 Proposed North Elevation - Left Side



1 Proposed West Elevation - Front

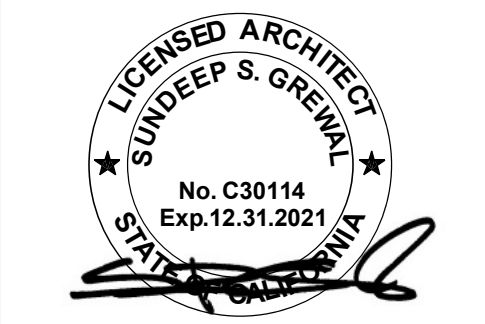




2 Renderings

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**gs+**  
**ARCHITECTS**

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Sheet Contents:  
Building Section  
Renderings

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Project No: 20-13-420

Drawn By: SSG

Checked By: SSG

Scale: 1/4" = 1'-0"

Revisions:  
Use Permit Set: 12-10-2020  
Redesign: 5-25-2021  
Planning Review: 6-29-2021  
Planning Review: 7-15-2021



1 Proposed Building Section

Sheet **A3.3**

Existing Shadow Line  
New Shadow Line



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**OPPENHEIMER RESIDENCE**  
1643 & 1647 California St.  
Berkeley, CA 94703  
APN: 58-2156-18

Sheet Contents:  
Shadows Studies

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Project No:  
20-13-420

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SSG

Checked By:  
SSG

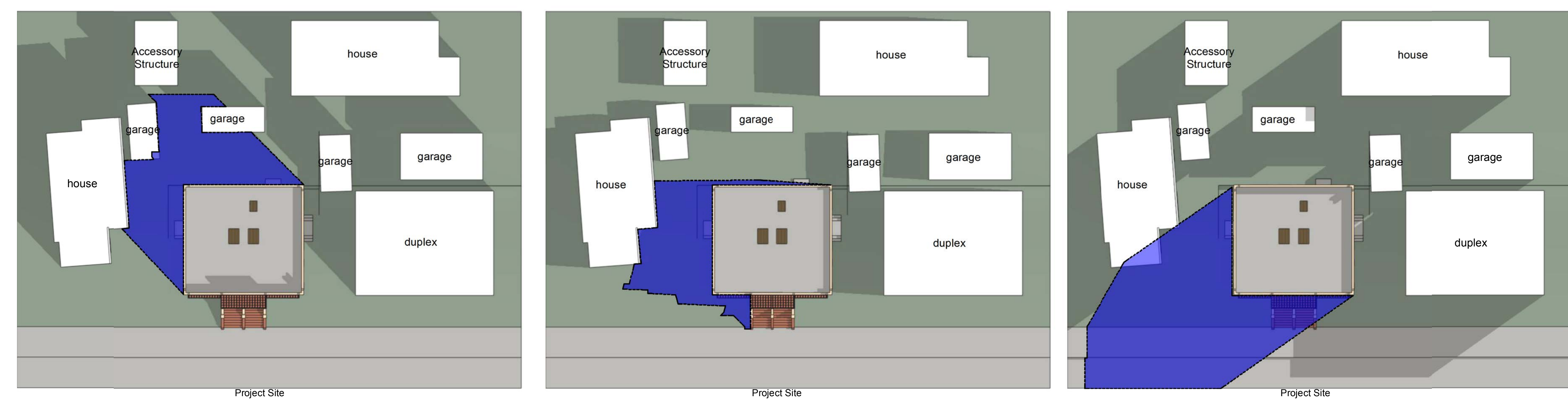
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Planning Review: 6-29-2021  
Planning Review: 7-15-2021

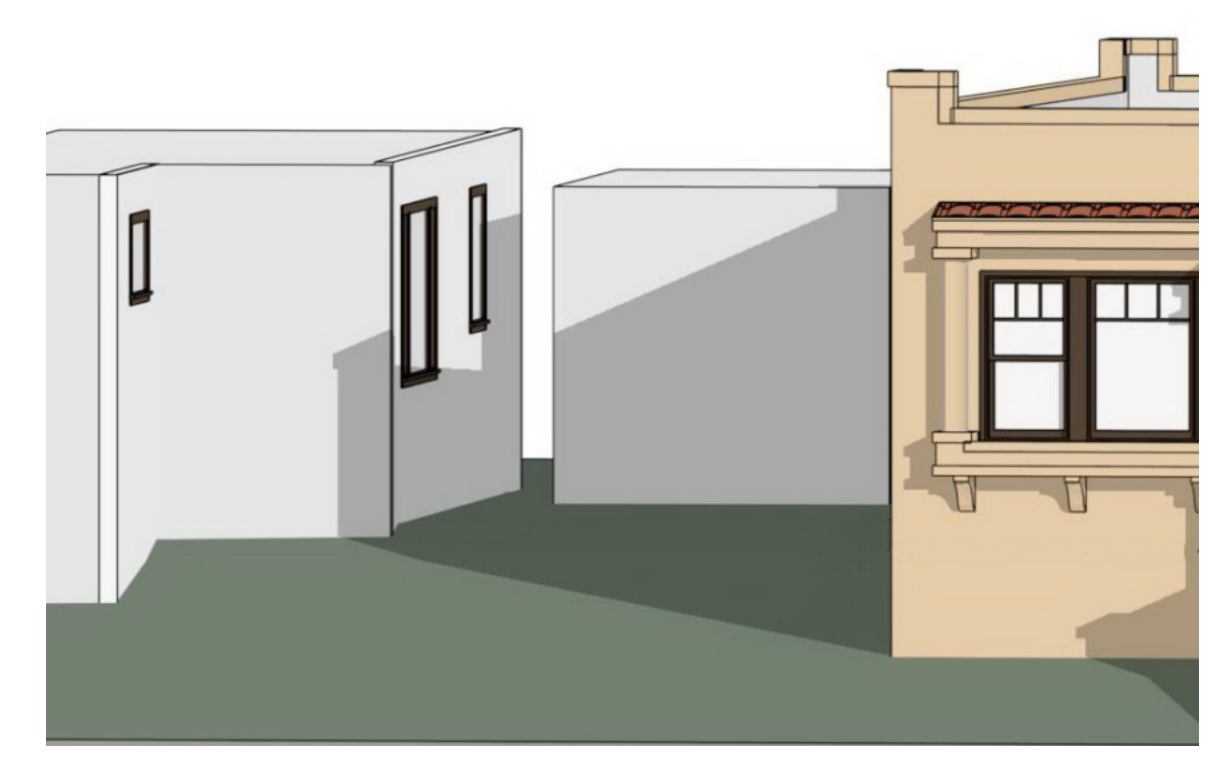
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Proposed  
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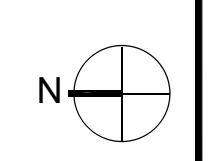
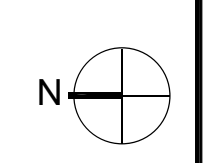


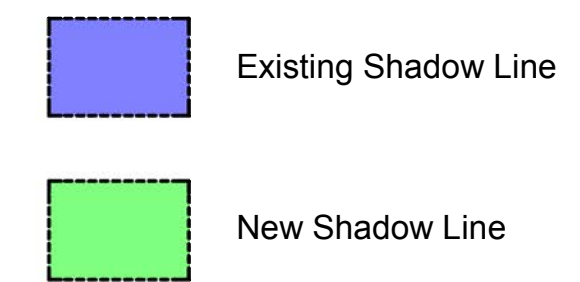
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12-08-2020 / 3:00 pm



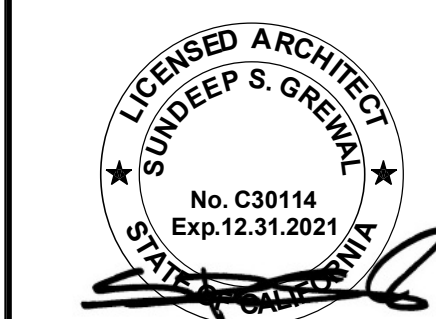
Actual  
12-08-2020 / 3:00 pm

**Shadow Accuracy Simulation**





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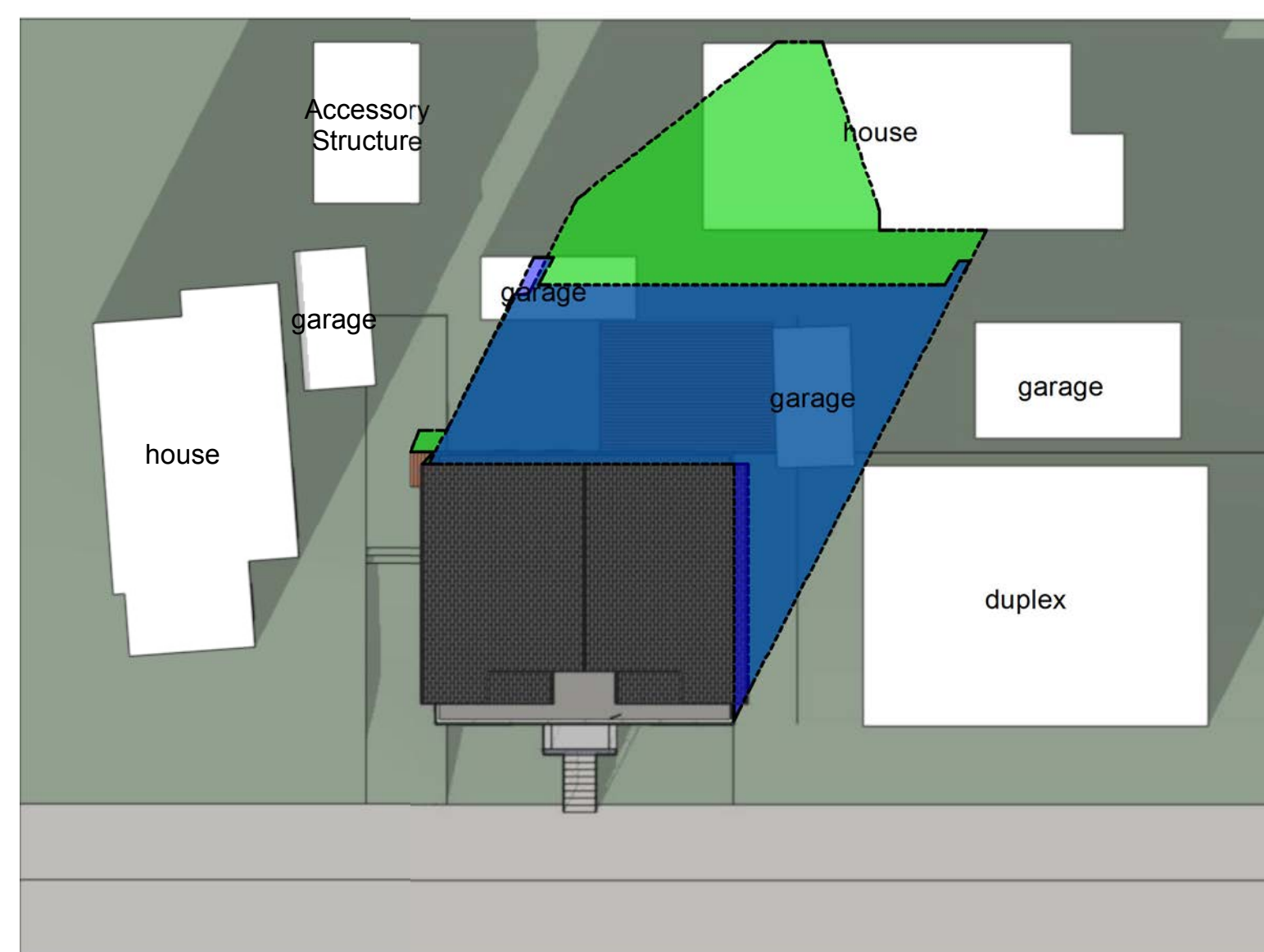
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SSG

Scale:  
NTS

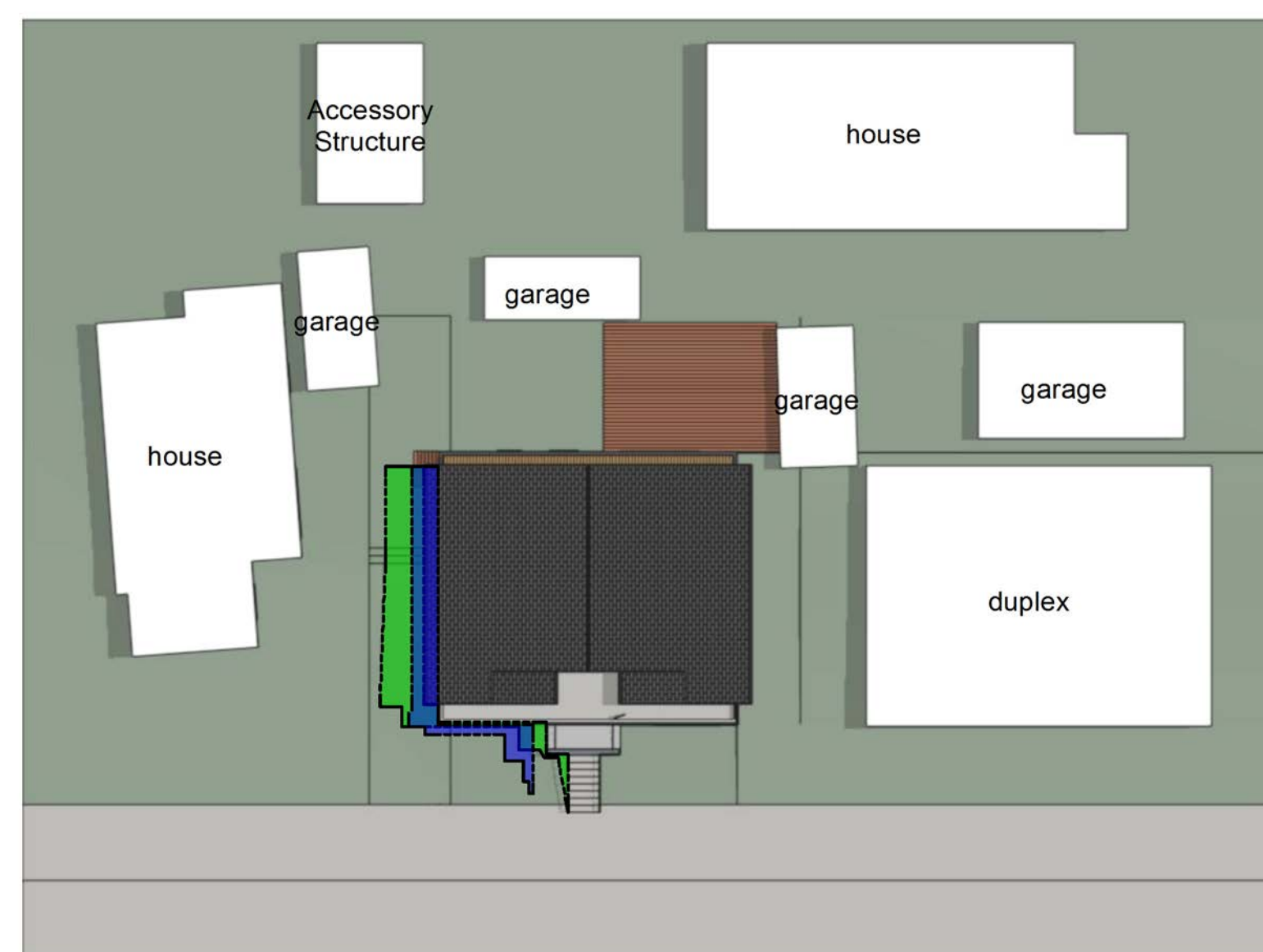
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Planning Review: 7-15-2021

Sheet  
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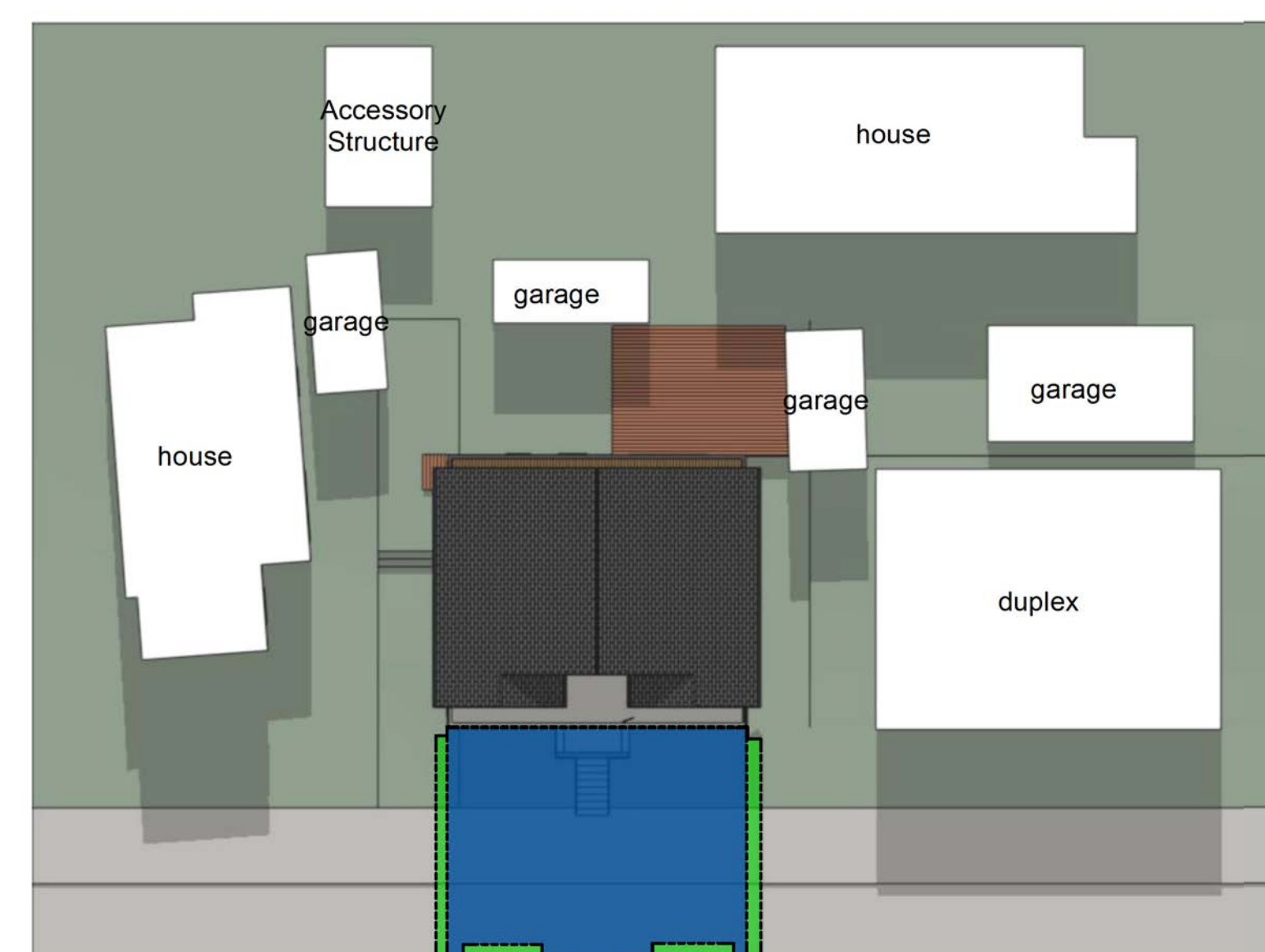
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Proposed  
**6-21-2021 / 6:35 pm**



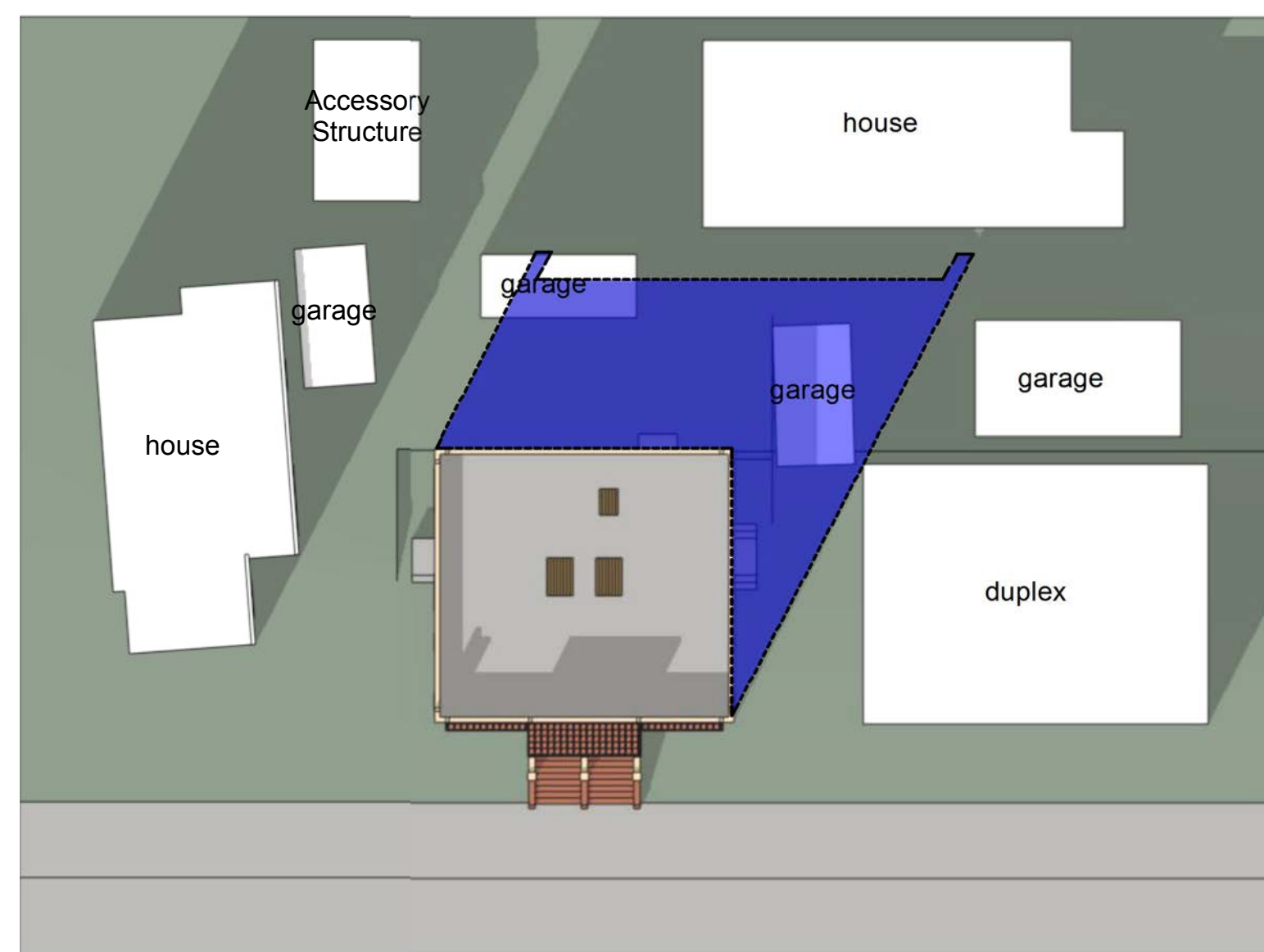
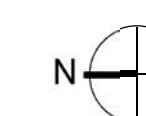
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**6-21-2021 / 12:00 pm**



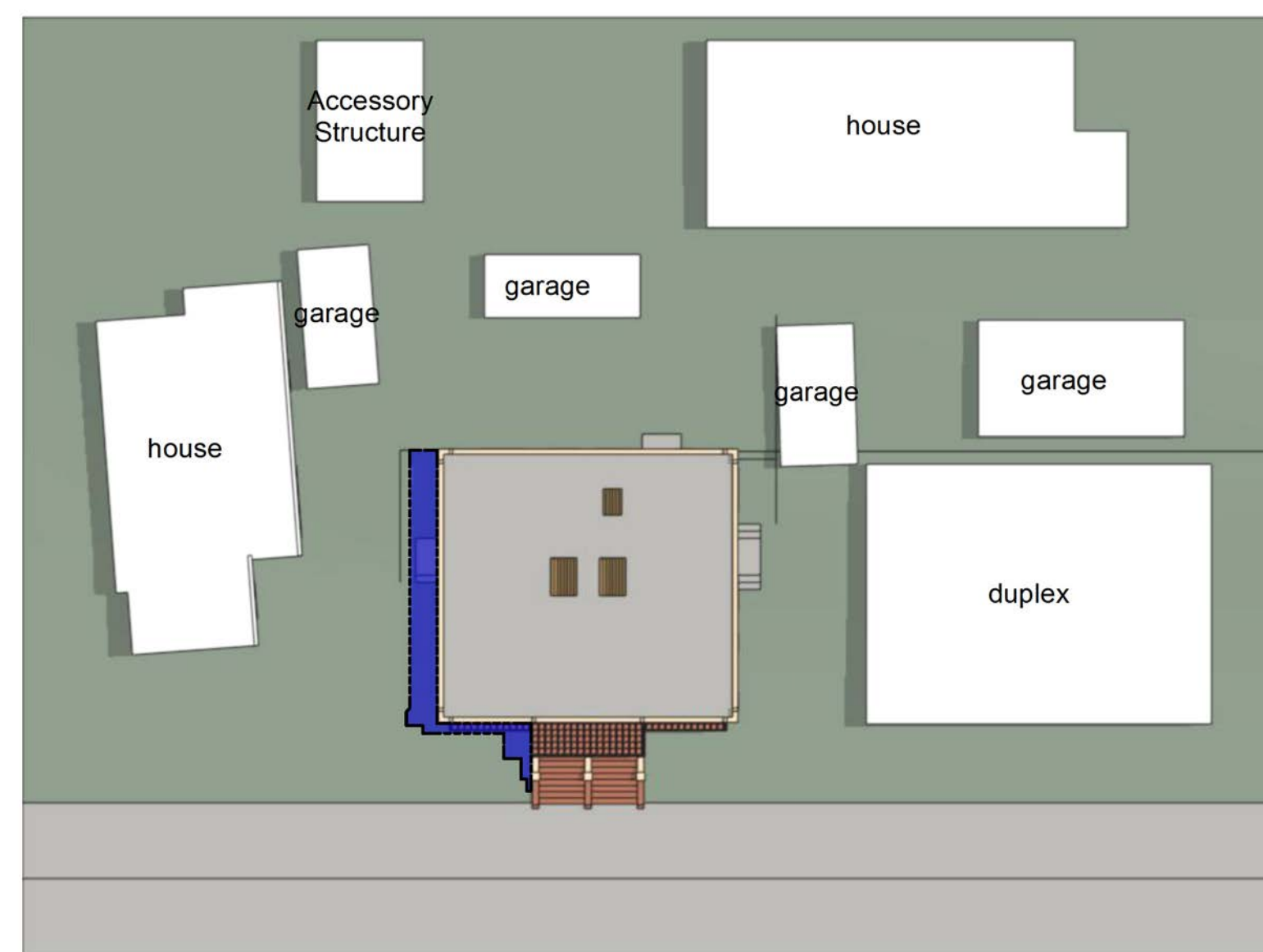
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Proposed  
**6-21-2021 / 7:47 am**



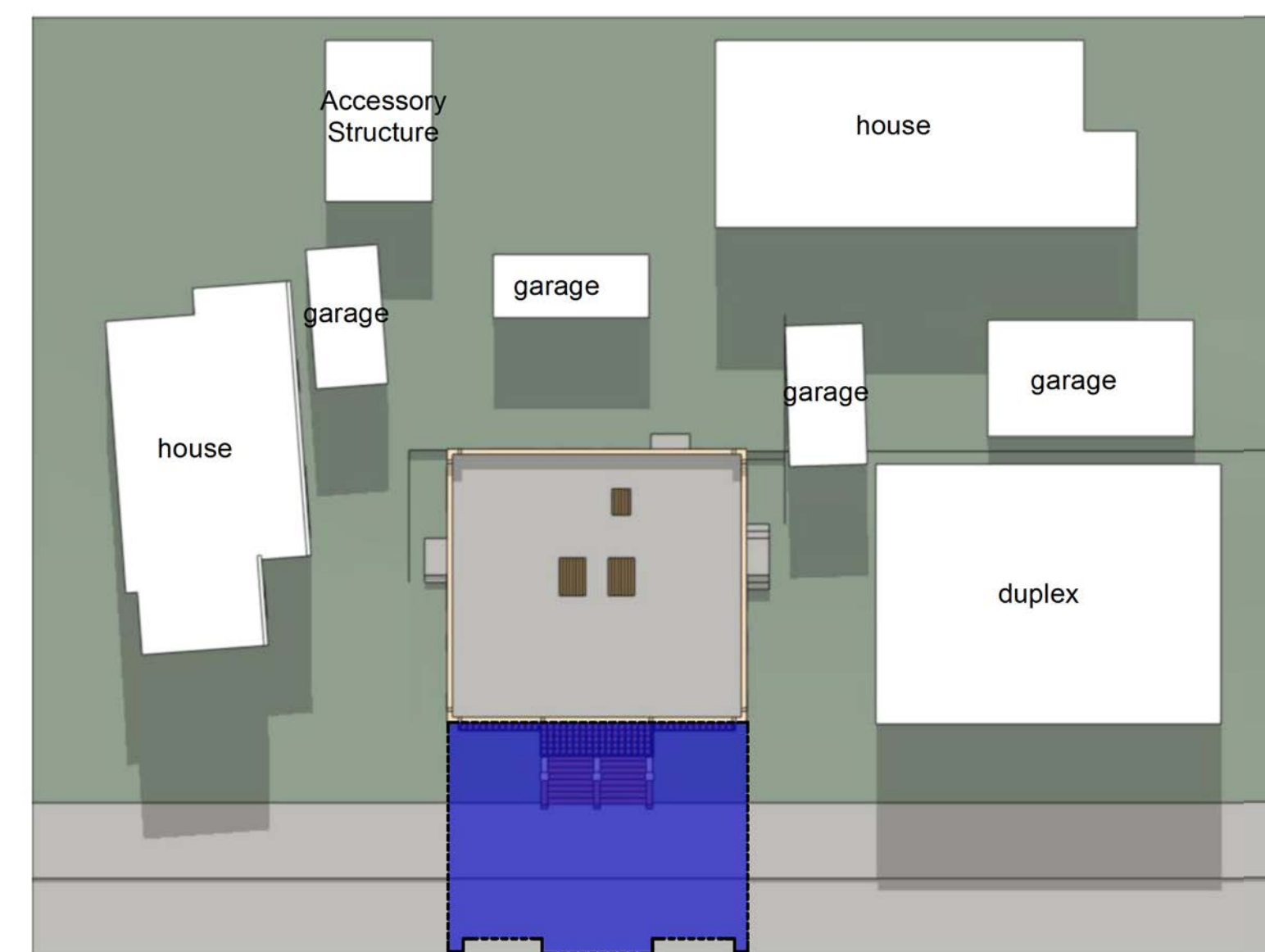
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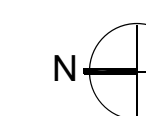
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Project Site

Existing  
**6-21-2021 / 7:47 am**

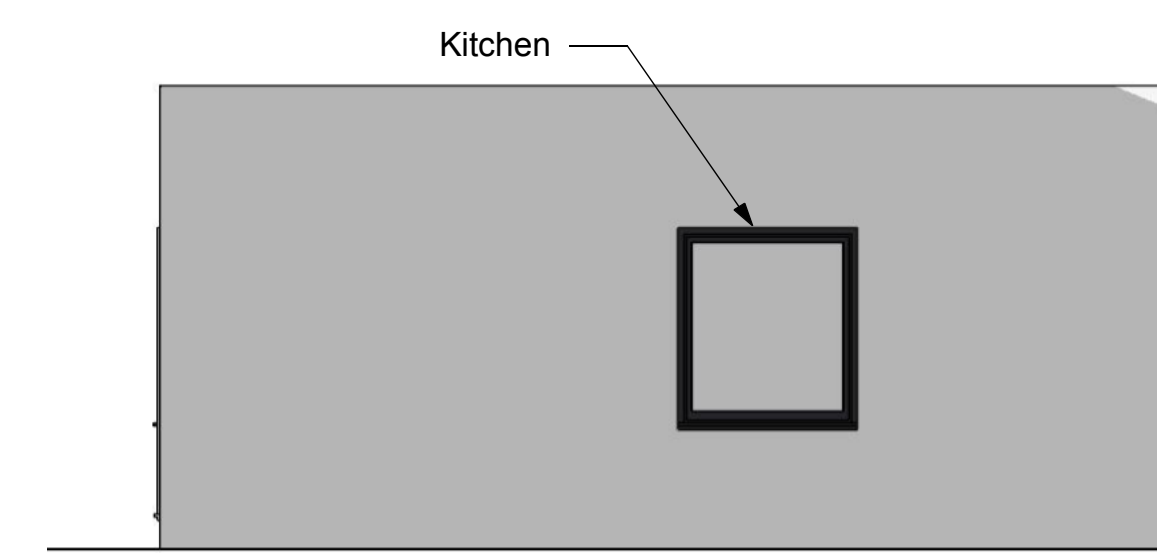




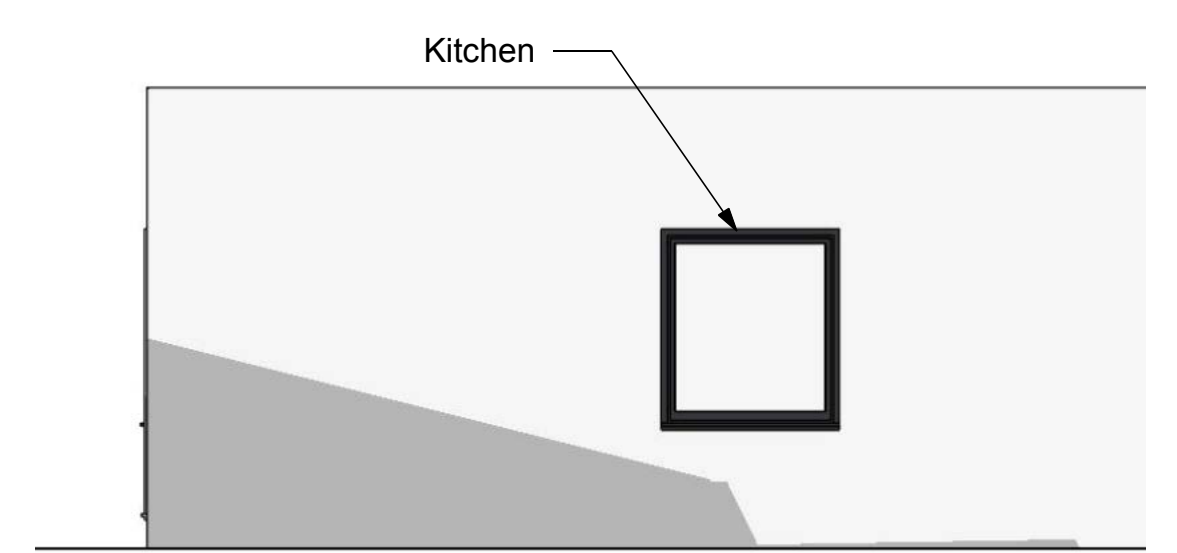
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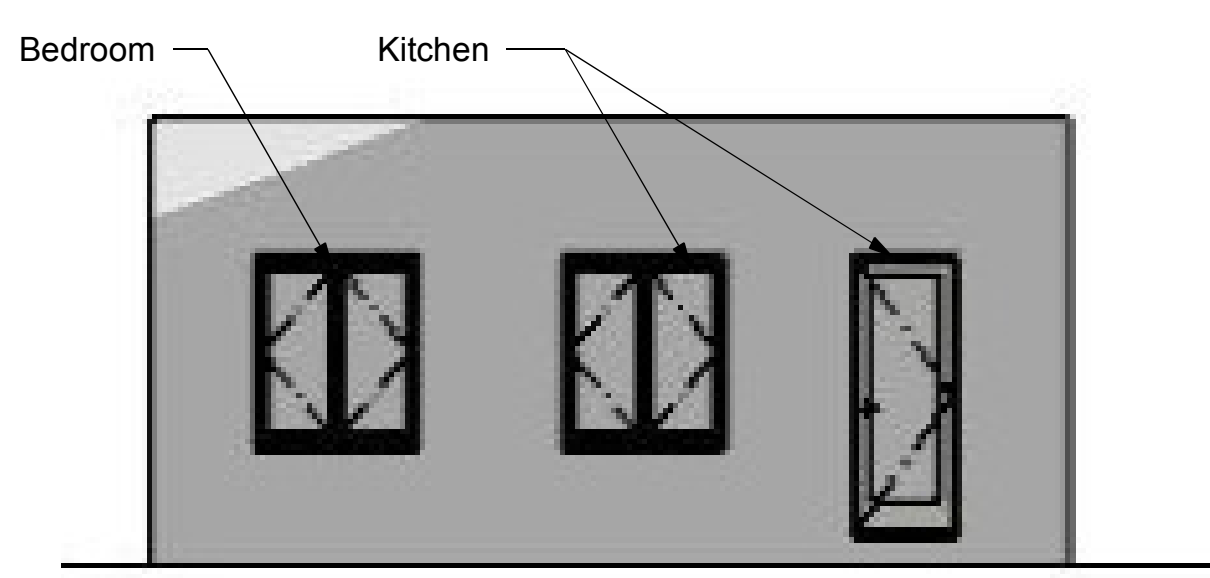
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Berkeley, CA 94703  
APN: 58-2156-18



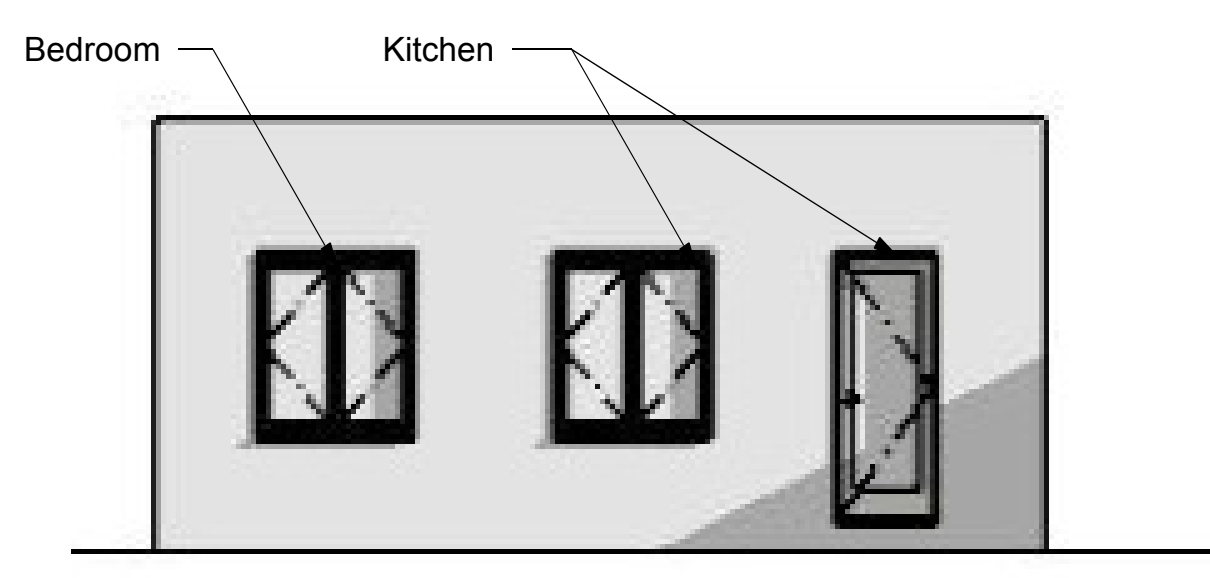
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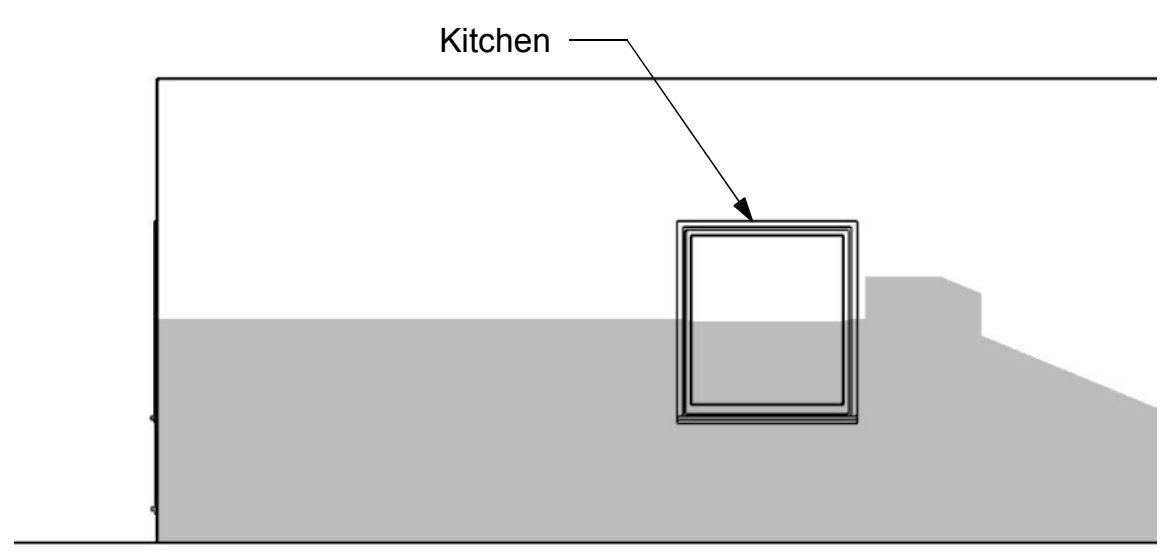
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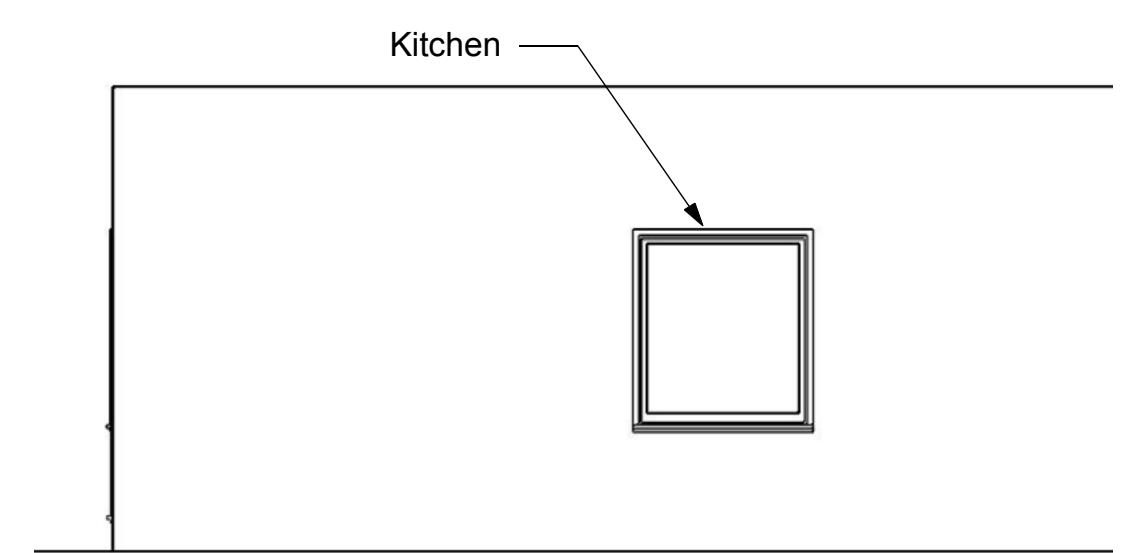
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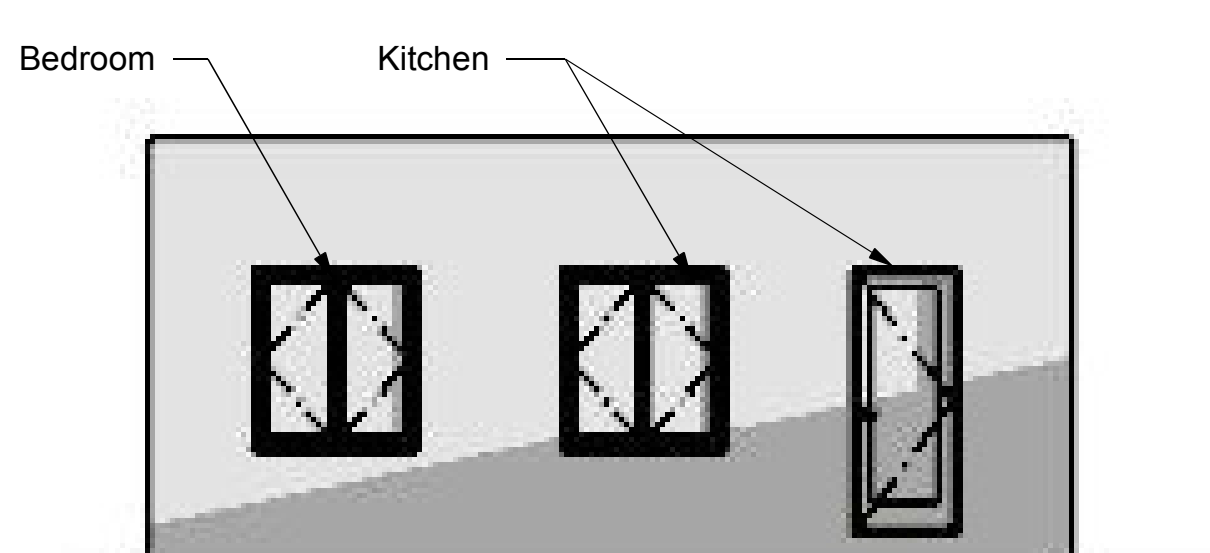
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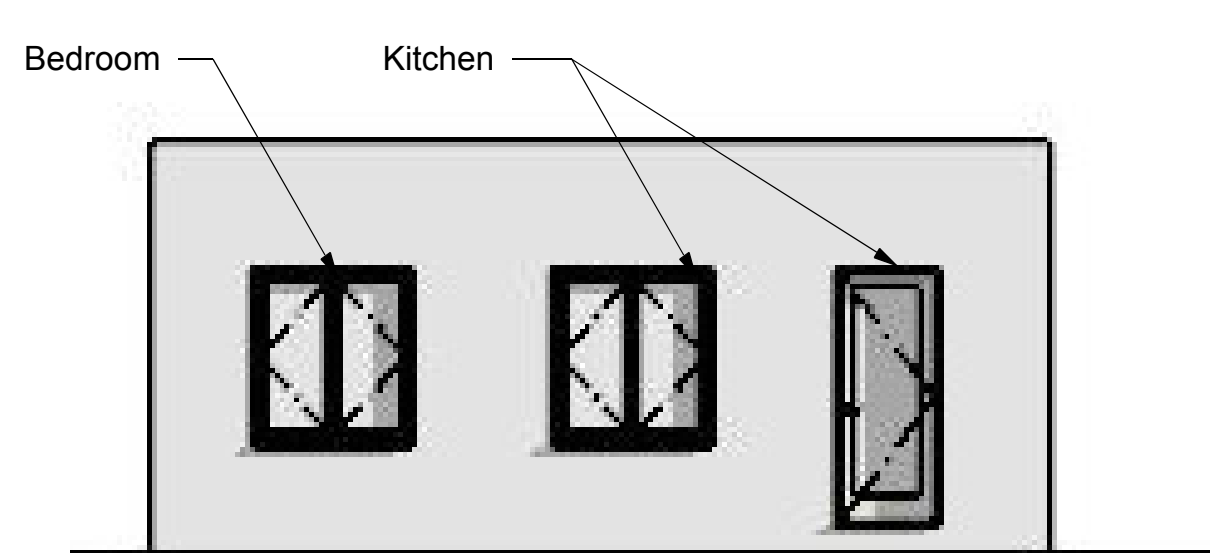
Existing West Wall



Existing West Wall



Existing North Wall



Existing North Wall

6-21-2021 / 6:35 pm

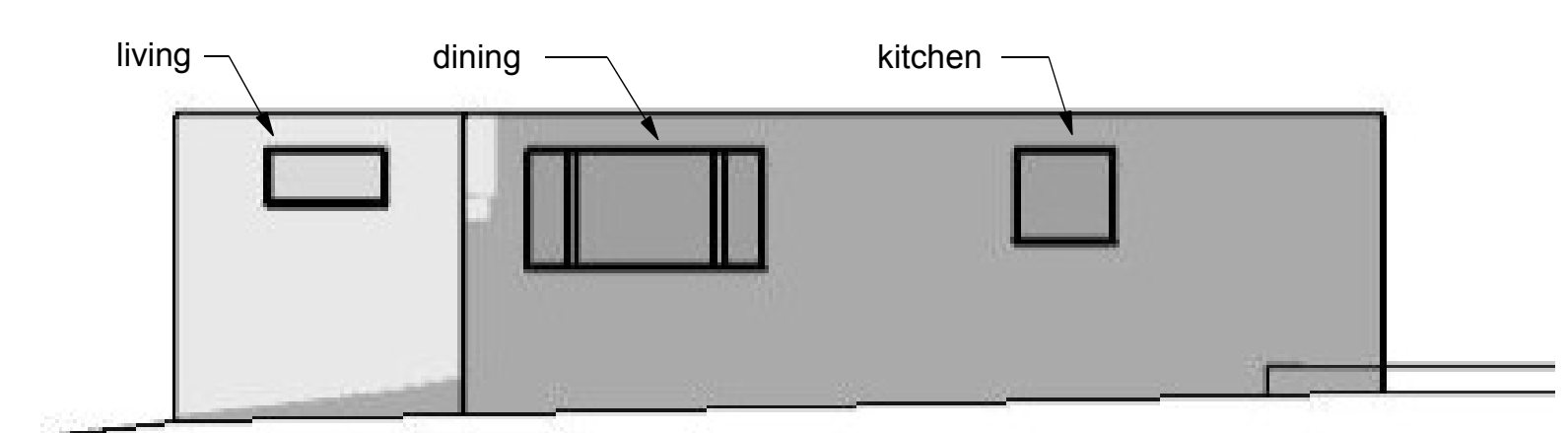
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6-21-2021 / 6:35 pm

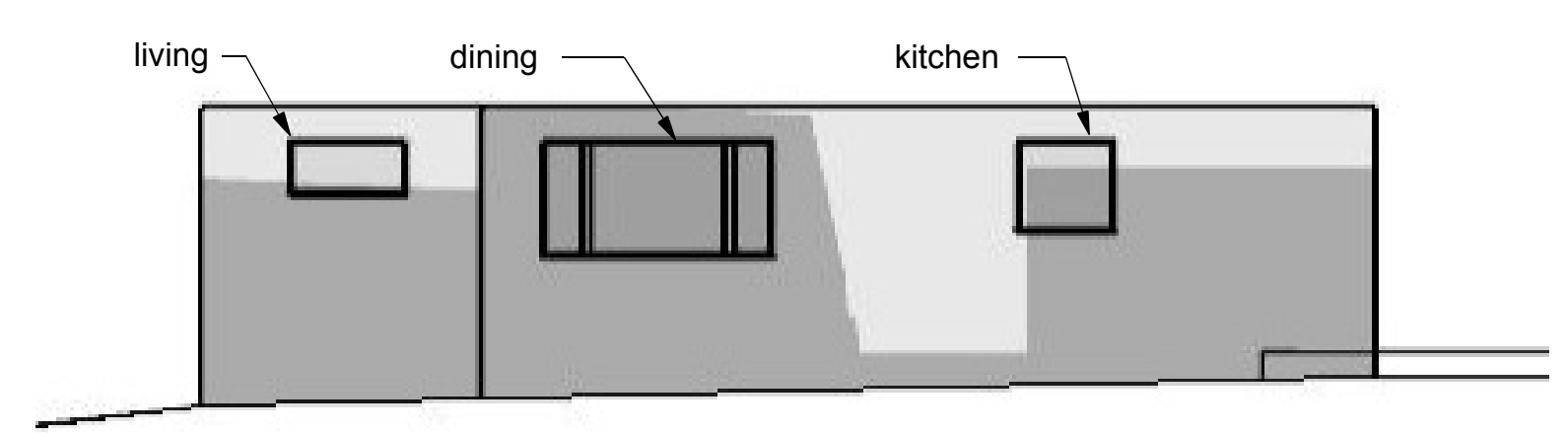
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**1609 Virginia St. Shadow Impact Study**

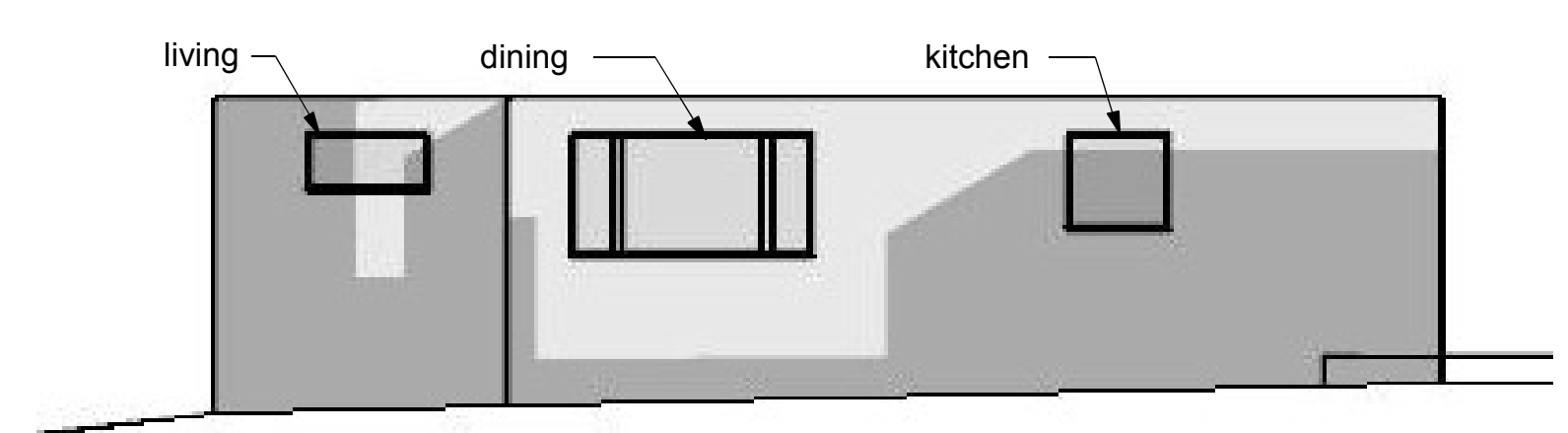
Sheet Contents:  
Shadows Studies



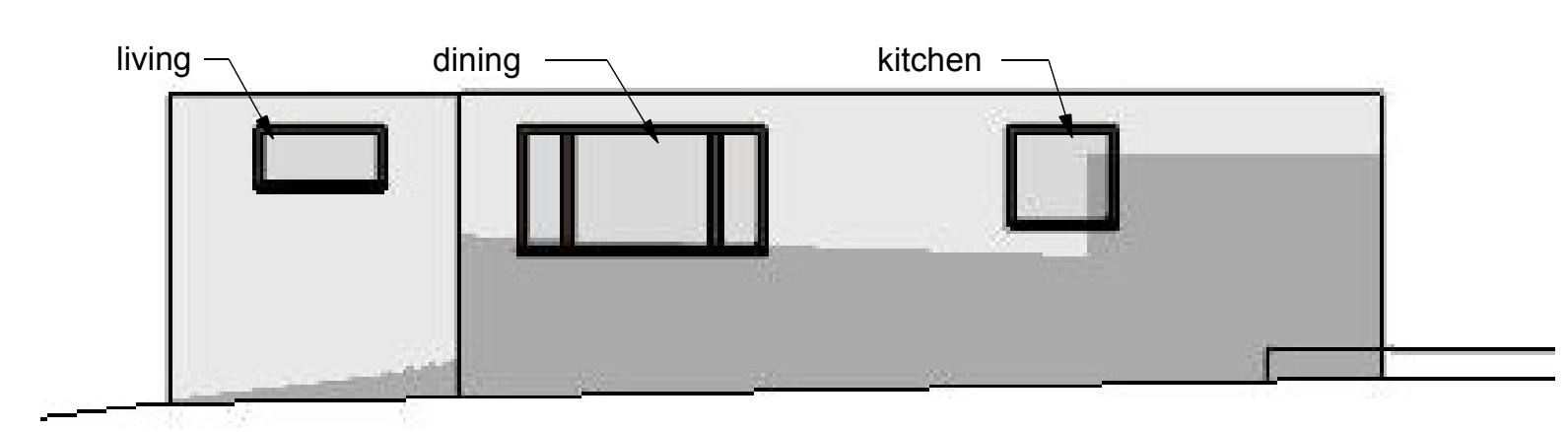
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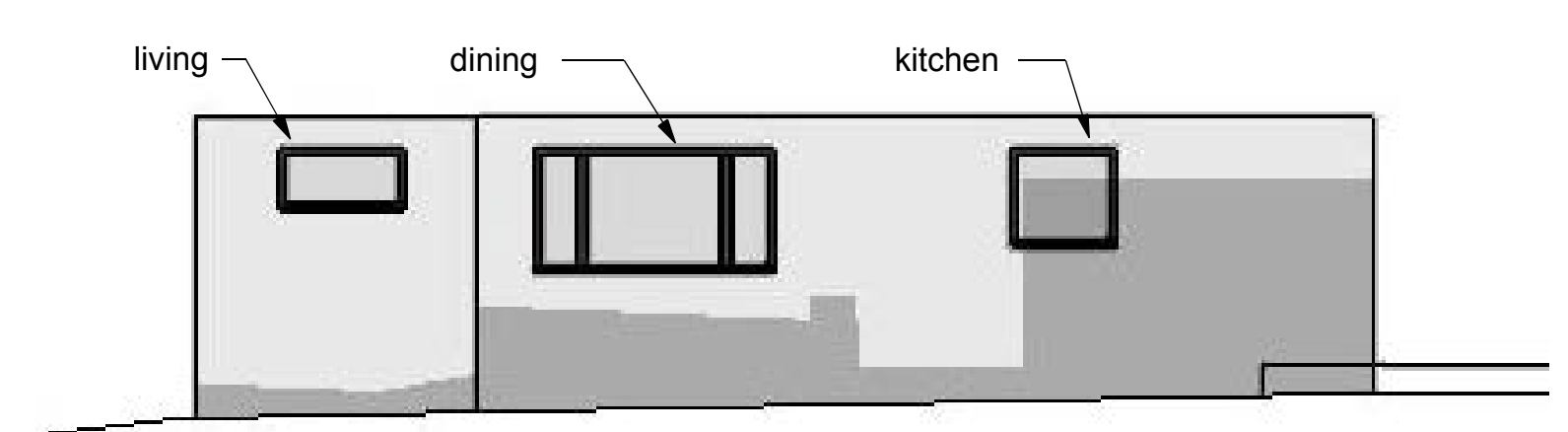
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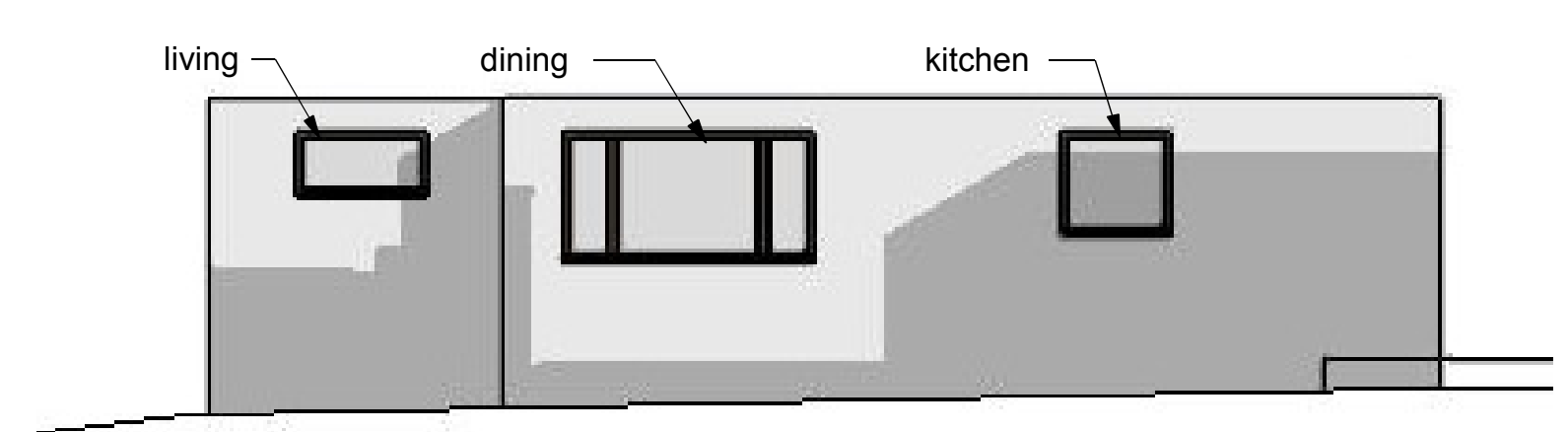
Proposed



Existing



Existing



Existing

12-21-2021 / 2:54 pm

12-21-2021 / 12:00 pm

12-21-2021 / 9:21 am

**1639 California St. Shadow Impact Study**

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Project No:  
20-13-420

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SSG

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Revisions:  
Use Permit Set: 12-10-2020  
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Planning Review: 6-29-2021  
Planning Review: 7-15-2021

Sheet  
**A4.3**



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Sheet Contents:  
Demolition Diagram

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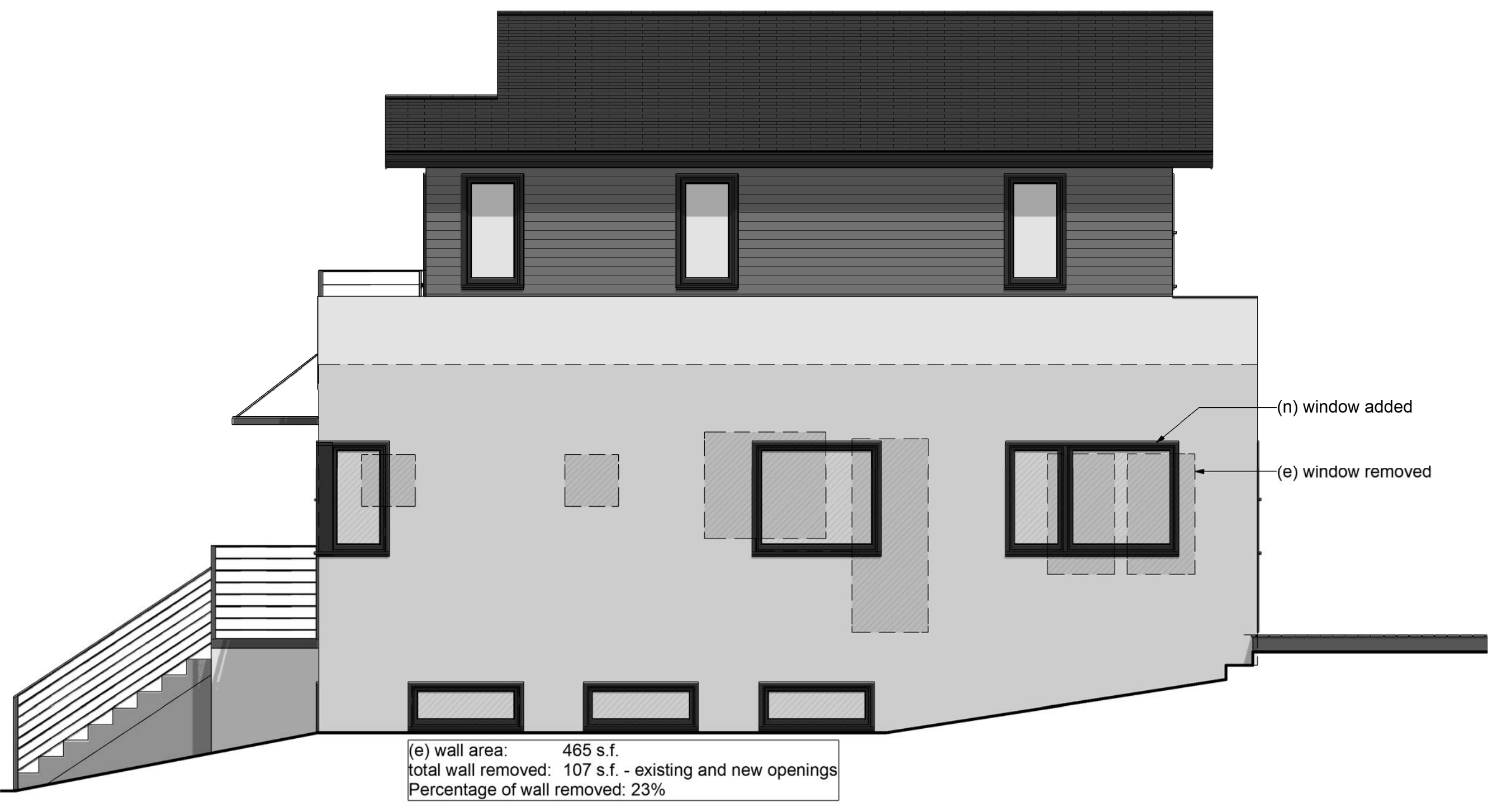
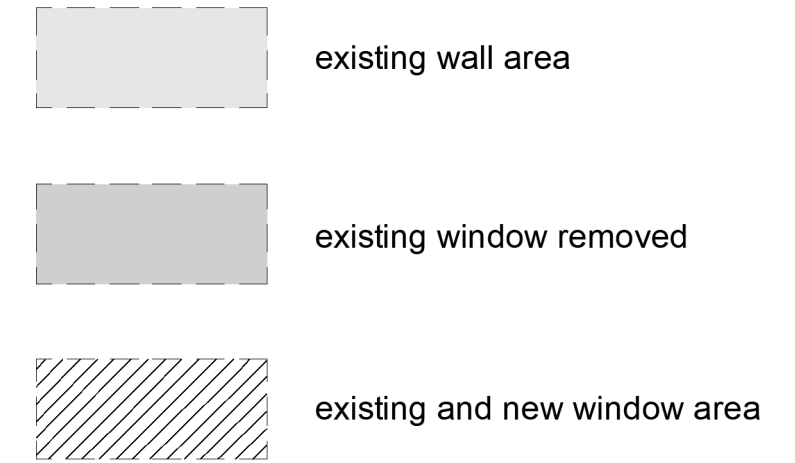
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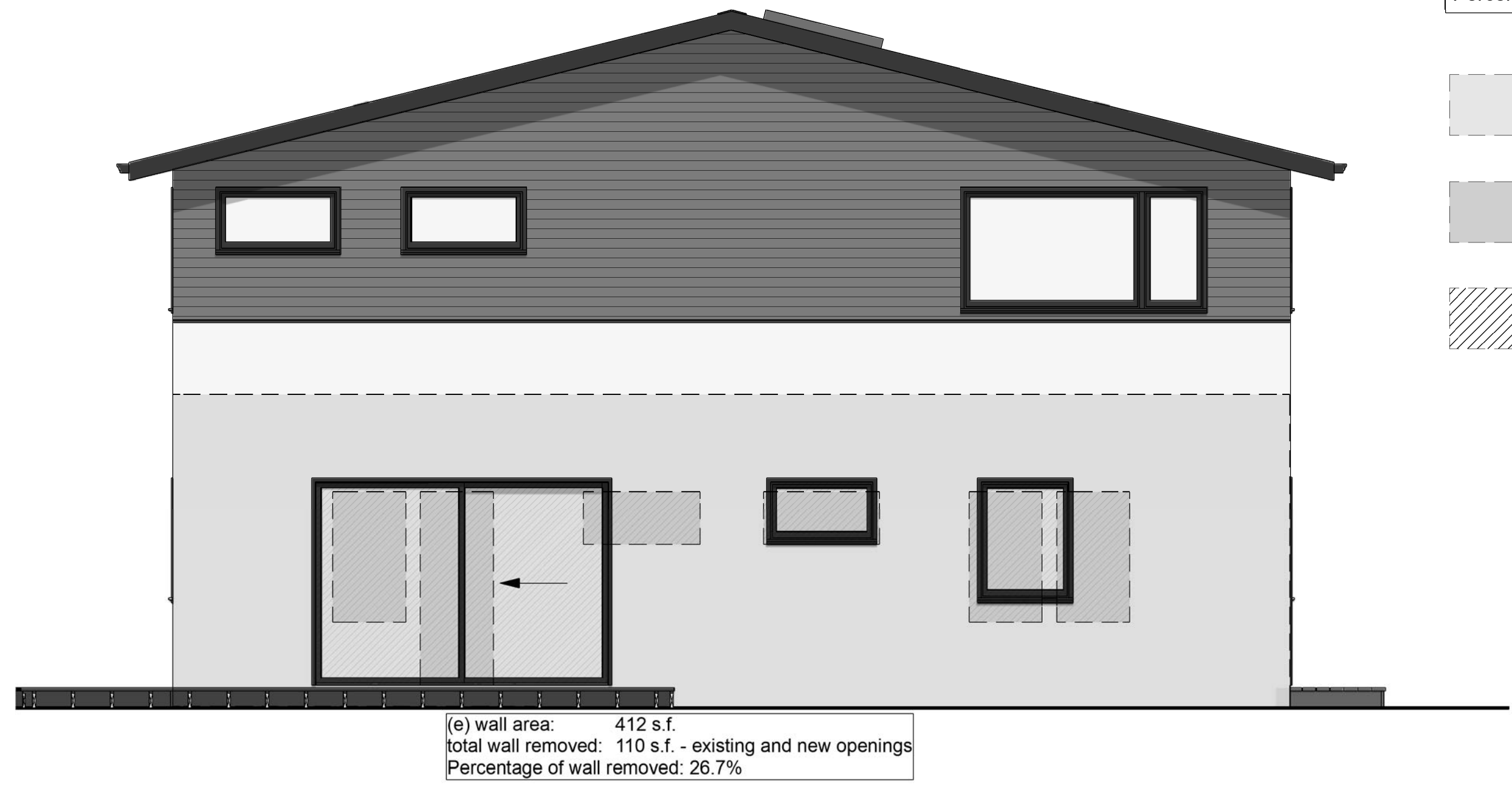
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Redesign: 5-25-2021  
Planning Review: 6-29-2021  
Planning Review: 7-15-2021  
Planning Review: 8-26-2021

Sheet **A5.1**

**Wall Demolition Notes:**  
Total wall area: 1,921 s.f.  
Total wall removed: 520 s.f. (existing and new openings)  
Percentage removed: 27.1%



4 Proposed South Elevation - Right Side



3 Proposed East Elevation - Rear



2 Proposed North Elevation - Left Side



1 Proposed West Elevation - Front



August 2<sup>nd</sup>, 2022

To: The Berkeley City Council

Re: ZAB decision to approve ZP2021-0001

We are filing this appeal for the below reasons:

- 1) Even after this matter being reverted for another hearing by ZAB after our successful appeal to the Council, the ZAB did not address the specific changes we had requested for this project to reduce impacts on neighbors, not even the most basic request for conditioning the permit to prevent post-permit modification of the upper floor exterior of the building.
- 2) The City Planner's decision to support and the ZAB's decision to approve this project seems entirely counter to policy and statements made by the City Council regarding the need to promote diversification of neighborhoods by preventing gentrification, and to protect small, more affordable and in this case rent-controlled housing units in Berkeley.
- 3) The City Planners have repeatedly affirmed that this project does not comply with the applicable, objective zoning standards. The project requires issuance of a total of seven different Administrative Use and Use Permits. The ZAB is supposed to consider and approve permits if doing so will not be detrimental to the peace, comfort, or general welfare of persons residing in the area and if doing so does not injure adjacent properties or the general welfare of the City. In the absence of objective standards regarding privacy and light, as well as in the absence of clear guidance regarding how to handle rent-controlled properties, the ZAB is using entirely subjective standards regarding what constitutes harm to neighbors and the city in making its decision to approve this project.

When this project was proposed, two of three adjacent neighbors independently opposed it. Before the ZAB hearing, we discussed with the city planner varied potential project modifications, ranging from reducing window sizes to eliminating the whole upper floor. He suggested we ask ZAB for "major modifications" by citing his initial recommendation to eliminate the top floor. That is what we did at the December 9, 2021 ZAB hearing.

At that meeting, the ZAB began to discuss reducing the square footage and number of bedrooms of the project, but the chairman cut that conversation short by citing a Planning department memo suggesting that ZAB could not consider options for reducing the size of projects. One ZAB member raised the possibility of other minor changes like window configuration to minimize privacy impacts but the chairman said he didn't want to discuss ideas from ZAB members that he had not heard voiced by the opponents. Since we were not allowed to speak at that time even though we raised our hand to try to say that we had indeed discussed such proposals with planning, the ZAB moved forward and eventually voted to approve the project.

We appealed to the city with the central argument that the Planning Department memo incorrectly interpreted the HAA and imposed restrictions on ZAB and the City that do not exist legally. Prior to the council meeting, the City Attorney clarified that indeed the memo from Planning was incorrect, and that the City can in fact limit the size or otherwise modify proposed projects such as this one. Our appeal



was successful with the Council reverting the matter to ZAB. Mayor Arreguin also noted that this property might be rent controlled, potentially requiring additional protections.

The City determined that both units of this duplex (not a Golden Duplex) are subject to rent control if rented. This is so even though the project proponents have been living in the structure as a single-family home for decades, after having -- without obtaining the necessary permits -- turned two units into one by removing a kitchen and opening the wall between the original units. (See original project submission where the proponents include an inaccurate floorplan showing two separate units, as compared to a later submission required by the City Planner that shows the actual current floor plan for their single-family home.)

In preparing for the second ZAB hearing we considered the ZAB's comments about the lack of specific modification proposals. Accordingly, we presented a detailed set of ideas, ranging from fully protecting the small rent-controlled units by not issuing the permits for the project as proposed, to a short list of minor modifications requested if the City was going to allow the full expansion. We also included options for restricting the square footage in ways that would still allow significant expansion, but with much lower impact to neighbors. One of these options is for construction to the maximum allowed size for new construction on this lot (2700 sq. ft.), much less than the 3763 sq ft currently being proposed.

Unfortunately, at the July 14th ZAB meeting, most of the ZAB members didn't discuss or comment on our specific proposed modifications, making us question whether they had seen our submission or supplemental materials. The ZAB member who said he had reviewed all the materials stated that he supported the project because modifications proposed by neighbors had already been implemented by the proponents, a statement that is incorrect. In fact, the current project plan is identical to the very first plan the proponents ever informed us about, after their May 25, 2021 resubmission to planning. At no point has planning, ZAB or the proponents considered or commented on the specific modifications regarding window height and size reduction or guarantees to prevent creation of a rear deck that we have requested, and which would reduce impacts to neighbors. The only changes to design that have been made are those initially required by the Planning department before it was willing to support the project at all.

Unlike the first ZAB hearing where potential and minor modifications were starting to be discussed by ZAB, the second meeting focused on whether the proposed final structure seems in line with other homes in the neighborhood, without considering whether those homes (on much larger properties) also exceed zoning standards, required Use Permits, or contained rent-controlled units. The ZAB Chairman stated that according to the Municipal Code, Berkeley homeowners are entitled to develop and improve their properties (in the first ZAB hearing the chairman stated that all owners have a right to a second story), and that the ZAB will permit them to do so unless there is a preponderance of evidence that weighs against approving a project, not just a presumed argument reflecting affordability. The ZAB chairman also stated that the ZAB is not the appropriate venue for addressing matters like this. If these statements are true, and the ZAB will not use city zoning standards or the requirements for public hearings and obtention of Use Permits to protect smaller and thus more affordable rent-controlled housing, then it seems a matter for the City Council to make this determination.

On the rent control issue, we raised the concern that this project permits the conversion of two 670 square foot rent-controlled units into one smaller unit and one massive 5-BR, 5-bath home, and that

although both units will indeed be rent-controlled if rented, it is extremely unlikely that the owner of a multi-million dollar home will ever opt to rent that larger unit out subject to rent-control. Thus, the project in effect removes a small rent-controlled unit from the Berkeley rental market. In response, one ZAB member suggested that the city might benefit from having large 5-bed, 5-bath units like the one that would be created here under rent control because it could provide rent-controlled housing for five different people living together. This rationalization ignores the reality of how rent-control works and the reluctance of owners to rent to multiple tenants, especially under rent-control. Meanwhile, the City Planner stated that while the project proponents may have converted the rent-controlled duplex into a single-family home without obtaining the permit to do so many years ago, that change does not matter because removal of a kitchen and opening up a wall between two units is simply an "internal" modification and both rent controlled units were owner occupied at the time.

It is worth noting that on the very same night, the ZAB also approved the conversion of another rent-controlled North Berkeley duplex (on Milvia street) from two moderately sized units to a conformation with one much smaller and one much larger unit. Again, the project required multiple permits yet the ZAB approved with barely any discussion. Again, a moderately sized, rent-controlled unit will be converted into a massive home that is unlikely to ever be rented, and a Use Permit for exceeding lot coverage was being awarded to allow this conversion. There thus seems to be a trend in which the City mounts no opposition, even when zoning standards are being exceeded and Use Permits are required, to property owners effectively converting rental properties subject to rent control into massive owner-occupied homes with accompanying much smaller rental units.

Thus, together, Planning and Zoning seem to be setting a policy that is extremely developer friendly, favors gentrification, and leads to conversion of the City's existing, smaller/lower-income, rent-controlled units into large luxury homes. This seems entirely at odds with things this mayor and council have been reported to say over the past few years as part of discussions about how Berkeley might address its housing crisis.

We therefore ask the City Council to review its stance on the City's rent-controlled duplexes and decide whether it is in the City's best interest and in line with the current City General Plan, to support gentrification projects in cases like this where the owner does not have the legal right to expand without being pro-actively issued Use Permits for exceeding the zoning standards. We strongly believe the City both can and should use existing zoning standards and permit requirements to impose conditions on development that will force owners to preserve the nature of and purpose of the rent-controlled properties they purchased. Owners who have purchased rent-controlled duplexes should not be "entitled" to modify these into massive homes unlikely to be rented. Allowing this project and others like it to proceed sets a precedent that creates such an expectation among property owners.

If the Council believes it is important to safeguard Berkeley's stock of smaller, more affordable rent-controlled units, then projects like this should not be approved and we ask that the permits afforded in this case be denied for the current application plans. By doing so, the Council would signal to City Planning and ZAB that it is important to balance City Policies seeking to protect more affordable rental units and prevent gentrification so as to promote diversity in neighborhoods -- especially in North Berkeley -- with the "entitlement" of owners to develop their properties.

If the mayor and the City Council decide that even with the existing affordability and housing crisis, permits for conversions like this should nevertheless be issued, we ask that the Council still review the minor modifications we requested to ZAB (identical to those presented in our initial appeal to Council).

Specifically, we request that the Council at a minimum make a condition to this permit that would hold the project proponents to their word about their plans, such that the agreements that the project proponents made with Planning to get their support in the ZAB hearings cannot later be modified. Such a condition to the permit would restrict the applicants from make any changes to the exterior windows and doors on the South and East sides of the upper floor through post-permitting modification requests to the Building Department. This would include (i) not adding an entrance to convert the parapet structure on the east side upper floor into a shallow deck, and (ii) not increasing the size or changing the location of any windows on the upper floor's east and south sides.

We request this permit condition in part because of a precedent with this very same architect in Berkeley having made concessions to planning and neighbors to obtain a building- permit and then immediately proceeding to request and obtain post-permit modifications undoing those concessions (this was brought up by a member of the public who spoke at both the December Council meeting and the July ZAB meeting). We imagine that such a condition to the permit would be supported by Planning since it would only hold the applicants to their agreement with Planning. This condition should also be supported by the project proponents if they are in fact happy with their current designs and have no plans to request post-permit modifications. Finally, we request that the windows on the upper floor east and south sides be converted to high-awning windows to minimize impact on appellants.

Thank you for your consideration,

Adam Safir (1609 Virginia St)  
Anna Cederstav (1609 Virginia St)  
Kay Bristol (1651/1653 California St)

**Communication regarding this appeal should be directed to:**

**Adam Safir  
1609 Virginia St., Berkeley CA. 94703  
510-725-9350  
cederfir@hotmail.com**



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  
JULY 14, 2022

## 1643 & 1647 California Street

Use Permit #ZP2021-0001 to 1) create a new lower basement level, 2) construct a new second story, and 3) modify the existing duplex layout, resulting in a 3,763 square foot duplex.

### I. Background

#### A. Land Use Designations:

- General Plan: Medium Density Residential
- Zoning: R-2 – Restricted Two-Family Residential District

#### B. Zoning Permits Required:

- Use Permit, under Berkeley Municipal Code (BMC) Section 23C.04.070.C, to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable lot coverage;
- Use Permit, under BMC Section 23C.04.070.E, to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable density;
- Administrative Use Permits, under BMC Section 23C.04.070.B, to horizontally extend two non-conforming yards (front and rear);
- Administrative Use Permit, under BMC section 23D.28.030, to permit a major residential addition;
- Administrative Use Permit, under BMC Section 23D.28.070.C, to allow an addition over 14 feet in height; and
- Administrative Use Permit, under BMC Section 23D.28.050, to construct a fifth bedroom.

**C. CEQA Recommendation:** It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"). The determination is made by ZAB.

Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no

cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

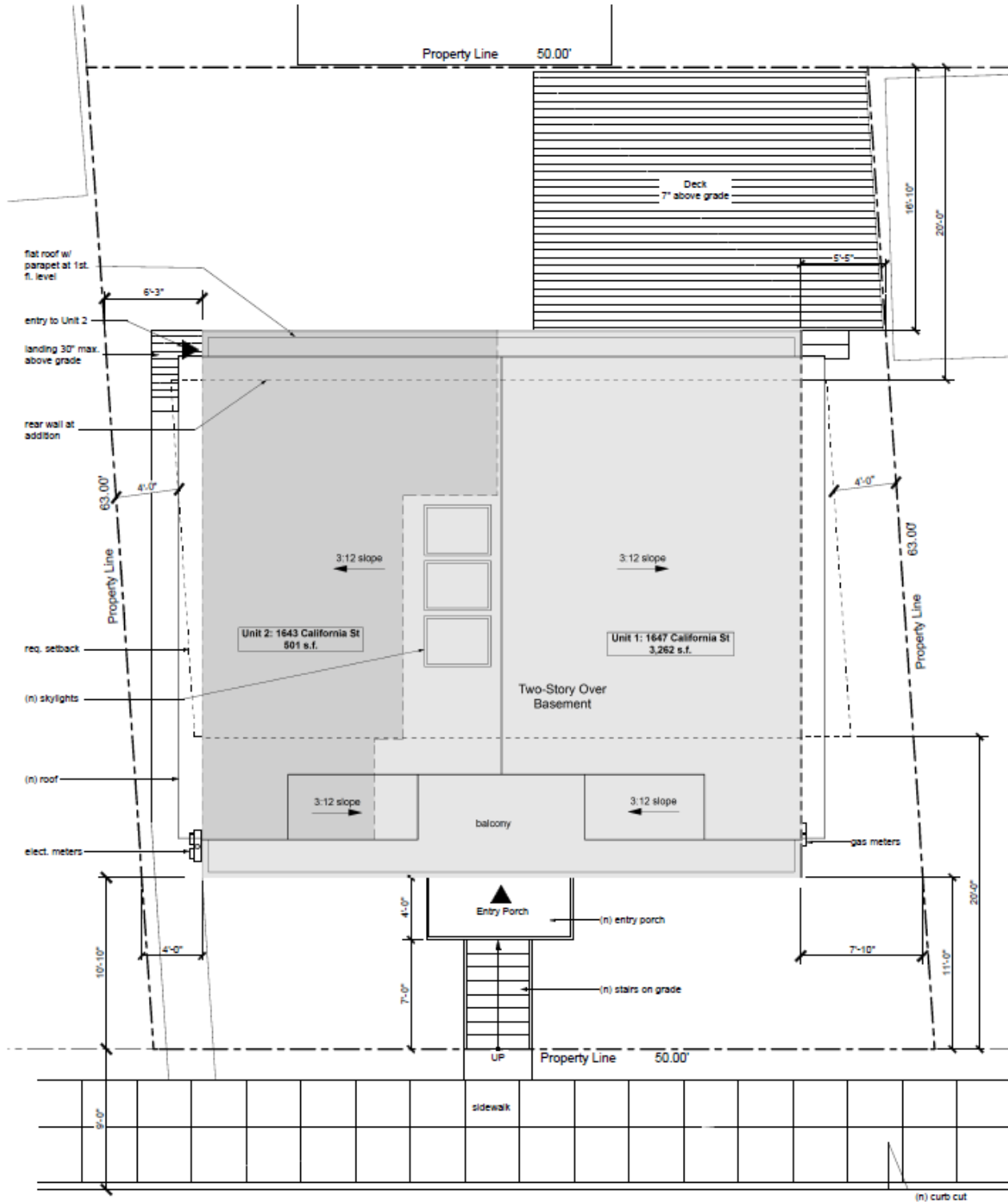
**D. Parties Involved:**

- Applicant                      Sundeep Grewel, Berkeley
- Property Owner              Ido and Tamar Oppenheimer, Berkeley

**Figure 1: Vicinity Map**



Figure 2: Site Plan



2 Proposed Site Plan

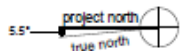
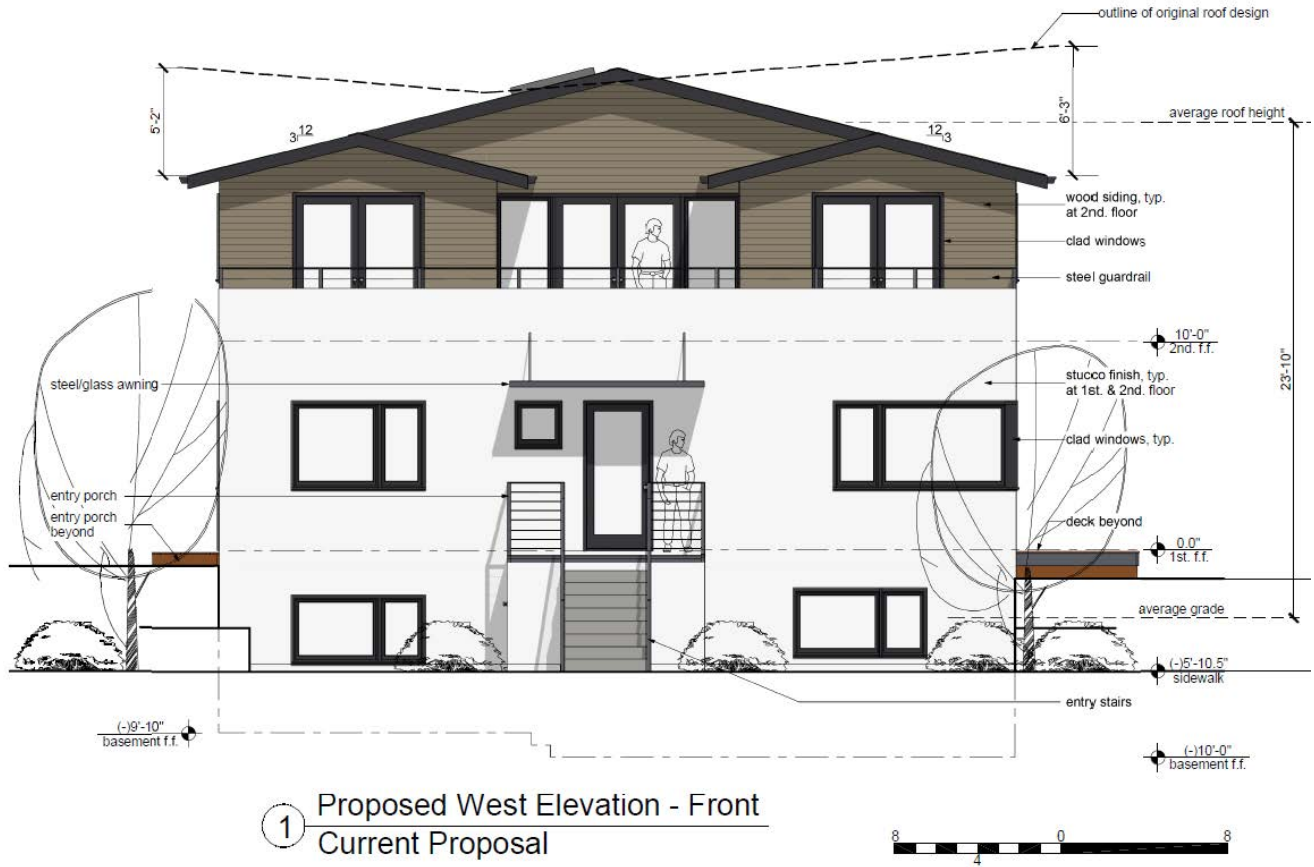


Figure 3: Front Elevation





**Figure 4: Rear Elevation**



**Table 1: Land Use Information**

| Location               |       | Existing Use  | Zoning District | General Plan Designation       |
|------------------------|-------|---------------|-----------------|--------------------------------|
| Subject Property       |       | Multi-Family  | R-2             | Low Medium Density Residential |
| Surrounding Properties | North | Single-Family |                 |                                |
|                        | South | Single-Family |                 |                                |
|                        | East  | Single-Family |                 |                                |
|                        | West  | Multi-Family  |                 |                                |

**Table 2: Special Characteristics**

| Characteristic                                                                                 | Applies to Project? | Explanation                                                                                    |
|------------------------------------------------------------------------------------------------|---------------------|------------------------------------------------------------------------------------------------|
| Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.) | No                  | Project is entirely residential, and therefore, this project is not subject to this resolution |
| Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)    | No                  | Project is entirely residential, and therefore, this project is not subject to this resolution |
| Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)                 | No                  | The project proposes to maintain the two dwelling units that currently exist at the property.  |
| Creeks                                                                                         | No                  | The site does not contain a mapped creek or a creek culvert.                                   |

|                                                            |     |                                                                                                                                                                                                                                                                |
|------------------------------------------------------------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Density Bonus                                              | No  | The project is not proposing to add dwelling units through a Density Bonus application                                                                                                                                                                         |
| Natural Gas Prohibition (Per BMC 12.80.020)                | No  | This project is an application for construction to an existing two-unit structure, and is therefore not subject to the Natural Gas Prohibition.                                                                                                                |
| Historic Resources                                         | No  | The project site is not designated as a Landmark by the City, nor is the application proposing to demolish the existing structure.                                                                                                                             |
| Housing Accountability Act (Gov't Code Section 65589.5(j)) | No  | The project is not a "housing development project," as no additional units would be created. The project is to increase the size of one of the dwellings, and reduce the size of the other dwelling. Therefore, the HAA findings do not apply to this project. |
| Housing Crisis Act of 2019 (SB330)                         | No  | The project is all residential, but no new dwellings are proposed, and no dwellings would be demolished.                                                                                                                                                       |
| Oak Trees                                                  | No  | There are no Coast Live Oak Trees on the property.                                                                                                                                                                                                             |
| Rent Controlled Units                                      | No  | The property contains two units that are owner-occupied. The Rent Control Ordinance would apply if either unit were rented.                                                                                                                                    |
| Residential Preferred Parking (RPP)                        | No  | This property is not located in a Residential Preferred Parking Zone                                                                                                                                                                                           |
| Seismic Hazards (SHMA)                                     | No  | The site is not located within an area susceptible to liquefaction, Fault Rupture, or Landslides as shown on the State Seismic Hazard Zones map.                                                                                                               |
| Soil/Groundwater Contamination                             | No  | The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites). Per §15300.2 of the CEQA Guidelines, a categorical exemption may be used on sites not listed on the Cortese List.                                  |
| Transit                                                    | Yes | The site is located near the corner of California and Virginia Streets, one block east of Sacramento Street. Sacramento is served by AC Transit line 52 and there are bus stops one block away to the west.                                                    |

**Table 3: Project Chronology**

| Date               | Action                                   |
|--------------------|------------------------------------------|
| January 8, 2021    | Application submitted                    |
| September 24, 2021 | Application deemed complete              |
| November 23, 2021  | Public hearing notices mailed/posted     |
| December 9, 2021   | ZAB hearing                              |
| December 20, 2021  | Notice of Decision issued                |
| January 10, 2022   | Appealed to City Council                 |
| April 26, 2022     | Council meeting, remanded to ZAB         |
| June 30, 2022      | ZAB public hearing notices mailed/posted |
| July 14, 2022      | ZAB hearing                              |
| July 25, 2022      | Remand deadline                          |

**Table 4: Development Standards**

| Standard                    |               | Existing | Proposed Total | Permitted/<br>Required                 |
|-----------------------------|---------------|----------|----------------|----------------------------------------|
| BMC Sections 23D.28.070-080 |               |          |                |                                        |
| Lot Area (sq. ft.)          |               | 3,100    | No change      | 5,000 min                              |
| Gross Floor Area (sq. ft.)  |               | 1,334    | 3,763          | N/A                                    |
| Dwelling Units              | Total         | 2        | No Change      | 1 max (1 per 2,500 sq.ft. of lot area) |
| Building Height             | Average (ft.) | 13'-6"   | 23'-10"        | 28' max                                |
|                             | Stories       | 1        | 2              | 3 max                                  |
| Building Setbacks (ft.)     | Front         | 10'      | No Change      | 20' min                                |
|                             | Rear          | 16'-10"  | No Change      | 20' min                                |
|                             | Left Side     | 3'-11"   | 4'-0"          | 4' min                                 |
|                             | Right Side    | 5'6"     | 5'5"           | 4' min                                 |
| Lot Coverage (%)            |               | 50%      | 44%            | 40% max                                |
| Usable Open Space (sq. ft.) |               | 500      | 1,029          | 800 min                                |
| Parking                     | Automobile    | 0        | 0              | 2 min                                  |

## II. Project Background

- A. ZAB Action:** On December 9, 2021, the Zoning Adjustments Board (ZAB) approved Use Permit ZP2021-0001 by a vote of 9-0-0-0 (Yes: Duffy, Kahn, Kim, Gaffney, O'Keefe, Olson, Sanderson, Thompson, Tregub; No: None; Abstain: None; Absent: None).

On December 20, 2021, staff issued the notice of the ZAB decision, and on January 10, 2022, an appeal of the ZAB decision was filed with the City Clerk by Kay Bristol, the owner of 1651-1653 California Street, and Anna Cederstav and Adam Safir, the owners of 1609 Virginia Street. The Clerk set the matter for review by the Council on April 26, 2022.

In the appeal letter, the appellants stated that they were concerned about the applicability of the Housing Accountability Act (HAA), the lack of modification by ZAB, procedural requirements, and inadequate opportunities for public participation.

- B. Council Consideration of the Appeal:** On April 26, 2022, the Council held a public hearing to consider the ZAB's decision. During the staff presentation, staff clarified that the HAA should not apply to the project since no new units will be added. The addition may be modified. By a vote of 9-0-0 (Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin), Council remanded the Use Permit to ZAB for reconsideration of the applicability of the Housing Accountability Act, and the Rent Stabilization and Eviction for Good Cause Ordinance.

### III. Project Description

- A. Neighborhood/Area Description:** The project site is located in the North Berkeley neighborhood, on the east side of California Street at the corner of California and Virginia Street. It is one block east of Sacramento Street and four blocks west of Martin Luther King Junior Way. The surrounding area consists of residential uses ranging from one- and two-story single-family dwellings, and two-story multi-family buildings. Bus service is available via transit lines on Sacramento Street.
- B. Site Conditions:** The subject property is a small, rectangular lot, oriented in the east-west direction, and is approximately 3,100 square feet in total area. It features a one-story main building originally constructed as a duplex. The building faces west, toward California Street. At some point in the past, the kitchen of the left side unit (1643 California) was removed without permits, and a doorway was installed between the two units, effectively converting the house to one unit, without the necessary approval of a Use Permit to remove a dwelling.

The property and structure is currently non-conforming due to several reasons: 1) the property is non-conforming to the lot coverage, currently at 50 percent coverage where 45 percent coverage is the limit for a one-story structure; 2) the property is non-conforming to the allowable residential density, containing two units when only one unit is permitted due to the lot size (prior to the unauthorized removal of 1643 California); and 3) the structure is located within the required front, rear, and left side yards.

- C. Proposed Project:** The project would make several alterations to the existing property. The existing residential structure would be shifted by 1-inch to the south to create a conforming left (north) side setback of 4 feet. The proposal would restore the

left dwelling unit at 1643 California, but would shrink the size of this unit from 650 square feet to 501 square feet. Additionally, the floor plan of the main level of right unit (1647 California) would be modified to serve as the main living area, with an open floor plan kitchen/dining/living room, plus a full bathroom. The structure would be expanded by creating a new basement level<sup>1</sup>, contained below the existing building footprint, solely serving 1647 California. This level would contain a family room/home gym, half bath, one new bedroom with a full bathroom, and closet and storage area. The proposal would add a new second level on top of the existing structure, also solely serving 1647 California, which would contain three new bedrooms and two full bathrooms. The second story would step in at the front to provide a balcony, and would step in from the rear to comply with the required 20-foot rear yard setback. In total, 1647 California would expand by 2,612 square feet, from 650 square feet to 3,262 square feet in total.

Other site work includes the removal of an existing accessory shed, and the construction of an on-grade deck in the southeastern corner of the rear yard.

## IV. Community Discussion

### A. Neighbor/Community Concerns:

On June 30, 2022, the City mailed public hearing notices to nearby property owners and occupants, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations.

At the time of writing this report, staff has received several communications regarding the project, both in support and opposition. All communications received have been included as Attachment 4.

Concerns raised include:

- a. Neighbors to the east and south have raised concerns due to the proposed increase in size of the house on a small lot.
- b. Concerns from each adjacent neighbor regarding the impacts to privacy and to shadows from the two-story design and increase in height.
- c. Concern with the project being out of scale with the neighborhood and surrounding properties, especially given the existing non-conformities of the property.

Support of the application includes:

- a. Improved structure and project site;
- b. Restoration of the second dwelling unit.

## V. Issues and Analysis

<sup>1</sup> The basement would not count as a story, as no portion of the basement level would be exposed to the existing grade by more than 6 feet, per the definition in BMC Section 23F.04.

- 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. Housing development is defined as a project that is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing. SB 330 does not apply to the proposed project because no new dwellings are proposed. Per Government Code Section 66300 and the attached memorandum from the Rent Stabilization Board (Attachment 5), both dwelling units are “protected units” because both are subject to rent control when rented.
- B. Housing Accountability Act Analysis:** The Housing Accountability Act (HAA), California Government Code Section 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 HAA does not apply to the proposed project because no new dwellings are proposed. The two existing dwellings would remain, and the size of the dwellings would change.
- C. Rent Stabilization and Eviction for Good Cause Ordinance:** Rent Board staff prepared a memorandum (Attachment 5) that analyzes whether the Rent Stabilization and Eviction for Good Cause Ordinance applies to the project. Since there are currently no tenants, there are no tenant protections at issue currently. Future tenants would be protected by the ordinance. Both units are subject to rent control when rented.
- D. Findings for Addition to a Structure on Parcel with Non-Conforming Lot Coverage:** Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of lot coverage are permitted with a Use Permit if the addition/enlargement does not increase coverage or exceed the height limit. As previously mentioned, the property is non-conforming to the maximum allowable lot coverage, with 50 percent coverage, where 45 percent is the District maximum on this R-2 property. The proposed addition would remove an existing shed in the rear yard, which would reduce the lot coverage to 44 percent, while creating a two-story house, which decreases the allowable lot coverage to 40 percent. While the proposed structure would still be non-conforming to the allowable lot coverage, the project would reduce the non-conformity from 5 percent over the allowable limit to 4 percent over the allowable limit. The proposed addition is located

over existing covered area, and therefore, does not increase the non-conforming lot coverage. Additionally, while the addition consists of a second story addition, reaching a total of 23 feet, 10 inches, which complies with the maximum average height limit of 28 feet.

- E. Findings for Addition to a Structure on Parcel with Non-Conforming Density:** Pursuant to BMC Section 23C.04.070.E, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with a Use Permit if the addition/enlargement does not increase the density or exceed the height limit. The project proposes to maintain the density at two units, therefore, it does not increase the density. As described in Section V.C, above, the addition would comply with the allowable average height limit in the district.
- F. Findings for Addition to Vertically Extend and Alter a Structure with Non-Conforming Yards:** Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements which vertically extend or alter a portion of a building which encroaches into a non-conforming yard may be of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with an Administrative Use Permit if the existing use of the property is conforming and if the addition/enlargement would not 1) reduce any yard below the minimum setback requirements, or further reduce existing non-conforming yards; or 2) exceed the maximum or calculated height limits. As previously explained, the existing residential structure is non-conforming to the front, rear, and left (north) side setbacks. The proposed addition/enlargement of the house would correct the non-conforming left side setback, but is proposed to vertically extend the non-conforming front and rear setbacks. The front setback would be vertically extended both up (with the second story) and down (with the basement), while the rear setback would be vertically extended down with the expansion of the basement. The second story at the rear would comply with the required 20-foot rear yard setback. As the enlargement of the building would comply with the permitted residential use on the property, and the vertical expansions within the non-conforming setbacks would not further reduce the non-conformity, these expansions are permissible.
- G. Addition of a Fifth Bedroom to an R-2 Parcel:** Pursuant to BMC Section 23D.28.050, an Administrative Use Permit is required to approve the addition of a fifth bedroom to a parcel in the R-2 Zoning District. This project proposes to increase the total number of bedrooms on the property from four to five bedrooms. The addition of this fifth bedroom would not add more units to the site, but would provide more room in one of the dwellings.
- H. Restricted Two-Family Residential District (R-2) Findings:** This project proposes to construct a major residential addition over 14-feet in height. As required by BMC Section 23D.28.090.A and BMC 23B.32.040.A, the Zoning Adjustments Board must make a finding of general non-detriment for any Administrative Use Permit in the R-2 Zoning District. This project would add approximately 2,429 square feet to the existing 1,334 square foot duplex. 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 because of the following reasons:

- i. The project would add a second level to the home, of which there are several examples in the neighborhood.
- ii. The second story addition would step in and comply with the required front and rear yard setbacks.
- iii. A basement is proposed to be added. While adding additional square footage to the building, the basement would not create any new impacts to the surrounding neighbors due to its placement partially below grade, maintaining the existing first floor level.
- iv. The neighborhood is a mix of residential uses, including apartments and single-family and multi-family homes. Existing structures in the immediate neighborhood vary in height from one to two stories.
- v. In addition, the project approval 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 will not be detrimental.

**I. General Non-Detriment for Use Permits and Administrative Use Permits:** Pursuant to BMC Section 23.28.090.B, the Board may issue a Use Permit if it meets the findings for non-detriment. An analysis of sunlight/shadows, air, and views follows:

Sunlight/Shadow: Shadow studies submitted by the applicant document the addition's projected shadow angles and lengths at three times throughout the day during the summer and winter solstice. The studies show that the addition would create an incremental increase in shadows on two neighboring dwellings, 1609 Virginia Street and 1639 California Street, as follows:

- Two hours after sunrise on the winter solstice, shadows on the south side of the dwelling at 1639 California Street would increase and cover the left third of a living room window;
- At noon on the winter solstice shadows on the south side of the dwelling at 1639 California Street would increase and cover a dining room window, and reach the sill of a living room window;
- Two hours before sunset on the winter solstice shadows on the south side of the dwelling at 1639 California Street would increase and cover a dining room window and a kitchen window. Shadows would also reach a garage and an accessory building at 1609 Virginia Street, and a garage at 1639 California Street.
- Two hours before sunset on the summer solstice, shadows on the west side of the dwelling at 1609 Virginia Street would increase and cover a kitchen window, and shadows on the north side of the dwelling at 1609 Virginia Street would increase and cover a bedroom window, a kitchen window, and a kitchen door. Shadows would also reach a garage at 1609 Virginia Street.



Because the impacts to neighboring properties would occur on limited areas, and would only partially shade neighboring buildings for a limited time during the year, and only for a few hours of the day, the residential addition would not result in a significant loss of direct sunlight on abutting residences, and these shading impacts are not deemed detrimental.

Air: As discussed above, the addition would not increase the footprint of the dwelling, and would not further reduce setbacks. The addition is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-2 neighborhood because the alteration would not further reduce the front and rear setbacks, and would not exceed height or story limits. Therefore, there would be minimal, if any, air impacts.

Views: The addition would not result in obstruction of significant views in the neighborhood as defined in BMC Section 23.502 (Glossary). The neighborhood is generally flat and developed with one- and two-story residences that filter or obscure most views that may be available of the Berkeley hills or the Golden Gate Bridge from off-site view angles.

**J. General Plan Consistency:** The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-3 – Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy H-33 – Regional Housing Needs: Encourage housing production adequate to meet City needs and the City's share of regional housing needs.
3. 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.
4. Policy UD-17 – Design Elements: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.
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 H-12 – Transit-Oriented New Construction: Encourage construction of new medium- and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.

## 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:

- A. APPROVE ZP2021-0001 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

### Attachments:

1. Findings and Conditions
2. Project Plans, dated August 26, 2021
3. Notice of Public Hearing
4. Correspondence Received, separated into pre-ZAB meeting and post-ZAB meeting
5. Rent Stabilization Board Memo, dated June 6, 2022
6. December 9, 2021 ZAB Staff Report, and Findings and Conditions
7. Appeal Letter, dated January 10, 2022
8. April 26, 2021 Council Report, and Resolution

**Staff Planner:** Allison Riemer, [ariemer@cityofberkeley.info](mailto:ariemer@cityofberkeley.info), (510) 981-7433



Administrative Record

This attachment is 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  
BERKELEY UNIFIED SCHOOL DISTRICT BOARD ROOM,  
1231 ADDISON STREET  
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

**ZAB APPEAL: 1643-1647 CALIFORNIA STREET, USE PERMIT #ZP2021-0001**

Notice is hereby given by the City Council of the City of Berkeley that on **THURSDAY, NOVEMBER 3, 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 #ZP2021-0001 to: 1) create a new lower basement level, 2) construct a new second story, and 3) modify the existing duplex layout resulting in a 3,763 square foot duplex on an existing property.

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of **October 20, 2022**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Allison Riemer, Project Planner, (510) 981-7433, or [ariemer@cityofberkeley.info](mailto:ariemer@cityofberkeley.info). Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to [council@cityofberkeley.info](mailto:council@cityofberkeley.info) 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](mailto:clerk@cityofberkeley.info) for further information.

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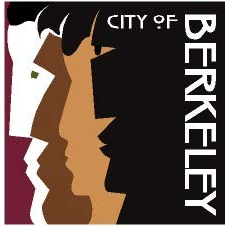
Mark Numainville, City Clerk

Mailed by: October 20, 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.*





Kate Harrison  
Vice Mayor, District 4

## REVISED AGENDA MATERIAL for Supplemental Packet 2

**Meeting Date:** October 11, 2022

**Item Number:** 22a

**Item Description:** Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102

**Submitted by:** Vice Mayor Harrison

Revised ordinance chapter from 13.110 to 13.102. Chapter 13.110 is already taken by the COVID-19 Emergency Response Ordinance.

ORDINANCE NO. -N.S.

FAIR WORKWEEK EMPLOYMENT STANDARDS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter ~~13.110~~13.102 is added to read as follows:

**CHAPTER ~~13.110~~13.102**  
**FAIR WORKWEEK EMPLOYMENT STANDARDS**

Sections:

- ~~13.110~~13.10 Purpose and Intent
- 2.010
- ~~13.110~~13.10 Definitions.
- 2.020
- ~~13.110~~13.10 Applicability.
- 2.030
- ~~13.110~~13.10 Waiver through Collective Bargaining
- 2.040
- ~~13.110~~13.10 Advance Notice of Work Schedules.
- 2.050
- ~~13.110~~13.10 Notice, Right to Decline, and Compensation for Schedule Changes.
- 2.060
- ~~13.110~~13.10 Offer of Work to Existing Employees.
- 2.070
- ~~13.110~~13.10 Right to Rest.
- 2.080
- ~~13.110~~13.10 Right to Request a Flexible Working Arrangement.
- 2.090
- ~~13.110~~13.10 Notice and Posting.
- 2.100
- ~~13.110~~13.10 Implementation.
- 2.110
- ~~13.110~~13.10 Enforcement.
- 2.120
- ~~13.110~~13.10 Retaliation Prohibited
- 2.130
- ~~13.110~~13.10 Retention of Records.
- 2.140
- ~~13.110~~13.10 City Access.
- 2.150
- ~~13.110~~13.10 No Preemption of Higher Standards.
- 2.160
- ~~13.110~~13.10 Severability.
- 2.170

**~~13.110~~13.102.010 Purpose and Intent**

This chapter shall be known and may be cited as the “Berkeley Fair Workweek Ordinance”. It is the purpose of this chapter and the policy of the City: (i) to enact and enforce fair and equitable employment scheduling practices in the City of Berkeley; (ii) Page 640



to provide the working people of Berkeley with protections that ensure employer scheduling practices do not unreasonably prevent workers from attending to their families, health, education, and other obligations; and (iii) to require Employers needing additional hours, whether temporary or permanent, to first offer those hours to current part-time Employees.

### **13.11013.102.020 Definitions**

As used in this chapter, the following terms shall have the following meanings:

- (a) "Building services" means the care and maintenance of property, including, but not limited to, janitorial services, building and grounds maintenance services, and security services.
- (b) "Calendar week" shall mean a period of seven consecutive days starting on Sunday.
- (c) "City" shall mean the City of Berkeley.
- (d) "Covered employer" shall mean an employer subject to the provisions of this chapter, as specified in Section [13.11013.102.030](#).
- (e) "Department" shall mean the City Manager's Department, as specified in Chapter 2.36, or another department or agency as the City Manager shall designate.
- (f) "Employee" shall mean any person who:
  - (1) In a calendar week performs at least two hours of work within the geographic boundaries of the City of Berkeley for an employer;
  - (2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Labor Code Section 1197 and wage orders published by the California Industrial Welfare Commission. Employees shall include learners, as defined by the California Industrial Welfare Commission; and
  - (3) Is (i) not exempt from payment of an overtime rate of compensation pursuant to Labor Code Section 510; and (ii) is not paid a monthly salary equivalent to at least forty hours per week at a rate of pay of twice the minimum wage required by Berkeley Municipal Code Section 13.99.040.
- (g) "Employer" shall mean any person, as defined in Labor Code Section 18, who directly or indirectly through any other person or employer, , employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through Title 9 of the Berkeley Municipal Code.
- (h) "Franchise" shall have the meaning in California Business and Professions Code Section 20001.
- (i) "Franchisee" shall have the meaning in California Business and Professions Code Section 20002.
- (j) "Franchisor" shall have the meaning in California Business and Professions Code Section 20003.
- (k) "Good faith" shall mean a sincere intention to deal fairly with others.
- (l) "Healthcare" shall mean either a Hospital, Medical Practitioner Office, Nursing Home, or Supportive Housing as defined in BMC Section 23F.04.10, or a facility that provides

outpatient maintenance dialysis.

(m) "Hotel" shall mean Tourist Hotel as defined in BMC Section 23F.04.10.

(n) "Manufacturing" shall mean a Manufacturing Use as defined in BMC Section 23F.04.10.

(o) "Predictability pay" shall mean wages paid to an employee, calculated on an hourly basis at the employee's regular rate of pay as that term is used in 29 U.S.C. Section 207 (e), as compensation for schedule changes made by a covered employer to an employee's schedule pursuant to Section ~~13.110~~13.102.060, in addition to any wages earned for work performed by that employee.

(p) "Restaurant" shall mean a Food Service Establishment as defined in BMC Section 23F.04.10.

(q) "Retail" shall mean a Retail Products Store as defined in BMC Section 23F.04.10.

(r) "Shift" shall mean the consecutive hours an employer requires an employee to work including employer-approved meal periods and rest periods.

(s) "Warehouse services" shall mean Warehouse Based Non-Store Retail as defined in BMC Section 23F.04.10.

(t) "Work schedule" shall mean all of an employee's shifts, including specific start and end times for each shift, during a calendar week.

### ~~13.110~~13.102.030 Applicability

(a) This chapter shall apply to: the City of Berkeley as an employer, and any employer in the City of Berkeley that is:

- (1) primarily engaged in the building services, healthcare, hotel, manufacturing, retail, or warehouse services industries, and employs 56 or more employees globally; or
- (2) primarily engaged in the restaurant industry, and employs 10 or more employees in the city of Berkeley and employs 100 or more globally; or
- (3) is a franchisee primarily engaged in the retail or restaurant industries employing 10 or more employees in the city of Berkeley and is associated with a network of franchises with franchisees employing in the aggregate 100 or more employees globally.

(b) This chapter does not apply to a not-for-profit corporation organized under Section 501 of the United States Internal Revenue Code unless it employs 100 or more employees globally.

(c) In determining the number of employees performing work for an covered employer during a given week, all employees performing work for the covered employer for compensation on a full-time, part-time, or temporary basis, at any location, shall be counted, including employees made available to work through the services of a temporary services or staffing agency or similar entity.

(d) For the purposes of determining whether a nonfranchisee entity is a covered employer as defined by this chapter, separate entities that form an integrated enterprise shall be considered a single employer. Within one year of the effective date of the ordinance, the City Manager shall promulgate rules pursuant to the authority provided in

Section ~~13.110~~13.102.110 to implement this subsection clarifying factors to be considered in determining what constitutes an integrated enterprise. .

(e) For the City of Berkeley as an employer, this chapter shall become operative with respect to non-represented employees one year after the effective date of the ordinance. Subject to a waiver under Section ~~13.110~~13.102.040, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative upon the commencement of a bona fide successor collective bargaining agreement or one year after the effective date of the ordinance, whichever is earlier.

(f) For all other employers, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative on the commencement of a bona fide successor collective bargaining agreement, subject to a waiver pursuant to Section ~~13.110~~13.102.040.

(g) For all other employers not subject to a collective bargaining agreement, this chapter shall become operative one year after the effective date of the ordinance.

#### ~~13.110~~13.102.040 Waiver through Collective Bargaining

The requirements of all or of specific portions of this chapter may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

#### ~~13.110~~13.102.050 Advance Notice of Work Schedules.

(a) Initial Estimate of Minimum Hours. An employer shall provide each employee with a good faith estimate in writing of the employee's work schedule. The employee may submit a written request to modify the estimated work schedule, and the covered employer in its sole discretion may accept or reject the request and shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two weeks' notice of their work schedules by doing one of the following:

(1) posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees; or

(2) transmitting the work schedule by electronic means, so long as all employees are given access to the electronic schedule at the workplace. For new employees, a covered employer shall provide the new employee prior to or on their first day of employment with an initial work schedule. Thereafter, the covered employer shall include the new employee in an existing schedule with other employees.

(c) An Employee who is a victim of domestic violence or sexual violence may request that the Employee's Work Schedule not be posted or transmitted to other employees. An oral or written request shall be sufficient and implemented immediately and is

sufficient until the Employee gives written permission to post the Employee's schedule. An Employer may request a written statement from the Employee that states that the Employee is a victim of domestic violence or sexual violence. The written statement shall constitute the documentation needed for the Employer to implement the request. The Employer may not require a written statement more than once in a calendar year from any Covered Employee for this purpose.

### **13.11013.102.060 Schedule Changes.**

- (a) Notice. A covered employer shall provide an employee written notice of any change to the employee's posted or transmitted work schedule within 24 hours of a schedule change. This notice requirement shall not apply to any schedule changes the employee initiates.
- (b) Right to Decline. Subject to the exceptions in subsections (d) and (e) of this section, an employee has the right to decline any previously unscheduled hours that the covered employer adds to the employee's schedule, and for which the employee has been provided advance notice of less than 14 days before the first day of any new schedule.
- (c) Predictability Pay for Schedule Changes. Subject to the exceptions in subsections (d) and (e) of this section, a covered employer shall provide an employee with the following compensation per shift for each previously scheduled shift that the covered employer adds or subtracts hours, moves to another date or time, cancels, or each previously unscheduled shift that the covered employer adds to the employee's schedule:
- (1) with less than 14 days notice, but 24 hours or more notice to the employee: one hour of predictability pay;
  - (2) with less than 24 hours to the employee,
    - (i) When hours are cancelled or reduced, four hours or the number of cancelled or reduced hours in the employee's scheduled shift, whichever is less;
    - (ii) For additions and all other changes, one hour of predictability pay. The compensation required by this subsection shall be in addition to the employee's regular pay for working such shift.
- (c) Scheduling Exceptions. The requirements of this section shall not apply under any of the following circumstances:
- (1) Mutually agreed-upon work shift swaps or coverage arrangements among employees;
  - (2) Employee initiated voluntary shift modifications, such as voluntary requests to leave a scheduled shift prior to the end of the shift or to use sick leave, vacation leave, or other policies offered by the Employer. This paragraph shall apply only to the employee initiating the voluntary shift modification; or
  - (3) To accommodate the following transitions in shifts:

- (i) If an employee works no more than thirty minutes past the end of a scheduled shift to complete service to a customer, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.
  - (ii) An employee begins or ends their scheduled shift no more than ten minutes prior to or after the scheduled shift, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.
- (d) Operational Exceptions. The requirements of this section shall not apply under any of the following circumstances:
- (1) Operations cannot begin or continue due to threats to covered employers, employees or property, or when civil authorities recommend that work not begin or continue;
  - (2) Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system;
  - (3) Operations cannot begin or continue due to: acts of nature (including but not limited to flood, fire, explosion, earthquake, tidal wave, drought), pandemic, war, civil unrest, strikes, or other cause not within the covered employer's control;
  - (4) When, in manufacturing, events outside of the control of the manufacturer result in a reduction in the need for Covered Employees, including, but not limited to, when a customer requests the manufacturer to delay production or there is a delay in the receipt of raw materials or component parts needed for production; or
  - (5) With regard to healthcare employers, in (i) any declared national, State, or municipal disaster or other catastrophic event, or any implementation of an Employer's disaster plan, or incident causing a hospital to activate its Emergency Operations Plan, that will substantially affect or increase the need for healthcare services; (ii) any circumstance in which patient care needs require specialized skills through the completion of a procedure; or (iii) any unexpected substantial increase in demand for healthcare due to large public events, severe weather, violence, or other circumstances beyond the Employer's control.
- (e) Nothing in this section shall be construed to prohibit a covered employer from providing greater advance notice of employee's work schedules and/or changes in schedules than that required by this section.

**13.11013.102.070 Offer of Work to Existing Employees.**

(a) Subject to the limitations in this chapter, before hiring new employees, including hiring through the use of temporary services or staffing agencies, a covered employer shall first offer additional hours of work to existing part-time employee(s) who have worked on behalf of the employer for more than two weeks, if the part-time employee(s) are qualified to do the additional work, as reasonably and in good faith determined by the covered employer. This section shall not be construed to require any employer to offer employees work hours paid at a premium rate under Labor Code Section 510 nor to prohibit any employer from offering such work hours. .

(b) A covered employer has discretion to distribute the additional work hours among part-time employees consistent with this section; provided, that: (1) the employer's system for distribution of hours must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity or expression, disability, age, marital or familial status, nor on the basis of family caregiving responsibilities; and (2) the employer may not distribute hours in a manner intended to avoid an increase in the number of employees working 30 or more hours per week, or with regard to the City of Berkeley, to avoid a granting of any benefits that an employee earns based on hours worked.

(c) A part-time employee may, but is not required to, accept the covered employer's offer of additional work under this section.

(1) A part-time employee shall have 24 hours to accept an offer of additional hours of work under this section, after which time the covered employer may hire new employees to work the additional hours.

(2) The 24 hour period referred to in this subsection begins either when the employee receives the written offer of additional hours, or when the covered employer posts the offer of additional hours as described in subsection (d) of this section, whichever is sooner. A part-time employee who wishes to accept the additional hours must do so in writing.

(d) When this section requires a covered employer to offer additional hours to existing part-time employees, the covered employer shall make the offer either in writing or by posting the offer in a conspicuous location in the workplace or electronically where notices to employees are customarily posted.

#### **13.11013.102.080 Right to Rest.**

(a) An employee has the right to decline work hours that occur:

- (1) Less than 11 hours after the end of the previous day's shift; or
- (2) During the 11 hours following the end of a shift that spanned two days.

(b) An employee who agrees in writing to work hours described in this section shall be compensated at one and one-half times the employee's regular rate of pay for any hours worked less than 11 hours following the end of a previous shift.

#### **13.11013.102.090 Right to Request a Flexible Working Arrangement.**

An employee has the right to request a modified work schedule, including but not limited to additional shifts or hours; changes in days of work or start and/or end times for the shift; permission to exchange shifts with other employees; limitations on availability; part-time employment; job sharing arrangements; reduction or change in work duties; or part-year employment. Notwithstanding any obligations under Section ~~13.110~~13.102.060, an employer may accept, modify, or decline the employee's request. A covered employer shall not retaliate against an employee for exercising their rights under this section or the rights outlined in the Berkeley Family Friendly and Environment Friendly Workplace Ordinance, Berkeley Municipal Code Chapter 13.101.

#### **~~13.110~~13.102.100 Notice and Posting.**

(a) The Department shall publish and make available to covered employers, in English and other languages as provided in any implementing regulations, a notice suitable for posting by covered employers in the workplace informing employees of their rights under this chapter.

(b) Each covered employer shall give written notification to each current employee and to each new employee at time of hire of their rights under this chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all employees. Every covered employer shall also provide each employee at the time of hire with the covered employer's name, address, and telephone number in writing. Failure to post such notice shall render the covered employer subject to administrative citation, pursuant to the provisions of this chapter. The Department is authorized to prepare sample notices and covered employer use of such notices shall constitute compliance with this subsection.

#### **~~13.110~~13.102.110 Implementation.**

(a) The Department shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the City shall have the force and effect of law and may be relied on by covered employers, employees and other parties to determine their rights and responsibilities under this chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this chapter, including supplementary procedures for helping to inform employees of their rights under this chapter, for monitoring covered employer compliance with this chapter, and for providing administrative hearings to determine whether a covered employer has violated the requirements of this chapter.

(b) Reporting Violations. An aggrieved employee may report to the Department in writing any suspected violation of this chapter. The Department shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee reporting the violation; provided, however, that with the authorization of such employee, the Department may disclose their name and identifying information as necessary to enforce this chapter or other employee protection laws.

(c) Investigation. The Department may investigate any possible violations of this chapter by a covered employer. The Department shall have the authority to inspect workplaces, interview persons and subpoena records or other items relevant to the enforcement of this chapter.

(d) Informal Resolution. If the Department elects to investigate a complaint, the City shall make every effort to resolve complaints informally and in a timely manner. The City's investigation and pursuit of informal resolution does not limit or act as a prerequisite for an employee's right to bring a private action against a covered employer as provided in this chapter.

**~~13.110~~13.102.120 Enforcement.**

(a) Enforcement by City. Where prompt compliance with the provisions of this chapter is not forthcoming, the Department may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

The Department may issue an administrative citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this chapter violated, as specified below:

- (1) A fine may be assessed for retaliation by a covered employer against an employee for exercising rights protected under this chapter. The fine shall be \$1,000 for each employee retaliated against.
- (2) A fine of \$500 may be assessed for any of the following violations of this chapter:
  - (i) Failure to provide notice of employees' rights under this chapter.
  - (ii) Failure to timely provide an initial work schedule or to timely update work schedules following changes.
  - (iii) Failure to provide predictability pay for schedule changes with less than 24 hours advance notice.
  - (iv) Failure to offer work to existing employees before hiring new employees or temporary staff or to award work to a qualified employee.
  - (v) Failure to maintain payroll records for the minimum period of time as provided in this chapter.
  - (vi) Failure to allow the Department access to payroll records.
- (3) A fine equal to the total amount of appropriate remedies, pursuant to subsection (c) of this section. Any and all money collected in this way that is the rightful property of an employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the Department in a prompt manner.

(f) City Access. Each covered employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.



(g) Any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to Employees, and reasonable attorneys' fees and costs.

(i) This Section shall not be construed to limit an Employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

(j) The remedies for violation of this chapter include but are not limited to:

1. Reinstatement, the payment of predictability pay unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of \$50 to each employee whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this chapter or State law.

2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

3. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.

4. If a repeated violation of this chapter has been finally determined in a period from July 1 to June 30 of the following year, the Department may require the employer to pay an additional sum as a civil penalty in the amount of \$50 to the City for each employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or State law.

(k) The remedies, penalties and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this chapter. Actions taken pursuant to this chapter shall not prejudice or adversely affect

any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.

(l) No criminal penalties shall attach for any violation of this chapter, nor shall this chapter give rise to any cause of action for damages against the City.

#### **13.11013.102.130 Retaliation Prohibited.**

An employer shall not discharge, reduce the compensation of, discriminate against, or take any adverse employment action against an employee, including discipline, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment, reduction of hours or denial of additional hours, informing another employer that the person has engaged in activities protected by this chapter, or reporting or threatening to report the actual or suspected citizenship or immigration status of an employee, former employee or family member of an employee to a Federal, State or local agency, for making a complaint to the Department, participating in any of the Department's proceedings, using any civil remedies to enforce their rights, or otherwise asserting their rights under this chapter. Within 120 days of an employer being notified of such activity, it shall be unlawful for the employer to discharge any employee who engaged in such activity unless the employer has clear and convincing evidence of just cause for such discharge.

#### **13.11013.102.140 Retention of Records.**

Each employer shall maintain for at least three years for each employee a record of their name, hours worked, pay rate, initial posted schedule and all subsequent changes to that schedule, consent to work hours where such consent is required by this chapter, and documentation of the time and method of offering additional hours of work to existing staff. Each employer shall provide each employee a copy of the records relating to such employee upon the employee's reasonable request.

#### **13.11013.102.150 City Access.**

Each employer shall permit access to work sites and relevant records for authorized Department representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

#### **13.11013.102.160 No Preemption of Higher Standards.**

The purpose of this chapter is to ensure minimum labor standards. This chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This chapter shall not be construed to limit a discharged employee's right to bring a common law cause of action for wrongful termination.

#### **13.11013.102.170 Severability.**

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

DRAFT

ORDINANCE NO. -N.S.

## FAIR WORKWEEK EMPLOYMENT STANDARDS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.110 is added to read as follows:

**CHAPTER 13.110  
FAIR WORKWEEK EMPLOYMENT STANDARDS**

Sections:

- 13.110.010 Purpose and Intent**
- 13.110.020 Definitions.**
- 13.110.030 Applicability.**
- 13.110.040 Waiver through Collective Bargaining**
- 13.110.050 Advance Notice of Work Schedules.**
- 13.110.060 Notice, Right to Decline, and Compensation for Schedule Changes.**
- 13.110.070 Offer of Work to Existing Employees.**
- 13.110.080 Right to Rest.**
- 13.110.090 Right to Request a Flexible Working Arrangement.**
- 13.110.100 Notice and Posting.**
- 13.110.110 Implementation.**
- 13.110.120 Enforcement.**
- 13.110.130 Retaliation Prohibited**
- 13.110.140 Retention of Records.**
- 13.110.150 City Access.**
- 13.110.160 No Preemption of Higher Standards.**
- 13.110.170 Severability.**

**13.110.010 Purpose and Intent**

This chapter shall be known and may be cited as the “Berkeley Fair Workweek Ordinance”. It is the purpose of this chapter and the policy of the City: (i) to enact and enforce fair and equitable employment scheduling practices in the City of Berkeley; (ii) to provide the working people of Berkeley with protections that ensure employer scheduling practices do not unreasonably prevent workers from attending to their families, health, education, and other obligations; and (iii) to require Employers needing additional hours, whether temporary or permanent, to first offer those hours to current part-time Employees.

**13.110.020 Definitions**

As used in this chapter, the following terms shall have the following meanings:

- (a) "Building services" means the care and maintenance of property, including, but not limited to, janitorial services, building and grounds maintenance services, and security services.
- (b) "Calendar week" shall mean a period of seven consecutive days starting on Sunday.
- (c) "City" shall mean the City of Berkeley.
- (d) "Covered employer" shall mean an employer subject to the provisions of this chapter, as specified in Section 13.110.030.
- (e) "Department" shall mean the City Manager's Department, as specified in Chapter 2.36, or another department or agency as the City Manager shall designate.
- (f) "Employee" shall mean any person who:
  - (1) In a calendar week performs at least two hours of work within the geographic boundaries of the City of Berkeley for an employer;
  - (2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Labor Code Section 1197 and wage orders published by the California Industrial Welfare Commission. Employees shall include learners, as defined by the California Industrial Welfare Commission; and
  - (3) Is (i) not exempt from payment of an overtime rate of compensation pursuant to Labor Code Section 510; and (ii) is not paid a monthly salary equivalent to at least forty hours per week at a rate of pay of twice the minimum wage required by Berkeley Municipal Code Section 13.99.040.
- (g) "Employer" shall mean any person, as defined in Labor Code Section 18, who directly or indirectly through any other person or employer, , employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through Title 9 of the Berkeley Municipal Code.
- (h) "Franchise" shall have the meaning in California Business and Professions Code Section 20001.
- (i) "Franchisee" shall have the meaning in California Business and Professions Code Section 20002.
- (j) "Franchisor" shall have the meaning in California Business and Professions Code Section 20003.
- (k) "Good faith" shall mean a sincere intention to deal fairly with others.
- (l) "Healthcare" shall mean either a Hospital, Medical Practitioner Office, Nursing Home, or Supportive Housing as defined in BMC Section 23F.04.10, or a facility that provides outpatient maintenance dialysis.
- (m) "Hotel" shall mean Tourist Hotel as defined in BMC Section 23F.04.10.
- (n) "Manufacturing" shall mean a Manufacturing Use as defined in BMC Section 23F.04.10.

- (o) "Predictability pay" shall mean wages paid to an employee, calculated on an hourly basis at the employee's regular rate of pay as that term is used in 29 U.S.C. Section 207 (e), as compensation for schedule changes made by a covered employer to an employee's schedule pursuant to Section 13.110.060, in addition to any wages earned for work performed by that employee.
- (p) "Restaurant" shall mean a Food Service Establishment as defined in BMC Section 23F.04.10.
- (q) "Retail" shall mean a Retail Products Store as defined in BMC Section 23F.04.10.
- (r) "Shift" shall mean the consecutive hours an employer requires an employee to work including employer-approved meal periods and rest periods.
- (s) "Warehouse services" shall mean Warehouse Based Non-Store Retail as defined in BMC Section 23F.04.10.
- (t) "Work schedule" shall mean all of an employee's shifts, including specific start and end times for each shift, during a calendar week.

### **13.110.030 Applicability**

- (a) This chapter shall apply to: the City of Berkeley as an employer, and any employer in the City of Berkeley that is:
- (1) primarily engaged in the building services, healthcare, hotel, manufacturing, retail, or warehouse services industries, and employs 56 or more employees globally; or
  - (2) primarily engaged in the restaurant industry, and employs 10 or more employees in the city of Berkeley and employs 100 or more globally; or
  - (3) is a franchisee primarily engaged in the retail or restaurant industries employing 10 or more employees in the city of Berkeley and is associated with a network of franchises with franchisees employing in the aggregate 100 or more employees globally.
- (b) This chapter does not apply to a not-for-profit corporation organized under Section 501 of the United States Internal Revenue Code unless it employs 100 or more employees globally.
- (c) In determining the number of employees performing work for an covered employer during a given week, all employees performing work for the covered employer for compensation on a full-time, part-time, or temporary basis, at any location, shall be counted, including employees made available to work through the services of a temporary services or staffing agency or similar entity.
- (d) For the purposes of determining whether a nonfranchisee entity is a covered employer as defined by this chapter, separate entities that form an integrated enterprise shall be considered a single employer. Within one year of the effective date of the ordinance, the City Manager shall promulgate rules pursuant to the authority provided in

Section 13.110.110 to implement this subsection clarifying factors to be considered in determining what constitutes an integrated enterprise. .

(e) For the City of Berkeley as an employer, this chapter shall become operative with respect to non-represented employees one year after the effective date of the ordinance. Subject to a waiver under Section 13.110.040, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative upon the commencement of a bona fide successor collective bargaining agreement or one year after the effective date of the ordinance, whichever is earlier.

(f) For all other employers, with respect to employees subject to a collective bargaining agreement, this chapter shall become operative on the commencement of a bona fide successor collective bargaining agreement, subject to a waiver pursuant to Section 13.110.040.

(g) For all other employers not subject to a collective bargaining agreement, this chapter shall become operative one year after the effective date of the ordinance.

#### **13.110.040 Waiver through Collective Bargaining**

The requirements of all or of specific portions of this chapter may be waived in a bona fide collective bargaining agreement, but only if the waiver is set forth explicitly in such agreement in clear and unambiguous terms.

#### **13.110.050 Advance Notice of Work Schedules.**

(a) Initial Estimate of Minimum Hours. An employer shall provide each employee with a good faith estimate in writing of the employee's work schedule. The employee may submit a written request to modify the estimated work schedule, and the covered employer in its sole discretion may accept or reject the request and shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two weeks' notice of their work schedules by doing one of the following:

(1) posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees; or

(2) transmitting the work schedule by electronic means, so long as all employees are given access to the electronic schedule at the workplace. For new employees, a covered employer shall provide the new employee prior to or on their first day of employment with an initial work schedule. Thereafter, the covered employer shall include the new employee in an existing schedule with other employees.

(c) An Employee who is a victim of domestic violence or sexual violence may request that the Employee's Work Schedule not be posted or transmitted to other employees. An oral or written request shall be sufficient and implemented immediately and is

sufficient until the Employee gives written permission to post the Employee's schedule. An Employer may request a written statement from the Employee that states that the Employee is a victim of domestic violence or sexual violence. The written statement shall constitute the documentation needed for the Employer to implement the request. The Employer may not require a written statement more than once in a calendar year from any Covered Employee for this purpose.

### **13.110.060 Schedule Changes.**

(a) Notice. A covered employer shall provide an employee written notice of any change to the employee's posted or transmitted work schedule within 24 hours of a schedule change. This notice requirement shall not apply to any schedule changes the employee initiates.

(b) Right to Decline. Subject to the exceptions in subsections (d) and (e) of this section, an employee has the right to decline any previously unscheduled hours that the covered employer adds to the employee's schedule, and for which the employee has been provided advance notice of less than 14 days before the first day of any new schedule.

(c) Predictability Pay for Schedule Changes. Subject to the exceptions in subsections (d) and (e) of this section, a covered employer shall provide an employee with the following compensation per shift for each previously scheduled shift that the covered employer adds or subtracts hours, moves to another date or time, cancels, or each previously unscheduled shift that the covered employer adds to the employee's schedule:

(1) with less than 14 days notice, but 24 hours or more notice to the employee: one hour of predictability pay;

(2) with less than 24 hours to the employee,

(i) When hours are cancelled or reduced, four hours or the number of cancelled or reduced hours in the employee's scheduled shift, whichever is less;

(ii) For additions and all other changes, one hour of predictability pay. The compensation required by this subsection shall be in addition to the employee's regular pay for working such shift.

(c) Scheduling Exceptions. The requirements of this section shall not apply under any of the following circumstances:

(1) Mutually agreed-upon work shift swaps or coverage arrangements among employees;

(2) Employee initiated voluntary shift modifications, such as voluntary requests to leave a scheduled shift prior to the end of the shift or to use sick leave, vacation leave, or other policies offered by the Employer. This paragraph shall apply only to the employee initiating the voluntary shift modification; or

(3) To accommodate the following transitions in shifts:



- (i) If an employee works no more than thirty minutes past the end of a scheduled shift to complete service to a customer, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.
  - (ii) An employee begins or ends their scheduled shift no more than ten minutes prior to or after the scheduled shift, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.
- (d) Operational Exceptions. The requirements of this section shall not apply under any of the following circumstances:
- (1) Operations cannot begin or continue due to threats to covered employers, employees or property, or when civil authorities recommend that work not begin or continue;
  - (2) Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system;
  - (3) Operations cannot begin or continue due to: acts of nature (including but not limited to flood, fire, explosion, earthquake, tidal wave, drought), pandemic, war, civil unrest, strikes, or other cause not within the covered employer's control;
  - (4) When, in manufacturing, events outside of the control of the manufacturer result in a reduction in the need for Covered Employees, including, but not limited to, when a customer requests the manufacturer to delay production or there is a delay in the receipt of raw materials or component parts needed for production; or
  - (5) With regard to healthcare employers, in (i) any declared national, State, or municipal disaster or other catastrophic event, or any implementation of an Employer's disaster plan, or incident causing a hospital to activate its Emergency Operations Plan, that will substantially affect or increase the need for healthcare services; (ii) any circumstance in which patient care needs require specialized skills through the completion of a procedure; or (iii) any unexpected substantial increase in demand for healthcare due to large public events, severe weather, violence, or other circumstances beyond the Employer's control.
- (e) Nothing in this section shall be construed to prohibit a covered employer from providing greater advance notice of employee's work schedules and/or changes in schedules than that required by this section.

**13.110.070 Offer of Work to Existing Employees.**

(a) Subject to the limitations in this chapter, before hiring new employees, including hiring through the use of temporary services or staffing agencies, a covered employer shall first offer additional hours of work to existing part-time employee(s) who have worked on behalf of the employer for more than two weeks, if the part-time employee(s) are qualified to do the additional work, as reasonably and in good faith determined by the covered employer. This section shall not be construed to require any employer to offer employees work hours paid at a premium rate under Labor Code Section 510 nor to prohibit any employer from offering such work hours. .

(b) A covered employer has discretion to distribute the additional work hours among part-time employees consistent with this section; provided, that: (1) the employer's system for distribution of hours must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity or expression, disability, age, marital or familial status, nor on the basis of family caregiving responsibilities; and (2) the employer may not distribute hours in a manner intended to avoid an increase in the number of employees working 30 or more hours per week, or with regard to the City of Berkeley, to avoid a granting of any benefits that an employee earns based on hours worked.

(c) A part-time employee may, but is not required to, accept the covered employer's offer of additional work under this section.

(1) A part-time employee shall have 24 hours to accept an offer of additional hours of work under this section, after which time the covered employer may hire new employees to work the additional hours.

(2) The 24 hour period referred to in this subsection begins either when the employee receives the written offer of additional hours, or when the covered employer posts the offer of additional hours as described in subsection (d) of this section, whichever is sooner. A part-time employee who wishes to accept the additional hours must do so in writing.

(d) When this section requires a covered employer to offer additional hours to existing part-time employees, the covered employer shall make the offer either in writing or by posting the offer in a conspicuous location in the workplace or electronically where notices to employees are customarily posted.

### **13.110.080 Right to Rest.**

(a) An employee has the right to decline work hours that occur:

(1) Less than 11 hours after the end of the previous day's shift; or

(2) During the 11 hours following the end of a shift that spanned two days.

(b) An employee who agrees in writing to work hours described in this section shall be compensated at one and one-half times the employee's regular rate of pay for any hours worked less than 11 hours following the end of a previous shift.

### **13.110.090 Right to Request a Flexible Working Arrangement.**

An employee has the right to request a modified work schedule, including but not limited to additional shifts or hours; changes in days of work or start and/or end times for the shift; permission to exchange shifts with other employees; limitations on availability; part-time employment; job sharing arrangements; reduction or change in work duties; or part-year employment. Notwithstanding any obligations under Section 13.110.060, an employer may accept, modify, or decline the employee's request. A covered employer shall not retaliate against an employee for exercising their rights under this section or the rights outlined in the Berkeley Family Friendly and Environment Friendly Workplace Ordinance, Berkeley Municipal Code Chapter 13.101.

### **13.110.100 Notice and Posting.**

(a) The Department shall publish and make available to covered employers, in English and other languages as provided in any implementing regulations, a notice suitable for posting by covered employers in the workplace informing employees of their rights under this chapter.

(b) Each covered employer shall give written notification to each current employee and to each new employee at time of hire of their rights under this chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all employees. Every covered employer shall also provide each employee at the time of hire with the covered employer's name, address, and telephone number in writing. Failure to post such notice shall render the covered employer subject to administrative citation, pursuant to the provisions of this chapter. The Department is authorized to prepare sample notices and covered employer use of such notices shall constitute compliance with this subsection.

### **13.110.110 Implementation.**

(a) The Department shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the City shall have the force and effect of law and may be relied on by covered employers, employees and other parties to determine their rights and responsibilities under this chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this chapter, including supplementary procedures for helping to inform employees of their rights under this chapter, for monitoring covered employer compliance with this chapter, and for providing administrative hearings to determine whether a covered employer has violated the requirements of this chapter.

(b) Reporting Violations. An aggrieved employee may report to the Department in writing any suspected violation of this chapter. The Department shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee reporting the violation; provided, however, that with the authorization of such employee, the Department may disclose their name and identifying information as necessary to enforce this chapter or other employee protection laws.

(c) Investigation. The Department may investigate any possible violations of this chapter by a covered employer. The Department shall have the authority to inspect workplaces, interview persons and subpoena records or other items relevant to the enforcement of this chapter.

(d) Informal Resolution. If the Department elects to investigate a complaint, the City shall make every effort to resolve complaints informally and in a timely manner. The City's investigation and pursuit of informal resolution does not limit or act as a prerequisite for an employee's right to bring a private action against a covered employer as provided in this chapter.

### **13.110.120 Enforcement.**

(a) Enforcement by City. Where prompt compliance with the provisions of this chapter is not forthcoming, the Department may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

The Department may issue an administrative citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this chapter violated, as specified below:

(1) A fine may be assessed for retaliation by a covered employer against an employee for exercising rights protected under this chapter. The fine shall be \$1,000 for each employee retaliated against.

(2) A fine of \$500 may be assessed for any of the following violations of this chapter:

(i) Failure to provide notice of employees' rights under this chapter.

(ii) Failure to timely provide an initial work schedule or to timely update work schedules following changes.

(iii) Failure to provide predictability pay for schedule changes with less than 24 hours advance notice.

(iv) Failure to offer work to existing employees before hiring new employees or temporary staff or to award work to a qualified employee.

(v) Failure to maintain payroll records for the minimum period of time as provided in this chapter.

(vi) Failure to allow the Department access to payroll records.

(3) A fine equal to the total amount of appropriate remedies, pursuant to subsection (c) of this section. Any and all money collected in this way that is the rightful property of an employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the Department in a prompt manner.

(f) City Access. Each covered employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

(g) Any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to Employees, and reasonable attorneys' fees and costs.

(i) This Section shall not be construed to limit an Employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

(j) The remedies for violation of this chapter include but are not limited to:

1. Reinstatement, the payment of predictability pay unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of \$50 to each employee whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this chapter or State law.

2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

3. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.

4. If a repeated violation of this chapter has been finally determined in a period from July 1 to June 30 of the following year, the Department may require the employer to pay an additional sum as a civil penalty in the amount of \$50 to the City for each employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or State law.

(k) The remedies, penalties and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this chapter. Actions taken pursuant to this chapter shall not prejudice or adversely affect

any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.

(l) No criminal penalties shall attach for any violation of this chapter, nor shall this chapter give rise to any cause of action for damages against the City.

#### **13.110.130 Retaliation Prohibited.**

An employer shall not discharge, reduce the compensation of, discriminate against, or take any adverse employment action against an employee, including discipline, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment, reduction of hours or denial of additional hours, informing another employer that the person has engaged in activities protected by this chapter, or reporting or threatening to report the actual or suspected citizenship or immigration status of an employee, former employee or family member of an employee to a Federal, State or local agency, for making a complaint to the Department, participating in any of the Department's proceedings, using any civil remedies to enforce their rights, or otherwise asserting their rights under this chapter. Within 120 days of an employer being notified of such activity, it shall be unlawful for the employer to discharge any employee who engaged in such activity unless the employer has clear and convincing evidence of just cause for such discharge.

#### **13.110.140 Retention of Records.**

Each employer shall maintain for at least three years for each employee a record of their name, hours worked, pay rate, initial posted schedule and all subsequent changes to that schedule, consent to work hours where such consent is required by this chapter, and documentation of the time and method of offering additional hours of work to existing staff. Each employer shall provide each employee a copy of the records relating to such employee upon the employee's reasonable request.

#### **13.110.150 City Access.**

Each employer shall permit access to work sites and relevant records for authorized Department representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

#### **13.110.160 No Preemption of Higher Standards.**

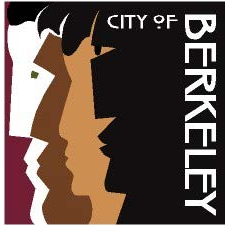
The purpose of this chapter is to ensure minimum labor standards. This chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This chapter shall not be construed to limit a discharged employee's right to bring a common law cause of action for wrongful termination.

#### **13.110.170 Severability.**

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

DRAFT



Kate Harrison  
Vice Mayor, District 4

## **SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** April 12, 2022

**Item #:** 40a.

**Item Description:** Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.110

**Submitted by:** Vice Mayor Harrison

### **Recommendation:**

1. Delay Council consideration of the Fair Workweek Ordinance to a date certain: the May 24, 2022 Council meeting, to provide HHCS staff with additional time to consider staffing needs with regard to enforcement.
2. Submit to the June 2022 Budget Process of approximately \$104,863 in General Funds with additional benefits to hire another Community Development Project Coordinator to assist with enforcement of this ordinance and other labor laws and regulations.

### **Background:**

Vice Mayor Harrison originally submitted this ordinance to the Labor Commission in 2018. Due Council consideration and enactment of this ordinance continues to be a top priority for workers within across the city, including within the City Departments.

While the pandemic has been extremely challenging for businesses, workers have also suffered greatly. Indeed, the fight for worker rights has received renewed attention during the pandemic and following high profile unionization efforts at Starbucks and Amazon. It is in the public interest for the City of Berkeley to finish the work its started in 2018 and finally stand in solidarity with part-time workers whose schedules are precarious and uncertain. The proposed Fair Work Week Ordinance, modelled on ordinances in neighboring cities and those across the nation, would bring predictability and added compensation to part-time workers.

Vice Mayor Harrison's office respectfully disagrees that this ordinance should be referred to a Council Policy Committee for up to another 120 days. This ordinance was already duly considered by the Ad Hoc Subcommittee on Paid Family Leave and Fair Work Week in 2018. In addition, the Labor Commission considered the ordinance



closely for nearly four years and submitted its updated version of the ordinance for Council action.

In consulting with the Deputy City Manager and the Director of the Health, Housing & Community Services Department, it is prudent to delay consideration of the ordinance for one month to the May 24, 2022 Council meeting to provide staff with additional time to consider enforcement and staffing needs to effectively implement the ordinance. This compromise avoids further and unnecessary delays and provides workers and the community with timely consideration and possible action.

This supplemental also includes an initial budget referral to hire an additional Community Development Project Coordinator to assist with enforcement of this ordinance and other labor laws and regulations.

NBER WORKING PAPER SERIES

THE EFFECTS OF THE EMERYVILLE FAIR WORKWEEK ORDINANCE ON  
THE DAILY LIVES OF LOW-WAGE WORKERS AND THEIR FAMILIES

Elizabeth Ananat  
Anna Gassman-Pines  
John Fitz-Henley II

Working Paper 29792  
<http://www.nber.org/papers/w29792>

NATIONAL BUREAU OF ECONOMIC RESEARCH  
1050 Massachusetts Avenue  
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The Effects of the Emeryville Fair Workweek Ordinance on the Daily Lives of Low-Wage Workers and their Families

Elizabeth Ananat, Anna Gassman-Pines, and John Fitz-Henley II

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**ABSTRACT**

Emeryville, CA's Fair Workweek Ordinance (FWO) aimed to reduce service workers' schedule unpredictability by requiring large retail and food service employers to provide advanced notice of schedules and to compensate workers for last-minute schedule changes. From a 1-in-6 sample of Emeryville retail and food service workers with young children (58 percent working in regulated businesses at baseline, the rest in the same industries in firms below the size cutoff for regulation), this study gathered daily reports of work schedule unpredictability and worker and family well-being over three waves before and after FWO implementation (N=6,059 observations). The FWO decreased working parents' schedule unpredictability relative to those in similar jobs at unregulated establishments. The FWO also decreased parents' days worked while increasing hours per work day, leaving total hours roughly unchanged. Finally, parent well-being improved, with significant declines in sleep difficulty.

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Even prior to the COVID-19 pandemic, low-income families were grappling with a work landscape that had changed dramatically over the last half century. Pressures of globalization and trade, and automation, led to job destruction in many industries, particularly those such as manufacturing that in the past led to stability for less-educated workers. In their place came service work, with lower wages and more unstable employment and hours (Autor, Dorn et al. 2013). At the same time, earnings volatility increased across socio-economic levels, most markedly among lower-income people (Gottschalk and Moffitt 2009, Dynan, Elmendorf et al. 2012, Morduch and Schneider 2017). These features of work left families with high and increasing levels of instability and unpredictability in work and earnings.

Even among stably employed service-sector workers, working parents faced additional forms of uncertainty. Managerial innovations have changed the daily operations of retail and food service firms such that service workers experience great daily uncertainty in both pay and hours. For example, the managerial tactic of “on-call scheduling,” in which employers facing variable customer demand minimize labor costs by requiring workers to be available for work but not compensating them for their availability if they are not needed, introduces significant unpredictability into workers’ days. By increasing uncertainty, on-call scheduling practices, in addition to last-minute schedule changes and shift cancellations, may increase parents’ difficulties in balancing work and family demands. That type of schedule unpredictability has been shown to be very common among low-wage workers (Lambert, Fugiel et al. 2014, Schneider and Harknett 2019, Ananat and Gassman-Pines 2021). Previous work has also established that, conditional on family fixed effects, days with schedule unpredictability lead to worse worker health than days in which work schedules go as expected (Ananat and Gassman-Pines 2021).

Partially in response to concerns about the harms to workers and families from schedule unpredictability, in the last 10 years governments at various levels across the United States have begun considering new regulations to limit unpredictability and compensate workers when it occurs. This paper, based on data collected prior to the pandemic, builds on the emerging research on the effects of such policy changes by examining the effects of the 2017 Fair Workweek Ordinance (FWO) in Emeryville,

CA, on working parents' work schedules, and worker and family well-being. While the context of low-wage work has shifted in the wake of the pandemic, understanding the challenges families were facing prior to its onset can help us understand how to restructure employment policies going forward.

We focus on a highly policy relevant group of workers: parents with young children. In so doing, this study is the first to provide evidence of the effects of a local policy aimed at deterring work schedule unpredictability on working parents' schedules and on worker and family well-being. To do so, this study used a novel sample recruitment strategy with an innovative survey data collection protocol, daily surveys using short message service (SMS) text messages, over three waves of data collection. This study is also the first to investigate this type of policy change in Emeryville, adding to ongoing work in Seattle and Oregon to build the base of knowledge about how schedule stability laws affect working families.

We recruited nearly 100 Emeryville hourly service workers with young children, a 1-in-6 sample of the universe of affected workers, using venue-time sampling, and surveyed them daily for 30 days over each of three study waves, all prior to the onset of the pandemic (2017-2018). This approach allowed us to identify how the work and family experiences of affected workers changed after the FWO, relative both to their experiences at baseline and to the experiences of workers who were otherwise similar but worked for Emeryville businesses that fell below the FWO's size thresholds.

### **Work Schedule Unpredictability**

Recent surveys of U.S. workers underscore the ubiquity of a variety of different types of schedule precarity, including schedule instability and unpredictability, among low-wage workers. For example, using the NLSY, researchers found that 41 percent of workers receive notice of their schedules only one week ahead of time or less (Lambert, Fugiel et al. 2014). Fluctuations in work hours are also substantial, with almost 75 percent reporting fluctuations in the number of hours they worked per week over the last month. Similarly, a survey of hourly workers in large retailers found that 60 percent of workers have variable hours and that 60 percent of workers have less than two weeks' notice of their work schedules (Schneider and Harknett 2019). In Emeryville, the vast majority, 87 percent, of a representative sample of

parents with young children reported some unanticipated work schedule change during a one-month period, with 58 percent of parents reporting at least one canceled shift (Ananat and Gassman-Pines 2021).

Estimates suggest that about one in six hourly workers has a young child (Schwartz, Wasser et al. 2015), and prior research has established that schedule unpredictability is associated with worse worker and family well-being. Surveys of low-wage workers at a single point in time have shown that those with more unstable schedules report more psychological distress, worse sleep quality, and more parenting stress (Schneider and Harknett 2019). Unstable and unpredictable work schedules are also correlated with lower-quality parent-child interactions (Henly, Shaefer et al. 2006) and increased work-life conflict (Luhr, Schneider et al. this volume, Henly and Lambert 2014).

Research focusing on day-to-day variation in work schedules underscores the negative effects on workers and their families from unanticipated work schedule changes. In Emeryville, instances of work schedule unpredictability on any given day were related to worse daily mood and sleep quality for working parents (Ananat and Gassman-Pines 2021). Similarly, research has shown that on days when parents are “on-call” for work hours, they reported increased daily negative mood (Bamberg, Dettmers et al. 2012, Dettmers, Vahle-Hinz et al. 2016) and worse daily sleep quality (Härmä, Karhula et al. 2018, Sprajcer, Jay et al. 2018) than days when they are not “on-call.”

Fewer prior studies focused on day-to-day variability in work schedules have examined the effects of work schedule unpredictability on other aspects of daily family wellbeing beyond parent mood and sleep quality. However, a related literature shows that daily parenting behaviors and child well-being were affected by daily nighttime work hours, with nighttime hours related to less daily parent time spent together with adolescent children, and harsher interactions between parents and children in early childhood (Gassman-Pines 2011, Lee, Davis et al. 2017). Increased parental nighttime work also led to less positive daily child behavior among preschool-aged children (Gassman-Pines 2011).

The findings from studies examining daily variation in work schedules are consistent with those from cross-sectional studies. Those examining daily variation, however, are able to use family fixed effects to control for all measured and unmeasured stable differences between families that might be

related to both work schedule unpredictability and family wellbeing. The research focused on within-family variation from day to day cannot be biased by between-family differences, such as parental personality or motivation. Thus, taken together, the evidence suggests that schedule unpredictability is not only correlated with worse outcomes for workers and their families, but actually causes worse well-being.

### **Policies to Regulate Service Workers' Schedules**

Regulation and legal standards played a large role in shaping today's workplaces, e.g. through minimum wages and workplace safety requirements, and led to current U.S. norms around schedules, such as the 8-hour workday. But in recent years, labor-market regulation has paid little attention to schedules, despite dramatic shifts in the nature of scheduling practices. While earlier schedule regulations focused on preventing employers from extracting too much labor from workers, many workers today instead fear unpredictability in work and the instability in earnings that results. In response to research demonstrating links between unpredictable work schedules and harm to workers, and due to concerted labor organizing efforts (Ananat, Gassman-Pines et al. 2020), policymakers in localities and states have passed new regulations related to service workers' schedules. These policies represent an innovational shift for local labor regulation and have been passed in Emeryville, CA, Chicago, New York City, Philadelphia, San Francisco, Seattle, and the state of Oregon. Each of the policies are unique but largely share the same general features. In particular, they require large employers to provide advanced notice of work schedules to their hourly workers and to compensate workers if schedules subsequently change.

#### ***Emeryville, CA's Fair Workweek Ordinance***

Passed in early 2017, the Emeryville Fair Workweek Ordinance (FWO) aims to stabilize schedules of hourly retail and food-service workers with several provisions. First, hourly workers must receive two weeks' advanced notice of their schedules. Second, workers have the right to decline previously unscheduled hours without retaliation if they are given less than two weeks' notice of hours. Third, workers are eligible for compensation for schedule changes that occur within two weeks and, in particular, for "stability pay" of up to 4 hours or half of a shift paid when a shift is cancelled, with the amount of pay increasing the closer to the shift the cancellation is made. Fourth, the FWO gives workers

the right to decline hours if they are within 11 hours of the previous shift, and workers are to be paid time and a half for shifts that fall within 11 hours of each other (so-called “clopings”).

The provisions of the Emeryville FWO apply to “large” retail and food service employers, defined as more than 55 employees globally for retail employers and both more than 55 employees globally and 20 or more employees in Emeryville for food service employers. These cutoffs mean there is some arbitrariness to which firms are treated: the large international sandwich chain Subway, for example, has fewer than 20 Emeryville employees and is untreated, while some local, single-location stores and restaurants have more than total 55 employees and are treated.

The Emeryville FWO was implemented in two phases. Beginning on July 1, 2107, the ordinance officially became effective and the city initiated a so-called “soft roll-out.” During the soft roll-out, the city investigated complaints but did not impose fines against employers who were not compliant. They also held employer- and employee-focused forums to educate stakeholders on the ordinance’s provisions and created and disseminated written educational materials. Beginning on January 1, 2018, the city began the full enforcement of the ordinance, including fines for non-compliance. Enforcement of the ordinance is primarily conducted via an employee-driven complaint system. If employers are found to have violated the ordinance, they can be fined up to \$500 per violation and \$1,000 for each employee retaliated against.

### ***Preliminary Evidence on Effects of Scheduling Policies***

Emerging research from Seattle and Oregon sheds light on the effects of such policies on workers, as well as the role of managers in policy implementation. In terms of effects on workers, an evaluation of workers with a range of family statuses showed significant changes in workers’ schedules after the implementation of the Seattle policy. In particular, in the first year of implementation, the Seattle policy increased the share of workers receiving advanced notice of their work schedule and the share of workers receiving predictability pay when their hours were changed (Harknett, Schneider et al. 2019). In the second year of implementation, additional benefits were observed, including a reduction in last-minute schedule changes and improved worker well-being as measured by increases in overall happiness and self-reported sleep quality (Harknett, Schneider et al. 2021). Consistent with the Seattle findings, an



evaluation of the early implementation of Oregon’s statewide policy also revealed that the majority of workers received advance notice of their schedule (Loustaunau, Petrucci et al. 2020).

These results generally align with studies that have focused on front-line managers as the conduits for policy implementation on behalf of employers. One year after policy implementation, managers in Seattle, for example, largely reported giving workers the required 14 days advanced notice of their shifts and following rules around shift cancellations, suggesting that implementing some of the Seattle law’s provisions were relatively straightforward (Haley and Lambert 2021). Employers struggled, however, with implementing other aspects of the law: Managers reported lower levels of compliance with rules around extending shifts and offering additional hours to current employees before hiring new ones. Similar patterns of results were reported by managers in Oregon (Loustaunau, Petrucci et al. 2020). In Oregon, an additional provision enabling managers to maintain voluntary waitlists facilitated frequent last-minute changes, making implementation easier for the employer but reducing the law’s reach from employees’ perspectives. Although the full set of costs and benefits to employers of these types of scheduling regulations is not yet known, related research suggest that employers could expect to see improvements in worker productivity and sales. A randomized experiment of a schedule stability intervention in retail stores showed such improvements in productivity and sales (Williams, Lambert et al. 2018, Kesavan, Lambert et al. 2020). Other research also suggest that improved work hours predictability leads to increased productivity (Hashemian, Ton et al. 2020).

### **The Current Study**

With only a limited set of localities passing scheduling regulations, evaluations of policy change in each locality are crucial to building the base of knowledge about how such regulations affect workers and families. This study addresses this need by providing evidence on the effects of the scheduling regulations implemented in Emeryville, CA and by focusing on a highly policy-relevant population that has not been the focus of work investigating the effects of scheduling regulations in other jurisdictions, parents of young children.

### **Identification**

Our main identification strategy is a difference-in-difference approach that compares over-time changes in outcomes for workers in “treatment” jobs—i.e. jobs at businesses that meet the size requirements to be regulated under Emeryville’s Fair Workweek Ordinance—to changes in outcomes for workers employed at similar jobs in businesses that fall short of the size requirements. Difference-in-difference designs rely on the assumption of parallel trends: the identifying assumption of our approach is that in the absence of the FWO’s implementation, the over-time changes in outcomes of workers in treatment and control jobs would have moved in parallel, and therefore any deviation in treated workers’ outcome trends from trends for workers in control jobs can be attributed to the effects of the FWO. Workers can and do hold multiple jobs; for outcomes that are defined at the worker-day level, such as sleep quality and interactions with the focal child, we define a worker as “treated” if they held at least one “treatment” job, even if they also held one or more control jobs. In robustness checks, we have defined treatment continuously, based on the share of hours worked at baseline in a treatment job; results are substantially similar (results available upon request).

A threat to the parallel trends assumption would occur if workers endogenously switch jobs in response to the FWO—that is, if treated jobs become more (or less) desirable due to the regulation, then workers with more advantages, e.g. those with better mental health, might switch sectors in response. Under those circumstances a simple difference-in-differences strategy, such as the type conducted using repeated cross-sectional surveys to evaluate policy changes, would inaccurately conflate compositional changes in the treated workforce due to the FWO with changes in individual worker outcomes due to the FWO. However, our panel structure avoids this problem by allowing us to combine the strengths of a difference-in-differences identification strategy with the complementary strengths of an individual fixed-effects approach: because we follow the same workers over time, we are able to include worker fixed effects and identify only changes in individual worker outcomes over time.

Another potential threat to the parallel trends assumption would occur if regulated versus unregulated businesses faced different shocks during the evaluation period, beyond those induced by the

FWO. The somewhat arbitrary and complex size cutoff for regulation—which does not coincide with thresholds for other regulations in Emeryville or with other meaningful market distinctions—makes it relatively unlikely, however, that treated and untreated firms will face different shocks (for example, to consumer demand or to credit access) on other dimensions over the implementation period.

## **METHOD**

### **Sample recruitment**

Individuals were eligible for this study if they worked in an hourly position in Emeryville and had a child between ages 2 and 7. Recruitment occurred in May 2017, after the passage of FWO but prior to its enactment. We used a venue-based sampling approach to recruitment. For this purpose, we secured from the City of Emeryville a complete list of retail and food service businesses in the city. Using this list, we constructed a sampling frame of venue (business) day-time units (VDTs), randomly selected VDTs, and identified and recruited eligible individuals present in those VDTs (Muhib, Lin et al. 2001). We approached workers at each business, determined their eligibility, and asked those workers to direct us to any other currently present employee with a young child. Across VDTs, we entered each business in the area at least once, talking with over 600 workers, including at least one from each retail or food establishment in the city. We estimated, based on recent surveys of hourly retail and food service workers (Schwartz, Wasser et al. 2015), that about 15 percent of the 3,743 Emeryville hourly retail and food service workers have a young child, suggesting an eligible population of 561 workers. Of these, we talked with 170, an estimated 30 percent of eligible workers. We successfully recruited 96, or 56 percent, of the eligible workers we contacted. Our sample, although small in absolute size, reflects a substantial 1-in-6 sample of the universe of Emeryville retail and food workers with a young child. Importantly, the initial sample was balanced across: 1) retail and food firms that meet threshold local and global employment levels and are subject to regulation from the FWO and 2) otherwise similar control firms below those thresholds, which are exempt from the FWO.

### Procedure and analysis sample

At the beginning of the study, respondents were asked about their demographics, health and well-being, work history, each job's hourly wage and whether it is tipped, and reports on children. Then, every day for 30 consecutive days, respondents reported on that day's work and family experiences via SMS text message. Daily survey completion rates among participants in the initial wave were very high: 61 percent of participants completed 100 percent of the daily surveys and 89 percent completed the majority (i.e. more than 15), providing substantial within-person variation for analysis.

We contacted the sample again two times: in the Fall of 2017 during the "soft roll-out" enforcement phase of FWO implementation (wave 2) and in the spring of 2018 during the full enforcement phase of FWO implementation (wave 3). Of the initial 96 participants, 76 participated in wave 2; 71 participated in wave 3. At each wave, we gathered information about changes in workers' jobs and job characteristics and then again collected reports on the day's work and family experiences via SMS text message for 30 consecutive days. In wave 2, daily participation was higher than in wave 1: 74 percent of participants completed 100 percent of the 30 daily surveys and 98 percent completed the majority of the daily surveys. In wave 3, daily participation was higher than in wave 1 or wave 2: 80 percent of participants completed 100 percent of the daily surveys and 99 percent completed the majority.

Participant compensation was structured to incentivize completion of all 30 daily surveys within each wave. In waves 1 and 2, participants received \$1.00 for each survey completed, with bonuses of \$7 and \$10 offered for each week with 7 completed surveys, respectively. In wave 3, participants received \$1.20 for each survey completed with a bonus of \$12 for each week with 7 completed surveys. An additional completion bonus for those who answered all 30 daily surveys was also offered: \$20 in wave 1, \$25 in wave 2 and \$30 in wave 3.

Our analysis sample for this study included all individuals who participated in at least one of the post-FWO implementation follow-up waves ( $N = 78$  parents;  $N = \sim 6,000$  person-days for analysis). On average, our analysis sample provided 86 days of survey responses across the waves of data collection.

All survey materials used for this study were available in both English and Spanish. All aspects of this study were approved by the Duke University Institutional Review Board (protocol #2017-0053).

## Measures

*Daily schedule unpredictability* was characterized along a number of dimensions. We asked a series of questions about up to three jobs per respondent, based on the number of jobs reported at the initial interview for each wave. For each job, respondents were asked whether they worked that day, and if so: when they started and stopped working and whether their hours worked were their originally scheduled hours. If not, they provided their originally scheduled hours. Thus, for each day that a respondent worked at a given job, we measure whether their hours worked deviated from their originally scheduled hours at that job. Further, if respondents did not work at a given job on a given day, they were asked if they were originally scheduled to work. Thus, for each day we measure whether a respondent had a shift cancelled at that job. For both changes in work hours and shift cancellations, respondents were asked when they found out about the change: *less than one hour before the shift start time; more than one hour before the shift start time, on the day of the shift; the night before; or earlier*. Those who gave any response other than *earlier* about either a change in hours or a shift cancellation were coded as having a last-minute work schedule change at that job on that day.

To find surprise shifts, we looked at responses to the question about originally scheduled hours. In that space, many respondents offered context, stating that they were off, weren't scheduled for that day, or offering hours on the next day (e.g. on Monday saying that they were scheduled to work Tuesday). In any of these cases, we classified this as a surprise shift, rather than a change in hours. Finally, surprise shifts, along with changes in hours and canceled shifts, were combined to create an additional measure that indicates whether the respondent had any kind of schedule change at that job on any given day.

Because information was provided about each job on each day, it was possible to examine work schedule unpredictability both by job and by day. For all outcomes discussed above, the unit of analysis was the person-job-day.

*Daily family and child well-being outcomes* were measured as described below. Daily mood was measured with an item that asked respondents how much of the time they felt fretful, angry, irritable, anxious, or depressed on a three-point scale from *all of the time* to *none of the time*. This question was modified from a question with a four-week recall period from the Health Utilities Index (HUI) (Furlong, Feeny et al. 2001, Horsman, Furlong et al. 2003). The single item has been validated as a daily measure of negative mood as it is positively correlated with daily stressors, including daily food insecurity (Gassman-Pines and Schenck-Fontaine 2019) and daily work schedule disruptions (Ananat and Gassman-Pines 2021); it increased substantially when COVID-19 restrictions were put into place (Gassman-Pines, Ananat et al. 2020). A dichotomous indicator was created equal to 1 for those who answered *Some of the time* or *All of the time* and 0 for those who answered *None of the time*.

Daily perceived negative sleep quality was measured with a single item used in other daily survey studies (George, Rivenbark et al. 2019), asking: “How well did you sleep last night?” Answers were on a 10-point scale from *really badly* to *really well*. We treat self-reported sleep quality as a measure of daily well-being, as perceived sleep quality is associated with daily affect (Bower, Bylsma et al. 2010). The sleep quality measure was reverse-coded so that higher numbers indicated worse perceived sleep quality. This measure has been validated, as it is correlated in expected directions with negative and positive daily mood, daily self-esteem (George, Rivenbark et al. 2019) and daily work schedule disruptions, a daily stressor (Ananat and Gassman-Pines 2021).

Daily parent-child interactions was measured with two questions: “Did you punish your child today?” and “Did you lose your temper with your child today?” Dichotomous indicator variables were set equal to 1 if the parent responded *Yes* and 0 if the parent responded *No*. Both of these measures have been validated as they were both positively correlated with daily disruptions to school and care during the COVID-19 pandemic (Gassman-Pines, Ananat et al. 2021).

Finally, daily child behavior was measured with two items. Daily child uncooperative behavior was measured with a single item asking: “How much was your child uncooperative today?” Answers on a four-point scale included: *Not at all*, *Just a little*, *Some*, and *A lot*. This question was modified from an

item in the Inattention/Overactivity with Aggression Conners Rating Scale (Loney and Milich 1982), which asks parents to rate how much the adjective describes their child “at this time.” Daily child worry was measured with a single item asking: “How much did your child appear to be sad or worried today?” Answer choices on a four-point scale included: *Not at all*, *Just a little*, *Some*, and *A lot*. This question was modified from an item in the Preschool Behavior Questionnaire (Behar and Stringfield 1974), which asks parents to rate how much the child exhibits each behavior.

For both child behaviors, prior research has demonstrated the reliability and validity of multi-item scale versions adapted for measuring daily externalizing and internalizing behavior problems (Gassman-Pines 2015). In the current study, single items were used to reduce respondent burden and attrition. Dichotomous indicator variables were set equal to 1 if the parent responded *Some* or *A lot* and 0 if the parent responded *Not at all* or *Just a little*. These single-item measures have been validated as they were both positively correlated with daily disruptions to school and care during the COVID-19 pandemic (Gassman-Pines, Ananat et al. 2021).

*Job type* (e.g., treatment vs. control) was categorized as follows: for each of up to 3 jobs reported by a respondent, a job was coded as a “treatment” job if it was an hourly position at a venue listed by the City of Emeryville as regulated under the FWO. A job was coded as a “control” job if it was at a retail or food establishment in Emeryville that was listed by the City as not covered under the FWO, or if it was outside of Emeryville or outside of retail and food. Workers were categorized as in the treatment group if they had at least one treatment job; otherwise, they were classified as in the control group. All respondents had at least one hourly position in food service or retail in Emeryville, but respondents could also have additional jobs outside of Emeryville, outside of food or retail, and/or paid other than hourly.

### **Analytic strategy**

To evaluate the job-experience relationships of interest, i.e. effects on schedule unpredictability, the following equation was used:

$$Y_{ijt} = \beta_0 + \beta_1 * Treat_{ij} * After_t + \beta_2 * After_t + \beta_3 * Treat_{ij} + \psi_{ij} + \tau_t + \epsilon_{ijt}$$

for outcome  $Y$  for person  $i$  in job  $j$  on day  $t$ , where  $\psi$  represents a vector of individual-by-job fixed effects and  $\tau$  is an indicator for whether day  $t$  falls on a weekend. Previous research shows that both work and home experiences differ dramatically between weekends and weekdays for workers in these types of jobs (Ryan, Bernstein et al. 2010, Shrout, Bolger et al. 2010, Gassman-Pines 2011, Gassman-Pines, Ananat et al. 2020, Ananat and Gassman-Pines 2021). Because of idiosyncratic variation in individual start days, respondents experience different numbers of weekend days, which would, if we simply averaged across days within person and wave, lead to greatly increased noise in our estimates.

$Treat_{ij}$  is an indicator variable equal to one if job  $j$  was at a treated firm subject to FWO regulations, and zero otherwise. We measure job-experience outcomes (hours changes, surprise shifts, and cancelled shift) at the person-job-day, rather than person-day, level because the variation in those outcomes exists at the person-job-day level. For example, we measure canceled shifts at the person-job-day level because a worker with two jobs might have had a shift canceled at one job on a given day, while on the same day their shift at another job was not canceled. As we are interested in whether the policy affects scheduling practices such as this, and as the policy can, in some cases, affect one of a respondent's jobs but not the other, examining job outcomes separately is scientifically appropriate. Note, however, that most respondents have only one job (Table 1), so this has only a minor effect on our sample size.

$After_t$  is an indicator variable equal to one if day  $t$  falls during the post-implementation period, and zero otherwise. The definition of the post-implementation period is somewhat ambiguous because Emeryville began implementation with a “soft roll-out,” as discussed above. To accommodate this ambiguity, our main results include three separate approaches to defining pre- and post: (1) base estimates only on pre-implementation (Wave 1) and full enforcement (Wave 3) data, with full enforcement Wave 3 observations defined as post-implementation; (2) include all observations and define both soft roll-out and full-enforcement observations as post-implementation; and (3) include all observations, and estimate:

$$Y_{ijt} = \beta_0 + \beta_1 * Treat_{ij} * Wave2_t + \beta_2 * Wave2_t + \beta_3 * Treat_{ij} * Wave3_t \\ + \beta_4 * Wave3_t + \beta_5 * Treat_{ij} + \psi_i + \tau_t + \epsilon_{ijt}$$



This specification allows us to estimate the effect of the FWO during the soft roll-out (represented by the estimated value of the coefficient  $\beta_1$ ) separately from the effect of the FWO during full enforcement (represented by the estimated value of the coefficient  $\beta_3$ ), and we report the estimates for both effects in our main results.

Worker and family well-being (worker sleep quality and mood, parenting behaviors, and child behavior) exist only at the person-day level, evaluated using the following equation:

$$Y_{it} = \beta_0 + \beta_1 * Treat_i * After_t + \beta_2 * After_t + \beta_3 * Treat_i + \psi_i + \tau_t + \epsilon_{it}$$

for outcome  $Y$  for person  $i$  on day  $t$ .  $Treat_i$  is equal to one if person  $i$  had at least one treatment job, and equal to zero otherwise. All other variables are as defined above, and a parallel specification shift was made to estimate our third approach to modeling soft roll-out and full enforcement effects.

In addition to fixed effects for each respondent, we cluster our standard errors at the person level, to reflect the fact that observations for a given respondent across jobs, days, and waves are not independent of one another. Clustering of standard errors relaxes the assumption that errors are independent and identically distributed and allows for errors within a cluster (in this case, a person) to instead be arbitrarily correlated. With 78 respondents in our analytical sample, we have a large enough sample to estimate person-fixed effects, use our average of 86 observations per respondent to estimate standard errors clustered on person, and then to estimate effects of the policy.<sup>1</sup>

## RESULTS

### Descriptive Results

Table 1 reports descriptive results at baseline for the analysis sample, overall and separately for the treatment and control groups (defined at Wave 1). Respondents were, on average, 30 years old, with

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<sup>1</sup> Our highly racially diverse sample means, however, that we have a small number of respondents of each race-ethnic identity. Estimates with fixed effects and clustering, regardless of how large their total  $N$ , do not exhibit large-sample properties when they include only a small set of clusters (Angrist & Pischke 2009), meaning our sample is unfortunately not adequate to estimate such models.

11.7 years of education, and had their first child at age 24. The majority, 86 percent, of the sample identified as female. Just under 30 percent had ever been married. They were racially and ethnically diverse: 31 percent were Hispanic (of any race); 45 percent were non-Hispanic Black; 8 percent were non-Hispanic White; 8 percent were non-Hispanic Asian-American; 1.2 percent were non-Hispanic Native American; and 7.1 percent were non-Hispanic multiracial. On average, they held 1.13 jobs. Respondents' household income averaged \$2,795 per month. The majority of respondents lived with at least one other adult: 58 percent lived with a romantic partner, and 21 percent lived with a parent. On average respondents had 1.8 children. Fifty-eight percent held at least one treatment job.

Financial strain was common among respondents. Over one in five reported generally not having enough money to make ends meet, with another half reporting generally having just enough. Nearly two-thirds of respondents doubted they could access funds to pay for a \$1000 emergency. About the same number had to borrow from friends or family in the past year to make ends meet, while 37 percent had applied for government assistance.

Not surprisingly given all these stressors, respondents reported mental health challenges as well. More than one in four reported finding it “often or always” difficult to relax, and one in ten “often or always” felt downhearted or blue. Similarly, 21 percent of respondents reported that their focal child was often “somewhat or very” worried, and 10 percent that their focal child was often “somewhat or very” unhappy, depressed, or tearful.

Across most characteristics, baseline characteristics were well-balanced across treatment and control. Among 24 characteristics, two were significantly different between the groups at the 10 percent level, consistent with chance. This balance suggests that, among hourly service workers with young children, there is little selection on observables into treatment (larger firm) versus control (smaller firm) jobs.

The exception to this balance was differences in child care arrangements, with those in treatment jobs less likely to access formal childcare and more likely to instead rely on relative care, and for more hours per week. We interpret these differences as a reflections of the jobs themselves rather than selection

into them; as shown in Figure 1, at baseline treatment jobs were more unpredictable, which, as documented in other work (Luhr et al., this volume) makes use of formal childcare more challenging. Note, however, that even if the difference in childcare suggested imbalance on unobservables between the treatment and control groups, difference-in-difference designs do not require baseline equality between treatment and control; rather, we instead rely on the much weaker assumption of parallel trends.

Table 2 summarizes all daily work and well-being outcomes across people, jobs, and waves. Because there were significant differences in these measures across race, we report both overall means and means for non-Hispanic Blacks, non-Hispanic Whites, non-Hispanic Asian-Americans, and Hispanics (of any race). Overall, some type of schedule change was made on nearly 11 percent of job-days, with a significantly greater share of days with a change among Asian-American respondents (17 percent) and a significantly lower share among White respondents (8 percent). The majority of schedule changes were last-minute, with less than 24 hours' notice; White respondents were less likely to experience changes at the last minute (4.7 percent of days versus 7.0 percent for the sample overall).

Among the types of schedule changes, a change in work hours was the most common, occurring on 5.4 percent of days on average but at almost twice that frequency, 10.3 percent of days, among Asian-Americans. Surprise shifts were the least common type of schedule change, occurring on less than 1 percent of days, with no differences across groups. Across all waves, respondents worked on about 55 percent of job-days; Asian-Americans and Hispanic respondents were more likely than average to work on a given day. The average shift length on any given work day was 7.1 hours, but was higher for Whites, at 7.4 hours, and lower for Asian-Americans, at 6.7 hours.

Finally, in terms of family well-being outcomes, negative mood was fairly common, with respondents overall reporting negative mood on 42 percent of days. White respondents reported significantly more days with negative mood (60 percent of days), while Hispanic respondents reported fewer (32 percent). Sleep difficulties were greater among Whites and lower among Asian-Americans; harsh parenting behaviors were higher among Whites and Asian-Americans than among the population

overall. Black and Asian-American parents reported more days with child uncooperativeness and child worry than did the sample overall. Child behavior problems were relatively infrequent across all groups.

### **Impacts of the Emeryville FWO**

Table 3 reports effects of the FWO on schedule disruption outcomes; given small sample sizes, we were not able to separately estimate effects of the FWO by race and ethnicity, as discussed above. Across all models, results showed that the FWO led to a decrease in any schedule change overall, with point estimates ranging from 2.5 percentage points to 5.5 percentage points, though not all point estimates reached conventional levels of statistical significance. Results from model three suggest that decreases in schedule changes occurred right away, in the soft-roll out phase of enforcement. The estimates from our third model are also presented in Figure 1, which shows that treatment jobs had more frequent schedule changes than control jobs in the pre-period, but that rates of schedule changes for the treatment jobs declined to the same level as the control jobs once the FWO was implemented. As shown in Table 3 and Figure 1, the same pattern of results was found for last-minute changes: the FWO reduced last-minute schedule changes. Again, although not all estimates reached conventional levels of statistical significance, the pattern of findings is consistent with a decline in last-minute changes following FWO implementation for the treatment jobs relative to the control jobs.

Among the types of schedule disruptions considered, we found that surprise shifts were most strongly affected by the FWO, while point estimates for changes in work hours follow a similar, but not statistically significant, pattern (Table 3). Shift cancellations were not affected by the FWO. As shown in Figure 1, treatment jobs had more frequent surprise shifts in the pre-period but rates of surprise shifts for the treatment jobs declined once the FWO was implemented, and were lower than rates in control jobs by the full-enforcement phase.

Table 4 reports effects of the FWO on daily work and hours outcomes. Results show that the FWO decreased the likelihood of working in a treatment job on any given day. The effect size was substantial, with decreases in wave three of about 12 percentage points. As shown in Figure 1, the likelihood of working in a treatment or control job on any given day were very similar prior to the

implementation of the FWO. During the post-period, the likelihood of working in a control job on any given day increased slightly while the likelihood of working in a treatment job decreased.

At the same time, however, results also showed that the FWO increased the length of shifts on work days. By the full enforcement phase, the increase in work hours was about .4 hours, on average. When combining the two effects by considering average work hours including zeroes for non-work days, the FWO did not significantly affect hours worked within a job. Workers do not appear to have increased work in non-regulated firms in response to changes in their treatment jobs, given that average work hours across all jobs were also not significantly affected by the FWO.

Finally, Table 5 reports effects of the FWO on parent and child outcomes. Considering parental well-being, the FWO decreased sleep difficulty (defined by reverse-coding and then normalizing the sleep quality responses that had been gathered using a 1-10 scale), though not all estimates reach conventional levels of statistical significance. In wave 3, sleep difficulty decreased by nearly .28 *SD* for those in treatment jobs, relative to those in control jobs. As show in Figure 1, those in treatment jobs experienced more sleep difficulty than those in control jobs prior to the implementation of the FWO, with sleep difficulty decreasing substantially during the full enforcement phase. Effects on daily parental negative mood were also in the negative direction, but did not reach statistical significance. We did not find any effects of the FWO on either parenting behaviors or child behavior.

### **Robustness Checks**

We conducted a variety of robustness checks (all results available on request). First, we ran all models on a balanced panel of participants who participated in all waves, rather than only in at least one post-implementation wave. Results were substantially similar to those reported here. Second, we ran all models using initial treatment status at the person-level only. Results were in the same direction and of similar magnitude to those described here but were less precisely estimated. Third, we ran all models using a continuous definition of treatment status defined by the share of total work hours worked at a treatment job at baseline; results were substantially similar. Fourth, we ran models of hours worked dropping observations for which hours information was incomplete and had to be imputed; results were

substantially similar. Fifth, we estimated all models for demographic subgroups defined by race, ethnicity, gender, and education; unfortunately, sample sizes became too small for interpretation.

## DISCUSSION

Low-income families in the 21<sup>st</sup> century, especially those working in the service sector, faced high levels of unpredictability in work hours and pay, even prior to the onset of the COVID-19 pandemic and its disruptions to the labor market. Anecdotally, there seems to be little possibility that the pandemic and its related economic dislocations have improved predictability. Local regulations aimed at reducing unpredictability in work schedules are a new innovation in labor policy that were gaining traction in many localities, and one state, in the United States prior to the pandemic, but little is known about such policies' effects and, therefore, whether predictability for low-income families will be improved by encouraging more localities to adopt such policies going forward. Emeryville, CA is one of only a handful of localities that has passed such an ordinance. This paper, thus, addresses a gap in the literature by being the first to examine the effect of Emeryville's Fair Workweek Ordinance on working parents and their families.

We find that the Fair Workweek Ordinance (FWO) succeeded in reducing schedule unpredictability for workers with young children, particularly changes in start and end times of shifts and surprise shifts. The FWO also decreased the number of workdays significantly for treated workers in our sample, while increasing the hours worked on workdays and leaving total work hours insignificantly affected. It is possible that these changes were concentrated among those, like our sample, with caregiving responsibilities, and represent a re-assignment by employers of short, unpredictable, or otherwise difficult shifts from such workers to workers without caregiving responsibilities, for whom such marginal shifts are less costly. Future work should examine effects of schedule predictability legislation on different populations of workers.

The regulatory success of the FWO translated into some health benefits for workers in regulated jobs, in particular, improved sleep quality. Thus, even with a relatively small sample size, this paper thus presents important initial evidence that this type of policy change can affect work schedule

unpredictability among working parents, and can do so by impacting individual workers rather than merely by shifting sector composition.

These findings are notable in the context of the remarkable changes in work in the last half century, with increasing instability and unpredictability in employment, hours, and pay, especially for workers with less access to formal higher education. Historically, regulations played a large role in shaping today's workplaces, for example through minimum wages and anti-discrimination policy, and also created the current U.S. norms around scheduling, including the 8-hour workday and the weekend. But in recent years, regulation of the labor market has focused little attention on scheduling, despite the fact that the nature of work schedules has been shifting dramatically. In particular, while the earlier generation of scheduling regulation concentrated on preventing employers from extracting *too much labor* from workers, many of today's workers fear instead *too much variability and unpredictability* in work and pay. That is, recent concerns focus on employers shifting the risk of variable customer demand from themselves to their employees, by giving workers neither hours nor pay when demand is unexpectedly low. Indeed, the Emeryville ordinance studied in this paper was passed in response to such concerns.

Our results show that the Emeryville FWO decreased schedule changes and, in particular, last-minute schedule changes. These impacts are notable because these are the dimensions of schedule changes that our own prior research has shown to be particularly costly for working parents and their families, in terms of reduced parental well-being (Ananat and Gassman-Pines 2021). These findings are also consistent with those from an evaluation of Seattle's secure scheduling law that examined all workers (rather than focusing on parents) and found that Seattle's law also decreased last-minute schedule changes (Harknett, Schneider et al. 2021). This convergent evidence suggests that local schedule regulations can be a fruitful path for addressing unpredictability in work schedules for low-income families. Importantly, we observe these changes immediately after the law was passed, during the "soft roll-out" phase of enforcement. Although the City only began fining non-compliant businesses during full enforcement, our results suggest that simply having a law go into effect is a powerful change that leads at least some firms to comply, even if they are not at risk of being fined or penalized.

We also find that changing scheduling practices through this local ordinance leads employers in covered firms to reduce the number of shifts that employees work. However, the FWO leads to increased hours for parents on the days when they do work, leaving no significant changes in average hours worked. Given the fixed costs of working on a given day, including making child care arrangements and commuting, it is plausible that on net these scheduling changes made workers better off. Consistent with this possibility, the net effect of the Emeryville FWO was to improve workers' well-being as proxied by subjective sleep quality. Working parents, in particular, are likely to place a high value on the stability of work schedules, as stable work schedules make balancing the demands of work and family easier (Henly 2004, Henly and Lambert 2014).

The evidence related to the effects of scheduling regulation on worker sleep quality is notable for several reasons. First, these results are highly similar to those found in the Seattle evaluation; Seattle's ordinance also improved subjective sleep quality (Harknett, Schneider et al. 2021). This converging evidence underscores the role for scheduling regulation in improving workers' sleep quality. Second, service sector workers emphasize sleep disruptions and poor-quality sleep as consequences of schedule unpredictability (Human Impact Partners and Center for Popular Democracy 2016), and our own prior work in Emeryville showed these effects on a daily level (Ananat and Gassman-Pines 2021). Reductions in work schedule unpredictability may improve sleep quality for a number of reasons, including: by helping to stabilize daily routines; by facilitating circadian rhythms, which can be disrupted by unstable and unpredictable work schedules; and by reducing job strain, each of which has been linked to sleep quality (Eriksen, Bjorvatn et al. 2008, Moss, Carney et al. 2015, Kecklund and Axelsson 2016). Other aspects of work life, such as commute time, may also play a role in exacerbating links between unpredictable work schedules and worse sleep quality, as longer commutes themselves are associated with worse sleep (Petrov, Weng et al. 2018); the shift to longer work hours on fewer days may have thus contributed to better sleep by reducing total commute time.

Finally, subjective sleep quality is also a marker of well-being and an important input into both physical and mental health (Brewster, Billy et al. 1993, Bower, Bylsma et al. 2010). Worse sleep quality,



for example, is related to both heart disease in the adult population (Cappuccio, Cooper et al. 2011) and depression among parents (Park, Meltzer-Brody et al. 2013). Poor sleep quality is associated with more harsh parenting behavior (Kelly, Erath et al. 2021), and worse daily sleep quality has been found to exacerbate the effects of chronic and daily stressors on daily negative parental mood (da Estrela, Barker et al. 2018, Lillis, Hamilton et al. 2018, Mihaila and Hartley 2018). Thus, improvements in sleep quality may have the potential to lead to longer-term improvements in family functioning and child wellbeing, such as more positive parent-child interactions, reduced parental stress, and improved child behavior. Future research should investigate the mechanisms connecting unpredictable work schedules to worse sleep quality, the family well-being consequences of improved sleep quality, and moderation by other aspects of work, such as commute time. While the small population of Emeryville means we were underpowered to detect downstream effects on children's well-being even in a 1-in-6 probability sample, the implications are conceptually clear, as children are influenced and constrained by their parents' lived experiences in the labor market (Ananat, Gassman-Pines et al. 2017). Links between parental well-being and child adjustment are well established (Cummings and Davies 1994, Cummings, Keller et al. 2005, Cummings, Davies et al. 2020). Parents who are experiencing psychological distress tend to have more difficulty acting as sensitive caregivers, which can lead to increased behavior problems and other difficulties for children (Dix, Gershoff et al. 2004).

We note that our sample included only working parents with young children, a group that is particularly strongly affected by work schedule unpredictability but is not representative of all workers in the treatment firms. It is possible, for example, that workers without young children (the majority of workers) may have experienced an increase in work shifts due to the Emeryville FWO, if they were willing to add shifts on short notice. Our results are not meant to generalize to all Emeryville retail and fast food employees, but only to employees with young children, a group of *a priori* concern due to both their vulnerability and their relevance to public policy.

Our methodological approach, pioneered in this study, has several strengths that enhance the contribution of this work. First, although small, our use of a venue-time sampling strategy resulted in a

sample that is representative of Emeryville workers in retail or food service with a child between the ages of two and seven. Given that such a population is unrostered and difficult to enumerate, implementing a representative sampling strategy was a major innovation. Second, we followed our sample longitudinally, which avoids bias from compositional changes in the workforces of firms after they become regulated. Therefore, our results cannot be explained by, for example, covered businesses becoming more attractive to workers with better mental health after FWO implementation. Finally, work schedule disruptions were measured via daily surveys, which avoids recall bias, a problem we have shown in previous work to be sizeable in reporting the frequency of schedule changes (Ananat & Gassman-Pines, 2021).

We do note, however, that despite our ability to follow the same representative sample longitudinally, it is still possible that endogenous sector-switching in response to time-varying worker characteristics could be driving some of our results. For example, if employment in covered businesses became more attractive post-FWO implementation, and therefore workers who experienced changes (such as becoming newly partnered and therefore better able to manage child care) that made them more desirable employees became more likely to switch into the covered sector than they would have been in the absence of the FWO, that could threaten the validity of our findings if these same changes also had direct impacts on worker well-being. The waves, however, were fielded only a few months apart, so any changes in employee characteristics, subsequent changes in employee desirability, and resulting changes in employment would have had to unfold quite quickly.

Additionally, our small overall sample size prevented us from examining subgroup effects. Understanding the heterogeneity in effects of schedule regulations for workers with different characteristics is important for future study, and will be facilitated by research with larger sample sizes. Finally, examining effects on employers was outside the scope of this study. Emerging literature would suggest that employers likely faced some challenges in implementing the law's provisions, but also that they may have benefited in terms of enhanced worker productivity and sales. Additional research should investigate effects on employers to understand the comprehensive impacts of scheduling regulations.

## **SUMMARY AND CONCLUSION**

To summarize, our results show that the Emeryville Fair Workweek Ordinance (FWO) reduced schedule unpredictability for working parents of young children, a group that has particular difficulty balancing work and family and is of policy concern. The FWO also decreased the number of work shifts, but increased shift length, leaving total work hours unchanged. The FWO also improved one measure of well-being: sleep quality. This is important initial evidence that secure scheduling policy changes can affect work schedule unpredictability among working parents, and, ultimately, these parents' well-being.

Parents working in the service sector face a myriad of challenges in balancing their work and family demands, which have plausibly only worsened in the wake of the COVID-19 pandemic. Work schedule unpredictability is a particularly salient and ongoing challenge that has been highlighted by workers, labor organizers, and social science scholars. Emeryville's law improved schedule predictability and well-being for working parents, suggesting that such laws could provide a pathway towards increasing predictability for low-income families.

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Table 1. Sample characteristics at baseline

|                                                       | Overall | No treatment job (C) | 1+ treatment job (T) | Significant difference between T and C |
|-------------------------------------------------------|---------|----------------------|----------------------|----------------------------------------|
| <b>Respondent Characteristics</b>                     |         |                      |                      |                                        |
| Age (mean)                                            | 29.6    | 30.9                 | 28.45                | +                                      |
| Female                                                | 86.2%   | 86.7%                | 85.4%                |                                        |
| Education (mean years)                                | 11.7    | 12.2                 | 11.4                 |                                        |
| Has 12 or more years of education                     | 73.4%   | 76.9%                | 71.8%                |                                        |
| Age at First Birth (mean)                             | 23.5    | 23.8                 | 23.1                 |                                        |
| Ever married                                          | 28.2%   | 36.4%                | 20.0%                | +                                      |
| Race/Ethnicity:                                       |         |                      |                      |                                        |
| Hispanic (of any race)                                | 30.6%   | 31.8%                | 30.0%                |                                        |
| African-American (non-Hispanic)                       | 44.7%   | 43.2%                | 45.0%                |                                        |
| Caucasian (non-Hispanic)                              | 8.2%    | 4.5%                 | 12.5%                |                                        |
| Asian (non-Hispanic)                                  | 8.2%    | 11.4%                | 5.0%                 |                                        |
| Native American (non-Hispanic)                        | 1.2%    | 0.0%                 | 2.5%                 |                                        |
| Multi-racial (non-Hispanic)                           | 7.1%    | 9.1%                 | 5.0%                 |                                        |
| <b>Household Characteristics</b>                      |         |                      |                      |                                        |
| Number of children (mean)                             | 1.80    | 1.84                 | 1.77                 |                                        |
| Respondent currently married or living w/ partner     | 58.3%   | 61.4%                | 56.4%                |                                        |
| Respondent lives with a parent                        | 21.4%   | 23.3%                | 17.5%                |                                        |
| <b>Focal Child Characteristics</b>                    |         |                      |                      |                                        |
| Age (mean)                                            | 3.6     | 4.0                  | 3.2                  |                                        |
| Female                                                | 54.4%   | 61.4%                | 44.1%                |                                        |
| <b>Care arrangements:</b>                             |         |                      |                      |                                        |
| enrolled in Head Start                                | 35.4%   | 52.3%                | 11.8%                | **                                     |
| enrolled in daycare                                   | 50.0%   | 62.8%                | 32.4%                | **                                     |
| enrolled in afterschool                               | 17.9%   | 20.9%                | 14.7%                |                                        |
| receives care from non-respondent parent              | 46.8%   | 39.5%                | 55.9%                |                                        |
| receives care from other relative                     | 40.0%   | 26.2%                | 59.4%                | **                                     |
| Total hours of non-respondent care per week (mean)    | 38.2    | 30.0                 | 47.8                 | **                                     |
| <b>Work situation</b>                                 |         |                      |                      |                                        |
| at least one treatment job covered by FWO             | 57.7%   | 0.0%                 | 100.0%               |                                        |
| # of jobs held by respondent (mean)                   | 1.13    | 1.10                 | 1.19                 |                                        |
| Monthly household income (mean)                       | \$2,795 | \$2,945              | \$2,633              |                                        |
| <b>Respondent Mental Health</b>                       |         |                      |                      |                                        |
| Often or always found it difficult to relax           | 26.3%   | 23.3%                | 31.3%                |                                        |
| Often or always felt down-hearted or blue             | 10.5%   | 7.0%                 | 15.6%                |                                        |
| <b>Focal Child Mental Health</b>                      |         |                      |                      |                                        |
| Often somewhat or very worried                        | 21.5%   | 15.9%                | 29.4%                |                                        |
| Often somewhat or very unhappy, depressed, or tearful | 10.1%   | 9.1%                 | 11.8%                |                                        |

*N* = 78; + *p* < .10

Table 2. Daily Outcomes Across Waves

|                                                   |                  | <u>Non-</u><br><u>Hispanic</u> | <u>Non-</u><br><u>Hispanic</u> | <u>Non-</u><br><u>Hispanic</u>   | <u>Hispanic</u>   |
|---------------------------------------------------|------------------|--------------------------------|--------------------------------|----------------------------------|-------------------|
|                                                   | <u>Overall</u>   | <u>Black</u>                   | <u>White</u>                   | <u>Asian-</u><br><u>American</u> | <u>(any race)</u> |
| <u>Person-job-days</u>                            |                  |                                |                                |                                  |                   |
| Share with any schedule change                    | 0.106<br>(0.004) | 0.105<br>(0.006)               | 0.078<br>(0.011)               | 0.173<br>(0.015)                 | 0.100<br>(0.007)  |
| Share with last minute change                     | 0.700<br>(0.003) | 0.073<br>(0.005)               | 0.047<br>(0.009)               | 0.086<br>(0.011)                 | 0.076<br>(0.006)  |
| Share with a change in work hours                 | 0.055<br>(0.003) | 0.051<br>(0.004)               | 0.054<br>(0.009)               | 0.103<br>(0.012)                 | 0.051<br>(0.005)  |
| Share with a cancelled shift                      | 0.041<br>(0.002) | 0.043<br>(0.004)               | 0.017<br>(0.005)               | 0.064<br>(0.009)                 | 0.040<br>(0.005)  |
| Share with a surprise shift                       | 0.010<br>(0.001) | 0.012<br>(0.002)               | 0.007<br>(0.003)               | 0.006<br>(0.003)                 | 0.010<br>(0.002)  |
| Share worked today                                | 0.547<br>(0.006) | 0.509<br>(0.009)               | 0.503<br>(0.021)               | 0.613<br>(0.019)                 | 0.603<br>(0.011)  |
| Mean hours worked on work days                    | 7.12             | 7.15                           | 7.39                           | 6.73                             | 7.17              |
| standard deviation                                | 2.01<br>(0.03)   | 2.02<br>(0.05)                 | 1.62<br>(0.10)                 | 2.00<br>(0.10)                   | 1.99<br>(0.06)    |
| Mean hours worked including non-work days         | 3.83             | 3.49                           | 3.70                           | 4.08                             | 4.11              |
| standard deviation                                | 3.84<br>(0.05)   | 3.84<br>(0.07)                 | 3.87<br>(0.16)                 | 3.64<br>(0.14)                   | 3.85<br>(0.09)    |
| <i>N</i>                                          | 6,945            | 3,107                          | 575                            | 671                              | 1,875             |
| <u>Person-days</u>                                |                  |                                |                                |                                  |                   |
| Share parent had negative mood                    | 0.422<br>(0.006) | 0.423<br>(0.010)               | 0.598<br>(0.020)               | 0.447<br>(0.020)                 | 0.361<br>(0.012)  |
| Raw Sleep Difficulty (1-10 scale) (mean)          | 2.9              | 2.8                            | 3.8                            | 2.6                              | 2.8               |
| standard deviation                                | 2.21<br>(0.03)   | 2.2<br>(0.04)                  | 1.92<br>(0.08)                 | 1.45<br>(0.06)                   | 2.48<br>(0.06)    |
| Share lost temper                                 | 0.092<br>(0.004) | 0.097<br>(0.006)               | 0.078<br>(0.011)               | 0.113<br>(0.013)                 | 0.093<br>(0.007)  |
| Share punished child                              | 0.084<br>(0.004) | 0.071<br>(0.005)               | 0.134<br>(0.014)               | 0.108<br>(0.013)                 | 0.077<br>(0.007)  |
| Share child was uncooperative most/all of the day | 0.139<br>(0.004) | 0.159<br>(0.007)               | 0.137<br>(0.014)               | 0.187<br>(0.016)                 | 0.099<br>(0.007)  |
| Share child was worried most/all of the day       | 0.054<br>(0.003) | 0.063<br>(0.005)               | 0.045<br>(0.009)               | 0.087<br>(0.011)                 | 0.032<br>(0.004)  |
| <i>N</i>                                          | 6,059            | 2,610                          | 575                            | 611                              | 1,653             |

Standard errors in parentheses.



Table 3. Effect of Emeryville Fair Workweek Ordinance on daily work schedule disruptions

|                                             | Wave 3<br>only as<br>Post | Waves 2<br>and 3 as<br>Post | Waves 2<br>and 3<br>unique<br>effects |
|---------------------------------------------|---------------------------|-----------------------------|---------------------------------------|
| <u>Outcome: Any schedule change</u>         |                           |                             |                                       |
| Policy impact <sup>a b</sup>                | -0.037<br>(0.029)         | -.042+<br>(0.024)           | -0.025<br>(0.028)                     |
| Wave 2 policy impact                        |                           |                             | -.055*<br>(0.025)                     |
| <u>Outcome: Last-minute schedule change</u> |                           |                             |                                       |
| Policy impact <sup>a b</sup>                | -0.032<br>(0.022)         | -.034+<br>(0.019)           | -0.029<br>(0.021)                     |
| Wave 2 policy impact                        |                           |                             | -.039+<br>(0.020)                     |
| <u>Outcome: Change in work hours</u>        |                           |                             |                                       |
| Policy impact <sup>a b</sup>                | -0.031<br>(.022)          | -0.027<br>(.021)            | -0.021<br>(.024)                      |
| Wave 2 policy impact                        |                           |                             | -0.031<br>(.022)                      |
| <u>Outcome: Canceled shift</u>              |                           |                             |                                       |
| Policy impact <sup>a b</sup>                | 0.012<br>(.015)           | 0.002<br>(.011)             | 0.014<br>(.014)                       |
| Wave 2 policy impact                        |                           |                             | -0.008<br>(.012)                      |
| <u>Outcome: Surprise shift</u>              |                           |                             |                                       |
| Policy impact <sup>a b</sup>                | -.019*<br>(.007)          | -.017*<br>(.007)            | -.019*<br>(.007)                      |
| Wave 2 policy impact                        |                           |                             | -.016*<br>(.008)                      |

<sup>a</sup> Treatment x Wave 3 for Models 1 and 3

<sup>b</sup> Treatment x post (Wave 2 and 3) for Model 2

+  $p < .10$ ; \*  $p < .05$

Table 4. Effect of Emeryville Fair Workweek Ordinance on daily work and work hours

|                                                                        | Model 1:<br>Wave 3 only<br>as Post | Model 2:<br>Waves 2<br>and 3 as<br>Post | Model 3:<br>Waves 2 and 3<br>unique effects |
|------------------------------------------------------------------------|------------------------------------|-----------------------------------------|---------------------------------------------|
| <u>Outcome: Worked today</u>                                           |                                    |                                         |                                             |
| Policy impact <sup>a b</sup>                                           | -.128*<br>(.064)                   | -.098*<br>(.048)                        | -.118+<br>(.058)                            |
| Wave 2 policy impact                                                   |                                    |                                         | -0.082<br>(.052)                            |
| <u>Outcome: Hours worked on work days</u>                              |                                    |                                         |                                             |
| Policy impact <sup>a b</sup>                                           | .509*<br>(.250)                    | 0.185<br>(.254)                         | .393+<br>(.233)                             |
| Wave 2 policy impact                                                   |                                    |                                         | 0.009<br>(.316)                             |
| <u>Outcome: Hours worked including non-workdays</u>                    |                                    |                                         |                                             |
| Policy impact <sup>a b</sup>                                           | -0.474<br>(.515)                   | -0.433<br>(.401)                        | -0.381<br>(.479)                            |
| Wave 2 policy impact                                                   |                                    |                                         | -0.475<br>(.437)                            |
| <u>Outcome: Hours worked across all jobs (including non-work days)</u> |                                    |                                         |                                             |
| Policy impact <sup>a b</sup>                                           | -0.698<br>(.743)                   | 0.441<br>(.666)                         | -0.623<br>(.734)                            |
| Wave 2 policy impact                                                   |                                    |                                         | 1.372+<br>(.818)                            |

<sup>a</sup> Treatment x Wave 3 for Models 1 and 3

<sup>b</sup> Treatment x post (Wave 2 and 3) for Model 2

+  $p < .10$ ; \*  $p < .05$

Table 5. Effect of Emeryville Fair Workweek Ordinance on daily family well-being

|                              | Wave 3<br>only as<br>Post     | Waves 2<br>and 3 as<br>Post | Waves 2<br>and 3<br>unique<br>effects | Wave 3<br>only as<br>Post        | Waves 2<br>and 3 as<br>Post | Waves 2<br>and 3<br>unique<br>effects |
|------------------------------|-------------------------------|-----------------------------|---------------------------------------|----------------------------------|-----------------------------|---------------------------------------|
| <b>Parental well-being</b>   | Outcome: Parent negative mood |                             |                                       | Outcome: Parent sleep difficulty |                             |                                       |
| Policy impact <sup>a,b</sup> | -3.740<br>(5.397)             | -0.869<br>(4.172)           | -3.839<br>(5.228)                     | -.281*<br>(0.137)                | -0.196<br>(0.124)           | -.282*<br>(0.136)                     |
| Wave 2 policy impact         |                               |                             | 1.738<br>(3.991)                      |                                  |                             | -0.118<br>(0.142)                     |
| <b>Parenting behaviors</b>   | Outcome: Lost temper          |                             |                                       | Outcome: Punished child          |                             |                                       |
| Policy impact <sup>a,b</sup> | -2.306<br>(1.976)             | -1.693<br>(1.684)           | -2.564<br>(1.886)                     | 2.507<br>(2.319)                 | 1.820<br>(1.846)            | 1.864<br>(2.269)                      |
| Wave 2 policy impact         |                               |                             | -1.031<br>(2.216)                     |                                  |                             | 1.699<br>(1.999)                      |
| <b>Child well-being</b>      | Outcome: Child uncooperative  |                             |                                       | Outcome: Child worried           |                             |                                       |
| Policy impact <sup>a,b</sup> | -1.328<br>(4.319)             | -2.168<br>(3.242)           | -2.014<br>(4.161)                     | 0.893<br>(2.383)                 | 0.087<br>(1.878)            | 0.211<br>(2.355)                      |
| Wave 2 policy impact         |                               |                             | -2.539<br>(3.166)                     |                                  |                             | -0.147<br>(1.811)                     |

<sup>a</sup> Treatment x Wave 3 for Models 1 and 3

<sup>b</sup> Treatment x post (Wave 2 and 3) for Model 2

+  $p < .10$ ; \*  $p < .05$

Table 6. Intent-to-Treat Analysis of Effect of Emeryville Fair Workweek Ordinance on daily work schedule disruptions

|                                             | Wave 3 only<br>as Post | Waves 2 and<br>3 as Post | Waves 2 and 3<br>unique effects |
|---------------------------------------------|------------------------|--------------------------|---------------------------------|
| <u>Outcome: Any schedule change</u>         |                        |                          |                                 |
| Policy impact <sup>a b</sup>                | -0.129*                | -.042+                   | -0.025                          |
|                                             | (0.064)                | (0.024)                  | (0.028)                         |
| Wave 2 policy impact                        |                        |                          | -.055*                          |
|                                             |                        |                          | (0.025)                         |
| <u>Outcome: Last-minute schedule change</u> |                        |                          |                                 |
| Policy impact <sup>a b</sup>                | -0.032                 | -.034+                   | -0.029                          |
|                                             | (0.022)                | (0.019)                  | (0.021)                         |
| Wave 2 policy impact                        |                        |                          | -.039+                          |
|                                             |                        |                          | (0.020)                         |
| <u>Outcome: Change in work hours</u>        |                        |                          |                                 |
| Policy impact <sup>a b</sup>                | -0.031                 | -0.027                   | -0.021                          |
|                                             | (.022)                 | (.021)                   | (.024)                          |
| Wave 2 policy impact                        |                        |                          | -0.031                          |
|                                             |                        |                          | (.022)                          |
| <u>Outcome: Canceled shift</u>              |                        |                          |                                 |
| Policy impact <sup>a b</sup>                | 0.012                  | 0.002                    | 0.014                           |
|                                             | (.015)                 | (.011)                   | (.014)                          |
| Wave 2 policy impact                        |                        |                          | -0.008                          |
|                                             |                        |                          | (.012)                          |
| <u>Outcome: Surprise shift</u>              |                        |                          |                                 |
| Policy impact <sup>a b</sup>                | -.019*                 | -.017*                   | -.019*                          |
|                                             | (.007)                 | (.007)                   | (.007)                          |
| Wave 2 policy impact                        |                        |                          | -.016*                          |
|                                             |                        |                          | (.008)                          |

<sup>a</sup> Treatment x Wave 3 for Models 1 and 3

<sup>b</sup> Treatment x post (Wave 2 and 3) for Model 2

+  $p < .10$ ; \*  $p < .05$

Table 7. Intent-to-Treat Analysis of Effect of Emeryville Fair Workweek Ordinance on daily work and work hours

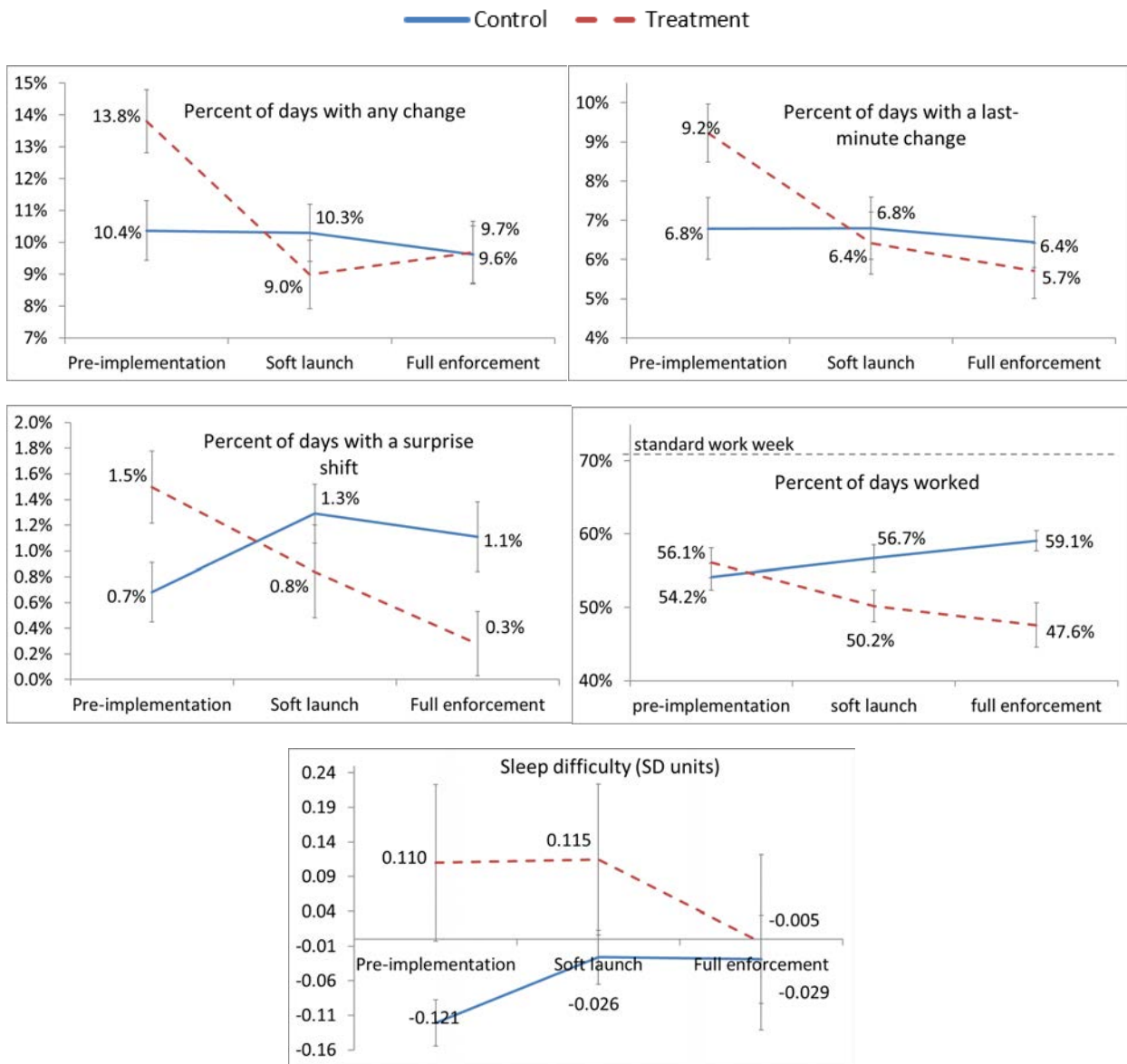
|                                                                        | Model 1:<br>Wave 3 only<br>as Post | Model 2:<br>Waves 2<br>and 3 as<br>Post | Model 3:<br>Waves 2 and 3<br>unique effects |
|------------------------------------------------------------------------|------------------------------------|-----------------------------------------|---------------------------------------------|
| <u>Outcome: Worked today</u>                                           |                                    |                                         |                                             |
| Policy impact <sup>a,b</sup>                                           | -.129*<br>(.064)                   | -.098*<br>(.048)                        | -.118+<br>(.058)                            |
| Wave 2 policy impact                                                   |                                    |                                         | -0.082<br>(.052)                            |
| <u>Outcome: Hours worked on work days</u>                              |                                    |                                         |                                             |
| Policy impact <sup>a,b</sup>                                           | .509*<br>(.250)                    | 0.185<br>(.254)                         | .393+<br>(.233)                             |
| Wave 2 policy impact                                                   |                                    |                                         | 0.009<br>(.316)                             |
| <u>Outcome: Hours worked including non-workdays</u>                    |                                    |                                         |                                             |
| Policy impact <sup>a,b</sup>                                           | -0.474<br>(.515)                   | -0.433<br>(.401)                        | -0.381<br>(.479)                            |
| Wave 2 policy impact                                                   |                                    |                                         | -0.475<br>(.437)                            |
| <u>Outcome: Hours worked across all jobs (including non-work days)</u> |                                    |                                         |                                             |
| Policy impact <sup>a,b</sup>                                           | -0.698<br>(.743)                   | 0.441<br>(.666)                         | -0.623<br>(.734)                            |
| Wave 2 policy impact                                                   |                                    |                                         | 1.372+<br>(.818)                            |

<sup>a</sup> Treatment x Wave 3 for Models 1 and 3

<sup>b</sup> Treatment x post (Wave 2 and 3) for Model 2

+  $p < .10$ ; \*  $p < .05$

Figure 1.





Commission on Labor

ACTION CALENDAR  
November 3, 2022  
*(Continued from October 11, 2022)*

To: Honorable Mayor and Members of the City Council

From: Commission on Labor

Submitted by: Michael Berne, Chairperson, Commission on Labor

Subject: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.110

### RECOMMENDATION

Adopt first reading of the proposed Fair Workweek Ordinance, adding Berkeley Municipal Code Chapter 13.110.

### POLICY COMMITTEE RECOMMENDATION

On September 22, 2022, the Health, Life Enrichment, Equity & Community Committee adopted the following action: M/S/C (Hahn/Taplin) to forward the Commission on Labor's item to Council with a positive recommendation to adopt the version of the ordinance dated "7/7/22" that was presented to the Committee at the July 11, 2022 meeting. Vote: All Ayes.

### FISCAL IMPACTS OF RECOMMENDATION

This ordinance provides for both private enforcement and enforcement by the City. Comparable jurisdictions report a small number of complaints annually, but additional staffing may be required to investigate complaints and hold enforcement hearings. Temporary staffing and one-time mailing costs will be required to conduct outreach to covered employers. The Commission anticipates that these cost projections will be quantified in a companion staff report.

### SUMMARY

Key features of the proposed ordinance include:

#### Scheduling Notification and Requests

- Schedules must be given 14 days in advance
- Employees must be provided with an initial estimate of hours
- Employees have the right to decline hours they are given with less than 14 days notice
- Employees shall have the right to request flexible and predictable schedules to accommodate childcare, education, second jobs etc.
- Employees have the right to decline any shift that either occurs less than 11

hours after the end of their previous shift; if accepting such a shift, will be compensated at 1½ times their regular rate of pay.

#### Predictability Pay

- Employees will receive predictability pay equal to a specified number of hours at their hourly rate of pay as compensation for schedule changes, ranging from 1 hour of pay for a shift scheduled less than 14 days in advance but at least 24 hours up to 4 hours of pay or hours equal to the amount of hours lost when a shift is canceled or reduced

#### Offer of Work to Existing Employees

- Before hiring new employees, employers must offer additional hours to existing part-time employees for any new hours available
- Employees shall have 24 hours to accept additional hours

#### Applicability

- In general, employers in Berkeley with 50 or more employees globally engaged in the following industry sectors: building services, healthcare, hotel, manufacturing, retail, or warehouse services;
- Restaurant employers with at least 100 employees globally and 10 or more in Berkeley;
- Franchisees associated with a network of franchises employing 100 or more employees globally and 10 or more; and
- The City of Berkeley as an employer.
- Specifically **excluded** are nonprofit organizations with fewer than 100 employees globally (which includes most arts organizations).

#### BACKGROUND

The City Council referred to the Commission on Labor in 2018 to draft an Ordinance to establish regulations governing the scheduling and hiring practices of qualifying businesses in Berkeley.

The City Council's referral observed that:

Even with sick pay and strong minimum wage laws, workers in Berkeley, particularly shift workers, still face unfair and exploitative work practices. Since the passage of the Affordable Care Act, a frequent issue that has arisen is the practice of businesses keeping their employees below 30 hours a week to avoid having to provide them health care. Workers may be forced to take "clopening" shifts, where an employee covers the closing shift one day and the opening shift the next day, giving them little time for rest. Shift workers frequently have shifts added or removed hours before they are set to begin, making scheduling impossible and creating financial difficulties for those with children who need child care.



At the time of the City Council's referral, multiple jurisdictions had introduced or enacted measures to address these inequitable conditions, including the Cities of Emeryville, San Jose, San Francisco, and New York, and the State of Oregon, with the strongest at the time being the City of Emeryville. The referral directed the ordinance to be based on the City of Emeryville, strengthened with the following principles:

- The right to refuse "clopening" shifts, the right to request a flexible work arrangement, and a prohibition on refusing hours to prevent the application of benefits should apply to all employers and employees
- The right to at least two weeks notice of work schedule, to decline additional hours, and to "predictability pay" if changes are made to the schedule after the 2 two week deadline should apply to all businesses of at least 25 employees
- The requirement that new shifts first be offered to all qualified existing employees until they have at least 35 hours of work per week on average should apply to all Retail, Hotel, and Restaurant firms with at least 25 employees
- All requirements of the ordinance apply to the City of Berkeley and the Berkeley Rent Stabilization Board.

Since the referral, several of the above-mentioned jurisdictions passed the introduced ordinances, in addition to the City of Chicago. Sectoral coverage in the proposed ordinance is generally modeled after Chicago, while firm size is generally modeled after Emeryville.

After many deliberative meetings before the full Commission and a dedicated subcommittee, and considering input from stakeholders including affected employers and workers, the Commission developed a proposed ordinance taking into account the Council's direction. At its November 17, 2021 meeting, the Commission on Labor voted to appoint Commissioners Katz and Botello to draft the Fair Workweek Council report recommending adoption of the draft ordinance and to send to Council without further action from the commission. (M/S/C: Katz/Osborne. Yes: Scantlebury, Harlow, Botello, Jones, Berne. Noes: None. Absent: Medak, Schriener.) By passing this ordinance, Berkeley has the opportunity to be at the forefront of worker protections and to support the essential workers that have gotten us through this pandemic.

The Commission found many of the workers employed in the retail, restaurant, and hospitality industries suffer from low wages and unpredictable schedules, while needing to work multiple jobs just to get by. Volatile scheduling leads to difficulty in managing multiple jobs, school work, and childcare. Following the model adopted by the City of Chicago, the proposed ordinance would cover building services (including janitorial and security), healthcare, manufacturing, and warehouse services.

In response to input received by stakeholders, the proposed ordinance applies only to employers employing fifty or more employees globally (similar to Emeryville), but for restaurants or franchises would apply if the employer employed at least ten employees

in the City of Berkeley and at least one hundred globally. This attempts to balance an interest in achieving the broadest coverage of any ordinance or law in the United States, while avoiding coverage of locally owned businesses that do not have the human resources support of a franchisor.

The strengthening elements requested by the City Council are mostly incorporated, except for the applicability thresholds based on our deliberative process, compliance with federal laws as applicable, the requirement for new shift offers reflects a forty-hour workweek, and the Rent Stabilization Board employees are presumed incorporated within City of Berkeley employees.

The City Council may wish to consider a delayed effectiveness date, such as until the beginning of the following calendar year, for private sector employers to allow for the time necessary for staff to provide outreach and education to affected businesses. While private sector employers should be provided a reasonable amount of time to set up systems to ensure compliance with the ordinance, the subcommittee recommends that the City of Berkeley as an employer can and should implement the new procedures promptly.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

#### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

This action is not expected to have any impact on the environment and is exempt from CEQA.

#### RATIONALE FOR RECOMMENDATION

Enactment of workplace protections. See background discussion.

#### ALTERNATIVE ACTIONS CONSIDERED

The Commission recognizes the labor standards benefits of applying the right to refuse “clopening” shifts, and refusal of hours to prevent employees from attaining thirty hours per week to all employers, and applying the two week notice and predictability pay to all sectors of the economy. The right to request a flexible working arrangement remains applicable to all employers that employ ten or more employees under the Berkeley Family Friendly and Environment Friendly Workplace Ordinance, adopted in 2017. The proposed ordinance’s focus on uniform application to the seven sectors covered in Chicago’s model reflects (a) the expected education and outreach required for compliance, (b) the sectors where working conditions require intervention the most, and (c) that the employers covered by the proposed ordinance are in the best position to comply with its provisions in the near term, and does not preclude broadening coverage in the future.

Fair Workweek Ordinance

CITY MANAGER

See companion report.

CONTACT PERSON

Margot Ernst, Commission Secretary, 510-981-5427

Attachments:

1: Ordinance

Exhibit A: Fair Workweek Ordinance

ORDINANCE NO. -N.S.

FAIR WORKWEEK EMPLOYMENT STANDARDS; ADDING BERKELEY MUNICIPAL CODE CHAPTER 13.110

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.110 is added to read as follows:

**CHAPTER 13.110  
FAIR WORKWEEK EMPLOYMENT STANDARDS**

Sections:

- 13.110.010 Purpose and Intent**
- 13.110.020 Definitions.**
- 13.110.030 Applicability.**
- 13.110.040 Waiver through Collective Bargaining**
- 13.110.050 Advance Notice of Work Schedules.**
- 13.110.060 Notice, Right to Decline, and Compensation for Schedule Changes.**
- 13.110.070 Offer of Work to Existing Employees.**
- 13.110.080 Right to Rest.**
- 13.110.090 Right to Request a Flexible Working Arrangement.**
- 13.110.100 Notice and Posting.**
- 13.110.110 Implementation.**
- 13.110.120 Enforcement.**
- 13.110.130 Retaliation Prohibited**
- 13.110.140 Retention of Records.**
- 13.110.150 City Access.**
- 13.110.160 No Preemption of Higher Standards.**
- 13.110.170 Severability.**

**13.110.010 Purpose and Intent**

This chapter shall be known and may be cited as the “Berkeley Fair Workweek Ordinance”. It is the purpose of this chapter and the policy of the City: (i) to enact and enforce fair and equitable employment scheduling practices in the City of Berkeley; (ii) to provide the working people of Berkeley with protections that ensure employer scheduling practices do not unreasonably prevent workers from attending to their families, health, education, and other obligations; and (iii) to require Employers needing additional hours, whether temporary or permanent, to first offer those hours to current part-time Employees.

### 13.110.020 Definitions

As used in this chapter, the following terms shall have the following meanings:

- (a) "Calendar week" shall mean a period of seven (7) consecutive days starting on Sunday.
- (b) "City" shall mean the City of Berkeley.
- (c) "Covered employer" shall mean an employer subject to the provisions of this chapter, as specified in Section 13.110.030.
- (d) "Department" shall mean the Department of Finance or other City department or agency as the City shall by resolution designate.
- (e) "Employee" shall mean any person who:
  - (1) In a calendar week performs at least two (2) hours of work within the geographic boundaries of the City of Berkeley for an employer;
  - (2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Labor Code Section [1197](#) and wage orders published by the California Industrial Welfare Commission. Employees shall include learners, as defined by the California Industrial Welfare Commission; and
  - (3) Is (i) not exempt from payment of an overtime rate of compensation pursuant to Labor Code Section 510; and (ii) is not paid a monthly salary equivalent to at least forty hours per week at a rate of pay of twice the minimum wage required by Berkeley Municipal Code Section 13.99.040.
- (f) "Employer" shall mean any person, including corporate officers or executives, as defined in Section [18](#) of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency, subcontractor or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through Title [9](#) of the Berkeley Municipal Code.
- (g) "Firm" shall mean a business organization or entity consisting of one (1) or more establishments under common ownership or control. In the case of a franchise, the franchisor shall be considered the firm.
- (h) "Franchise" shall have the meaning in California Business and Professions Code Section [20001](#).
- (i) "Franchisee" shall have the meaning in California Business and Professions Code Section [20002](#).
- (j) "Franchisor" shall have the meaning in California Business and Professions Code Section [20003](#).
- (k) "Good faith" shall mean a sincere intention to deal fairly with others.

(l) "Predictability pay" shall mean wages paid to an employee, calculated on an hourly basis at the employee's regular rate of pay as that term is used in [29 U.S.C. Section 207\(e\)](#), as compensation for schedule changes made by a covered employer to an employee's schedule pursuant to Section 13.110.060, in addition to any wages earned for work performed by that employee.

(m) "Shift" shall mean the consecutive hours an employer requires an employee to work including employer-approved meal periods and rest periods.

(n) "Work schedule" shall mean all of an employee's shifts, including specific start and end times for each shift, during a calendar week.

(o) "Building services" means the care and maintenance of property, including, but not limited to, janitorial services, building maintenance services, and security services.

(p) "Healthcare" shall mean either a Hospital, Medical Practitioner Office, Nursing Home, or Supportive Housing as defined in BMC Section 23F.04.10, or a facility that provides outpatient maintenance dialysis.

(q) "Hotel" shall mean Tourist Hotel as defined in BMC Section 23F.04.10.

(r) "Manufacturing" shall mean a Manufacturing Use as defined in BMC Section 23F.04.10.

(s) "Restaurant" shall mean a Food Service Establishment as defined in BMC Section 23F.04.10.

(t) "Retail" shall mean a Retail Products Store as defined in BMC Section 23F.04.10.

(u) "Warehouse services" shall mean Warehouse Based Non-Store Retail as defined in BMC Section 23F.04.10.

### **13.110.030 Applicability**

(a) All sections of this chapter shall apply to: the City of Berkeley as an employer, and all employers in the City of Berkeley who are primarily engaged in any of the following industries:

- (1) building services;
- (2) healthcare;
- (3) hotel;
- (4) manufacturing;
- (5) restaurant;
- (6) retail; or
- (7) warehouse services.

(b) Notwithstanding subdivision (a), this chapter shall apply only to an employer that

- (1) is not a restaurant and employs fifty (50) or more employees globally;

- (2) is a restaurant operator employing ten (10) or more employees in the city of Berkeley and employs one hundred (100) or more globally; or
- (3) is a franchisee employing ten (10) or more employees in the city of Berkeley and is associated with a network of franchises employing one hundred (100) or more employees globally.

(c) This chapter does not apply to a not-for-profit corporation organized under Section 501 of the United States Internal Revenue Code unless it employs one hundred (100) or more employees globally.

(d) In determining the number of employees performing work for a covered employer during a given week, all employees performing work for the covered employer for compensation on a full-time, part-time, or temporary basis, at any location, shall be counted, including employees made available to work through the services of a temporary services or staffing agency or similar entity.

(e) For the purposes of determining whether a nonfranchisee entity is a covered employer as defined by this chapter, separate entities that form an integrated enterprise shall be considered a single employer under this chapter. Separate entities will be considered an integrated enterprise and a single employer under this chapter where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:

- (1) Degree of interrelation between the operations of multiple entities;
- (2) Degree to which the entities share common management;
- (3) Centralized control of labor relations; and
- (4) Degree of common ownership or financial control over the entities.

There shall be a presumption that separate legal entities, which may share some degree of interrelated operations and common management with one another, shall be considered separate employers for purposes of this chapter as long as (i) the separate legal entities operate substantially in separate physical locations from one another, and (ii) each separate legal entity has partially different ultimate ownership.

### **13.110.040 Waiver through Collective Bargaining**

To the extent permitted by law, all or any portion of the applicable requirements of this chapter may be waived in a bona fide collective bargaining agreement; provided, that such waiver is explicitly set forth in such agreement in clear and unambiguous terms that the parties thereto intend to and do thereby waive all of or a specific portion(s) of this chapter.

**13.110.050 Advance Notice of Work Schedules.**

(a) Initial Estimate of Minimum Hours.

(1) Prior to or on commencement of employment, a covered employer shall provide each employee with a good faith estimate in writing of the employee's work schedule.

(2) Prior to or on commencement of employment, the employee may request that the covered employer modify the estimated work schedule provided under subsection (a)(1) of this section. The covered employer shall consider any such request, and in its sole discretion may accept or reject the request; provided, that the covered employer shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two (2) Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two (2) weeks' notice of their work schedules by doing one (1) of the following: (1) posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees; or (2) transmitting the work schedule by electronic means, so long as all employees are given access to the electronic schedule at the workplace. For new employees, a covered employer shall provide the new employee prior to or on their first day of employment with an initial work schedule. Thereafter, the covered employer shall include the new employee in an existing schedule with other employees. If the covered employer changes an employee's work schedule after it is posted and/or transmitted, such changes shall be subject to the notice and compensation requirements set forth in this chapter.

(c) An Employee who is a victim of domestic violence or sexual violence may request that the Employee's Work Schedule not be posted or transmitted to other employees. An oral or written request shall be sufficient and implemented immediately and is sufficient until the Employee gives written permission to post the Employee's schedule. An Employer may request a written statement from the Employee that states that the Employee is a victim of domestic violence or sexual violence. The written statement shall constitute the documentation needed for the Employer to implement the request. The Employer may not require a written statement more than once in a calendar year from any Covered Employee for this purpose.

**13.110.060 Notice, Right to Decline, and Compensation for Schedule Changes.**

(a) A covered employer shall provide an employee notice of any change to the employee's posted or transmitted work schedule. The covered employer shall provide such notice by in-person conversation, telephone call, email, text message, or other electronic communication. If the Employee accepts the additional shift via a verbal conversation, the Employer shall immediately follow up with written confirmation to document the agreement and when it was accepted. This notice requirement shall not



apply to any schedule changes the employee initiates, such as employee requested sick leave, time off, shift trades, or additional shifts.

(b) Subject to the exceptions in subsection (d) of this section, an employee has the right to decline any previously unscheduled hours that the covered employer adds to the employee's schedule, and for which the employee has been provided advance notice of less than fourteen (14) days.

(c) Subject to the exceptions in subsection (d) of this section, a covered employer shall provide an employee with the following compensation per shift for each previously scheduled shift that the covered employer adds or subtracts hours, moves to another date or time, cancels, or each previously unscheduled shift that the covered employer adds to the employee's schedule: (1) with less than fourteen (14) days' notice, but twenty-four (24) hours or more notice to the employee: one (1) hour of predictability pay; (2) with less than twenty-four (24) hours to the employee, (i) four (4) hours or the number of hours in the employee's scheduled shift, whichever is less, when hours are canceled or reduced; (ii) one (1) hour of predictability pay for all other changes. The compensation required by this subsection shall be in addition to the employee's regular pay for working that shift.

(d) Exceptions. The requirements of this section shall not apply under any of the following circumstances:

- (1) Operations cannot begin or continue due to threats to covered employers, employees or property, or when civil authorities recommend that work not begin or continue;
- (2) Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system;
- (3) Operations cannot begin or continue due to: acts of nature (including but not limited to flood, fire, explosion, earthquake, tidal wave, drought), war, civil unrest, strikes, or other cause not within the covered employer's control;
- (4) Mutually agreed-upon work shift swaps or coverage arrangements among employees.
- (5) Employee initiated voluntary shift modifications, such as voluntary requests to leave a scheduled shift prior to the end of the shift or to use sick leave, vacation leave, or other policies offered by the Employer. This paragraph shall apply only to the employee initiating the voluntary shift modification.
- (6) To accommodate the following transitions in shifts:
  - (i) If an employee works past the end of a scheduled shift to complete service to a customer, which service would entitle the employee to receive a commission, tip, or other incentive pay based on the completion of that service, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.

(ii) An employee begins or ends their scheduled shift no more than ten minutes prior to or after the scheduled shift, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.

(7) When, in manufacturing, events outside of the control of the manufacturer result in a reduction in the need for Covered Employees, including, but not limited to, when a customer requests the manufacturer to delay production or there is a delay in the receipt of raw materials or component parts needed for production.

(8) With regard to healthcare employers, in (i) any declared national, State, or municipal disaster or other catastrophic event, or any implementation of an Employer's disaster plan, or incident causing a hospital to activate its Emergency Operations Plan, that will substantially affect or increase the need for healthcare services; (ii) any circumstance in which patient care needs require specialized skills through the completion of a procedure; or (iii) any unexpected substantial increase in demand for healthcare due to large public events, severe weather, violence, or other circumstances beyond the Employer's control.

(e) Nothing in this section shall be construed to prohibit a covered employer from providing greater advance notice of employee's work schedules and/or changes in schedules than that required by this section.

#### **13.110.070 Offer of Work to Existing Employees.**

(a) Subject to the limitations herein, before hiring new employees or contract employees, including hiring through the use of temporary services or staffing agencies, a covered employer shall first offer additional hours of work to existing part-time employee(s) who have worked on behalf of the employer for more than two weeks, and if the part-time employee(s) are qualified to do the additional work, as reasonably and in good faith determined by the covered employer. This section requires covered employers to offer to part-time employees only up to the number of hours required to schedule a part-time employee forty (40) hours of work in a calendar week. In order to facilitate communication with current employees who may be interested in additional work, an Employer may specify how employees may in advance communicate their interest of additional work and which positions and hours of work employees would be interested in covering.

(b) A covered employer has discretion to divide the additional work hours among part-time employees consistent with this section; provided, that: (1) the employer's system for distribution of hours must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity or expression, disability, age, marital or familial status, nor on the basis of family caregiving responsibilities or status as a student; and (2) the employer may not distribute hours in a manner intended to avoid an increase in the number of employees working 30 or

more hours per week, or with regard to the City of Berkeley, to avoid a the granting of any benefits that an employee earns based on hours worked.

(c) A part-time employee may, but is not required to, accept the covered employer's offer of additional work under this section.

(1) A part-time employee shall have twenty-four (24) hours to accept an offer of additional hours of work under this section, after which time the covered employer may hire new employees to work the additional hours.

(2) The twenty-four (24) hour period referred to in this subsection begins either when the employee receives the written offer of additional hours, or when the covered employer posts the offer of additional hours as described in subsection (d) of this section, whichever is sooner. A part-time employee who wishes to accept the additional hours must do so in writing.

(d) When this section requires a covered employer to offer additional hours to existing part-time employees, the covered employer shall make the offer either in writing or by posting the offer in a conspicuous location in the workplace where notices to employees are customarily posted. Covered employers may post the notice electronically on an internal website in a conspicuous location and which website is readily accessible to all employees. The notice shall include the total hours of work being offered, the schedule of available shifts, whether those shifts will occur at the same time each week, and the length of time the covered employer anticipates requiring coverage of the additional hours, and the process by which part-time employees may notify the covered employer of their desire to work the offered hours.

(e) The covered employer shall retain each written offer no less than three (3) years as required under Section [13.110.140](#).

(f) This section shall not be construed to require any covered employer to offer employees work hours paid at a premium rate under California Labor Code Section [510](#) nor to prohibit any covered employer from offering such work hours.

### **13.110.080 Right to Rest.**

(a) An employee has the right to decline work hours that occur:

- (1) Less than eleven (11) hours after the end of the previous day's shift; or
- (2) During the eleven (11) hours following the end of a shift that spanned two (2) days.

(b) An employee who agrees in writing to work hours described in this section shall be compensated at one and one-half (1-1/2) times the employee's regular rate of pay for any hours worked less than eleven (11) hours following the end of a previous shift.

### **13.110.090 Right to Request a Flexible Working Arrangement.**

An employee has the right to request a modified work schedule, including but not limited to additional shifts or hours; changes in days of work or start and/or end times for the

shift; permission to exchange shifts with other employees; limitations on availability; part-time employment; job sharing arrangements; reduction or change in work duties; or part-year employment. A covered employer shall not retaliate against an employee for exercising their rights under this section or the rights outlined in the Berkeley Family Friendly and Environment Friendly Workplace Ordinance, Berkeley Municipal Code Chapter 13.101.

**13.110.100 Notice and Posting.**

(a) The Department shall publish and make available to covered employers, in English and other languages as provided in any implementing regulations, a notice suitable for posting by covered employers in the workplace informing employees of their rights under this chapter.

(b) Each covered employer shall give written notification to each current employee and to each new employee at time of hire of their rights under this chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all employees. Every covered employer shall also provide each employee at the time of hire with the covered employer's name, address, and telephone number in writing. Failure to post such notice shall render the covered employer subject to administrative citation, pursuant to the provisions of this chapter. The Department is authorized to prepare sample notices and covered employer use of such notices shall constitute compliance with this subsection.

**13.110.110 Implementation.**

(a) The Department shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the City shall have the force and effect of law and may be relied on by covered employers, employees and other parties to determine their rights and responsibilities under this chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this chapter, including supplementary procedures for helping to inform employees of their rights under this chapter, for monitoring covered employer compliance with this chapter, and for providing administrative hearings to determine whether a covered employer has violated the requirements of this chapter.

(b) Reporting Violations. An aggrieved employee may report to the Department in writing any suspected violation of this chapter. The Department shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee reporting the violation; provided, however, that with the authorization of such employee, the Department may disclose their name and identifying information as necessary to enforce this chapter or other employee protection laws.

(c) Investigation. The Department may investigate any possible violations of this chapter by a covered employer. The Department shall have the authority to inspect workplaces, interview persons and subpoena records or other items relevant to the enforcement of this chapter.

(d) Informal Resolution. If the Department elects to investigate a complaint, the City shall make every effort to resolve complaints informally and in a timely manner. The City's investigation and pursuit of informal resolution does not limit or act as a prerequisite for an employee's right to bring a private action against a covered employer as provided in this chapter.

### **13.110.120 Enforcement.**

(a) Enforcement by City. Where prompt compliance with the provisions of this chapter is not forthcoming, the Department may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

The Department may issue an administrative citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this chapter violated, as specified below:

(1) A fine may be assessed for retaliation by a covered employer against an employee for exercising rights protected under this chapter. The fine shall be one thousand dollars (\$1,000.00) for each employee retaliated against.

(2) A fine of five hundred dollars (\$500.00) may be assessed for any of the following violations of this chapter:

(i) Failure to provide notice of employees' rights under this chapter.

(ii) Failure to timely provide an initial work schedule or to timely update work schedules following changes.

(iii) Failure to provide predictability pay for schedule changes with less than twenty-four (24) hours' advance notice.

(iv) Failure to offer work to existing employees before hiring new employees or temporary staff or to award work to a qualified employee.

(v) Failure to maintain payroll records for the minimum period of time as provided in this chapter.

(vi) Failure to allow the Department access to payroll records.

(3) A fine equal to the total amount of appropriate remedies, pursuant to subsection (c) of this section. Any and all money collected in this way that is the rightful property of an employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the Department in a prompt manner.

(f) City Access. Each covered employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance,

including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

(g) Any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to Employees, and reasonable attorneys' fees and costs.

(i) This Section shall not be construed to limit an Employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

(j) The remedies for violation of this chapter include but are not limited to:

1. Reinstatement, the payment of predictability pay unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of fifty dollars (\$50.00) to each employee whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this chapter or State law.
2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.
3. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.
4. If a repeated violation of this chapter has been finally determined in a period from July 1 to June 30 of the following year, the Department may require the employer to pay an additional sum as a civil penalty in the amount of fifty dollars (\$50.00) to the City for each employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or State law.

(k) The remedies, penalties and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this chapter. Actions taken pursuant to this chapter shall not prejudice or adversely affect any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.

(l) No criminal penalties shall attach for any violation of this chapter, nor shall this chapter give rise to any cause of action for damages against the City.

### **13.110.130 Retaliation Prohibited.**

An employer shall not discharge, reduce the compensation of, discriminate against, or take any adverse employment action against an employee, including discipline, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment, reduction of hours or denial of additional hours, informing another employer that the person has engaged in activities protected by this chapter, or reporting or threatening to report the actual or suspected citizenship or immigration status of an employee, former employee or family member of an employee to a Federal, State or local agency, for making a complaint to the Department, participating in any of the Department's proceedings, using any civil remedies to enforce their rights, or otherwise asserting their rights under this chapter. Within one hundred twenty (120) days of an employer being notified of such activity, it shall be unlawful for the employer to discharge any employee who engaged in such activity unless the employer has clear and convincing evidence of just cause for such discharge.

### **13.110.140 Retention of Records.**

Each employer shall maintain for at least three (3) years for each employee a record of their name, hours worked, pay rate, initial posted schedule and all subsequent changes to that schedule, consent to work hours where such consent is required by this chapter, and documentation of the time and method of offering additional hours of work to existing staff. Each employer shall provide each employee a copy of the records relating to such employee upon the employee's reasonable request.

### **13.110.150 City Access.**

Each employer shall permit access to work sites and relevant records for authorized Department representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

**13.110.160 No Preemption of Higher Standards.**

The purpose of this chapter is to ensure minimum labor standards. This chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This chapter shall not be construed to limit a discharged employee's right to bring a common law cause of action for wrongful termination.

**13.110.170 Severability.**

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Energy Commission

## ACTION CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council  
 From: Energy Commission  
 Submitted by: Bentham Paulos, Chairperson, Energy Commission  
 Subject: Recommendation on Climate, Building Electrification, and Sustainable Transportation Budget Priorities for Fiscal Year 2023 and 2024

### RECOMMENDATION

The Energy Commission recommends that the Berkeley City Council prioritize and include in the City's budget for the Fiscal Years Ending (FYE) 2023 and 2024 several staff positions, pilot projects, investments in electric vehicles and charging infrastructure, and other measures to ensure that the City's budget is aligned with and provides adequate and needed funding to implement the City's adopted Climate Action Plan, Electric Mobility Roadmap, Building Emissions Saving Ordinance, 2019 ban on gas in new construction, and the Existing Buildings Electrification Strategy.

### POLICY COMMITTEE RECOMMENDATION

No action was taken by the Budget & Finance Committee. Item is automatically returning to the Council agenda pursuant to the 120-day time limit for items referred to policy committees.

### SUMMARY

In this memo, the Energy Commission (which disbanded March 31, 2022, and was merged with the Community Environmental Advisory Commission in April 2022) provides details on specific budget and funding priorities for: staffing an Electric Mobility Coordinator and the Green Buildings Program Manager; fully funding the Building Electrification and Just Transition pilot project (especially to avoid risking loss of state funding); accelerate funding for the City's delayed fleet replacement with electric vehicles, residential electric vehicle charging infrastructure, and electric bike parking infrastructure; expanding public engagement and outreach; leveraging street maintenance budgets to incorporate and promote low-carbon mobility; and adopting policies and creating incentive programs to advance transportation and building electrification such as using the Transportation Network Company (TNC) User Tax General Fund revenue to fund bike and pedestrian projects and using a portion of the Transfer Tax to create an incentive program for residential building electrification.

### FISCAL IMPACTS OF RECOMMENDATION

The specific fiscal impacts are detailed in the budget recommendations below. At least one of our priority budget recommendations – to fully fund the Building Electrification and Just Transition pilot – is urgent and time-sensitive and cannot wait until the June

budget process. Any delay risks Berkeley losing access to substantial state funding that could support this pilot.

### CURRENT SITUATION AND ITS EFFECTS

Berkeley has been a world leader on climate change and building electrification, as well as on zero waste. The City has already adopted an ambitious climate action plan and greenhouse gas (GHG) emission reduction goals.<sup>1</sup> Between our Building Emissions Savings Ordinance<sup>2</sup>, 2019 ban on gas in new construction, the 100% renewable option with East Bay Community Energy, and the Existing Buildings Electrification Strategy<sup>3</sup> (BEBES), approved by the Council last year<sup>4</sup>, we continue to lead the world with our thoughtfulness and action.

However, the task in front of us is daunting. With 60% of the City's emissions coming from the transportation sector and 36% from the building sector,<sup>5</sup> we must redouble our efforts to reduce climate emissions from transportation and buildings through electrification of buildings and transportation, sustainable low- and zero-carbon transportation modes, and other efforts. With the upcoming budget processes, we have ample opportunity to take necessary next steps to reach our zero emissions goals.

The Energy Commission has identified the following priority items related to climate, buildings, and transportation in the City's Fiscal Year (FY) 2023 budget to ensure that

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<sup>1</sup> In 2006, voters overwhelmingly passed ballot Measure G and established Berkeley's goal to *Reduce our entire community's greenhouse gas emissions by 80% below 2000 levels by 2050*. Since then, the City has adopted a Climate Action Plan (2009).

On June 12, 2018, the Council passed item 30 which adopted a resolution establishing the goal of becoming a Fossil Fuel-Free City. Of the recommendations in the resolution, one was that "All future City government procurements of vehicles should minimize emissions and set a goal of transitioning the city's vehicle fleet to all electric vehicles."

Also, on June 12, 2018, the Council passed item 49 "Declaration of a Climate Emergency" which refers "to the Energy Commission to study and report back to Council on a path for Berkeley to become a "Carbon Sink" as quickly as possible, and to propose a deadline for Berkeley to achieve this goal" ideally by 2030.

<sup>2</sup> <https://www.cityofberkeley.info/BESO/>

<sup>3</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Berkeley%20Existing%20Bldg%20Elect%20Strategy\\_Final\\_102021.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Berkeley%20Existing%20Bldg%20Elect%20Strategy_Final_102021.pdf)

<sup>4</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/12\\_Dec/Documents/2021-12-14\\_Item\\_06\\_Minutes\\_for\\_Approval.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/12_Dec/Documents/2021-12-14_Item_06_Minutes_for_Approval.aspx)

<sup>5</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2022/02\\_Feb/Documents/2022-02-08\\_Presentations\\_Item\\_17\\_Pres\\_Planning\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2022/02_Feb/Documents/2022-02-08_Presentations_Item_17_Pres_Planning_pdf.aspx)

the budget aligns with the City's adopted climate action plan and greenhouse gas (GHG) emission reduction goals.

At least one of our priority budget recommendations – to fully fund the Building Electrification and Just Transition pilot – is urgent and time-sensitive and cannot wait until the June budget process. Any delay risks Berkeley losing access to substantial state funding that could support this pilot.

At its meeting of February 23, 2022, the Energy Commission voted to send this recommendation to the City Council by a vote of 6-0-0-1 [Moved Tahara, Second Paulos. Ayes: Paulos, Wolf, Tahara, Moore, Guliasi, Zuckerman. Noes: None. Abstain: None. Absent: de Tournay Birkhahn].

### **Budget Priorities Recommended by the Energy Commission**

#### **I. Budget Priorities to Increase Staff Capacity to Implement the City's Established Climate, Transportation, and Clean Energy Policies and Priorities**

- 1. Fund and Hire Staff to Implement the Electric Mobility Roadmap.** The City had previously approved the hiring of an Electric Mobility Coordinator within the Public Works Department<sup>6</sup> to assist with implementation of the Berkeley Electric Mobility Roadmap adopted in July 2020<sup>7</sup>; but, at the time of writing, no position has been posted, now a year and a half after approval of the Roadmap.

The Council has been a leader in adopting resolutions acknowledging the need for a prompt transition away from fossil fuels and strategies for how to do so.<sup>8</sup> But, without additional staff capacity, and exacerbated by recent staff departures and necessary pandemic re-assignments, the City has not been able to make adequate progress on implementing initiatives to reduce global warming pollution from the transportation sector, which is the largest emitter of global warming pollution in Berkeley.<sup>9</sup> Existing staff's capacity is simply inadequate to lead implementation of the groundbreaking, transformative Roadmap in addition to their current responsibilities, and relying only on existing staff to implement will continue to cause unacceptable delays. **To**

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<sup>6</sup> Budget Referral from Councilwoman Harrison, March 30, 2021. The Energy Commission's understanding is that this position was included in the FY21-22 Budget to commence half-way through the fiscal year or as an "unfunded council referral," which was supposed to be funded via savings from other cuts or delayed expenses.

[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/03\\_Mar/Documents/2021-03-30\\_Item\\_25\\_Budget\\_Referral\\_Allocate\\_Funding.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-30_Item_25_Budget_Referral_Allocate_Funding.aspx)

<sup>7</sup> On July 21, 2020, the Council passed item 1, adopting the [Berkeley Electric Mobility Roadmap](#).

<sup>8</sup> *Ibid.*

<sup>9</sup> 59% of GHG emissions in Berkeley come from transportation, followed by 39% from buildings..

[https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-21\\_Special\\_Item\\_05\\_Climate\\_Action\\_Plan\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_05_Climate_Action_Plan_pdf.aspx) (July 21, 2020).

**implement the Electric Mobility Roadmap, it is critical that the City fund and hire additional staff beginning in the FY 2023 budget.<sup>10</sup>**

- 2. Increase Staff Necessary to Implement the Berkeley Existing Buildings Electrification Strategy, and Ensure Durable Funding for Critical Staff Positions.** In addition to the Electric Mobility Coordinator position, the Energy Commission believes it should also be a priority for the City to enhance staff capacity for implementing other climate and clean energy initiatives, such as, but not limited, to the Berkeley Existing Building Electrification Strategy<sup>11</sup> and Climate Equity Action Fund.<sup>12</sup>

City staff has and continues to do impressive work with limited staff. However, the scope of the task ahead of us is massive. As laid out by the BEBES, there are no fewer than 57 policy actions (Table 3-5, BEBES) that the City should take in order to decarbonize the building sector by 2045, let alone by 2030, which the science demands of comparatively wealthy municipalities such as ours. Many of these actions involve substantial education and regulatory initiatives, which can only be achieved with the addition of dedicated, skilled staff.

Although we defer to staff with respect to the specifics of what additional positions might be most useful, some critical actions include:

- Ensuring durable, long-term funding for the Green Buildings Program Manager. Although hiring has only recently begun, this role was approved as part of the 2019 gas ban,<sup>13</sup> and its extension will be critical in helping to develop future code

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<sup>10</sup> This single staff person will have an outsized impact, as they will be responsible for establishing and coordinating the Electric Mobility Roadmap Implementation Working Group as called for in the Roadmap. This Working Group was supposed to be convened within six months of the Roadmap's approval, but in the absence of staff capacity, it still has not been done. The Working Group's mandate includes tracking and evaluating Roadmap implementation progress. Without the Working Group, there is no accountability for the City to deliver against its stated electric mobility plans.

<sup>11</sup> On November 30, 2021, the Council passed item 13, adopting the [Berkeley Existing Building Electrification Strategy](#). Phase 1 (2021-2025) actions for the Berkeley Existing Building Electrification Strategy will lay the groundwork to support wide-spread transition to electrified buildings in Berkeley. Policies included in Phase 1 will involve continued community engagement, pilot projects, education campaigns to demonstrate the benefits and feasibility of electrification, collaboration with labor and workforce organizations to advance inclusive high road jobs, alignment of existing programs and incentives, and the development of additional incentive programs as well as larger scale funding and financing programs such as tariffed on-bill financing. The City of Berkeley will work with partners such as East Bay Community Energy and Pacific Gas & Electric to develop larger scale Phase 2 projects. There will also be a need to collaborate with regional and State partners to align State policies to support Phase 2 actions. (Berkeley Existing Building Electrification Strategy, p. 95.)

<sup>12</sup> The City recently issued an [RFP](#) for the Climate Equity Action Fund. but existing staff do not have the capacity to maximize program impact and collect lessons learned from this innovative fund.

<sup>13</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2019/12\\_Dec/Documents/2019-12-03\\_Supp\\_2\\_Reports\\_Item\\_24\\_Supp\\_Arreguin\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/12_Dec/Documents/2019-12-03_Supp_2_Reports_Item_24_Supp_Arreguin_pdf.aspx)

amendments and help to reduce permitting overhead, improve compliance, and address the myriad other regulatory questions identified in the BEBES.

- Supporting and expanding staffing across the City for programs related to tenant protections and anti-displacement, such as those listed in Appendix C of the BEBES. As we electrify our existing building stock, we will need to evolve and augment our existing policies to protect marginalized communities at risk of displacement (CC-9, BEBES). We cannot afford for these policies to lag behind the pace and scale of electrification measures in the city.
- Supporting and expanding OESD staff to facilitate updates to the 2009 Climate Action Plan as appropriate and programs to facilitate Berkeley's ambitious new greenhouse gas limit goals. For example, last year the Council passed a Resolution establishing a 2030 emission reduction target that reflects Berkeley's fair share of the 50% global reduction in CO<sub>2</sub>e – 60.5% from 2018 levels by 2030.<sup>14</sup> Council is also actively considering more stringent and binding targets across its sector-based and consumption inventories. These new initiatives will have significant implications for the City's approach to building decarbonization. While we fully support these ambitious targets, efforts to implement them have been largely unfunded and understaffed. Achieving these targets will require a significant expansion of the City's climate staff capacity.

## II. Budget Priorities to Advance Clean Transportation in Berkeley

1. **Fund City Fleet Electrification and Charging.** On June 29, 2021, the City adopted item 25 approving the recommendations in the City Auditor's report "Fleet Replacement Fund Short Millions"<sup>15</sup>, which directed staff to adjust the fleet replacement funding model and budget, ensuring that the City's transition to electric vehicles (EVs) aligns with its adopted GHG emissions goals. On September 14, 2021, the Council adopted the recommendation from item 27 "Recommendations for Fleet Electrification Policy and Financing",<sup>16</sup> made by the Energy Commission, which referred to the City Manager to update the Municipal Fleet Electrification Assessment and EV charging funding priorities to respond to the City Auditor's Report and align with the objectives stated in the Electric Mobility Roadmap and prioritize municipal fleet modal shift to electric bicycles and other forms of zero-emissions mobility where feasible.

<sup>14</sup>[https://www.cityofberkeley.info/Clerk/City\\_Council/2021/11\\_Nov/Documents/2021-11-30\\_Item\\_14\\_Cities\\_Race\\_to\\_Zero\\_Campaign\\_\\_2030\\_emission\\_reduction\\_target.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/Documents/2021-11-30_Item_14_Cities_Race_to_Zero_Campaign__2030_emission_reduction_target.aspx)

<sup>15</sup> Fleet Replacement Fund Short Millions, Berkeley City Auditor, June 29, 2021. [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/06\\_June/Documents/2021-06-29\\_Supp\\_2\\_Reports\\_Item\\_25\\_Supp\\_Auditor\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/06_June/Documents/2021-06-29_Supp_2_Reports_Item_25_Supp_Auditor_pdf.aspx).

<sup>16</sup> Recommendations for Fleet Electrification Policy and Financing, From Energy Commission, Sept 14, 2021. [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/09\\_Sep/City\\_Council\\_\\_09-14-2021\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/09_Sep/City_Council__09-14-2021_-_Regular_Meeting_Agenda.aspx) - Item 27

The Fleet EV Plan identified 32 vehicles to replace with EVs in FY 2021, requiring an estimated \$1.16 million; but, as of June 2021, Public Works had only \$747,000 to replace 29 vehicles scheduled to be replaced with EVs in FY 2021. The Energy Commission's recommendation noted that delaying replacement of these vehicles in 2021 would result in greater GHG emissions:

“For example, per the Fleet EV Plan, if the City does not replace light-duty internal combustion cars with EVs as scheduled in 2021, it will produce an estimated additional 10.6 MT of GHG emissions in 2021; if not replaced as planned in 2022 an additional 19.5 MT of GHGs would be emitted in 2022; and so on.” (page 4).

It is the Energy Commission's understanding that East Bay Community Energy (EBCE) has offered to provide substantial investments in the City of Berkeley for EV charging infrastructure, which would support progress on the City's fleet electrification and free up City funds that would otherwise have been spent on EV charging infrastructure. The Energy Commission urges the Council to resolve the budget gaps identified in the Auditor's report and explore additional funding sources so that the City can accelerate its purchases of EVs and the associated EV charging infrastructure in FY 2023.

A global microchip shortage resulting in prolonged supply chain delays and long wait times for the delivery of EVs is compounding the necessity for the City to take immediate action on fleet replacement. These delays are being exacerbated by the recent surge in demand for EVs. As more municipalities similarly pass electrification plans, Berkeley will see increasing competition for the same vehicles. The City must thus plan and order ahead if it wants to have a smooth fleet transition. The City should also commence its purchase of e-bikes for the years ahead, as replacements to existing City vehicles where appropriate. E-bikes are both highly cost effective and may not face the same supply chain delays as electric cars and trucks. The Energy Commission recommends that the Council prioritize these municipal fleet EV replacements, along with the associated EV charging infrastructure, in the FY 2023 budget.

2. **Expand Infrastructure for Residential EV Charging and E-Bike Parking.** The City should prioritize funds to address solutions for residential curbside EV charging. The City's Residential Curbside EV Charging Pilot Program<sup>17</sup> sunset in 2020. The development model the pilot used – private ownership of a charger on the side of a public street – was not successful. While 62 residents applied for the program, only four on-site and seven curbside chargers were installed - high permitting fees, restrictive engineering requirements, lack of control of the parking space adjacent to

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<sup>17</sup> [https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_Energy\\_and\\_Sustainable\\_Development/Manual%20with%20attachments%2012-1-14.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Energy_and_Sustainable_Development/Manual%20with%20attachments%2012-1-14.pdf)

the charger, and poor access to electrical supply resulted in high costs.<sup>18</sup> Given the number of Berkeley residents who do not have access to a driveway or garage, the Electric Mobility Roadmap identified as a high priority the need to deploy curbside charging for electric cars, particularly in neighborhoods with high rates of multifamily and rental housing. The next phase of curbside charging will incorporate lessons learned from the Pilot, investigate alternative strategies, identify state and federal funding sources, and explore partnerships with EBCE and EV charging companies.

The City should also investigate the potential to provide public secure parking for other types of fossil fuel-free vehicles, namely e-bikes and cargo bikes, for apartment dwellers. E-bikes and cargo bikes tend to be larger and heavier than regular bicycles, making them difficult to carry up steps. A paid, public parking system, such as the BikeLink lockers at BART stations, may be adapted to street parking near apartment buildings.

The Council should allocate funds in the budget for an electric mobility staff person who would oversee new projects — research other cities' approaches, evaluate Berkeley's codes, standards, and permitting processes, and conduct feasibility studies — along with funds for the pilot projects themselves.

3. **Incorporate Low-Carbon Mobility into Street Maintenance Budget.** While Council is considering a bond measure that would make capital investments in our transportation system, the City should also revisit how the maintenance budget can be used to promote low-carbon mobility.

The Council has approved multiple plans to promote safe, equitable, and low-carbon mobility for all. These “complete streets” concepts are captured in the Bicycle Plan, Pedestrian Plan, Vision Zero Action Plan, and analysis of Safe Routes to School.<sup>19</sup> But many of the measures in these plans have been implemented slowly, if at all. The Council should direct the Public Works Department to follow these plans to the letter, and integrate all low-cost and rapidly deployable concepts from the plans into their ongoing maintenance. The timing of deploying higher cost measures may necessarily depend on funding.<sup>20</sup>

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<sup>18</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/02\\_Feb/Documents/2018-02-27\\_Item\\_16\\_Residential\\_Curbside\\_Electric.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/02_Feb/Documents/2018-02-27_Item_16_Residential_Curbside_Electric.aspx)

<sup>19</sup> See [Bicycle Plan](#), [Pedestrian Plan](#), [Vision Zero Action Plan](#), [Safe Routes to School](#).

<sup>20</sup> A related concept is that the Council should consider giving a more formal policy status to Bicycle Boulevards. While the Boulevards serve as a useful wayfinding tool for cyclists, their designation does not give the streets a meaningful status, and no prioritization when it comes to City planning or operations. For example, places where Bicycle Boulevards cross busy streets, such as at California/Dwight or Channing/San Pablo, face years of delay before safe crossing solutions can be implemented. Numerous Bicycle Boulevards suffer from extremely poor pavement condition. Stop signs often favor cars instead of the Boulevards, and lighting can often be sub-standard. All of these factors undermine achievement of City plans, threaten public safety, and lock in carbon pollution. Direction from the Council to staff could

On January 18, 2022, the Council adopted item 19, referring a budget item to use Transportation Network Company (TNC) User Tax General Fund revenue to build and maintain protected bicycle lanes and crossings, pedestrian street crossings, and quick-build public transit projects under the Street Repair Program. The Energy Commission recommends that the Council follow through on its plan to use this revenue to benefit transportation projects in Berkeley.

### III. Budget Priorities and Financial Incentives to Advance Building Decarbonization in Berkeley

- 1. Fully Fund the Building Electrification and Just Transition Pilot Project.** In the December 2021 Annual Adjustment Ordinance (AAO) budget process, the Mayor declared, and the Council approved, that the Building Electrification and Just Transition pilot (“the pilot”)<sup>21</sup> be a first priority to be funded in the May 2022 AAO.<sup>22</sup> Consistent with the City’s “targeted universalism” approach to building electrification,<sup>23</sup> the pilot intends to kick-start electrification among affordable housing and low income (LMI) communities through incentives, and develop high-road jobs through labor standards and contractor prequalification.

**Funding for this item in the May AAO is critical, and cannot wait until the June budget process.** Any delay risks losing access to substantial state funding that could multiply the reach and impact of the pilot. The California TECH initiative, an \$120 million initiative established by SB 1477, recently began offering incentives for heat pump space and water heating that can defray nearly \$10,000 of cost per home,<sup>24</sup> including the cost of an electric panel upgrade. These incentives are accessible to contractors via the BayREN Home+ programs, which will simplify administration of the pilot due to its use of pre-qualified contractors.

There is additional urgency as well. The Bay Area Air Quality Management District (BAAQMD) is looking at phasing out the sale of NOx-emitting appliances by the end of the decade,<sup>25</sup> which will significantly affect the availability of non-electric space

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take the form of a formal designation of the Boulevards as a category of street, just as Public Works delineates “arterials” and “collectors” when it comes to planning and operations.

<sup>21</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/11\\_Nov/City\\_Council\\_11-30-2021\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/11_Nov/City_Council_11-30-2021_-_Regular_Meeting_Agenda.aspx)

<sup>22</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2021/12\\_Dec/Documents/2021-12-14\\_Supp\\_2\\_Reports\\_Item\\_44\\_Supp\\_Mayor.pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2021/12_Dec/Documents/2021-12-14_Supp_2_Reports_Item_44_Supp_Mayor.pdf.aspx)

<sup>23</sup> According to the BEBES: “Targeted Universalism is the practice of setting a universal policy goal...while identifying targeted strategies and actions specifically for marginalized communities to ensure that those communities can benefit from the policy goal.”

<sup>24</sup> For single-family homes (up to 4 units), including “enhanced” incentives for HPWH. See: <https://energy-solution.com/wp-content/uploads/2021/12/TECH-Single-and-Multifamily-Incentives.pdf>

<sup>25</sup> <https://www.baaqmd.gov/rules-and-compliance/rule-development/building-appliances>



and water heating. However, BAAQMD recognizes that such a rule can only be effective if there is sufficient financial support for disadvantaged communities and a robust installer network (things the BEBES also calls out) so that everyone can reap the benefits of zero-pollution appliances without facing substantial costs. **These costs cannot be borne by cities alone, but Berkeley can lay the groundwork to leverage state and federal money with its pilot and thus significantly contribute to the regional effort to improve air quality and GHG emissions.**

2. **Use Transfer Tax Revenues to Provide Incentives for Electrification.** With soaring home prices, the transfer tax represents a durable source of funds that the City should leverage to accelerate our building electrification goals. There are two potential models to consider.

First, would be to model a rebate program after the Seismic Retrofit Refund Program<sup>26</sup> that would rebate a percentage of the transfer tax with a value up to the cost of a typical electrification package for electrification measures completed within one year of transfer. This would incentivize electrification at a time when there is large access to capital, and could lay the groundwork for an ultimate requirement to retrofit at time of sale. OESD staff have already provided Council with a draft ordinance and indicate that each year on average 800 units would qualify through this mechanism.<sup>27</sup>

The Energy Commission recommends that Council move forward with this ordinance but with a cap on the amount of eligible homeowner rebates per year. These rebates are critical to the City's long-term strategy of phasing in potential electrification mandates as feasible.

At the same time, as a diverse and majority renter city, it is critical that electrification subsidies are also available for units occupied by rent controlled or below market rate tenants. As a second model option, a percentage of the transfer tax refund program (for example, the difference between the reserved and actual rebate amounts) might be simultaneously allocated to expand electrification work among those LMI and minority communities most affected by inequality, pollution, climate change, or at risk of displacement. This could come in the form of expanding the Building Electrification and Just Transition pilot and Climate Equity Fund to reach more households, or other incentive programs targeted at those same communities.

3. **Adopt Policies to Promote Implementation of Low-cost, Partial Electrification measures.** In addition to enacting full retrofit programs, we recommend that the Council consider low-cost, partial electrification measures to maximize the

<sup>26</sup> [https://www.cityofberkeley.info/Finance/Home/Real\\_Property\\_Transfer\\_Tax\\_Seismic\\_Refunds.aspx](https://www.cityofberkeley.info/Finance/Home/Real_Property_Transfer_Tax_Seismic_Refunds.aspx)

<sup>27</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/Documents/2020-07-21\\_Special\\_Item\\_03\\_Referral\\_Response\\_Ordinance\\_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-21_Special_Item_03_Referral_Response_Ordinance_pdf.aspx)

immediate climate and health impacts of electrification measures. For example, a requirement that any AC installation instead be a heat pump (TR-7, BEBES) could be coupled with a subsidy for LMI communities to pay for the cost difference between an AC and an equivalent heat pump model, which is estimated to be between just \$200 and \$500 wholesale.<sup>28</sup> An installer subsidy of \$676 alone could be enough to nearly double heat pump market share even absent a mandate<sup>29</sup>. Other low-cost measures might include the purchasing and distribution of portable heat pumps to provide cooling to households on our increasing number of hot days (newer inverter models offer substantial energy savings over traditional portable ACs<sup>30</sup>), portable induction units as both a gateway into electric cooking and a mechanism to reduce indoor NOx pollution that has been demonstrated to cause asthma in small children,<sup>31</sup> as well as weatherization work to make homes safer, more comfortable, and to reduce energy use. Council might also consider rebates for electrification at time of replacement, or provide access to equipment purchased under bulk purchasing agreements as part of the Building Electrification and Just Transition pilot program.

#### IV. Budget Priorities to Educate and Engage Berkeley Residents in Implementing Transportation and Building Electrification

1. **Expand Sustainability Outreach Events.** In conjunction with implementation of the Electric Mobility Roadmap and Existing Building Electrification Strategy, it is appropriate for the City to continue and expand public engagement on alternative transportation and green building solutions.

Increasing electric mobility awareness and education is a key strategy in the Electric Mobility Roadmap for achieving the City's zero net carbon goals. Berkeley has already organized four highly successful annual Ride Electric events, which brought the public together to learn about and, in certain cases, test drive EVs and e-bikes. The City has also partnered successfully with other local groups to organize in-person and virtual green building tours that feature clean energy, energy and water conservation, gray water, electric appliances, and garden features.

As technologies and incentives evolve, more members of the public consider adopting electric mobility and building electrification technologies, and as the City increases its e-mobility expertise through additional staffing, these events can and should continue to play an important role in getting Berkeley residents to transition away from fossil fuels. The Roadmap states that the City will expand electric mobility

<sup>28</sup> <https://www.clasp.ngo/research/all/3h-hybrid-heat-homes-an-incentive-program-to-electrify-space-heating-and-reduce-energy-bills-in-american-homes/>

<sup>29</sup> *ibid*

<sup>30</sup> <https://www.midea.com/us/air-conditioners/portable-air-conditioners/midea-duo-smart-inverter-portable-air-conditioner-map12s1tbl>

<sup>31</sup> <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=310879>

education and outreach activities, with a goal of increasing awareness of electric mobility options and incentives.<sup>32</sup> To deliver on this commitment, the City must allocate funds for these events in its next budget.

With its recent adoption of the Existing Building Electrification Strategy, the Council must expand funding for sustainability outreach events to also address needs identified in the Strategy. For example, the Strategy identified a need for education to address the steep learning curve and cultural sensitivity around cooking with electric stoves, as cooking is a cultural asset and many feel strongly about cooking with gas stoves.<sup>33</sup> While the City has hosted building electrification events, including loan programs for residents to try out electric induction cooktops, it will need to do more to engage residents in adopting electric heat pumps, induction stoves, and other technologies.

## BACKGROUND

The City has existing mandated climate goals and emissions reductions commitments, and already-adopted strategies, such as the Electric Mobility Roadmap and the Existing Buildings Electrification Strategy. Furthermore, the City has already approved certain staff positions and investments, such as an Electric Mobility Coordinator position and commitments to replace the City's vehicle fleet with electric vehicles on a schedule. The City is falling behind in hiring and filling needed positions and in executing on needed investments. The budget recommendations proposed by the Energy Commission in this memo seek to ensure the City stays on track to meet its goals.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

If the Council further delays investments or doesn't include our recommended priorities in the upcoming budget, it puts at risk the health and safety of Berkeley's residents, the City's achievement of its adopted and mandated climate, clean energy, and transportation goals, and its national and global leadership on addressing climate change in innovative ways.

## RATIONALE FOR RECOMMENDATION

The Energy Commission commends the Council for its many years of leadership to reduce Berkeley's global warming pollution and to advance clean energy solutions for the transportation and building sectors. Our budget is a declaration of our values. We have a tremendous opportunity to accelerate building decarbonization while improving equity through targeted universalism, and we must seize the moment to secure a safer, healthier, more resilient future.

However, if the Council further delays investments in staffing, fleet electrification and electric vehicle charging infrastructure, building maintenance and retrofits, and public

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<sup>32</sup> Berkeley Electric Mobility Roadmap, p. 43.

<sup>33</sup> Berkeley Existing Building Electrification Strategy, p. 42.

education in the FYE 2023 and 2024 budget, it puts at risk the health and safety of Berkeley's residents, the City's achievement of its adopted and mandated climate, clean energy, and transportation goals, and its national and global leadership on addressing climate change in innovative ways. The Energy Commission thus urges the City Council to incorporate the above stated priorities into its FYE 2023 and 2024 budget.

ALTERNATIVE ACTIONS CONSIDERED

We did not consider excluding these items from the budget.

CITY MANAGER

The City Manager recommends that the content and recommendations of the Commission's Report be referred to the budget process.

CONTACT PERSON

Billi Romain, Energy Commission Secretary, 510-981-7432



Office of the City Manager

INFORMATION CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Eleanor Hollander, Economic Development Manager  
 Subject: Fiscal Year (FY) 2023 Civic Arts Grant Awards

INTRODUCTION

This report is to inform the City Council of the Civic Arts Grant awards for individual artists and festivals for Fiscal Year (FY) 2023.

CURRENT SITUATION AND ITS EFFECTS

The Fiscal Year 2023 Civic Arts Grant award amounts (Attachments 1 and 2) as approved by the Civic Arts Commission include \$44,000 for eleven (11) individual artists and \$194,299 for thirty-three (33) festivals. Most festival applicants that applied were awarded funding (33), although three (3) festivals that applied were not awarded funds for FY23. A record-setting number of individuals artists (62) applied for grant funds for FY23, and with limited funding, forty-one (41) individual artist applicants were not awarded funds. These awards are in addition to the deployment of the second year of Arts Organization grant funding awarded in Fiscal Year 2022 for both FY22 and FY23 (totaling \$458,697 per year for 70 arts organizations).

BACKGROUND

The Civic Arts Grant application period originally was from March 1, 2022 to March 31, 2022; however, the deadline was extended to April 13, 2022 to invite more applicants to apply. This year the Civic Arts Program received a combined total of 88 applications from individual artists and festival organizers for grant funding for the FY 2023 cycle.

Civic Arts staff held two grant application workshops to review grant application requirements and provide instruction on using the on-line grant application system: 1. Grant Application Webinar on March 7, 2022 for individual artists applicants; and 2. Grant Application Webinar on March 9, 2022 for festival applicants. Both workshops were held virtually by Zoom Webinar. Recordings of the webinars were also made available on the Civic Arts website for applicants' reference.

To evaluate grant applications, Civic Arts staff asked for the assistance of seasoned grant review panelists approved by the Civic Arts Commission during the FY22 grant cycle. The slate of review panelists all have substantial backgrounds in arts and culture and a demonstrated commitment to cultural equity. Between June 7 and June 17, 2022,

staff conducted two grant review panel meetings via Zoom. Panelists independently evaluated and scored applications relative to the review criteria prior to the panel reviews, and discussed the applications and their evaluations with fellow panelists during the panel review meetings.

After the conclusion of the grant review process, the compiled panel scores were presented to the Civic Arts Commission's Grants Subcommittee at a public Zoom meeting on July 12, 2022. The Subcommittee determined award recommendations based on application scores, the grant program guidelines, funding criteria, and available funding. The award amounts as recommended by the Grants Subcommittee were made public on July 13, 2022 through the meeting discussion and vote, and communicated to all applicants via email.

On July 27, 2022, the Civic Arts Commission approved the final FY23 Civic Arts Grant award amounts as follows: FY23 Individual Artist Projects grant funding recommendations - M/S/C (Blecher/Anno) Vote: Ayes — Anno, Blecher, Covarrubias, Dhesi, Ozol, Passmore, Woo; Nays — None; Abstain — None; Absent — Bullwinkel. FY23 Festivals grant funding recommendations were approved as follows: FY23 Festivals grant funding recommendations. M/S/C (Blecher/Anno) Vote: Ayes — Anno, Blecher, Covarrubias, Dhesi, Ozol, Passmore, Woo; Nays — None; Abstain — None; Absent — Bullwinkel.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Civic Arts Grants program is administered online. Applicants used a web-based grants management system to apply and grant review panelists evaluate and score the applications using the same system, greatly reducing the need for paper applications.

#### POSSIBLE FUTURE ACTION

The Civic Arts Grants are awarded on a bi-annual basis to Arts Organizations and annual basis to Individual Artists, and Festivals. The Civic Arts Grants Program plans to implement the annual grant application and review process for FY 2024 beginning in fall 2023. FY24 awards will be subject to the Civic Arts Commission's approval.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The City's annual budget typically includes a baseline amount of \$500,000 for Civic Arts Grants to Arts Organizations and Individual Artists and approximately \$156,000 for Festivals. Council increased Festivals funding from \$156,000 to \$200,000 in FY23, allowing for a greater distribution of Festivals funds for the grant cycle.

#### CONTACT PERSON

Hilary Amnah, Civic Arts, Office of Economic Development, 510-981-7539

#### Attachments:

1. FY23 Civic Arts Individual Artists Projects Grant Awards
2. FY23 Civic Arts Festivals Grant Awards

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**FY23 Individual Artist Project Grants**

|    | <b>Title</b>                | <b>Primary Discipline</b> | <b>Score out of 1000</b> | <b>Award</b> |
|----|-----------------------------|---------------------------|--------------------------|--------------|
| 1  | Hector Salgado              | Media/Film                | 947                      | \$4,000      |
| 2  | Emily Onderdonk             | Music                     | 933                      | \$4,000      |
| 3  | Marlene (Cookie) Segelstein | Music                     | 927                      | \$4,000      |
| 4  | Mahsa Vahdat                | Music                     | 907                      | \$4,000      |
| 5  | Hector Munoz-Guzman         | Visual                    | 895                      | \$4,000      |
| 6  | Paula deJoie                | Visual                    | 887                      | \$4,000      |
| 7  | Andy Warner                 | Multi-disciplinary        | 885                      | \$4,000      |
| 8  | Oona Garthwaite             | Media/Film                | 883                      | \$4,000      |
| 9  | Erica Azim                  | Music                     | 882                      | \$4,000      |
| 10 | Natalia Quintero-Hong       | Multi-disciplinary        | 868                      | \$4,000      |
| 11 | Elizabeth Rosner            | Literary                  | 862                      | \$4,000      |
| 12 |                             |                           | 860                      | \$0          |
| 13 |                             |                           | 858                      | \$0          |
| 14 |                             |                           | 852                      | \$0          |
| 15 |                             |                           | 848                      | \$0          |
| 16 |                             |                           | 848                      | \$0          |
| 17 |                             |                           | 847                      | \$0          |
| 18 |                             |                           | 843                      | \$0          |
| 19 |                             |                           | 842                      | \$0          |
| 20 |                             |                           | 838                      | \$0          |
| 21 |                             |                           | 835                      | \$0          |
| 22 |                             |                           | 820                      | \$0          |
| 23 |                             |                           | 815                      | \$0          |
| 24 |                             |                           | 812                      | \$0          |
| 25 |                             |                           | 808                      | \$0          |
| 26 |                             |                           | 795                      | \$0          |
| 27 |                             |                           | 788                      | \$0          |
| 28 |                             |                           | 785                      | \$0          |
| 29 |                             |                           | 777                      | \$0          |
| 30 |                             |                           | 765                      | \$0          |
| 31 |                             |                           | 762                      | \$0          |
| 32 |                             |                           | 748                      | \$0          |
| 33 |                             |                           | 748                      | \$0          |
| 34 |                             |                           | 745                      | \$0          |
| 35 |                             |                           | 727                      | \$0          |
| 36 |                             |                           | 708                      | \$0          |
| 37 |                             |                           | 705                      | \$0          |
| 38 |                             |                           | 702                      | \$0          |
| 39 |                             |                           | 702                      | \$0          |
| 40 |                             |                           | 690                      | \$0          |
| 41 |                             |                           | 685                      | \$0          |
| 42 |                             |                           | 680                      | \$0          |
| 43 |                             |                           | 680                      | \$0          |
| 44 |                             |                           | 677                      | \$0          |
| 45 |                             |                           | 677                      | \$0          |
| 46 |                             |                           | 665                      | \$0          |
| 47 |                             |                           | 657                      | \$0          |
| 48 |                             |                           | 655                      | \$0          |
| 49 |                             |                           | 648                      | \$0          |
| 50 |                             |                           | 613                      | \$0          |
| 51 |                             |                           | 595                      | \$0          |
| 52 |                             |                           | 272                      | \$0          |

**Page 4 of 4  
FY23 Festival Grants**

| <b>Large Events with a proposed budget over \$50,000</b>                 |                                                                                                                |                          |              |
|--------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|--------------------------|--------------|
|                                                                          | <b>Title</b>                                                                                                   | <b>Score out of 1000</b> | <b>Award</b> |
| 1                                                                        | Berkeley Juneteenth Festival                                                                                   | 898                      | \$7,581      |
| 2                                                                        | California Native Ways — 4th Annual California Indian Arts & Culture Festival                                  | 893                      | \$7,538      |
| 3                                                                        | Disability Rights Rising: A Celebration of the Art, Culture, and the History of Disability Justice in Berkeley | 888                      | \$7,496      |
| 4                                                                        | Freight Fest                                                                                                   | 887                      | \$7,488      |
| 5                                                                        | Standing on the Shoulders of Giants: A Community Celebration                                                   | 850                      | \$7,175      |
| 6                                                                        | Foundation for the Future of Literature and Literacy (Bay Area Book Festival)                                  | 830                      | \$7,007      |
| 7                                                                        | San Francisco Mime Troupe Free Park Shows in Berkeley 2022                                                     | 798                      | \$6,736      |
| 8                                                                        | Berkeley Bird Festival                                                                                         | 795                      | \$6,711      |
| 9                                                                        | 2023 Junior Bach Festival                                                                                      | 745                      | \$6,289      |
|                                                                          |                                                                                                                |                          |              |
| <b>Mid-Size Events with a proposed budget between \$5,001 - \$50,000</b> |                                                                                                                |                          |              |
| 10                                                                       | Black Generations Festival                                                                                     | 895                      | \$6,044      |
| 11                                                                       | Black Women's Blues Festival                                                                                   | 878                      | \$5,929      |
| 12                                                                       | The Himalayan Fair                                                                                             | 873                      | \$5,896      |
| 13                                                                       | The Queering Dance Festival                                                                                    | 872                      | \$5,889      |
| 14                                                                       | 30th Annual Berkeley Indigenous Peoples Day Powwow and Indian Market                                           | 868                      | \$5,862      |
| 15                                                                       | Persian New Year Festival - Chaharshanbe Souri                                                                 | 867                      | \$5,855      |
| 16                                                                       | Evolution: A 10th Anniversary Celebration of API Theater                                                       | 862                      | \$5,821      |
| 17                                                                       | SF Bay Brazilian Day & Lavagem Festival 2022                                                                   | 860                      | \$5,808      |
| 18                                                                       | Berkeley Poetry Festival                                                                                       | 837                      | \$5,653      |
| 19                                                                       | Dia de los Muertos 2022                                                                                        | 835                      | \$5,639      |
| 20                                                                       | Chocolate & Chalk Art Festival                                                                                 | 832                      | \$5,619      |
| 21                                                                       | Hawaiian Healing Arts Festival                                                                                 | 827                      | \$5,585      |
| 22                                                                       | Berkeley Video & Film Festival                                                                                 | 823                      | \$5,558      |
| 23                                                                       | West Berkeley Community Print Festival                                                                         | 813                      | \$5,490      |
| 24                                                                       | AfroLit                                                                                                        | 813                      | \$5,490      |
| 25                                                                       | Annual Contemporary Diasporas Festival                                                                         | 800                      | \$5,403      |
| 26                                                                       | Ubuntu Awards Festival                                                                                         | 798                      | \$5,389      |
| 27                                                                       | Telegraph Avenue Holiday Street Fair                                                                           | 797                      | \$5,382      |
| 28                                                                       | Watershed Environmental Poetry Festival                                                                        | 775                      | \$5,234      |
| 29                                                                       | Telegraph Berkeley Summer Fair or (Sunday Best)                                                                | 765                      | \$5,166      |
| 30                                                                       | Community Music Day                                                                                            | 760                      | \$5,133      |
| 31                                                                       | Capoeira: The Art of Social and Personal Transformation                                                        | 747                      | \$5,045      |
| 32                                                                       | Asian Cultural Festival                                                                                        | 732                      | \$4,943      |
|                                                                          |                                                                                                                |                          |              |
| <b>Small Events with a proposed budget of up to \$5,000</b>              |                                                                                                                |                          |              |
| 33                                                                       | The Dragon Boat Experience                                                                                     | 868                      | \$2,442      |
|                                                                          |                                                                                                                |                          |              |
| <b>Not Awarded</b>                                                       |                                                                                                                |                          |              |
| 34                                                                       | Makers Ball 2022 (Mid-Size Event)                                                                              | 673                      | \$0          |
| 35                                                                       | Front Row Festival (Mid-Size Event)                                                                            | 613                      | \$0          |
| 36                                                                       | Vida Vert Festival (Mid-Size Event)                                                                            | 545                      | \$0          |





Office of the City Manager

INFORMATION CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: David Sprague, Interim Fire Chief, Fire Department  
 Subject: Fire Prevention Inspections Audit Status Report

CURRENT SITUATION AND ITS EFFECTS

On May 9, 2019 the City Auditor submitted a Fire Prevention Inspections audit report<sup>1</sup> to the City Council with recommendations to improve the overall fire prevention inspection program, improve customer service, and reduce the risk of fires and other emergencies that may fall within the jurisdiction of the fire code. The purpose of this information item is to update City Council on the status of implementation of the audit report's recommendations. This is the first status report regarding this audit.

BACKGROUND

The audit included eleven recommendations. Of these items, progress on the implementation or resolution of three of the recommendations was started shortly after the issuance of the report. Since the initial fire department response to the audit recommendations, the department has determined through further research, evaluation and the pursuit of a resolution for two of the recommendations that these two original recommendations should be dropped. These two recommendations involved technical modifications to, or work-arounds for the department's fire record management system software known as RedAlert. Of the nine remaining recommendations three are partly implemented, four have been started, and two have not been started. The two recommendations that have not been started require reliable data on both fire inspection workload and on resources available to deliver inspection services.

Significant programmatic and structural changes are occurring in the fire department which makes meaningful fire inspection workload and resource analysis impossible under the current circumstances for both the wildland and the built-environment. Changes currently being implemented within the department include a significant increase in fire prevention staffing, a changing picture of other fire department personnel that may or may not be available to support fire inspection activities, rapidly changing fire safety inspection mandates and priorities at both the local and State level,

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<sup>1</sup> [Audit: Fire Prevention Inspections: Insufficient Resources Strain Code Compliance](#)

and an initiative to move away from an inefficient, paper-based inspection system to a more efficient digital inspection system using digital devices in the field.

Once the scope, nature and impact of these changes are clear, a proposal to reconfigure the fire inspection program can be formulated. Any proposed changes in the scope or frequency of the locally mandated fire inspection program should strive to maximize the positive impacts of the program given any limitations on the resources available to implement the program. As recommended in the audit, both a workload analysis and an analysis of short- and long-term impacts of potential modifications to the program would be a part of a proposal to modify the annual fire inspection program.

Please see Attachment 1 for a detailed table of audit report recommendations, correction action plans, and implementation progress. The next status report to Council is expected to be presented on May 9, 2023.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### CONTACT PERSON

Steven Riggs, Fire Marshal, Fire Department, (510)-981-3473.

#### Attachments:

1: Audit findings, Recommendations, and Status Updates

| Fire Prevention Inspections: Insufficient Resources Strain Code Compliance                                       |                |                                                                                                                                                                                          |            |            |             |                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
|------------------------------------------------------------------------------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------|-------------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Finding                                                                                                          | Recommendation |                                                                                                                                                                                          | Issue Date | Department | Last Status | Current Status | Update                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |
|                                                                                                                  | Number         | Recommendation                                                                                                                                                                           |            |            |             |                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
| Fire Not Meeting Inspection Mandates; Extensive Code Requirements and Population Growth Impact Staffing Workload | 1.1            | Analyze the short- and long-term impact of putting forth a change to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections.                        | 5/9/2019   | Fire       | Not Started | Not Started    | An analysis of the short- and long-term impacts of amending the Berkeley Municipal Code inspection mandate has been deferred due to significant programmatic and structural changes that are in progress within the fire department and impact inspection workload and resources.                                                                                                                                                                                                                                                                                       |  |
| Fire Not Meeting Inspection Mandates; Extensive Code Requirements and Population Growth Impact Staffing Workload | 1.2            | Perform a workload analysis to quantify the staff needed now and in the future to comply with the local fire prevention inspection requirements.                                         | 5/9/2019   | Fire       | Not Started | Started        | Estimated Start date: July, 2023. Both inspection staff and the digital field equipment and software are still being put in place to begin generating inspector productivity data.                                                                                                                                                                                                                                                                                                                                                                                      |  |
| Fire Relies on Incomplete Data to Manage Inspections                                                             | 2.1            | Develop a process, in consultation with the Information Technology Department, for sharing information on property changes and additions between Fire and other City database platforms. | 5/9/2019   | Fire       | Started     | Dropped        | The auditee has accepted the risk to the city that the recommendation is meant to address and is unable or unwilling to implement the recommendation. According to the department, they engaged with IT and the current software vendor and were unable to implement this recommendation. They have stated that if software replacement is pursued in the future, the software's capability to communicate with other COP software suites and the ability to automate the update of property ownership and other records will be considered for any candidate software. |  |

|                                                                      |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                 |             |                    |                |                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------------------------------------------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-------------|--------------------|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Fire Relies on Incomplete Data to Manage Inspections</p>          | <p>2.2</p> | <p>Work with both the database’s software vendor and the Information Technology Department to strengthen controls over the database, including:</p> <ul style="list-style-type: none"> <li>· Assessing the needs for required fields for processing an inspection, such as unit, shift, inspector name, address, violation details, and violation location.</li> <li>· Formatting drop down menus for inspection status, inspection type, and violation status. Formatting the options available for the violation code numbers and violation description fields.</li> </ul> | <p>5/9/2019</p> | <p>Fire</p> | <p>Not Started</p> | <p>Dropped</p> | <p>The auditee has accepted the risk to the city that the recommendation is meant to address and is unable or unwilling to implement the recommendation. According to the department, they engaged with IT and the current software vendor and determined that the benefits of implementing the recommendation within the current software would not outweigh the risks and limitations imposed by the recommendation.</p> |
| <p>Fire Staff Do Not Have Enough Support to Get Inspections Done</p> | <p>3.1</p> | <p>Coordinate work plans with Suppression for all mandated fire prevention inspections. These should take into consideration the volume and nature of the other work Suppression performs.</p>                                                                                                                                                                                                                                                                                                                                                                               | <p>5/9/2019</p> | <p>Fire</p> | <p>Not Started</p> | <p>Started</p> | <p>Until the annual fire inspection program can be redesigned and revised to meet current and future goals and demands, the current coordination program remains valid for the current delivery model and program. It's anticipated that inspection staffing (Fire Prevention and Suppression) may have stabilized by June 2023 and work on this recommendation can proceed.</p>                                           |

|                                                                      |                                                                                                                                      |                 |             |                    |                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <p>Fire Staff Do Not Have Enough Support to Get Inspections Done</p> | <p>3.2 Create a risk-assessment plan to identify those properties that are most at risk of a fire.</p>                               | <p>5/9/2019</p> | <p>Fire</p> | <p>Started</p>     | <p>Implemented</p> | <p>The fire department and our allied city agencies and stakeholders have begun the process of developing a Community Wildfire Prevention Plan. This is both a fire hazard and fire risk assessment program that conducts a comprehensive examination of the city's risk of wildfire. The initial CWPP project is expected to be Partly approved/adopted by Council in March of 2023. Estimated completion by June, 2023.</p>                       |
| <p>Fire Staff Do Not Have Enough Support to Get Inspections Done</p> | <p>3.3 Issue a General Order to the Department on the importance and necessity of performing fire prevention inspections.</p>        | <p>5/9/2019</p> | <p>Fire</p> | <p>Not Started</p> | <p>Not Started</p> | <p>A rewrite of the fire department General Order detailing the conduct of the annual fire prevention inspection program will be conducted following a redesign of the annual fire inspection program in line with the current programmatic and structural changes occurring within the fire department. The current General Order which addresses the annual fire inspection program remains valid for the current delivery model and program.</p> |
| <p>Fire Staff Do Not Have Enough Support to Get Inspections Done</p> | <p>3.4 The Fire Marshal and Suppression Management jointly develop a communication plan between Fire Prevention and Suppression.</p> | <p>5/9/2019</p> | <p>Fire</p> | <p>Started</p>     | <p>Started</p>     | <p>Until the annual fire inspection program can be redesigned and revised to meet current and future goals and demands, the current coordination program remains valid for the current delivery model and program. It's anticipated that inspection staffing (Fire Prevention and Suppression) may have stabilized by June 2023 and work on this recommendation can proceed.</p>                                                                    |

|                                                                      |                                                                                                                                                                                                                                                                                                                    |                 |             |                    |                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-------------|--------------------|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Fire Staff Do Not Have Enough Support to Get Inspections Done</p> | <p>Revise the fire prevention inspection training to provide hands-on training, using experienced Suppression staff, on how to conduct inspections and interact with residents and community members during inspections.</p>                                                                                       | <p>5/9/2019</p> | <p>Fire</p> | <p>Not Started</p> | <p>Implemented</p> | <p>Fire inspection training for personnel engaged in defensible space inspections was completely redesigned and delivered this year. Fire Prevention staff periodically re-design the annual fire inspection training for Suppression companies. The new fire code adoption would be incorporated into Partly revised training near the start of the new fiscal year (July 2023).</p>                                                                                                                                                                                                                                                                                                               |
| <p>Fire Staff Do Not Have Enough Support to Get Inspections Done</p> | <p>Develop and distribute educational information to property owners prior to the beginning of the inspection cycle to provide information on the fire prevention inspection program, common violations, and any upcoming inspections for that area of the City.</p>                                               | <p>5/9/2019</p> | <p>Fire</p> | <p>Not Started</p> | <p>Implemented</p> | <p>The 2022 calendar year was the second consecutive year that the fire department conducted direct outreach to, and the transmittal of educational materials to the entire population of Berkeley Fire Zones 2 and 3 regarding the expansion of our Defensible Space inspection program, wildfire hazards, defensible space requirements, and a message from the Fire Chief regarding the need to provide defensible space. The fire department is in the process of hiring a full-time employee as a Communications Specialist. July 2023 is the estimated start date to generate built-environment outreach materials in Partly conjunction with department's new Communications Specialist.</p> |
| <p>Fire Staff Do Not Have Enough Support to Get Inspections Done</p> | <p>Create a process for issuing, tracking, and following up on administrative citations for properties with repeat or high-risk violations, including revenue collections and tracking. That process should collaborate with other City work units that perform enforcement activities to provide consistency.</p> | <p>5/9/2019</p> | <p>Fire</p> | <p>Not Started</p> | <p>Started</p>     | <p>During 2022 the fire department has initiated discussions with other COB stakeholder entities about standardizing the handling, tracking and processing of Administrative Citations.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |



Office of the City Manager

INFORMATION CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee William-Ridley, City Manager

Submitted by: Donald E. Ellison, Interim HR Director

Subject: UPDATE: HR Response: Audit Directive(s) for Comprehensive Domestic Violence Policy to Support City Employees

INTRODUCTION

On October 10<sup>th</sup>, 2019, the City Auditor's Office issued its audit, *Domestic Violence Response: Berkeley Needs a Comprehensive Policy to Support City Employees* with recommendations to improve Berkeley's domestic violence response policy. The purpose of this information item is to update City Council on the status of implementation of the audit report's recommendations. This is the first status report regarding this audit.

CURRENT SITUATION AND ITS EFFECTS

This report is an informational update on progress towards goals on HR's proposed Corrective Action Plan in response to Audit recommendations. The audit includes 6 recommendations as listed in attachment A Recommendation Table DV Policy.

BACKGROUND

As a follow-up to the May 10<sup>th</sup> 2022 HR Audit meeting with the City Auditor's office to review the City Auditors Report and recommendations for a Comprehensive Domestic Violence Policy to Support City Employees, the Human Resources Division is in the process of revising the Domestic Violence Policy A.R. 2.21.

On August 29<sup>th</sup>, 2022, the Human Resources department conferred with the affected departments regarding the revision of A.R. 2.21. The meet and confer process is ongoing; once it has been completed, the revision will be submitted to the City Manager's office for review and approval.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

There are no identifiable environmental effects or opportunities associated with the subject of this report.

CONTACT PERSON

Donald Ellison, Interim Human Resources Director, Human Resources Department, (510)-981-6807.

Attachments:

1. Attachment A (Recommendation Table DV Policy)
2. Attachment B (Audit Report)



| Audit Title: Domestic Violence Response: Berkeley Needs a Comprehensive Policy to Support City Employees |                |                                                                                                                                                                                                                                                                                                                                                                                                       |                 |                                        |                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Finding                                                                                                  | Recommendation |                                                                                                                                                                                                                                                                                                                                                                                                       | Lead Department | Expected or Actual Implementation Date | Status of Audit Recommendations, Corrective Action Plan, and Progress Summary                                                                                  |
| Policy Does Not Completely Reflect State Requirements                                                    | 1.1            | Define and include sexual assault, stalking, and witnesses' rights.                                                                                                                                                                                                                                                                                                                                   | Human Resources | Ongoing                                | <u>Partly Implemented:</u><br>Human Resources has made proposed updates to terms and definitions in the policy. Policy is in draft form and awaiting approval. |
| Policy Does Not Completely Reflect State Requirements                                                    | 1.2            | State that when assessing safety accommodations, Human Resources takes into consideration danger to the employee and undue burden to the employer.                                                                                                                                                                                                                                                    | Human Resources | Ongoing                                | <u>Partly Implemented:</u><br>Human Resources has made proposed updates to terms and definitions in the policy. Policy is in draft form and awaiting approval. |
| Policy Does Not Completely Reflect State Requirements                                                    | 1.3            | Revise the policy title to reflect the comprehensive scope of the policy.                                                                                                                                                                                                                                                                                                                             | Human Resources | Ongoing                                | <u>Partly Implemented:</u><br>Policy title is updated in draft form and is awaiting approval.                                                                  |
| Policy Does Not Completely Reflect State Requirements                                                    | 1.4            | Clarify that requirements for employees to document their use of leave or request for accommodations are at the discretion of Human Resources and may include self-certification when appropriate. We also recommend that Human Resources clarify that employees are encouraged to come to Human Resources for assistance even if they do not initially have the documentation that may be requested. | Human Resources | Ongoing                                | <u>Partly Implemented:</u><br>Policy is updated in draft form and is awaiting approval.                                                                        |

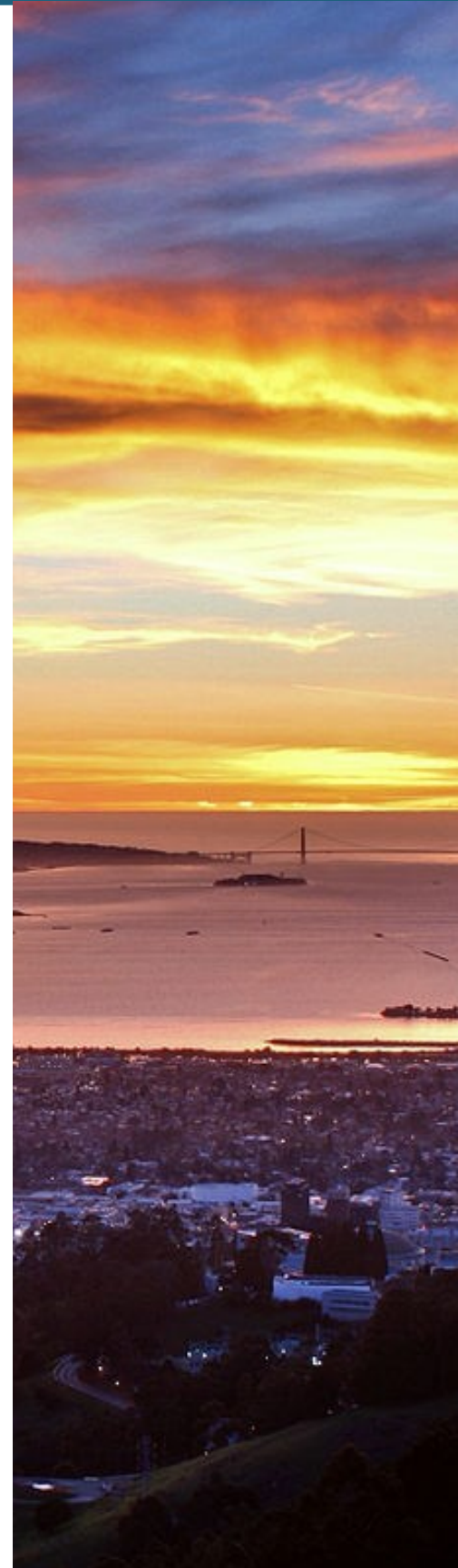
|                                                                       |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                        |                |                                                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Policy Does Not Address Key Workplace Domestic Violence Issues</p> | <p>2.1</p> | <p>Incorporate the model policy and all best practice elements described in this finding, and communicate this guidance to city staff.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>Human Resources</p> | <p>Ongoing</p> | <p><u>Started:</u><br/>The policy update is in draft form and is awaiting approval. In addition, Human Resources will assess the feasibility of adopting additional elements from model policies and will add as appropriate at a later date.</p> |
| <p>Berkeley Needs to Prepare All Staff to Comply with the Policy</p>  | <p>3.1</p> | <p>Implement best practices, including:</p> <ul style="list-style-type: none"> <li>• Training supervisors and Human Resources staff about their role in responding to employees experiencing domestic violence and providing information for employees about the domestic violence response policy;</li> <li>• Conducting periodic outreach to employees to inform them about the policy, encourage them to come forward, and provide general information about domestic violence;</li> <li>• Facilitating collaboration among city staff who have a role in implementing the policy, and convening a domestic violence response team to advise on policies, ongoing outreach and education, and Human Resources' implementation of recommendations from this audit; and</li> <li>• Adopting a trauma-informed and inclusive approach.</li> </ul> | <p>Human Resources</p> | <p>Ongoing</p> | <p><u>Started:</u><br/>Human Resources may add policy review to supervisor training to include revised domestic violence policy.</p>                                                                                                              |

Audit Report  
October 10, 2019

# **Domestic Violence Response: Berkeley Needs a Comprehensive Policy to Support City Employees**



BERKELEY CITY AUDITOR



# Domestic Violence Response: Berkeley Needs a Comprehensive Policy to Support City Employees

## Report Highlights

October 10, 2019



### Findings

1. **Berkeley’s domestic violence leave policy does not include the state requirements of defining sexual assault and stalking or stating that the policy covers employees dealing with these experiences. We also found that Berkeley’s policy does not provide Human Resources the flexibility to use its discretion to allow self-certification in rare instances.**
2. **Berkeley’s policy does not include guidance on key domestic violence issues that affect employees or the workplace.**
3. Berkeley can adopt practices to be better positioned to implement a robust, coordinated, and supportive domestic violence response, including: training, outreach and education, collaboration, and commitment to an inclusive and trauma-informed response.



### Recommendations

To reflect the full extent of state law, we recommend Human Resources revise the policy to define and include sexual assault, **stalking, and witnesses’ rights. We also recommend Human Resources clarify that requirements for employees to document their use of leave or request for accommodations are at the discretion of Human Resources, and that employees are encouraged to come to Human Resources for assistance even if they do not initially have the documentation that may be requested.**

**To ensure Berkeley’s policy addresses key domestic violence issues in the workplace, we recommend Human Resources revise its policy to incorporate all the model policy and best practice elements described in the report, and communicate this guidance to city staff.**

To prepare Berkeley for implementing an inclusive domestic violence response policy, we recommend Human Resources implement best practices, including providing supervisor training, conducting ongoing employee outreach, facilitating collaboration, and adopting a trauma-informed and inclusive approach.

### Objectives

To what extent does Berkeley’s policy reflect state requirements?

**Does Berkeley’s policy address the key domestic violence issues in the workplace?**

Is Berkeley prepared to implement a supportive domestic violence response policy?

### Why This Audit Is Important

Domestic violence can extend into the workplace to threaten employee safety and wellbeing. In a national survey, 60 percent of respondents who experienced domestic violence reported losing their jobs as a consequence of the abuse. Studies estimate that domestic violence costs \$8.3 billion a year in health costs and lost productivity.

A comprehensive response for employees experiencing domestic violence can improve their wellbeing and help employees stay safe. Berkeley is a step ahead of many other workplaces in having developed a stand-alone leave policy in January 2019 to help employees experiencing domestic violence get the support they need. However, we are concerned that supervisors are not trained to comply with the policy and employees do not know about the options for assistance available to them.



BERKELEY CITY AUDITOR

For the full report, visit:  
<http://www.cityofberkeley.info/auditor>

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## Introduction

Domestic violence can occur anywhere, and its effects can extend into the workplace to threaten employee safety, health, and wellbeing. Nationally, one in four women and one in seven men have experienced severe violence by an intimate partner in their lifetime.<sup>1</sup> Domestic violence risk is higher for people of color and people who identify as LGBTQ+ or non-binary gender.<sup>2</sup> In a national survey, 60 percent of respondents who experienced domestic violence reported losing their jobs, and 96 percent reported their work performance suffered as a consequence of the abuse.<sup>3</sup> Alarming, 43 percent of women killed in U.S. workplaces were killed by a relative or domestic partner.<sup>4</sup> Studies estimate that domestic violence costs \$8.3 billion a year in health costs and lost productivity.<sup>5</sup> Responding to local concerns about these distressing statistics, City Council passed a resolution in 2018 co-authored by Berkeley's Peace and Justice Commission and Commission on the Status of Women resolving that freedom from domestic violence is a human right.

A comprehensive and coordinated response for employees experiencing domestic violence can improve their wellbeing and help employees stay safe, but most workplaces do not have a domestic violence response policy.<sup>6</sup> Berkeley is a step ahead of many other workplaces in having developed a stand-alone leave policy in January 2019 to help employees experiencing domestic violence get the support they need. However, we are concerned that supervisors are not trained to comply with the policy and employees do not know about the options for assistance available to them. We are also concerned that the current policy is limited. The intention for this audit is to outline a more comprehensive approach that Berkeley can adopt to be a leader in responding to domestic violence in the workplace and encouraging employees to seek the assistance available to them if needed.

## Scope, Objectives, and Methodology

This audit focused on the City of Berkeley's domestic violence leave policy. Our objectives were to determine:

1. **To what extent does Berkeley's policy reflect state requirements?**
2. **Does Berkeley's policy address the key domestic violence issues in the workplace?**
3. Is Berkeley prepared to implement a supportive domestic violence response policy?

We examined Berkeley's current policy, reviewed relevant laws and regulations, interviewed subject-matter experts and Berkeley employees, and reviewed best practices. For more information, see Appendix I.

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<sup>1</sup> National Domestic Violence Hotline: <https://www.thehotline.org/resources/statistics/>

<sup>2</sup> Alameda County Department of Public Health: [http://www.acphd.org/media/506904/dv\\_2018\\_ac.pdf](http://www.acphd.org/media/506904/dv_2018_ac.pdf)

<sup>3</sup> Workplaces Respond to Domestic and Sexual Violence: A National Resource Center: <https://www.workplacesrespond.org/facts/>

<sup>4</sup> National Bureau of Labor Statistics, 2015 (most recent data available): <https://www.bls.gov/iif/oshwc/cfoi/workplace-homicides.htm>

<sup>5</sup> Workplaces Respond to Domestic and Sexual Violence: A National Resource Center: <https://www.workplacesrespond.org/facts/>

<sup>6</sup> National Domestic Violence Hotline: <https://www.thehotline.org/resources/statistics/>

## Background

Domestic violence is a pattern of coercive behavior, including acts or threats, used by one person to gain power and control over another person. Domestic violence occurs between current or former spouses, family members, intimate partners, or parents of children or stepchildren in common. Domestic violence affects people of all walks of life regardless of race, gender, sexual orientation, income, culture, nationality, and religion. The populations at highest risk include:

- Women ages 18-44;
- Women of color, particularly African American and Native populations;
- Pregnant and postpartum women;
- LGBTQ+ people;
- People with disabilities;
- Youth and adults who witnessed or experienced domestic violence as children;
- People who are low-income or in poverty; and
- Immigrants and refugees.

Though incidents of domestic violence often occur outside of work, domestic violence is a serious issue that can affect employees in the workplace. Domestic violence can result in physical harm, health issues, trauma, and emotional distress for employees. As a result, employees experiencing domestic violence may have excessive absences from work, problems with work performance, and other interference that can threaten their ability to do their job, advance in their job, or keep their job. Maintaining sufficient employment is important for those experiencing domestic violence. About three out of four people who experience domestic violence cited economic insecurity as the main reason they stayed in an abusive situation.<sup>7</sup>

Table 1. Statistics on Domestic Violence in the Workplace

|            |                                                                                                                                                |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>43%</b> | of women killed in U.S. workplaces were killed by a relative or domestic partner. <sup>8</sup>                                                 |
| <b>96%</b> | of people who experienced domestic violence reported their work performance suffered as a consequence of the abuse. <sup>9</sup>               |
| <b>75%</b> | of people who experience domestic violence cited economic insecurity as the main reason they stayed with the person abusing them. <sup>9</sup> |
| <b>64%</b> | of employees who reported experiencing domestic violence felt their ability to work was affected by the violence. <sup>10</sup>                |

Sources: See footnotes.

<sup>7</sup> Workplaces Respond to Domestic and Sexual Violence: A National Resource Center: <https://www.workplacesrespond.org/facts/>

<sup>8</sup> National Bureau of Labor Statistics, 2015 (most recent data available): <https://www.bls.gov/iif/oshwc/cfoi/workplace-homicides.htm>

<sup>9</sup> Workplaces Respond to Domestic and Sexual Violence: A National Resource Center: <https://www.workplacesrespond.org/facts/>

<sup>10</sup> National Domestic Violence Hotline: <https://www.thehotline.org/resources/statistics/>

In 2012, U.S. President Barack Obama issued a presidential memorandum that required federal agencies to develop or modify policies for addressing the effects of domestic violence on the workforce. At the time, California already had laws in place granting employees experiencing domestic violence, sexual assault, or stalking the right to take time off of work to safeguard their health and wellbeing, and to request accommodations to stay safe at work. In 2013, California passed a bill prohibiting employers from discriminating or retaliating against employees for taking time off work or requesting accommodations related to domestic violence. In 2015, the City of Berkeley updated its policy that allowed employees to take extended leave for family care or health issues to include domestic violence issues, as required by state and federal law. Berkeley issued a stand-alone version of the policy in early 2019 that focused on leave time and accommodations for employees experiencing domestic violence.

Domestic violence is a complex issue for employers to address. Employers are not expected to be counselors or provide supportive services such as shelter, legal services, or counseling. But a secure workplace can be a **safe haven for some and safety at work is an important part of an individuals' comprehensive safety plan.** Employers can also be a resource to connect employees to supportive services in the community, such as the **City's existing Employee Assistance Program.**<sup>11</sup> On the other hand, employers could inadvertently worsen the situation if their response to employees experiencing domestic violence does not use best practices to demonstrate sensitivity to those experiencing domestic violence. Another challenge is that employers must also balance the concerns of individual employees with the need to maintain business operations.

#### **A note about language used in this report:**

**Domestic Violence:** Domestic violence can take many forms, both physical and non-physical. It includes, but is not limited to: physical violence, injury, or intimidation; sexual violence or abuse; emotional and/or psychological intimidation; verbal abuse; threats; harassment; stalking; or economic abuse and control. This report uses the term domestic violence to include all of these forms of abuse.

**Person/Employee, Survivor, and Victim:** People are not defined by their experience. To acknowledge employees' personhood and personal right to choose how they would like to identify, we use the term "person/employee experiencing domestic violence" rather than "survivor" or "victim." We also use "person using violence or abuse" rather than "perpetrator" or "abuser."

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<sup>11</sup> Berkeley contracts with Claremont Behavioral Services Employee Assistance Program, which provides city employees referrals to counseling and other supportive services, including domestic violence counseling and community resources.



## Berkeley's Domestic Violence Leave Policy Does Not Completely Reflect State Requirements

Berkeley's domestic violence leave policy (Administrative Regulation 2.21) generally reflects state law by allowing employees to take time off of work and request workplace accommodations to stay safe at work. However, the policy is missing some important components and clarity that would help ensure that Berkeley complies with the requirements of state law. If

**Berkeley's policy does not have clear and explicit language that includes all** key components of state law, city employees will not have complete information about how to support those experiencing domestic violence in a way that fully complies with the law, and city employees may not understand their rights and responsibilities.

### The policy does not address sexual assault and stalking, or the rights of employees who have witnessed domestic violence.

Berkeley's domestic violence leave policy AR 2.21 does not define sexual assault and stalking or state that the policy covers employees dealing with those experiences. The policy also does not explicitly state that witnesses of domestic violence may use leave time to participate in court proceedings, **though this right is included in the law. California law establishes employees'** right to take time off from work to protect their health and wellness if they experience domestic violence, sexual assault, or stalking.<sup>12</sup> It also establishes their right to request reasonable accommodations to help them stay safe at work. The law further allows that witnesses of any of these circumstances have the right to use leave time to participate in court proceedings.

In 2018, Human Resources (HR) identified the need for a stand-alone domestic violence leave policy. In quickly meeting this need, HR based the policy on the existing Family Care Leave Policy,<sup>13</sup> which did not include all **the terms in the state requirements. The City Attorney's Office reviewed the** policy but did not note that some language describing who is covered by the policy was missing. According to HR staff, the policy was limited to a leave policy, which could account for the omission.



Sexual assault can cause psychological, emotional, and physical distress that can lead to problems at work. More than 50 percent of people who have been stalked reported being stalked at work.

<sup>12</sup> California Labor Code sections 230 through 230.2: <https://bit.ly/2YO344z>

<sup>13</sup> This policy allows employees to take leave, beyond what is allowed in other policies, for family care or health issues as required by state and federal law.

If Berkeley’s policy does not explicitly define and address sexual violence and stalking as defined in state law, there is a risk that employees with these experiences will not know that they have rights under the policy. Additionally, supervisors may not be able to provide correct information to employees who are either facing these issues themselves or are witnesses. By not explicitly including these provisions from the law, there is an increased risk that city staff will not respond appropriately if someone experiencing sexual assault or stalking comes forward to seek assistance. As a result, employees experiencing sexual assault and/or stalking may not get the workplace assistance that they are allowed and they may face greater risk of harm, trauma, or even death. These risks can affect not only the person experiencing domestic violence but also their coworkers.

### The policy does not state factors used in determining whether accommodations are reasonable.

Berkeley’s policy AR 2.21 states that employees may request *reasonable* accommodations for their safety while at work, but does not include language from state law that describes how employers should evaluate whether a request is reasonable. If an employee reports that they are experiencing domestic violence and requests accommodations to stay safe at work, state law requires employers to engage in a timely, good faith, and interactive process with the employee to determine effective reasonable accommodations.

**This provision is included in Berkeley’s policy, but does not explicitly state** that HR considers employee circumstances and needs in addition to impact on city operations. The law requires employers to consider the following when determining whether the accommodation is reasonable:

- Employers must consider the urgency of the circumstance or danger facing the employee; and
- Employers are not required to undertake an action that constitutes an undue hardship on their business operations (requiring significant difficulty or expense).

Including this language in the policy would help city staff charged with arranging accommodations to better understand what factors to consider in determining if they are reasonable. Without this guidance, supervisors and HR staff may not consistently align with the law or apply the policy.



Impacts of domestic violence can affect not only the person experiencing domestic violence, but also their coworkers.



State law requires employers to engage in a timely, good faith, and interactive process with the employee to determine effective and reasonable accommodations.

## The policy title is focused on leave and is not comprehensive.

The title of Berkeley’s policy in AR 2.21 is “Domestic Violence Leave Policy,” which implies that the topic is limited to taking leave related to domestic violence rather than a comprehensive response to employees experiencing or who have witnessed domestic violence, sexual assault, or stalking. State law goes beyond allowing leave to also granting the right for employees to request accommodations to help them stay safe at work. The title of the policy may be misleading to both employees and supervisors seeking information about the full range of support available to employees and how to access it. An accurate descriptive title can help employers easily communicate to employees what the policy covers and provide the information they need.

## The policy does not allow exceptions for employees to self-certify their leave or accommodation.

Domestic violence circumstances and employee needs vary, yet Berkeley’s policy AR 2.21 does not provide HR the flexibility to tailor its response based on employees’ specific situation. If employees have an unexcused absence from work due to the effects of domestic violence, the law allows *but does not require* employers to request proof that the absence was for that reason.

Berkeley’s policy requires employees who have had an unexcused absence to retroactively provide certification to justify their use of leave in all instances. Certification can include a police report, restraining order, or note from a doctor, counselor, or domestic violence or sexual assault advocate.

Berkeley’s requirement also conflicts with guidance from domestic violence experts who state that it is important for policies to be flexible enough to allow for a case-by-case approach that responds to the unique circumstances individuals face. They also state that the needs of an individual experiencing domestic violence and how they choose to seek assistance can vary depending on many factors including their culture, support network, and access to resources. Some of the actions people take to stay safe may not provide official documentation. There is a risk that seeking services that provide documentation may result in increased danger and retaliation, especially considering that leaving an abusive relationship is usually the most dangerous point in a person’s domestic violence experience.<sup>14</sup>



California state law allows but does not require employers to request proof that the absence was for one of the reasons specified in the law.

<sup>14</sup> National Coalition Against Domestic Violence: <https://ncadv.org/why-do-victims-stay>

Some of the actions people take to stay safe provide individuals with official documentation. For example, if law enforcement is called to a domestic violence situation, they are likely to issue an immediate temporary restraining order that could serve as documentation. Similarly, if an individual accesses services from a domestic violence agency or organization, such as staying in a shelter or participating in regular counseling, it is standard for the agency to issue documentation that clients can give to their employer.

However, some actions do not necessarily provide documentation. For example, leaving an abusive situation by moving into another family **member's home may not involve domestic violence services or** documentation, especially if law enforcement was not involved. Leaving a partner who harms or abuses is often the most dangerous **time in a person's** domestic violence experience, and there is a risk that seeking services that provide documentation may result in increased danger and retaliation. In the rare circumstances when an employee experiencing abuse may not have documentation, HR could allow employees to sign a statement certifying that they are using leave or requesting accommodations related to the allowed purpose.

HR staff reported that, in practice, they do consider individual needs and work interactively with employees to find the combination of leave time and accommodations that is the greatest benefit to the employee. They also reported that they prioritize getting employees the time off they need over getting documentation. However, it is important to document that practice in the policy to ensure it continues when new HR staff take on the role of administering the policy. It is also important that the policy state that HR may use its discretion to determine when additional supporting documentation may be necessary or when accepting a signed statement may be appropriate.

To encourage employees experiencing domestic violence to seek assistance from HR, the policy should specify that employees can come to HR regardless of whether they initially have supporting documentation. HR could also specify that a signed statement, like the one required for bereavement leave, can be acceptable to justify the need for accommodations. Domestic violence issues are unique to individual circumstances. Therefore, domestic violence leave policy elements do not necessarily need to apply to other city policies about employee leave and accommodations.



Leaving a partner who abuses is often the most dangerous time **in a person's domestic violence** experience. Therefore, there is a risk that seeking services that provide documentation may result in increased danger and retaliation.



Domestic violence is widely underreported. People experiencing domestic violence and abuse face many barriers to coming forward, including fear of discrimination or retaliation at work.

## Recommendations

To reflect the full extent of state law, we recommend Human Resources revise the policy to:

- 1.1 Define and include sexual assault, stalking, and witnesses' rights.
- 1.2 State that when assessing safety accommodations, Human Resources takes into consideration danger to the employee and undue burden to the employer.

To clearly communicate the policy to employees and supervisors, we recommend Human Resources:

- 1.3 Revise the policy title to reflect the comprehensive scope of the policy.

To allow Human Resources the flexibility to tailor its response to individual domestic violence circumstances, we recommend Human Resources revise the policy to:

- 1.4 Clarify that requirements for employees to document their use of leave or request for accommodations are at the discretion of Human Resources and may include self-certification when appropriate. We also recommend that Human Resources clarify that employees are encouraged to come to Human Resources for assistance even if they do not initially have the documentation that may be requested.

## Berkeley's Policy Does Not Address Key Workplace Domestic Violence Issues

Berkeley has taken an important first step in establishing a stand-alone domestic violence leave policy AR 2.21, but it is missing key elements that could guide staff in responding to common related issues. More than 70 percent of employers in the U.S. do not have a formal program or policy that addresses domestic violence.<sup>15</sup> Berkeley is notable among employers because it has created a policy. However, Berkeley can do more to help navigate the challenges that result from domestic violence by adopting elements from model domestic violence response policies. Berkeley has an opportunity to develop its policy into a more comprehensive response to domestic violence in the workplace and demonstrate its commitment to keeping its workplace community safe.

Model workplace domestic violence response policies state that HR staff and supervisors need guidance on topics beyond allowing leave time and accommodations, including how to handle work performance issues for staff experiencing domestic violence and how to ensure accommodations are **effective for staff in different work settings**. Berkeley's policy contains only three of 12 model policy elements that address key domestic violence issues that affect the workplace (see Table 2).

<sup>15</sup> National Domestic Violence Hotline: <https://www.thehotline.org/resources/statistics/>

**Table 2. Comparison of Berkeley’s Domestic Violence Leave Policy AR 2.21 to Model Domestic Violence Response Policies**

| Model Policy Elements                                                                                                                                 | Model Policies     |                          |                       | Berkeley’s Policy (AR 2.21) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------------------------|-----------------------|-----------------------------|
|                                                                                                                                                       | Workplaces Respond | American Bar Association | Department of Justice |                             |
| Statement of support for employees                                                                                                                    | Yes                | Yes                      | Yes                   | Yes                         |
| Explanation of leave time and accommodations available to employees                                                                                   | Yes                | Yes                      | Yes                   | Yes                         |
| Statement on non-discrimination and non-retaliation related to domestic violence experience                                                           | Yes                | Yes                      | Yes                   | No <sup>16</sup>            |
| Addresses employee work performance issues in the context of domestic violence experience                                                             | Yes                | Yes                      | Yes                   | No                          |
| Designates responsibility of employer in helping employee to access unemployment insurance if maintaining work is no longer viable                    | Yes                | Yes                      | No                    | No                          |
| Designates training requirements for domestic violence issues                                                                                         | No <sup>17</sup>   | Yes                      | Yes                   | No                          |
| Emphasizes prompt or immediate response to an employee reporting domestic violence                                                                    | Yes                | Yes                      | Yes                   | Yes                         |
| Emphasizes prompt or immediate response to domestic violence incidents between employees                                                              | Yes                | Yes                      | Yes                   | No <sup>18</sup>            |
| Inclusion of different work locations and settings in workplace definition                                                                            | N/A                | N/A                      | Yes                   | No                          |
| Definitions of all relevant terms related to domestic violence issues and specified in the law                                                        | Yes                | Yes                      | Yes                   | No                          |
| Section discussing the importance of maintaining domestic violence survivor confidentiality                                                           | Yes                | Yes                      | Yes                   | No <sup>19</sup>            |
| Designates employer responsibility relative to restraining order enforcement, including if the person using violence or abuse is also a city employee | Yes                | Yes                      | Yes                   | No                          |

Sources: Policies listed in column headers, interviews with domestic violence organizations, and auditor conclusion.

<sup>16</sup> Discussed in other workplace policies, but not Administrative Regulation 2.21: Domestic Violence Leave Policy.

<sup>17</sup> Workplaces Respond discusses the purpose of the policy as supporting a comprehensive education and training program.

<sup>18</sup> A separate policy on violence in the workplace specifies “immediate” response, but that is not stated in the Domestic Violence Leave Policy (AR 2.21).

<sup>19</sup> AR 2.21 Domestic Violence Leave Policy states that supervisors and HR should keep information confidential but does not emphasize the importance of confidentiality or provide detail about how to ensure confidentiality.

In addition to elements identified in model policies, there are other best practices that could help Berkeley meet employees’ needs. One recommendation from domestic violence organizations relevant to Berkeley’s diverse community is that domestic violence response policies should make a commitment to providing support that is inclusive and representative of the community’s cultural and linguistic diversity. This is critical to ensuring that a workplace domestic violence response policy is sensitive to the intersection between domestic violence and factors such as race, culture, and language. This view is not expressed in the City’s stand-alone domestic violence leave policy. Making this commitment would distinguish Berkeley as a leader in workplace domestic violence response and align its policy with Berkeley’s core values of safety, health, equity, and respect.

Without including the best practices such as those listed above, Berkeley may not be prepared to respond to many of the issues that may occur when an employee experiences domestic violence. As a result, the City may not be able to adequately protect employees experiencing domestic violence or support their success at work and continued employment. A lack of effective support for employees experiencing domestic violence could also cost Berkeley through decreased productivity and employee performance, and increase the risk of harm to employees.

## Recommendation

**To ensure Berkeley’s policy addresses relevant domestic violence issues in the workplace, we recommend Human Resources revise its policy to:**

- 2.1** Incorporate the model policy and all best practice elements described in this finding, and communicate this guidance to city staff.



**Berkeley’s Core Values:** Service, Collaboration, Respect, Equity, Accountability, Continuous Learning, Innovation, Safety, and Health



## Berkeley Needs to Take Steps to Prepare All Staff to Comply with the Policy

Berkeley employees are not prepared to implement a comprehensive domestic violence response policy. Without engaging in training, outreach, and collaboration, Berkeley cannot implement a comprehensive system to support employees experiencing domestic violence, sexual assault, or stalking. Berkeley has taken a first step in establishing a stand-alone domestic violence leave policy, but has not yet planned for how it will use best practices to fully implement the policy.

To be a leader in effective and thoughtful approaches to responding to domestic violence in the workplace, Berkeley will need to take steps to prepare all staff to comply with the policy as intended. There are practices that Berkeley is not currently following but can adopt to be better positioned to implement a robust, coordinated, and supportive domestic violence response plan. These include:

1. Training for all supervisors about domestic violence at work and the expectations for how they should respond;
2. Outreach and education to inform employees about domestic violence in the workplace and ways in which the City can support them;
3. Collaboration with resources in the City and in the community to **strengthen Berkeley’s domestic violence response; and**
4. Commitment to an inclusive and trauma-informed perspective in addressing domestic violence at work.

### Provide training and guidance for supervisors.

Supervisors need training to understand the domestic violence response policy and their role in following the policy. Supervisors and HR staff will also need training on the best practices for supporting employees experiencing domestic violence. All staff should be included in some level of information sharing about the policy because an employee experiencing domestic violence may be more willing to first report domestic violence to a coworker or supervisor they regularly work with rather than to HR. Without training on how to address performance issues that could be related to abuse, supervisors are not equipped to respond appropriately. HR should



“Employers have an important role to play [and by] providing support for employees who experience abuse, HR professionals may be able to prevent workplace tragedies.”

- Society for Human Resources Management, “When Domestic Violence Comes to Work”

provide training to help supervisors and HR personnel respond appropriately and sensitively to employees with domestic violence concerns. Trainings should include guidance on how to handle performance issues related to domestic violence.

### **Inform employees about the policy and encourage them to seek assistance.**

Ongoing outreach and education about the domestic violence response policy can both inform employees about their options to address domestic violence and provide encouragement for them to seek the available assistance. In one national survey of U.S. workplaces, two out of three respondents reported that they were not aware of their workplace having a domestic violence response policy.<sup>20</sup> Employees who do not know about **their rights or the City's policy, or who do not feel comfortable reporting** their domestic violence experience, may not request the time off or accommodations they need to address domestic violence concerns. Informing all staff about the domestic violence response policy can also help staff understand the expectations of their role and mitigate the risk that Berkeley may be liable if staff are not sufficiently informed to follow the policy as intended. Actions HR could take to facilitate ongoing outreach include:

- Developing outreach materials using different types of media to let **employees know about their rights as specified in the City's** domestic violence response policy. Outreach materials should include language that is supportive, understandable, and trauma-informed (see text box below);
- Making sure outreach materials and information about domestic violence resources in the community are accessible to all **employees, including on the City's website on a page that uses** web-safety protocols; and
- Informing employees about the policy through the employee newsletter, Berkeley Matters, all-staff email communications, and, for staff without computer or internet access, by asking managers to share this information.



Considering current workload and capacity constraints, Human Resources can explore options such as providing short video trainings for supervisors and including domestic violence training in existing supervisor trainings.



Web safety protocols are steps organizations can take to help people stay safe by keeping their internet use private when accessing information online. Protocols include adding a safety alert header or a quick escape button to a website. More tips for technology safety can be found at NNEDV.org.

<sup>20</sup> Corporate Alliance to End Partner Violence: <http://www.ncdsv.org/images/CAEPVSurvey.WorkPlace.pdf>

A **trauma-informed** approach 1) takes into account that all people may have experienced trauma, 2) includes the individuals in decisions about their wellbeing, and 3) promotes a culture of safety, empowerment, and healing.

An **inclusive response considers employees' needs across differences in** socio-economic status, race, culture, language, age, gender, and sexual orientation. Resources and information should be accessible to people across these differences.

## Collaborate with city staff on domestic violence response.

By collaborating with city employees who have expertise in domestic violence and crisis response, such as mental health providers and law enforcement, Berkeley can build capacity to promote a supportive and safe workplace. HR and city staff are not expected to be experts in domestic violence or provide supportive services such as shelter, counseling, or legal services. Convening a domestic violence response team would help HR access the knowledge and experience needed to develop a comprehensive domestic violence response that considers the many different perspectives **of Berkeley's diverse employees. Actions HR could take to facilitate** collaboration include:

- Convening a domestic violence response team with City staff, such as mental health providers and law enforcement, who are informed about domestic violence to advise on policies, outreach, and education;
- Communicating with representatives in each department that may be involved in a workplace accommodation to establish a response process and clarify roles. Those departments may include: HR, IT, **OSHO/building security, public works, police, the City Attorney's Office, and the City Manager's Office;** and
- **Contacting domestic violence organizations and the City's** Employee Assistance Program provider to develop a list of culturally-specific and linguistically-representative resources to refer employees to when they request help.



The City has department experts on issues and services related to domestic violence, such as mental health professionals in the Health Housing & Community Services Department and Berkeley **Police Department's Domestic Violence Prevention Unit.** These experts can advise Human Resources on the tone and language of the policy, **training,** and outreach materials.

## Adopt a trauma-informed and inclusive approach.

Domestic violence organizations emphasize the importance of using a trauma-informed approach to developing a domestic violence response policy and response. Doing so takes into consideration the needs of people who have experienced trauma and provides referrals to resources that can support healing. They also emphasize that experiences of domestic violence **can vary depending on an individual's circumstances and that a domestic violence response should be inclusive.** An inclusive response considers employees needs across differences in socio-economic status, race, culture, language, age, gender, and sexual orientation. A thorough explanation of trauma-informed and inclusive principles is beyond the scope of this audit, but we included a high-level summary in the textbox above. A trauma-informed approach can help prevent employers from causing additional harm to someone experiencing domestic violence. An inclusive perspective is also essential to developing a domestic violence response that is as effective as possible for employees from different backgrounds. Actions HR could take to adopt a trauma-informed and inclusive approach include:

- Providing training to HR staff and supervisors about trauma-informed and inclusive principles;
- Applying a trauma-informed lens to addressing performance issues;
- Using a supportive and non-judgmental tone for policy and related communication;
- Ensuring flexibility in policy and options to reasonably meet unique needs of each individual; and
- Maintaining an up-to-date and accurate directory of resources to refer employees to, including culturally-specific and linguistically appropriate options (see Appendix III).

## Recommendation

To prepare Berkeley employees for implementing an inclusive domestic violence response policy, we recommend Human Resources:

- 3.1** Implement best practices, including:
- Training supervisors and Human Resources staff about their role in responding to employees experiencing domestic violence and providing information for employees about the domestic violence response policy;
  - Conducting periodic outreach to employees to inform them about the policy, encourage them to come forward, and provide general information about domestic violence;
  - Facilitating collaboration among city staff who have a role in implementing the policy, and convening a domestic violence response team to advise on policies, ongoing outreach and **education, and Human Resources' implementation of recommendations from this audit;** and
  - Adopting a trauma-informed and inclusive approach.

## Appendix I—Methodology and Statement of Compliance

### Methodology

We audited the City of Berkeley’s current domestic violence leave policy for city employees. We performed a risk assessment of the City’s policy and of domestic violence in the workplace to identify potential internal control weakness, health and safety concerns, and fraud risks. There were no fraud risks significant to our objectives. We focused our audit on the City’s policy and preparedness to respond to domestic violence concerns. We did not review how the City responded to current or past instances of employees experiencing domestic violence. We provided a copy of the draft report to the Health, Housing, and Community Services Department, the City Attorney, and the Police Department. To accomplish our audit objectives, we:

- **Reviewed State of California Labor Code Sections 230, 230.1, and 230.2 governing employers’ responsibilities to employees who report experiencing domestic violence, sexual assault, or stalking, or who have witnessed such circumstances.**
- **Reviewed California Government Code Section 12926 to understand the legal definition of “undue hardship” and California Labor Code Section 6400 to understand the legal definition of a “place of employment that is safe and healthful” as both are referred to in California Labor Code Section 230.**
- Reviewed Administrative Regulation 2.21: Domestic Violence Leave Policy; Administrative Regulation 2.4: Family Care Leave; Employee Violence in the Workplace and Employee Security Policy; and Bereavement Leave Policy to understand the city policies relevant to employee leave and safety.
- Interviewed Human Resources staff to gain an understanding of their process for developing and using the policy, and to understand their needs when supporting staff using the policy.
- Interviewed City Attorney staff to understand the process that city policies go through for review **and approval in the City Attorney’s Office, and the specific review of Administrative Regulation 2.21: Domestic Violence Leave Policy.**
- Reviewed best practices and studies from organizations focused on helping persons experiencing domestic violence to understand the impact of domestic violence in the workplace and what subject-matter experts suggest employers do to address the concern. Specifically, we looked at information from National Domestic Violence Hotline; Futures Without Violence; Rape, Abuse & Incest National Network; National Network to End Domestic Violence; Narika; Women Organized to Make Abuse Nonexistent, Inc. (W.O.M.A.N., Inc.); National Coalition Against Domestic Violence; Maine Department of Labor: Family Crisis Services; and Society for Human Resources Management.
- Reviewed model policies from organizations that focus on domestic violence in the workplace to understand what information policies need to include. Specifically, we looked at policies from Workplaces Respond to End Domestic and Sexual Violence: National Resource Center; American

Bar Association; U.S. Department of Justice; and Legal Momentum: The Women's Legal Defense and Education Fund.

- **Reviewed King County, Washington's audit, *Domestic Violence Resources for County Employees Are Limited and Hard to Find***, to identify best practices, model policies, and common issues found in government jurisdictions in regards to responding to those experiencing domestic violence. We **also reviewed Kind County's Peer Review, which concluded the organization and sufficient quality control system were in place.** We, therefore, concluded we could rely on the results of their audit.
- Reviewed policies on domestic violence in the workplace from the City and County San Francisco, City of Los Angeles, and King County, Washington to understand what other local government jurisdictions have developed.
- Obtained Berkeley City Resolution 68,301-N.S. **co-authored by Berkeley's Peace and Justice Commission and Commission on the Status of Women** resolving that freedom from domestic violence is a human right to understand local concerns regarding the effects of domestic violence.
- **Obtained the City of Berkeley's Strategic Plan to understand the core values as they may apply to the city's workforce.**
- Reviewed labor agreements between the City of Berkeley and its unions, associations, and bargaining units to understand which contracts include explicit language regarding domestic violence leave.
- Gathered statistics on domestic violence at the national, state, and local level to understand the prevalence of domestic violence. We specifically obtained statistics from National Domestic Violence Hotline; Alameda County Department of Public Health; National Bureau of Labor Statistics; National Coalition Against Domestic Violence; Workplaces Respond to End Domestic and Sexual Violence: A National Resource Center; and Corporate Alliance to End Partner Violence.

## Domestic Violence Statistics

Domestic violence is a sensitive topic making it difficult to obtain current, complete data. Research relies on people to self-report their domestic violence experiences and many people are unable to do so. Additionally, the organizations we cite in this report used varying sources, dates, population sizes, and other factors in their studies. As a result, some of the statistics we use in this report are several years old or do not match precisely across studies, e.g., one statistic may say 70 percent while another says 65 percent for the same topic. However, what is consistently true is that domestic violence is a severe and prevalent problem, it shows up in the workplace, and it can have devastating effects on those experiencing domestic violence and their colleagues. Further, the organizations that conducted the studies are knowledgeable on the effects of domestic

violence and, therefore, credible in their work. As such, we determined that the statistics were sufficiently reliable for providing context in our report.

## Independence Assessment

The lead auditor for this report serves as our office's Area Safety Monitor (ASM). The role of the ASM is to discuss safety issues with the City's Occupational Health & Safety Officer (OHSO) during regular safety committee meetings for city employees, and to share safety information between the OHSO and our office. **It was serving in this capacity that the concern regarding the City's domestic violence leave policy came to our attention.** The lead auditor also has had prior experience working and volunteering with people experiencing **domestic violence. We assessed the role of the ASM and the lead auditor's former experience. This included** consulting with an external audit expert on audit independence standards. We concluded that no independence impairments exist. Nonetheless, to support our commitment to independence, we put safeguards in place to address any potential perception that impairments did exist. Safeguards include disclosing this information in this report, and ensuring that the Audit Manager verified that our audit findings, conclusions, and recommendations are supported by unbiased, factual, sufficient, and appropriate audit evidence.

## Statement of Compliance

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



## Appendix II—Management Response

We provided a draft of this report to City Management and the Human Resources Department (HR) for review and comment. HR provided comments, which are reproduced in full below. In its comments, HR agreed to our findings and conclusions and agreed with five recommendations, but did not agree with one recommendation.

HR concurred with our recommendation 1.1 to revise the policy to define and include sexual assault, stalking, and witnesses' rights as well as with recommendation 1.2 to revise the policy on considerations in assessing safety accommodations. They also agreed to revise the title in recommendation 1.3 to be more comprehensive.

HR did not agree to allow employees to self-certify their leave request as we proposed in recommendation 1.4. The department said that, in its efforts to be consistent in its application of leave protected by legal mandate, that it is essential for employees to obtain documentation as allowed by law. We understand their perspective but note that the state law uses the language "may obtain" rather than "mandate." for the list of possible documentation. In our work focusing on identifying risks, we want to ensure that in rare circumstances employees can attest to their unique situation. For some, obtaining documentation poses an obstacle that they may be unable to overcome even in life-threatening circumstances. This is a risk that could be addressed through self-certification. HR agreed to our proposal in recommendation 1.4 to encourage employees to come forward for help even if they do not have documentation. HR also informed us that they will work closely with employees to first prioritize their safety and connect them with help through the Employee Assistance Program to obtain documentation. While we understand the confines within which HR must operate, we continue to encourage flexibility to allow for employees to forego the certification requirement in rare circumstances.

HR expressed its commitment to the intent of recommendations 2.1 and 3.1. While the department agreed to those recommendations, it is still evaluating how best to fully implement them within the boundaries of its operations. Our recommendations are not meant to require HR to take actions for which they are not qualified. Therefore, as part of our follow-up process, we will be actively engaging with HR to continue to help them understand the purpose of our recommendations so that they implement them only as intended. We want to emphasize the importance of collaborating with domestic violence experts working in the city in developing policies and trainings, and that these are created and implemented through a trauma-informed lens. Ultimately, we made these recommendations with the intention of mitigating safety and harm risks to the city when addressing domestic violence issues.

Below are HR planned corrective actions and proposed implementation dates. We will monitor their progress through our follow-up process and the department will provide City Council with regular updates on its actions until they address all of our recommendations.

## 1.1 To reflect the full extent of state law, we recommend Human Resources revise the **policy to define and include sexual assault, stalking, and witnesses' rights.**

Management Response: Concur

Proposed Implementation Plan: Note: Proposed changes to the language of the current policy are indicated by italics.

Add Witnesses To Policy: Human Resources proposes to modify the language of **Administrative Regulation No. 2.21 at Section II "Policy,"** such that the first sentence reads as follows: **"The City of Berkeley is committed to promoting a work environment that is supportive of victims of domestic violence, *testifying witnesses*, and the effects the abuse can have on employees and the workplace."**

Add Witnesses To Definitions: Human Resources proposes to add language to **Administrative Regulation No. 2.21 at Section III "Definitions,"** to include the following sentence: **"D. *Witness* -- A witness is an employee required by subpoena or other court order to testify as a witness at any judicial proceeding."**

Add Witnesses To Procedures: Human Resources proposes to modify **Administrative Regulation No. 2.21 at Section IV "Procedures"** to reflect the provisions in **Labor Code Section 230(b), regarding witnesses. The following paragraph may be added under IV, A., 6:** **"6. *Procedure for Witnesses: An employee who requests time off to serve as a witness in any judicial proceeding must produce either a subpoena or other court order to immediate supervisor requiring their appearance as a witness in any judicial proceeding, including but not limited to restraining orders hearings, family court hearings, and trial.*"**

Note Re Accused/Alleged Perpetrators As Witnesses: Human Resources may also add a brief note indicating that the City also permits leave under this policy for testifying witnesses who are accused of domestic violence, sexual violence, stalking, etc. **Labor Code Section 230(b) protects subpoenaed witnesses when required to testify in "any judicial proceeding."**

Modify Definition of Perpetrator: Because of the updates related to sexual assault and stalking, HR proposes to revise the definition of perpetrator in **Administrative Regulation No. 2.21 at Section III. "Definitions," C. "Perpetrator" as follows:** **"Perpetrator – *The individual who commits or threatens to commit an act of domestic violence, sexual assault or stalking.*"**

Adding Sexual Assault And Stalking: Human Resources proposes to modify **Administrative Regulation No. 2.21 at Section IV "Procedures," A. "Request for Time Off" to read as follows:** **"Employees who are victims of domestic violence, *sexual assault and/or stalking* [...]"**.

Proposed Implementation Date: January 1, 2020

- 1.2** To reflect the full extent of state law, we recommend Human Resources revise the policy to state that when assessing safety accommodations, Human Resources takes into consideration danger to the employee and undue burden to the employer.

Management Response: Concur

Proposed Implementation Plan: Human Resources proposes to revise Administrative Regulation No. 2.21 at Section V. “Responsibilities,” C. “Human Resources Department,” to provide, in accordance with Labor Code Section 230(f), that: *“In determining whether the accommodation is reasonable, the City of Berkeley shall consider an exigent circumstance or danger facing the employee. This does not require the City to undertake any action that constitutes an undue hardship on the employer’s business operations.”*

The above sentence would be inserted prior to the last sentence in the current Regulation. **The last sentence reads: “To the extent required by law, the Human Resources staff will maintain confidentiality of any employee requesting time off.”**

Proposed Implementation Date: January 1, 2020

- 1.3** To clearly communicate the policy to employees and supervisors, we recommend Human Resources revise the policy title to reflect the comprehensive scope of the policy.

Management Response: Concur

Proposed Implementation Plan: Human Resources proposes to revise the title to read: *Domestic Violence, Other Protections and Leave Policy*, and advise employees of changes to the policy which include protections for victims of sexual violence, stalking and witnesses giving testimony. Additionally, further definitions listed in Section 1.1 give sufficient notice of bases for leave and reasonable accommodation.

Proposed Implementation Date: January 1, 2020

**1.4** To allow Human Resources the flexibility to tailor its response to individual domestic violence circumstances, we recommend Human Resources revise the policy to clarify that requirements for employees to document their use of leave or request for accommodations are at the discretion of Human Resources and may include self-certification when appropriate. We also recommend that Human Resources clarify that employees are encouraged to come to Human Resources for assistance even if they do not initially have the documentation that may be requested.

Management Response: Disagree

Proposed Implementation Plan: This recommendation is not reflective of requirements under Labor Code Section 230.

Request for time off: Section 230 provides that when an unscheduled absence occurs, employer shall not take any action against employee until employee provides certification within a reasonable time. The mandatory certification requirements listed in Administrative Regulation No. 2.21 are already within legal parameters for taking leave/time off as delineated in Labor Code Section 230(d)(2)(A-C). Self-certification is not included or discussed in this portion of the statute. Human Resources proposes to add a Section IV. A. 2. iv. Which **provides as follows:** “*iv. A written declaration or statement by employee request for the applicable leave and agreement to submit one of the listed items listed in i. through iii. within ten (10) calendar days within leave request.*”

Request for an accommodation: When employee requests an accommodation, however, the self-certification *may* be requested by the employer and submitted by the employee. The statute at Section 230(f)(7)(A) refers to self-**certification as “a written statement signed by the employee or individual acting on the employee’s behalf, certifying that the accommodation is for a purpose authorized [...]**” by the statute.

To be clear, the City is obligated to obtain certification from employees requesting leave for unauthorized absences in the form of police reports, court orders or documentation from a professional. However, when the employee requests a reasonable accommodation, the City may accept self-certification (i.e., a written statement from the employee). To ensure that accommodation requests are consistent with other policies (e.g., FMLA and/or ADA), Human Resources proposes to add a Section IV. B.1. which provides as follows: “*1. In support of a request for reasonable accommodation, an employee shall provide written certification documentation from a medical professional or other healthcare provider concurrent with the accommodation request. Alternatively, an employee may provide a written declaration*

*or statement by the employee followed by documentation from a medical professional or other healthcare provider within thirty (30) calendar days of the accommodation request.”*

The Human Resources staff will engage the employee in an interactive process to determine effective reasonable accommodations that can be provided to aid her/him in safeguarding their health and safety. *When implementing any accommodations Human Resources will ensure that all appropriate benefits are provided, i.e. EAP.* Any reasonable accommodation involving changes to an employees working conditions will be in accordance with the terms of **the employee’s MOU, Personnel Rules and Regulations.**

HR proposes to add to Section IV. 3 Confidentiality: *The City recognizes the importance of maintaining confidentiality.* The immediate supervisor shall maintain the confidentiality of any employee requesting leave under this regulation.

Proposed Implementation Date: January 1, 2020

**2.1 To ensure Berkeley’s policy addresses relevant domestic violence issues in the** workplace, we recommend Human Resources revise its policy to incorporate the model policy and all best practice elements described in this finding, and communicate this guidance to city staff.

Management Response: Concur

Proposed Implementation Plan: Human Resources intends to distribute the policy to city staff via email on a quarterly basis with an explanation of changes. Human Resources may notify employees in Berkeley Matters, highlighting changes and notifying supervisors about changes of which they need to be aware. Following the model policies provided by the Audit Team, Human Resources will add a) the statement of non-discrimination and non-retaliation; b) further definitions of key terms; and c) a sentence addressing the importance of survivor confidentiality.

In addition, Human Resources will assess the feasibility of adopting additional elements from model policies and will add as appropriate at a later date.

Proposed Implementation Date: January 1, 2020

### 3.1 To prepare Berkeley employees for implementing an inclusive domestic violence response policy, we recommend Human Resources **implement best practices, including:**

- Training supervisors and Human Resources staff about their role in responding to employees experiencing domestic violence and providing information for employees about the domestic violence response policy;
- Conducting periodic outreach to employees to inform them about the policy, encourage them to come forward, and provide general information about domestic violence;
- Facilitating collaboration among city staff who have a role in implementing the policy, and convening a domestic violence response team to advise on policies, ongoing outreach and **education, and Human Resources' implementation of recommendations from this audit;** and
- Adopting a trauma-informed and inclusive approach.

Management Response: Concur

Proposed Implementation Plan:

Training (To Be Implemented By Approx. January 1, 2020): Human Resources may coordinate with organizational trainer Wilhelmina Parker to add policy review to supervisor training to include revised domestic violence policy. Additionally, training announcement to be placed in Berkeley Matters.

Human Resources Will Request Appropriate Resources: Human Resources will be requesting resources to conduct additional year-round training outside of what is currently proposed. The department does not have resources to prioritize domestic violence policy as a program, but aims to make its leave administration consistent with other such as FMLA, ADA, and collaborative with the needs of employees experiencing workplace violence.

Collaborative Approached Already Implemented: Human Resources already collaborates with other departments regarding necessary resources for the employee, including building security, workplace violence prevention, and information technology (changing computer, **phone, email, work location**). **Administrative Regulation No. 2.21 Section IV, 1 ("Procedures")** already provides that employees will give reasonable advance notice to their immediate supervisor re leaves and unscheduled absences. In addition, Human Resources already has applicable Leave Specialist in the department available to process leave requests. A response team requires additional resources and may create potential liabilities re HIPAA, privacy and confidentiality as well as inefficient administration.

Human Resources employees are not trained social workers or therapists equipped to provide Response Team services which are outside of the scope of leave administration.

Critical to future deployment and operational implementation, Human Resources will seek broad input from various departments in administration and in training development around this policy.

Proposed Implementation Date: Specified for individual components of the implementation plan, above.

## Appendix III—Domestic Violence Resources

### Domestic Violence Resources

To further our intention of providing a roadmap for Berkeley, we wanted to provide some resources for those who could benefit. If you or someone you know are experiencing domestic violence or abuse, sexual assault, or stalking, you are not alone and help is available. Please reach out to one of the following resources for more support:

- If your life is in danger, please call 9-1-1 or your local emergency number.
- National Domestic Violence Hotline: Advocates are available 24 hours a day, 365 days a year to help you create a plan to stay safe and refer you to services in your community. Help is available by phone or online chat:

1-800-799-7233 (English and Spanish) | 1-800-787-3224 (TTY) | [thehotline.org](http://thehotline.org)

- Employee Assistance Program: City of Berkeley employees have access to counselors through Claremont Employee Assistance Program. Counselors are available by phone 24 hours a day, 365 days a year. Claremont can also refer members to counselors or domestic violence services in your local community. Services are available in many languages and translation services are available:

1-800-834-3773

- Alameda County Family Justice Center (ACFJC): The ACFJC website provides helpful information and resources for people experiencing domestic abuse in Alameda County. Information is available that addresses domestic violence and teens, the LGBTQ+ community, immigrants, children, people with disabilities. There is also information about restraining orders, technology safety, housing, and employment. Visit their website:

[http://www.acfjc.org/resource\\_library/domestic\\_violence](http://www.acfjc.org/resource_library/domestic_violence)



## Appendix III—Domestic Violence Resources

### Domestic Violence Resource Guide for Alameda County Guía de Recursos de Violencia Domestica para el Condado de Alameda

#### 24-HOUR CRISIS LINES

##### Lineas de crisis las 24 hrs. del día

|                                                       |                                |
|-------------------------------------------------------|--------------------------------|
| A Safe Place                                          | 510-536-7233                   |
| Building Futures with<br>Women and Children           | 1-866-292-9688                 |
| Crisis Support Svcs of the E-Bay                      | 1-800-309-2131                 |
| Ruby's Place                                          | 888-339-7233                   |
| Tri-Valley Haven                                      | 1-800-884-8119<br>925-449-5842 |
| Center for Domestic Peace<br>(Español)                | 415-924-6616<br>415-924-3456   |
| WOMAN, Inc. – referrals (SF)<br>(Español)             | 415-864-4722<br>877-384-3578   |
| Next Door                                             | 408-279-2962                   |
| Family Violence Law Center...<br>Mobile Response Team | 1-800-947-8301                 |
| National Domestic Violence Hotline                    | 1-800-799-7233                 |
| Queer Asian Women & Transgender Hotline               | 877-751-0880                   |
| Bay Area Women Against Rape                           | 510-845-7273                   |

#### BATTERER'S TREATMENT

##### Tratamiento para agresores/golpeadores

|                                        |                              |
|----------------------------------------|------------------------------|
| Associated Counseling (SL)             | 510-357-0550                 |
| Davis Street Family Resource Ctr. (SL) | 415-472-3275                 |
| John Hamel & Associates (B)            | 510-644-8190                 |
| Men Creating Peace (O/SF)              | 510-730-0184                 |
| Peace Creations (CV)                   | 925-833-9505                 |
| Second Chance (H)<br>(N)               | 510-886-8696<br>510-792-4357 |
| Terra Firma Diversion (H)              | 510-675-9362                 |
| Triumph (O)                            | 510-636-4111                 |
| West Oakland Health Council (O)        | 510-729-8800                 |

#### CHILD ABUSE SERVICES

##### Servicios de abuso infantil

|                                         |              |
|-----------------------------------------|--------------|
| Child and Family Services (Alameda Co.) | 510-259-1800 |
| (SF)                                    | 415-558-2650 |

#### COUNSELING SERVICES

##### Servicios de asesoramiento/Consejería

|                                                 |                              |
|-------------------------------------------------|------------------------------|
| ACCESS Mental Health Referrals                  | 1-800-491-9099               |
| Alameda Family Services (A)                     | 510-629-6300                 |
| Asian Health Services (O)                       | 510-986-6800                 |
| CARE Program (children) (O)                     | 510-428-3407                 |
| Center for Non-abusive Relationships (O)        | 510-208-5006                 |
| Community Health for ...<br>Asian Americans (A) | 510-835-2777                 |
| Earth Circles Counseling Center (O)             | 510-601-1929                 |
| Family Paths (O)<br>(H)                         | 510-893-9230<br>510-893-9230 |
| La Familia (H)                                  | 510-881-5921                 |
| Mujeres con Esperanza (O)                       | 510-300-3156                 |
| Mujeres Unidas y Activas (O)<br>(SF)            | 510-261-3398<br>415-621-8140 |
| Rainbow Psychotherapy Assoc. (B)                | 510-420-8083                 |
| Shimtih Korean Center (SL)<br>Korean            | 510-547-2360<br>844-828-2254 |
| The D.O.V.E.S Project (O)                       | 510-428-3135                 |
| Triumph (O)                                     | 510-636-4111                 |
| Berkeley Therapy Institute (B)                  | 510-841-8484                 |

2/08/2019 A. Flores & M. Minard, Alameda County Family Justice Center, 510-267-8800

|                                        |              |
|----------------------------------------|--------------|
| Blue Oak Therapy Center (B)            | 510-649-9818 |
| Jewish Family & Children Services (SF) | 415-449-1200 |

#### COUNSELING *continued*

##### Servicios de asesoramiento, *continua*

|                                            |                              |
|--------------------------------------------|------------------------------|
| Oak Creek Counseling Center (B)            | 1-888-637-7404               |
| UC Psychology Clinic (Sept.-May) (B)       | 510-642-5292                 |
| Hume Center (F)<br>(P)                     | 510-745-9151<br>925-223-8047 |
| Simi Markar, MFT (F)                       | 510-273-9126                 |
| Davis Street Family Resource Ctr (SL)      | 510-347-4620                 |
| Family Services Counseling Ctr (SL)        | 510-483-6715                 |
| Pathways Counseling Center/Girls Inc. (SL) | 510-357-5515                 |
| Tri-Valley Haven                           | 925-449-5845                 |
| Cameron House (Chinese) (SF)               | 415-781-0401                 |
| Women's Daytime Drop-In Center (B)         | 510-548-2884                 |

#### CULTURALLY SPECIFIC RESOURCES

##### Recursos culturalmente específicos

|                                         |                |
|-----------------------------------------|----------------|
| Arab Cultural and Community Center (SF) | 415-664-2200   |
| Asian Health Services (O)               | 510-986-6800   |
| Korean Community Center East Bay (O)    | 510-547-2662   |
| La Clinica de la Raza (O)               | 510-535-4000   |
| Maitri-Indian (San Jose)                | 1-888-862-4874 |
| Narika-South Asian (B)                  | 1-800-215-7308 |
| Shalom Bayit-Jewish (O)                 | 866-742-5667   |
| Terra Firma Diversion-Spanish (H)       | 510-675-9362   |

#### DEAF RESOURCES

##### Recursos para sordos

|                                                   |                                                                                                 |
|---------------------------------------------------|-------------------------------------------------------------------------------------------------|
| DCARA                                             | 510-343-6670                                                                                    |
| DeafHope (O)                                      | <a href="mailto:deafhope@deaf-hope.org">deafhope@deaf-hope.org</a><br>Video Phone: 510-735-8553 |
| Deaf Community Counseling Center (DCCS) (SF) (SL) | 415-474-7310                                                                                    |
| Video Phone (SL):                                 | 510-343-7277                                                                                    |
| Video Phone (SF):                                 | 415-255-5848                                                                                    |

#### ELDER ABUSE SERVICES

##### Servicios para personas mayores victimas de abusos

|                                                    |                              |
|----------------------------------------------------|------------------------------|
| Adult Protective Services (Alameda County)<br>(SF) | 510-577-3500<br>415-557-5230 |
| API Legal Outreach (O)<br>(SF)                     | 510-251-2846<br>415-567-6255 |
| Area Agency on Aging (Alameda County)              | 510-577-1900                 |
| Institute on Aging (SF)                            | 415-750-4111                 |
| Legal Assistance for Seniors (O)                   | 510-832-3040                 |
| Victim Witness (O)                                 | 510-272-6180                 |

#### HEALTHCARE RESOURCES

##### Recursos para el cuidado de la salud

|                                        |              |
|----------------------------------------|--------------|
| Axis Community Health (P)              | 925-462-1755 |
| Berkeley Free Clinic (B)               | 510-548-2570 |
| Davis Street Family Resource Ctr. (SL) | 510-347-4620 |
| Healthy Communities (O)                | 510-444-9655 |
| Highland Hospital (O)                  | 510-437-4800 |
| La Clinica de la Raza (O)              | 510-535-4000 |
| La Familia (H)                         | 510-881-5921 |
| Native American Health Center (O)      | 510-535-4400 |
| Public Health Dept. Immunizations (O)  | 510-267-3230 |
| Tiburcio Vasquez (H/U)                 | 510-471-5907 |
| Tri-City Health Center (Fremont)       | 510-770-8133 |

Location Key: Oakland (O), Berkeley (B), Fremont (F), Hayward (H), Livermore (L), Newark (N), Pleasanton (P), San Leandro (SL), San Ramon (SR), Santa Clara County (SC), Castro Valley (CV)

## Appendix III—Domestic Violence Resources

### Domestic Violence Resource Guide for Alameda County Guía de Recursos de Violencia Domestica para el Condado de Alameda

Urban Indian Health Board (O) 510-535-4400  
West Oakland Health Center (O) 510-835-9610

#### LAW ENFORCEMENT

##### Aplicación y ejecución de la ley

##### For life-threatening emergencies call 911

Alameda Police Department 510-337-8340  
Albany Police Department 510-525-7300  
Berkeley Police Department 510-981-5900  
Dublin Police Department 925-833-6670  
Emeryville Police Department 510-596-3700  
Fremont Police Department 510-790-6800  
Hayward Police Department 510-293-7272  
Livermore Police Department 925-371-4900  
Newark Police Department 510-578-4237  
Oakland Police Department 510-777-3333  
Pleasanton Police Department 925-931-5100  
San Leandro Police Department 510-577-2740  
Union City Police Department 510-471-1365  
Alameda Co. Sheriff's Department 510-670-5048

#### LEGAL SERVICES

##### Servicios legales

Alameda County BAR Association (O) 510-302-2222  
API Legal Outreach (O) 510-251-2846  
(SF) 415-567-6255  
Bay Area Legal Aid (O) 1-800-663-4744  
Family Violence Law Center (O) 1-510-208-0220  
Family & Children Law Center (SF) 415-492-9230  
Self-Help Center (H) 510-272-1393  
Employment Law Center (SF) 415-864-8848  
Tri-Valley Haven 925-449-5842

#### LGBT RESOURCES

##### Recursos para lesbianas, homosexuales, bi-sexuales y transexuales

CUAV (SF) 415-777-5500  
Hayward Lighthouse Center (referrals) 510-881-8167  
Pacific Center (B) 510-548-8283  
Project Eden (H) 510-413-3487  
Queer Asian Women Services (SF) (Shelter) 415-751-7110  
San Francisco LGBT Center 415-865-5555  
Tri-Valley Haven 800-884-8119

#### SEXUAL ASSAULT

##### Ayuda para víctimas de asaltos sexuales

Bay Area Women Against Rape (O) 510-430-1298  
CALCASA (Sacramento) 916-446-2520  
Contra Costa Rape Crisis 1-800-670-7273  
Highland Hospital (O) 510-437-4800  
San Francisco Women Against Rape 415-861-2024  
Tri-Valley Haven 1-800-884-8119

#### SHELTERS

##### Albergues/Refugios

A Safe Place 510-536-7233  
Asian Women's Shelter 415-751-0806  
Building Futures with  
Women and Children 1-866-292-9688  
Eden I&R 2-1-1  
510-537-2710  
Ruby's Place 888-339-7233  
La Casa de Las Madres 415-503-0500  
Next Door 415-487-3300  
Riley Center 415-597-7960  
SAVE 510-794-6055  
Second Chance 510-792-4357  
Shepherd's Gate 925-443-4283  
Tri-Valley Haven 1-800-884-8119  
WOMAN, Inc. – referrals (SF) 415-864-4722

#### TRANSITIONAL HOUSING

##### Alojamiento de transición

Alameda Point Collaborative (O) 510-898-7800  
Bonita House (B) 510-526-4765  
BOSS 510-841-5572  
Henry Robinson (O) 510-238-5091

#### IMMIGRATION ASSISTANCE

##### Asistencia de inmigración

Bay Area Legal Aid (O) 510-663-4744  
Centro legal de la Raza (O) 510-437-1554  
East Bay Sanctuary (B) 510-540-5296  
Immigration Center for Women & Children (SF) 415-861-1449  
International Institute of the Bay Area (O) 415-538-2846

#### MISCELLANEOUS

##### Misceláneo

Alameda County Community Food Bank 510-636-3773  
Department of Child Support Services (P) 1-866-901-3212  
District Attorney's Office (O) 510-272-6222  
Family and Children's Bureau (O) 510-690-2500  
Victim Witness Assistance Division (O) 510-272-6180  
Victim Compensation Program (O) 510-272-5044

#### SERVICES FOR MALE VICTIMS

##### Servicios para las víctimas masculinas

**Except for shelter, most of the agencies listed make their services available to male victims of domestic violence. Please call agency for more information.**

**For a wide range of domestic violence related services call  
Alameda County Family Justice Center  
(510) 267-8800**

### Mission Statement

Promoting transparency and accountability in Berkeley government.

### Audit Team

Claudette Biemeret, Audit Manager  
Caitlin Palmer, Auditor-in-Charge  
Tracy Yarlott-Davis, Audit Team Member

### City Auditor

Jenny Wong

### Office of the City Auditor

Phone: (510) 981-6750  
Email: [auditor@cityofberkeley.info](mailto:auditor@cityofberkeley.info)  
Website: [www.cityofberkeley.info/auditor](http://www.cityofberkeley.info/auditor)

Copies of our audit reports are available at  
[www.cityofberkeley.info/Auditor/Home/Audit\\_Reports.aspx](http://www.cityofberkeley.info/Auditor/Home/Audit_Reports.aspx)



BERKELEY CITY AUDITOR

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**To:** Honorable Mayor and Members of the City Council

**From:** Jenny Wong, City Auditor *JW*

**Subject:** Domestic Violence Response: Berkeley Needs a Comprehensive Policy to Support City Employees

#### RECOMMENDATION

We recommend City Council request that the City Manager report back by April 28, 2020, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Human Resources Department. They have agreed to our findings and five of our recommendations. Please see our report for their complete response.

#### FISCAL IMPACTS OF RECOMMENDATION

We estimate that our first two recommendations will require 40 hours of staff time at an approximate cost of \$5,000, and that the third, and final, recommendation will require approximately 100-300 hours at a cost of about \$13,000 - \$38,000, respectively. The Human Resources Department may need funding to implement our recommendation to provide training to their staff and supervisors. The cost is dependent upon the type of training Human Resources chooses to implement.

It is not possible to assign a price to health and safety, but the cost of not implementing the recommendations could be higher due to potential lost productivity, physical harm to employees, and legal costs.

#### CURRENT SITUATION AND ITS EFFECTS

Berkeley's domestic violence leave policy does not completely reflect California state law. The policy does not address sexual assault, stalking, or witnesses' rights; state factors used in determining reasonable accommodations; or allow rare exceptions for employees to self-certify their leave or accommodation requests. The policy title is also focused on leave, which is misleading as to the scope that the state law covers.

Beyond state law, the policy does not address key workplace domestic violence issues, such as addressing work performance issues for employees experiencing domestic violence. Further, there are practices that Berkeley is not currently following, but could adopt, to be better positioned to implement a coordinated and supportive domestic violence response, including: training, outreach and education, collaboration, and commitment to an inclusive and trauma-informed response.

To reflect the full extent of state law, we recommend Human Resources revise the policy to address sexual assault, stalking, and witnesses' rights, and amend the policy title to reflect its comprehensive scope. We also recommend that Human Resources allow for employees to self-certify their leave and accommodation request when, in rare instances, it is not safe to obtain other documentation, and to clarify in the policy that employees are encouraged to come to Human Resources for assistance even if they do not initially have the documentation that may be requested.

To ensure Berkeley's policy addresses relevant domestic violence issues in the workplace, we recommend Human Resources revise its policy to incorporate the model policy and best practice elements described in our audit, and communicate the guidance to city staff. Additionally, to prepare Berkeley for implementing an inclusive domestic violence response policy, we recommend Human Resources provide training to supervisors and Human Resources staff responsible for implementing the policy, conduct outreach and education for all employees, facilitate collaboration, and adopt a trauma-informed and inclusive approach.

#### BACKGROUND

California law grants employees experiencing domestic violence, sexual assault, or stalking the right to take time off of work to safeguard their health and wellbeing, and to request accommodations to stay safe at work. The law extends to witnesses' of domestic violence who need to take leave in order to participate in court proceedings. Berkeley has a domestic violence leave policy that focuses on leave time and accommodations for employees experiencing domestic violence.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with this report.

#### RATIONALE FOR RECOMMENDATION

In a national survey, 60 percent of respondents who experienced domestic violence reported losing their jobs as a consequence of the abuse. Studies estimate that domestic violence costs \$8.3 billion a year in health costs and lost productivity in the United States. A comprehensive and coordinated response for employees experiencing domestic violence can improve their wellbeing and help keep workplaces safer.

#### CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachment:

- 1: Audit Report: Domestic Violence Response: Berkeley Needs a Comprehensive Policy to Support City Employees





Office of the City Manager

INFORMATION CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: LPO NOD: 2065 Kittredge Street/#LMSAP2021-0004

INTRODUCTION

The attached Landmarks Preservation Commission Notice of Decision (NOD) for is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance (BMC/LPO) Section 3.24.240.A, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has approved a Structural Alteration Permit (SAP) for the subject City Landmark property. This action is subject to a 15-day appeal period, which began on October 19, 2022.

BACKGROUND

BMC/LPO Section 3.24.300 allows City Council to review any action of the Landmarks Preservation Commission in granting or denying a Structural Alteration Permit. In for Council to review the decision on its merits, Council must appeal the Notice of Decision. To do so, a Council member must move this Information Item to Action and then move to set the matter for hearing on its own. Such action must be taken within 15 days of the mailing of the Notice of Decision, or by November 3, 2022. Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set. The Council must then rule on the designation within 30 days of closing the hearing, otherwise the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to appeal the decision, in which case it would conduct a public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this action.

CONTACT PERSON

Fatema Crane, Principal Planner, Planning and Development, 510-981-7410

Attachments:

1: Notice of Decision – LMSAP2021-0004 for 2065 Kittredge Street





L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N

---

N O T I C E O F D E C I S I O N

**DATE OF BOARD DECISION: August 4, 2022**  
**DATE NOTICE MAILED: October 19, 2022**  
**APPEAL PERIOD EXPIRATION: November 3, 2022**  
**EFFECTIVE DATE OF PERMIT (Barring Appeal): November 4, 2022<sup>1</sup>**

## 2065 Kittredge Street

**Structural Alteration Permit (#LMSAP2021-0004) to partially demolish the rear portion of the City Landmark Shattuck Hotel building, to completely demolish the 1926 and 1959 Hink's department store expansions; and to construct a new multi-story, mixed use building on the site, located in the Downtown.**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following permit:

**PERMITS REQUIRED:**

- Structural Alteration Permit

**APPLICANT:** Bill Schrader, The Austin Group, 164 Oak Road, Alamo, CA

**ZONING DISTRICT:** Commercial Downtown/Mixed-Use (C-D/MU)

**ENVIRONMENTAL REVIEW STATUS:** The Commission adopted the Environmental Impact Report (EIR) Addendum to the certified 2211 Harold Way Mixed-Use Project Final EIR (SCH #2014052063) and a Revised Mitigation Monitoring and Reporting Program (MMRP) pursuant to the California Environmental Quality Act.

**The Application materials for this project are available online at:**

<https://berkeleyca.gov/construction-development/land-use-development/zoning-projects>

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<sup>1</sup> Pursuant to BMC Section 1.04.070, if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day. Pursuant to BMC Section 3.24.190, the City Council may "certify" any decision of the LPC for review, within fifteen days from the mailing of the NOD. Such certification shall stay all proceedings in the same manner as the filing of a notice of appeal.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2021-0004  
2065 Kittredge Street  
October 19, 2022  
Page 2 of 4

---

**FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE**

**COMMISSION VOTE: 5-2-1-1**

**YES:** ADAMS, CRANDALL, LEUSCHNER, LINVILL, TWU

**NO:** ENCHILL, SCHWARTZ

**ABSTAIN:** MONTGOMERY

**ABSENT:** FINACOM

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code)**

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An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.

Such appeal shall be taken by filing a written notice of appeal with the City Clerk within fifteen days after the mailing of the notice of the decision of the commission. The notice of appeal shall clearly and concisely set forth the grounds upon which the appeal is based. If the appeal is taken by an owner of the property affected, or an authorized agent, the notice of appeal shall be filed in duplicate and the City Clerk shall immediately forward one copy to the secretary of the commission. If the appeal is taken by someone other than an owner of affected property or an authorized agent, the notice of appeal shall be filed in triplicate and the City Clerk shall immediately forward one copy to the owner or authorized agent of the affected property and one copy to the secretary of the commission. Within ten days after the filing of a notice of appeal, the secretary of the commission shall transmit to the City Council a copy of the application, a copy of the notice of appeal and a written statement setting forth the reasons for the commission's decision, and shall make available to the council, at the time the matter is considered by the council, all other papers constituting the record upon which the action appealed from was taken.

The City Clerk is located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley. The City Clerk's facsimile number is (510) 981-6901. The City Clerk's telephone number is (510) 981-6900.

An appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

The required fee is as follows (checks and money orders must be payable to "City of Berkeley"):

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2021-0004  
2065 Kittredge Street  
October 19, 2022  
Page 3 of 4

- a. The basic fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
- b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
- c. The fee for all appeals by Applicants is \$2,500.

**STRUCTURAL ALTERATION PERMIT ISSUANCE:**

If no appeal is received, the Structural Alteration Permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in a public hearing and/or written correspondence during the proceedings related to this permit.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must including the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMSAP2021-0004  
2065 Kittredge Street  
October 19, 2022  
Page 4 of 4

forth above.

- C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

**PUBLIC COMMENT:**

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

Questions about the project should be directed to the project planner, Fatema Crane, at (510) 981-7413 or fcrane@cityofberkeley.edu. All project application materials, may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, between 8 a.m. and 4 p.m., Monday through Thursday.

**ATTACHMENTS:**

1. Findings and Conditions
2. Project Plans, revised **JULY 22, 2022**

**ATTEST:**   
Fatema Crane, Senior Planner  
Secretary to the Landmarks Preservation Commission

cc: City Clerk  
Applicant: Bill Schrader, The Austin Group, 164 Oak Road, Alamo, CA  
Property Owner: CA Student Living Berkeley, LLC, 130 E Randolph Street, Suite 2100,  
Chicago, IL

## ATTACHMENT 1, PART 2

## FINDINGS AND CONDITIONS

AUGUST 4, 2022

**2065 Kittredge Street****Structural Alteration Permit #LMSAP 2021-0004****PROJECT DESCRIPTION**

The application proposes to partially demolish the rear portion of the City Landmark Shattuck Hotel building, and to completely demolish the 1926 and 1959 Hink's department store expansions; and to construct a new multi-story, mixed-use building on the site, located in the Downtown.

**CEQA FINDINGS**

1. An Addendum to the Final Environmental Impact Report (EIR) to the 2211 Harold Way Mixed-Use Project, which was certified in December 2015, was prepared to evaluate the potentially significant environmental impacts of the proposed project, pursuant to the California Environmental Quality Act. The Landmarks Preservation Commission has considered the Addendum together with the previously certified Final EIR. The Addendum reflects the independent judgment of the Commission and has been completed in compliance with CEQA. The Addendum, together with the 2211 Harold Way Mixed-Use Project Final EIR, is adequate for the 2065 Kittredge Street Mixed-Use Project. On the basis of the whole record, including the Addendum, the previously certified Final EIR, and the public comments received, the Commission finds that the project changes described in the Addendum, i.e., the modified project, will not result in new significant effects or a substantial increase in the severity of previously identified significant effects on the environment.
2. The Addendum prepared for the project addressed the following issues: Air Quality, Cultural Resources, Greenhouse Gas Emissions, Noise, Transportation, and Utilities and Service Systems.
3. Public Resources Code Section 21081.6 and CEQA Guidelines Section 15091(d) require the City to adopt a reporting or monitoring program for the changes to the project that it has adopted or made a condition of approval in order to avoid or substantially lessen significant effects on the environment. The Mitigation Monitoring and Reporting Program for the 2211 Harold Way Mixed-Use Project Final EIR, as modified in the addendum and reflected in the Conditions of Approval for the modified project, are hereby adopted as the reporting and monitoring program for this project; see Exhibit A. The monitoring program is designed to ensure compliance during project implementation.

**LANDMARKS PRESERVATION ORDINANCE FINDINGS**

Pursuant to Berkeley Municipal Code Sections 3.24.260.C.1.a, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The proposed project allows for the preservation of the Mission Revival style original hotel, together with all of its 1912 and most of its 1913 additions. The Hotel will still form a

significant presence on Shattuck Avenue, retaining its distinctive form, stucco walls, decorative tile work, wall surface ornamentation, squared towers, hipped roof forms, arched or arcaded wall openings, varied roof heights, red clay tile roof cladding, and broad eave overhangs with exposed rafter tails; with the new building rising behind. Mitigation measures are included to reduce any construction related impacts to the hotel, and as such the project will not adversely affect its features.

## **FINDINGS REGARDING THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION**

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Regarding the Secretary of the Interior's (SOI) Standards for Restoration/Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. SOI Standard #2: The proposed project will retain the City Landmark Shattuck Hotel building, including its early 1912 and 1913 building additions. The structure's Spanish Revival architectural design and character-defining features will not be removed or altered. The proposed demolition of a low-rise, rear portion of the 1913 addition building would not result alteration of the primary building facades, thereby avoiding loss of distinctive materials and features. The proposed wholesale demolition of the 1926 building addition is not found to be a significant loss of distinctive features, in part because the structure's significance lay primarily in its associations with historical events. As the significant architectural character of the Shattuck Hotel will not be completely removed, and will continue to be represented in the retained features of this site, the proposed project complies with Standard #2.
2. SOI Standard #9: The proposed new construction will be visually and physically separated from the street-facing façades of the Shattuck Hotel building; the Allston elevation will be separated by an existing alley that will remain, and the Kittredge elevation will feature a hyphen where the façade steps back and away from the historic structure. The new building will be located to the rear of the Shattuck Hotel, and the Hotel will retain its primacy and presence along Shattuck Avenue. The design of the new building is distinctively contemporary, thereby differentiating it from the historic structure.

## **ZONING ORDINANCE DESIGN REVIEW STANDARDS**

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Pursuant to BMC Chapter 23E.12.020, the Landmarks Preservation Commission of the City of Berkeley finds the project as proposed substantially conforms with the Southside Area Plan Design Guidelines (2011) in that the project:

1. General Guidelines - Similar to typical 20<sup>th</sup> century commercial design, like Shattuck Hotel, the new project generally maintains a band separating the building's base and creating a middle and a top. The upper most (or *top*) floor is present, though quiet as it steps back and features usable open space. The selection of proposed building materials is found to be comparable with new construction in Downtown, while the color palette is reflective of the historic Hotel building. The proposed window design comprises 25-50% of the upper façade, as recommended.

2. **Roof Forms.** - Owing to the proposed massing and color palette, much of the upper story visually serves as a successful termination to the building.
3. **Building Materials** - The materials proposed for this project are found to be durable and of high quality.
4. **Frontage, Setbacks & Heights** - The project height is comparable to the neighboring buildings, including the City Landmark Shattuck Hotel. As the results of refinements, the final proposal maintains a continuous build-to-line with the exception of the main, residential entry plaza. A step-back occurs throughout the project at approximately 65 to 75 ft. above street level.
5. **Open Spaces** – As the result of project refinements, the final design features public open space that is directly aligned with the existing open space at Berkeley Public Library.
6. **Public Serving Frontages for Kittredge, Harold and Allston Way** - The project features the recommended pattern and placement of entrances on all three street-facing facades, as well as the desired amount of glazing on Kittredge and Allston elevations. The Harold Way façade exceeds the recommended amount of glazing at the live/work entrances and comes close in the residential window pattern.

#### **HISTORIC PRESERVATION & DESIGN REVIEW CONDITIONS**

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1. **Project plans.** Project shall conform to plans, facades restoration specifications, and photographs, dated July 22, 2022.
2. **Final Design Review.** Pursuant to BMC Section 23.406.070.C, prior to submittal of any building permit for this project, the project proponent shall obtain Final Design Review (FDR) approval from the Landmarks Preservation Commission. Prior to FDR consideration, the project proponent shall make the following improvements subject to Commission approval:
  - a) Enlarge and further refine the commercial tenant space at the corner of Kittredge Street and Harold Way.
  - b) Further refine the public open space areas.
  - c) Establish internal access between the bicycle parking area and the residential entry.
3. This Structural Alteration Permit approval is contingent upon Use Permit approval of this project.
4. **Mitigation monitoring & reporting program – Exhibit A.** The project proponent shall adhere to and demonstrate compliance with this plan to the satisfaction of the Zoning Officer. The project proponent shall bear the cost of monitoring to ensure compliance with the plan; a deposit of not less than \$10,000 may be required prior to building permit submittal in order to secure the services of a third-party monitor.
5. **Chemical Treatments.** Any chemical or physical graffiti removal treatments needed as construction progresses shall be undertaken using the gentlest means possible.

6. **Signage program.** For Final Design Review, the project proponent shall submit complete signage details, including colors, materials, letter heights, dimensions, placement on building, and installation details. All materials will be matte unless otherwise noted.
7. **Landscape & Irrigation.** For Final Design Review, the applicant shall submit a Landscape plan including the number, location, and species of all proposed plantings, and which existing plantings shall be removed. The applicant shall provide irrigation for all landscaped areas or provide drought tolerant plant palette. This shall be called out on Landscape building permit drawings. Further, the plans shall include irrigation for all landscaped areas.
8. **Exterior lighting detail.** For Final Design Review, the project proponent shall submit lighting details showing all proposed site and building lighting. Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.



# BERKELEY PLAZA

## 2065 KITTREDGE ST, BERKELEY, CA 94704

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### CA VENTURES



#### SHEET LIST

- A0-000 COVER SHEET
- A0-001 EXISTING SITE PHOTOS
- A0-002 EXISTING SITE PHOTOS
- A0-003 EXISTING SITE PHOTOS
- A0-004 DEMO SITE PLAN EXHIBIT
- A0-005 PROJECT STATS
- A0-006 ZONING AND CODE INFO
  
- A1-001 SITE PLAN EXISTING- LEVEL U1
- A1-002 SITE PLAN EXISTING- LEVEL 1
- A1-003 SITE PLAN PROPOSED- LEVEL U1
- A1-004 SITE PLAN PROPOSED- LEVEL 1
- A1.001 ELECTRICAL ROOM DEMO, PLAN, SECTION
- A1-101 PLAN- LEVEL U1
- A1-111 PLAN- LEVEL 1
- A1-112 PLAN- LEVEL 1 ENLARGED
- A1-121 PLAN- LEVEL 2
- A1-131 PLAN- LEVEL 3
- A1-141 PLAN- LEVEL 4-7
- A1-181 PLAN- LEVEL 8
- A1-191 PLAN- ROOF
- A1-201 NEW SERVICE HALL/ELECTRICAL ROOM PLAN
  
- A3-001 ELEVATIONS- WEST (HAROLD WAY)
- A3-002 ELEVATIONS- SOUTH (KITTREDGE ST.)
- A3-003 ELEVATIONS- NORTH (ALLSTON WAY)
- A3-004 ELEVATIONS- NORTH (HIDDEN)
- A3-005 ELEVATIONS- EAST (HIDDEN)
- A3-006 ELEVATIONS- SOUTH ENLARGED (KITTREDGE ST.)
- A3-101 BUILDING SECTION
- A3-102 BUILDING SECTION
- A3-201 PERSPECTIVES
- A3-202 PERSPECTIVES
- A3-301 SHADOW STUDIES - JUNE 21
- A3-302 SHADOW STUDIES - DEC 21
- A3-303 SHADOW STUDIES - DEC 10
- A3-304 STREET STRIP ELEVATIONS
- A3-305 MATERIAL BOARDS
- A5-001 SAMPLE UNITS
  
- L0 TREE REMOVAL PLAN
- L1 GROUND LEVEL PRELIMINARY LANDSCAPE PLAN
- L2 EIGHTH FLOOR PRELIMINARY LANDSCAPE PLAN
- L3 RECOMMENDED PLANT LIST, SITE AMENITY IMAGES
- L4 GROUND LEVEL PRELIMINARY IRRIGATION PLAN
- L5 EIGHTH FLOOR PRELIMINARY IRRIGATION PLAN
- L6 IRRIGATION NOTES AND DETAILS

PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

#### NILES BOLTON ASSOCIATES

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#### APPLICANT:

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 T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 3   | SD SET               | 9/16/21  |
| 4   | USE PERMIT           | 10/25/21 |
| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
| 6   | SAP                  | 12/22/21 |
| 7   | USE PERMIT RESUBMIT. | 1/11/22  |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LWRKS. MEETING  | 5/10/22  |
| 14  | STAFF REVIEW         | 07/01/22 |
| 15  | STAFF REVIEW #2      | 07/13/22 |
| 16  | ILPC REVISIONS       | 07/22/22 |

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BERKELEY PLAZA  
 2065 KITTREDGE ST  
 BERKELEY, CA 94704

CA VENTURES

#### DEVELOPER

CA STUDENT LIVING BERKELEY, LLC  
 130 E RANDOLPH STREET  
 SUITE 2100  
 CHICAGO, IL 60601  
 CONTACT: JESSICA LEO  
 PHONE: (304) 238-4745

#### ARCHITECTURE

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 3060 PEACHTREE RD. N.W.  
 SUITE 600  
 ATLANTA, GA 30305  
 CONTACT: MOHAMED MOHSEN  
 PHONE: (404) 365-7600

#### CIVIL ENGINEERING

LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC.  
 135 MAIN STREET  
 SUITE 1500  
 SAN FRANCISCO, CA 94105  
 CONTACT: JASON JOH  
 PHONE: (415) 955-5200

#### LANDSCAPE ARCHITECTURE

THOMAS BAAK AND ASSOCIATES, LLP  
 1620 NORTH MAIN STREET  
 SUITE 4  
 WALNUT CREEK, CA 94596  
 CONTACT: RICK STOVER  
 PHONE: (925) 933-2583

#### STRUCTURAL ENGINEERING

DCI ENGINEERS  
 135 MAIN STREET  
 SUITE 1800  
 SAN FRANCISCO, CA 94105  
 CONTACT: MICHAEL BAUER  
 PHONE: (415) 638-8913

#### INTERIOR DESIGN

KUCHAR  
 1821 WEST HUBBARD  
 SUITE 105  
 CHICAGO, IL 60622  
 CONTACT: SARAH KUCHAR-PARKINSON  
 PHONE: (312) 624-9206

#### GENERAL CONTRACTOR

WEST BUILDERS, INC.  
 120 RAILROAD AVENUE  
 POINT RICHMOND, CA 94801  
 CONTACT: SEAN KIRBY  
 PHONE: (510) 307-5678

#### DOCUMENT ISSUANCES:

- 09-16-21 | SCHEMATIC DESIGN
- 10-25-21 | USE PERMIT
- 12-10-21 | USE PERMIT RESUBMISSION
- 12-22-21 | STRUCTURAL ALTERATION PERMIT
- 01-11-22 | USE PERMIT RESUBMISSION
- 02-25-22 | USE PERMIT RESUBMISSION DRAFT
- 03-17-22 | USE PERMIT RESUBMISSION
- 03-23-22 | SAP RESUBMISSION
- 04-11-22 | DRC MEETING - APRIL 21ST, 2022
- 05-10-22 | LANDMARK MEETING - JUNE 2ND, 2022
- 07-01-22 | STAFF REVIEW PACKAGE
- 07-13-22 | STAFF REVIEW PACKAGE #2

#### SHEET TITLE:

COVER SHEET

#### SHEET NUMBER:

A0-000



1 SITE PHOTO - KITTREDGE ST AND HAROLD WAY - LOOKING EAST  
A0-001 12" = 1'-0"



2 SITE PHOTO - ALLSTON WAY AND HAROLD WAY - LOOKING EAST  
A0-001 12" = 1'-0"



3 SITE PHOTO - HAROLD WAY - LOOKING SOUTH  
A0-001 12" = 1'-0"



4 SITE PHOTO - KITTREDGE ST - LOOKING WEST  
A0-001 12" = 1'-0"

PROJECT #: 121246  
DRAWN BY: TF  
CHECKED BY: MM

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www.nilesbolton.com

APPLICANT:  
BILL SCHRADER  
T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 4   | USE PERMIT           | 10/25/21 |
| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
| 6   | SAP                  | 12/22/21 |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 13  | JUNE LWRKS. MEETING  | 5/10/22  |

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BERKELEY, CA 94704

CA VENTURES

SHEET TITLE:  
EXISTING SITE PHOTOS

SHEET NUMBER:  
**A0-001**



1 SITE PHOTO - ALLSTON WAY FACADE  
A0-002 12" = 1'-0"



4 SITE PHOTO - KITTREDGE ST FACADE  
A0-002 12" = 1'-0"



2 SITE PHOTO - HAROLD WAY NORTH FACADE  
A0-002 12" = 1'-0"



3 SITE PHOTO - HAROLD WAY SOUTH FACADE  
A0-002 12" = 1'-0"

PROJECT #: 121246  
DRAWN BY: TF  
CHECKED BY: MM

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| No. | Description         | Date     |
|-----|---------------------|----------|
| 6   | SAP                 | 12/22/21 |
| 9   | SAP RESUBMIT.       | 3/23/22  |
| 13  | JUNE LWRKS. MEETING | 5/10/22  |

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CA VENTURES

SHEET TITLE:  
EXISTING SITE PHOTOS

SHEET NUMBER:  
**A0-002**

NOT RELEASED FOR CONSTRUCTION



1 SITE PHOTO - ALLSTON WAY - EXISTING HOTEL  
A0-003 12" = 1'-0"



2 SITE PHOTO - SHATTUCK AVE - EXISTING HOTEL  
A0-003 12" = 1'-0"



3 SITE PHOTO - SHATTUCK AVE AND ALLSTON WAY - EXISTING HOTEL  
A0-003 12" = 1'-0"



4 SITE PHOTO - SHATTUCK AVE AND KITTREDGE ST - EXISTING HOTEL  
A0-003 12" = 1'-0"

PROJECT #: 121246  
DRAWN BY: TF  
CHECKED BY: MM

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| No. | Description         | Date     |
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| 6   | SAP                 | 12/22/21 |
| 9   | SAP RESUBMIT.       | 3/23/22  |
| 13  | JUNE LWRKS. MEETING | 5/10/22  |

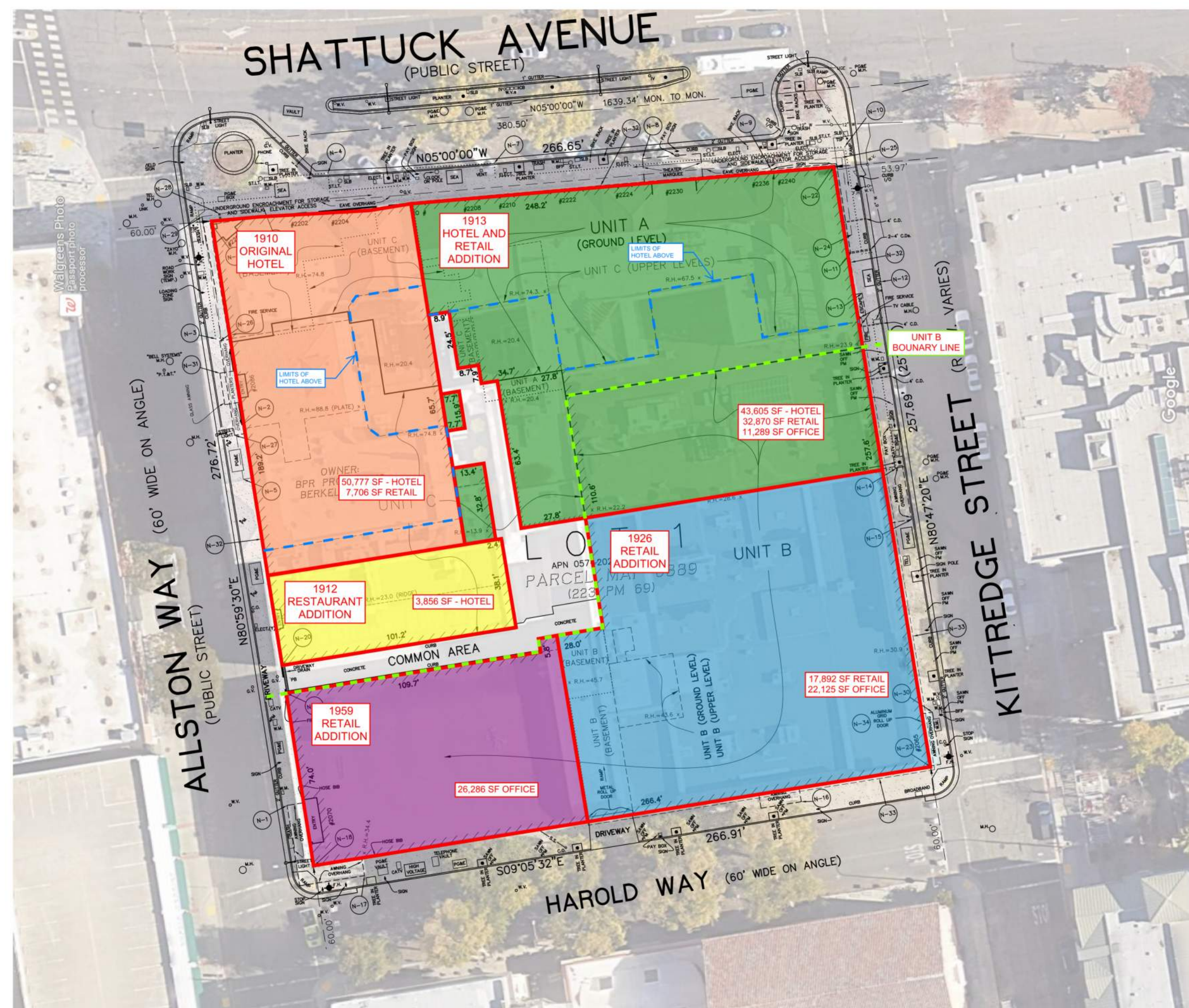
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2065 KITTREDGE ST  
BERKELEY, CA 94704

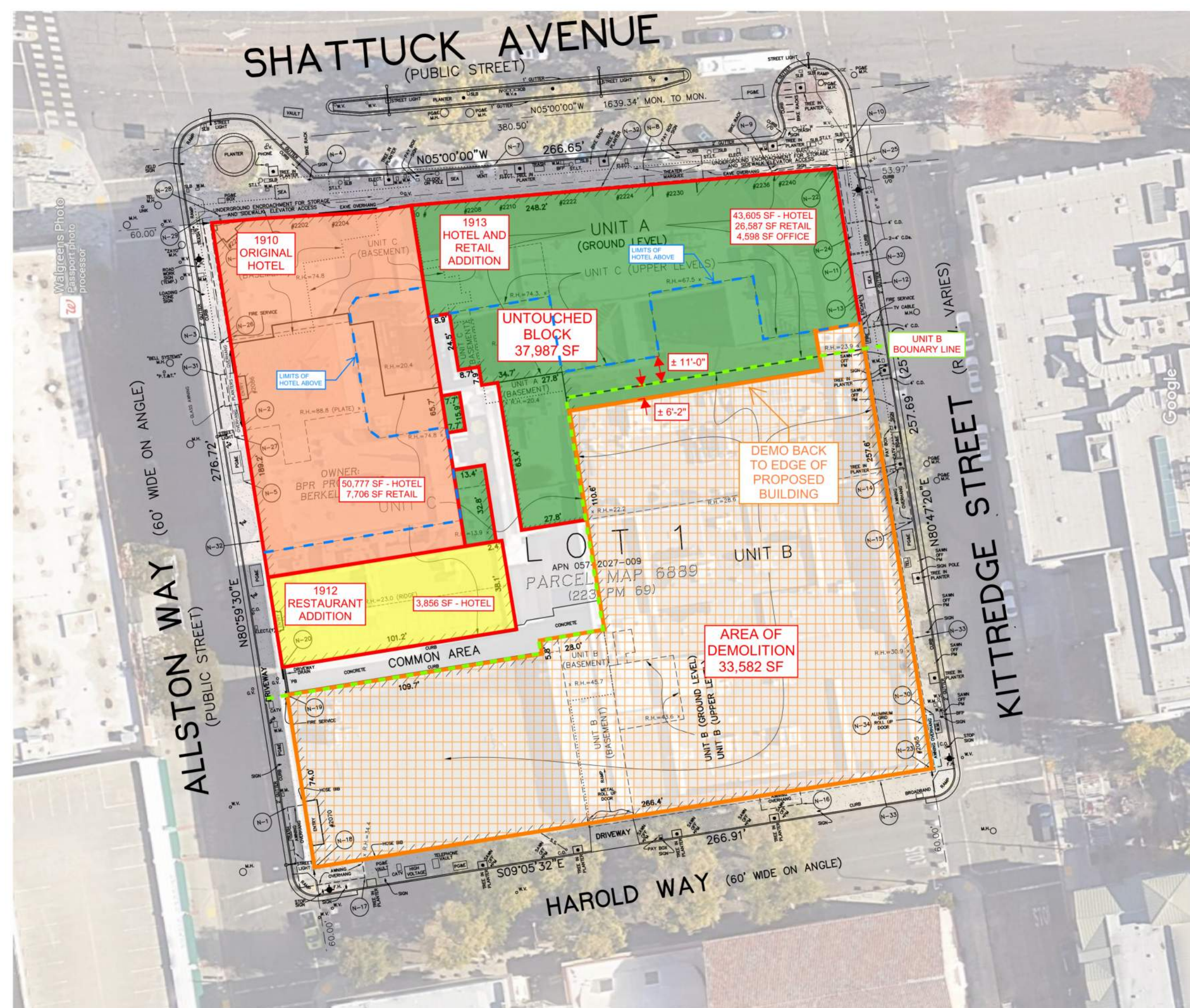
CA VENTURES

SHEET TITLE:  
EXISTING SITE PHOTOS

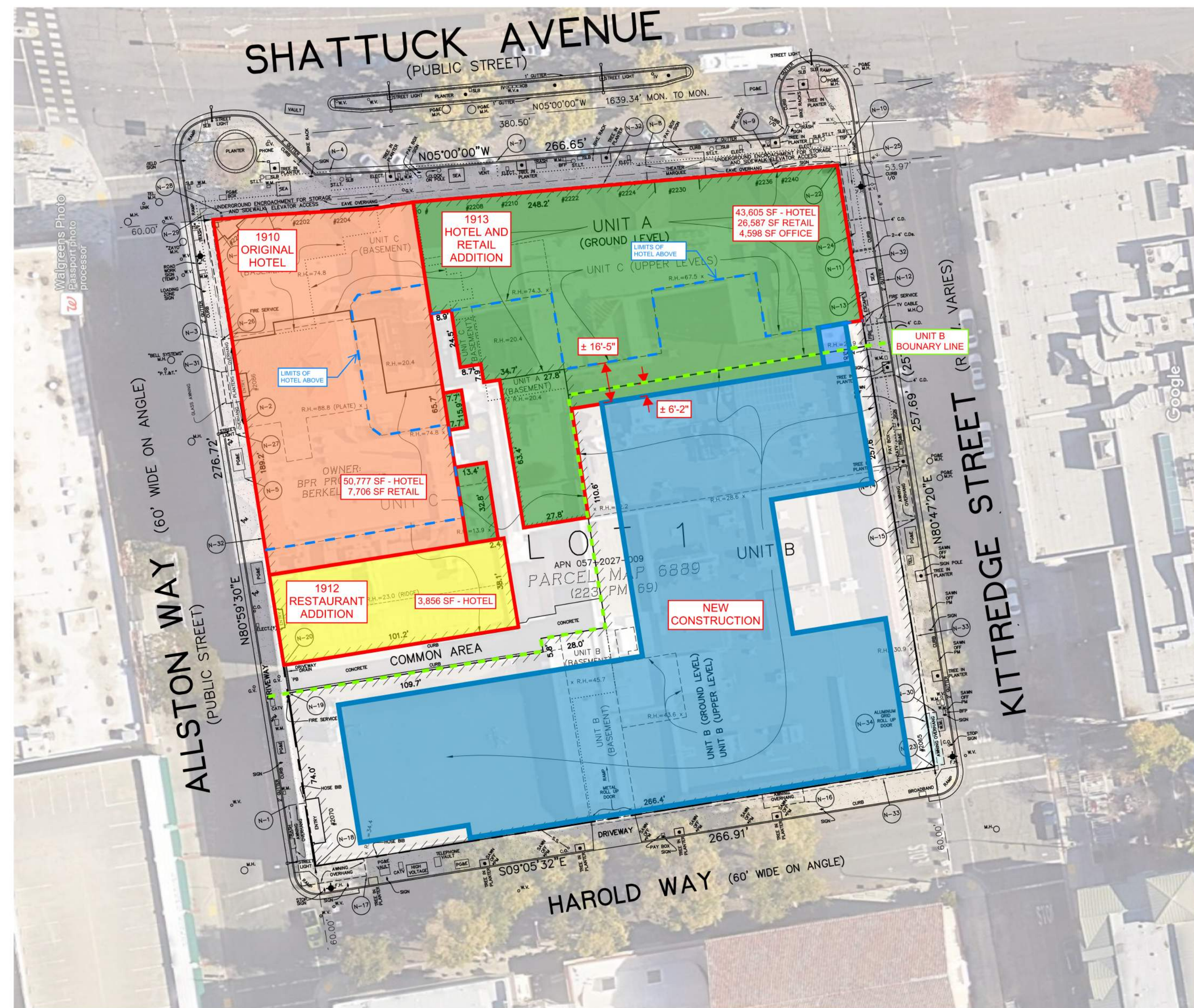
SHEET NUMBER:  
**A0-003**



EXISTING DIAGRAM



DEMO DIAGRAM



PROPOSED CONSTRUCTION DIAGRAM

PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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APPLICANT:  
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| No. | Description          | Date     |
|-----|----------------------|----------|
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| 6   | SAP                  | 12/22/21 |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRG MEETING    | 4/11/22  |
| 13  | JUNE LRWS. MEETING   | 5/10/22  |

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 BERKELEY, CA 94704

CA VENTURES

SHEET TITLE:  
 DEMO SITE PLAN EXHIBIT

SHEET NUMBER:  
**A0-004**

1 DEMO SITE PLAN EXHIBIT  
 A0-004 NOT TO SCALE

UNIT MIX

| Name                  | S1       | S2-A | S2-B | S3  | MS1-A | MS1-B | NS1 | A1-A | A1-B | A2-A | A2-B | A3  | B1-A | B1-B | B2-A | B2-B | B2-C | B2-D | B2-E | B3-A | B3-B | B4  | B5  | B6-A | B6-B | B7-A | B7-B | B8  | B9  | C1   | C2   | LW-A | Total Units | Total Beds |  |  |    |  |  |  |    |  |  |  |
|-----------------------|----------|------|------|-----|-------|-------|-----|------|------|------|------|-----|------|------|------|------|------|------|------|------|------|-----|-----|------|------|------|------|-----|-----|------|------|------|-------------|------------|--|--|----|--|--|--|----|--|--|--|
| Bedrooms              | 1        | 1    | 1    | 1   | 1     | 1     | 1   | 1    | 1    | 1    | 1    | 1   | 2    | 2    | 2    | 2    | 2    | 2    | 2    | 2    | 2    | 2   | 2   | 2    | 2    | 2    | 2    | 2   | 2   | 3    | 3    | 1    |             |            |  |  |    |  |  |  |    |  |  |  |
| Bathrooms             | 1        | 1    | 1    | 1   | 1     | 1     | 1   | 1    | 1    | 1    | 1    | 1   | 2    | 2    | 2    | 2    | 2    | 2    | 2    | 2    | 2    | 2   | 2   | 2    | 2    | 2    | 2    | 2   | 2   | 3    | 3    | 1.5  |             |            |  |  |    |  |  |  |    |  |  |  |
| Beds                  | 1        | 1    | 1    | 1   | 1     | 1     | 1   | 2    | 2    | 2    | 2    | 2   | 4    | 4    | 4    | 4    | 4    | 4    | 4    | 4    | 4    | 4   | 4   | 4    | 4    | 4    | 4    | 4   | 6   | 6    | 3    |      |             |            |  |  |    |  |  |  |    |  |  |  |
| Unit GSF              | 436      | 381  | 375  | 396 | 322   | 348   | 295 | 638  | 633  | 641  | 695  | 718 | 952  | 986  | 984  | 991  | 1003 | 993  | 908  | 1030 | 973  | 953 | 956 | 962  | 909  | 977  | 932  | 953 | 971 | 1373 | 1374 | 867  |             |            |  |  |    |  |  |  |    |  |  |  |
| WOOD                  | Floor 8  | 1    | -    | 1   | -     | -     | 1   | 2    | 1    | 2    | -    | -   | 4    | 1    | -    | -    | -    | -    | 1    | -    | 1    | 1   | 1   | -    | 1    | -    | 1    | -   | -   | 1    | -    | -    | 23          | 69         |  |  |    |  |  |  |    |  |  |  |
|                       | Floor 7  | 1    | -    | 1   | -     | 2     | 1   | 1    | 1    | 2    | -    | -   | 4    | 1    | 1    | 1    | -    | 1    | -    | 1    | -    | 1   | 1   | -    | 1    | -    | 1    | -   | 1   | 1    | -    | -    | 27          | 86         |  |  |    |  |  |  |    |  |  |  |
|                       | Floor 6  | 1    | -    | 1   | -     | 2     | 1   | 1    | 1    | 2    | -    | -   | 4    | 1    | 1    | 1    | -    | 1    | -    | 1    | -    | 1   | 1   | -    | 1    | -    | 1    | 1   | 1   | -    | -    | 27   | 86          |            |  |  |    |  |  |  |    |  |  |  |
|                       | Floor 5  | 1    | -    | 1   | -     | 2     | 1   | 1    | 1    | 2    | -    | -   | 4    | 1    | 1    | 1    | -    | 1    | -    | 1    | -    | 1   | 1   | -    | 1    | -    | 1    | 1   | 1   | -    | -    | 27   | 86          |            |  |  |    |  |  |  |    |  |  |  |
|                       | Floor 4  | 1    | -    | 1   | -     | 2     | 1   | 1    | 1    | 2    | -    | -   | 4    | 1    | 1    | 1    | -    | 1    | -    | 1    | -    | 1   | 1   | -    | 1    | -    | 1    | 1   | 1   | -    | -    | 27   | 86          |            |  |  |    |  |  |  |    |  |  |  |
|                       | Floor 3  | 1    | 1    | -   | -     | 2     | 1   | 1    | 2    | -    | -    | 2   | 4    | 1    | 1    | 1    | -    | 1    | -    | 1    | -    | 1   | 1   | -    | 1    | -    | 1    | 1   | 1   | -    | -    | 27   | 86          |            |  |  |    |  |  |  |    |  |  |  |
|                       | Floor 2  | 1    | 1    | -   | 1     | 2     | -   | 1    | 3    | -    | -    | 1   | 4    | 4    | -    | -    | -    | -    | -    | -    | 1    | -   | 1   | 1    | -    | 1    | -    | -   | -   | -    | -    | 23   | 66          |            |  |  |    |  |  |  |    |  |  |  |
|                       | Floor 1  | -    | -    | -   | -     | -     | -   | 2    | -    | -    | -    | -   | 1    | -    | -    | -    | -    | -    | -    | -    | -    | -   | -   | -    | -    | -    | -    | -   | -   | -    | 4    | 7    | 20          |            |  |  |    |  |  |  |    |  |  |  |
|                       | Floor -1 | -    | -    | -   | -     | -     | -   | -    | -    | -    | -    | -   | -    | -    | -    | -    | -    | -    | -    | -    | -    | -   | -   | -    | -    | -    | -    | -   | -   | -    | -    | -    | -           |            |  |  |    |  |  |  |    |  |  |  |
| <b>Total Units</b>    | 7        | 2    | 5    | 1   | 14    | 5     | 7   | 13   | 5    | 10   | 2    | 1   | 29   | 10   | 5    | 5    | 1    | 4    | 1    | 5    | 2    | 7   | 7   | 6    | 1    | 5    | 1    | 7   | 5   | 5    | 6    | 4    | 188         | 585        |  |  |    |  |  |  |    |  |  |  |
| <b>Unit Mix</b>       | 4%       | 1%   | 3%   | 1%  | 7%    | 3%    | 4%  | 7%   | 3%   | 5%   | 1%   | 1%  | 15%  | 5%   | 3%   | 3%   | 1%   | 2%   | 1%   | 3%   | 1%   | 4%  | 4%  | 3%   | 1%   | 3%   | 1%   | 4%  | 3%  | 3%   | 3%   | 2%   |             |            |  |  |    |  |  |  |    |  |  |  |
|                       | 22%      |      |      |     |       |       |     |      |      |      |      |     |      |      |      |      | 16%  |      |      |      |      |     |     |      |      |      | 54%  |     |     |      |      |      |             |            |  |  | 6% |  |  |  | 2% |  |  |  |
| <b>Total Bedrooms</b> | 7        | 2    | 5    | 1   | 14    | 5     | 7   | 13   | 5    | 10   | 2    | 1   | 58   | 20   | 10   | 10   | 2    | 8    | 2    | 10   | 4    | 14  | 14  | 12   | 2    | 10   | 2    | 14  | 10  | 15   | 18   | 4    | 311         |            |  |  |    |  |  |  |    |  |  |  |
| <b>Bedroom Mix</b>    | 2%       | 1%   | 2%   | 0%  | 5%    | 2%    | 2%  | 4%   | 2%   | 3%   | 1%   | 0%  | 19%  | 6%   | 3%   | 3%   | 1%   | 3%   | 1%   | 3%   | 1%   | 5%  | 5%  | 4%   | 1%   | 3%   | 1%   | 5%  | 3%  | 5%   | 6%   | 1%   | 100%        |            |  |  |    |  |  |  |    |  |  |  |
| <b>Total Beds</b>     | 7        | 2    | 5    | 1   | 14    | 5     | 7   | 26   | 10   | 20   | 4    | 2   | 116  | 40   | 20   | 20   | 4    | 16   | 4    | 20   | 8    | 28  | 28  | 24   | 4    | 20   | 4    | 28  | 20  | 30   | 36   | 12   | 585         |            |  |  |    |  |  |  |    |  |  |  |
| <b>Bed Mix</b>        | 1%       | 0%   | 1%   | 0%  | 2%    | 1%    | 1%  | 4%   | 2%   | 3%   | 1%   | 0%  | 20%  | 7%   | 3%   | 3%   | 1%   | 3%   | 1%   | 3%   | 1%   | 5%  | 5%  | 4%   | 1%   | 3%   | 1%   | 5%  | 3%  | 5%   | 6%   | 2%   | 100%        |            |  |  |    |  |  |  |    |  |  |  |
|                       | 11%      |      |      |     |       |       |     |      |      |      |      |     |      |      |      |      | 69%  |      |      |      |      |     |     |      |      |      | 11%  |     |     |      | 2%   |      |             |            |  |  |    |  |  |  |    |  |  |  |

|             | S1    | S2-A | S2-B  | S3  | MS1-A | MS1-B | NS1   | A1-A  | A1-B  | A2-A  | A2-B  | A3  | B1-A   | B1-B  | B2-A  | B2-B  | B2-C  | B2-D  | B2-E | B3-A  | B3-B  | B4    | B5    | B6-A  | B6-B | B7-A  | B7-B | B8    | B9    | C1    | C2    | LW-A  | Total   |  |
|-------------|-------|------|-------|-----|-------|-------|-------|-------|-------|-------|-------|-----|--------|-------|-------|-------|-------|-------|------|-------|-------|-------|-------|-------|------|-------|------|-------|-------|-------|-------|-------|---------|--|
|             | 1     | 1    | 1     | 1   | 1     | 1     | 1     | 1     | 1     | 1     | 1     | 1   | 2      | 2     | 2     | 2     | 2     | 2     | 2    | 2     | 2     | 2     | 2     | 2     | 2    | 2     | 2    | 2     | 2     | 3     | 3     | 1     |         |  |
|             | 1     | 1    | 1     | 1   | 1     | 1     | 1     | 1     | 1     | 1     | 1     | 1   | 2      | 2     | 2     | 2     | 2     | 2     | 2    | 2     | 2     | 2     | 2     | 2     | 2    | 2     | 2    | 2     | 3     | 3     | 1.5   |       |         |  |
|             | 1     | 1    | 1     | 1   | 1     | 1     | 1     | 2     | 2     | 2     | 2     | 2   | 4      | 4     | 4     | 4     | 4     | 4     | 4    | 4     | 4     | 4     | 4     | 4     | 4    | 4     | 4    | 4     | 6     | 6     | 3     |       |         |  |
|             | 436   | 381  | 375   | 396 | 322   | 348   | 295   | 638   | 633   | 641   | 695   | 718 | 952    | 986   | 984   | 991   | 1003  | 993   | 908  | 1030  | 973   | 953   | 956   | 962   | 909  | 977   | 932  | 953   | 971   | 1373  | 1374  | 867   |         |  |
| Floor 8     | 436   | -    | 375   | -   | 644   | -     | 295   | 1,276 | 633   | 1,282 | -     | -   | 3,808  | 986   | -     | -     | -     | -     | 908  | -     | 973   | 953   | 956   | -     | 909  | -     | 932  | 953   | -     | -     | 1,374 | -     | 17,693  |  |
| Floor 7     | 436   | -    | 375   | -   | 644   | 348   | 295   | 638   | 633   | 1,282 | -     | -   | 3,808  | 986   | 984   | 991   | -     | 993   | -    | 1,030 | -     | 953   | 956   | 962   | -    | 977   | -    | 953   | 971   | 1,373 | 1,374 | -     | 21,962  |  |
| Floor 6     | 436   | -    | 375   | -   | 644   | 348   | 295   | 638   | 633   | 1,282 | -     | -   | 3,808  | 986   | 984   | 991   | -     | 993   | -    | 1,030 | -     | 953   | 956   | 962   | -    | 977   | -    | 953   | 971   | 1,373 | 1,374 | -     | 21,962  |  |
| Floor 5     | 436   | -    | 375   | -   | 644   | 348   | 295   | 638   | 633   | 1,282 | -     | -   | 3,808  | 986   | 984   | 991   | -     | 993   | -    | 1,030 | -     | 953   | 956   | 962   | -    | 977   | -    | 953   | 971   | 1,373 | 1,374 | -     | 21,962  |  |
| Floor 4     | 436   | -    | 375   | -   | 644   | 348   | 295   | 638   | 633   | 1,282 | -     | -   | 3,808  | 986   | 984   | 991   | -     | 993   | -    | 1,030 | -     | 953   | 956   | 962   | -    | 977   | -    | 953   | 971   | 1,373 | 1,374 | -     | 21,962  |  |
| Floor 3     | 436   | 381  | -     | -   | 644   | 348   | 295   | 1,276 | -     | -     | 1,390 | -   | 3,808  | 986   | 984   | 991   | 1,003 | -     | -    | 1,030 | -     | 953   | 956   | 962   | -    | 977   | -    | 953   | 971   | 1,373 | 1,374 | -     | 22,091  |  |
| Floor 2     | 436   | 381  | -     | 396 | 644   | -     | 295   | 1,914 | -     | -     | -     | 718 | 3,808  | 3,944 | -     | -     | -     | -     | -    | -     | -     | 973   | 953   | 956   | 962  | -     | -    | -     | -     | -     | -     | -     | 17,333  |  |
| Floor 1     | -     | -    | -     | -   | -     | -     | -     | 1,276 | -     | -     | -     | -   | 952    | -     | -     | -     | -     | -     | -    | -     | -     | -     | -     | -     | -    | -     | -    | -     | -     | -     | -     | 3,468 | 5,696   |  |
| Floor -1    | -     | -    | -     | -   | -     | -     | -     | -     | -     | -     | -     | -   | -      | -     | -     | -     | -     | -     | -    | -     | -     | -     | -     | -     | -    | -     | -    | -     | -     | -     | -     | -     | -       |  |
|             | 3,052 | 762  | 1,875 | 396 | 4,508 | 1,740 | 2,065 | 8,294 | 3,165 | 6,410 | 1,390 | 718 | 27,608 | 9,860 | 4,920 | 4,955 | 1,003 | 3,972 | 908  | 5,150 | 1,946 | 6,671 | 6,692 | 5,772 | 909  | 4,885 | 932  | 6,671 | 4,855 | 6,865 | 8,244 | 3,468 | 150,661 |  |
| <b>AVG.</b> | 351   |      |       |     | 644   |       |       | 967   |       |       |       |     |        |       |       |       |       |       |      |       |       |       |       |       |      |       |      |       |       |       |       |       |         |  |

AREA TABLE

| Floors       | GSF            | Common        | Utility      | Res.           | Amenity / Lobby | Retail       | Parking       | Exterior SF (not in GSF) | # Units    | # Parking | Efficiency | Height |
|--------------|----------------|---------------|--------------|----------------|-----------------|--------------|---------------|--------------------------|------------|-----------|------------|--------|
| Floor 8      | 22,755         | 3,511         | 440          | 17,739         | 1,065           | -            | -             | 2,946                    | 23         | -         | 78.0%      | 85     |
| Floor 7      | 26,150         | 3,694         | 417          | 22,039         | -               | -            | -             | -                        | 27         | -         | 84.3%      | 74     |
| Floor 6      | 26,150         | 3,694         | 417          | 22,039         | -               | -            | -             | -                        | 27         | -         | 84.3%      | 64     |
| Floor 5      | 26,150         | 3,694         | 417          | 22,039         | -               | -            | -             | -                        | 27         | -         | 84.3%      | 54     |
| Floor 4      | 26,150         | 3,694         | 417          | 22,039         | -               | -            | -             | -                        | 27         | -         | 84.3%      | 44     |
| Floor 3      | 26,150         | 3,694         | 417          | 22,039         | -               | -            | -             | -                        | 27         | -         | 84.3%      | 34     |
| Floor 2      | 24,002         | 3,709         | 628          | 17,541         | 2,124           | -            | -             | -                        | 23         | -         | 73.1%      | 24     |
| Floor 1      | 23,818         | 3,025         | 3,850        | 4,203          | 5,434           | 4,181        | 3,125         | -                        | 7          | -         | 17.6%      | 14     |
| Floor -1     | 19,657         | 878           | 1,023        | -              | -               | -            | 17,756        | -                        | -          | 43        | 0.0%       | (10)   |
| <b>Total</b> | <b>220,982</b> | <b>29,593</b> | <b>8,026</b> | <b>149,678</b> | <b>8,623</b>    | <b>4,181</b> | <b>20,881</b> | <b>2,946</b>             | <b>188</b> | <b>43</b> |            |        |

EXISTING SITE DESCRIPTION

THE USE OF THE APPROXIMATELY 95,000 SF EXISTING BUILDING INCLUDES SERVICE AND OFFICE SPACE (APPROXIMATELY 3,000 RSF) ON 4 LEVELS (BASEMENT THROUGH PARTIAL THIRD FLOOR). THERE WERE NO PREVIOUS RESIDENTIAL USES ON THE PROJECT SITE. THE ENTIRE EXISTING BUILDING AND BASEMENT WILL BE DEMOLISHED WITHIN THE PROPERTY BOUNDARY.

PROPOSED PROJECT DESCRIPTION

THE PROPOSED PROJECT IS A MIX-USED OFF-CAMPUS STUDENT HOUSING COMMUNITY THAT CONTAINS 188 UNITS (585 BEDS). THE PROJECT UNIT TYPES INCLUDE STUDIOS, 1 BEDROOM, 2 BEDROOM, 3 BEDROOM, AND LIVE/WORK UNITS.

THE BUILDING TOTALS 220,982 GSF, WHICH INCLUDES 149,687 SF OF RESIDENTIAL AREA AND 8,623 SF OF INDOOR RESIDENTIAL AMENITY AREA IN ADDITION TO 2,946 SF OF ELEVATED ROOF TERRACE AMENITY. THERE IS ALSO 4,181 SF OF GROUND LEVEL COMMERCIAL.

THE PROJECT IS DESIGNED AS TYPE-IIIA CONSTRUCTION (WOOD) OVER TYPE-IA (PODIUM) WITH A TOTAL OF 8 RESIDENTIAL LEVELS. A PARTIAL BASEMENT IS ALSO PROVIDED TO HOUSE 43 PARKING SPACES. ADDITIONALLY, THE PROJECT WILL PROVIDE 129 BIKE PARKING SPACES ON LEVEL 1.

PROJECT #: 121246  
DRAWN BY: TF  
CHECKED BY: MM

NILES BOLTON ASSOCIATES

3060 Peachtree Rd. N.W.  
Suite 600  
Atlanta, GA 30305  
T 404 365 7600  
www.nilesbolton.com

APPLICANT:  
BILL SCHRADER  
T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 2   | PRELIM APP 58330     | 7/21/21  |
| 3   | SD SET               | 9/16/21  |
| 4   | USE PERMIT           | 10/25/21 |
| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
| 6   | SAP                  | 12/22/21 |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
|     |                      |          |

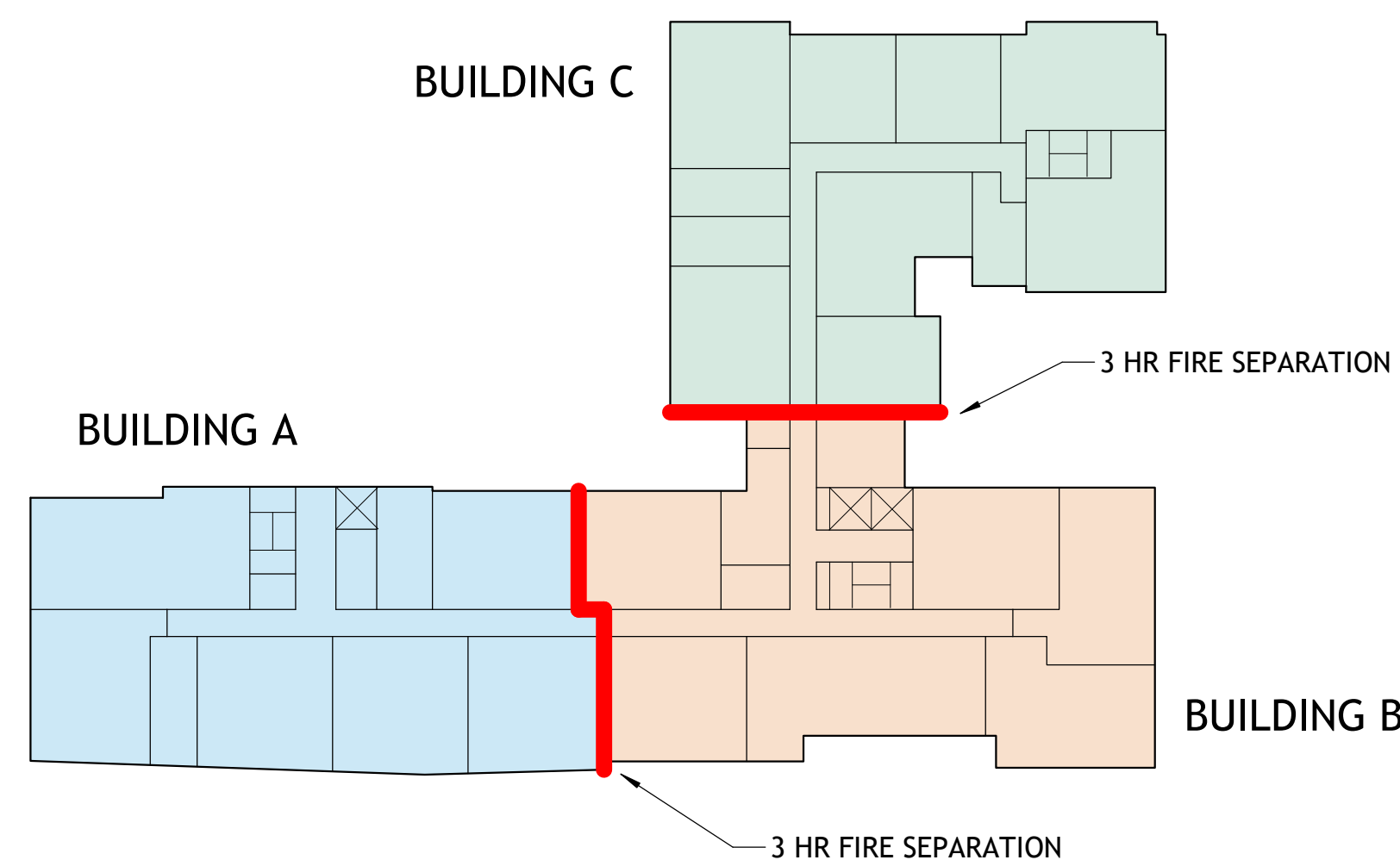
### CONSTRUCTION INFORMATION

| BERKELEY PLAZA    |                                                                                             |
|-------------------|---------------------------------------------------------------------------------------------|
| CONSTRUCTION TYPE | 5 LEVELS OF TYPE IIIA CONSTRUCTION OVER 3 LEVELS OF TYPE IA AND 1 BASEMENT LEVEL OF TYPE IA |
| SPRINKLER SYSTEM  | NFPA 13                                                                                     |
| CLIMATE ZONE      | 3                                                                                           |
| SEISMIC CATEGORY  | D                                                                                           |
| JURISDICTION      | CITY OF BERKELEY                                                                            |

| BUILDING HEIGHTS AND AREAS                           |                                      |                  |                  |                  |
|------------------------------------------------------|--------------------------------------|------------------|------------------|------------------|
| TYPE IIIA CONSTRUCTION                               |                                      |                  |                  |                  |
| MAX ALLOWABLE STORIES: 5                             |                                      |                  |                  |                  |
| BUILDING HEIGHT, PER CBC TABLE 504.3 AND 504.4       | ACTUAL STORIES (ABOVE PODIUM): 5     |                  |                  |                  |
|                                                      | MAX ALLOWABLE HEIGHT: 85'            |                  |                  |                  |
|                                                      | ACTUAL HEIGHT (ABOVE AVG GRADE): 84' |                  |                  |                  |
| BUILDING AREA, PER CBC TABLE 506.2 [At+(Ns x If)]xSa | LEVEL                                | BLDG A AREA      | BLDG B AREA      | BLDG C AREA      |
|                                                      | 4                                    | 8,441 SF         | 8,841 SF         | 8,727 SF         |
|                                                      | 5                                    | 8,441 SF         | 8,841 SF         | 8,727 SF         |
|                                                      | 6                                    | 8,441 SF         | 8,841 SF         | 8,727 SF         |
|                                                      | 7                                    | 8,441 SF         | 8,841 SF         | 8,727 SF         |
|                                                      | 8                                    | 5,268 SF         | 8,784 SF         | 8,629 SF         |
| <b>TOTAL PROPOSED BUILDING AREA</b>                  |                                      | <b>39,032 SF</b> | <b>44,148 SF</b> | <b>43,537 SF</b> |
| At: Tabular Area per Table 506.2.5M                  |                                      | 24,000 +         | 24,000 +         | 24,000 +         |
| Ns: Tabular Area Factor for non-sprinkled            |                                      | (24,000 X 0)     | (24,000 X 0)     | (24,000 X 0)     |
| If: Frontage Increase                                |                                      | X2 =             | X2 =             | X2 =             |
| Sa: 2 (R Occupancy)                                  |                                      |                  |                  |                  |
| <b>TOTAL ALLOWABLE AREA</b>                          |                                      | <b>48,000 SF</b> | <b>48,000 SF</b> | <b>48,000 SF</b> |
| TYPE IA CONSTRUCTION                                 |                                      |                  |                  |                  |
| MAX ALLOWABLE STORIES: UNLIMITED                     |                                      |                  |                  |                  |
| BUILDING HEIGHT PER CBC TABLE 504.3 AND 504.4        | ACTUAL STORIES: 3                    |                  |                  |                  |
|                                                      | MAX ALLOWABLE HEIGHT: UNLIMITED      |                  |                  |                  |
|                                                      | ACTUAL HEIGHT (ABOVE AVG GRADE): 34' |                  |                  |                  |
| BUILDING AREA, PER CBC TABLE 506.2                   | TOTAL ALLOWABLE AREA: UNLIMITED      |                  |                  |                  |
|                                                      | TOTAL PROPOSED AREA: 98,305 SF       |                  |                  |                  |

| FIRE RESISTANCE RATING REQUIREMENTS FOR BUILDING ELEMENTS PER TABLE 601 |                        |           |                        |           |
|-------------------------------------------------------------------------|------------------------|-----------|------------------------|-----------|
| BUILDING ELEMENT                                                        | REQUIRED HOURLY RATING |           | PROVIDED HOURLY RATING |           |
|                                                                         | TYPE IA                | TYPE IIIA | TYPE IA                | TYPE IIIA |
| PRIMARY STRUCTURAL FRAME                                                | 3                      | 1         | 3                      | 1         |
| EXTERIOR BEARING WALL                                                   | 3                      | 2         | 3                      | 2         |
| INTERIOR BEARING WALL                                                   | 3                      | 1         | 3                      | 1         |
| NON-BEARING EXTERIOR WALL                                               | 2                      | 2         | 2                      | 2         |
| FLOOR CONSTRUCTION                                                      | 2                      | 1         | 2                      | 1         |
| ROOF CONSTRUCTION                                                       | 1.5                    | 1         | 1.5                    | 1         |

| ACCESSIBILITY PROVISIONS |                                                                                                                                                                                         |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| UNITS                    | ALL UNITS TO COMPLY WITH THE FAIR HOUSING ACT AS THE BASE SAFE HARBOR. ALL UNITS TO BE ADAPTABLE AND ACCESSIBLE PER CBC SECTION 1128A.1                                                 |
| PUBLIC AREAS             | ALL AREAS OF COMMERCE THAT ARE OPEN TO THE PUBLIC MUST COMPLY WITH 2010 ADA ACCESSIBILITY GUIDELINES AND CBC CHAPTER 11B                                                                |
| COMMON USE AREAS         | ALL COMMON USE AREAS NOT OPEN TO THE PUBLIC MUST COMPLY WITH CBC SECTION 1127A                                                                                                          |
| MEANS OF EGRESS          | EXITS TO BE 1/3 DIAGONAL OF THE LENGTH OF THE MAXIMUM OVERALL DIAGONAL DIMENSION OF THE AREA SERVED, MEASURED ALONG THE SHORTEST DIRECT LINE OF TRAVEL WITHIN A ONE HOUR RATED CORRIDOR |
|                          | AREAS OF REFUGE NOT REQUIRED PER CBC 1009.3 EXCEPTION 8                                                                                                                                 |

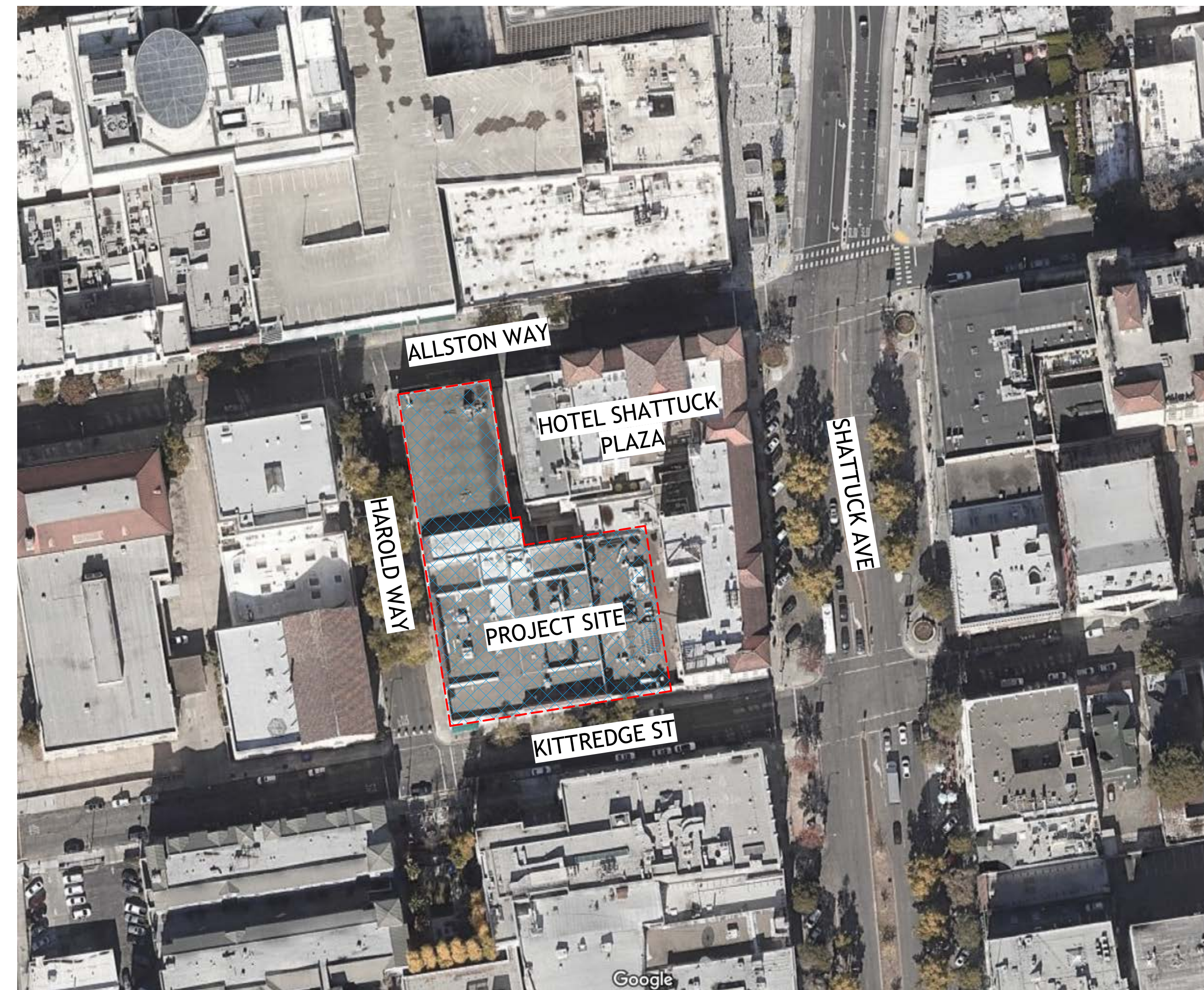


### CODE INFORMATION

The proposed project will comply with the Berkeley Energy Code (BMC Chapter 19.36) and Berkeley Green Code (BMC Chapter 19.37), adopted by City Council on December 3rd, 2019, where building design must incorporate all-electric systems.

### WAIVER/CONCESSION LIST

- **Waiver** to exceed the height limit - Proposed at 87'-0", where 60 ft/75 ft with use permit is the limit. The 87'-0" proposed is measured to top of roof and does not include the additional 5 feet parapet allowed by right.
- **Waiver** to construct rooftop projections, such as mechanical appurtenances or architectural elements which exceed the maximum height limit for the district.
- **Waiver** to reduce the 15' minimum front setbacks above 75'
- **Waiver** to increase the 5' maximum front setbacks between 0' to 20'
- **Waiver** to reduce the minimum landscape coverage of usable open space from 40% of the provided usable open space to 25% of the provided usable open space
- **Waiver** to reduce the required parking spaces for the commercial spaces from 6 required spaces to 0 provided spaces.
- **Concession** for 20% reduction in useable open space and the percentage of associated landscaped area.



1 SITE MAP  
A0-006 12" = 1'-0"

### TABULATION FORM

PROJECT ADDRESS: 2065 KITTREDGE ST DATE: 07-22-22  
 APPLICANT'S NAME: BILL SCHRADER ZONING DISTRICT: C-DMU CORE

| UNIT, PARKING SPACES, AND BEDROOMS                                                                                                              | Existing  | Proposed   | Permitted/ Required                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------------|---------------------------------------------------------------------------|
| NUMBER OF DWELING UNITS                                                                                                                         | 0         | 188        | NA                                                                        |
| NUMBER OF PARKING SPACES<br>MAX 0.5 SPACES PER UNIT                                                                                             | 0         | 43         | 0 MIN<br>94 MAX                                                           |
| NUMBER OF BIKE PARKING SPACES<br>311 BEDROOMS<br>1 LONG TERM SPACE PER 3 BEDROOMS = 104 SPACES<br>1 SHORT TERM SPACE PER 40 BEDROOMS = 8 SPACES | 0         | 129        | 112<br>LOCATED ON<br>LEVEL 1                                              |
| YARDS AND HEIGHTS                                                                                                                               |           |            |                                                                           |
| FRONT YARD SETBACK (FT)                                                                                                                         | 0'        | 0'         | 0' MIN (0'-75' HEIGHT)<br>15' MIN (75'+ HEIGHT)<br>5' MAX (0'-20' HEIGHT) |
| BUILDING HEIGHT (STORIES)                                                                                                                       | 3         | 8          | -                                                                         |
| MAXIMUM (FT)                                                                                                                                    | 25'       | 87'        | -                                                                         |
| AREAS                                                                                                                                           |           |            |                                                                           |
| LOT AREA                                                                                                                                        | 33,582 SF | 33,582 SF  | -                                                                         |
| TOTAL GROSS FLOOR AREA<br>TOTAL AREA COVERED BY ALL FLOORS                                                                                      | 92,531 SF | 186,126 SF | -                                                                         |
| BUILDING FOOTPRINT                                                                                                                              | 33,582 SF | 27,619 SF  | -                                                                         |
| LOT COVERAGE                                                                                                                                    | 100%      | 82%        | -                                                                         |
| USEABLE OPEN SPACE<br>80 SF OF USABLE OPEN SPACE PER UNIT                                                                                       | 0         | 12,032 SF  | 15,040 SF                                                                 |
| FLOOR AREA RATIO                                                                                                                                | 2.8:1     | 5.5:1      | -                                                                         |

WAIVER  
WAIVER  
WAIVER

CONCESSION

| COMMERCIAL SPACE REQUIREMENTS                                                                                                                                                       | Existing | Proposed | Permitted/ Required |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------|---------------------|
| 4,181 SF TOTAL<br>1,717 SF ALLSTON RETAIL SUITE<br>949 SF KITTREDGE RETAIL SUITE<br>1,515 SF WORK SPACE IN LIVE/WORK UNITS                                                          |          |          |                     |
| NUMBER OF PARKING SPACES<br>1.5 SPACES PER 1,000 SF OF RETAIL SUITE = 4 SPACES<br>1 SPACE PER FIRST 1,000 SF OF WORK AREA AND 1 SPACE PER ADDITIONAL 750 SF OF WORK AREA = 2 SPACES | 0        | 0        | 6                   |
| NUMBER OF BIKE PARKING SPACES<br>1 BIKE SPACE PER 2,000 SF OF COMMERCIAL FLOOR AREA<br>SPACES LOCATED AT EXTERIOR BIKE RACKS                                                        | 0        | 3        | 3                   |
| USEABLE OPEN SPACE<br>1 SF OF USABLE OPEN SPACE<br>PER 50 SF OF COMMERCIAL FLOOR AREA                                                                                               | 0        | 84       | 84                  |

WAIVER

PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

### NILES BOLTON ASSOCIATES

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APPLICANT:  
 BILL SCHRADER  
 T 925 638 8782

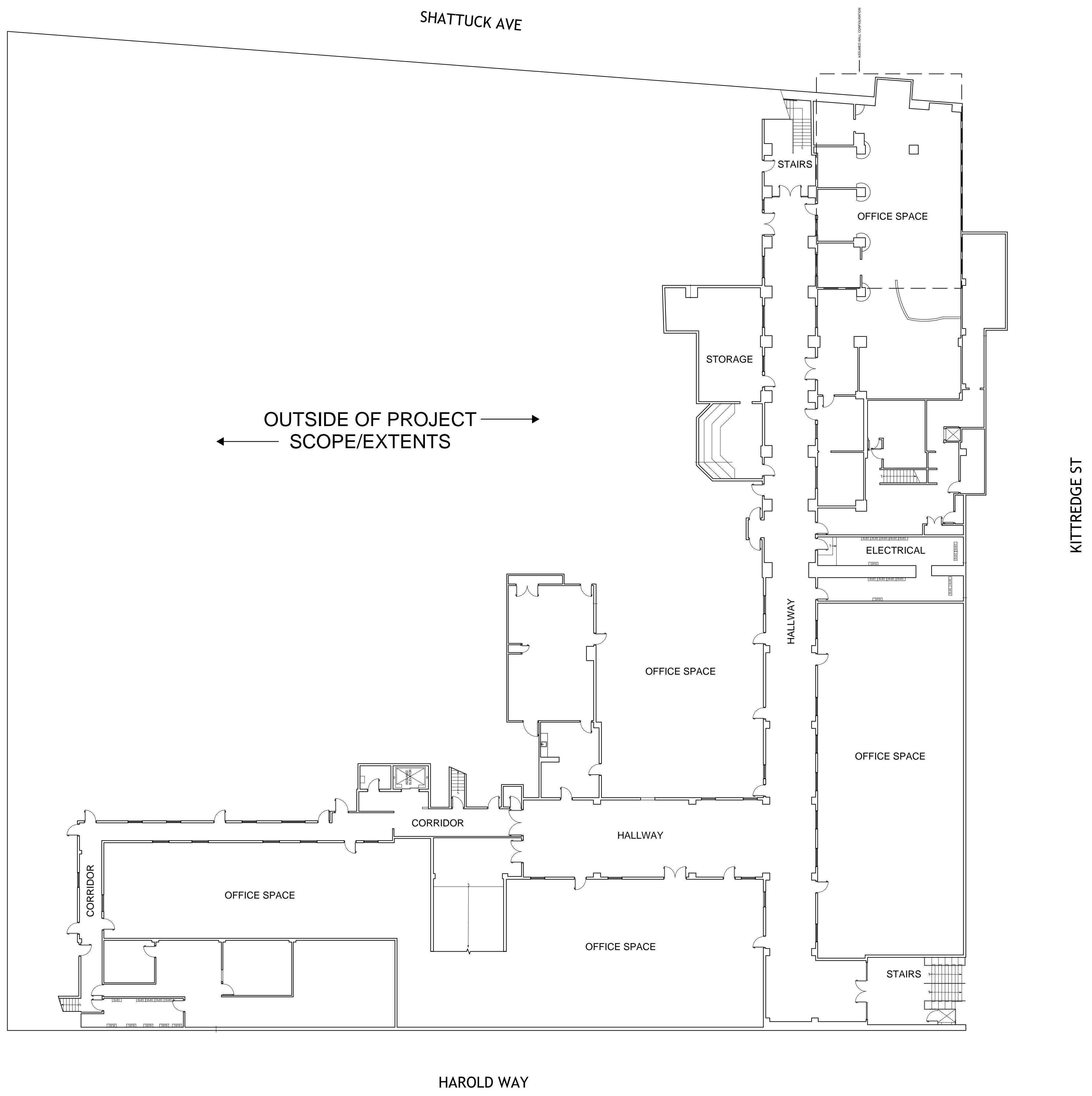
| No. | Description          | Date     |
|-----|----------------------|----------|
| 4   | USE PERMIT           | 10/25/21 |
| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
| 6   | SAP                  | 12/22/21 |
| 7   | USE PERMIT RESUBMIT. | 1/11/22  |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LMRKS. MEETING  | 5/10/22  |
| 16  | LPC REVISIONS        | 07/22/22 |

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BERKELEY PLAZA  
 2065 KITTREDGE ST  
 BERKELEY, CA 94704  
 CA STUDENT LIVING BERKELEY, LLC

SHEET TITLE:  
 ZONING AND CODE  
 INFO

SHEET NUMBER:  
**A0-006**



**EXISTING  
BASEMENT PLAN**

0 4 8 16'  
 1 LEVEL U1- EXISTING  
 A1-001 1/16" = 1'-0"



PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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| No. | Description         | Date    |
|-----|---------------------|---------|
| 9   | SAP RESUBMIT.       | 3/23/22 |
| 13  | JUNE LWRKS. MEETING | 5/10/22 |

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 CA VENTURES

SHEET TITLE:  
 SITE PLAN  
 EXISTING- LEVEL U1

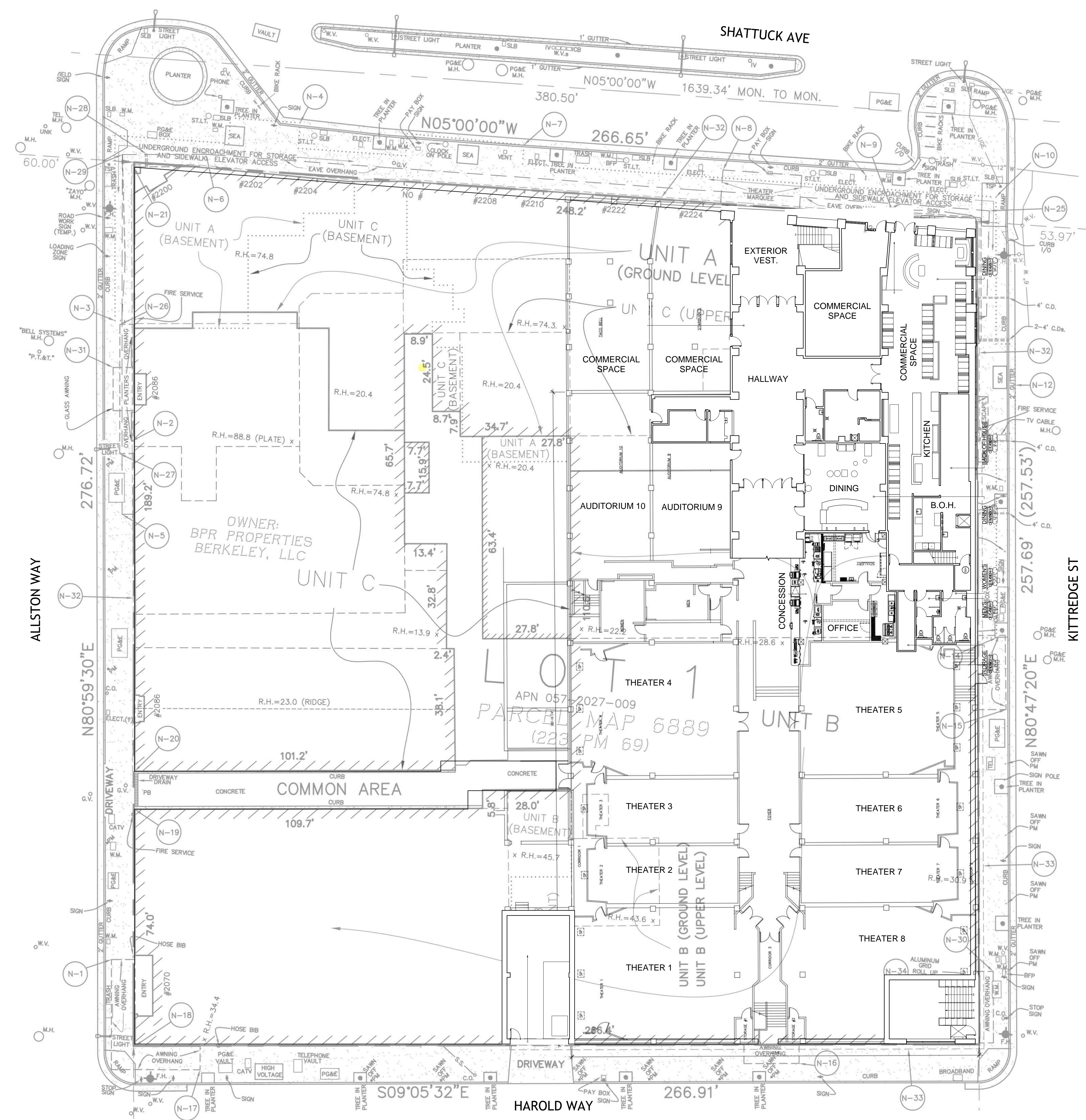
SHEET NUMBER:  
**A1-001**

NOT RELEASED FOR CONSTRUCTION



# EXISTING GROUND LEVEL PLAN

1 LEVEL 1- EXISTING  
A1-002 1/16" = 1'-0"



PROJECT #: 121246  
DRAWN BY: TF  
CHECKED BY: MM

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T 925 638 8782

| No. | Description         | Date     |
|-----|---------------------|----------|
| 6   | SAP                 | 12/22/21 |
| 9   | SAP RESUBMIT.       | 3/23/22  |
| 13  | JUNE LWRKS. MEETING | 5/10/22  |

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SHEET TITLE:  
SITE PLAN  
EXISTING- LEVEL 1

SHEET NUMBER:  
A1-002



PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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|-----|---------------------|----------|
| 9   | SAP RESUBMIT.       | 3/23/22  |
| 13  | JUNE LMRKS. MEETING | 5/10/22  |
| 15  | STAFF REVIEW #2     | 07/13/22 |

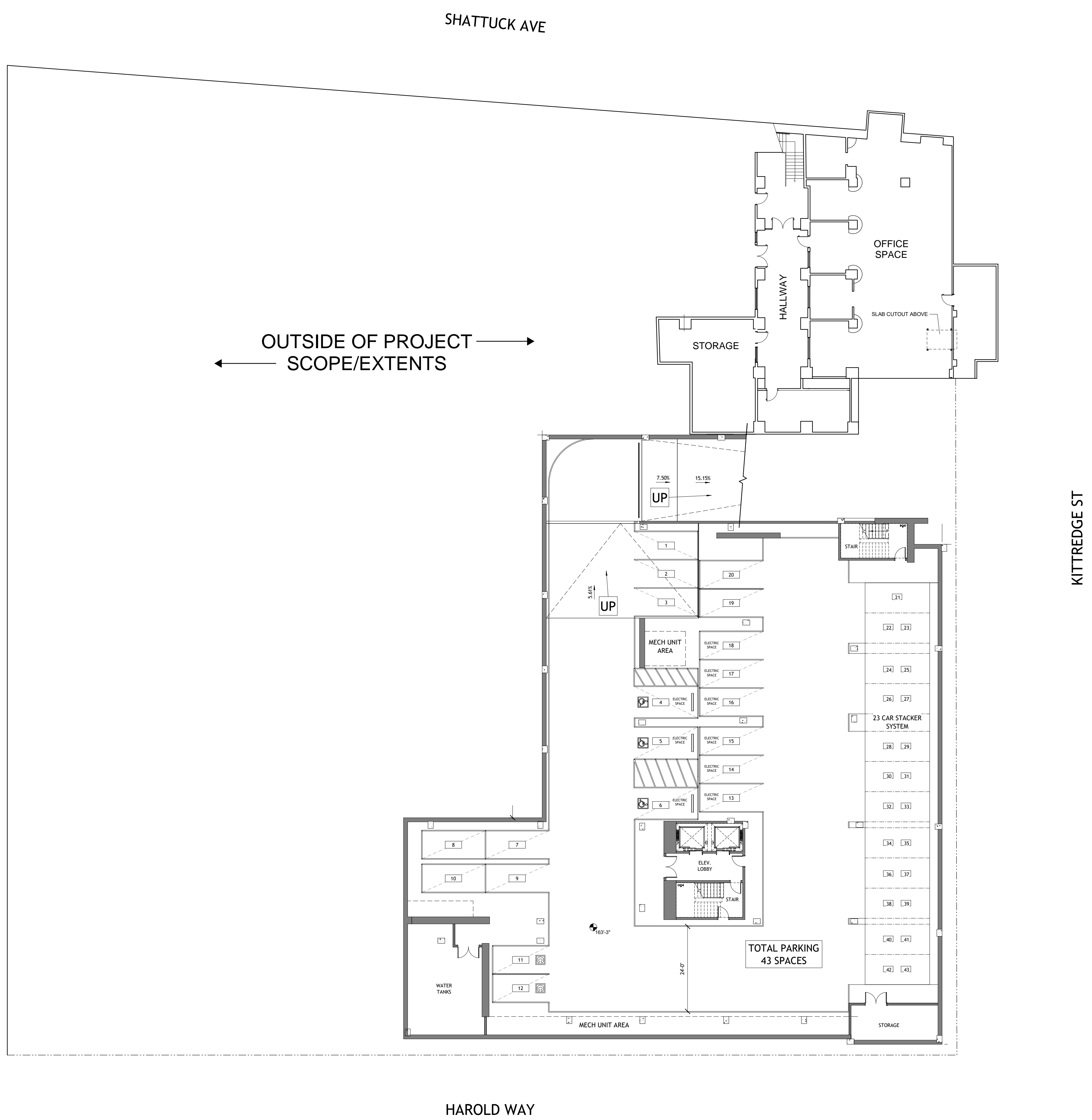
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SHEET TITLE:  
 SITE PLAN  
 PROPOSED- LEVEL  
 U1

SHEET NUMBER:  
**A1-003**

NOT RELEASED FOR CONSTRUCTION



**PROPOSED  
 BASEMENT PLAN**



1 LEVEL U1- PROPOSED  
 A1-003 1/16" = 1'-0"



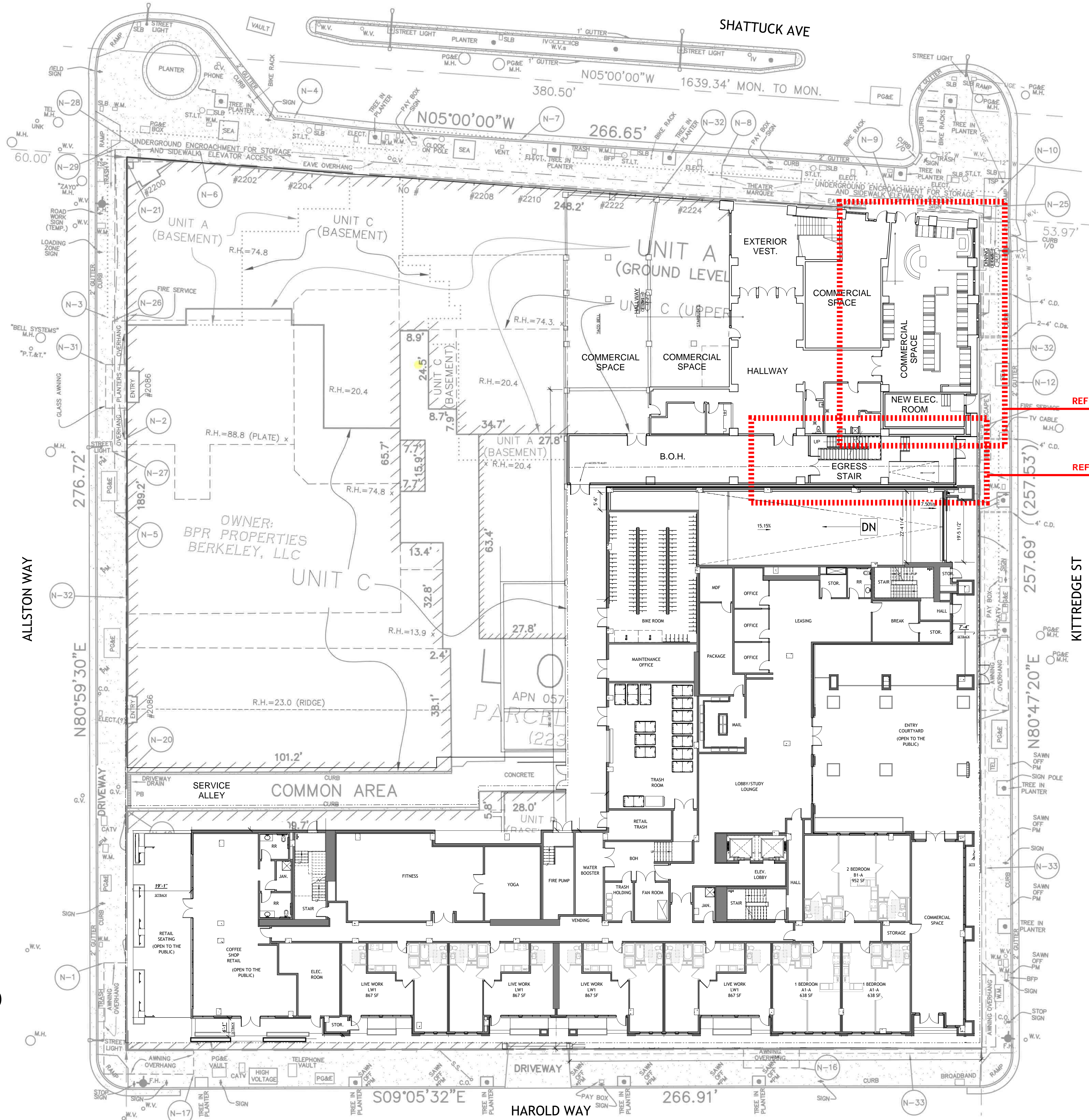
HAROLD WAY

ALLSTON WAY

KITTREDGE ST

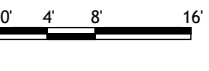
SHATTUCK AVE

← OUTSIDE OF PROJECT SCOPE/EXTENTS →



**PROPOSED GROUND LEVEL PLAN**

1 LEVEL 1- PROPOSED  
A1-004 1/16" = 1'-0"



REFER TO 1/A1-001 FOR ENLARGED PLAN

REFER TO 1/A1-201 FOR ENLARGED PLAN

PROJECT #: 121246  
DRAWN BY: TF  
CHECKED BY: MM

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| No. | Description         | Date     |
|-----|---------------------|----------|
| 9   | SAP RESUBMIT.       | 3/23/22  |
| 13  | JUNE LMRKS. MEETING | 5/10/22  |
| 15  | STAFF REVIEW #2     | 07/13/22 |

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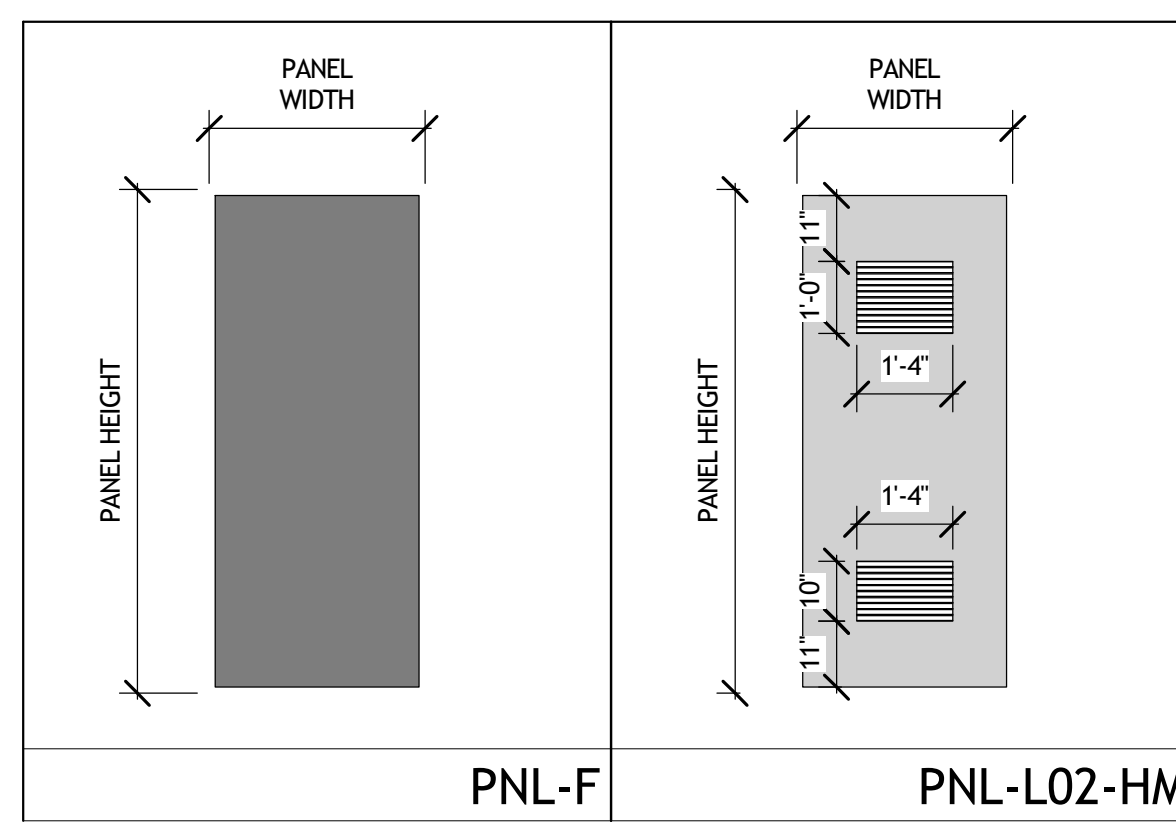
CA VENTURES

SHEET TITLE:  
**SITE PLAN PROPOSED- LEVEL 1**

SHEET NUMBER:  
**A1-004**

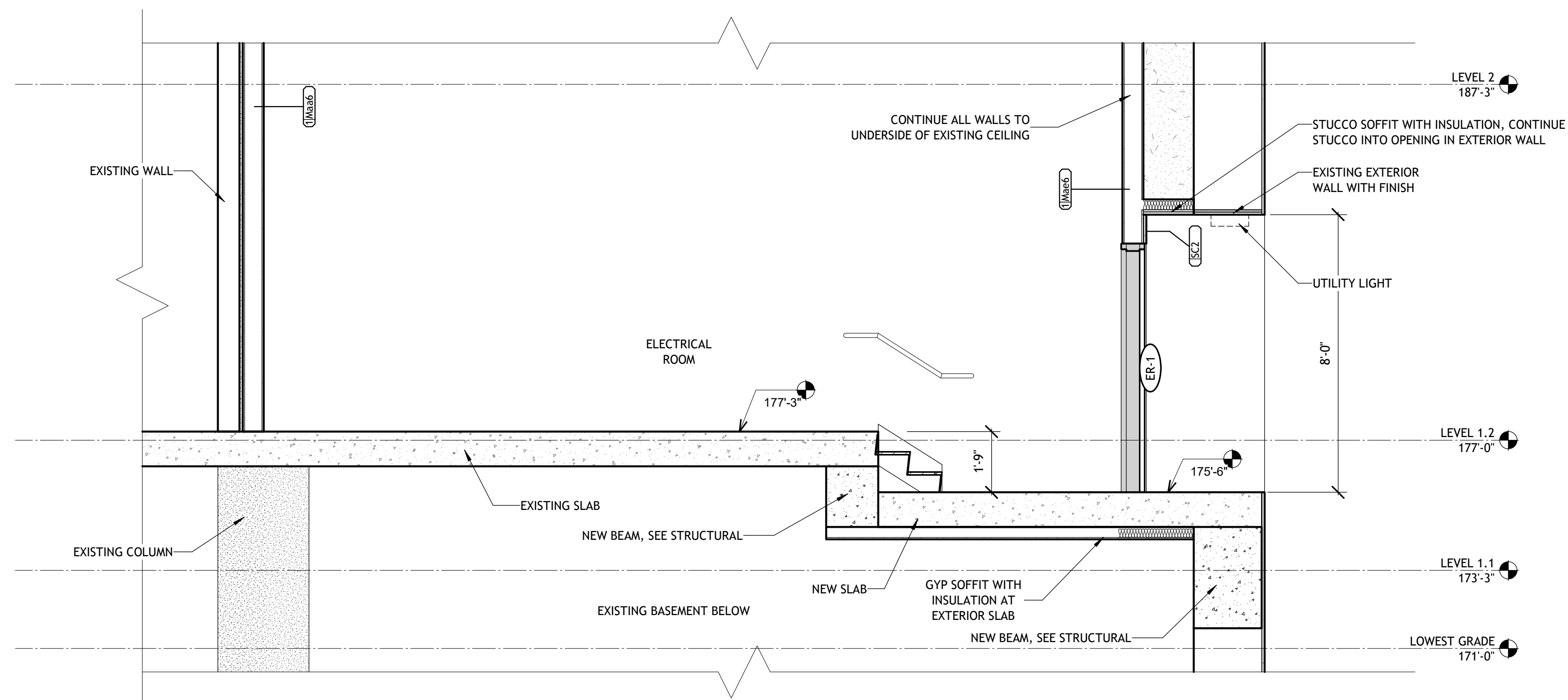


NOT RELEASED FOR CONSTRUCTION

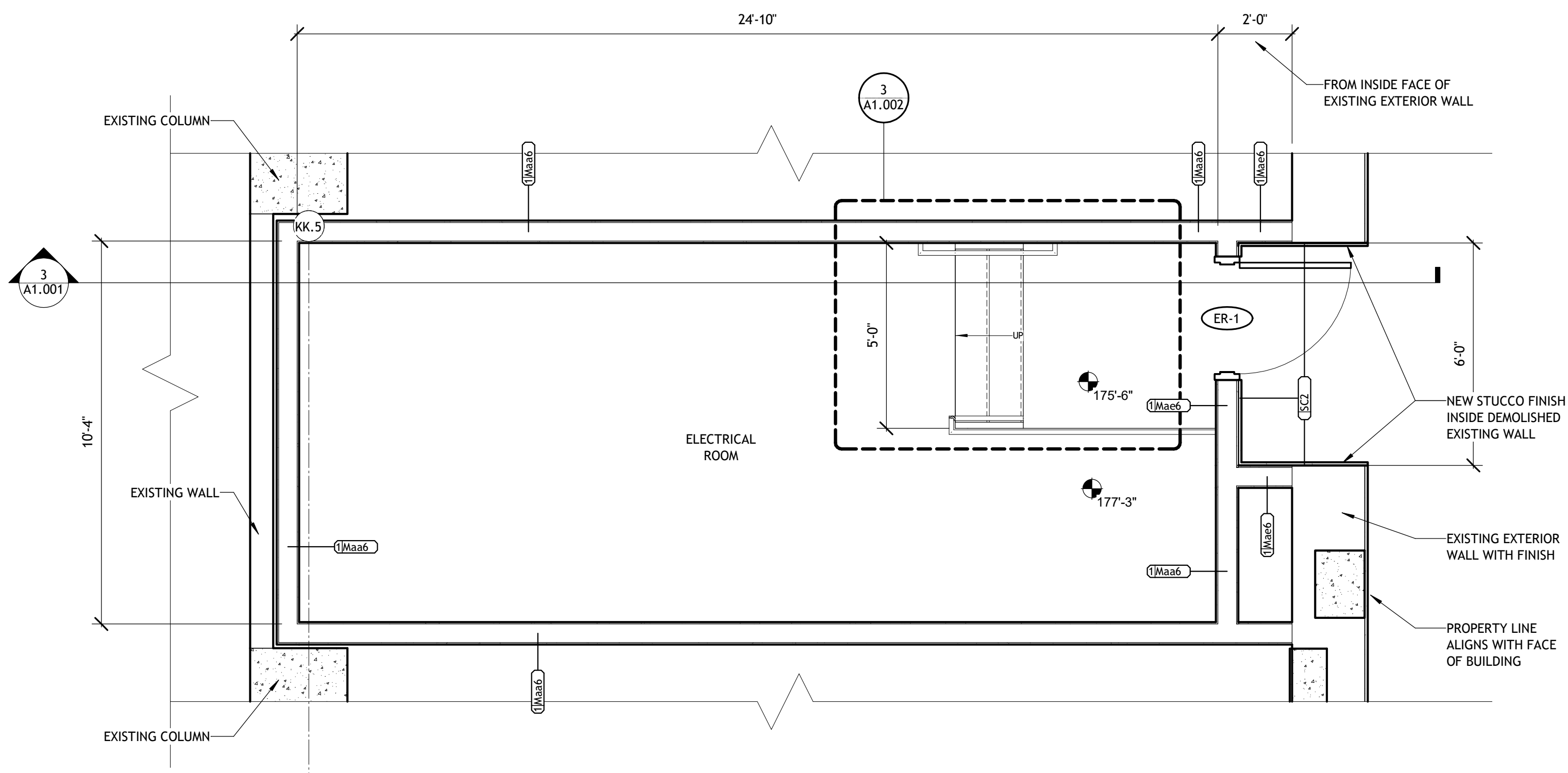


| DOOR SCHEDULE- ELECTRICAL ROOM |                 |                   |             |            |                |           |        |        |                                                                                                                                                         |
|--------------------------------|-----------------|-------------------|-------------|------------|----------------|-----------|--------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| TAG                            | LOCATION        | FIRE RATING (MIN) | SIZE WxH    | PANELS     |                | FRAME     |        | HW SET | COMMENTS                                                                                                                                                |
|                                |                 |                   |             | TYPE       | FINISH         | TYPE      | HW SET |        |                                                                                                                                                         |
| LEVEL 1.1                      |                 |                   |             |            |                |           |        |        |                                                                                                                                                         |
| ER-1                           | ELECTRICAL ROOM | 0                 | 3'-0"x7'-0" | PNL-L02-HM | 08-OPENINGS-HM | FRM-00HM1 | 08.0   |        | DOOR WITH HIGH-LOW LOUVERS TO THE EXTERIOR. COORDINATE WITH MECHANICAL. PANIC BAR HARDWARE TO BE PROVIDED. LOCK TO BE PROVIDED, SEE HARDWARE SET BELOW. |
| ER-2                           | B.O.H.          | 0                 | 3'-0"x7'-0" | PNL-F-HM   | 08-OPENINGS-HM | FRM-00HM1 | 13.0   |        | EGRESS FROM B.O.H. PANIC BAR HARDWARE TO BE PROVIDED. SEE HARDWARE SET BELOW.                                                                           |

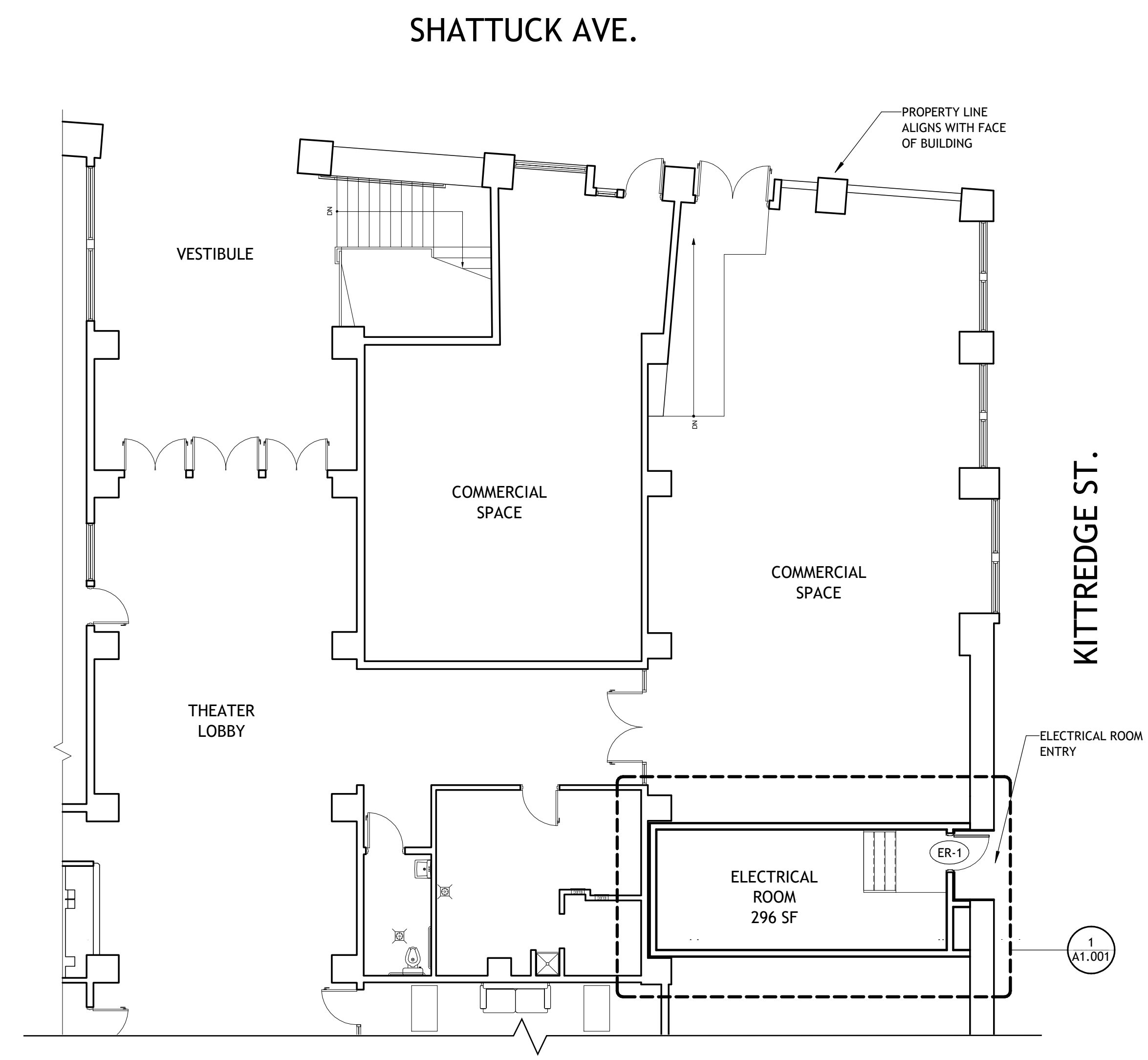
| Hardware Set # 08.0 |                                    |     |      |        | Hardware Set # 13.0 |                      |                                  |     |      |        |      |
|---------------------|------------------------------------|-----|------|--------|---------------------|----------------------|----------------------------------|-----|------|--------|------|
| PRODUCT             | DESCRIPTION                        | QTY | UNIT | FINISH | MFG                 | PRODUCT              | DESCRIPTION                      | QTY | UNIT | FINISH | MFG  |
| Hinge               | FB81179 4.5 x 4.5 NRP (As Req'd)   | 3   | EA   | 652    | STN                 | Hinge                | FB81179 4.5 x 4.5 NRP (As Req'd) | 1   | EA   | 652    | STN  |
| Rim Panic           | 290 821203 x 4993 D (Storeroom)    | 1   | EA   | 626W   | STCH                | Rim Panic            | QDC111 (FRESH)                   | 1   | EA   | 626    | STCH |
| Cylinder            | 12E-72 Less Core (Rim)             | 1   | EA   | 626    | STCH                | E Trim               | QET170 (Storeroom)               | 1   | EA   | 626    | STCH |
| Core                | 6C5-SFIC                           | 1   | EA   | 626    | BST                 | Cylinder             | 12E-72 Less Core (Rim)           | 1   | EA   | 626    | STCH |
| Closer              | QDC113 (EDA, SPG Stop/Compression) | 1   | EA   | 689    | STCH                | Core                 | 6C5-SFIC                         | 1   | EA   | 626    | BST  |
| Kick Plate          | K0059 10" x 2" LDW B4E/CSK         | 1   | EA   | 630    | TRM                 | Closer               | QDC111 (Panic Bar - Push Side)   | 1   | EA   | 689    | STCH |
| Seal                | 9050C X LAR (Head/Jambo)           | 1   | EA   | A      | NGP                 | Kick Plate           | K0059 10" x 2" LDW B4E/CSK       | 1   | EA   | 630    | TRM  |
| Sweep               | 601 A X LAR                        | 1   | EA   | A      | NGP                 | Wall Stop/Floor Stop | 1270WV or W1311                  | 1   | EA   | 630    | TRM  |
| Threshold           | 813 A X LAR X 14-20 SS MSEA        | 1   | EA   | A      | NGP                 | Seal                 | 9050C X LAR (Head/Jambo)         | 1   | EA   | A      | NGP  |



3 ELECTRICAL ROOM SECTION  
A1.001 3/8" = 1'-0"



2 ELECTRICAL ROOM PLAN  
A1.001 3/8" = 1'-0"



1 BUILDING PLAN  
A1.001 1/8" = 1'-0"

PROJECT #: 121246  
DRAWN BY: TF  
CHECKED BY: MM  
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www.nilesbolton.com

| No. | Description        | Date    |
|-----|--------------------|---------|
|     | ELEC. ROOM PERMIT  | 4/11/22 |
| 13  | JUNE LMRK. MEETING | 5/10/22 |

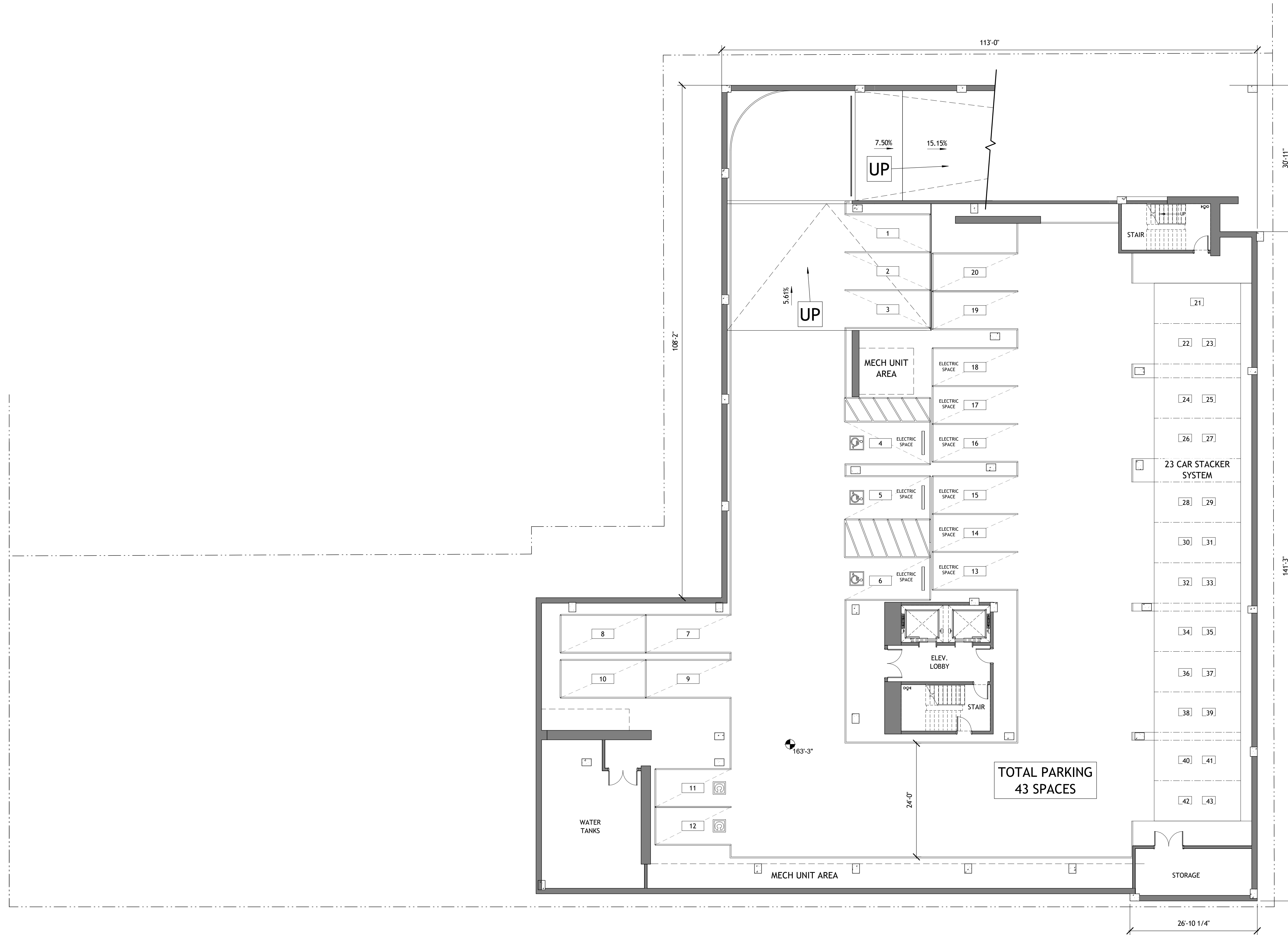
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**ELECTRICAL ROOM TI PERMIT**  
2240 SHATTUCK AVE  
BERKELEY, CA 94704  
CA VENTURES

SHEET TITLE:  
**ELECTRICAL ROOM DEMO, PLAN, SECTION**

SHEET NUMBER:  
**A1.001**





PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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 BILL SCHRADER  
 T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 1   | PLAN UPDATE          | 6/28/21  |
| 2   | PRELIM APP SB330     | 7/21/21  |
| 3   | SD SET               | 9/16/21  |
| 4   | USE PERMIT           | 10/25/21 |
| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
| 6   | SAP                  | 12/22/21 |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LWRKS. MEETING  | 5/10/22  |
| 14  | STAFF REVIEW         | 07/01/22 |
| 15  | STAFF REVIEW #2      | 07/13/22 |

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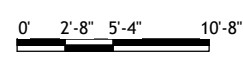
**BERKELEY PLAZA**  
 2065 KITTREDGE ST  
 BERKELEY, CA 94704

CA VENTURES

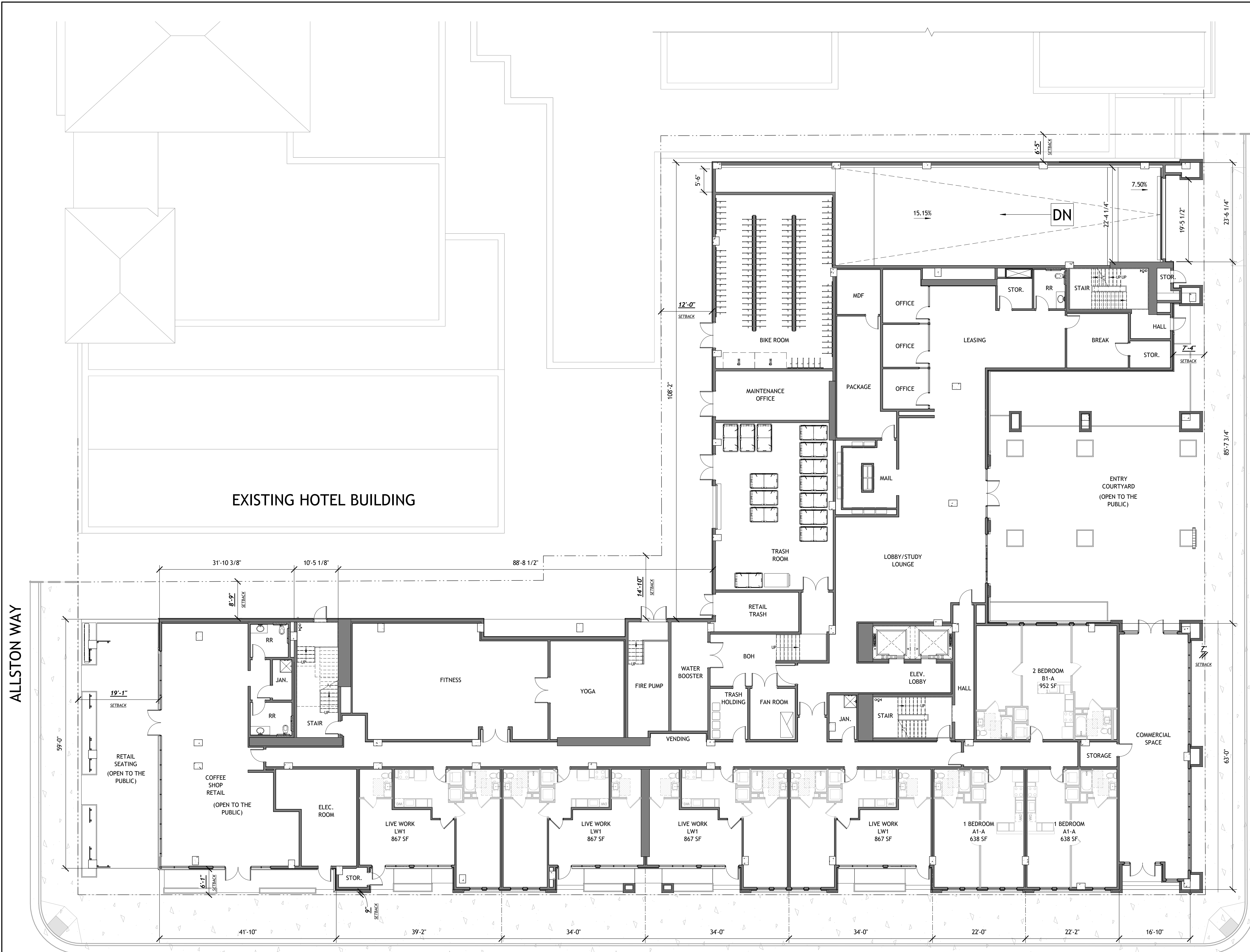
SHEET TITLE:  
 PLAN- LEVEL U1

SHEET NUMBER:  
**A1-101**

1 PRESENTATION FLOOR PLAN- LEVEL U1  
 A1-101 3/32" = 1'-0"



NOT RELEASED FOR CONSTRUCTION



PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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| No. | Description          | Date     |
|-----|----------------------|----------|
| 1   | PLAN UPDATE          | 6/28/21  |
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| 3   | SD SET               | 9/16/21  |
| 4   | USE PERMIT           | 10/25/21 |
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| 6   | SAP                  | 12/22/21 |
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| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LWRKS. MEETING  | 5/10/22  |
| 14  | STAFF REVIEW         | 07/01/22 |
| 15  | STAFF REVIEW #2      | 07/13/22 |

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SHEET TITLE:  
 PLAN- LEVEL 1

SHEET NUMBER:  
**A1-111**

1 PRESENTATION FLOOR PLAN- LEVEL 1  
 A1-111 3/32" = 1'-0"

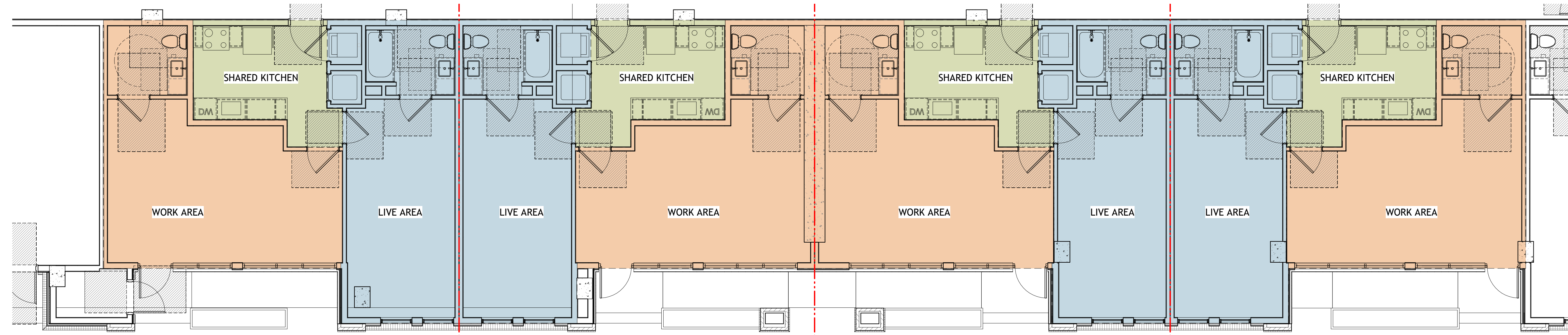
HAROLD WAY

KITTREDGE ST

ALLSTON WAY



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LIVE/WORK UNIT 1

TOTAL AREA: 867 SF

- LIVE AREA: 336 SF (39%)
- WORK AREA: 392 SF (45%)
- SHARED KITCHEN AREA: 139 SF (16%)

LIVE/WORK UNIT 2

TOTAL AREA: 867 SF

- LIVE AREA: 336 SF (39%)
- WORK AREA: 392 SF (45%)
- SHARED KITCHEN AREA: 139 SF (16%)

LIVE/WORK UNIT 3

TOTAL AREA: 867 SF

- LIVE AREA: 336 SF (39%)
- WORK AREA: 392 SF (45%)
- SHARED KITCHEN AREA: 139 SF (16%)

LIVE/WORK UNIT 4

TOTAL AREA: 867 SF

- LIVE AREA: 336 SF (39%)
- WORK AREA: 392 SF (45%)
- SHARED KITCHEN AREA: 139 SF (16%)

NOTE: THE KITCHEN IS CONSIDERED SPACE THAT SERVES BOTH THE LIVE AREA AND THE WORK AREA OF THE UNIT. THE SHARED AREA OF THE KITCHEN IS SPLIT BETWEEN THE TWO CATEGORIES TO BRING BOTH LIVE FUNCTIONS AND WORK FUNCTIONS TO EXACTLY 50% OF THE TOTAL UNIT AREA, IN ACCORDANCE WITH IBC SECTION 419.

1 LIVE/WORK UNITS ENLARGED PLAN  
A1-112 3/16" = 1'-0"

PROJECT #: 121246  
DRAWN BY: Author  
CHECKED BY: Checker

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| No. | Description         | Date     |
|-----|---------------------|----------|
| 13  | JUNE LMRKS. MEETING | 5/10/22  |
| 16  | LPC REVISIONS       | 07/22/22 |

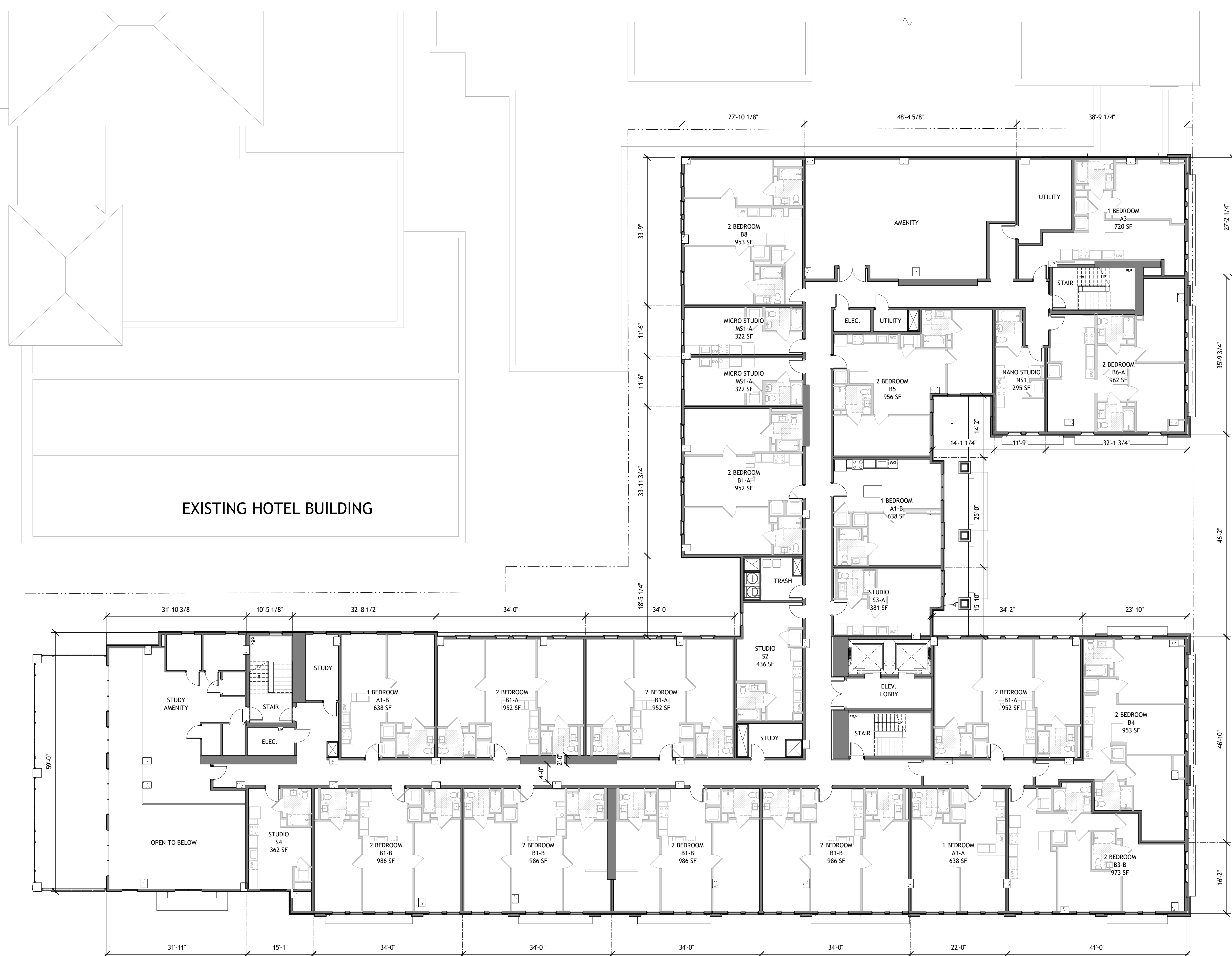
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CA STUDENT LIVING BERKELEY, LLC

SHEET TITLE:  
PLAN- LEVEL 1  
ENLARGED

SHEET NUMBER:  
**A1-112**

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PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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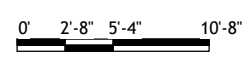
APPLICANT:  
 BILL SCHRADER  
 T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 1   | PLAN UPDATE          | 6/28/21  |
| 2   | PRELIM APP SB330     | 7/21/21  |
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| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LWRKS. MEETING  | 5/10/22  |
| 14  | STAFF REVIEW         | 07/01/22 |
| 15  | STAFF REVIEW #2      | 07/13/22 |

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1 PRESENTATION FLOOR PLAN- LEVEL 2  
 A1-121 3/32" = 1'-0"

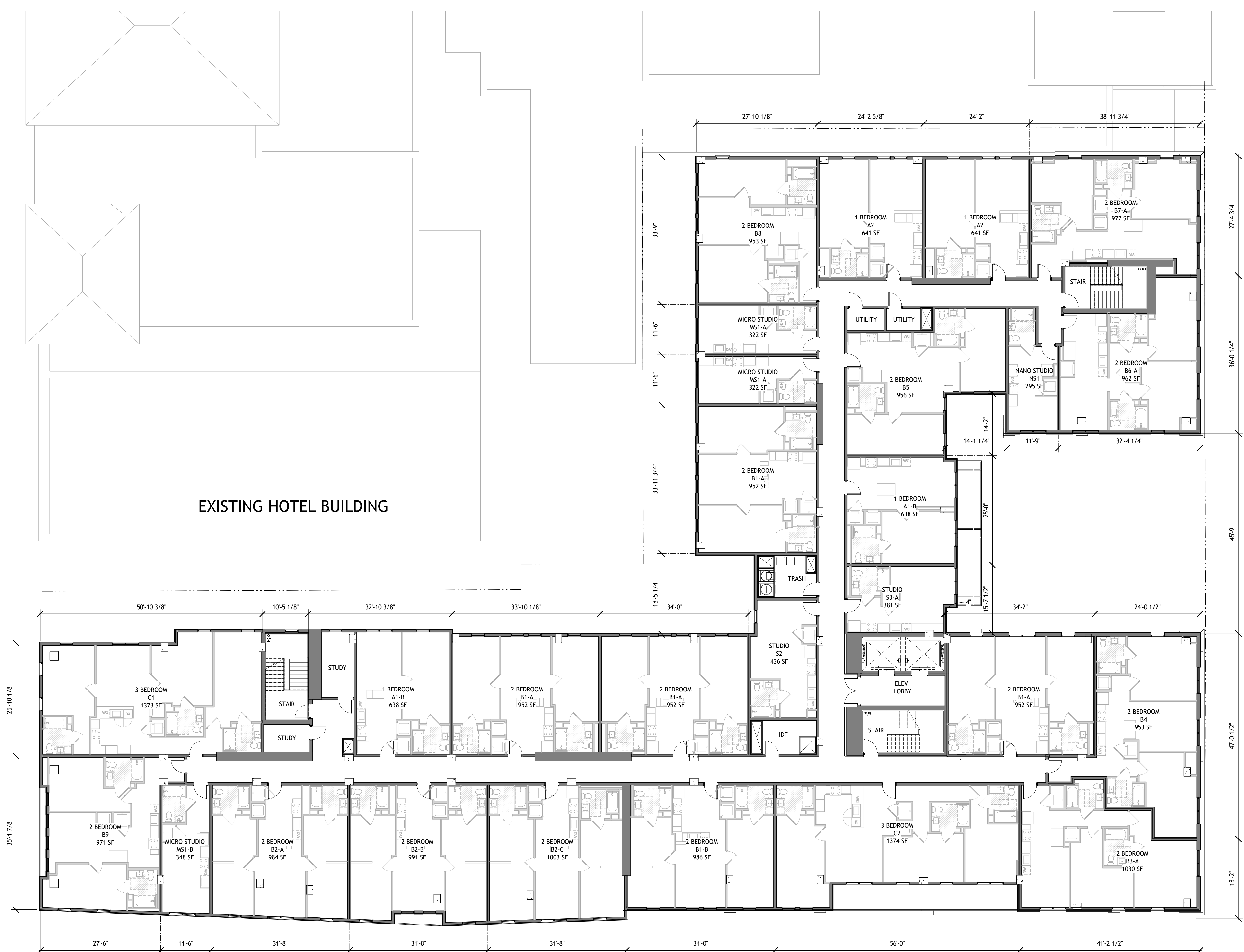


SHEET TITLE:  
 PLAN- LEVEL 2

SHEET NUMBER:  
**A1-121**

NOT RELEASED FOR CONSTRUCTION





PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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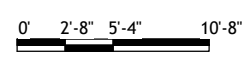
APPLICANT:  
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 T 925 638 8782

| No. | Description          | Date     |
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| 15  | STAFF REVIEW #2      | 07/13/22 |

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**BERKELEY PLAZA**  
 2065 KITTREDGE ST  
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 CA VENTURES

1 PRESENTATION FLOOR PLAN- LEVEL 3  
 A1-131 3/32" = 1'-0"



SHEET TITLE:  
 PLAN- LEVEL 3

SHEET NUMBER:  
**A1-131**

NOT RELEASED FOR CONSTRUCTION



PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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 Atlanta, GA 30305  
 T 404 365 7600  
 www.nilesbolton.com

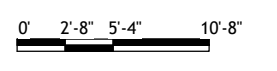
APPLICANT:  
 BILL SCHRADER  
 T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 1   | PLAN UPDATE          | 6/28/21  |
| 2   | PRELIM APP SB330     | 7/21/21  |
| 3   | SD SET               | 9/16/21  |
| 4   | USE PERMIT           | 10/25/21 |
| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
| 6   | SAP                  | 12/22/21 |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LWRKS. MEETING  | 5/10/22  |
| 14  | STAFF REVIEW         | 07/01/22 |
| 15  | STAFF REVIEW #2      | 07/13/22 |

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1 PRESENTATION FLOOR PLAN- LEVEL 4-7  
 A1-141 3/32" = 1'-0"

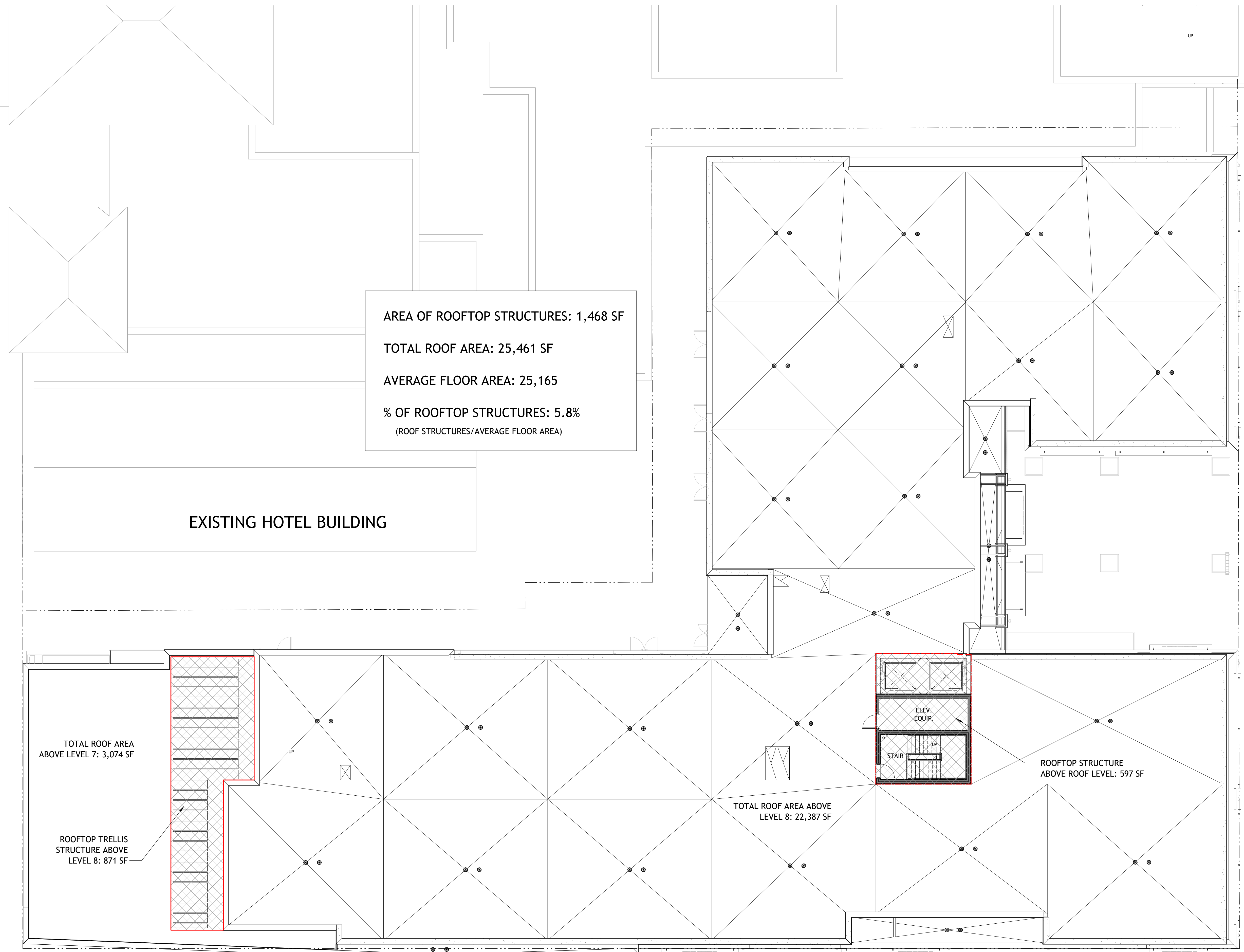


SHEET TITLE:  
 PLAN- LEVEL 4-7

SHEET NUMBER:  
**A1-141**

NOT RELEASED FOR CONSTRUCTION





AREA OF ROOFTOP STRUCTURES: 1,468 SF  
 TOTAL ROOF AREA: 25,461 SF  
 AVERAGE FLOOR AREA: 25,165  
 % OF ROOFTOP STRUCTURES: 5.8%  
 (ROOF STRUCTURES/AVERAGE FLOOR AREA)

EXISTING HOTEL BUILDING

TOTAL ROOF AREA ABOVE LEVEL 7: 3,074 SF

ROOFTOP TRELLIS STRUCTURE ABOVE LEVEL 8: 871 SF

TOTAL ROOF AREA ABOVE LEVEL 8: 22,387 SF

ROOFTOP STRUCTURE ABOVE ROOF LEVEL: 597 SF

ELEV. EQUIP.  
STAIR

1 PRESENTATION FLOOR PLAN- ROOF PLAN  
 A1-191 3/32" = 1'-0"

0 2'-8" 5'-4" 10'-8"



PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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APPLICANT:  
 BILL SCHRADER  
 T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
| 6   | SAP                  | 12/22/21 |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LMRK. MEETING   | 5/10/22  |
| 14  | STAFF REVIEW         | 07/01/22 |
| 15  | STAFF REVIEW #2      | 07/13/22 |
| 16  | LPC REVISIONS        | 07/22/22 |

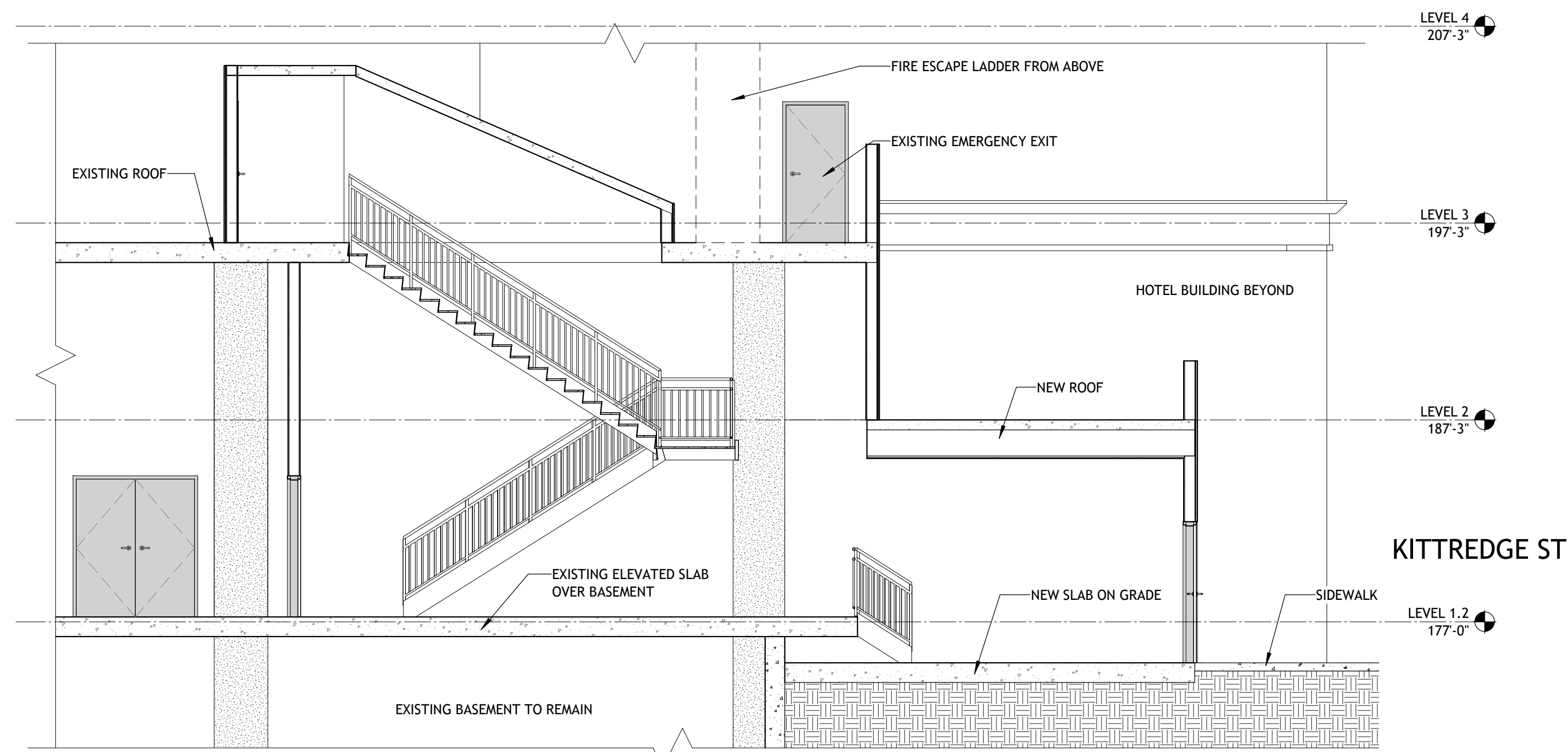
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 CA STUDENT LIVING BERKELEY, LLC

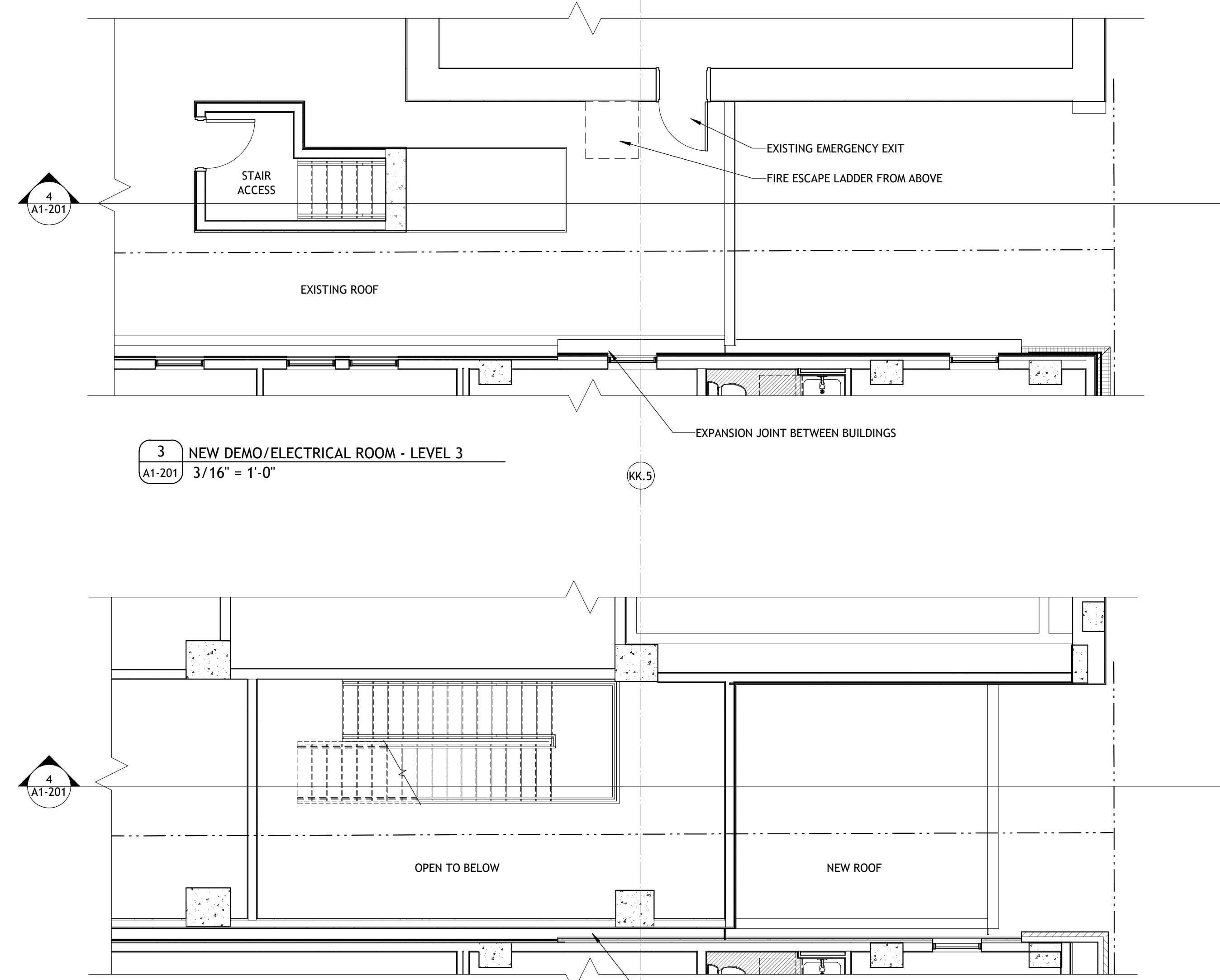
SHEET TITLE:  
 PLAN- ROOF

SHEET NUMBER:  
**A1-191**

NOT RELEASED FOR CONSTRUCTION

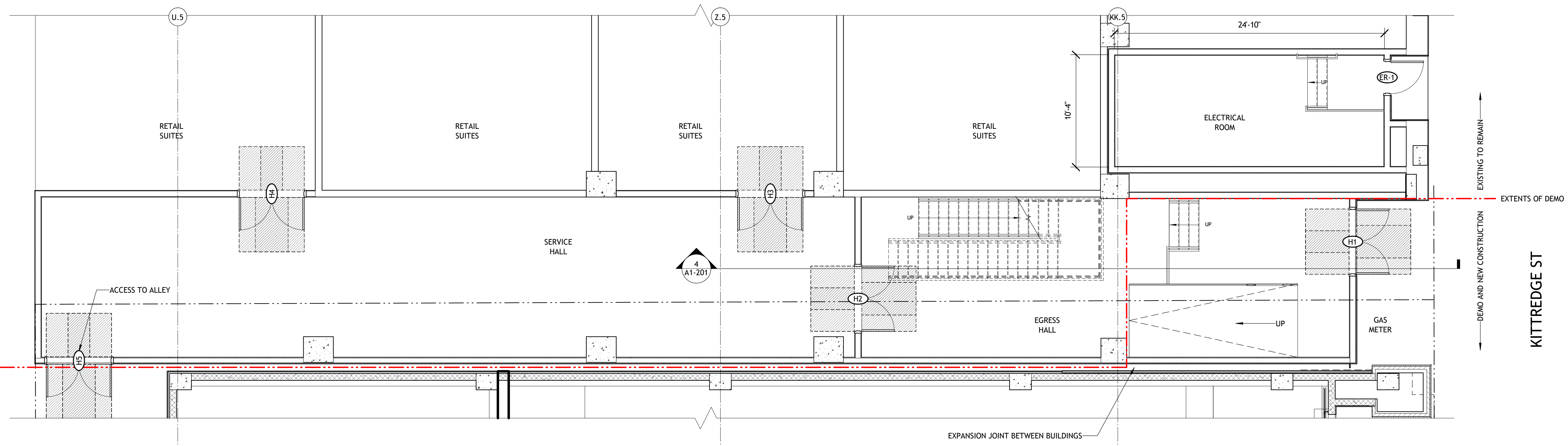


4 NEW DEMO/ELECTRICAL ROOM SECTION  
A1-201 3/16" = 1'-0"



3 NEW DEMO/ELECTRICAL ROOM - LEVEL 3  
A1-201 3/16" = 1'-0"

2 NEW DEMO/ELECTRICAL ROOM - LEVEL 2  
A1-201 3/16" = 1'-0"



1 NEW DEMO/ELECTRICAL ROOM - LEVEL 1  
A1-201 3/16" = 1'-0"

PROJECT #: 121246  
DRAWN BY: TF  
CHECKED BY: MM

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APPLICANT:  
BILL SCHRADER  
T 925 638 8782

| No. | Description          | Date    |
|-----|----------------------|---------|
| 9   | SAP RESUBMIT.        | 3/23/22 |
| 11  | USE PERMIT RESUBMIT. | 3/28/22 |
| 12  | APRIL DRG MEETING    | 4/11/22 |
| 13  | JUNE LWRKS. MEETING  | 5/10/22 |

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CA VENTURES

SHEET TITLE:  
**NEW SERVICE HALL/ELECTRICAL ROOM PLAN**

SHEET NUMBER:  
**A1-201**

NOT RELEASED FOR CONSTRUCTION

| Keynote Legend |                                              |
|----------------|----------------------------------------------|
| Key Value      | Keynote Text                                 |
| E1             | LIGHT TAN STUCCO                             |
| E2             | CHARCOAL GREY STUCCO                         |
| E3             | DARK TAN STUCCO                              |
| E4             | BRICK                                        |
| E5             | WHITE FIBER CEMENT                           |
| E6             | VINYL WINDOW WITH THERMOFOIL ALUMINUM FINISH |
| E7             | ALUMINUM CANOPY                              |
| E8             | EXTERIOR WALL SCONCE                         |
| E10            | STOREFRONT                                   |
| E13            | GLASS RAILING                                |
| E15            | MESH SCREENING                               |

PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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APPLICANT:  
**BILL SCHRADER**  
 T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 2   | PRELIM APP SB330     | 7/21/21  |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRG MEETING    | 4/11/22  |
| 13  | JUNE LMRK. MEETING   | 5/10/22  |
| 14  | STAFF REVIEW         | 07/01/22 |
| 15  | STAFF REVIEW #2      | 07/13/22 |

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CA VENTURES



1 PRESENTATION-ELEVATION- WEST (HAROLD WAY)  
 A3-001 3/32" = 1'-0"

AREA PROJECTING  
 ACROSS PROPERTY LINE   
 PROJECTING AREA: 5,697 SF  
 TOTAL FACE AREA: 22,996 SF  
 PROJECTING AREA: 24.8%



2 PRESENTATION-ELEVATION- WEST PROJECTION DIAGRAM  
 A3-001 1" = 30'-0"

SHEET TITLE:  
**ELEVATION- WEST (HAROLD WAY)**

SHEET NUMBER:  
**A3-001**

NOT RELEASED FOR CONSTRUCTION

| Keynote Legend |                                              |
|----------------|----------------------------------------------|
| Key Value      | Keynote Text                                 |
| E1             | LIGHT TAN STUCCO                             |
| E2             | CHARCOAL GREY STUCCO                         |
| E3             | DARK TAN STUCCO                              |
| E4             | BRICK                                        |
| E5             | WHITE FIBER CEMENT                           |
| E6             | VINYL WINDOW WITH THERMOFOIL ALUMINUM FINISH |
| E7             | ALUMINUM CANOPY                              |
| E8             | EXTERIOR WALL SCONCE                         |
| E10            | STOREFRONT                                   |
| E12            | ALUMINUM DOOR                                |
| E17            | PARKING GATE                                 |

PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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| No. | Description          | Date     |
|-----|----------------------|----------|
| 2   | PRELIM APP SB330     | 7/21/21  |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRG MEETING    | 4/11/22  |
| 13  | JUNE LMRK. MEETING   | 5/10/22  |
| 14  | STAFF REVIEW         | 07/01/22 |
| 15  | STAFF REVIEW #2      | 07/13/22 |

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CA VENTURES

SHEET TITLE:  
**ELEVATION- SOUTH (KITTREDGE ST.)**

SHEET NUMBER:  
**A3-002**

NOT RELEASED FOR CONSTRUCTION



1 PRESENTATION-ELEVATION- SOUTH (KITTREDGE ST.)  
 A3-002 3/32" = 1'-0"

| Keynote Legend |                      |
|----------------|----------------------|
| Key Value      | Keynote Text         |
| E5             | WHITE FIBER CEMENT   |
| E8             | EXTERIOR WALL SCONCE |
| E10            | STOREFRONT           |
| E13            | GLASS RAILING        |
| E15            | MESH SCREENING       |
| E16            | STONE BREEZE BLOCK   |

PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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 T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 2   | PRELIM APP SB330     | 7/21/21  |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LMRK. MEETING   | 5/10/22  |
| 14  | STAFF REVIEW         | 07/01/22 |
| 15  | STAFF REVIEW #2      | 07/13/22 |

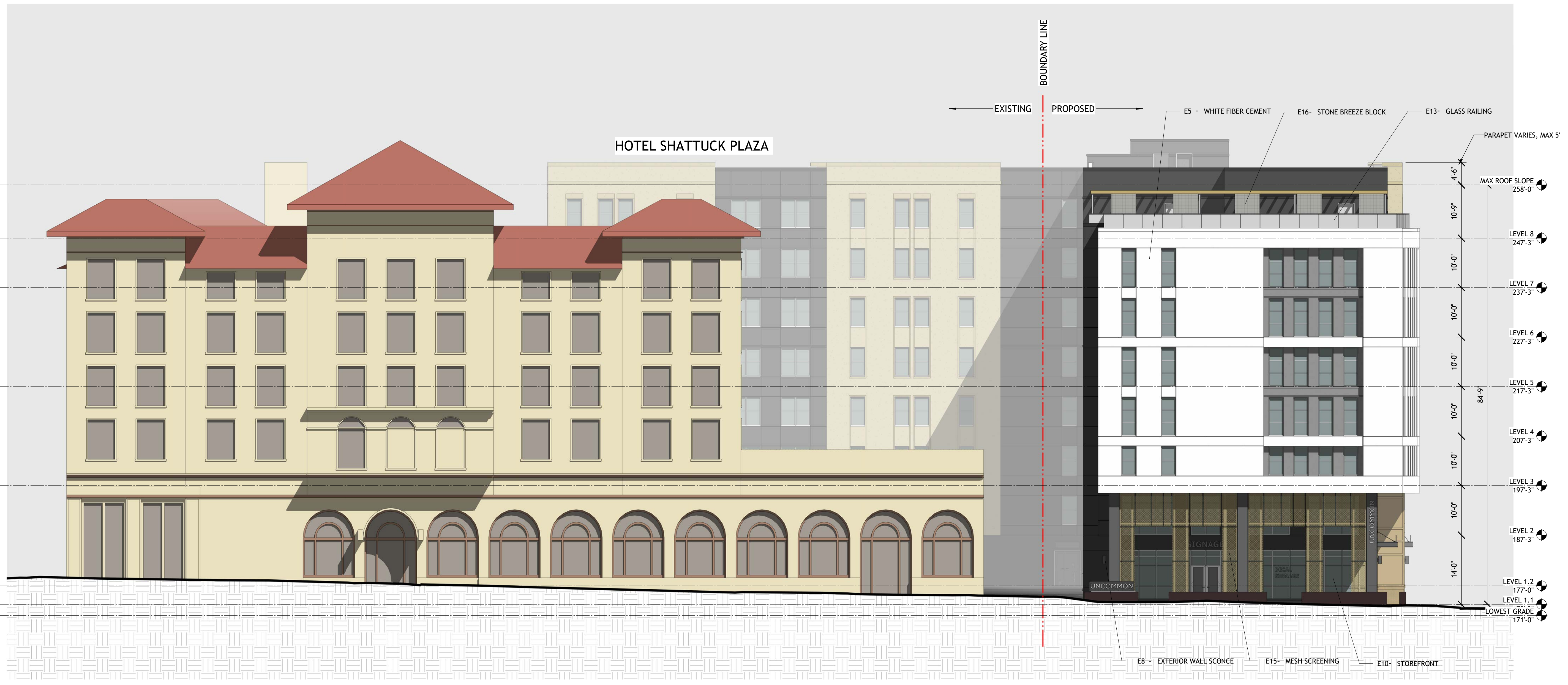
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CA VENTURES

SHEET TITLE:  
**ELEVATION- NORTH (ALLSTON WAY)**

SHEET NUMBER:  
**A3-003**



0 2' 5' 10'

1 PRESENTATION-ELEVATION- NORTH (ALLSTON WAY)  
 A3-003 3/32" = 1'-0"



| Keynote Legend |                                              |
|----------------|----------------------------------------------|
| Key Value      | Keynote Text                                 |
| E1             | LIGHT TAN STUCCO                             |
| E2             | CHARCOAL GREY STUCCO                         |
| E6             | VINYL WINDOW WITH THERMOFOIL ALUMINUM FINISH |
| E12            | ALUMINUM DOOR                                |

PROJECT #: 121246  
 DRAWN BY: Author  
 CHECKED BY: Checker

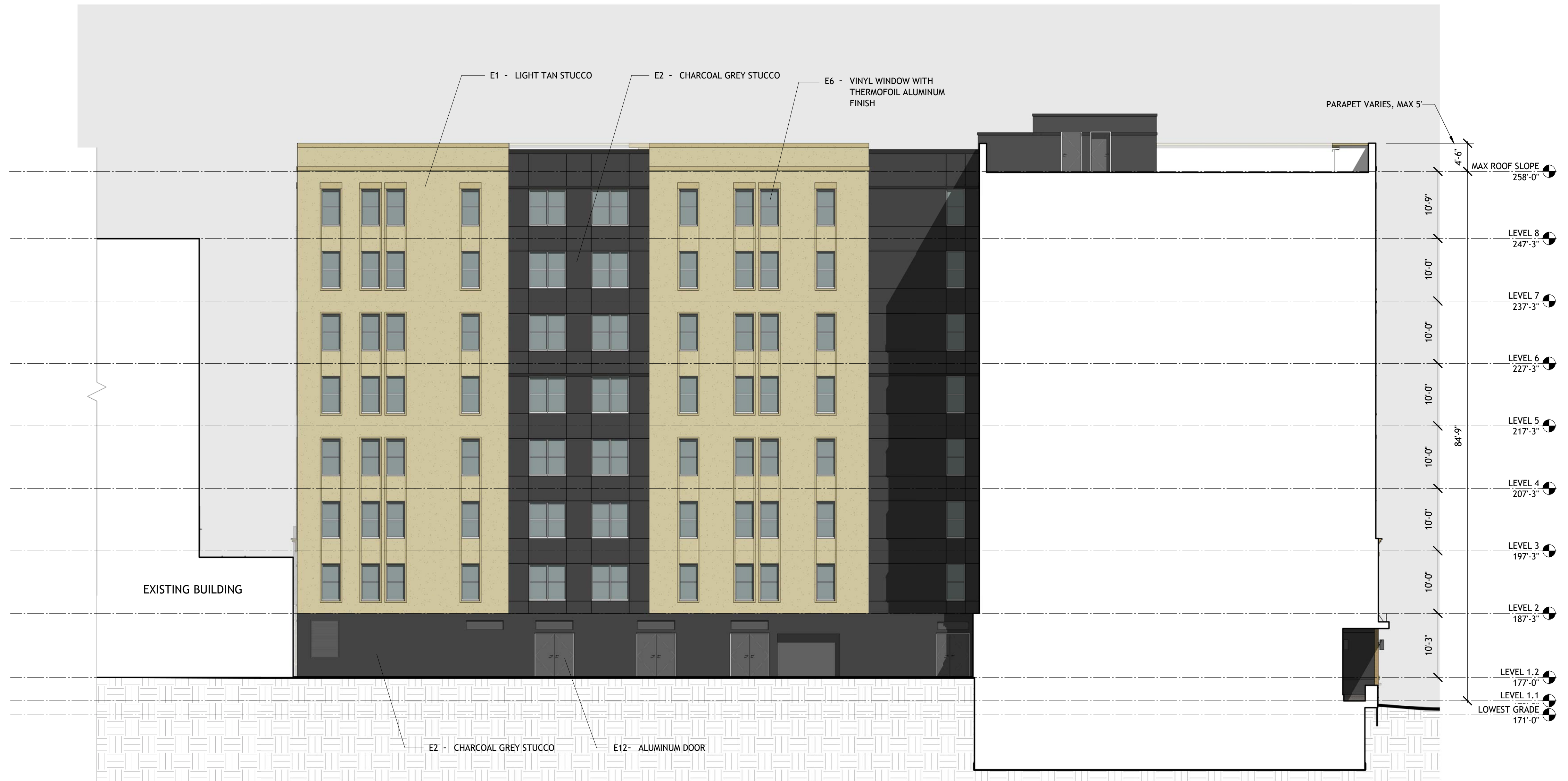
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APPLICANT:  
 BILL SCHRADER  
 T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LMRKS. MEETING  | 5/10/22  |
| 14  | STAFF REVIEW         | 07/01/22 |
| 15  | STAFF REVIEW #2      | 07/13/22 |

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1 PRESENTATION-ELEVATION- NORTH (HIDDEN)  
 A3-004 3/32" = 1'-0"

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 BERKELEY, CA 94704

CA VENTURES

SHEET TITLE:  
 ELEVATION- NORTH  
 (HIDDEN)

SHEET NUMBER:  
**A3-004**

| Keynote Legend |                                              |
|----------------|----------------------------------------------|
| Key Value      | Keynote Text                                 |
| E1             | LIGHT TAN STUCCO                             |
| E2             | CHARCOAL GREY STUCCO                         |
| E3             | DARK TAN STUCCO                              |
| E4             | BRICK                                        |
| E5             | WHITE FIBER CEMENT                           |
| E6             | VINYL WINDOW WITH THERMOFOIL ALUMINUM FINISH |
| E13            | GLASS RAILING                                |
| E14            | GLASS BLOCK                                  |

PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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APPLICANT:  
 BILL SCHRADER  
 T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 2   | PRELIM APP SB330     | 7/21/21  |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRG MEETING    | 4/11/22  |
| 13  | JUNE LMRK'S MEETING  | 5/10/22  |
| 14  | STAFF REVIEW         | 07/01/22 |
| 15  | STAFF REVIEW #2      | 07/13/22 |

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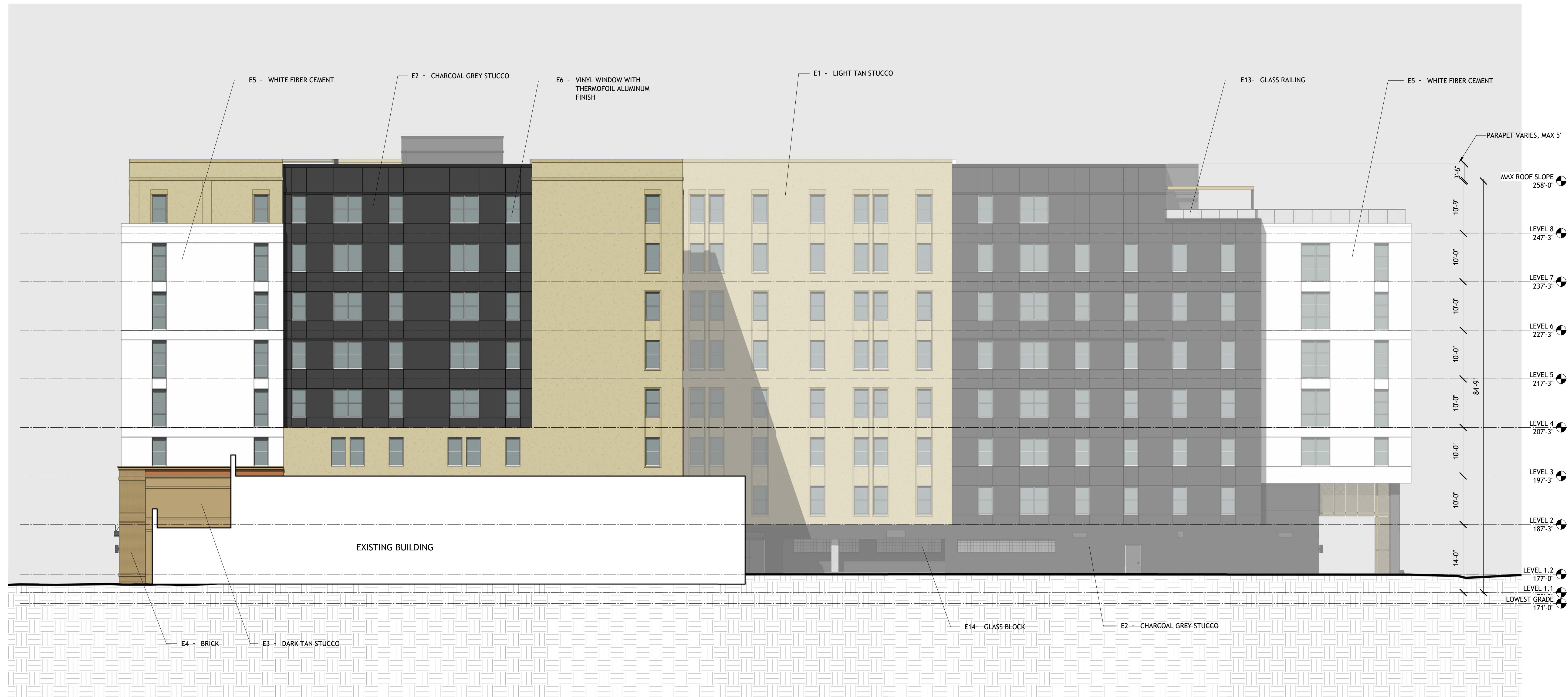
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 BERKELEY, CA 94704

CA VENTURES

SHEET TITLE:  
**ELEVATION- EAST (HIDDEN)**

SHEET NUMBER:  
**A3-005**

NOT RELEASED FOR CONSTRUCTION



1 PRESENTATION-ELEVATION- EAST (HIDDEN)  
 A3-005 3/32" = 1'-0"



1 PROPOSED ELEVATION - SOUTH ENLARGED (KITTREDGE ST.)  
A3-006 1/8" = 1'-0"

- NEW RECESSED ALCOVE TO PROVIDE ELECTRICAL ROOM ACCESS
- CROWD MOULDING TO EXTEND AROUND CORNER
- METAL DOOR, PAINT TO MATCH STUCCO
- CHARCOAL STUCCO

FACADE ALTERATIONS SCOPE ASSOCIATED WITH THE EXISTING BUILDING TO REMAIN IS LIMITED TO:

- 1) REMOVING THE EGRESS STAIRS SHOWN IN PHOTO 4/A0-001 - A NEW EGRESS STAIR IS PROVIDED TO MAINTAIN THE EXITING FROM THE ELEVATED LEVELS AS ILLUSTRATED ON THE OVERALL SITE PLAN AND THE ENLARGED PLAN DIAGRAMS ON SHEET A1-201.
- 2) PROVIDING AN ALCOVE TO ACCESS THE NEW ELECTRICAL ROOM AS SHOWN ABOVE. THE EXISTING ELECTRICAL ROOM IS CURRENTLY LOCATED WITHIN THE AREA TO BE DEMOLISHED AND NEEDS TO BE RELOCATED.

PROJECT #: 121246  
DRAWN BY: Author  
CHECKED BY: Checker

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APPLICANT:  
BILL SCHRADER  
T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 8   | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LMRKS. MEETING  | 5/10/22  |
| 15  | STAFF REVIEW #2      | 07/13/22 |

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CA STUDENT LIVING BERKELEY, LLC

SHEET TITLE:  
**ELEVATION - SOUTH ENLARGED (KITTREDGE ST.)**

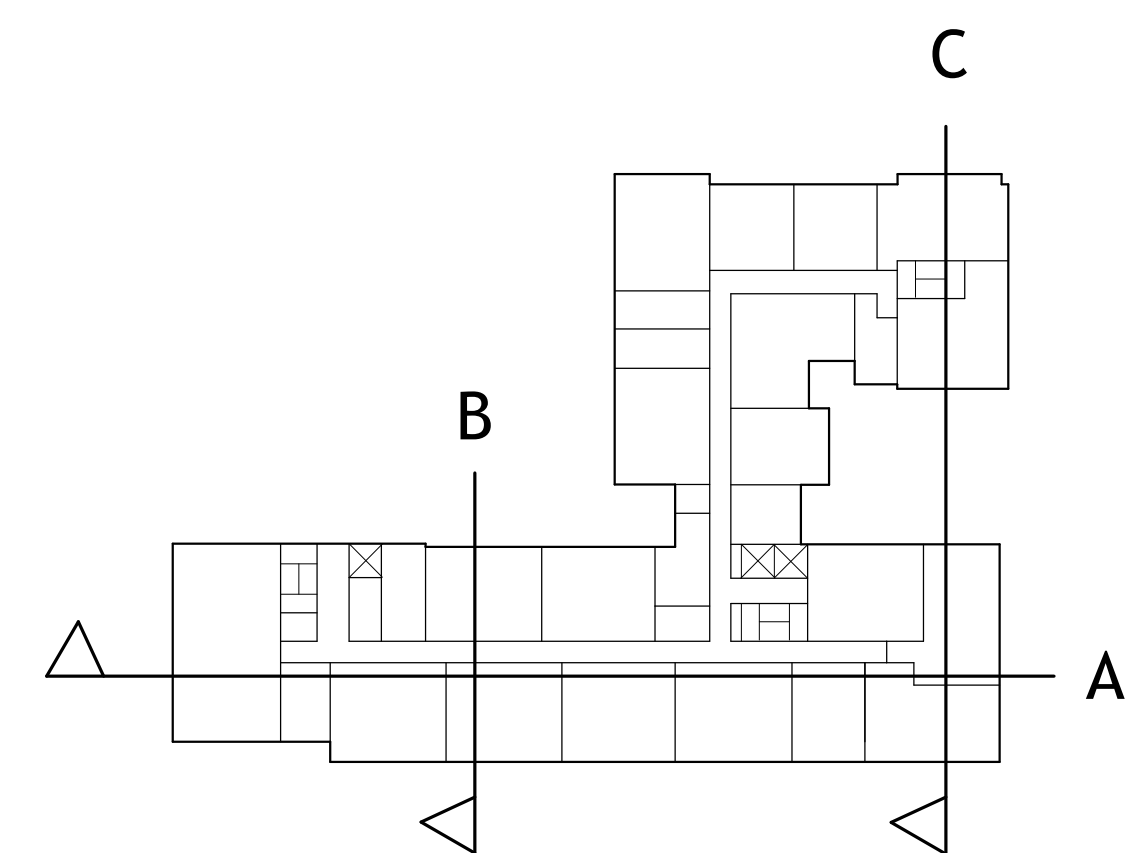
SHEET NUMBER:  
**A3-006**

NOT RELEASED FOR CONSTRUCTION



0 2'-8" 5'-4" 10'-8"

1 BUILDING SECTION A - ZONING  
A3-101 3/32" = 1'-0"



SECTION KEYPLAN  
NOT TO SCALE

PROJECT #: 121246  
DRAWN BY: TF  
CHECKED BY: MM

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APPLICANT:  
BILL SCHRADER  
T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
| 6   | SAP                  | 12/22/21 |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LWRKS. MEETING  | 5/10/22  |

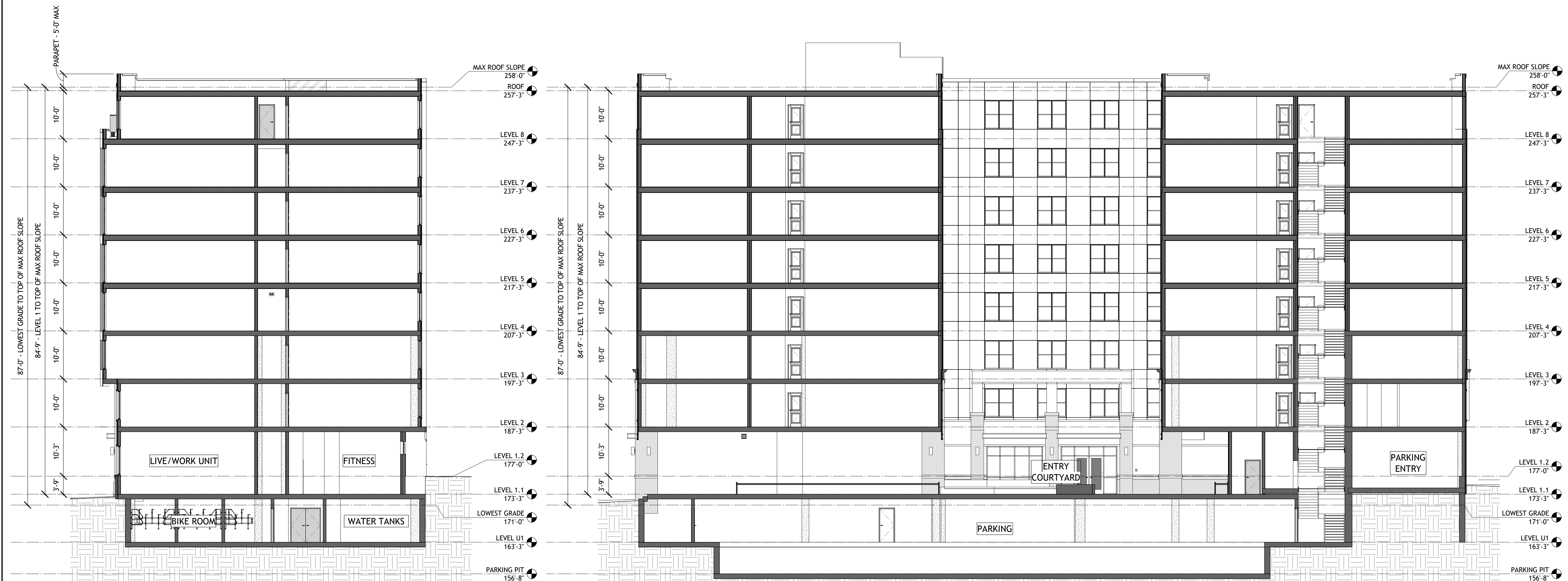
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CA VENTURES

SHEET TITLE:  
**BUILDING SECTION**

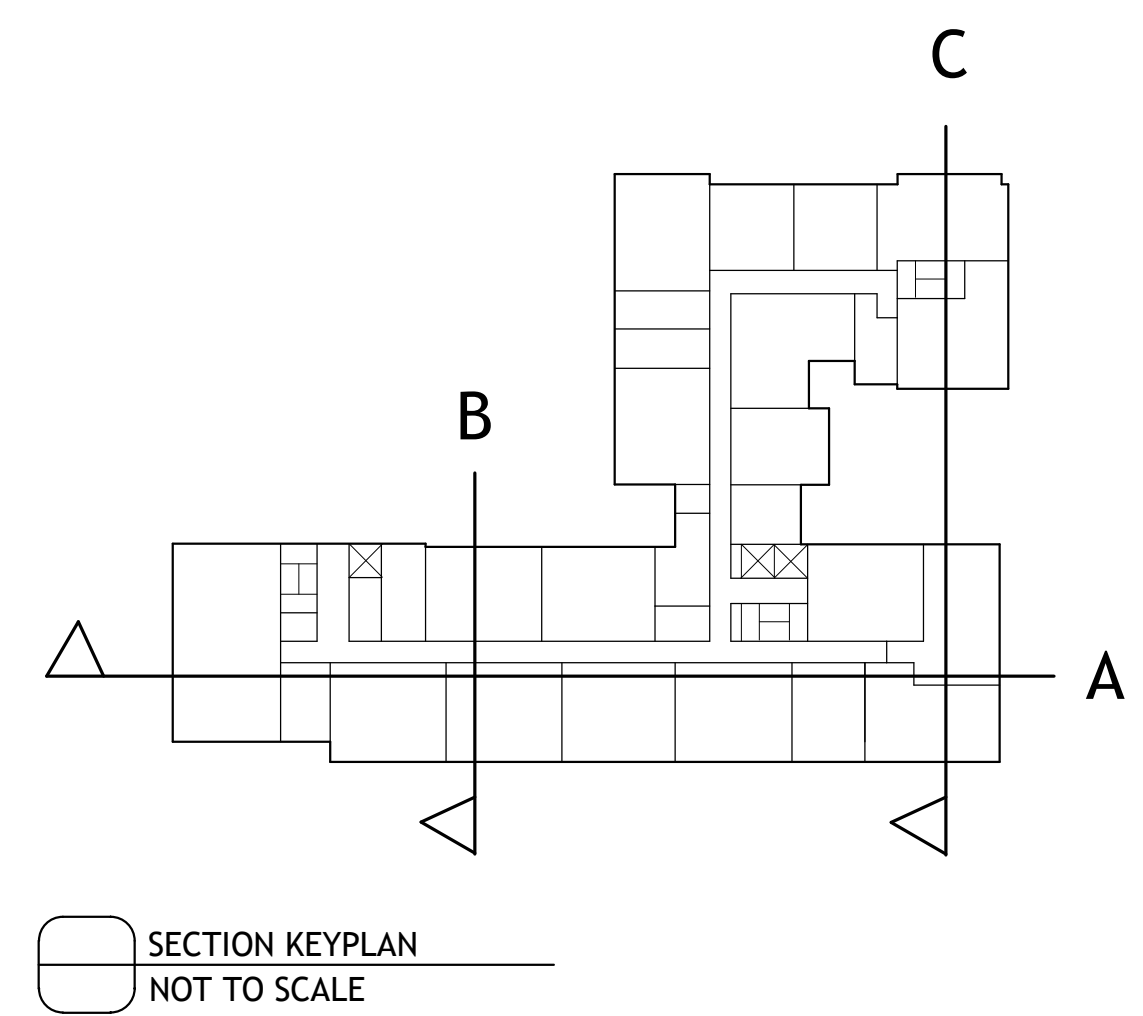
SHEET NUMBER:  
**A3-101**

NOT RELEASED FOR CONSTRUCTION



1 BUILDING SECTION B - ZONING  
 A3-102 3/32" = 1'-0"

2 BUILDING SECTION C - ZONING  
 A3-102 3/32" = 1'-0"



PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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APPLICANT:  
 BILL SCHRADER  
 T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 6   | SAP                  | 12/22/21 |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LRWS. MEETING   | 5/10/22  |

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SHEET TITLE:  
 BUILDING SECTION

SHEET NUMBER:  
**A3-102**

NOT RELEASED FOR CONSTRUCTION



1 PERSPECTIVE - KITTREDGE ST AND HAROLD WAY CORNER  
A3-201 NOT TO SCALE



2 PERSPECTIVE - KITTREDGE ST RETAIL SPACE  
A3-201 NOT TO SCALE



3 PERSPECTIVE - PERSPECTIVE - KITTREDGE ST PLAZA AND RETAIL  
A3-201 NOT TO SCALE



4 PERSPECTIVE - PERSPECTIVE - KITTREDGE ST PLAZA AND RETAIL  
A3-201 NOT TO SCALE

PROJECT #: 121246  
DRAWN BY: TF, RK  
CHECKED BY: MM

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APPLICANT:  
BILL SCHRADER  
T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 2   | PRELIM APP 58330     | 7/21/21  |
| 3   | SD SET               | 9/16/21  |
| 4   | USE PERMIT           | 10/25/21 |
| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
| 6   | SAP                  | 12/22/21 |
| 8   | USE PERMIT RESUBMIT. | 3/17/22  |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
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| 14  | STAFF REVIEW         | 07/01/22 |
| 15  | STAFF REVIEW #2      | 07/13/22 |

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CA VENTURES

SHEET TITLE:  
**PERSPECTIVES**

SHEET NUMBER:  
**A3-201**



1 PERSPECTIVE - HAROLD WAY LIVE/WORK UNIT ENTRIES  
A3-202 NOT TO SCALE



2 PERSPECTIVE - NORTH WEST CORNER AERIAL  
A3-202 NOT TO SCALE



3 PERSPECTIVE - ALLSTON WAY AND HAROLD WAY RETAIL ENTRY  
A3-202 NOT TO SCALE



4 PERSPECTIVE - ALLSTON WAY AND HAROLD WAY CORNER  
A3-202 NOT TO SCALE

PROJECT #: 121246  
DRAWN BY: TF, RK  
CHECKED BY: MM

**NILES BOLTON ASSOCIATES**

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Suite 600  
Atlanta, GA 30305  
T 404 365 7600  
www.nilesbolton.com

APPLICANT:  
BILL SCHRADER  
T 925 638 8782

| No. | Description          | Date    |
|-----|----------------------|---------|
| 8   | USE PERMIT RESUBMIT. | 3/17/22 |
| 9   | SAP RESUBMIT.        | 3/23/22 |
| 11  | USE PERMIT RESUBMIT. | 3/28/22 |
| 12  | APRIL DRC MEETING    | 4/11/22 |
| 13  | JUNE LWRKS. MEETING  | 5/10/22 |

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**BERKELEY PLAZA**  
2065 KITTREDGE ST  
BERKELEY, CA 94704

CA VENTURES

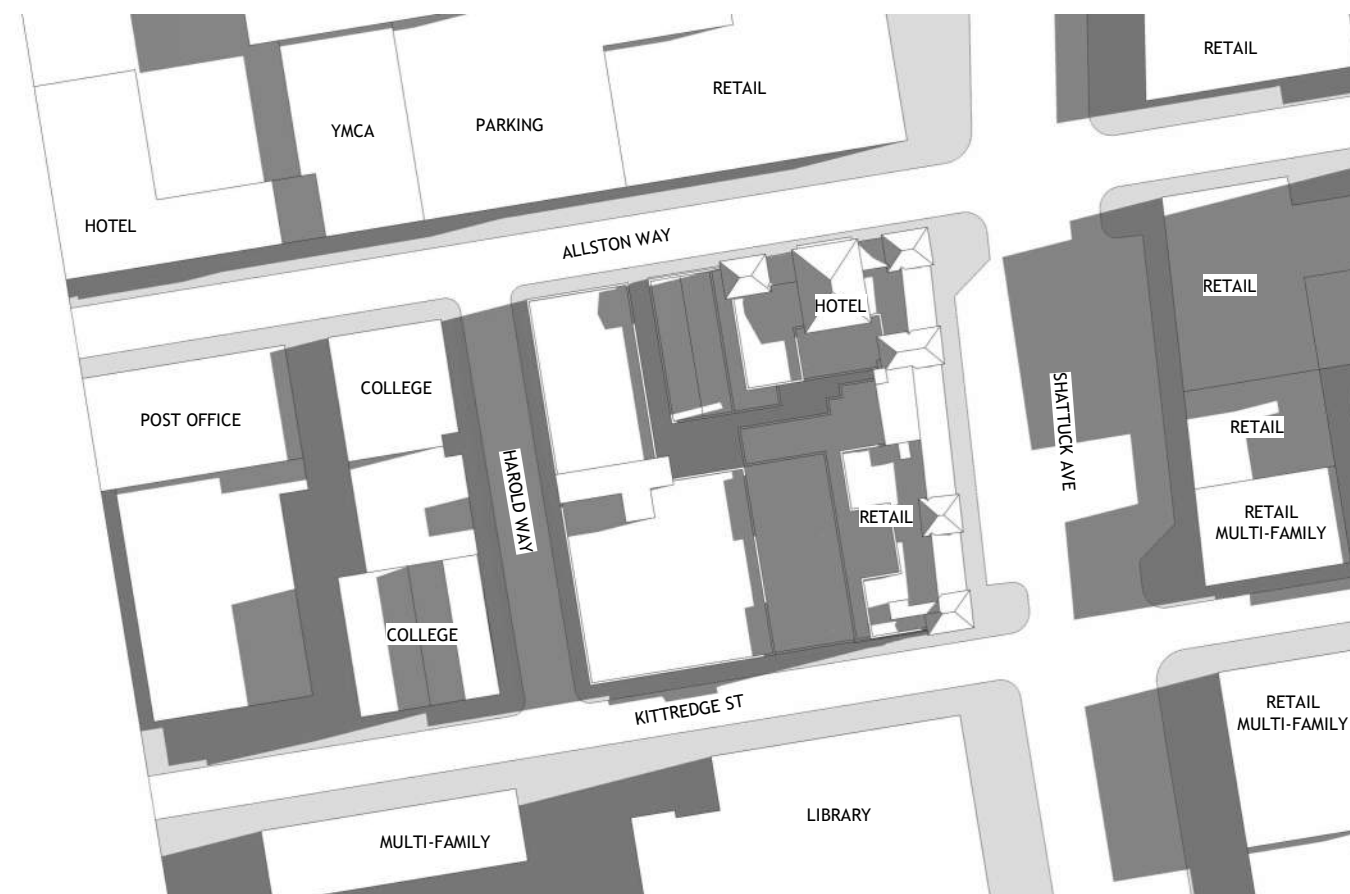
SHEET TITLE:  
**PERSPECTIVES**

SHEET NUMBER:  
**A3-202**

NEW SHADOWS FROM PROPOSED PROJECT SHOWN IN RED

# JUNE 21 MORNING

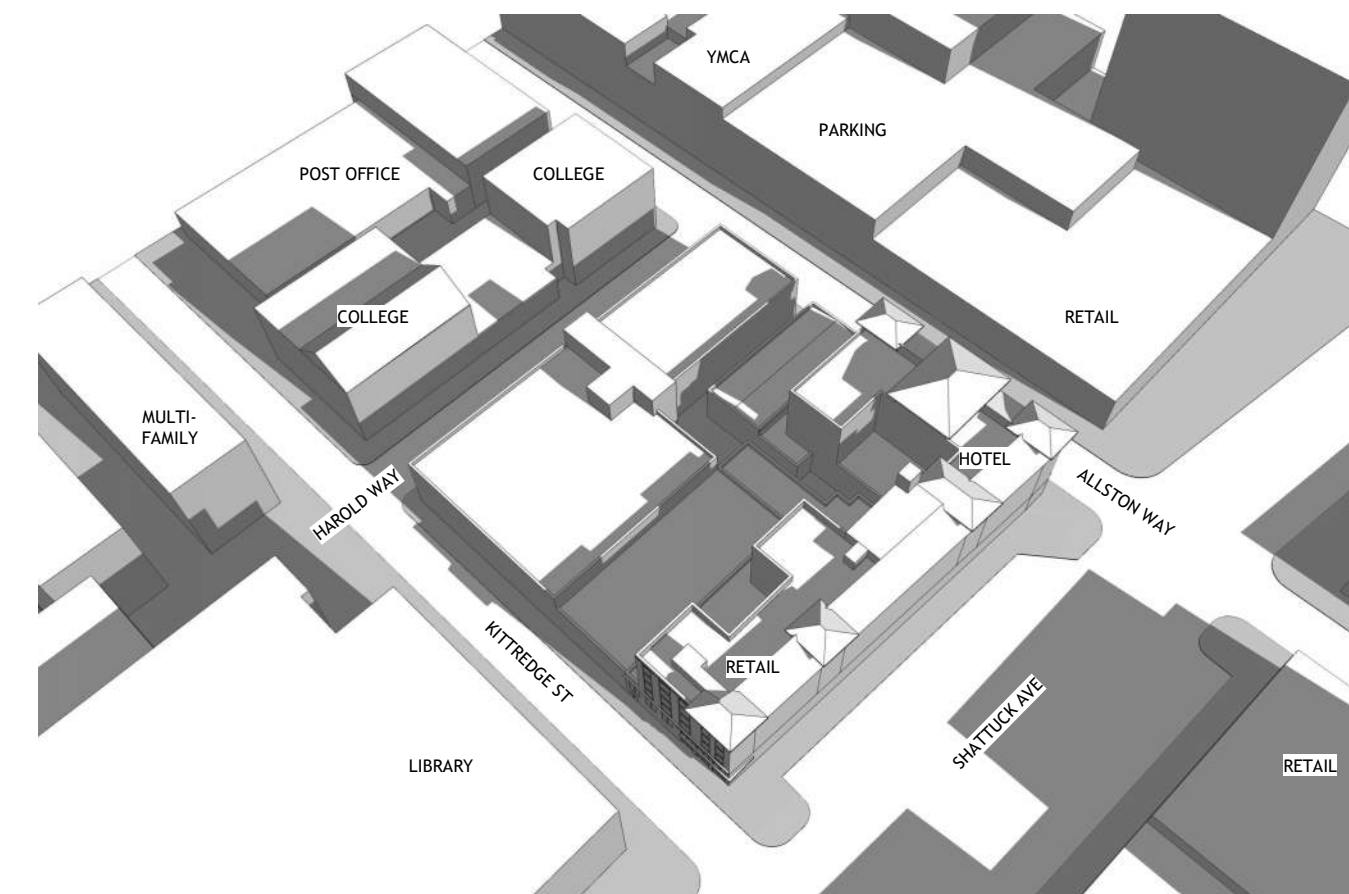
2 HOURS AFTER SUNRISE - 7:47 AM



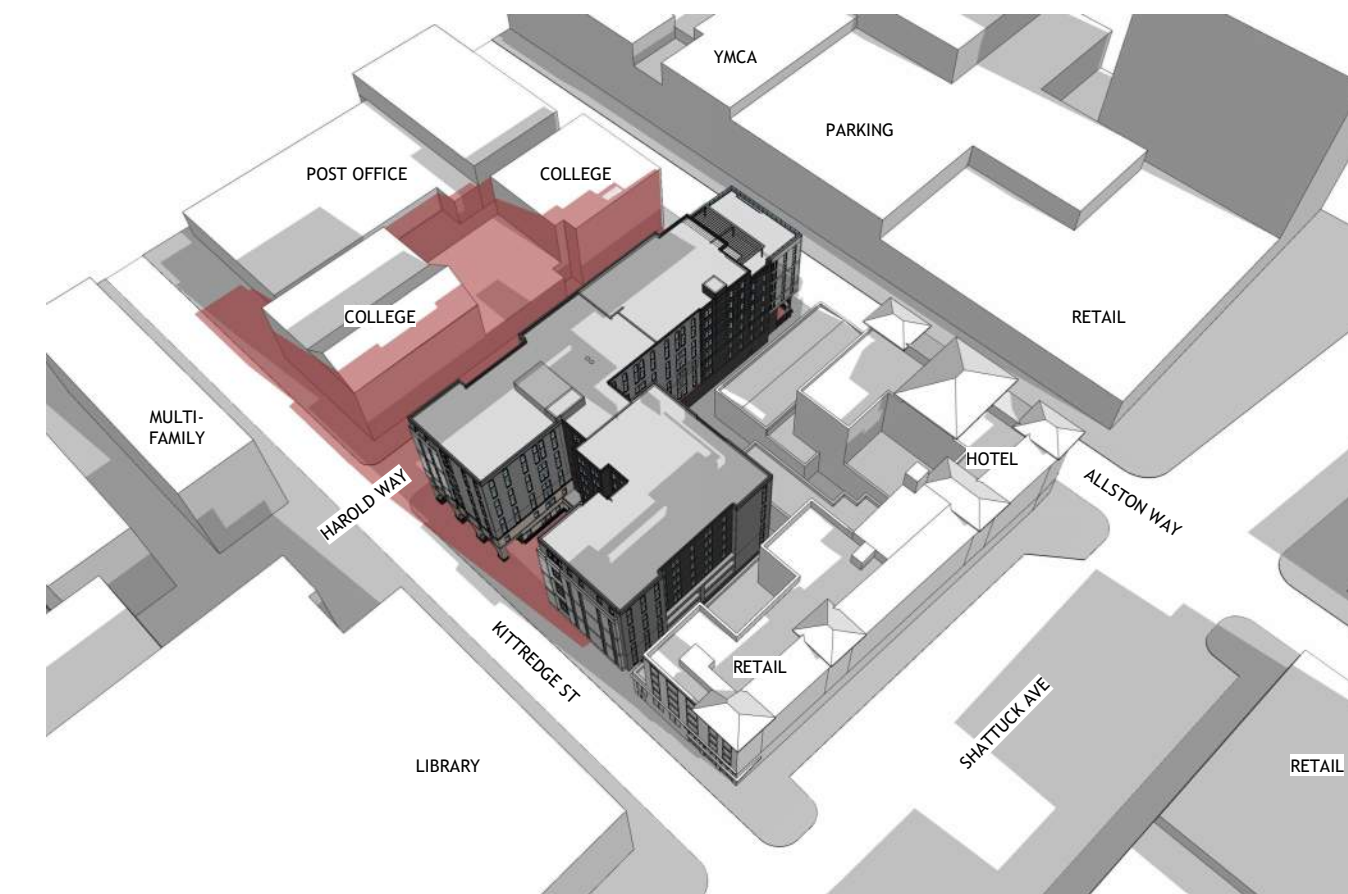
TOP VIEW EXISTING



TOP VIEW PROPOSED



ANGLE VIEW EXISTING

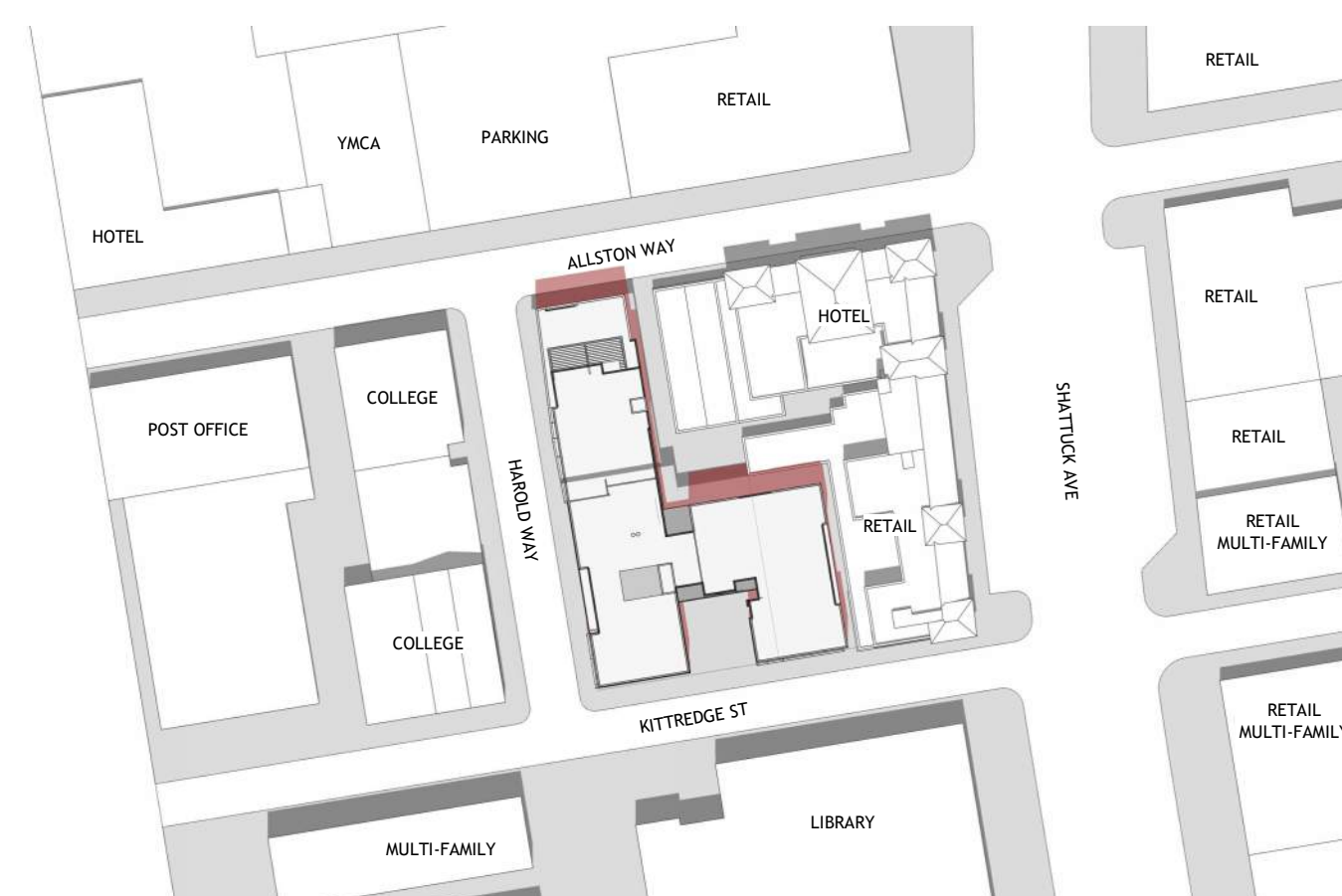


ANGLE VIEW PROPOSED

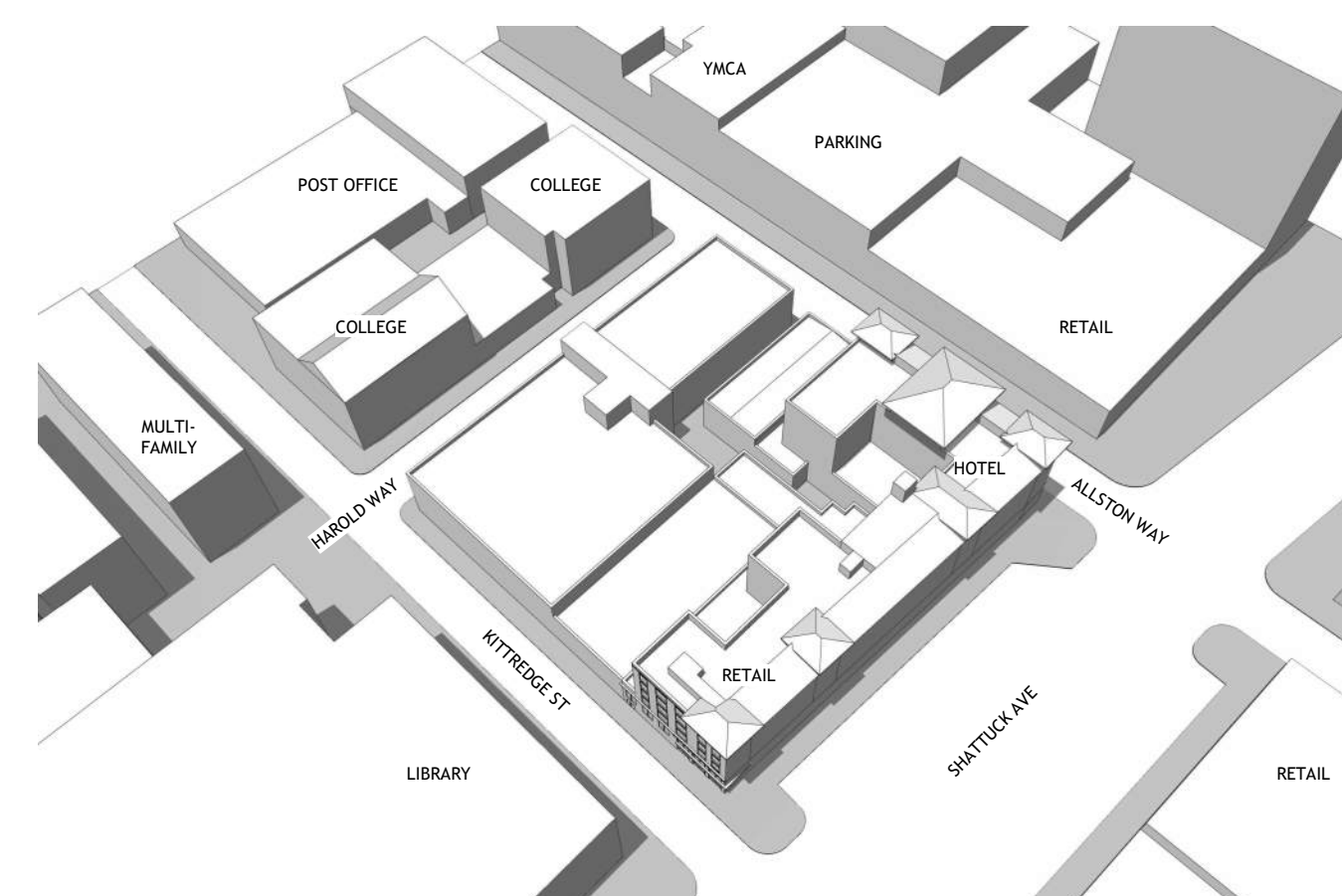
# JUNE 21 NOON



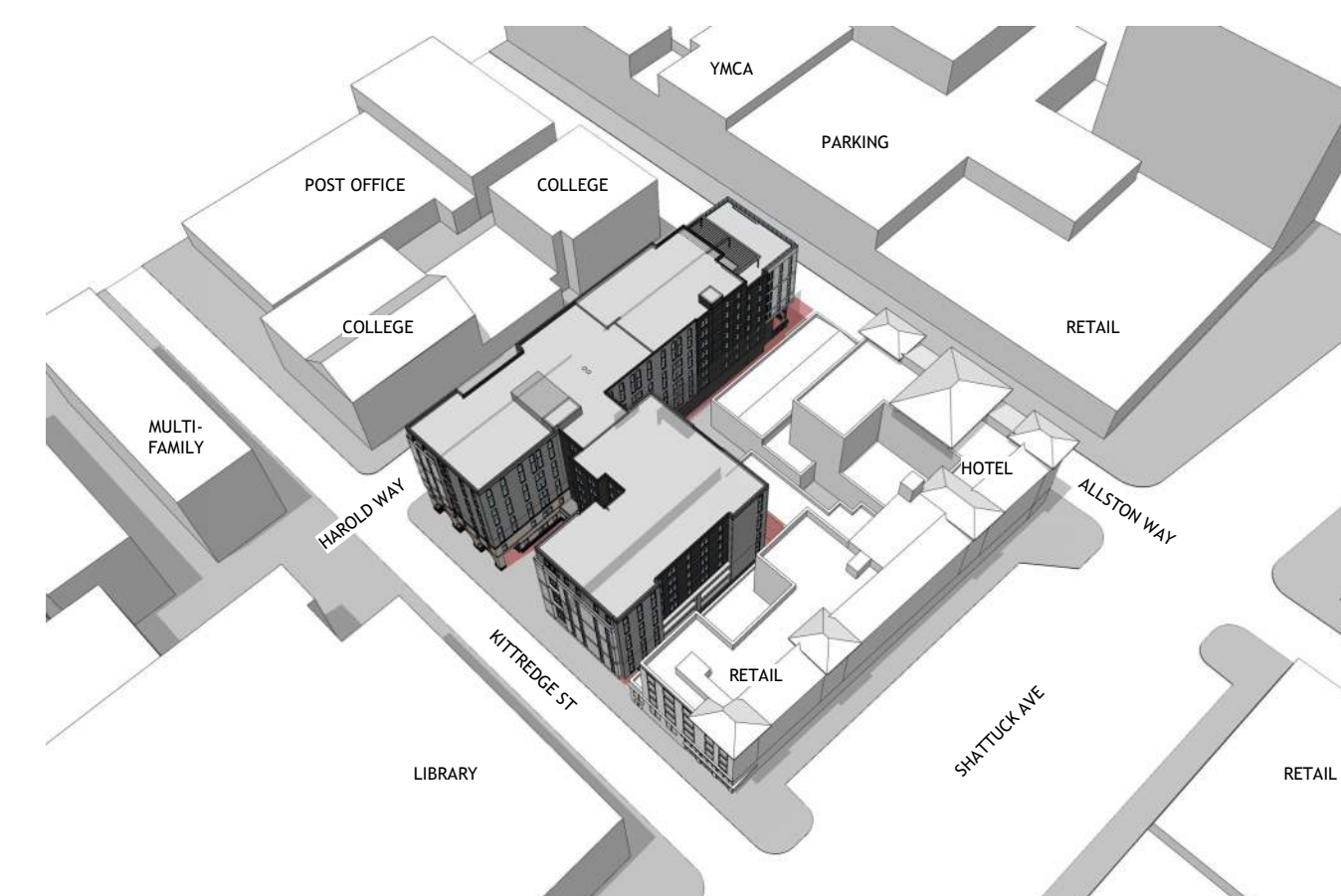
TOP VIEW EXISTING



TOP VIEW PROPOSED



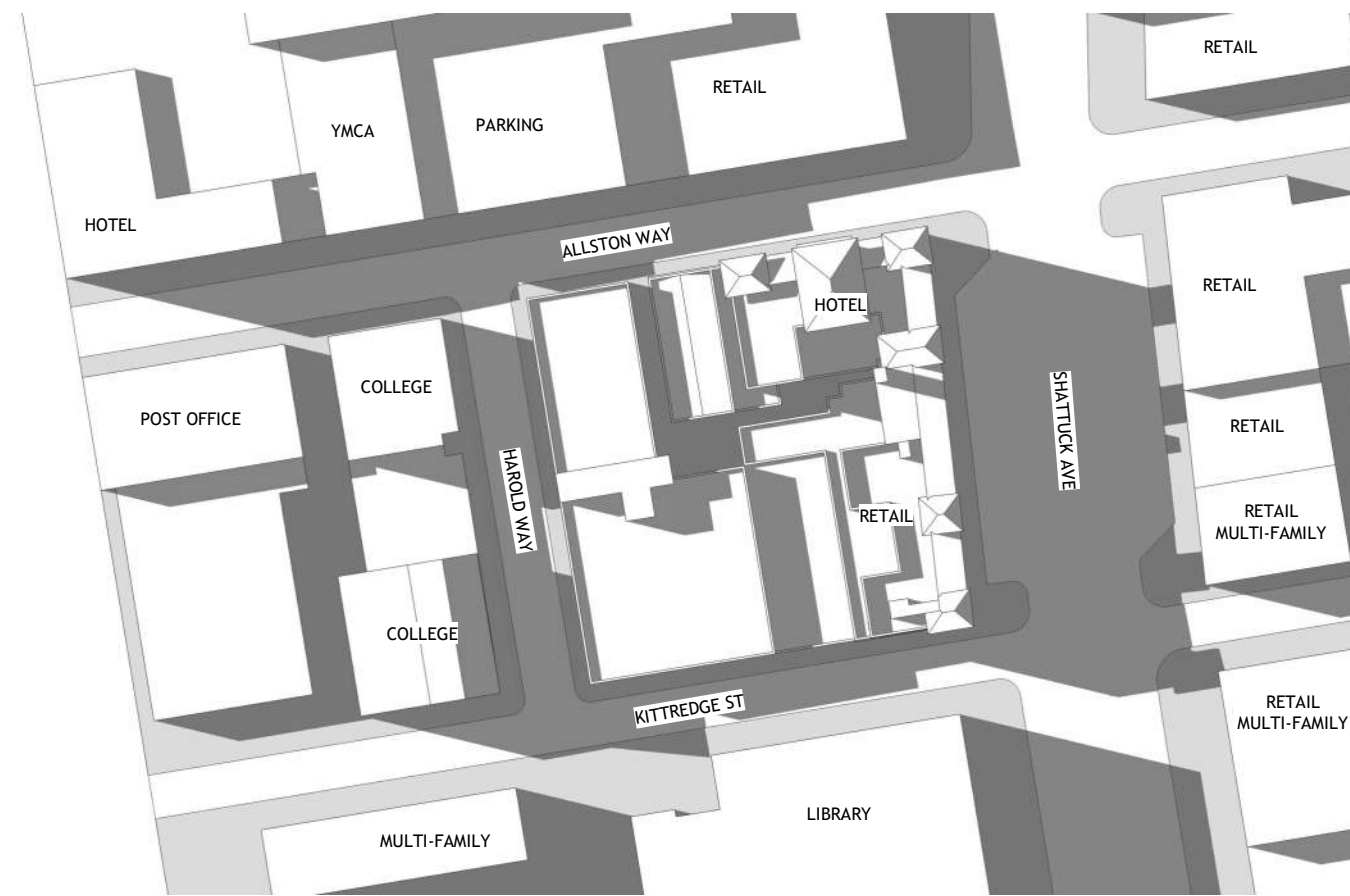
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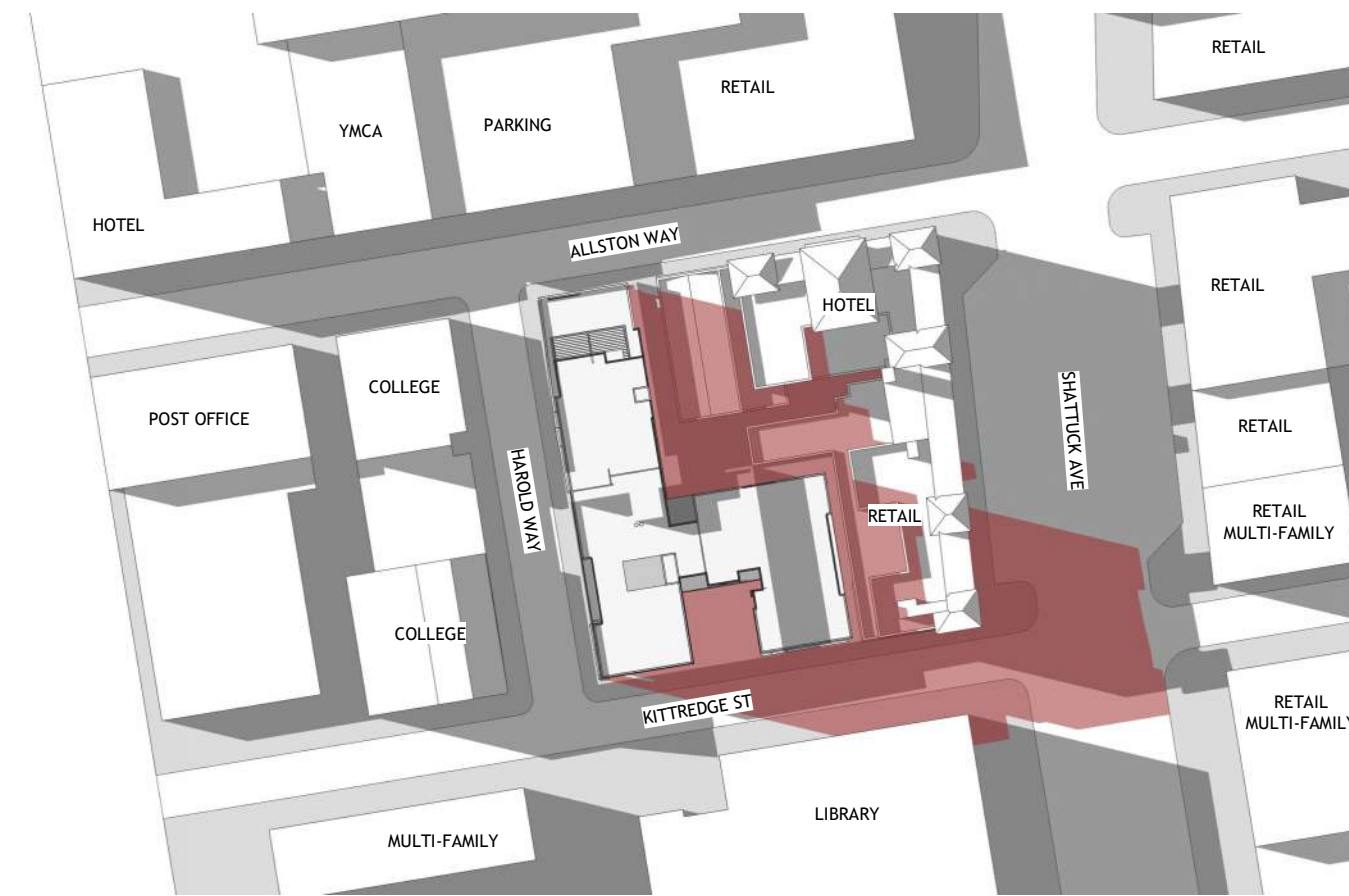
ANGLE VIEW PROPOSED

# JUNE 21 EVENING

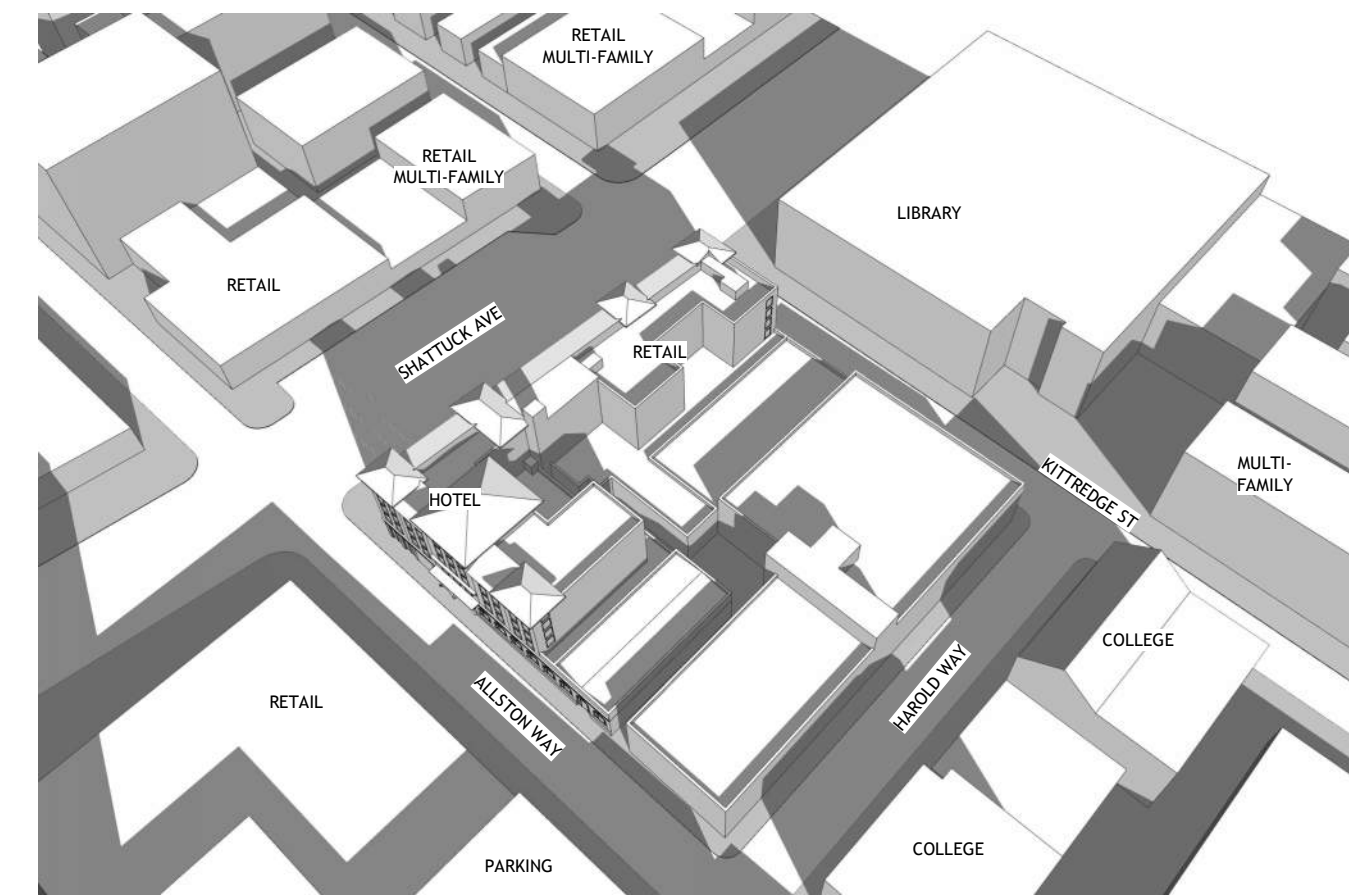
2 HOURS BEFORE SUNSET - 6:34 PM



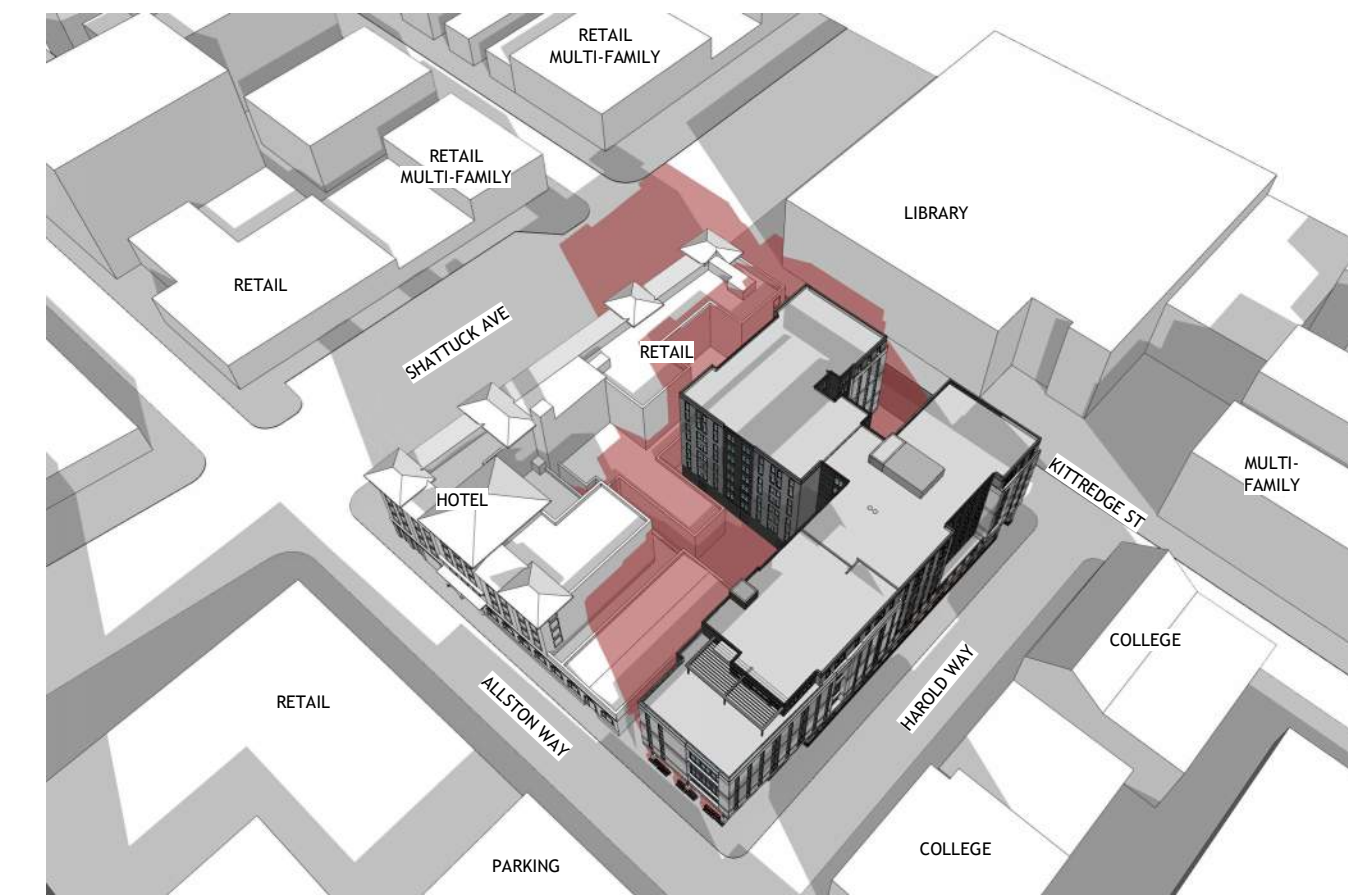
TOP VIEW EXISTING



TOP VIEW PROPOSED



ANGLE VIEW EXISTING



ANGLE VIEW PROPOSED

PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

**NILES BOLTON ASSOCIATES**

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APPLICANT:  
 BILL SCHRADER  
 T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
| 4   | USE PERMIT           | 10/25/21 |
| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
| 6   | SAP                  | 12/22/21 |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 12  | APRIL DRG MEETING    | 4/11/22  |
| 13  | JUNE LRKRS. MEETING  | 5/10/22  |

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**BERKELEY PLAZA**  
 2065 KITTRIDGE ST  
 BERKELEY, CA 94704

CA VENTURES

SHEET TITLE:  
 SHADOW STUDIES -  
 JUNE 21

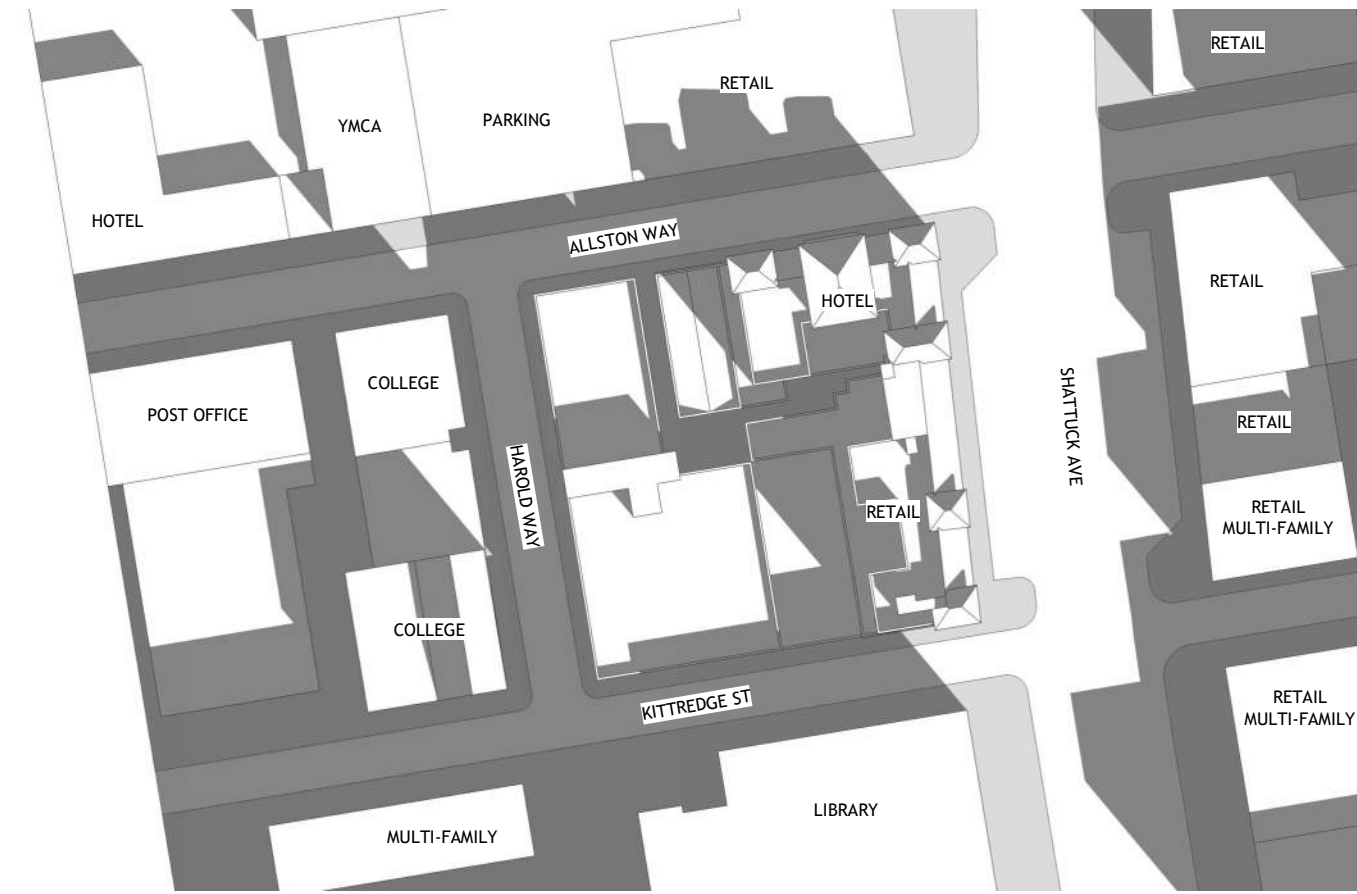
SHEET NUMBER:  
**A3-301**



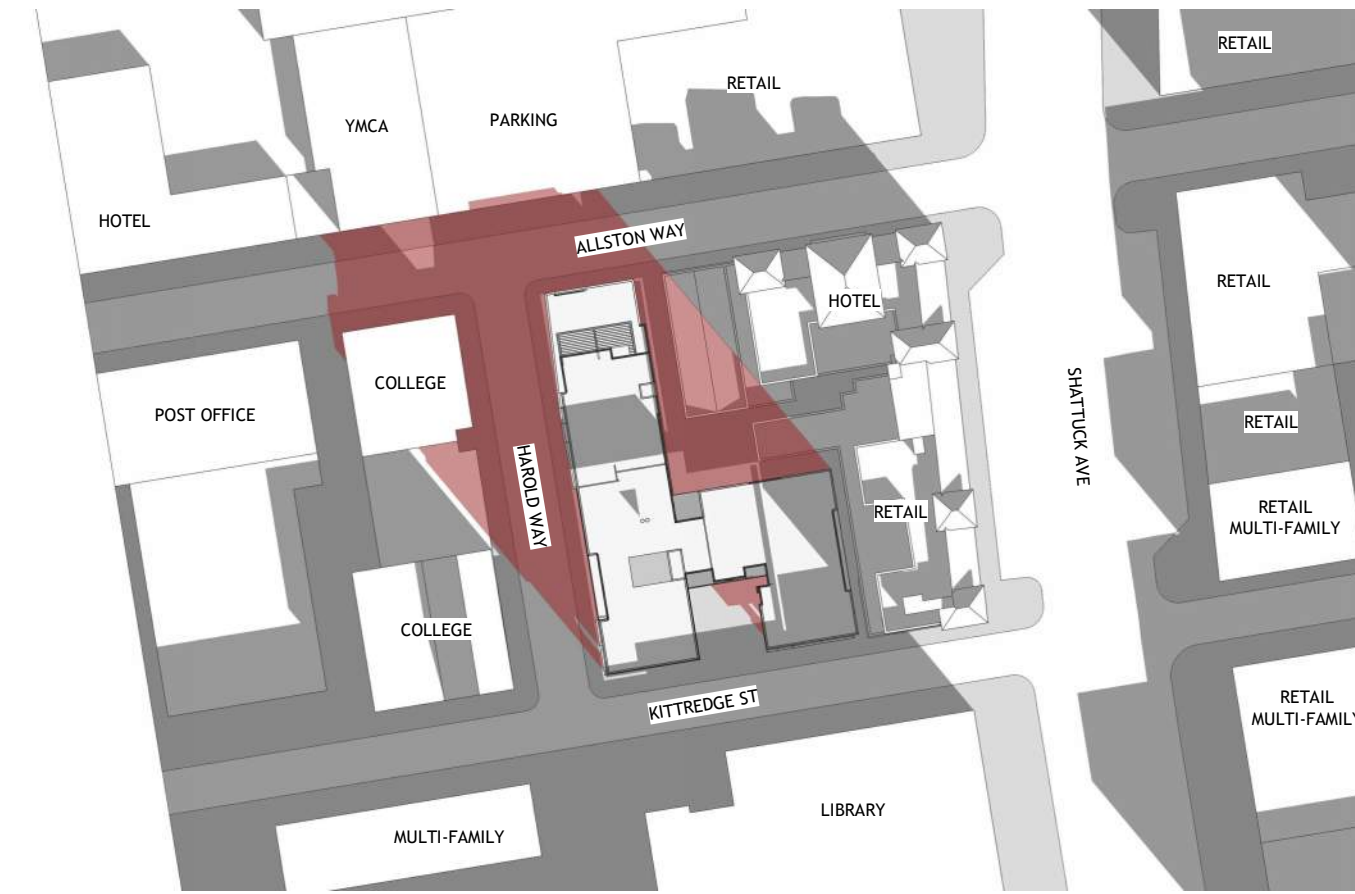
NEW SHADOWS FROM PROPOSED PROJECT SHOWN IN RED

# DECEMBER 21 MORNING

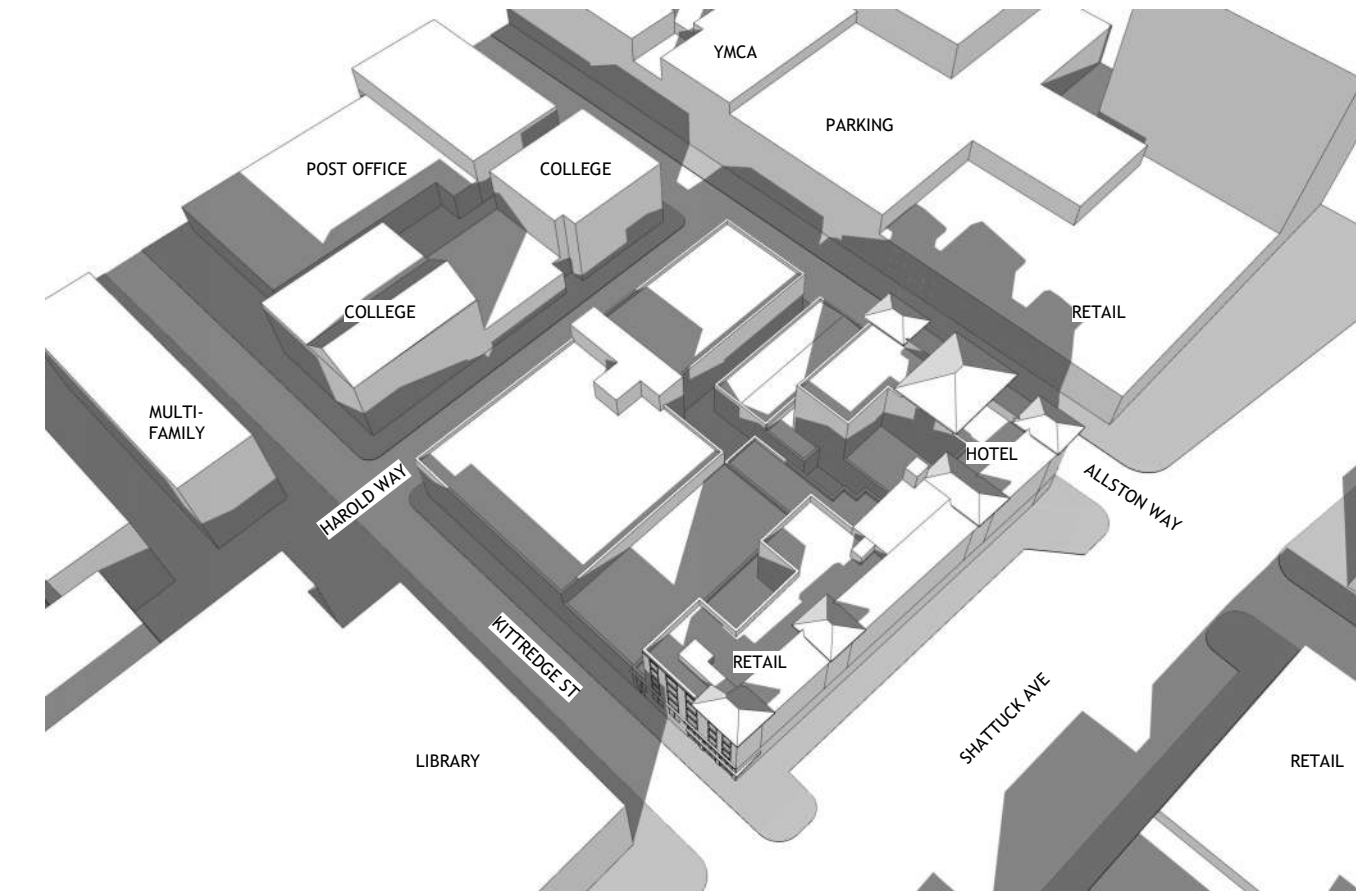
2 HOURS AFTER SUNRISE - 9:21 AM



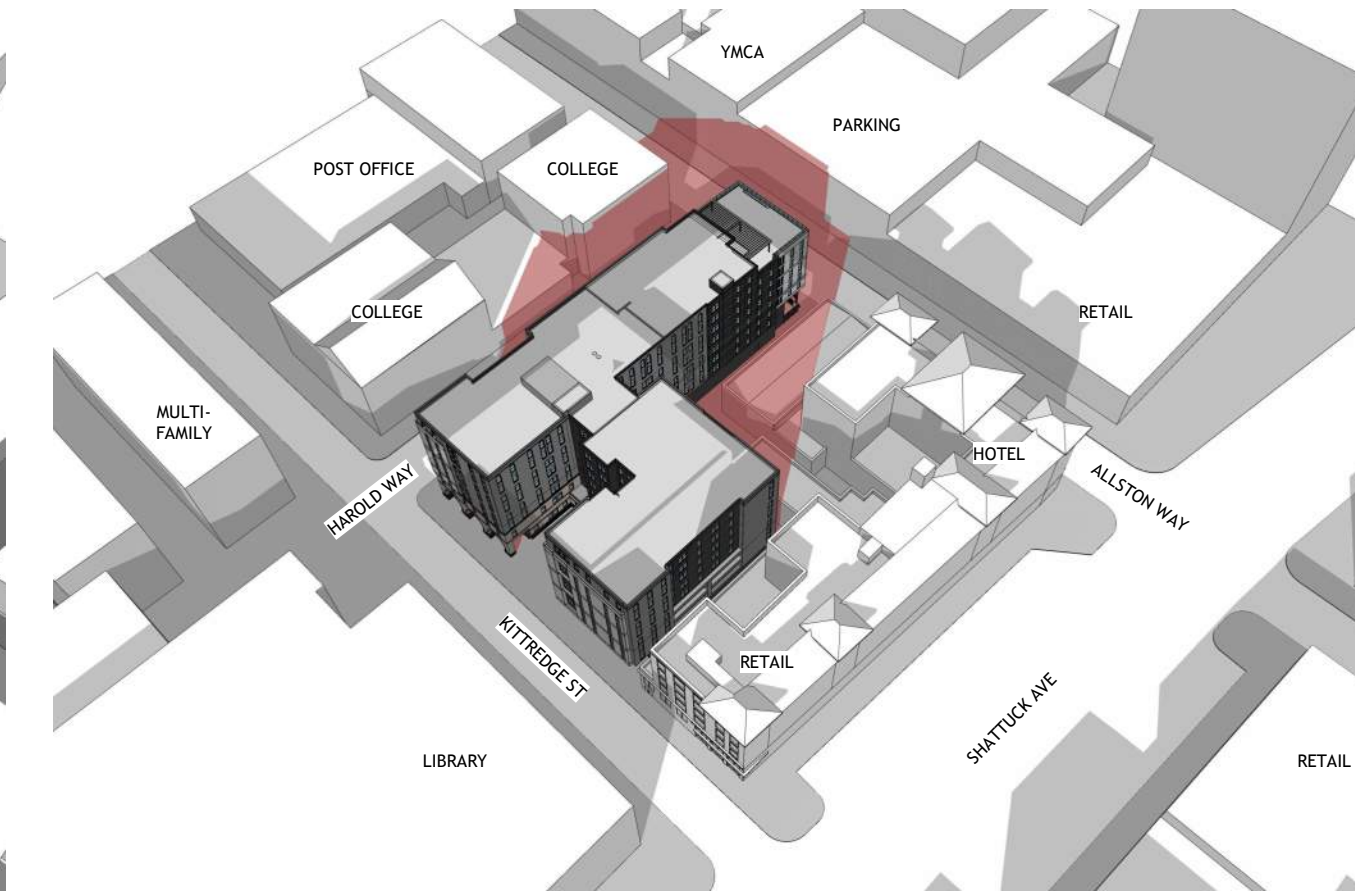
TOP VIEW EXISTING



TOP VIEW PROPOSED



ANGLE VIEW EXISTING



ANGLE VIEW PROPOSED

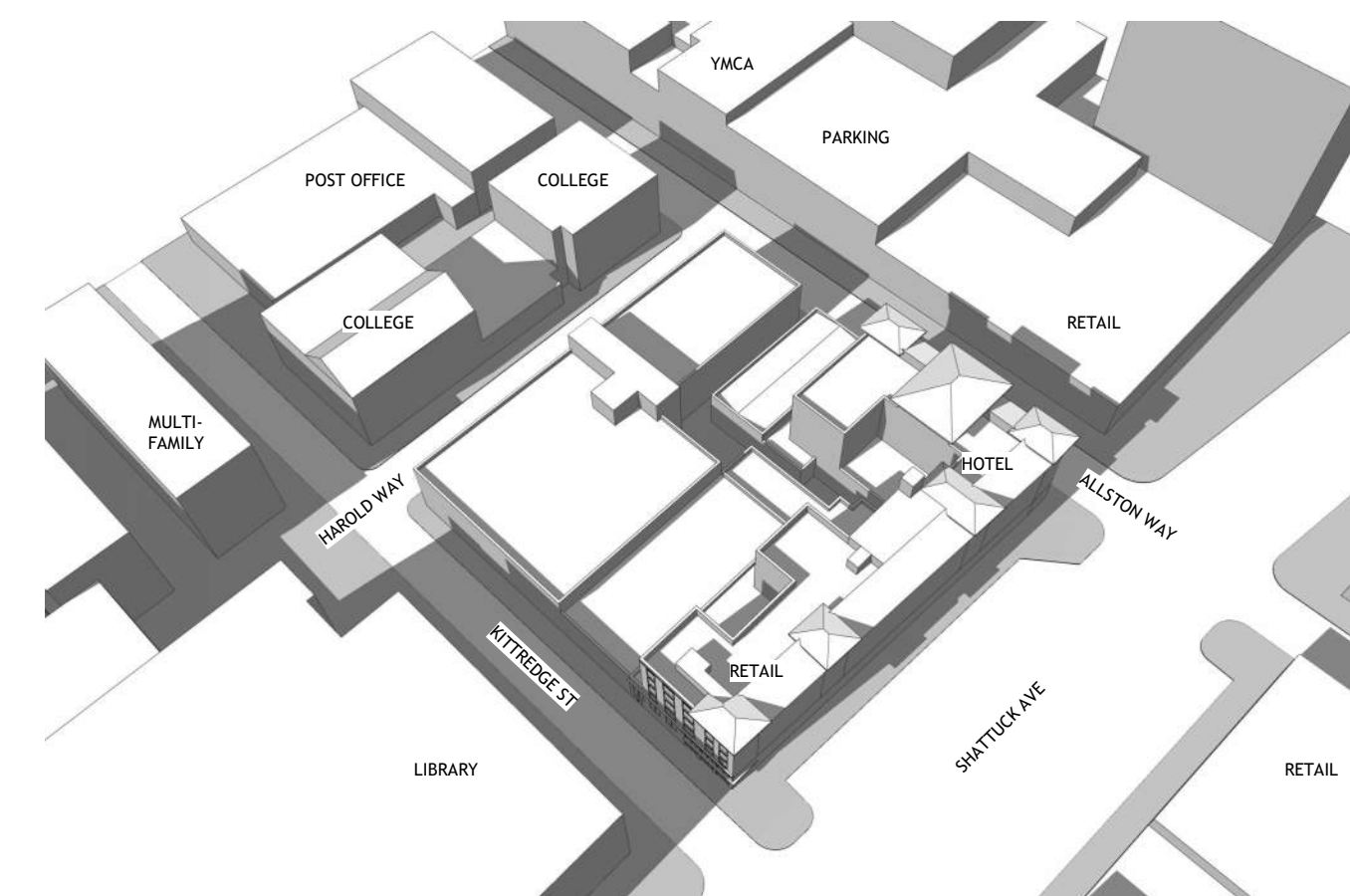
# DECEMBER 21 NOON



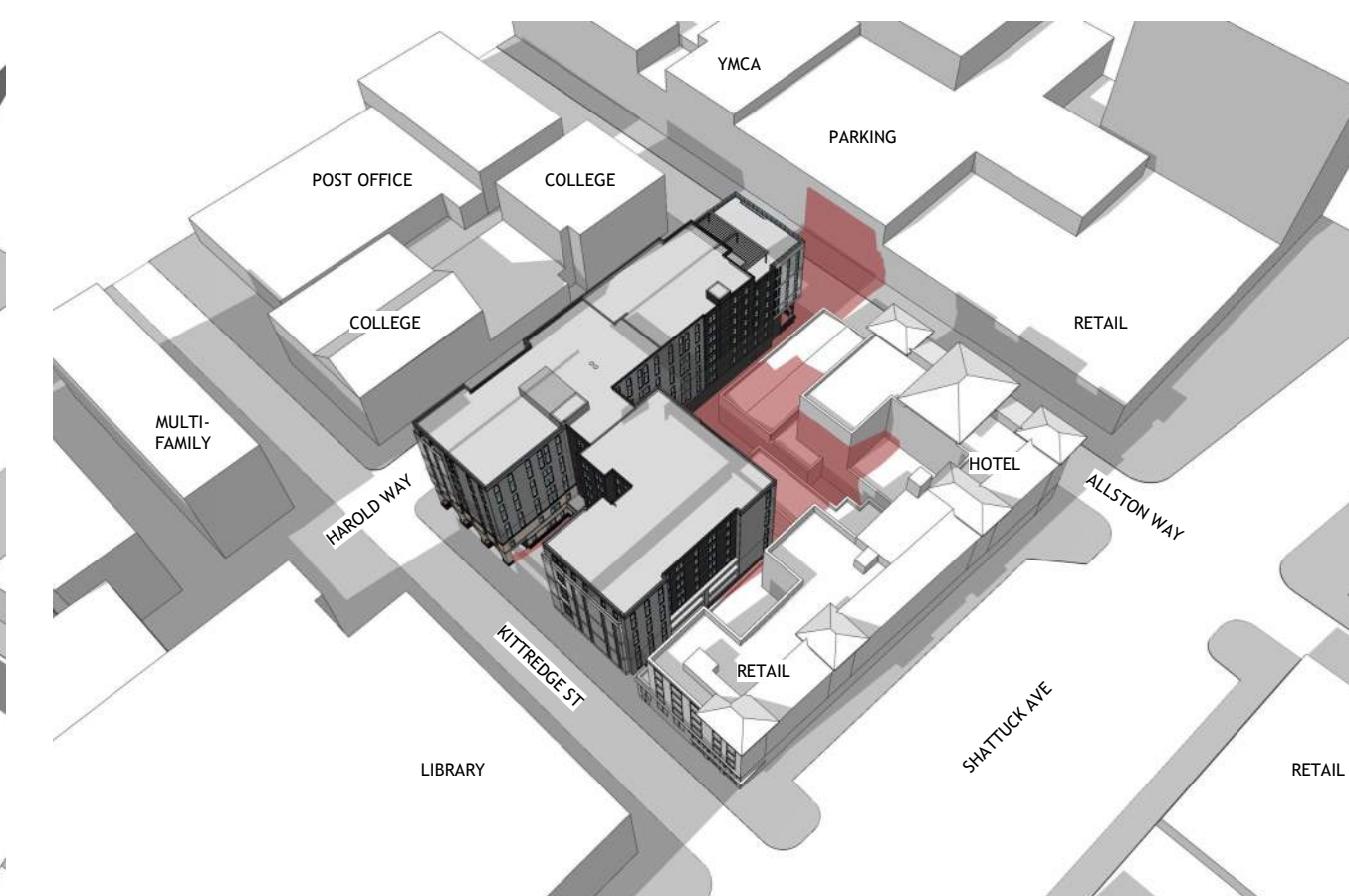
TOP VIEW EXISTING



TOP VIEW PROPOSED



ANGLE VIEW EXISTING



ANGLE VIEW PROPOSED

# DECEMBER 21 EVENING

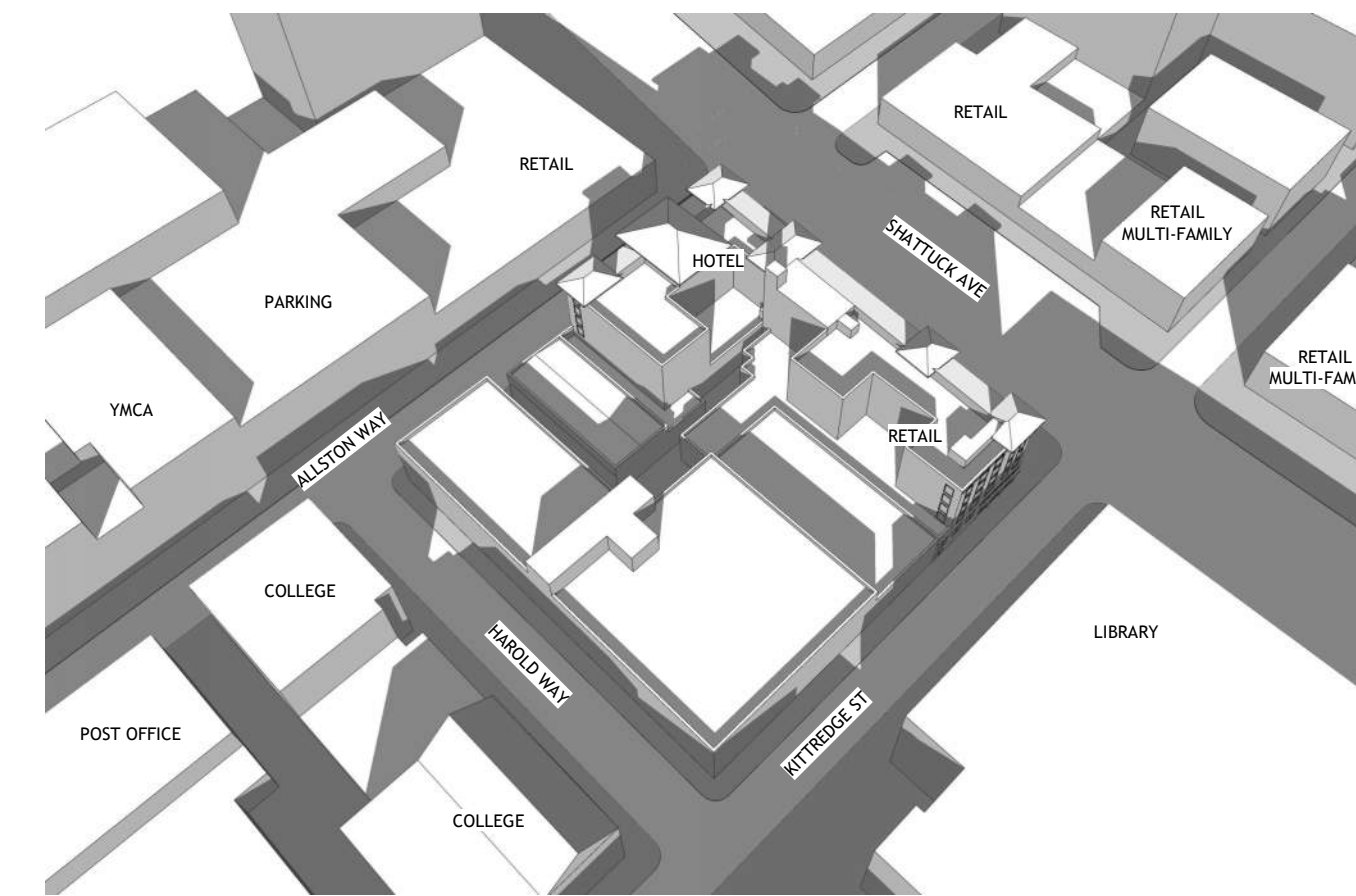
2 HOURS BEFORE SUNSET - 2:53 PM



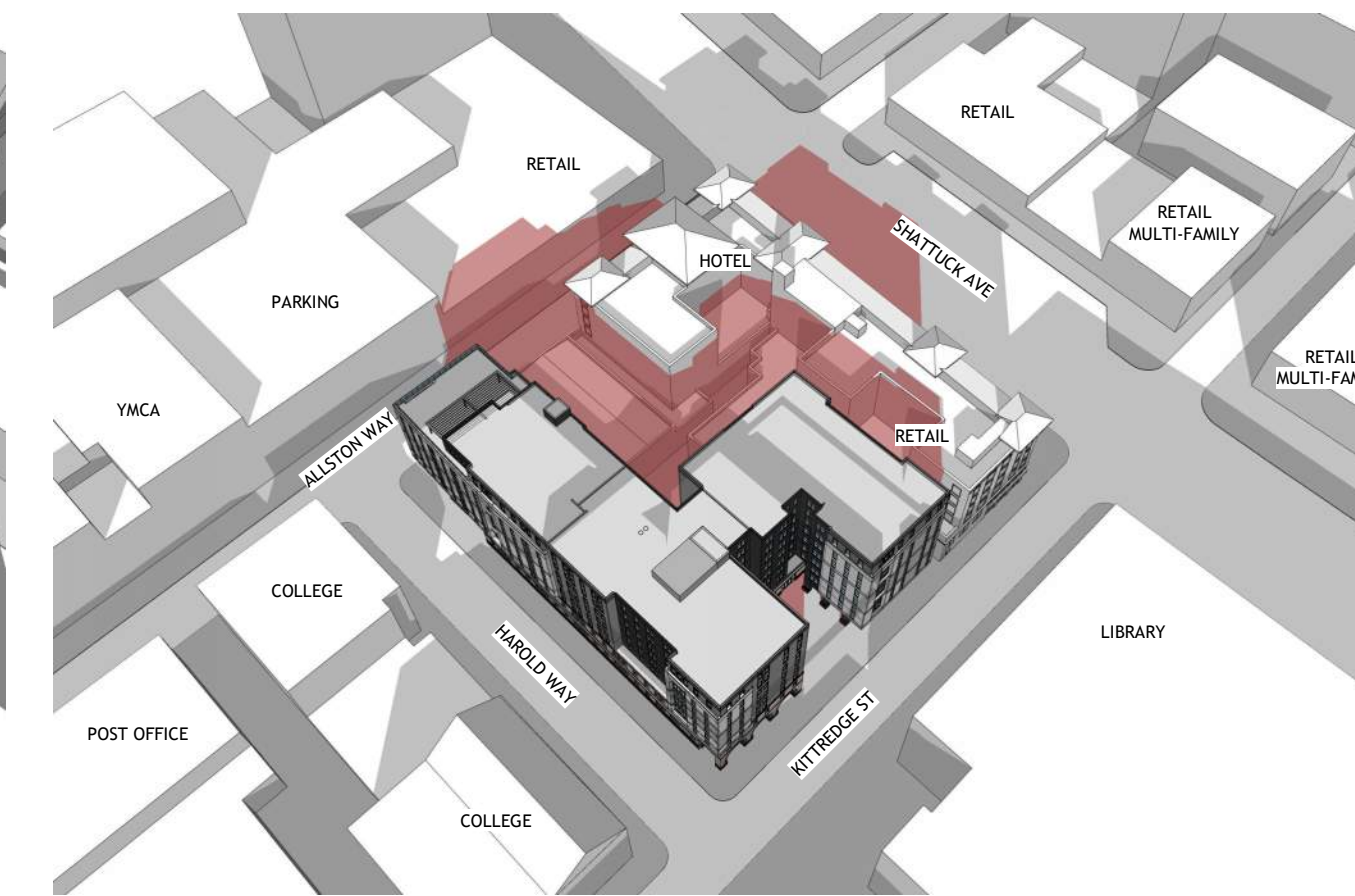
TOP VIEW EXISTING



TOP VIEW PROPOSED



ANGLE VIEW EXISTING



ANGLE VIEW PROPOSED

PROJECT #: 121246  
DRAWN BY: TF  
CHECKED BY: MM

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|-----|----------------------|----------|
| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
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CA VENTURES

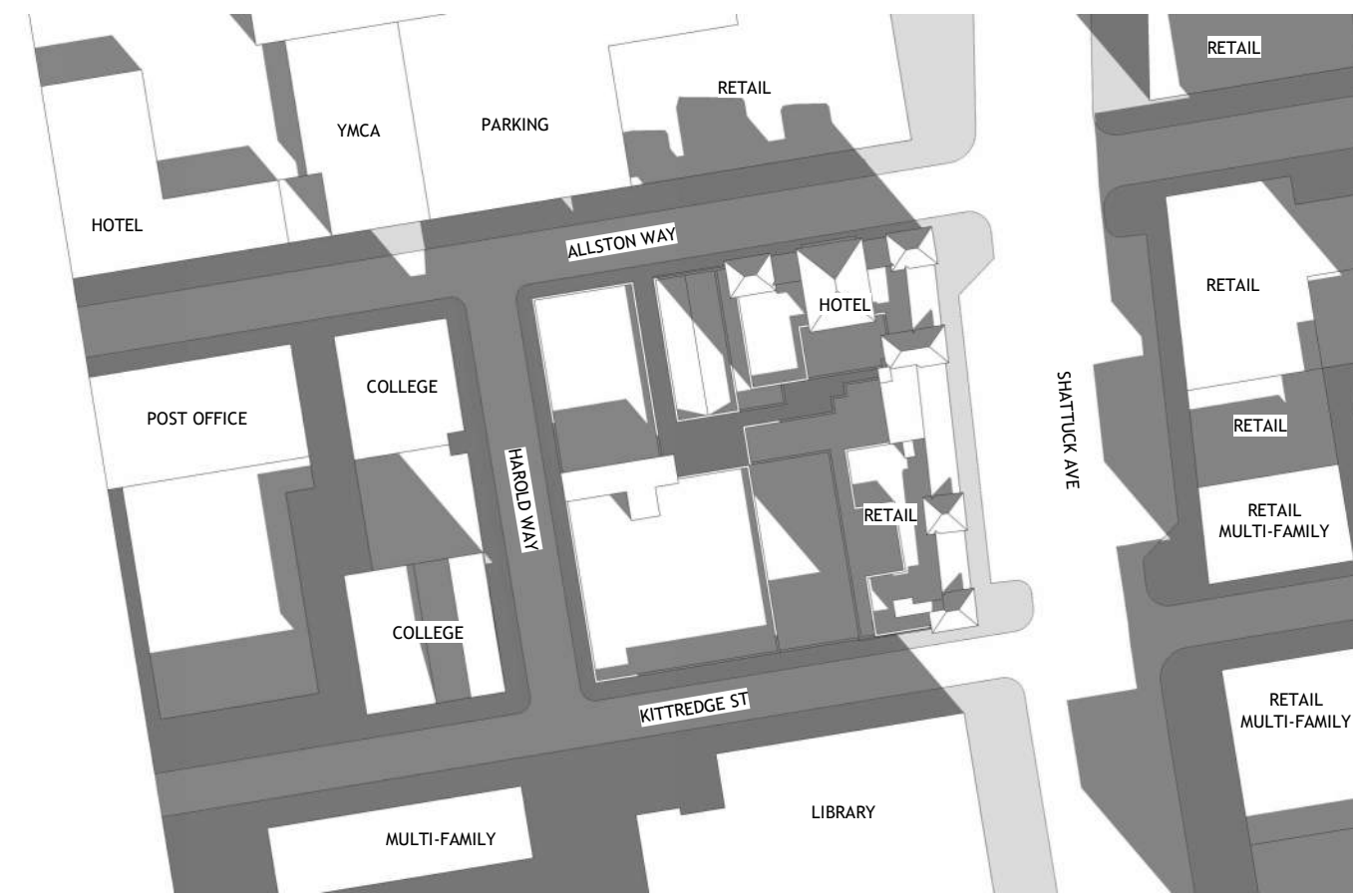
SHEET TITLE:  
SHADOW STUDIES  
-DEC 21

SHEET NUMBER:  
**A3-302**

NEW SHADOWS FROM PROPOSED PROJECT SHOWN IN RED

# DECEMBER 10 MORNING

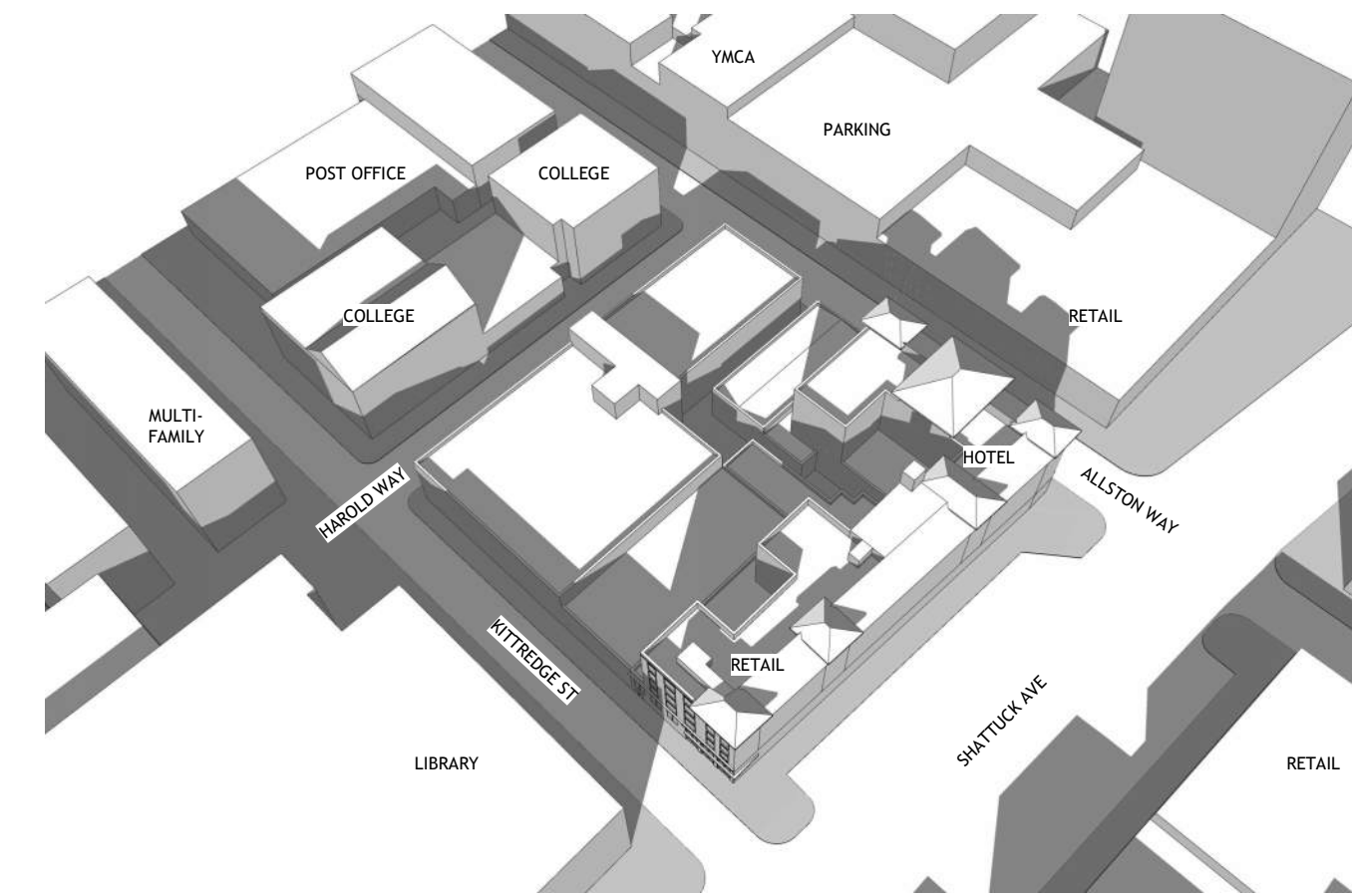
2 HOURS AFTER SUNRISE - 9:14 AM



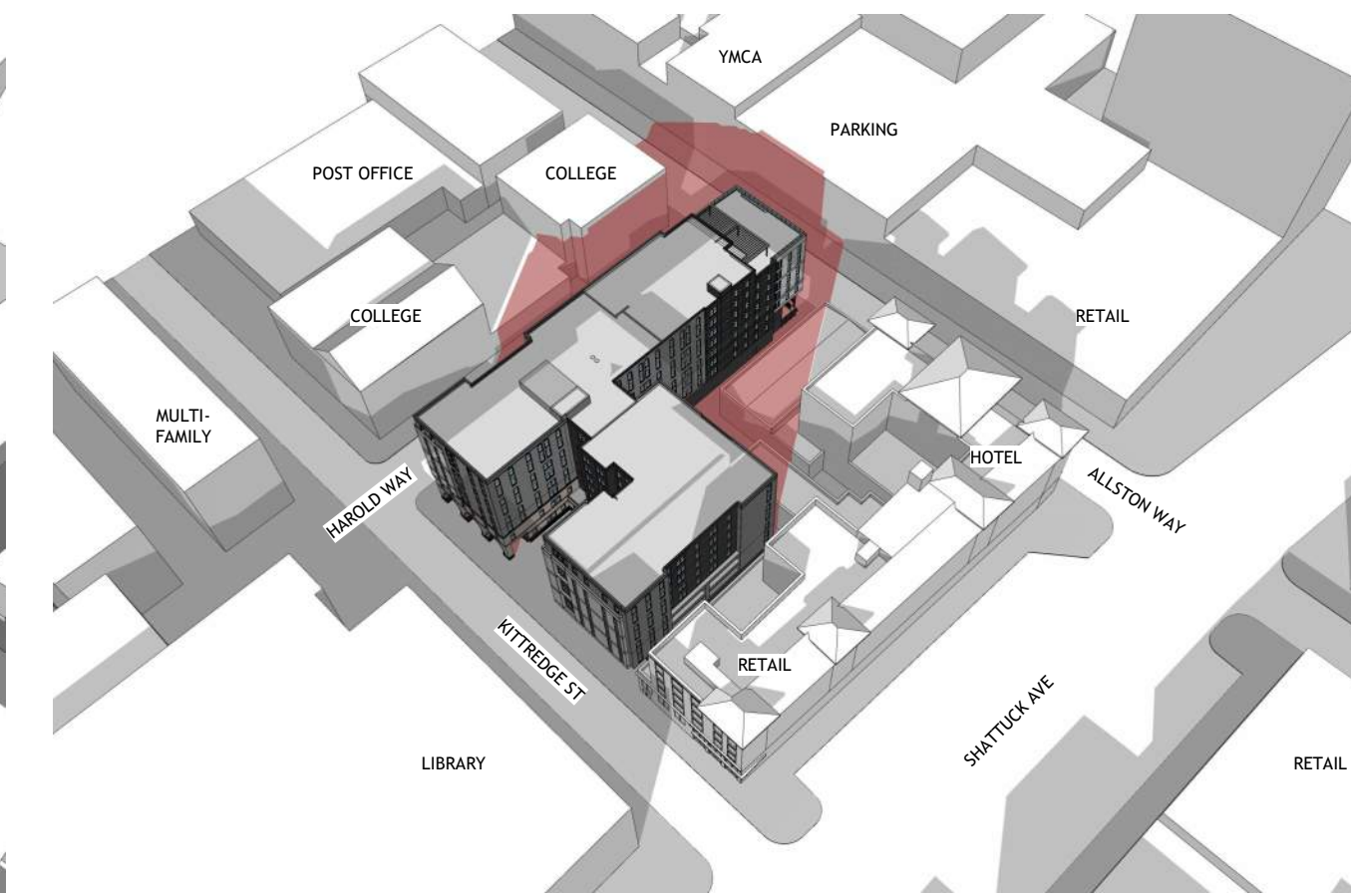
TOP VIEW EXISTING



TOP VIEW PROPOSED



ANGLE VIEW EXISTING



ANGLE VIEW PROPOSED

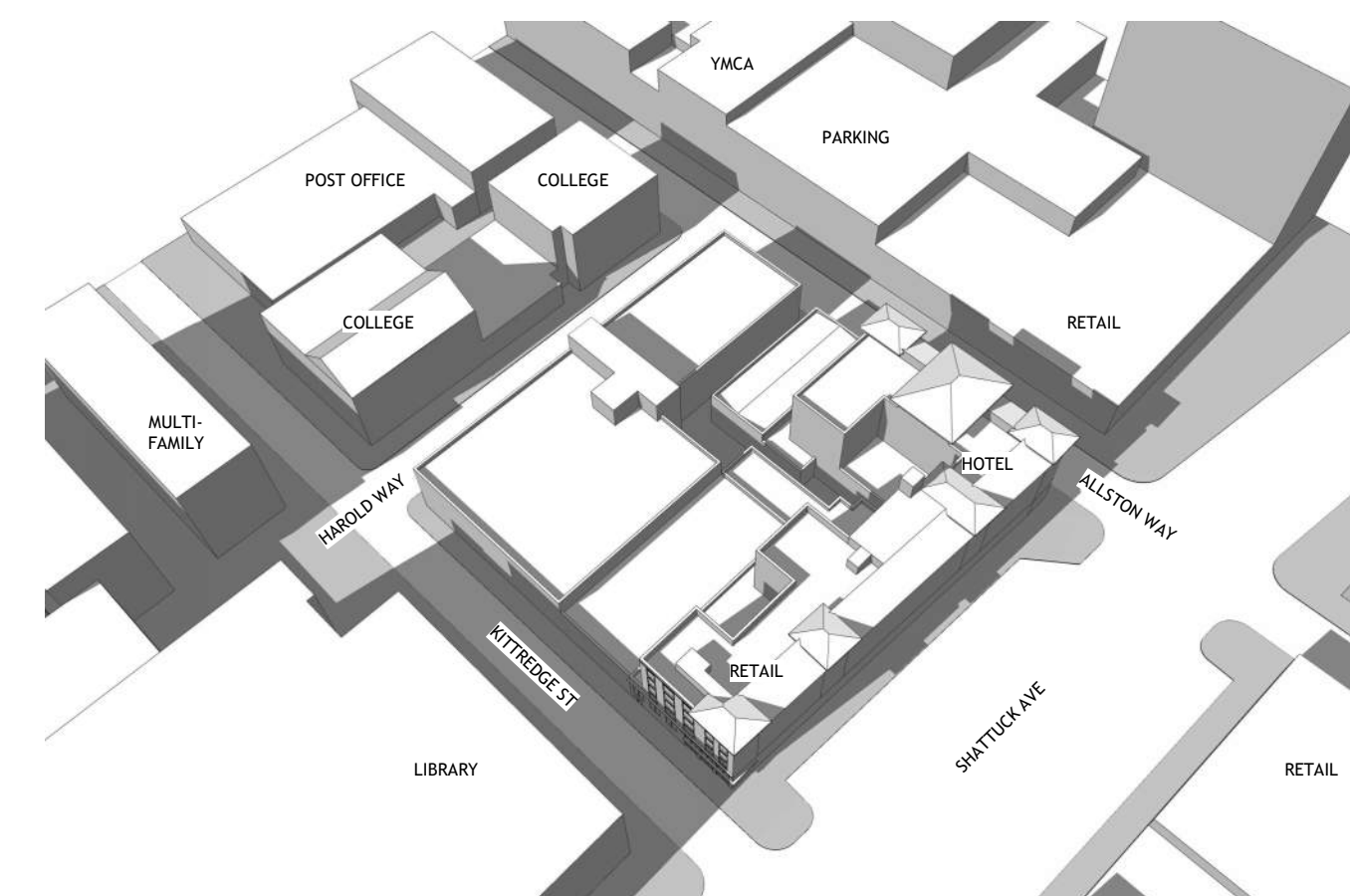
# DECEMBER 10 NOON



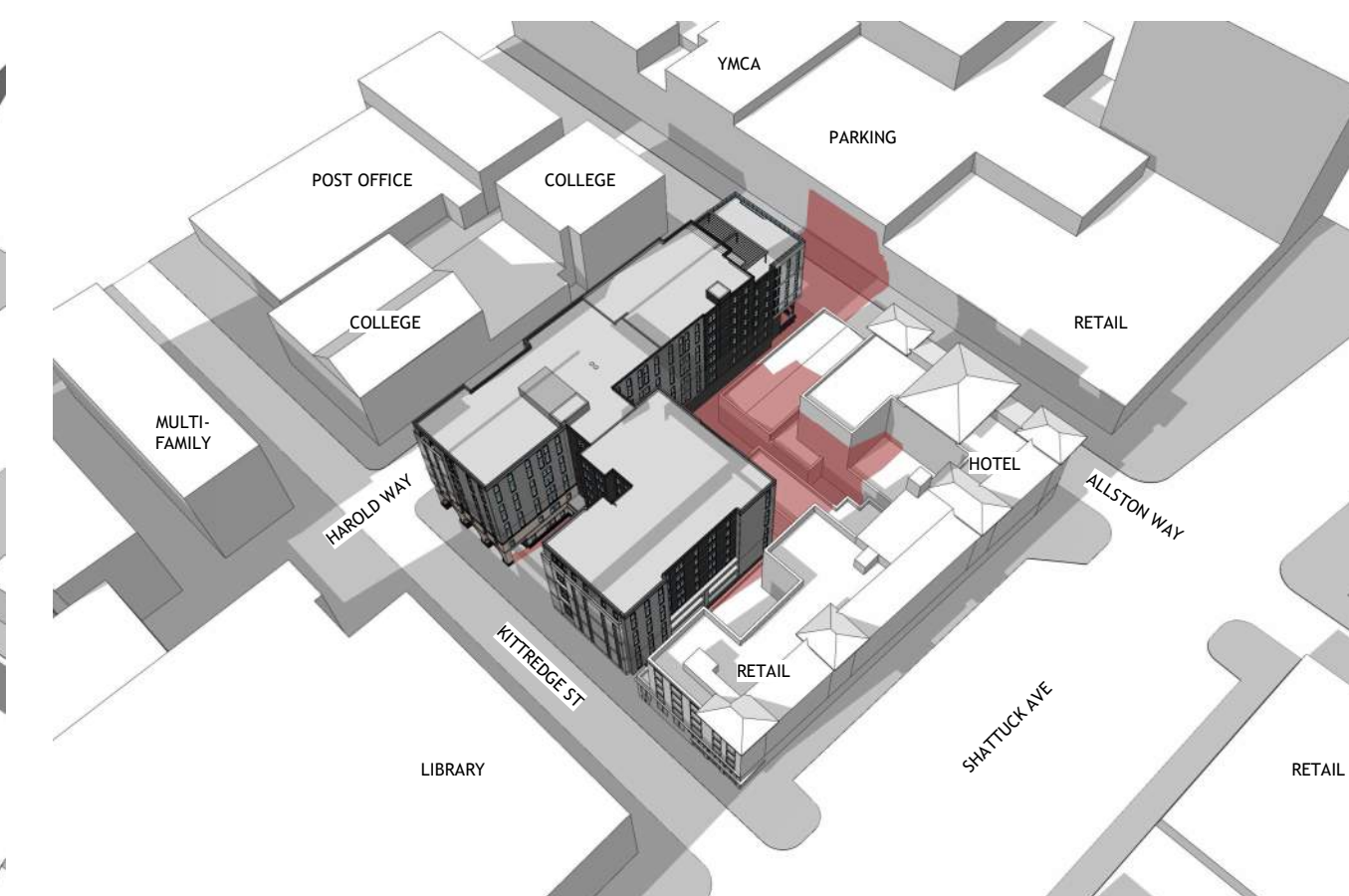
TOP VIEW EXISTING



TOP VIEW PROPOSED



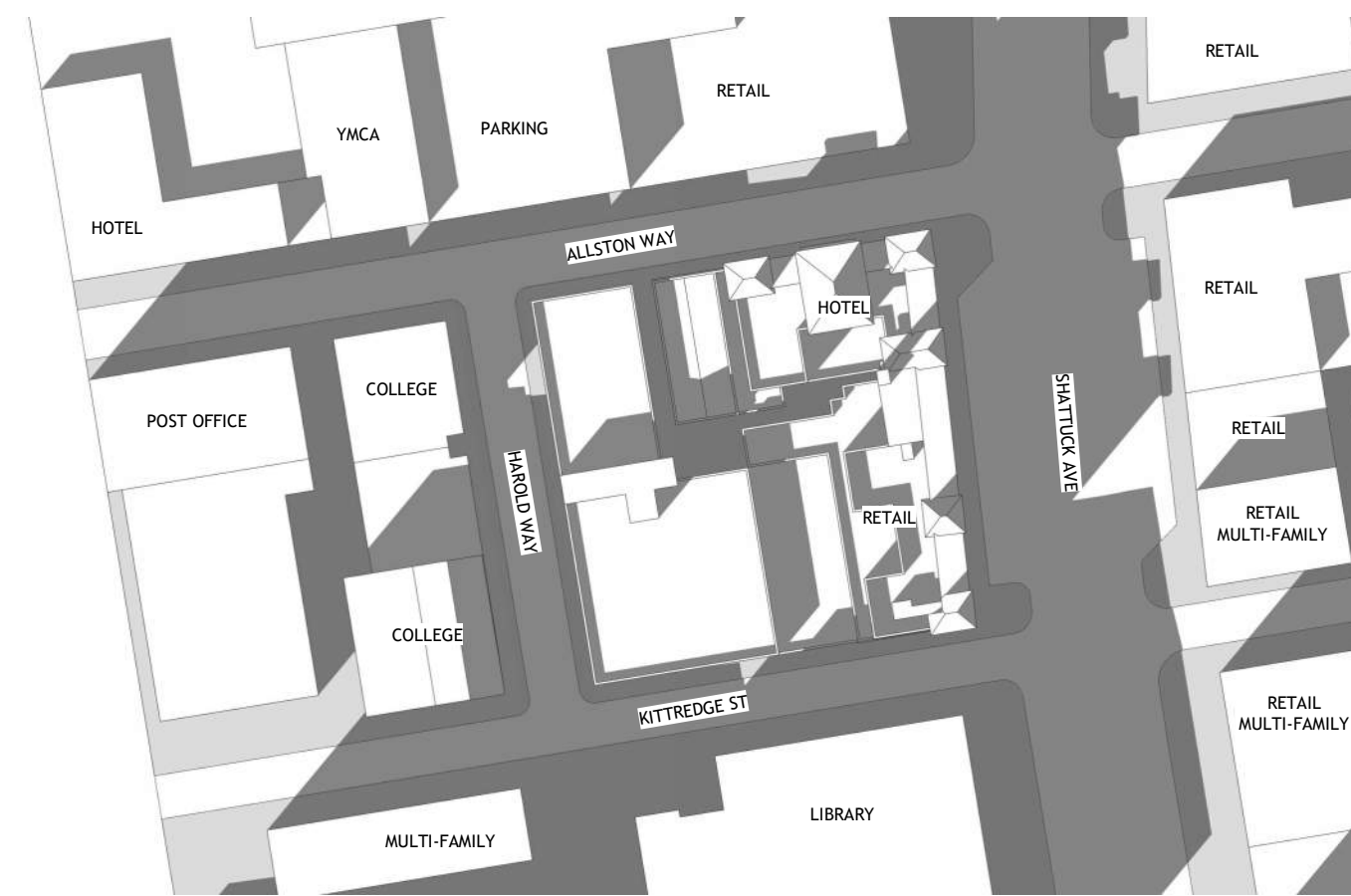
ANGLE VIEW EXISTING



ANGLE VIEW PROPOSED

# DECEMBER 10 EVENING

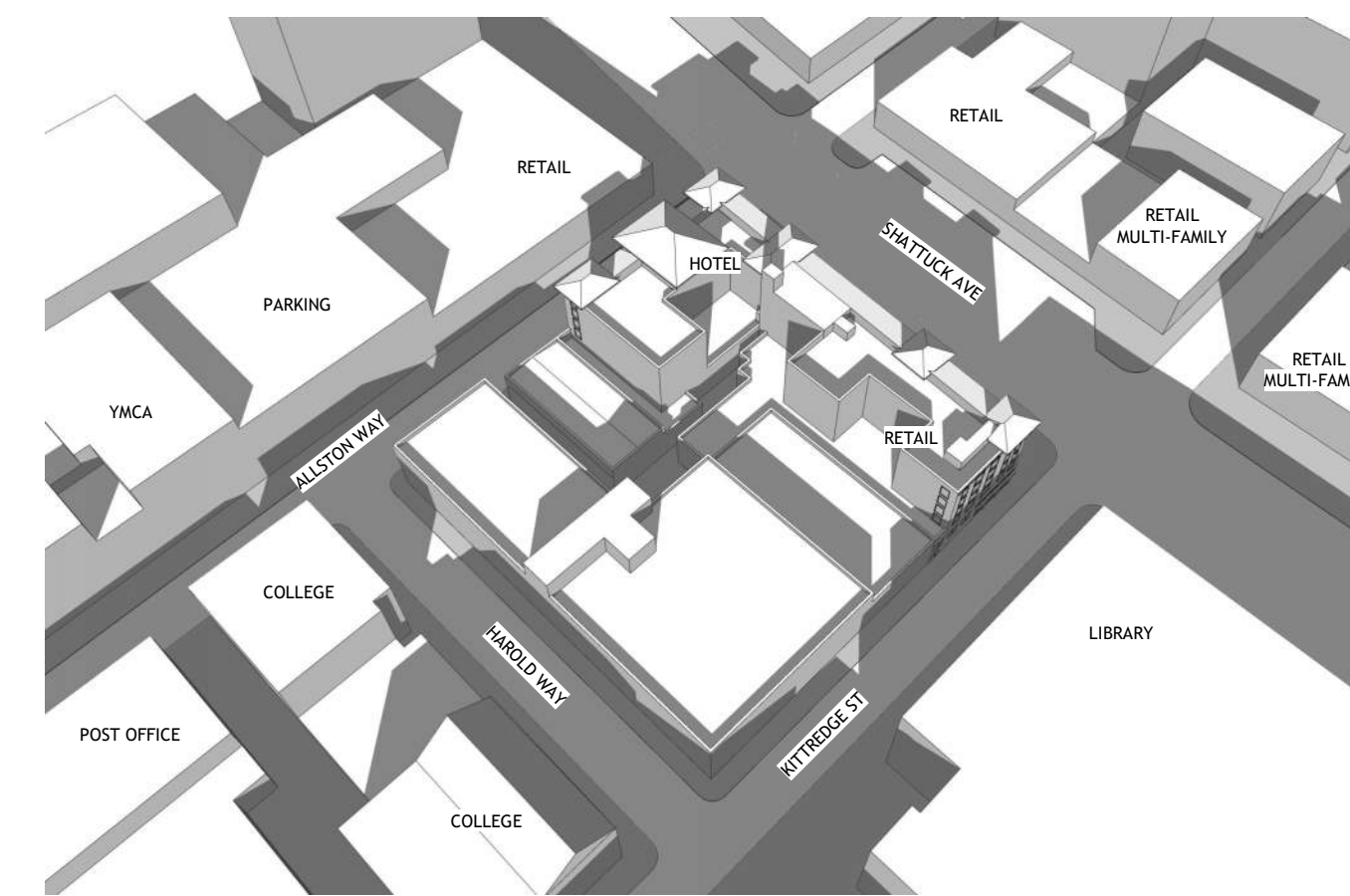
2 HOURS BEFORE SUNSET - 2:49 PM



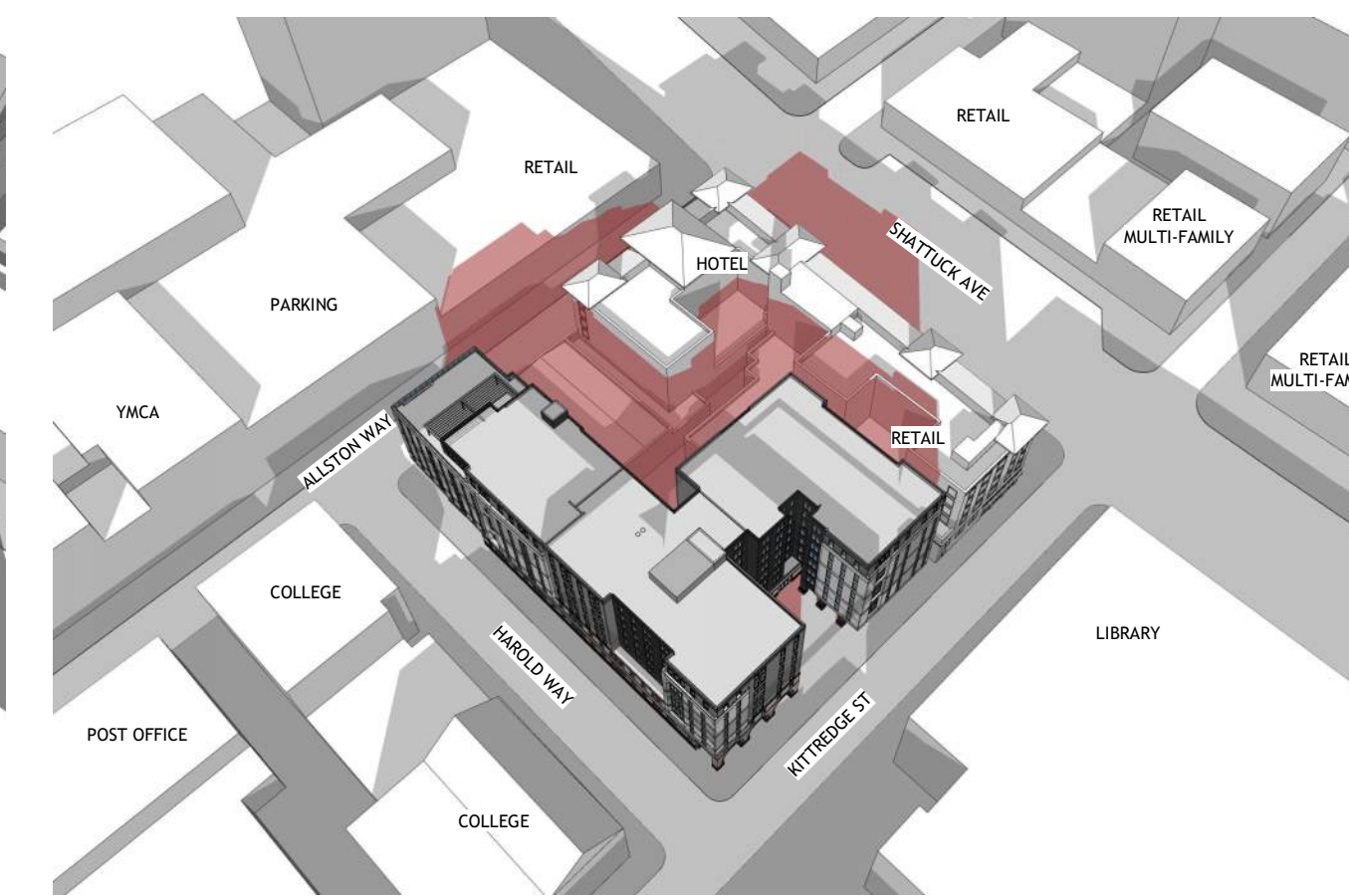
TOP VIEW EXISTING



TOP VIEW PROPOSED



ANGLE VIEW EXISTING



ANGLE VIEW PROPOSED

PROJECT #: 121246  
 DRAWN BY: TF  
 CHECKED BY: MM

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| 9   | SAP RESUBMIT.        | 3/23/22  |
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CA VENTURES

SHEET TITLE:  
 SHADOW STUDIES  
 -DEC 10

SHEET NUMBER:  
**A3-303**

NOT RELEASED FOR CONSTRUCTION



SHATTUCK AVE

HAROLD WAY

1 STREET STRIP ELEVATION - ALLSTON WAY  
A3-304 NOT TO SCALE

PROJECT #: 121246  
DRAWN BY: TF, RK  
CHECKED BY: MM

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APPLICANT:  
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T 925 638 8782

| No. | Description          | Date     |
|-----|----------------------|----------|
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| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
| 6   | SAP                  | 12/22/21 |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 13  | JUNE LWRKS. MEETING  | 5/10/22  |

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HAROLD WAY

SHATTUCK AVE

2 STREET STRIP ELEVATION - KITTREDGE ST  
A3-304 NOT TO SCALE

**BERKELEY PLAZA**  
2065 KITTREDGE ST  
BERKELEY, CA 94704

CA VENTURES

SHEET TITLE:  
**STREET STRIP ELEVATIONS**

SHEET NUMBER:  
**A3-304**



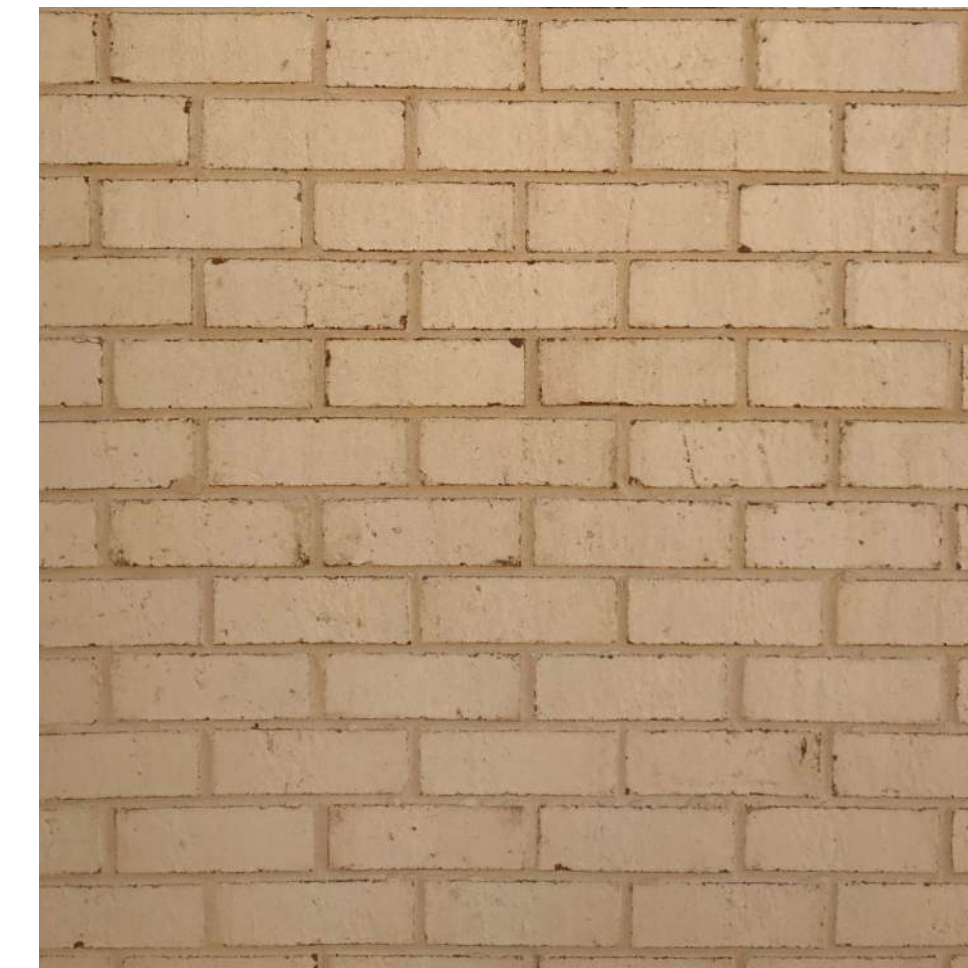
E1 - TAN STUCCO



E2 - CHARCOAL GREY STUCCO



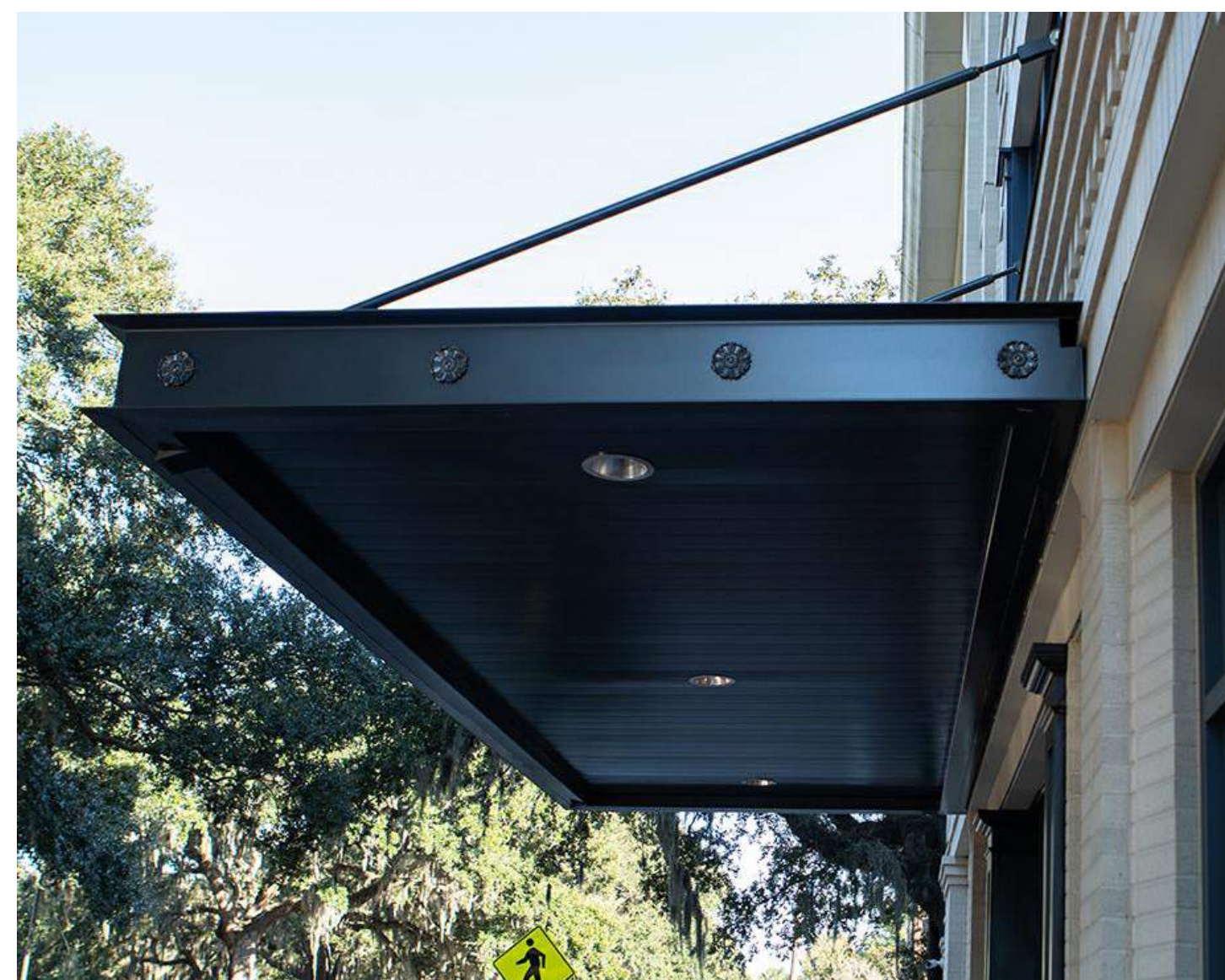
E3 - DARK TAN STUCCO



E4 - BRICK



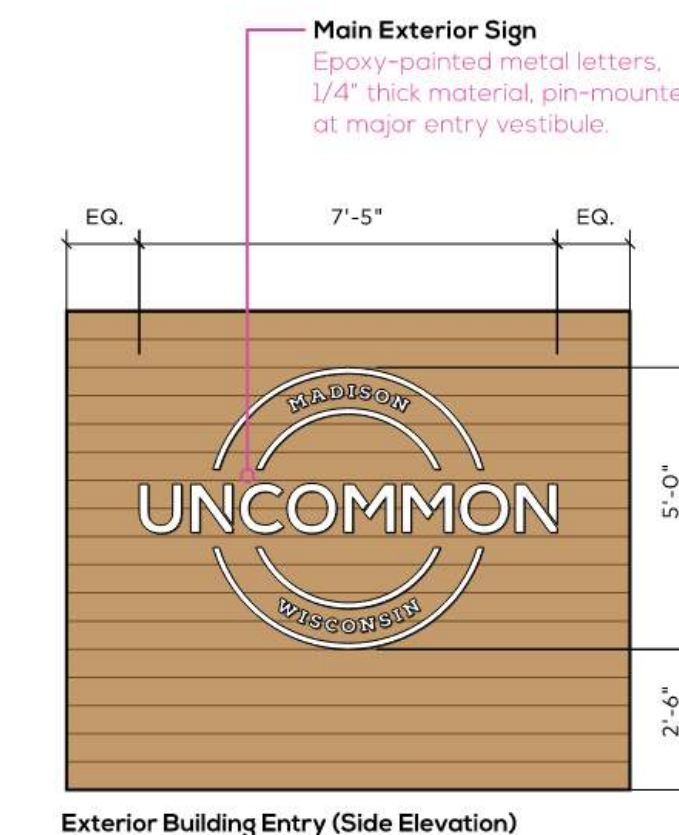
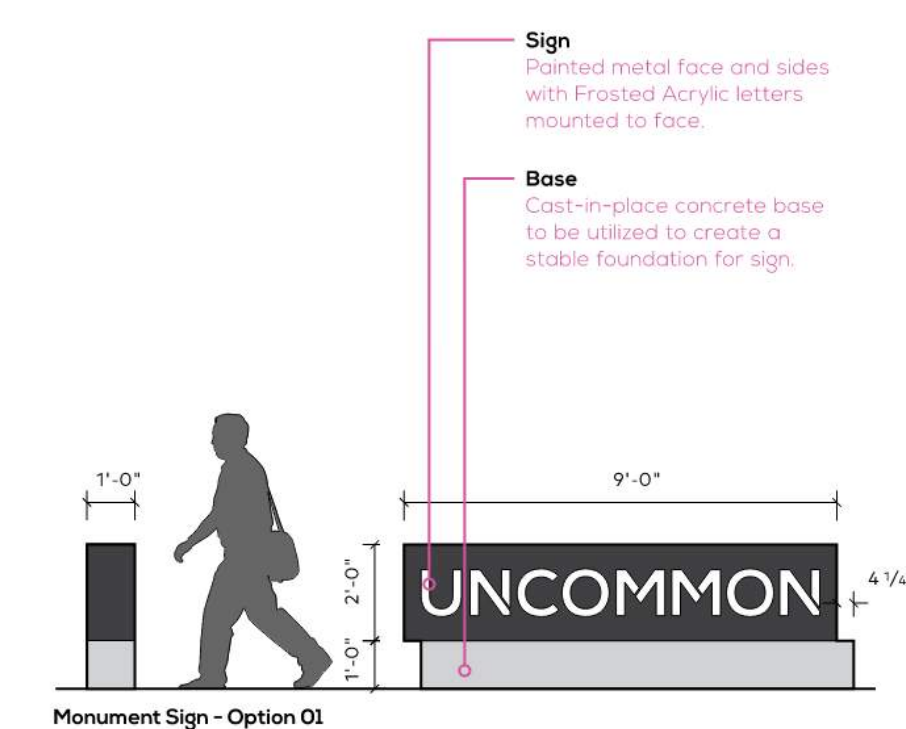
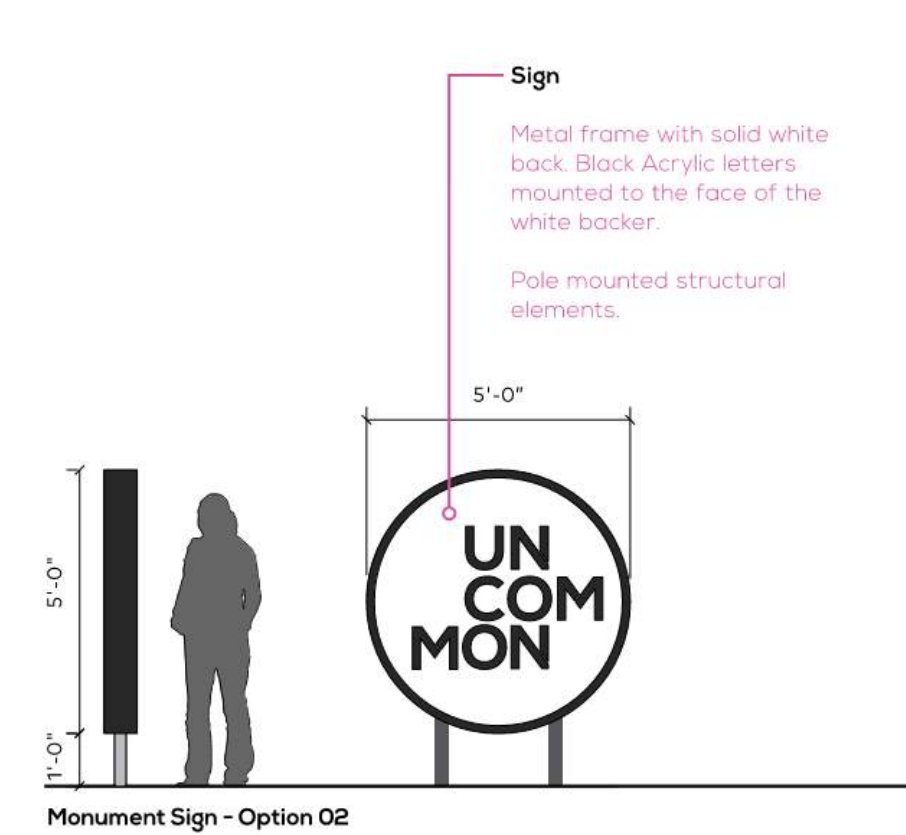
E5 - WHITE FIBER CEMENT



E7 - ALUMINUM CANOPY



E8 - EXTERIOR WALL SCONCE



E9 - SIGNAGE

PROJECT #: 121246  
DRAWN BY: TF, RK  
CHECKED BY: MM

**NILES BOLTON ASSOCIATES**

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| 6   | SAP                  | 12/22/21 |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
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| 13  | JUNE LWRKS. MEETING  | 5/10/22  |

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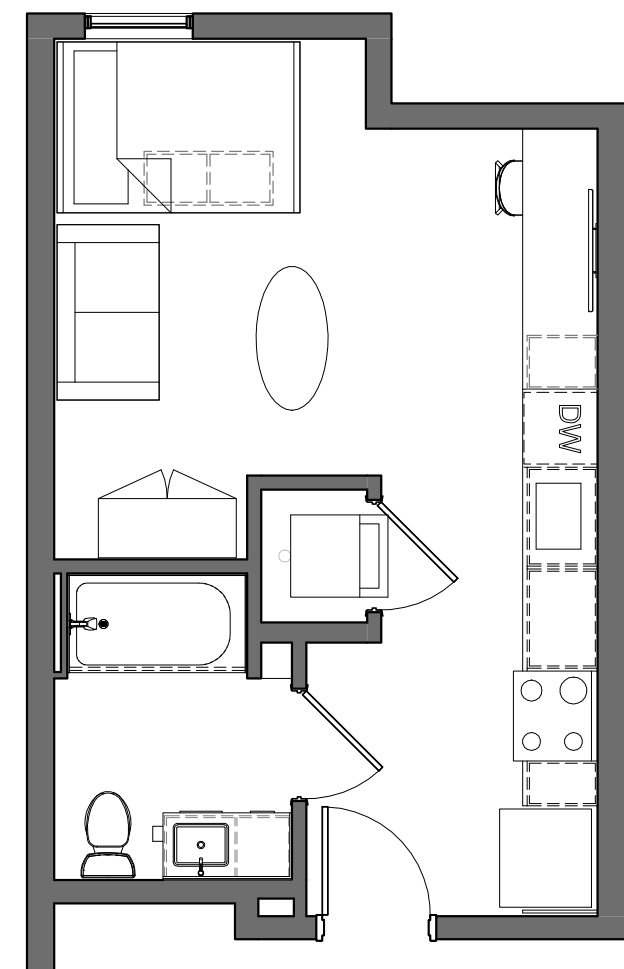
BERKELEY PLAZA  
2065 KITTREGE ST  
BERKELEY, CA 94704

CA VENTURES

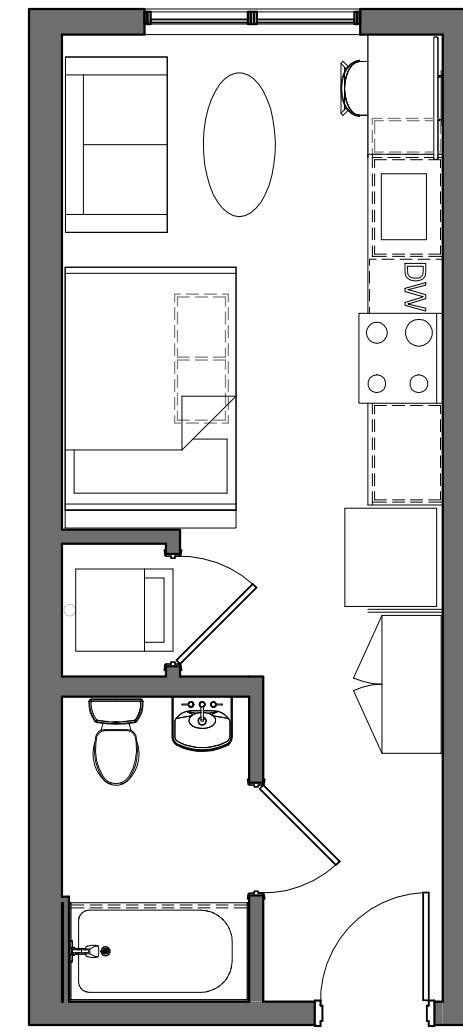
SHEET TITLE:  
MATERIAL BOARDS

SHEET NUMBER:  
A3-305

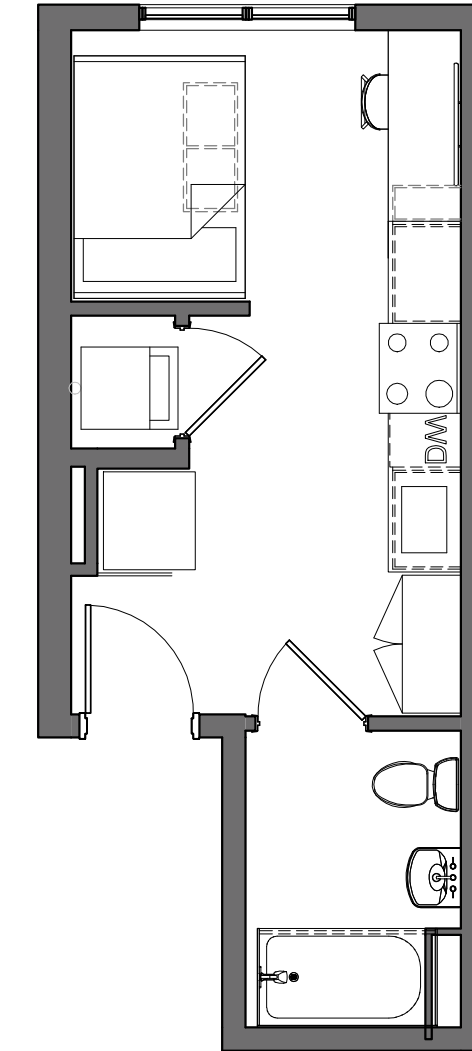
1 MATERIAL BOARD  
A3-305 NOT TO SCALE



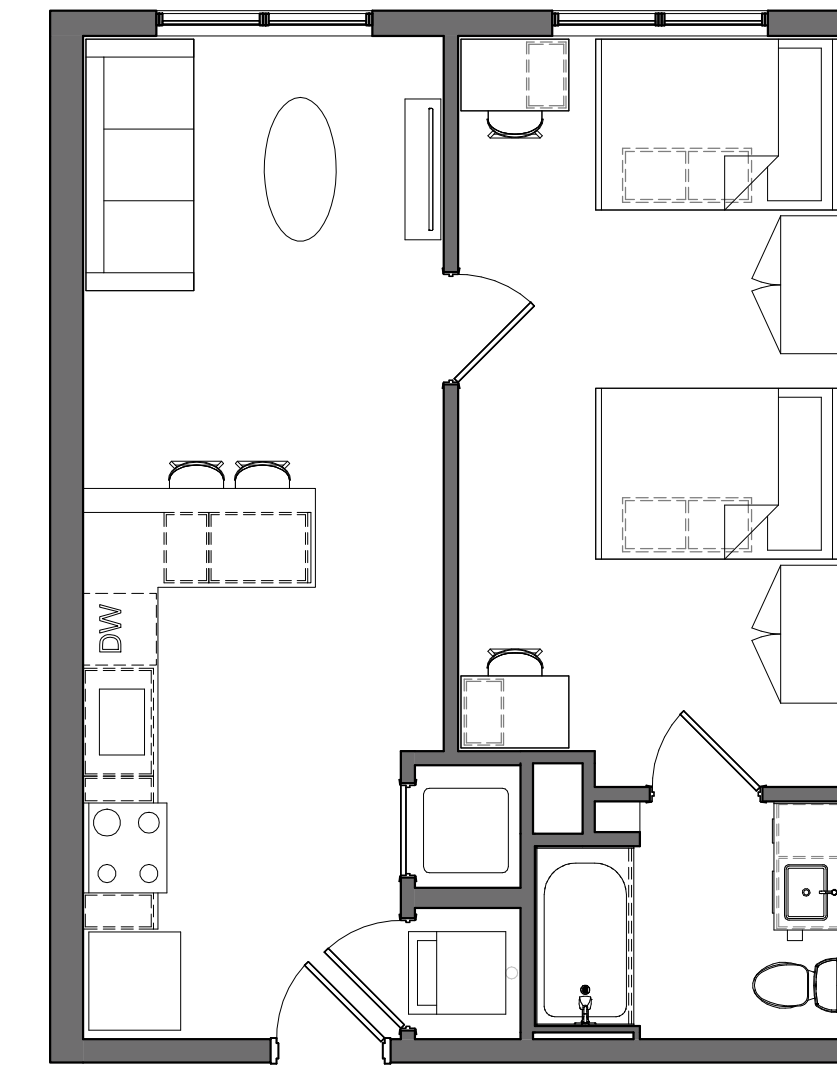
2 SAMPLE UNIT - S2  
A5-001 3/16" = 1'-0"



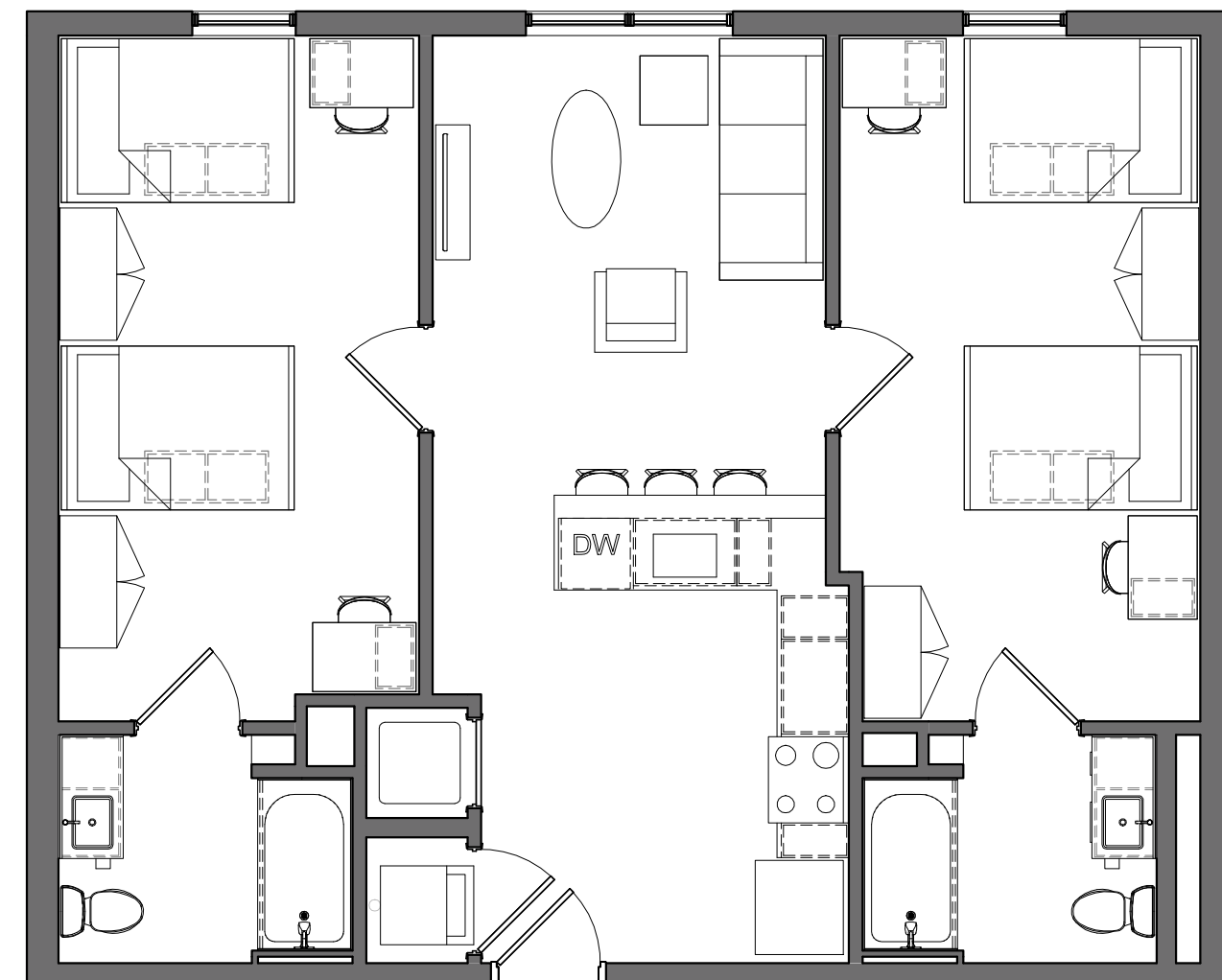
3 SAMPLE UNIT - MS1  
A5-001 3/16" = 1'-0"



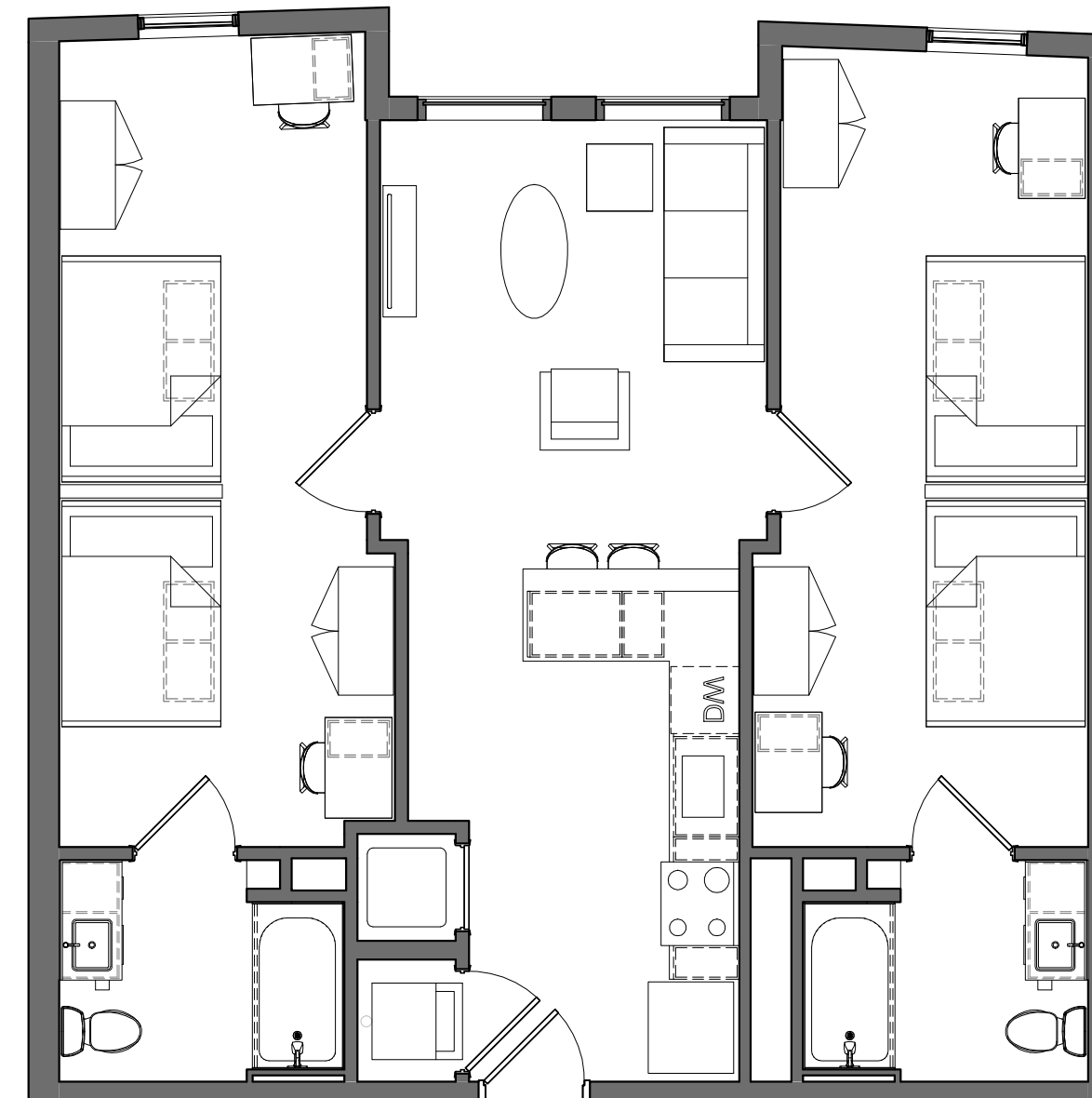
4 SAMPLE UNIT - NS1  
A5-001 3/16" = 1'-0"



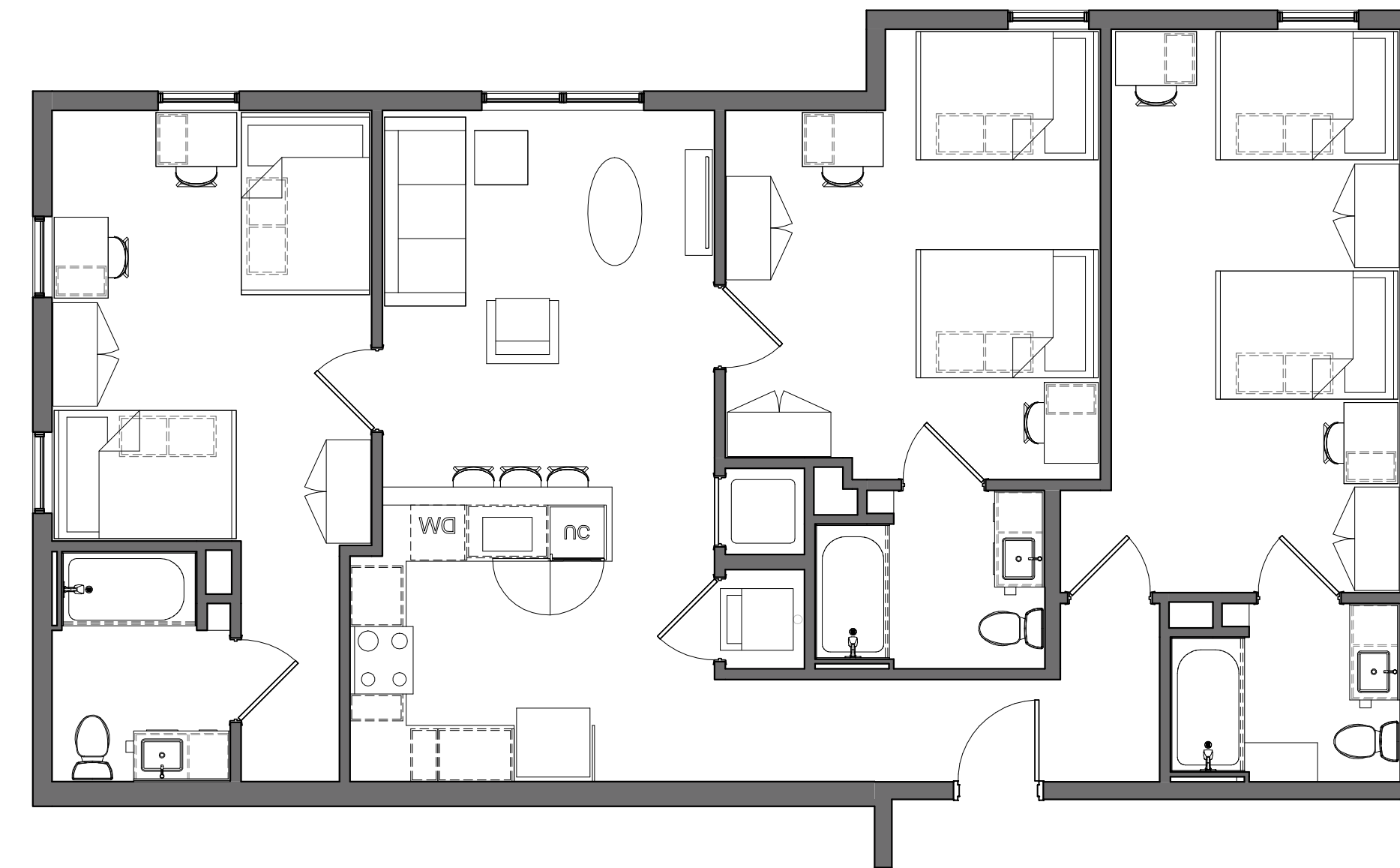
5 SAMPLE UNIT - A1  
A5-001 3/16" = 1'-0"



1 SAMPLE UNIT - B1  
A5-001 3/16" = 1'-0"



6 SAMPLE UNIT - B2  
A5-001 3/16" = 1'-0"



7 SAMPLE UNIT - C1  
A5-001 3/16" = 1'-0"

PROJECT #: 121246  
DRAWN BY: TF  
CHECKED BY: MM

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| No. | Description          | Date     |
|-----|----------------------|----------|
| 4   | USE PERMIT           | 10/25/21 |
| 5   | USE PERMIT RESUBMIT. | 12/10/21 |
| 6   | SAP                  | 12/22/21 |
| 9   | SAP RESUBMIT.        | 3/23/22  |
| 11  | USE PERMIT RESUBMIT. | 3/28/22  |
| 12  | APRIL DRC MEETING    | 4/11/22  |
| 13  | JUNE LWRKS. MEETING  | 5/10/22  |

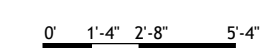
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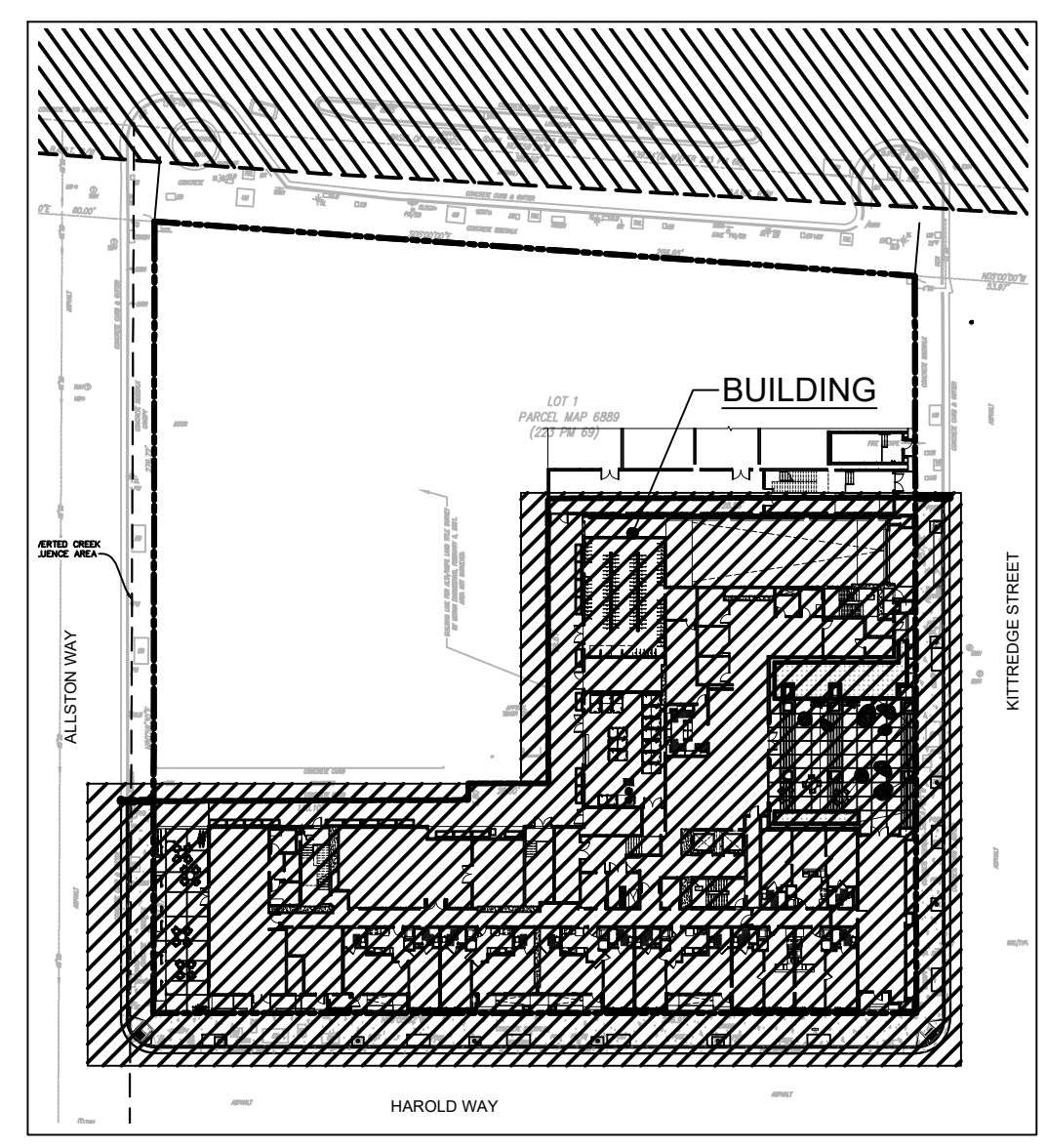
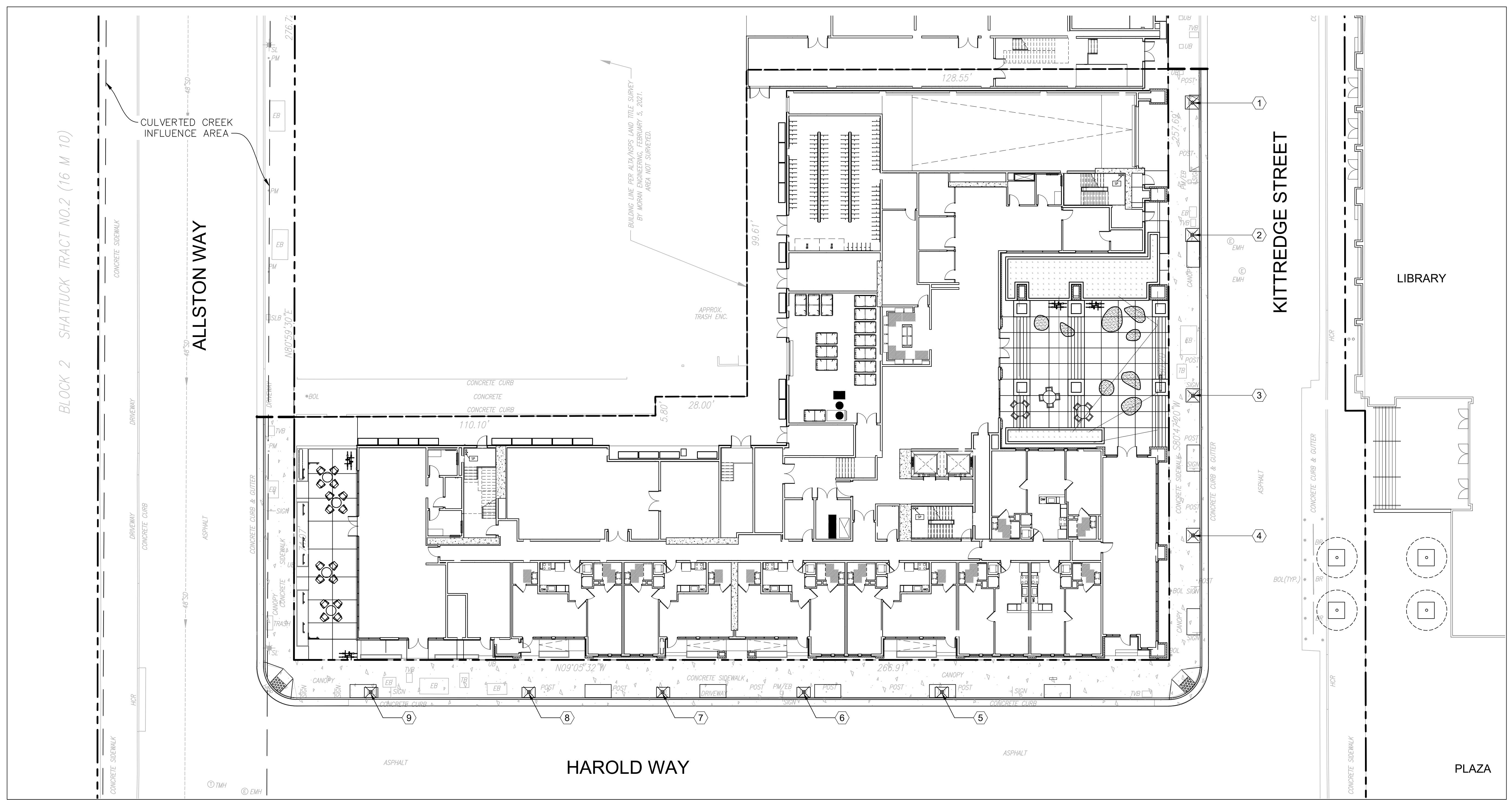
BERKELEY PLAZA  
2065 KITTREDGE ST  
BERKELEY, CA 94704

CA VENTURES

SHEET TITLE:  
SAMPLE UNITS

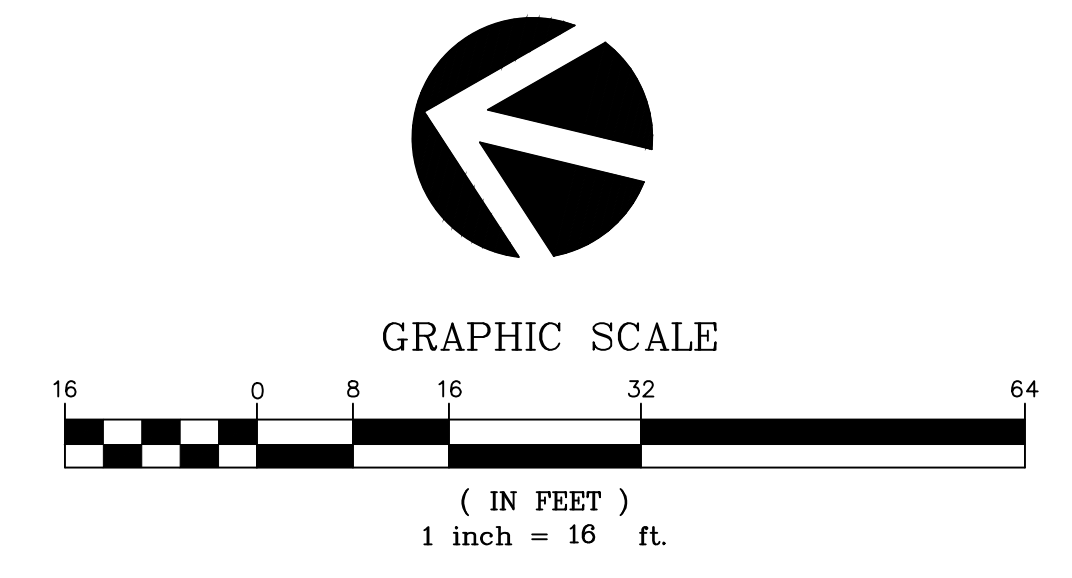
SHEET NUMBER:  
A5-001





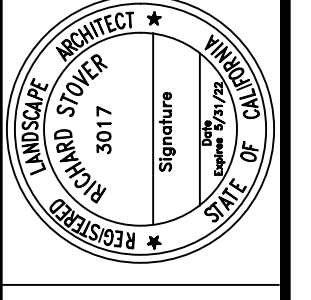
SITE MAP

| EXISTING TREES TO BE REMOVED: |                              | DIAMETER AT BREAST HEIGHT (IN.) |
|-------------------------------|------------------------------|---------------------------------|
| SYMBOL                        | BOTANICAL NAME (COMMON NAME) |                                 |
| ①                             | PYRUS (FLOWERING PEAR)       | 1"                              |
| ②                             | ULMUS PUMILA (SIBERIAN ELM)  | 17"                             |
| ③                             | ULMUS PUMILA (SIBERIAN ELM)  | 15"                             |
| ④                             | ULMUS PUMILA (SIBERIAN ELM)  | 15"                             |
| ⑤                             | ULMUS PUMILA (SIBERIAN ELM)  | 15"                             |
| ⑥                             | ULMUS PUMILA (SIBERIAN ELM)  | 10"                             |
| ⑦                             | ULMUS PUMILA (SIBERIAN ELM)  | 13"                             |
| ⑧                             | ULMUS PUMILA (SIBERIAN ELM)  | 16"                             |
| ⑨                             | ULMUS PUMILA (SIBERIAN ELM)  | 3"                              |



| REVISIONS |                     |
|-----------|---------------------|
| 12/20/21  | Use Permit Resubmit |
| 09/21/21  | Review Submittal    |
| 08/18/21  | Review Submittal    |
| 07/22/21  | Resubmittal         |

RW Stover & Associates, Inc.  
Landscape Architecture  
1000 W. 12th St., Suite 4  
Walnut Creek, CA 94596  
Ph: 925.933.2383



**BERKELEY PLAZA**  
**2065 KITTREDGE STREET**  
BERKELEY, CALIFORNIA

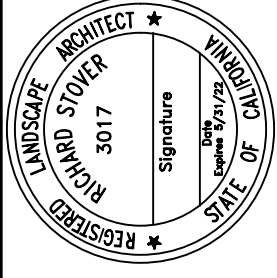
**TREE REMOVAL PLAN**

DESIGNED: DRAWN:  
CHECKED: JOB NO:  
DATE  
9-23-21  
SCALE

SHEET  
**LO**  
OF SHEETS

| REVISIONS |                         |
|-----------|-------------------------|
| 12/20/21  | Use Permit Resubmit     |
| 09/21/21  | Design Review Submittal |
| 08/18/21  | Design Review Submittal |
| 07/22/21  | Design Review Submittal |
| 07/22/21  | Design Review Submittal |

RW Stover & Associates, Inc.  
 Landscape Architecture  
 2065 KITTREDGE STREET  
 BERKELEY, CA 94706  
 PH: 925.933.2383

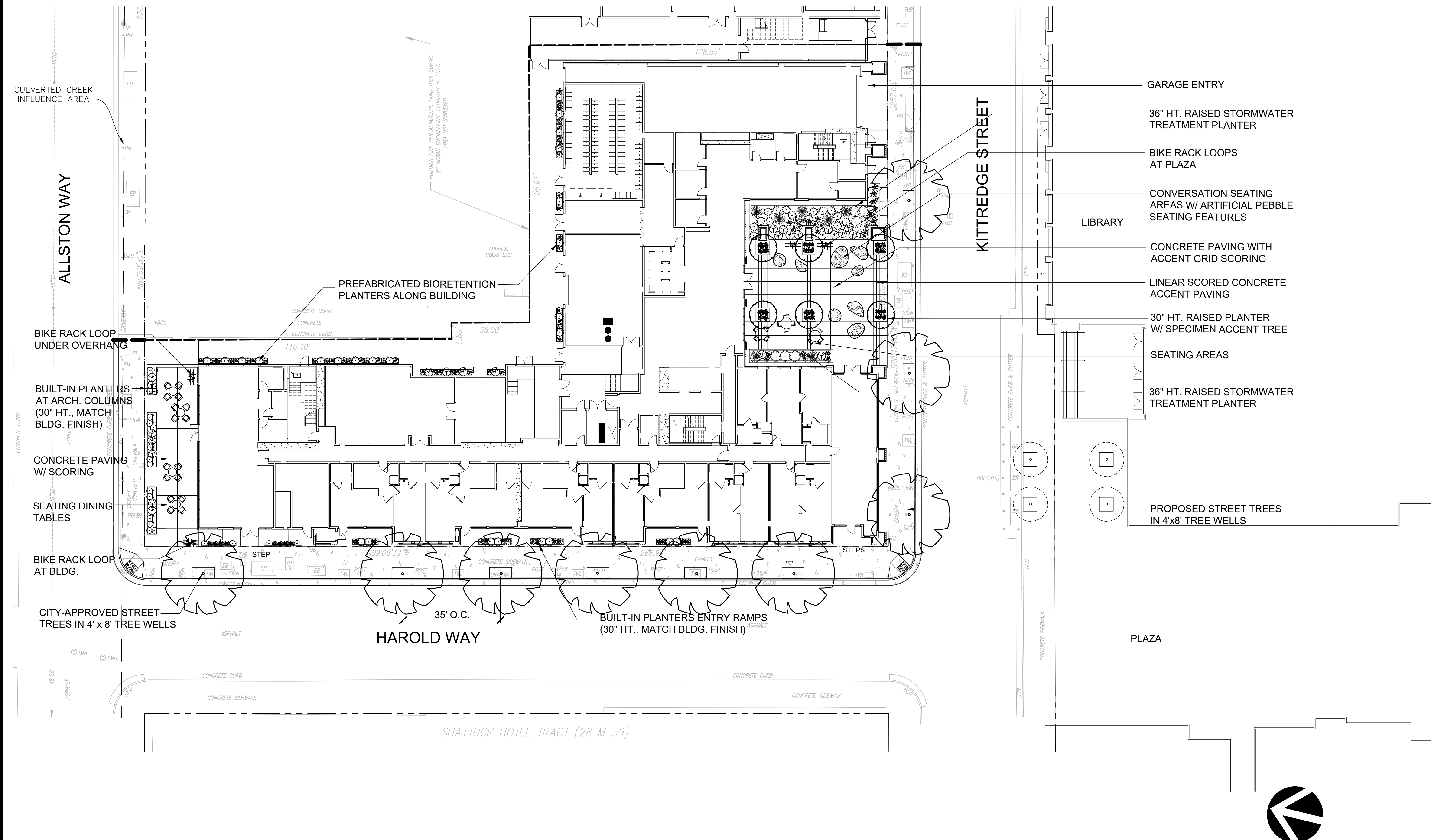


**BERKELEY PLAZA**  
**2065 KITTREDGE STREET**  
 BERKELEY, CALIFORNIA

**GROUND LEVEL PRELIMINARY LANDSCAPE PLAN**

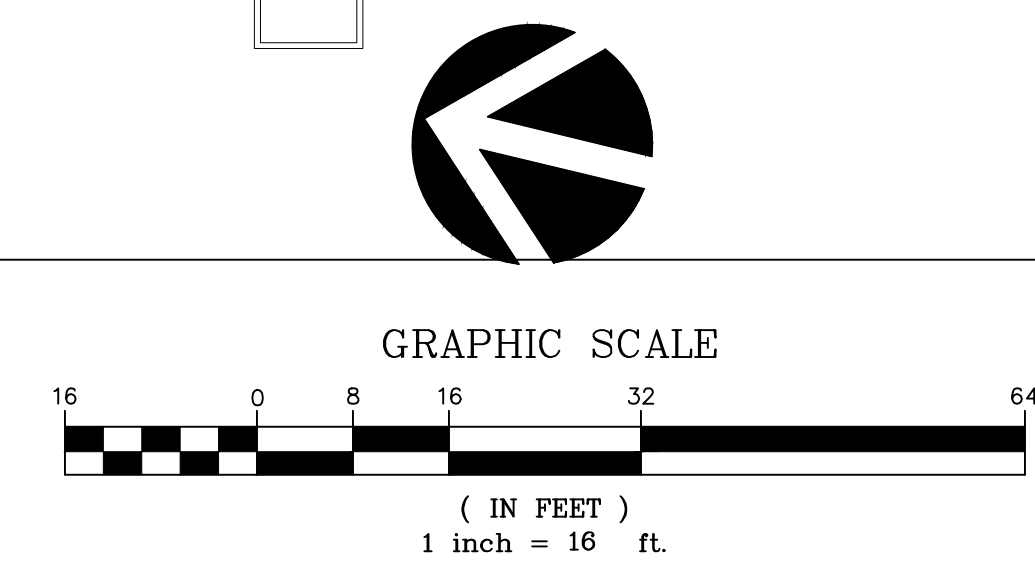
|                 |          |
|-----------------|----------|
| DESIGNED:       | DRAWN:   |
| CHECKED:        | JOB NO.: |
| DATE<br>9-23-21 |          |
| SCALE           |          |

SHEET  
**L1**  
 OF SHEETS

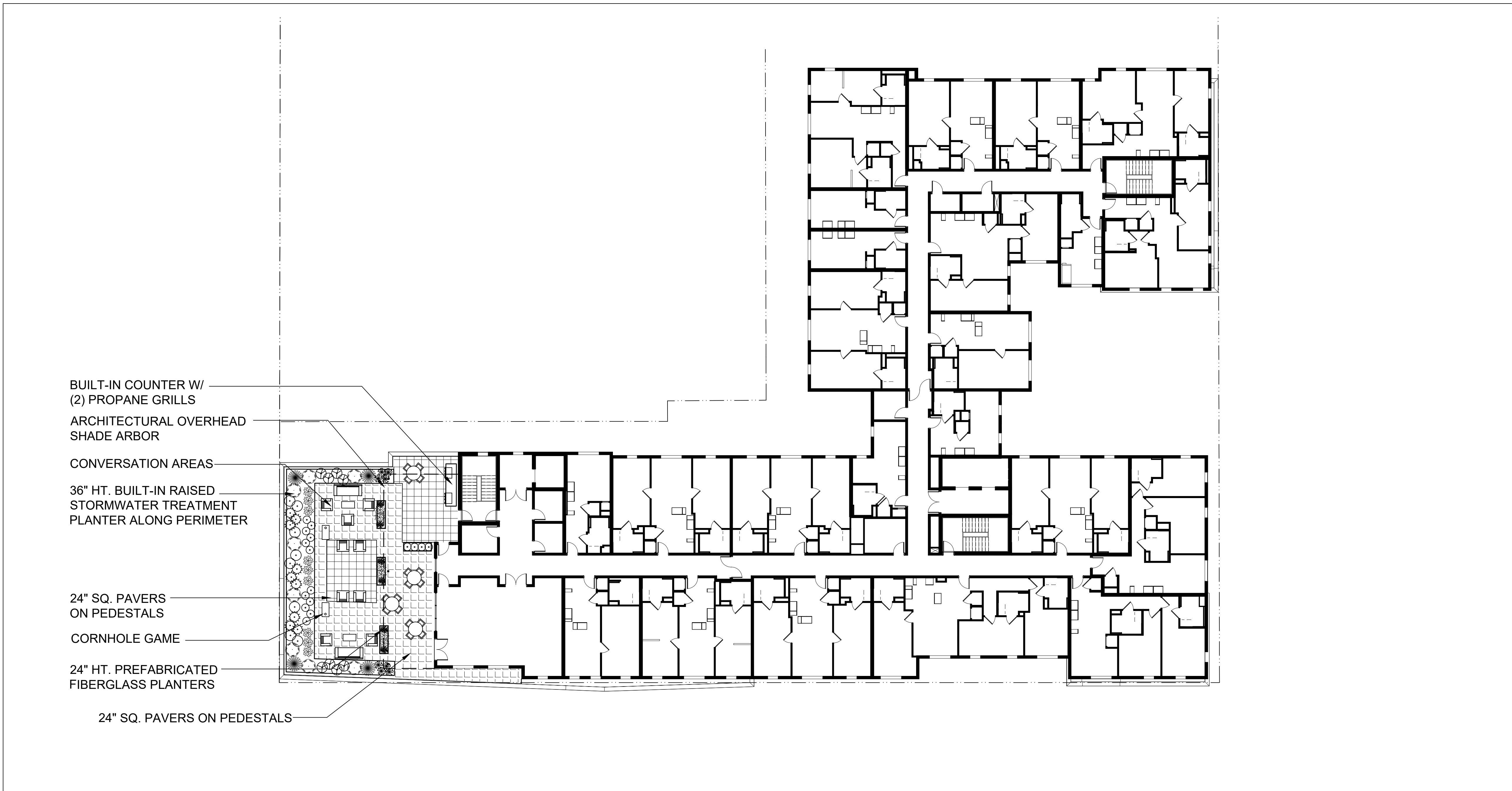


**Master Landscape Design Concept**

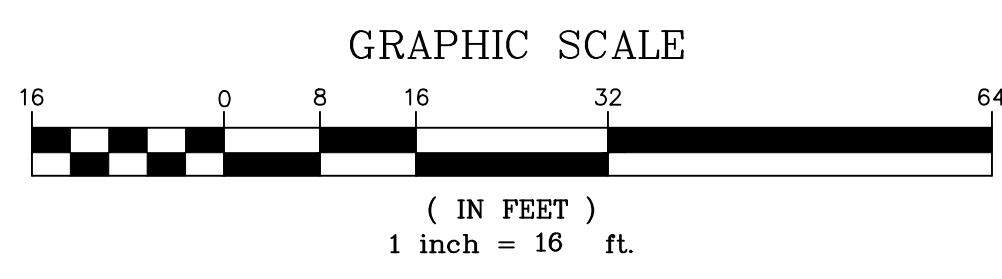
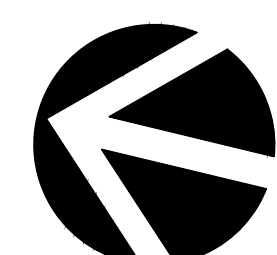
The landscape design for the Berkeley Plaza blends the City and Bay-Friendly landscape requirements to fit within the context of the surrounding project's urban character, as well as provide a more individual character of onsite plant materials and compositions that compliment the building architecture. Usable space is the focus of each outdoor courtyard, providing site residents amenity space and garden atmosphere while allowing for required stormwater treatment areas. The plant palette is predominantly California Natives, with a generous mix of pollinators to encourage the local insect and bird populations.



REFER TO SHEET L2 FOR ROOF DECK LANDSCAPE  
 REFER TO SHEET L3 FOR PLANT LIST AND IMAGES



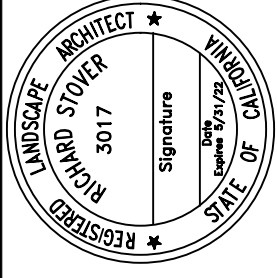
- BUILT-IN COUNTER W/  
(2) PROPANE GRILLS
- ARCHITECTURAL OVERHEAD  
SHADE ARBOR
- CONVERSATION AREAS
- 36" HT. BUILT-IN RAISED  
STORMWATER TREATMENT  
PLANTER ALONG PERIMETER
- 24" SQ. PAVERS  
ON PEDESTALS
- CORNHOLE GAME
- 24" HT. PREFABRICATED  
FIBERGLASS PLANTERS
- 24" SQ. PAVERS ON PEDESTALS



REFER TO SHEET L3 FOR PLANT LIST AND IMAGES

| REVISIONS |                         |
|-----------|-------------------------|
| 12/10/21  | Use Permit Resubmit     |
| 12/21/21  | Design Review Submittal |
| 03/18/22  | Design Review Submittal |
| 07/22/22  | Final Resubmittal       |
|           |                         |
|           |                         |

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**BERKELEY PLAZA**  
**2065 KITTREDGE STREET**  
BERKELEY, CALIFORNIA

**EIGHTH FLOOR  
PRELIMINARY  
LANDSCAPE PLAN**

|                 |         |
|-----------------|---------|
| DESIGNED:       | DRAWN:  |
| CHECKED:        | JOB NO: |
| DATE<br>9-23-21 |         |
| SCALE           |         |

SHEET  
**L2**  
OF SHEETS





**SPECIMEN ACCENT TREES IN RAISED PLANTERS**  
CERCIS OCCIDENTALIS (WESTERN REDBUD)

**PROPOSED PLANT MATERIAL LIST (ALL BUILDING LEVELS):**

| BOTANICAL NAME                      | COMMON NAME          | MATURE SIZE (HxW) | WUCOLS WATER USE | NATIVE | COUNT |
|-------------------------------------|----------------------|-------------------|------------------|--------|-------|
| <b>TREES:</b>                       |                      |                   |                  |        |       |
| STREET TREE (CITY-APPROVED)         |                      | SEE PLAN 24" BOX  | MED              | NO     | 9     |
| CERCIS OCCIDENTALIS (LOW-BRANCHING) | WESTERN REDBUD       | 18'x18' 36" BOX   | LOW              | YES    | 6     |
| <b>SHRUBS:</b>                      |                      |                   |                  |        |       |
| *+CALYCANTHUS OCCIDENTALIS          | SPICE BUSH           | 8'x5' 5 GA        | LOW              | YES    | 11    |
| +ERIOGONUM ARBORESCENS              | BUCKWHEAT            | 4'x4' 5 GA        | LOW              | YES    | 15    |
| *+SALVIA CLEVE. 'WINNIFRED GILLMAN' | CALIFORNIA BLUE SAGE | 3'x5' 5 GA        | LOW              | YES    | 33    |
| TEUCRIUM 'COMPACTA'                 | DWARF GERMANDER      | 3'x3' 5 GA        | LOW              | NO     | 8     |
| <b>PERENNIALS / GRASSES:</b>        |                      |                   |                  |        |       |
| *+ACHILLEA MILLEFOLIUM              | COMMON YARROW        | 1'x2' 1 GA        | LOW              | YES    | 86    |
| ERIGERON GLAUCUS                    | BEACH ASTER          | 1'x2.5' 1 GA      | LOW              | YES    | 36    |
| *FESTUCA CALIFORNICA                | CALIFORNIA FESCUE    | 2'x3' 5 GA        | LOW              | YES    | 8     |
| *JUNCUS PATENS                      | CALIFORNIA GRAY RUSH | 1.5'x3' 1 GA      | LOW              | YES    | 41    |
| *MUHLENBERGIA RIGENS                | DEER GRASS           | 4'x4' 5 GA        | LOW              | YES    | 14    |
| +PENSTEMON HETEROPHYLLUS            | FOOTHILL PENSTEMON   | 3'x2' 1 GA        | LOW              | YES    | 44    |

**POLLINATOR PLANTS NOTE:** 64% OF PLANT PALETTE IS NATIVE POLLINATOR SPECIES (189 OF 296 SPECIMENS)

+ DENOTES PLANT SPECIES RECOMMENDED AS POLLINATOR PLANT IN NORTHERN CALIFORNIA

\* DENOTES PLANT SPECIES SELECTED FROM THE ALAMEDA COUNTY APPENDIX B STORMWATER MEASURES PLANT LIST

**Bioretention Planters**  
Solutions to manage on-structure Stormwater Filtration

Materials: **GFRC Concrete, Weathering or Mild Steel with Powder-Coated Finish**

Bioretention (also referred to as floodthrough) planters act as an on-structure organic filter for stormwater systems. Tournesol Siteworks offers several standard configurations as well as custom designs to meet your specific application. The bioretention planters are available in lightweight GFRC or steel, and feature an internal waterproof sealant and 4" diameter drainage plumbing. Bioretention media is typically specified by local authorities or to code.

The Tournesol bioretention planters are now available in metal! Standard materials include weathering steel (Corten), a steel that rusts but maintains its structural strength, and powder-coated mild steel with a zinc-rich primer and stainless steel base.

- Fully engineered Bioretention plumbing system - just add media & plants.
- Allows the use of reliable monolithic membrane waterproofing below, while avoiding complicated and expensive cast-in-place construction.
- Standard sizes and custom configurations available.
- Ability to match planters by color & shape with complimentary benches & site furnishings.

**PREFABRICATED BIORETENTION PLANTERS**  
TOURNESOL SITEWORKS FIBERGLASS



**BUILT-IN PLANTERS**



**PREFABRICATED PLANTERS**  
TOURNESOL 'WILSHIRE' COLLECTION  
COLOR: BRONZE



**BIKE RACKS**  
COLUMBIA CASCADE LOOP RACK  
WITH GALVANIZED FINISH



**ARTIFICIAL FIBERGLASS PEBBLE FURNITURE (LARGE AND SMALL)**  
FROM NATURE WORKS, ENGLAND

**WATER EFFICIENT LANDSCAPE WORKSHEET**

REFERENCE EVAPOTRANSPIRATION (ET<sub>0</sub>): 41.8

| HYDROZONE / PLANTING DESCRIPTION | PLANT FACTOR (PF) | IRRIGATION METHOD                                                                                                                        | IRRIGATION EFFICIENCY (IE) | ETAF (PF / IE) | LANDSCAPE AREA (sq. ft.) | ETAF x AREA                                    | ESTIMATED TOTAL WATER USE (ETWU) |
|----------------------------------|-------------------|------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|----------------|--------------------------|------------------------------------------------|----------------------------------|
| <b>REGULAR LANDSCAPE AREAS:</b>  |                   |                                                                                                                                          |                            |                |                          |                                                |                                  |
| LOW WATER USE                    | 0.3               | DRIP                                                                                                                                     | 0.81                       | 0.3703703      | 1,862                    | 689.6294986                                    | 17872.4                          |
| MEDIUM WATER USE                 | 0.5               | BUBBLER                                                                                                                                  | 0.81                       | 0.6172839      | 90                       | 55.555551                                      | 1439.8                           |
|                                  |                   |                                                                                                                                          |                            |                | <b>TOTALS:</b>           | 1952                                           | 745                              |
| <b>SPECIAL LANDSCAPE AREAS:</b>  |                   |                                                                                                                                          |                            |                |                          |                                                |                                  |
| REC. AREA                        |                   |                                                                                                                                          |                            | 0              | 0                        | 0                                              | 0                                |
| WATER FEATURE 1                  |                   |                                                                                                                                          |                            | 0              | 0                        | 0                                              | 0                                |
| WATER FEATURE 2                  |                   |                                                                                                                                          |                            | 0              | 0                        | 0                                              | 0                                |
|                                  |                   |                                                                                                                                          |                            |                | <b>TOTALS:</b>           | 0                                              | 0                                |
|                                  |                   |                                                                                                                                          |                            |                |                          | <b>ETWU TOTAL:</b>                             | 19,312                           |
|                                  |                   |                                                                                                                                          |                            |                |                          | <b>MAXIMUM ALLOWED WATER ALLOWANCE (MAWA):</b> | 22,765                           |
| <b>ETAF CALCULATIONS:</b>        |                   |                                                                                                                                          |                            |                |                          |                                                |                                  |
| <b>REGULAR LANDSCAPE AREAS:</b>  |                   |                                                                                                                                          |                            |                |                          |                                                |                                  |
| TOTAL ETAF x AREA                | 745               | NOTE: AVERAGE ETAF FOR REGULAR LANDSCAPE AREAS MUST BE 0.55 OR BELOW FOR RESIDENTIAL AREAS, AND 0.45 OR BELOW FOR NON-RESIDENTIAL AREAS. |                            |                |                          |                                                |                                  |
| TOTAL LANDSCAPE AREA             | 1,952             |                                                                                                                                          |                            |                |                          |                                                |                                  |
| AVERAGE ETAF                     | 0.38              |                                                                                                                                          |                            |                |                          |                                                |                                  |
| <b>ALL LANDSCAPE AREAS:</b>      |                   |                                                                                                                                          |                            |                |                          |                                                |                                  |
| TOTAL ETAF x AREA                | 745               |                                                                                                                                          |                            |                |                          |                                                |                                  |
| TOTAL LANDSCAPE AREA             | 1,952             |                                                                                                                                          |                            |                |                          |                                                |                                  |
| SITEWIDE ETAF                    | 0.38              |                                                                                                                                          |                            |                |                          |                                                |                                  |

- GENERAL NOTES:**
1. ALL PLANTING SHALL BE WATERED BY FULLY AUTOMATIC, WATER-CONSERVING IRRIGATION SYSTEM.
  2. ALL PLANTING AREAS, EXCEPT FOR STORMWATER TREATMENT PLANTERS, SHALL RECEIVE A 3" LAYER OF FIRBARK MULCH DRESSING.
  3. STORMWATER TREATMENT PLANTERS SHALL RECEIVE A 2" DEEP LAYER OF 1-3/8"Ø DECORATIVE RIVER-WASHED GRAVEL.

**PROJECT PRIVATE USABLE LANDSCAPE OPEN SPACE**

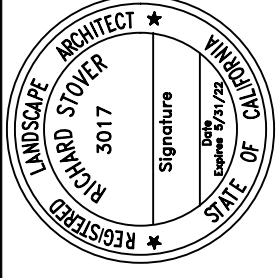
|                | TOTAL AREA | LANDSCAPE AREA |
|----------------|------------|----------------|
| • GROUND LEVEL | 4,481 SF   | 835 SF         |
| • ROOF LEVEL   | 2,742 SF   | 722 SF         |
|                | 7,223 SF   | 1,557 SF       |

CITY REQUIREMENT THAT LANDSCAPE AREA EQUALS 40% OF USABLE PRIVATE OPEN SPACE  
TOTAL AREA OF LANDSCAPE PROVIDED EQUALS 21.5% OF USABLE PRIVATE OPEN SPACE

**REVISIONS**

| NO. | DATE     | DESCRIPTION          |
|-----|----------|----------------------|
| 1   | 12/10/21 | Use Permit Resubmit  |
| 2   | 01/21/22 | Design Review Submit |
| 3   | 03/18/22 | Design Review Submit |
| 4   | 05/18/22 | Permit Resubmittal   |
| 5   | 07/22/22 |                      |

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Ph: 925.933.2883



**BERKELEY PLAZA**  
**2065 KITTREDGE STREET**  
BERKELEY, CALIFORNIA

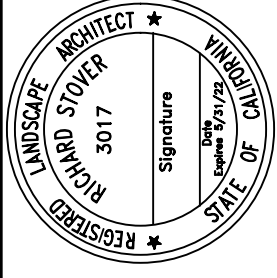
RECOMMENDED  
PLANT LIST, SITE  
AMENITY IMAGES

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| DESIGNED:       | DRAWN:  |
| CHECKED:        | JOB NO: |
| DATE<br>9-23-21 |         |
| SCALE           |         |

SHEET  
**L3**  
OF SHEETS  
Page 833

| REVISIONS |                         |
|-----------|-------------------------|
| 12/20/21  | Use Permit Resubmit     |
| 09/21/21  | Design Review Submittal |
| 08/18/21  | Design Review Submittal |
| 07/22/21  | Design Review Submittal |
| 07/22/21  | Design Review Submittal |

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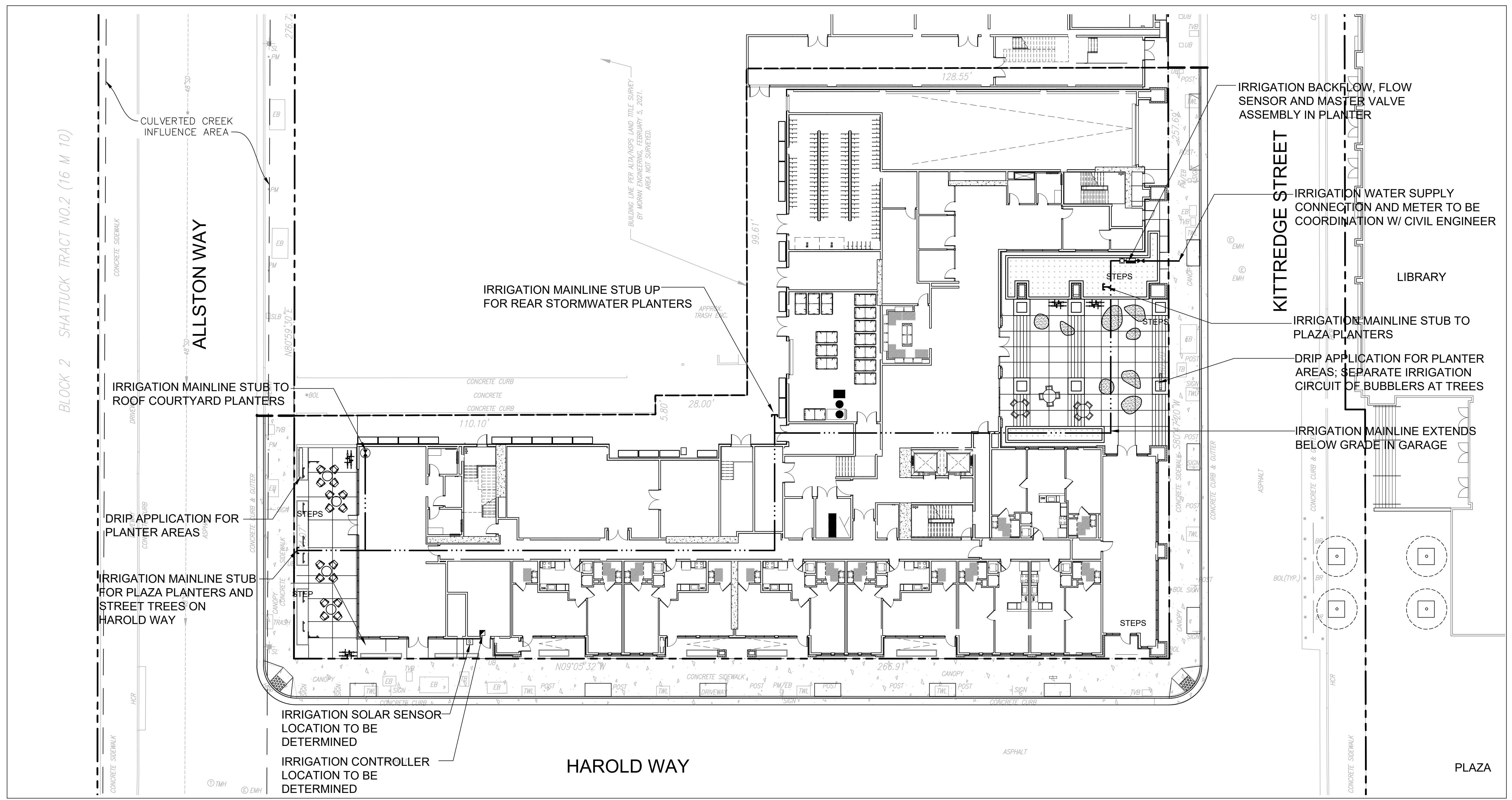


**BERKELEY PLAZA**  
**2065 KITTREDGE STREET**  
 BERKELEY, CALIFORNIA

GROUND LEVEL  
 PRELIMINARY  
 IRRIGATION PLAN

|                 |          |
|-----------------|----------|
| DESIGNED:       | DRAWN:   |
| CHECKED:        | JOB NO.: |
| DATE<br>9-23-21 |          |
| SCALE           |          |

SHEET  
**L4**  
 OF SHEETS

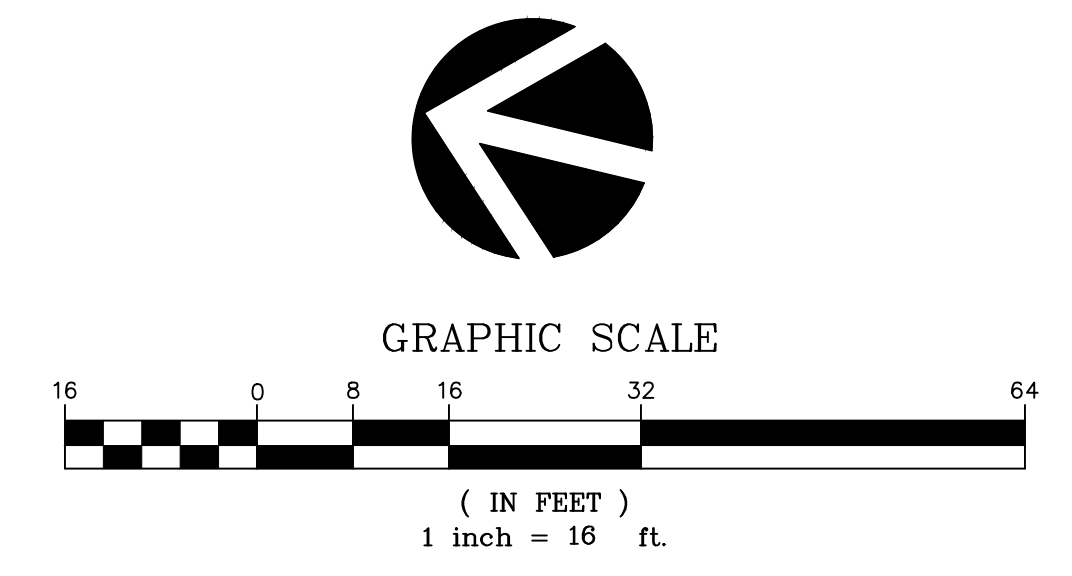


**PRELIMINARY IRRIGATION LEGEND:**

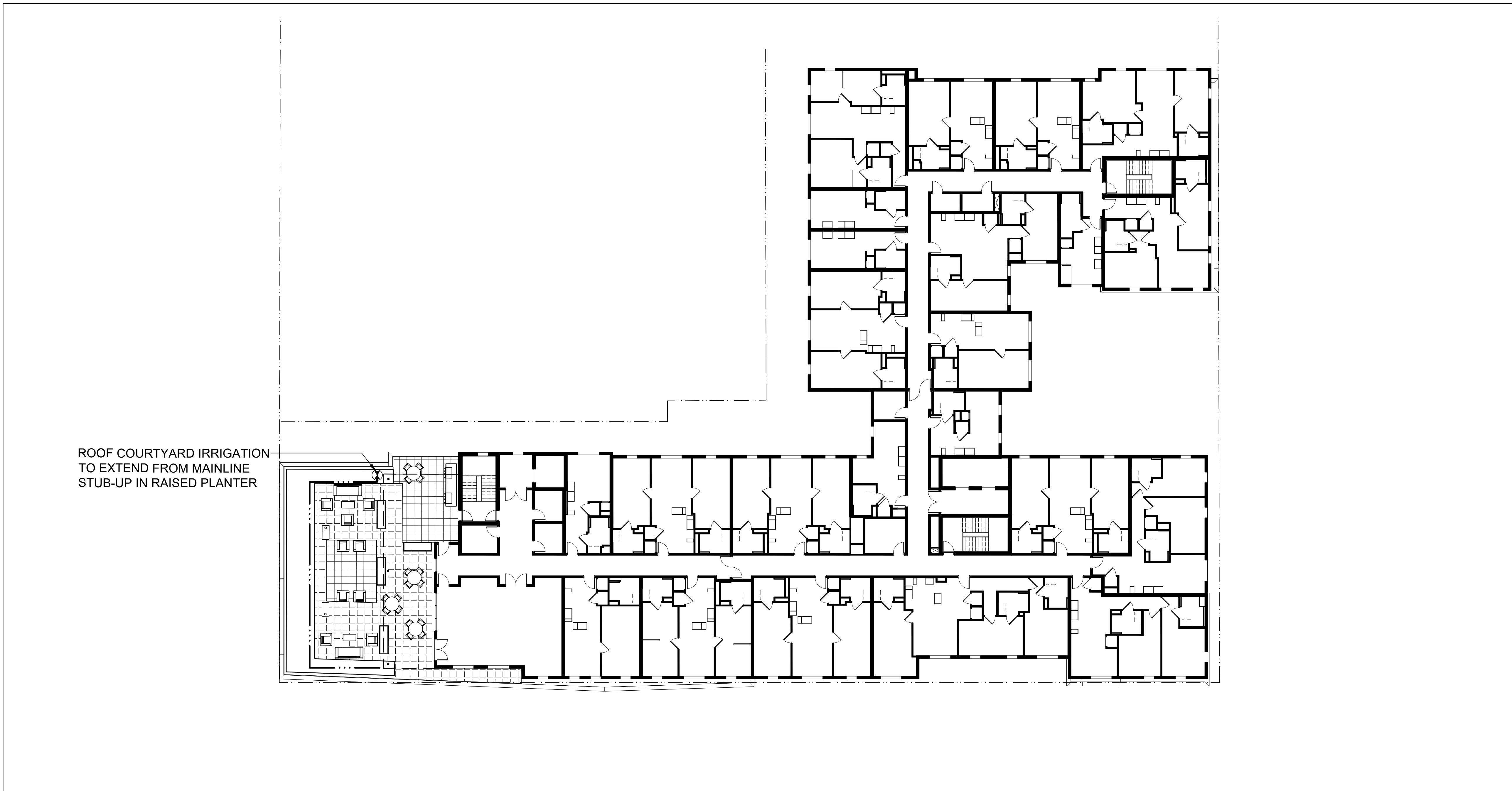
|  |                                                                     |
|--|---------------------------------------------------------------------|
|  | CONTROLLER                                                          |
|  | WIRELESS SOLAR-SYNC SENSOR                                          |
|  | OPEN MASTER CONTROL VALVE. FLOW SENSOR SHALL BE WIRED TO CONTROLLER |
|  | REDUCED PRESSURE BACKFLOW PREVENTER ASSEMBLY                        |
|  | BALL VALVE                                                          |
|  | MAIN LINE                                                           |

**GRAPHIC NOTE:**  
 IRRIGATION PLAN IS A SCHEMATIC REPRESENTATION OF THE DESIGN. ALL IRRIGATION PIPES AND VALVES SHOWN IN PAVING AREAS SHALL BE INSTALLED IN ADJACENT PLANTERS ALONG BACK OF PAVING AS SITE CONSTRAINTS ALLOW. SLEEVE LOCATIONS ARE SHOWN RELATIVE TO RELATED SITE PAVING LOCATIONS.

**IRRIGATION APPLICATION NOTE:**  
 ALL IRRIGATION APPLICATION TO BE DRIP EMITTERS FOR PLANTERS, WITH BUBBLER IRRIGATION FOR TREES. (TYPICAL)



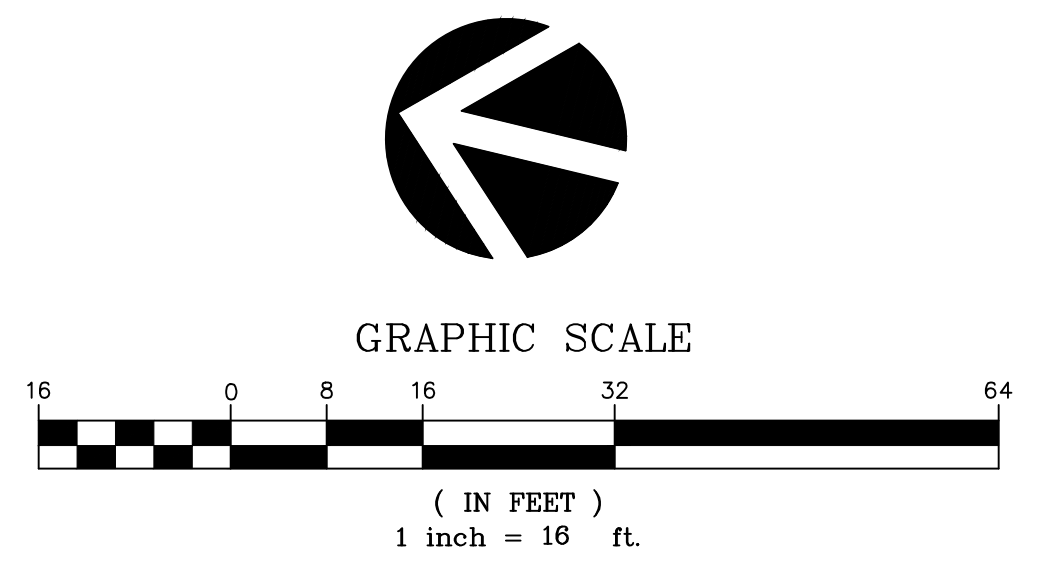
REFER TO SHEET L5 FOR ROOF DECK IRRIGATION  
 REFER TO SHEET L6 FOR IRRIGATION NOTES AND DETAILS



ROOF COURTYARD IRRIGATION  
TO EXTEND FROM MAINLINE  
STUB-UP IN RAISED PLANTER

**IRRIGATION APPLICATION NOTE:**  
ALL IRRIGATION APPLICATION TO BE DRIP EMITTERS FOR  
PLANTERS, WITH BUBBLER IRRIGATION FOR TREES. (TYPICAL)

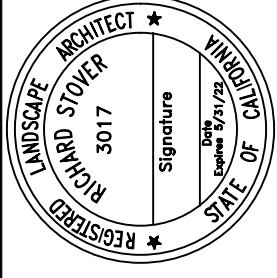
**GRAPHIC NOTE:**  
IRRIGATION PLAN IS A SCHEMATIC REPRESENTATION OF THE DESIGN. ALL  
IRRIGATION PIPES AND VALVES SHOWN IN PAVING AREAS SHALL BE  
INSTALLED IN ADJACENT PLANTERS ALONG BACK OF PAVING AS SITE  
CONSTRAINTS ALLOW. SLEEVE LOCATIONS ARE SHOWN RELATIVE TO  
RELATED SITE PAVING LOCATIONS.



REFER TO SHEET L6 FOR IRRIGATION NOTES AND DETAILS

| REVISIONS |                      |
|-----------|----------------------|
| 12/10/21  | Use Permit Resubmit  |
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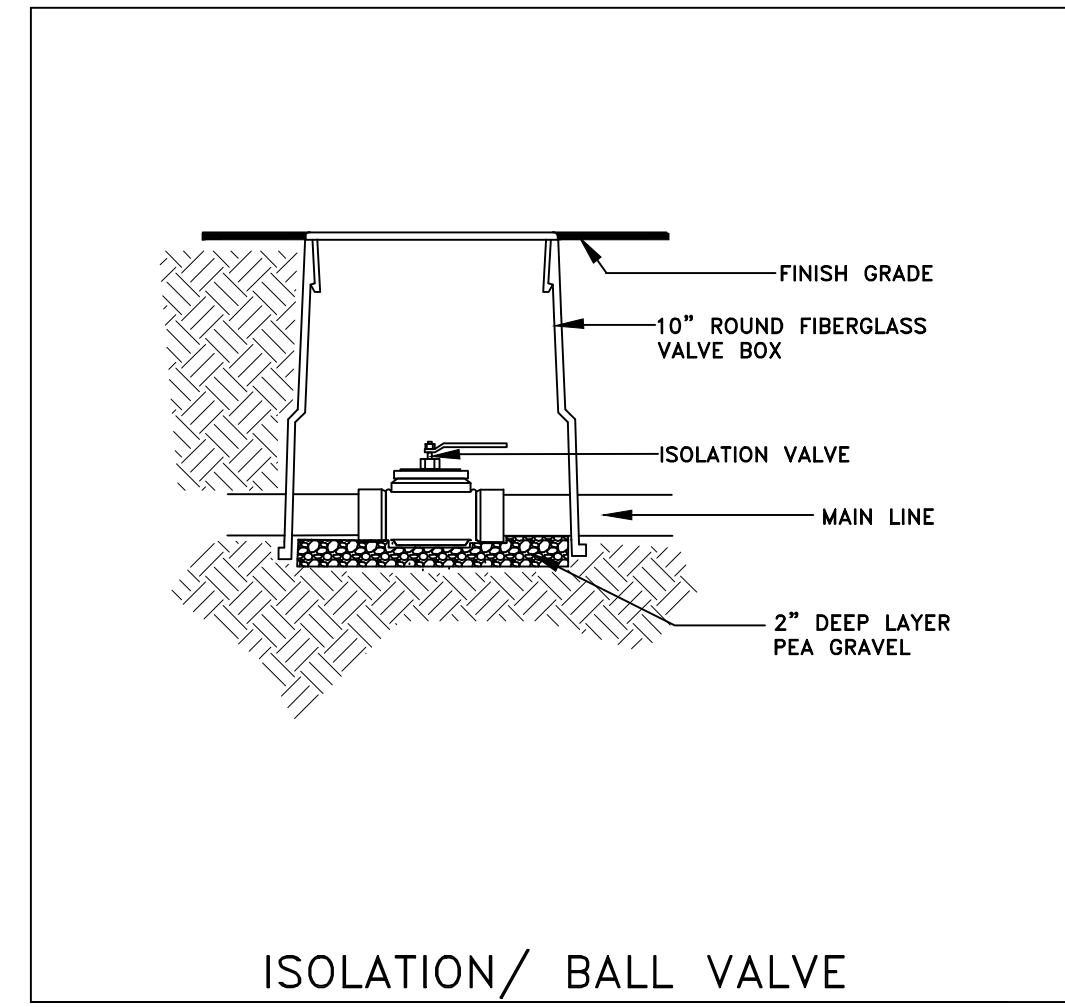
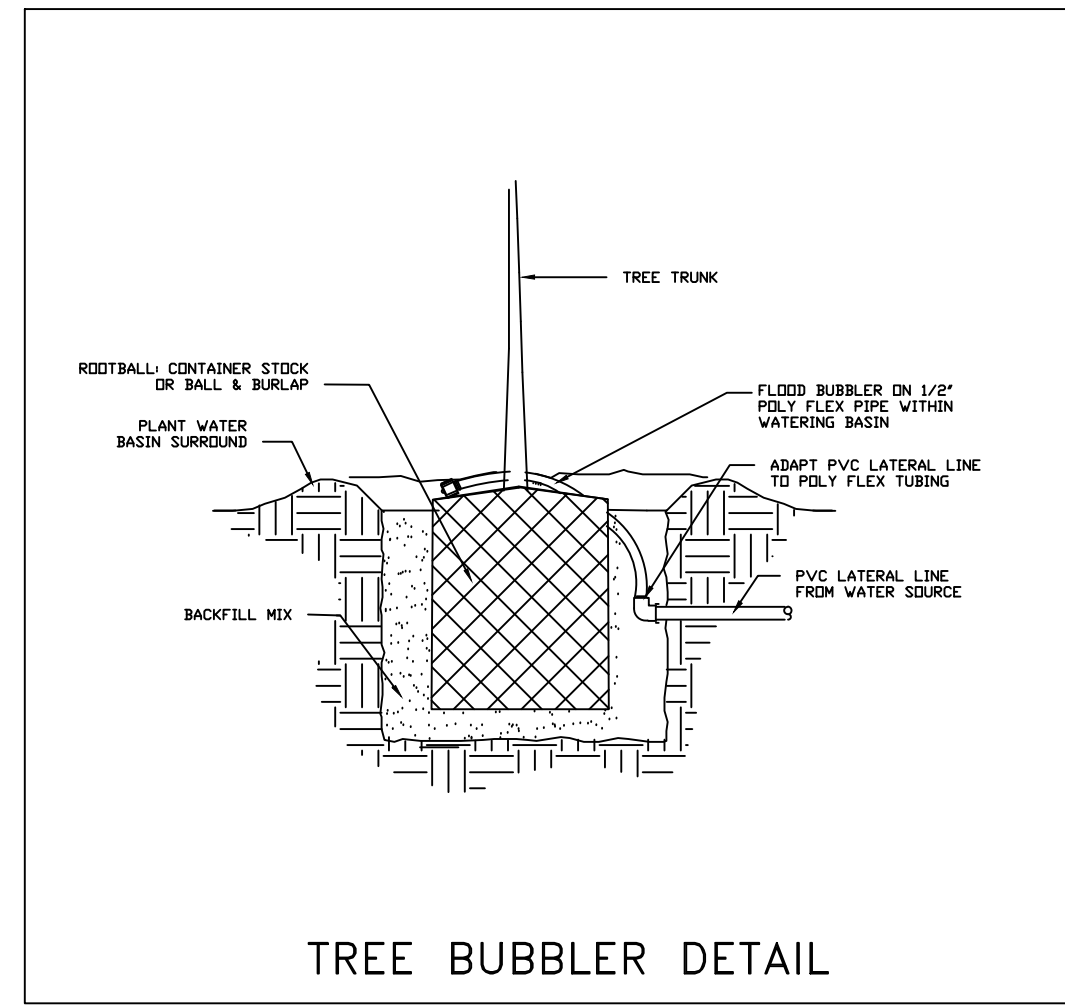
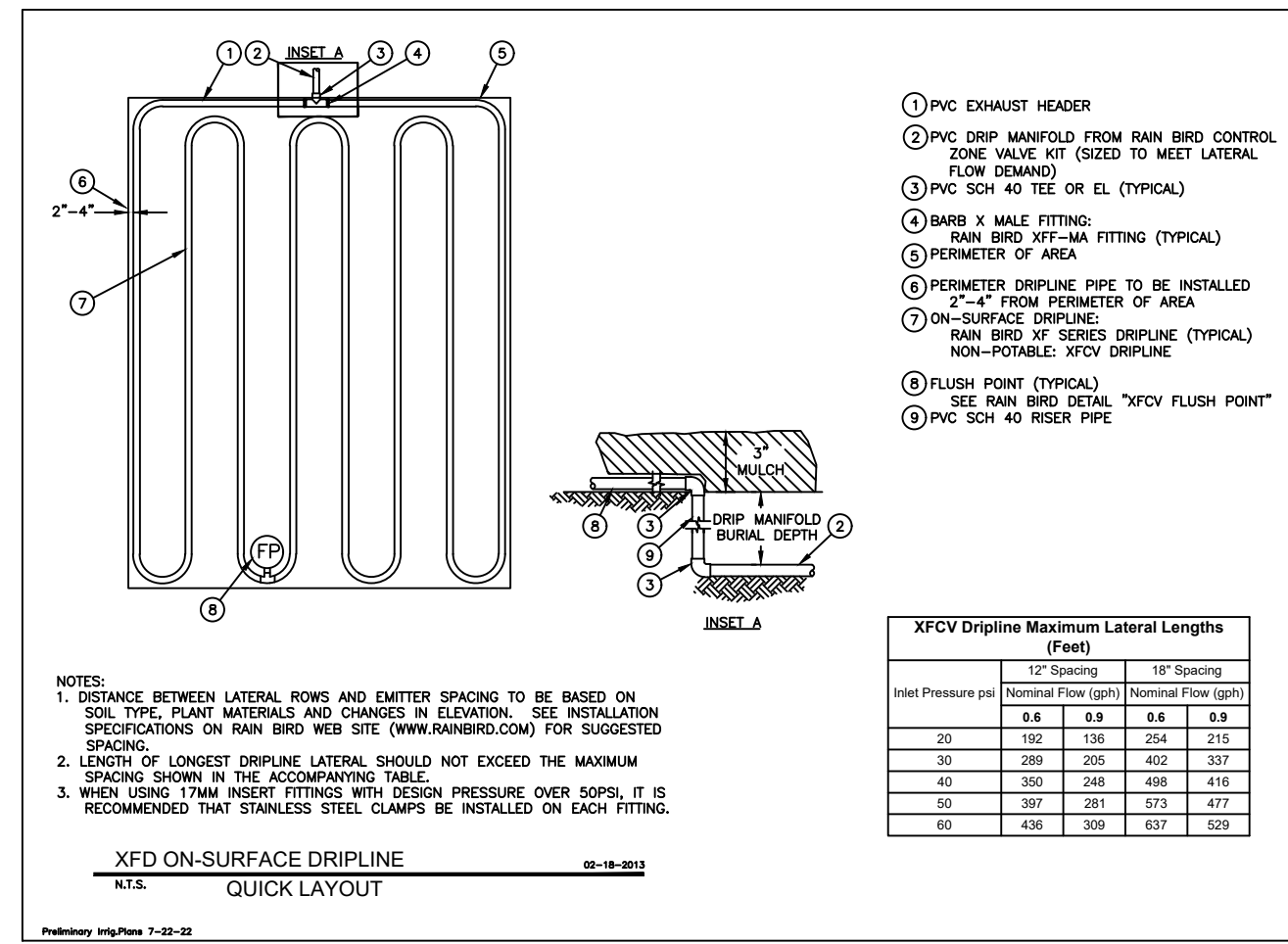


**BERKELEY PLAZA**  
**2065 KITTREDGE STREET**  
BERKELEY, CALIFORNIA

**EIGHTH FLOOR  
PRELIMINARY  
IRRIGATION PLAN**

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| DESIGNED:       | DRAWN:  |
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| SCALE           |         |

SHEET  
**L5**  
OF SHEETS



**IRRIGATION NOTES:**

**GENERAL NOTES:** DO NOT WILLFULLY INSTALL THE IRRIGATION SYSTEM AS SHOWN ON THE DRAWINGS WHEN IT IS OBVIOUS IN THE FIELD THAT OBSTRUCTIONS, GRADE DIFFERENCES OR DIFFERENCES IN AREA DIMENSIONS EXIST THAT MIGHT NOT HAVE BEEN CONSIDERED IN THE DESIGN OF THE SYSTEM. SUCH OBSTRUCTIONS OR DIFFERENCES SHOULD BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT. NOTIFY LANDSCAPE ARCHITECT OF ANY ASPECTS OF LAYOUT, WHICH WILL PROVIDE INCOMPLETE OR INSUFFICIENT WATER COVERAGE OF PLANT MATERIAL AND DO NOT PROCEED UNTIL THE INSTRUCTIONS ARE OBTAINED. IN THE EVENT THIS NOTIFICATION IS NOT PERFORMED, THE IRRIGATION CONTRACTOR SHALL ASSUME FULL RESPONSIBILITY FOR ANY REVISIONS NECESSARY. IT IS THE RESPONSIBILITY OF THE IRRIGATION CONTRACTOR TO FAMILIARIZE HIMSELF WITH ALL THE GRADE DIFFERENCES, LOCATION OF WALKS, RETAINING WALLS, ETC. PRIOR TO CONSTRUCTIONS. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO PROTECT IN PLACE (BY ALL MEANS NECESSARY) ALL EXISTING UTILITIES UNLESS OTHERWISE SPECIFIED ON THE PANS, CITY STANDARD DRAWINGS, SPECIFICATIONS, SPECIFIC NOTES & DETAIL DRAWINGS AND THE SOILS REPORT TAKE PRECEDENCE OVER GENERAL DRAWINGS AND PLANS UNLESS OTHERWISE DIRECTED. ANY DEVIATION FROM APPROVED PLANS DURING CONSTRUCTION WILL REQUIRE 48 HOURS PRIOR NOTICE TO THE LANDSCAPE ARCHITECT. AT LEAST ONE SET OF PLANS SHALL BE ON THE SITE AT ALL TIMES FOR INSPECTION. IRRIGATION CONTRACTOR SHALL COMPLY WITH ALL STATE, COUNTY AND CITY LAWS AND ORDINANCES; AND REGULATIONS OF THE DEPARTMENT OF INDUSTRIAL RELATIONS, O.S.H.A. AND INDUSTRIAL ACCIDENT COMMISSION RELATING TO THE SAFETY AND CHARACTER OF WORK, EQUIPMENT AND LABOR PERSONNEL. THE IRRIGATION CONSULTANT ASSUMES NO RESPONSIBILITY BEYOND THE ADEQUACY OF THE DESIGN CONTAINED HEREIN.

**DRAWINGS:** DUE TO THE SCALE OF DRAWINGS, IT IS NOT POSSIBLE TO INDICATE ALL OFFSETS, FITTINGS, SLEEVES, ETC., WHICH MAY BE REQUIRED. THE CONTRACTOR SHALL ALSO CAREFULLY INVESTIGATE THE STRUCTURAL AND FINISHED CONDITIONS AFFECTING ALL OF HIS WORK. PLAN HIS WORK ACCORDINGLY AND FURNISH SUCH FITTINGS, ETC. AS MAY BE NECESSARY TO MEET SUCH CONDITIONS. DRAWINGS ARE GENERALLY DIAGRAMMATIC AND INDICATIVE OF THE WORK TO BE INSTALLED. THE WORK SHALL BE INSTALLED IN SUCH A MANNER AS TO AVOID CONFLICTS BETWEEN IRRIGATION SYSTEM, PLANTING AND ARCHITECTURAL FEATURES. ALL PIPING, VALVES, ETC. SHOWN WITHIN PAVED AREAS ARE FOR DESIGN CLARIFICATION ONLY AND SHALL BE INSTALLED IN PLANTING AREAS WHERE POSSIBLE.

**CONTROLLER:** IRRIGATION CONTRACTOR IS TO PROGRAM TIMING OF STATIONS ON CONTROLLER TO IRRIGATE IN THE MOST EFFICIENT, WATER CONSERVING MANNER POSSIBLE. IT IS THE RESPONSIBILITY OF THE LANDSCAPE MAINTENANCE CONTRACTOR AND/OR THE OWNER TO PROGRAM THE IRRIGATION CONTROLLERS TO PROVIDE THE MINIMUM AMOUNT OF WATER NEEDED TO SUSTAIN PROPER PLANT HEALTH. THIS INCLUDES MAKING ADJUSTMENTS TO THE PROGRAM FOR SEASONAL WEATHER CHANGES, PLANT MATERIAL NEEDS, WATER REQUIREMENTS, CHANGES IN ELEVATION, SUN, SHADE AND WIND EXPOSURES. CONTRACTOR SHALL ASSUME RESPONSIBILITY FOR ANY DAMAGE, EROSION, PUDDLING, ETC. DUE TO IMPROPER PROGRAMMING. ELECTRICAL CONTRACTOR TO SUPPLY 120-VOLT A.C. (2.5 AMP) SERVICE & DISCONNECT, JUNCTION BOX AND CONDUIT, AS NECESSARY, TO CONTROLLER LOCATION. IRRIGATION CONTRACTOR TO MAKE FINAL CONNECTION FROM ELECTRICAL STUB-OUT TO CONTROLLER. INSTALL NEW 9-VOLT DURACELL BATTERY(S) IN EACH CONTROLLER (IF REQUIRED) TO RETAIN PROGRAM IN MEMORY DURING TEMPORARY POWER FAILURES. CONTROLLER SHALL HAVE GROUND WIRE AS PER MANUFACTURER'S INSTRUCTIONS.

**VALVES:** BACKFLOW DEVICE, ISOLATION AND CONTROL VALVE LOCATIONS SHOWN ARE DIAGRAMMATIC. INSTALL IN GROUND COVER / SHRUB AREAS AT THE EDGES OF THE PLANTING AREAS SO AS TO NOT INTERFERE WITH PLANT HOLE EXCAVATION. INSTALL VALVE BOXES 12 INCHES FROM AND PERPENDICULAR TO WALKS, CURBS, ETC. AND EACH BOX SHALL BE 12 INCHES APART. THE SHORT SIDE OF VALVE BOX SHALL BE PARALLEL TO WALK, CURB, ETC. INSTALL (1) VALVE PER RECTANGULAR BOX IN LINE WITH THE LENGTH OF THE BOX. LOCATE QUICK COUPLING VALVES 2 INCHES FROM HARDSCAPE AREA.

**WIRING:** CONTROL WIRES SHALL BE U.L. APPROVED FOR DIRECT BURIAL IN GROUND, COPPER SIZE #14-1. COMMON GROUND WIRE SHALL HAVE WHITE INSULATION JACKET. CONTROL WIRE SHALL HAVE INSULATION JACKET OF COLOR OTHER THAN WHITE. SPLICING SHALL BE DONE WITH 3M #3570 SCOTCHLOK SEAL PACKS. SPLICING OF 24-VOLT WIRES WILL NOT BE PERMITTED EXCEPT IN VALVE BOXES. LEAVE A 24 INCH COIL OF EXCEL WIRE AT EACH SPLICE AND AT 100 FEET ON CENTER ALONG WIRE RUN. TAPE WIRE IN BUNDLES AT 10 FEET ON CENTER. NO TAPING PERMITTED IN SLEEVES. INSTALL A CONTROL WIRE FOR EACH EXTRA STATION LEFT ON THE CONTROLLER AND A SPARE CONTROL WIRE OF A DIFFERENT COLOR ALONG THE ENTIRE MAIN LINE. LOOP 24 INCHES OF EXCESS WIRE INTO EACH SINGLE VALVE BOX AND INTO ONE VALVE BOX IN EACH GROUP OF VALVES.

**ON-GRADE DRIP LINE SYSTEM:** ALL DRIP LINE TO BE SET ON GRADE IN PARALLEL ROWS AS REQUIRED TO PROVIDE COMPLETE COVERAGE OF GROUND COVER AREAS AS WELL AS SHRUB PLANTING. EMITTERS PROVIDE 0.80 GALLONS PER HOUR FLOW (APPROXIMATELY 1.0 GALLON PER 100 LINEAR FEET OF DRIP LINE). DESIGN LIMITS RECOMMEND NOT EXCEEDING 200 FEET OF TUBING FOR ANY SINGLE LENGTH. STAKE TUBING TO GRADE WITH GALVANIZED TIE-DOWN STAKES AT 3 FT. (MAX.) SPACING. PROVIDE XF DRIPLINE INSERT FITTINGS FOR ALL CONNECTIONS. PROVIDE REMOVABLE THREADED END CAPS AT THE TERMINUS OF EACH DRIP LINE LENGTH FOR EASY FLUSHING OF SYSTEM.

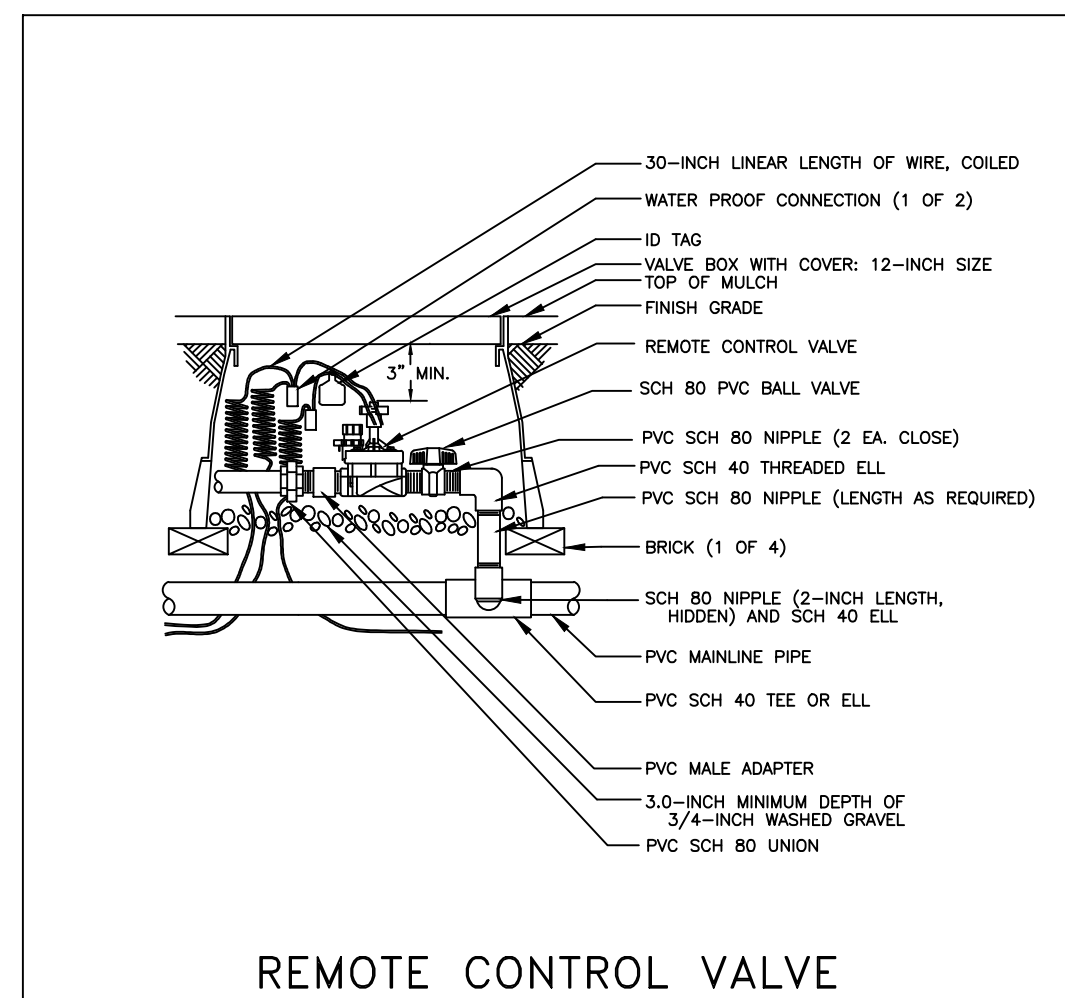
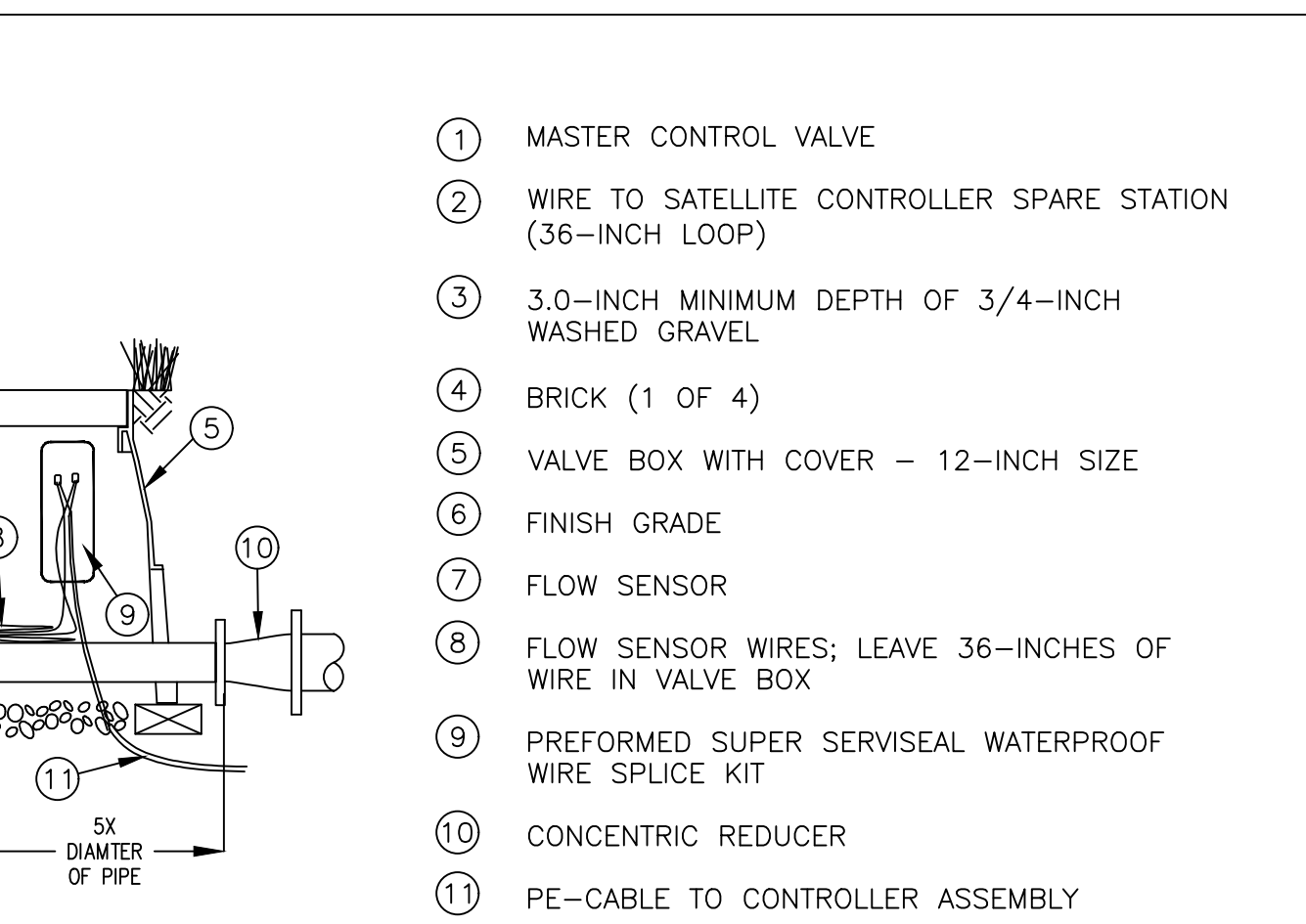
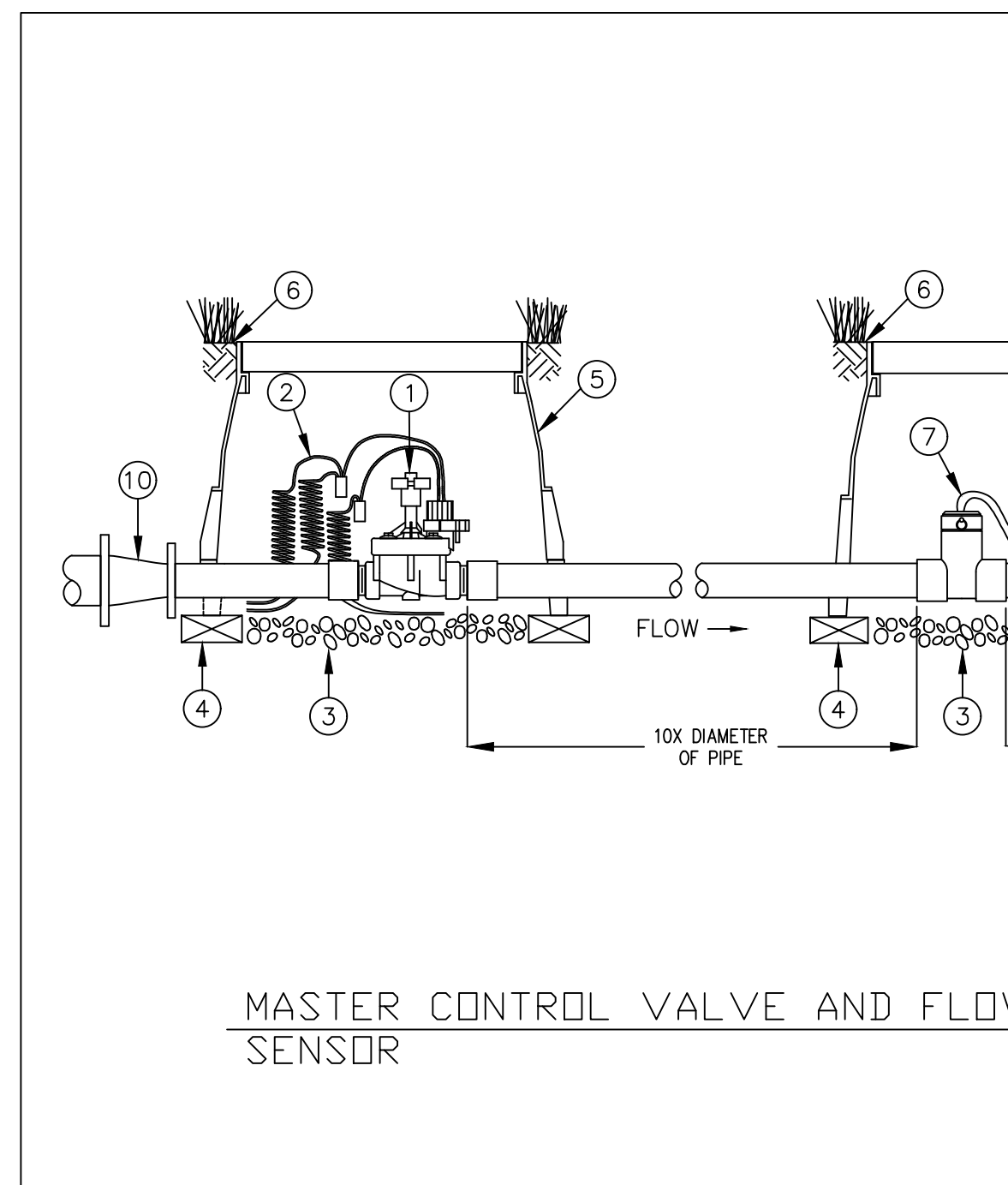
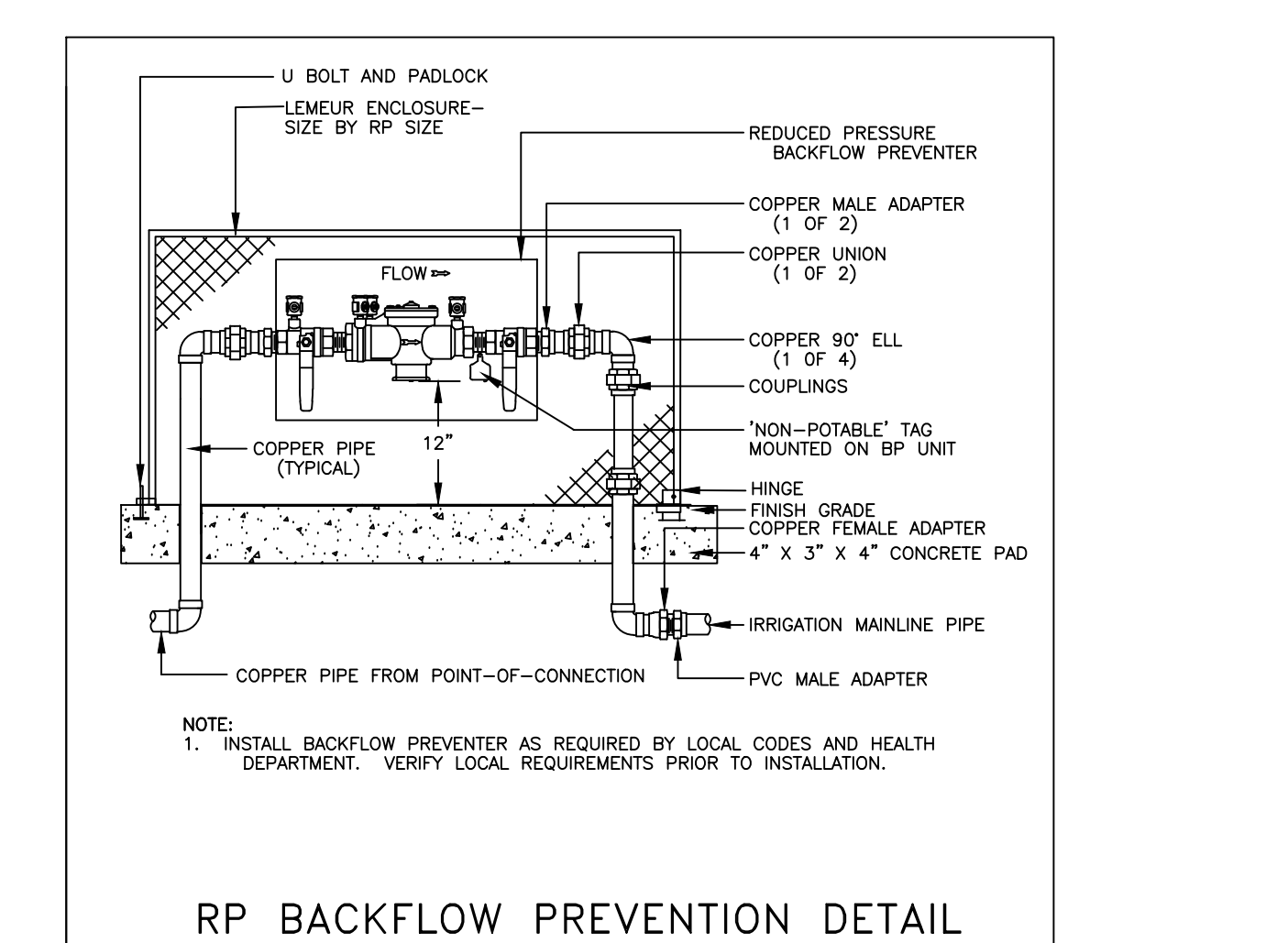
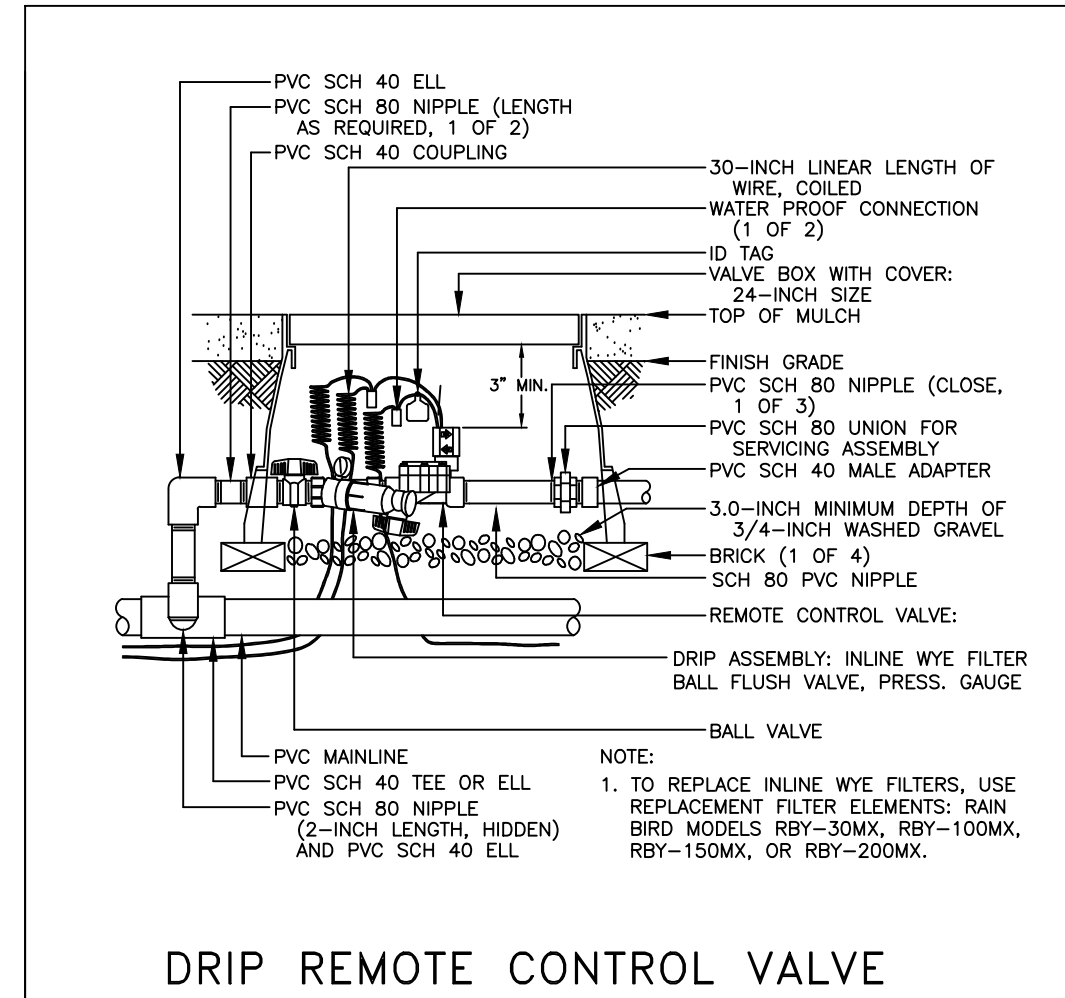
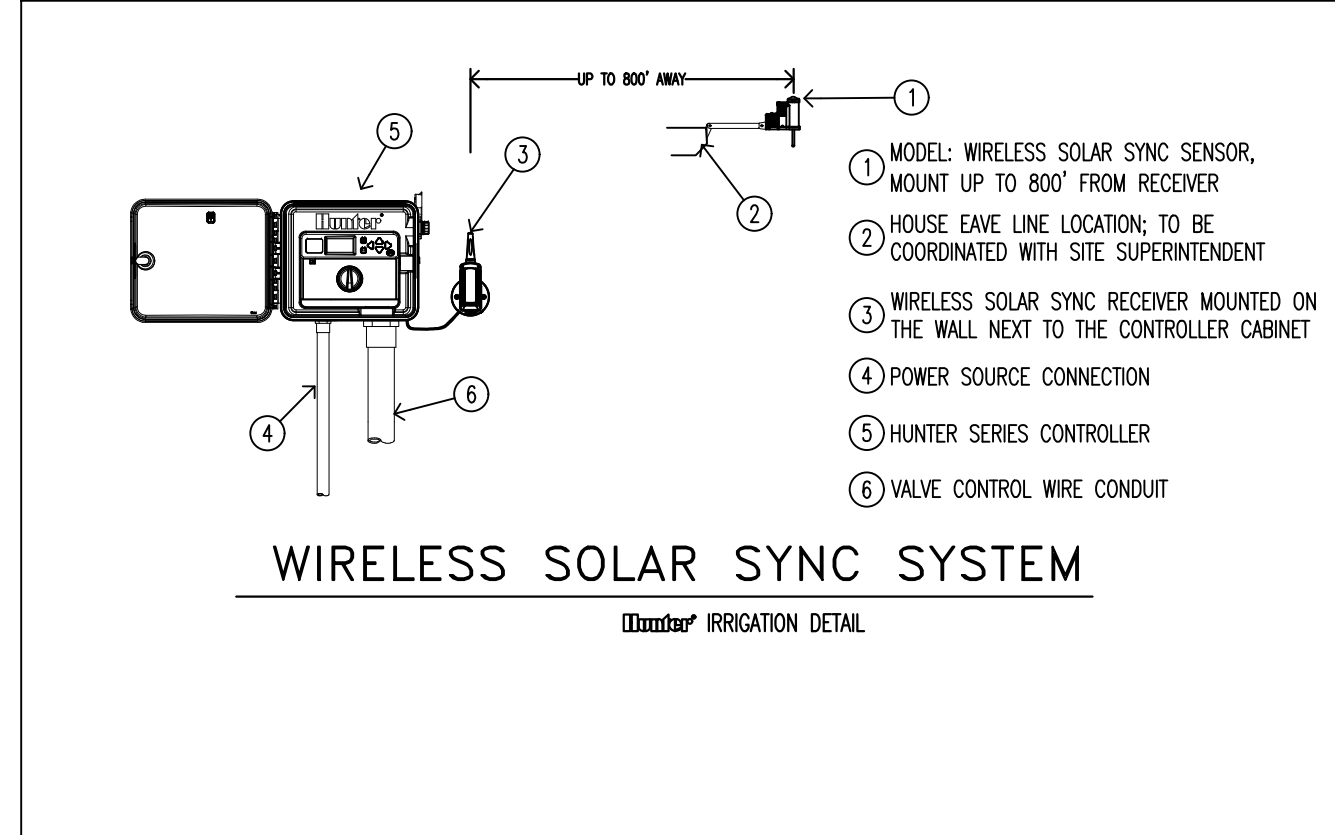
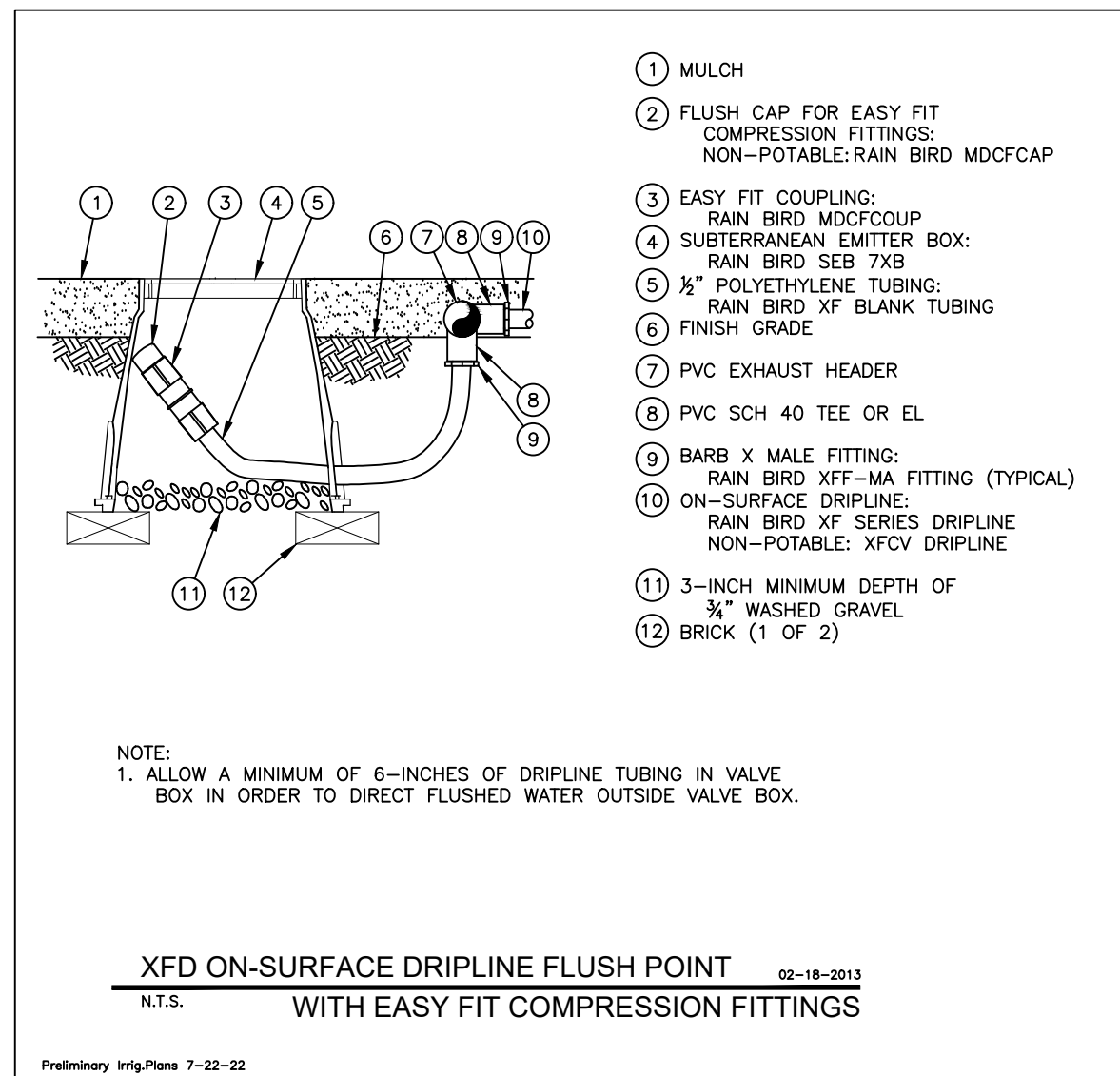
**PIPING/TRENCHING:** INSTALL MAIN LINE PIPING WITH CONCRETE THRUST BLOCKS AS PER MANUFACTURER'S RECOMMENDATION. MAIN AND LATERAL LINES SHALL BE SURROUNDED WITH A MINIMUM OF 2" OF SAND OR ROCK FREE SOIL. PIPE SEALANT COMPOUND SHALL BE RECTOR SEAL T-2, PERMATHEX 51 OR LASCO #905305. PRESSURE THE MAIN LINE @ 150 PSI FOR 2 HOURS AND THE LATERAL LINES @ 100 PSI FOR 2 HOURS, WHERE IT IS NECESSARY TO EXCAVATE ADJACENT TO EXISTING TREES, THE CONTRACTOR SHALL USE ALL POSSIBLE CARE TO AVOID INJURY TO TREES, AND TREE ROOT SYSTEMS. EXCAVATION IN AREA WHERE TWO (2) INCH AND LARGER ROOTS EXIST SHALL BE DONE BY HAND. CUT ROOTS ONE (1) INCH AND LARGER IN DIAMETER SHALL BE PAINTED WITH TWO COATS OF TREE SEAL OR EQUAL. TRENCHES ADJACENT TO TREES SHOULD BE CLOSED WITHIN TWENTY-FOUR (24) HOURS; AND WHERE THIS IS NOT POSSIBLE, THE SIDE OF THE TRENCH ADJACENT TO THE TREE SHALL BE KEPT SHADED WITH WET BURLAP OR CANVAS.

**SLEEVES:** THE IRRIGATION CONTRACTOR SHALL COORDINATE WITH THE GENERAL CONTRACTOR AND OTHER SUBCONTRACTORS FOR THE LOCATION AND THE INSTALLATION OF SLEEVES, CONDUIT OR PIPE THROUGH WALLS, UNDER ROADWAYS, PAVING, STRUCTURES, ETC. PRIOR TO CONSTRUCTION. IN ADDITION TO THE SLEEVES AND CONDUITS SHOWN ON THE DRAWINGS, THE IRRIGATION CONTRACTOR SHALL BE RESPONSIBLE FOR THE COORDINATION AND/OR INSTALLATION OF SLEEVES AND CONDUITS OF SUFFICIENT SIZE UNDER ALL PAVED AREAS.

**IRRIGATION SYSTEM:** THE IRRIGATION SYSTEM IN CURRENTLY POTABLE. SET UP FOR POSSIBLE RETROFIT TO RECYCLED WATER SOURCE IN FUTURE. DESIGN IS BASED ON A MINIMUM OPERATING PRESSURE (PSI) AND A FLOW DEMAND (GPM) AS NOTED ON PLAN. THE IRRIGATION CONTRACTOR SHALL VERIFY WATER PRESSURE PRIOR TO CONSTRUCTION. REPORT ANY DIFFERENCE BETWEEN THE WATER PRESSURE INDICATED ON THE DRAWINGS AND THE ACTUAL PRESSURE READING AT THE IRRIGATION POINT-OF CONNECTION TO THE LANDSCAPE ARCHITECT. FAILURE TO DO SO WILL RESULT IN THE CONTRACTOR BEING RESPONSIBLE FOR ANY NECESSARY CHANGES DUE TO THIS DIFFERENCE.

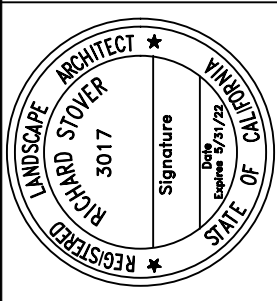
**GUARANTEE:** ALL CONSTRUCTION, PARTS AND PRODUCTS BY THE LANDSCAPE CONTRACTOR AND/OR HIS SUBCONTRACTORS SHALL BE GUARANTEED FOR ONE (1) FULL YEAR AFTER THE BEGINNING OF THE MAINTENANCE PERIOD. THE CONTRACTOR SHALL REPLACE (AT NO EXPENSE TO THE OWNER) ANY AND ALL IRRIGATION PRODUCTS THAT ARE IN AN UNACCEPTABLE CONDITION FOR THE TIME OF USE. REPLACEMENT OF ANY ITEMS SHALL MATCH ORIGINAL DESCRIPTION OF ITEMS ON CONSTRUCTION PLANS AND SHALL BE INSTALLED PER SPECIFICATION. THE CONTRACTOR SHALL NOT BE HELD LIABLE FOR LOSS OF IRRIGATION PARTS OR PRODUCTS DUE TO VANDALISM, ACCIDENTAL CAUSES, OR ACTS OF NEGLIGENCE BY OTHERS THAN THE CONTRACTOR, HIS AGENTS OR EMPLOYEES.

**DO NOT BID, ORDER MATERIALS OR INSTALL ANY OR ALL OF SYSTEM BEFORE READING THE IRRIGATION NOTES IN THEIR ENTIRETY. THE CONTRACTOR SHALL ASSUME FULL RESPONSIBILITY FOR ALL CHANGES, REVISIONS AND OR ADDITIONS TO SYSTEM DUE TO FAILURE TO DO SO.**



| NO. | DATE     | REVISIONS               |
|-----|----------|-------------------------|
| 1   | 12/10/21 | Use Permit Resubmit     |
| 2   | 12/10/21 | 12/10/21 Review Submitt |
| 3   | 05/18/22 | 05/18/22 Review Submitt |
| 4   | 05/18/22 | 05/18/22 Resubmittal    |
| 5   | 07-22-22 |                         |

RW Stover & Associates, Inc.  
Landscape Architecture  
10175 Wilshire Blvd., Suite 4  
Wahau Creek, CA 94596  
Ph: 925.933.2383



BERKELEY PLAZA  
2065 KITTREDGE STREET  
BERKELEY, CALIFORNIA

IRRIGATION NOTES AND DETAILS

|                 |          |
|-----------------|----------|
| DESIGNED:       | DRAWN:   |
| CHECKED:        | JOB NO.: |
| DATE<br>9-23-21 |          |
| SCALE           |          |

SHEET  
**L6**  
OF SHEETS



Office of the City Manager

INFORMATION CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Audit Status Report: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress towards the Year 2020 Zero Waste Goal

INTRODUCTION

The Office of the City Auditor presented a July 1, 2014 Report to the City Council: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress towards the Year 2020 Zero Waste Goal<sup>1</sup> (Audit Report). The City Auditor conducted the Audit Report at the Public Works Director's request to assess Zero Waste Division's progress towards the Year 2020 Zero Waste Goal. This is the fifth and final status report on the efforts made to implement the Audit Report's recommendations, which are slated for no further follow-up action as recommended by the City Auditor for all audits more than five years old.

CURRENT SITUATION AND ITS EFFECTS

The Audit Report noted fifteen (15) recommendations for the Public Works Department (PWD) and its Zero Waste Division (ZWD) to review, implement and report to Council. The first set of seven (7) recommendations was related to zero waste goals and ZWD's operational components, and the second set of eight (8) recommendations focused on collaborating with the Department of Information Technology (IT) to utilize technology to interface with Zero Waste routes, staff, and the customers.

Since the January 15, 2020 update on this Audit Report, Public Works has made additional progress on the implementation of recommendations. At the time of this report, the Auditor's Office verified three (3) of the recommendations as implemented and dropped the remaining twelve (12) recommendations.

BACKGROUND

Public Works' Zero Waste Division is responsible for the collection of residential material, including refuse, recycling, and composting; collection and processing of commercial material, including refuse, recycling, and composting; off-site hauling and

<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Auditor/Level\\_3\\_-\\_General/A%20RPT\\_Zero%20Waste\\_Final.pdf](https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/A%20RPT_Zero%20Waste_Final.pdf)

composting of green/food waste for all customers; off-site hauling, sorting, and marketing of construction and demolition debris for all customers; and manages contracts related to the above work.

On March 22, 2015, the Berkeley City Council adopted Zero Waste Resolution No. 62,849-N.S. setting a goal of zero waste sent to landfills by the year 2020. The Resolution does not define a specific zero waste percentage expectation for Berkeley, but the language used therein suggests diversion of 100% of waste from landfills.

In its October 17, 2017 presentation to the City Council, the Zero Waste Commission recommended attaining the City's Zero Waste goal requires redefining the Zero Waste Goal and issuing a Request for Proposal (RFP) for a Zero Waste Management Strategic Plan. The City Council approved this recommendation.

On April 28, 2022, the City released the RFP, seeking qualified firms for the development and completion of an Integrated Zero Waste Management Strategic Plan (Plan) to provide methodologies and guidance for the City's Zero Waste Division's operation, personnel, program, and financial requirements to meet the City's Climate Action Plan and Zero Waste goals. The Plan's development will include robust public participation and outreach, along with City Council and staff input on both the draft and final Plan. City Council approved an item at the October 8, 2022 meeting to enter into a contract with the selected consultant for the Plan's development.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The increased diversion of compostable and recyclable materials is an essential part of the City's Zero Waste Goal as described in the City's 2009 Climate Action Plan.

#### POSSIBLE FUTURE ACTION

Public Works' Zero Waste Division and the Zero Waste Commission will continue to take timely and focused action(s) to address outstanding and partially implemented recommendations.

#### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The Integrated Zero Waste Management Strategic Plan has an approved budget of \$500,000. The AMCS financial software platform and associated professional services are budgeted for \$1.3 million for the first five years. There may be additional financial impacts to complete the remaining Audit findings.

#### CONTACT PERSON

Greg Apa, Solid Waste & Recycling Manager (510) 981-6359

Attachment:

1. Audit Findings and Recommendations Response Form

ATTACHMENT No. 1

| Audit Title: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal |                                                                                                                                                                                                                                                                                        |                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| Findings and Recommendations                                                                                                                    | Lead Dept.                                                                                                                                                                                                                                                                             | Agree, Partially Agree, or Do Not Agree and Corrective Action Plan | Expected or Actual Implementation Date                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Status of Outstanding Audit Recommendations and Implementation Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Finding 1: Insufficient data and resources (for planning, strategy, or execution) dedicated to Berkeley's zero waste by 2020 resolution</b>  |                                                                                                                                                                                                                                                                                        |                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 1.1                                                                                                                                             | Request the City Council to redefine and then reaffirm its commitment to zero waste (i.e., the percentage that the Council considers to be success), and to ensure sufficient resources to fund appropriate staffing and the necessary infrastructure to achieve stated goals by 2020. | Public Works                                                       | <p>Agree</p> <p>This is consistent with the strategic approach the Public Works Department has taken to correct operational deficiencies and create an organization more capable of continuing the work to reach the City's zero waste goal.</p> <p>The Department is poised to undertake an open search for a new ZWD Manager whose input, perspective, and anticipated professional expertise will be essential in analyzing the resources necessary to achieve the goal and drafting suitable recommendations to Council.</p> | <p>5/09/2017 Status: not submitted</p> <p><b>January 23, 2018 Update:</b><br/><b>Not Implemented</b><br/>The Zero Waste Commission submitted to the City Council its recommendation for the City to develop an RFP to: 1) develop a Zero Waste Strategic Plan (Plan) to delineate terminology, 2) define and clarify what the City's Zero Waste Goal will be, and 3) develop plan for the Public Works - Zero Waste Division to implement to attain that goal. The City Council concurred with this recommendation which was an item on its October 17, 2017 Action Calendar for the Zero Waste Division to develop the RFP for the development of the Plan.</p> <p><b>6/04,2018 Update:</b><br/><b>Not Implemented</b><br/>The RFP is in development and should be released to solicit proposals to be submitted during the second quarter FY2019.</p> <p><b>March 12, 2019</b><br/><b>Partially Implemented</b><br/>ZWD has developed an RFP to: 1) develop a Zero Waste Strategic Plan (Plan) to delineate terminology, 2) define and clarify what the City's Zero Waste Goal will be, and 3) develop plan for the Public Works - Zero Waste Division to implement to attain that goal. The RFP is in administrative review.</p> <p><b>March 24, 2020 Update</b><br/><b>Partially Implemented</b><br/>At the September 17, 2019 City Council Work Session, Public and its consultant presented the proposed 5-year Rate Review that includes additional staffing for implementation and compliance with State and StopWaste.org mandatory recycling and food waste. The Council provided input on the Rate Review is in review and adjusted Rates with be presented to the City Council mid-2020.</p> <p><b>November 13, 2022 Update</b><br/><b>Dropped</b><br/>Revised 5-year Rate Schedules presented at the December 7, 2021 City Council Work Session. Council consented to moving forward with Proposition 218 process to approve Rates as proposed. In January</p> |

ATTACHMENT No. 1

| Audit Title: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal                                                                                                                                                                                                                                                                                                                                                                           |              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| Findings and Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Lead Dept.   | Agree, Partially Agree, or Do Not Agree and Corrective Action Plan                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Expected or Actual Implementation Date                                                  | Status of Outstanding Audit Recommendations and Implementation Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| 1.2 Draft and obtain Council approval of a written strategic plan to achieve zero waste by 2020, including annual or biennial interim waste diversion goals. Topics that the strategic plan should discuss include: <ul style="list-style-type: none"> <li>Objectives and long-term and interim goals</li> <li>Actions to be taken</li> <li>Responsible parties</li> <li>Expected cost and impact of implementation</li> <li>Performance measures</li> <li>External factors affecting performance and progress</li> </ul> | Public Works | <p>Agree</p> <p>The Public Works Department has taken a strategic approach to solving the structural deficit and making progress toward our Zero Waste goal. The Department improved the efficiency of operations, followed the strategies in the Climate Action Plan, is currently completing a commercial franchise study, and in May 2014 completed a Prop 218-compliant rate increase. PW will continue to focus on maintaining efficient operations, high quality customer service, and improvements to waste diversion efforts.</p> <p>The Department will take the next step toward zero waste by reassessing the current situation, and developing a strategic plan intended to guide the Department through the increasingly difficult path to zero waste. Part of this process requires evaluating the existing Transfer Station infrastructure, along with what might be required to reach the Zero Waste goal as defined.</p> <p>The strategic plan will be flexible so that annual work plans can be designed to address changing conditions.</p> <p>Public Works will build upon relevant</p> | <p>June 2015</p> <p>June 2019</p> <p>June 2019</p> <p>December 2019</p> <p>May 2021</p> | <p>5/09/2017 Status: not submitted</p> <p><b>January 23, 2018 Update:</b><br/><b>Not Implemented</b><br/>The City's Solid Waste Management Plan (1998) and Source Reduction and Recycling Element (1992) are the City's most recent documents guiding the City's actions toward the goal of zero waste. Although the City's Solid Waste Management Plan Update (2005) wasn't formerly adopted by the City, it was designed to achieve the 2010 goal of reaching 75% diversion. The City is currently achieving 76% diversion based on FY2015 information. The Zero Waste Commission and the City Auditor each concluded independently that a comprehensive, written strategic plan that clearly defines roles and responsibilities and assigns sufficient resources is needed to guide the City towards the goal of achieving zero waste. The Zero Waste Commission recommended and the City Council concurred at its October 17, 2017 Action Calendar concurred with Zero Waste Commission's recommendation for Public Works' Zero Waste Division to develop an RFP to: develop a Zero Waste Strategic Plan to delineate terminology, define and clarify what the City's Zero Waste Goal will be, and develop plan to attain the defined Strategic Plan's Zero Waste Goal.</p> <p><b>6/04,2018 Update:</b><br/><b>Not Implemented</b><br/>These issues will be included in the development of RFP that will be advertised for proposals the second quarter FY2019.</p> <p><b>March 12, 2019</b><br/><b>Partially Implemented</b><br/>ZWD has developed an RFP to: 1) develop a Zero Waste Strategic Plan (Plan) to delineate terminology, 2) define and clarify what the City's Zero Waste Goal will be, and 3) develop plan for the Public Works - Zero Waste Division to implement to attain that goal. The RFP is in administrative review.</p> <p><b>March 24, 2020 Update</b><br/><b>Partially Implemented</b><br/>With installation and implementation of the Zero Waste Division's management software (vendor is AMCS and projected to be</p> |





ATTACHMENT No. 1

| Audit Title: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal |              |                                                                                                                                                  |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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|                                                                                                                                                 |              |                                                                                                                                                  | <p>May 2022</p> <p>August 2024</p>     | <p>City’s policy and decision making and paths of implementation to the goal of Zero Waste. IT and ZWD are in the process of selecting a vendor to implement an entirely new ZW software solution that includes routing, billing and work orders. ZW meets weekly with key PW staff to ensure division objectives and action items are prioritized and budgeted for. With the first reading and passing of the Single Use Foodware and Litter Reduction Ordinance on January 22, 2019, ZWD is working closely with PW Fiscal and Admin division to budget for adequate staffing for this new responsibility. ZWD anticipates completion of a Feasibility Study to replace the existing Transfer Station by mid-2019. ZWD primary objectives are in accordance with the Citywide Strategic Plan. Once the new ZW software system is in place and the Strategic Plan has been completed, a more accurate work plan could be created that would include performance measures.</p> <p><b><u>March 24, 2020 Update</u></b><br/> <b>Partially Implemented</b><br/>                     With installation and implementation of the Zero Waste Division’s management software (vendor is AMCS and projected to be completed late 2020), the City can assure Strategic Plan proposes that customers information is accurate and verifiable (FUND\$ cannot). With completion of this step, the City can issue an RFP for a new user-friendly routing system. With a new Routing system, reliable, verifiable and accurate performance metrics can be developed. The cost of these systems and additional staffing required have been included in projected budgets.</p> <p><b><u>November 13, 2022 Update</u></b><br/> <b>Dropped</b><br/>                     The AMCS software financial platform will not be fully implemented until July 2024. An RFP for an Integrated Zero Waste Management Strategic Plan (Plan) was released April 28, 2022. An October 8, 2022 City Council Consent Item was submitted for award of contract for development of the Plan to the selected consultant. The implementation of the AMCS platform and the Plan development will be conducted and coordinated in unison.</p> |
| 1.4                                                                                                                                             | Public Works | Agree<br>Prepare an annual report to Council, highlighting progress toward strategic plan and work plan goals to achieve zero waste in Berkeley. | December 2019                          | <p>5/09/2017 Status: not submitted</p> <p><b><u>January 23, 2018 Update:</u></b><br/> <b>Partially Implemented</b><br/>                     With the newly re-staffed ZWC and new management at Zero Waste Division and once the Strategic Plan is completed and as part of the Strategic Plan, the Work Plan with goals, budget, timelines, FTEs and measurements will be developed. Then, Public Works will initiate</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

ATTACHMENT No. 1

| Audit Title: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal |            |                                                                    |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| Berkeley achieve zero waste. This includes sharing strategic and annual work plan goals and regular updates regarding progress and completion.  |            |                                                                    | November 2021                          | <p>annual reporting to Council. Nonetheless progress has been made, such as: the ZWD has undertaken a City Facilities Greening Project to ensure that all City-owned facilities have the appropriate containers with signage for trash, recyclables (bottles/cans and fiber), and organics; and that City staff receive training on the acceptable materials to place in each container type. The recent, May through September 2017, renovation of 1947 Center Street is being used as a pilot for this Project.</p> <p>In celebration of Earth Day 2017, the ZWD hosted a Zero Waste Earth Day Fair for City employees to get answers to all of their recycling-related questions, play games, enjoy zero waste snacks, and talk trash with ZWD staff. This event was attended by more than 100 City employees.</p> <p><b><u>March 12, 2019</u></b><br/> <b>Partially Implemented</b></p> <p>City staff have been encouraged to participate in the visioning sessions for the Transfer Station Redesign January 16, 17, and 18, 2019. Also, ZWD has developed an RFP to: 1) develop a Zero Waste Strategic Plan (Plan) to delineate terminology, 2) define and clarify what the City's Zero Waste Goal will be, and 3) develop plan for the Public Works - Zero Waste Division to implement to attain that goal. The RFP is in administrative review. Once the strategic plan is completed, it will be shared with City staff.</p> |
|                                                                                                                                                 |            |                                                                    | November 2021                          | <p><b><u>March 24, 2020 Update</u></b><br/> <b>Partially Implemented</b></p> <p>At the Council's Work Sessions for Rate Review (September 17, 2019) and Solid Waste &amp; Recycling Transfer Station Feasibility Study (November 5, 2019), PW informed Council of the need for additional RFPs, staffing, funding and facility requirements to meet the City's zero waste goal.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|                                                                                                                                                 |            |                                                                    | August 2024                            | <p><b><u>November 13, 2022 Update</u></b><br/> <b>Dropped</b></p> <p>Revised 5-year Rate Schedules was presented at the December 7, 2021 City Council Work Session. Council consented to moving forward with Proposition 218 process for property owner consent of the revised Rates as proposed. These Revised Schedules included additional costs for: 1) Ecology and CCC contracts (\$85 mil over 10 years, sole sourced per Council direction); staffing for AB 341 &amp; 1826 (commercial recycling), SB1383 (organic recycling) and Single Use</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

ATTACHMENT No. 1

| Audit Title: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal                                                                                                                                                                                         |              |                                                                                                                                                                                                                                                                                                     |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| Findings and Recommendations                                                                                                                                                                                                                                                                                                            | Lead Dept.   | Agree, Partially Agree, or Do Not Agree and Corrective Action Plan                                                                                                                                                                                                                                  | Expected or Actual Implementation Date | Status of Outstanding Audit Recommendations and Implementation Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                         |              |                                                                                                                                                                                                                                                                                                     |                                        | Disposal Foodware and Litter Reduction Ordinance compliance; and CEQA compliance work for Transfer Station Replacement Concepts A and B. In January 2022, The City Agenda Committee placed the revised 5-year rate schedules on pause.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 1.5 Determine if additional funds are needed for the education, outreach, compliance, and enforcement necessary to reach zero waste goals. If sufficient funds are not available, propose to Council a separate fee to cover those costs for the City's zero- waste program, such as a regulatory fee as allowed under Proposition 218. | Public Works | Agree<br>The Public Works Strategic Plan process will evaluate and identify the necessary resources, and if funding is insufficient, a recommendation will be made to consider an Integrated Waste Management Fee or other appropriate mechanism to fund additional staffing and/or outreach needs. | December 2019                          | <p>5/09/2017 Status: not submitted</p> <p><b>January 23, 2018 Update:</b><br/><b>Partially Implemented</b><br/>Since September 2016, Public Works has hired the Zero Waste Division's Solid Waste &amp; Recycling Manager, Greg Apa, and Recycling Program Manager, Heidi Obermeit, who have 29 and 10 years, respectively, of solid waste industry experience. With their extensive background in the solid waste industry, they are in the process of reviewing, assessing and addressing Zero Waste's current efforts to educate and as needed the expansion of educational outreach to the community members and commercial businesses, both existing and new. Outreach educational materials are somewhat dated and these materials may be updated and customized as required with more current graphics and narratives.<br/>In addition, the ZWD has hired a Field Service Representative who assists ZWD's education and compliance efforts with all community members and businesses.<br/>In 2018, the current Council approved rate structure will require an updated rate study including the cost of increased educational outreach and training for handling of recyclable materials to ensure a sustainable rate structure to achieve the zero waste goals that the Council has set for Public Waste and Zero Waste Division.</p> <p><b>March 12, 2019</b><br/><b>Partially Implemented</b><br/>Public Works has determined through internal budget process that Zero Waste needs two additional full-time staff members to oversee the education, outreach, compliance, and enforcement necessary to reach zero-waste goals. The Zero Waste Division will be determining additional funding beyond staffing needed to increase education, outreach, compliance, and enforcement during the strategic planning process. The RFP for the strategic plan process is currently under administrative review. This process will also identify if the current levels of fees can cover the costs of the City's Zero Waste program or if Public Works will need to assess additional fees.</p> |

ATTACHMENT No. 1

| Audit Title: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal |              |                                                                    |                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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|                                                                                                                                                 |              |                                                                    | November 2021<br><br><br><br><br><br><br><br><br><br>July 2023 | <p><b>March 24, 2020</b><br/><b>Partially Implemented</b><br/>July 2019, City Council approved the hiring two additional full-time staff members to oversee the education, outreach, compliance, and enforcement necessary to reach zero waste goals. At a September 17, 2019 City Council Work Session on the current Rate Review Study, Council provided Public Works and its consultant direction to provide ongoing and additional services to be funded by the Zero Waste Fund. An update of the Rate Review Study will be scheduled with the City Council mid-2020.</p> <p><b>November 13, 2022 Update</b><br/><b>Dropped</b><br/>Revised 5-year Rate Schedules was presented at the December 7, 2021 City Council Work Session. Council consented to moving forward with Proposition 218 process for property owner consent of the revised Rates as proposed. These Revised Schedules included additional costs for: 1) Ecology and CCC contracts (\$85 mil over 10 years, sole sourced per Council direction); staffing for AB 341 &amp; 1826, SB1383 and Single Use Disposal Plastic and Litter Reduction Ordinance compliance; and CEQA compliance work for Transfer Station Replacement Concepts A and B. In January 2022, The City Agenda Committee placed the revised 5-year rate schedules on pause.</p> |
| 1.6                                                                                                                                             | Public Works | Agree                                                              | October 2016                                                   | <p>5/09/2017 Status: not submitted</p> <p><b>January 23, 2018 Update:</b><br/><b>Implemented</b><br/>With the hiring of the Recycle Program Manager, ZWD is continuously streamlining and updating the City's and ZWD's website to include: guidelines to recycle plant debris and food waste; information on the mandatory recycling requirements for businesses and multi-family properties in Alameda County; and links to other recycling resources in the area. Further, the ZWD has made available guidelines to help designers of multifamily, commercial, and mixed-use buildings plan for recycling collection when designing new buildings or renovations. In conjunction with the City's Public Information Officer, the ZWD has distributed press releases to educate the general public about the appropriate material to place in their refuse, recycling and green compost carts, extra pick-up bags, proper cart placement.</p>                                                                                                                                                                                                                                                                                                                                                                        |

ATTACHMENT No. 1

| Audit Title: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal                                                                                                                                                                                                                                                                                                     |              |                                                                                                                                                                                                                                             |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| Findings and Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                        | Lead Dept.   | Agree, Partially Agree, or Do Not Agree and Corrective Action Plan                                                                                                                                                                          | Expected or Actual Implementation Date | Status of Outstanding Audit Recommendations and Implementation Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <ul style="list-style-type: none"> <li>Zero waste goals and progress toward those goals.</li> </ul> <p><a href="http://StopWaste.org">StopWaste.org</a> is a good example and has resources that Berkeley can direct customers to use.</p> <p>Updates should be made as changes are made to the list of materials accepted through each waste stream.</p>                                                                                           |              |                                                                                                                                                                                                                                             |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>1.7 Engage in discussions with the California Department of Resources Recycling and Recovery to obtain permission to collect garbage biweekly instead of weekly while maintaining weekly collection of compostables. Perform additional education and outreach prior to implementing biweekly garbage service to educate the public on the change. Alternatively, seek permission to implement a pilot project for biweekly garbage service.</p> | Public Works | <p>Agree</p> <p>The ZWD will investigate the process of obtaining legal permission to pilot biweekly rubbish collection. We will identify the operational and outreach preparation necessary to evaluate the feasibility of this pilot.</p> | N/A                                    | <p>5/09/2017 Status: not submitted</p> <p><b>January 23, 2018 Update:</b><br/> <b>Dropped</b></p> <p>Although a Solid Waste &amp; Recycling Manager and Recycling Program Manager is on staff, the Zero Waste Division, as an enterprise funded collection service division, is understaffed and inexperienced to engage in the process change of State Law, which requires weekly collection of refuse. In addition, this would require significant lobbying of CalRecycle to approve a pilot program to collect refuse other than on a weekly basis.</p> <p>The Audit Report states that there is the potential of \$496,000 annual cost savings by switching to biweekly garbage service. However, and as noted in the Audit Report, this is based on assumptions which:</p> <p>1) State law requires the refuse shall not remain on any premises more than seven (7) days. Berkeley would need to revise the State law, request a waiver or seek permission for a pilot program. This waiver or revision of State law will potentially require substantial lobbying members of City Council, State House of Representative(s) and Senator(s), as well as, of all the many County and State permitting and health agencies that would be involved to amend State law.</p> |

ATTACHMENT No. 1

| Audit Title: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal |                                                                                                                                                                                                                                                                    |                                                                    |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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|                                                                                                                                                 |                                                                                                                                                                                                                                                                    |                                                                    |                                        | 2) Require additional staff and funding to support a community educational outreach to ensure that refuse is not just reallocated by community members to the recycling and plant debris carts.<br>3) Public Works would need to enter into negotiations with the employee bargaining unit to an agreement whether positions can be eliminated through attrition or reassignment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Finding 2: Limited use of available technologies affects operational efficiencies</b>                                                        |                                                                                                                                                                                                                                                                    |                                                                    |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 2.1                                                                                                                                             | Work with the Department of Information Technology to configure the CRM system with a required field that auto populates valid route information based on address and service delivery type so that route specific data can be collected on a going-forward basis. | Public Works                                                       | Agree                                  | <p>5/09/2017 Status: not submitted</p> <p><b>December 2019</b><br/><u>January 23, 2018 Update:</u><br/><b>Not implemented</b><br/>Currently the City is implementing an Enterprise Resource Planning (ERP) project to replace the FUND\$ system including the CRM application. ERP is a software with financial (accounting, billing, budget, contracts) and human resource (time entry, personnel, payroll, benefits) applications. As part of this project, ZWD has been working with IT and its consultant during the needs assessment phase to ensure that RouteSmart™ will interface with the selected software.</p> <p><u>June 4, 2018 Update:</u><br/><b>Not implemented</b><br/>IT with ZWD is soliciting many companies to demonstrate their invoicing, customer service, and routing systems. With the conclusion of the demonstrations, IT will develop an RFP that will soloist proposals for systems that will integrate with Erma.</p> <p><b>December 2019</b><br/><u>March 12, 2019</u><br/><b>Not Implemented</b><br/>IT released an RFP on behalf of Public Works for Zero Waste Management software on October 18, 2018. As the FUND\$ system is in the process of being replaced, a new system was deemed necessary and IT issued an RFP for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System and a Route Optimization System. One proposal was received. If the proposal is accepted, software installation and implementation is anticipated to begin immediately upon contract execution in May 2019, with software operational by December 2019.<br/>The new system will require route optimization and will have an onboard system for drivers containing route information based on address and service delivery type so that route-specific data can be</p> |

ATTACHMENT No. 1

| Audit Title: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal |              |                                                                                                                                                                                                                                                                                                                                                                                                           |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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|                                                                                                                                                 |              |                                                                                                                                                                                                                                                                                                                                                                                                           | <p>November 2022</p> <p>July 2024</p>  | <p>collected on a going-forward basis. The details of this system will be evaluated and developed as part of implementation.</p> <p>In addition to these new systems, Public Works and Parks are also implementing a new computerized maintenance management system. Once that vendor has been selected, then 311 will issue an RFP for a new Customer Relationship Management system that will integrate with the Zero Waste solutions.</p> <p><b><u>March 24, 2020 Update</u></b><br/> <b>Not Implemented</b></p> <p>IT is finalizing the contract the new Zero Waste software management system and to be completed late 2020. After this in operation, RFPs will be issued for new Routing and CRM system. When these are operational, CRM will be able to integrate routing information.</p> <p><b><u>November 13, 2022 Update</u></b><br/> <b>Dropped</b></p> <p>Contract awarded to AMCS to install new customer account &amp; financial software platform to be up and running by mid-2024.</p>                                                                                                                                              |
| 2.2                                                                                                                                             | Public Works | <p>Agree</p> <p>Zero Waste will work with IT to create the most efficient link between RouteSmart™ and the CRM system that can be created, given available resources. One solution, budget permitting, would be implementing the best of breed billing system that integrates with RouteSmart, rather than to trying to configure the CRM system to handle functions it was never designed to handle.</p> | <p>April 2015</p> <p>December 2019</p> | <p>5/09/2017 Status: not submitted</p> <p><b><u>January 23, 2018 Update:</u></b><br/> <b>Not Implemented</b></p> <p>IT has been able to create a table that extracts customer information from the FUNDS and RouteSmart™. However, and due to the limitations of FUNDS, this link takes hours to download information into RouteSmart™ versus that the company states should take minutes. Therefore, until the installation of the ERP process is completed, RouteSmart™ cannot be used to its full route optimization capabilities.</p> <p><b><u>March 12, 2019</u></b><br/> <b>Not Implemented</b></p> <p>Working with RouteSmart™ for further integration was deemed not worthwhile as that system does not integrate with ArcGIS which is the City's primary system for spatial data. IT released an RFP on behalf of Public Works for Zero Waste Management software on October 18, 2018. The RFP was for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System and a Route Optimization System. One proposal was received. If the proposal is</p> |







ATTACHMENT No. 1

| Audit Title: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal                                                                                        |                     |                                                                    |                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| Findings and Recommendations                                                                                                                                                                                                           | Lead Dept.          | Agree, Partially Agree, or Do Not Agree and Corrective Action Plan | Expected or Actual Implementation Date                      | Status of Outstanding Audit Recommendations and Implementation Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>route books and other mobile field reporting. Include in the assessment changes to job responsibilities that might require a meet and confer with union representatives. Purchase the software and hardware if cost beneficial.</p> |                     |                                                                    | <p>December 2019</p> <p>January 2021</p> <p>August 2024</p> | <p>City's ERP project vendor selected, contract awarded and then ZWD/IT needs assessment completed.</p> <p><b><u>March 12, 2019</u></b><br/> <b>Partially Implemented</b><br/>                     IT released an RFP on behalf of Public Works for Zero Waste Management software on October 18, 2018. The RFP was for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System and a Route Optimization System. These systems will utilize onboard mobile hardware. In addition, this system will integrate with the new GPS solution which will integrate with the Zero Waste solution allowing for real time decision making and route information. Exact capabilities of both systems will be validated and coordinated as part of the contracting process once the vendors are selected.</p> <p><b><u>March 24, 2020 Update</u></b><br/> <b>Partly Implemented</b><br/>                     IT released an RFP for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System will allow a follow-up RFP for Route Optimization System on October 18, 2018. One proposal was received. IT and Legal are in the process of finalizing a contract with the vendor with software installation to follow. Once this system is installed and operating, an RFP for onboard truck/route/customer reporting system may be released.</p> <p><b><u>November 13, 2022 Update</u></b><br/> <b>Dropped</b><br/>                     Contract awarded to AMCS to install new customer account &amp; financial software platform to be up and running by mid-2024.</p> |
| <p>2.6 Work jointly with the Department of Information Technology and the Department of Finance to develop and automate script flows in the CRM system to ensure that all cases undergo the appropriate</p>                            | <p>Public Works</p> | <p>Agree</p>                                                       | <p>October 2016</p>                                         | <p>5/09/2017 Status:<br/>not submitted</p> <p><b><u>January 23, 2018 Update:</u></b><br/> <b>Implemented</b><br/>                     ZWD, IT, 311 Call Center, and Finance have developed script flows with use of the CRM tracking systems to ensure all cases receive appropriate review prior to closing. These cases are compiled and reviewed weekly and monthly by ZWD, IT, 311 Call Center, and Finance staff.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |



## ATTACHMENT No. 1

| Audit Title: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal |                        |                                                                                                                                                            |                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| agreement is reached.                                                                                                                           |                        |                                                                                                                                                            |                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 2.8 Create a method for community members to track the status of their cases online, which will reduce the call volume to the 311 Call Center.  | Information Technology | Agree<br>This functionality will be available after the upgrade of our CRM system is complete, currently scheduled to be no later than the end of FY 2015. | June 2016<br><br><br><br><br><br><br><br><br><br>June 2020<br><br><br><br><br><br><br><br><br><br>January 2022 | 5/09/2017 Status: not submitted<br><br><b>January 23, 2018 Update:</b><br><b>Not Implemented</b><br>Currently 311 team members create cases and assigned them to the appropriate service queue for ZWD investigation and response. This system allows the City to internally track issues but the ability of community member to track independently or via the City website has not been linked.<br>Currently the City is implementing an Enterprise Resource Planning (ERP) project to replace the FUNDS\$ system and to update the City website. With the installation of the selected ERP, then the CRM system can be integrated with the ERP system. This integration would allow community members' to track their issues, such as, missed pickups, cost of service, etc. only.<br><b>March 12, 2019</b><br><b>Not Implemented</b><br>IT released an RFP on behalf of Public Works for Zero Waste Management software on October 18, 2018 for a complete Zero Waste Solution. Software installation and implementation is anticipated to begin immediately upon contract execution in May 2019, with software operational by December 2019. Subsequently, IT will be issuing an RFP for a new 311 system to replace LAGAN that will integrate with the Zero Waste solution. One of the objectives of these new systems is to provide customers the ability to track their requests.<br><b>March 24, 2020 Update</b><br><b>Partially Implemented</b><br>IT released an RFP for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System will allow a follow-up RFP for Route Optimization System on October 18, 2018. One proposal was received. IT and Legal are in the process of finalizing a contract with the vendor with software installation to follow. Once this system is installed and operating, an RFP for onboard truck/route/customer reporting system may be released. With an onboard system linked to Customer Relationship Management (CRM) |

ATTACHMENT No. 1

| Audit Title: Underfunded Mandate: Resources, Strategic Plan, and Communication Needed to Continue Progress Toward the Year 2020 Zero Waste Goal |            |                                                                    |                                        |                                                                                                                                                                                                                                                                                           |
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| Findings and Recommendations                                                                                                                    | Lead Dept. | Agree, Partially Agree, or Do Not Agree and Corrective Action Plan | Expected or Actual Implementation Date | Status of Outstanding Audit Recommendations and Implementation Progress Summary                                                                                                                                                                                                           |
|                                                                                                                                                 |            |                                                                    | August 2024                            | reporting system, customers could track status of their cases, such as, missed pickups, late routes, etc<br><b>November 13, 2022 Update</b><br><b>Dropped</b><br>Contract awarded to AMCS to install new customer account & financial software platform to be up and running by mid-2024. |



Office of the City Manager

INFORMATION CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works

Subject: Audit Status Report: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity

INTRODUCTION

The Office of the City Auditor presented to the City Council a September 20, 2016 Report: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity. The City Auditor conducted the audit to assess whether the City of Berkeley is correctly billing customers based on their actual refuse collection levels; whether all Berkeley residents are signed up to receive refuse, recycling, and plant debris collection service as required by the Berkeley Municipal Code; and whether there are opportunities for improving both refuse and service delivery operations. This is the final status report on the efforts made to implement the Audit Report's recommendations, which are slated for no further follow-up action as recommended by the City Auditor for all audits more than five years old.

CURRENT SITUATION AND ITS EFFECTS

The Audit Report included twelve (12) recommendations for the Office of the City Manager and Departments of Finance, Information Technology, and Public Works to review, implement, and report to Council regarding the status of recommendations. This is the fifth and final status report on the recommendations. Public Works has continued to make progress since the last status update. The Auditor's Office verified six recommendations as implemented and has dropped the remaining six recommendations. Please see Attachment 1 for a detailed table of audit report recommendations, corrective actions, and implementation progress.

**BACKGROUND**

Public Works' Zero Waste Division is responsible for the collection of residential material, including refuse, recycling, and composting; collection and processing of commercial material, including refuse, recycling, and composting; off-site hauling and composting of green/food waste for all customers; off-site hauling, sorting, and marketing of construction and demolition debris for all customers; and manages contracts related to the above work.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

With the implementation of the Audit's recommendations, the Zero Waste Division will continue to help reduce the volume of waste landfilled and:

- Increase residential composting, recycling, and source reduction.
- Increase commercial composting, recycling, and source reduction.
- Increase recycling of construction and demolition (C&D) debris.
- Expand efforts to eliminate waste at its source.
- Increase waste diversion in public buildings.

All of these above-noted items promote the City's zero waste goal and are included in the approved Climate Action Plan Goals for Waste Reduction and Recycling.

**POSSIBLE FUTURE ACTION**

Public Works will continue to take timely and focused action(s) to address outstanding and partially implemented recommendations. The Zero Waste Division is working with the Information Technology and Finance Departments to select the software solution(s) needed to facilitate the implementation of the audit recommendations.

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTION**

Public Works will update Council periodically on the progress, resources available, and any additional funding needed to address those recommendations that remain outstanding and partially implemented.

**CONTACT PERSON**

Greg Apa, Solid Waste and Recycling Manager, (510) 981-6359

Attachment:

1. Audit Findings and Recommendations Response Form



ATTACHMENT No. 1

| Audit Title: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                               |                                        |                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| Findings and Recommendations                                                                                                | Lead Dept.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Agree, Partially Agree, or Do Not Agree and Corrective Action Plan                            | Expected or Actual Implementation Date | Status of Outstanding Audit Recommendations and Implementation Progress Summary |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Finding: Integrated thinking about zero waste operations will help ensure accurate billings and customer equity</b>      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                               |                                        |                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 1.1                                                                                                                         | Agree to a common and unified vision for zero waste operations. Discuss the long-term zero waste goals, objectives, and key initiatives and share that information with those responsible for day-to-day operations. Use meetings and informal communications to regularly encourage staff to embrace a unified view of zero waste operations.                                                                                                                                                                                                                              | City Manager's Office and Team<br>Response: Public Works, Finance, and Information Technology | Agree                                  | October 2016                                                                    | <b>January 23, 2018 Update Implemented</b><br>Since late 2015, Zero Waste, 311, and IT (called collectively the Customer Solutions Group or Group) have met on a monthly basis to discuss operational issues that affect the three divisions. Given that this Group was already in place and per the Auditor's recommendation, the Group opted to include Finance as a participant instead of creating of a separate team and meeting.<br>The meetings' monthly agenda identifies that the Group's primary focus is the development and continuous implementation of a common approach by all members to ensure a unified vision for zero waste operations for all community members. In addition, the meetings' agenda details those customers' issues as they occur, so that, the Group's members resolve them. These resolutions are applied by the Group to continue its efforts to strive towards the City's zero waste goals and the initiatives needed to attain these goals.                   |
| 1.2                                                                                                                         | Form a zero waste team comprised of managers and line staff involved with zero waste operations (i.e., waste collection, billings, customer calls, systems support). Include a diverse pool of people who can share ideas, resources, and knowledge. Have the team members' work collectively to evaluate their respective functions; the interrelationships among their departmental activities; and the practices, policies, and procedures they use to perform their zero waste account management and operations functions. Ensure that the team understands that their | Team<br>Response: Public Works, Finance, and Information Technology                           | Agree                                  | October 2016                                                                    | <b>September 20, 2016 Update Implemented</b><br>Zero Waste, 311, and IT meet on a monthly basis to discuss operational issues that affect the three divisions. This meeting schedule has been in existence for over one year.<br>Since there was already a setup in place, we decided to include Finance as a participant versus create a separate team. We expanded the group and meeting scope to accommodate the Auditor's recommendations. At every meeting, it will be the first agenda item to make sure all participants are made aware of the team's concept. We will consider this completely implemented by October 2016, as at that time we will have met twice within the capacity required by this audit recommendation. This will be a regular meeting for the foreseeable future. The team members do understand that the Zero Waste operation is an enterprise with different parts and that the success of the operation depends on each of these distinctive units working together. |



ATTACHMENT No. 1

| Audit Title: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity |                                                   |                                                                    |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| Findings and Recommendations                                                                                                | Lead Dept.                                        | Agree, Partially Agree, or Do Not Agree and Corrective Action Plan | Expected or Actual Implementation Date | Status of Outstanding Audit Recommendations and Implementation Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                                                                                                                             |                                                   |                                                                    | December 2019                          | <p>IT administration, IT-311 and Zero Waste have commenced efforts, such as, an As-Is (existing software) review to improve customer interface with the City and a To-Be (future software) for the development of an RFP to solicit new software for new customer interface, refuse billing and routing systems. These reviews were facilitated by the City's software consultant, Third Wave. The RFP is tentatively scheduled for a late 2018 release.</p> <p>Rather than the purchase of another software system to integrate the existing inefficient (i.e., requires another software program to be bolted on to existing software), and inadequate software, a new routing and customer billing system would replace the CX and RouteSmart™ systems, integrate with ERMA and would be customer driven resolution and coordinated billing system.</p> <p><b>March 12, 2019 Update</b><br/><b>Partially Implemented</b></p> |
|                                                                                                                             |                                                   |                                                                    | January 2021                           | <p>IT released an RFP on behalf of Public Works for Zero Waste Management software on October 18, 2018. The RFP was for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System and a Route Optimization System. One proposal was received. If the proposal is accepted, software installation and implementation is anticipated to begin immediately upon contract execution in May 2019, with software operational by December 2019</p> <p><b>March 24, 2020 Update</b><br/><b>Partially Implemented</b></p>                                                                                                                                                                                                                                                                                                                        |
|                                                                                                                             |                                                   |                                                                    | July 2024                              | <p>IT released an RFP for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System will allow a follow-up RFP for Route Optimization System on October 18, 2018. One proposal was received. IT and Legal are in the process of finalizing a contract with the vendor with software installation to follow.</p> <p><b>November 13, 2022 Update</b><br/><b>Dropped</b></p> <p>Contract awarded to AMCS, July 2020, to install new customer account &amp; financial software platform to be up and running by mid-2024.</p>                                                                                                                                                                                                                                                                                                               |
| 1.4                                                                                                                         | Require the zero waste team formed in response to | Team Response:                                                     | Agree                                  | October 2016<br><b>September 20, 2016 Update</b><br><b>Implemented.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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| Audit Title: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                   |                                                                    |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| Findings and Recommendations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Lead Dept.                                        | Agree, Partially Agree, or Do Not Agree and Corrective Action Plan | Expected or Actual Implementation Date | Status of Outstanding Audit Recommendations and Implementation Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>recommendation 1.2 to have regular meetings, e.g., quarterly, to share information about their operations and the known or expected changes and events that may impact cross-functional efforts. These meetings may need to be more frequent at first and less frequent over time. The team should use their meeting time to:</p> <ul style="list-style-type: none"> <li>▪ Identify continued barriers to change.</li> <li>▪ Decide on solutions that will help overcome barriers.</li> <li>▪ Share information about the challenges preventing staff from meeting operational objectives.</li> <li>▪ Make cross-departmental decisions to improve processes and customer service.</li> </ul> <p>Also see recommendation 1.2.</p> | Public Works, Finance, and Information Technology |                                                                    |                                        | <p>As mentioned in response to recommendation 1.2, we expanded our existing monthly meeting to include Finance. The purpose of those meetings has always been to share information about operational and staff challenges. We expanded the meeting to include specific suggestions for this recommendation.</p> <p>This initiative will be a continuous process that will be put in place for years to come as it becomes part of managing the operations of Zero Waste.</p>                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1.5 In collaboration with Information Technology and as part of Enterprise Resource Planning, budget for, select, and install an account management system designed for zero waste activities. Use information from the zero waste team evaluation (recommendation 1.2) and zero waste strategy analyses</p>                                                                                                                                                                                                                                                                                                                                                                                                                      | Team Response: Public Works and Finance           | Agree                                                              |                                        | <p><b>January 23, 2018 Update</b><br/> <b>Not Implemented</b><br/>                     The current Customer Relationship Management (CRM) system will not integrate with RouteSmart™ due to both FUND\$ and CRM system limitations. The City is currently engaged in the Enterprise Resource Planning process to replace the FUND\$ and then integrate the CRM system, which according to the current schedule by June 2019. The long term solution will be to procure a new customer management, operations and billing software that will fully integrate the RouteSmart™ with the new ERP. Zero Waste Division and the Customer Solutions Group is actively engaging with IT to ensure that the new ERP system recognizes that Zero Waste Division is an enterprise funded operation. That is, it would be desirable to utilize RouteSmart system's</p> |

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| Audit Title: Unified Vision of Zero Waste Activities Will Help Align Service Levels with Billing and Ensure Customer Equity                                                                                                                                                                                                                                            |            |                                                                    |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| Findings and Recommendations                                                                                                                                                                                                                                                                                                                                           | Lead Dept. | Agree, Partially Agree, or Do Not Agree and Corrective Action Plan | Expected or Actual Implementation Date | Status of Outstanding Audit Recommendations and Implementation Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>(recommendation 1.8) to identify the critical business needs that should be included in the purchase of new zero waste account management system, or that should be considered when determining whether sufficient middleware options exist to fully integrate existing systems with the new account management software. Also see recommendations 1.2 and 1.8.</p> |            |                                                                    | July 2019                              | <p>capabilities to generate customer driven service requests (work orders), whereas the current ERP system is a City staff internally generated system input. IT has recognized that to provide seamless CRM service that a Request for Proposals (RFP) for an application that delivers the most efficient financial and operational software system that specifically handles the Zero Waste collection services will be written in FY2018 as part of Phase 2 of the ERP project.</p> <p><b><u>September 25, 2018 Update</u></b><br/> <b>Partially Implemented</b><br/>                     IT administration, IT-311 and Zero Waste have commenced efforts, such as, an As-Is (existing software) review to improve customer interface with the City and a To-Be (future software) for the development of an RFP to solicit new software for new customer interface, refuse billing and routing systems. These reviews were facilitated by the City's software consultant, Third Wave. The RFP is tentatively scheduled for a late 2018 release.</p> <p>Rather than the purchase of another software system to integrate the existing inefficient (i.e., requires another software program to be bolted on to existing software), and inadequate software, a new routing and customer billing system would replace the CX and RouteSmart™ systems, integrate with ERMA and would be customer driven resolution and coordinated billing system.</p> |
|                                                                                                                                                                                                                                                                                                                                                                        |            |                                                                    | December 2019                          | <p><b><u>March 12, 2019 Update</u></b><br/> <b>Partially Implemented</b><br/>                     IT released an RFP on behalf of Public Works for Zero Waste Management software on October 18, 2018. The RFP was for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System and a Route Optimization System. One proposal was received. If the proposal is accepted, software installation and implementation is anticipated to begin immediately upon contract execution in May 2019, with software operational by December 2019.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|                                                                                                                                                                                                                                                                                                                                                                        |            |                                                                    | January 2021                           | <p><b><u>March 24, 2020 Update</u></b><br/> <b>Partially Implemented</b><br/>                     IT released an RFP for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System will allow a follow-up RFP for Route Optimization System on October 18, 2018. One proposal was received. IT and Legal are in the process of finalizing a contract with the vendor with software installation to follow.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                                                                                                        |            |                                                                    | July 2024                              | <p><b><u>November 13, 2022 Update.</u></b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |



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| <b>Findings and Recommendations</b>                                                                                                                                                                                                                                                                                                                                    | <b>Lead Dept.</b> | <b>Agree, Partially Agree, or Do Not Agree and Corrective Action Plan</b> | <b>Expected or Actual Implementation Date</b> | <b>Status of Outstanding Audit Recommendations and Implementation Progress Summary</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>perform an independent review of the calculations and data entry for accuracy. Have the reviewer report back on any errors.</p> <p>Ensure that management is also notified of the errors, verifies that the corrections were made, and signs off on the review.</p>                                                                                                 |                   |                                                                           | July 2024                                     | <p>produced two other times to make sure all the error was fixed and the Manager of the unit signed off on the final report before finalizing system changes.</p> <p><b><u>January 23, 2018 Update:</u></b><br/> <b>Implemented</b><br/>                     The initial base rates were approved by Resolution No. 66,600-N.S. effective July 1, 2014 for FY2015. The Department of Public Works administration calculates the next Fiscal Year's rates based on the previous Fiscal Year's rates. The rates are calculated utilizing the current CPI, the published April annual rate, or 3%, whichever is greater. These new FY rates and calculations are verified and signed off by Zero Waste Division Manager. The completed approved Rate Tables are then forwarded to the Finance Department Revenue Collections Manager for final verification and FUNDS\$ system input for billing.</p> <p><b><u>November 13, 2022 Update</u></b><br/> <b>Implemented</b><br/>                     Contract awarded to AMCS, July 2020, to install new customer account &amp; financial software platform to be up and running by mid-2024. New Rates were proposed at a 12/07/2022 Council Work Session that was to include the cost of AMCS. The Proposition 218 rate approval process was put on hold by City Agenda Committee in January 2022.</p> |
| <p>1.8 Request that Information Technology use the CX module data extracts, such as the one used for this audit, to provide Public Works staff with the data they need to analyze zero waste strategies. Use the data extracts to further identify the critical business needs for new zero waste account management software.</p> <p>Also see recommendation 1.5.</p> | Public Works      | Agree                                                                     | Originally Expected: December 2016            | <p><b><u>September 20, 2016 Update</u></b><br/>                     We will ask IT to provide our fiscal services and zero waste strategy staff with CX data using existing data extracts, and use that for data analytics using software such as Excel. We will use these extracts to help identify the reporting needs of a new zero waste account management system.</p> <p>If needed, IT staff can provide reports or training to Public Works staff so they are able to run the reports themselves or extract the information in the format needed, if feasible.</p> <p><b><u>January 23, 2018 Update</u></b><br/> <b>Not Implemented</b><br/>                     The CX module data utilized for this Audit was specifically designed to support the data request and this is what is called a bolt-on module, which means, it retrieves specific data requested from the CRM. Any module development requires IT to code, test and implement these bolt-on modules for a specific request. To analyze all appropriate data to identify a critical Zero Waste Division business need(s) would require the utilization of data residing in RouteSmart™. The Current CRM system will not integrate or auto-populate with RouteSmart™ due to CRM system limitations. Per</p>                                                                  |

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|                                                                                                                             |            |                                                                    | December 2019                          | <p>the current IT ERP implementation schedule, the City is scheduled to upgrade and/or replace the CRM system in June 2019.</p> <p>The long term solution will be to procure a new customer management, operations and billing software that will integrate and fully utilize the RouteSmart™ data. An RFP for an application that delivers the most efficient financial and operational software system specific to the Zero Waste Division operational and the solid waste industry requirements is scheduled to be developed in FY2018 as part of Phase 2 of the ERP project.</p> <p><b>September 25, 2018 Update</b><br/> <b>Partially Implemented</b></p> <p>IT provided extensive CX data in support of the Commercial Route expansion. During the expansion which involved adding over 400 accounts, critical limitations of the CZX software were identified. Additionally, IT facilitated the key departments to complete an As-Is analysis of existing software to identify areas of improvement. The departments have completed s To-Be analysis of future software which was the basis for a Request For Proposals (RFP) to solicit new software for new customer interface, refuse billing and routing systems. Both the CX (customer account management and billing software) and RouteSmart™ (collection routing software) systems are planned for replacement within the next year. These reviews were facilitated by the City's software consultant, Third Wave. The RFP is tentatively scheduled for late 2018 release. IT administration, IT-311 and Zero Waste are collaborating to ensure a unified approach.</p> <p>This new routing and customers billing software will the CX and RouteSmart™ Systems and integrate with Erma, the City's new financial software system. The new software will be customer driven and provide enhanced, coordinated billing system.</p> |
|                                                                                                                             |            |                                                                    | December 2019                          | <p><b>March 12, 2019 Update</b><br/> <b>Partially Implemented</b></p> <p>IT released an RFP on behalf of Public Works for Zero Waste Management software on October 18, 2018. The RFP was for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System and a Route Optimization System. One proposal was received. If the proposal is accepted, software installation and implementation is anticipated to begin immediately upon contract execution in May 2019, with software operational by December 2019.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|                                                                                                                             |            |                                                                    | January 2021                           | <p><b>March 24, 2020 Update</b><br/> <b>Partially Implemented</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |





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| <b>Findings and Recommendations</b>                                                                                                | <b>Lead Dept.</b> | <b>Agree, Partially Agree, or Do Not Agree and Corrective Action Plan</b> | <b>Expected or Actual Implementation Date</b> | <b>Status of Outstanding Audit Recommendations and Implementation Progress Summary</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|                                                                                                                                    |                   |                                                                           | December 2019                                 | tentatively scheduled for late 2018 release. IT administration, IT-311 and Zero Waste are collaborating to ensure a unified approach. This new routing and customers billing software will the CX and RouteSmart™ Systems and integrate with Erma, the City’s new financial software system. The new software will be customer driven and provide enhanced, coordinated billing system.<br><b>March 12, 2019 Update</b><br><b>Partially Implemented</b>                                                                                                                                                                                                                                                                                            |
|                                                                                                                                    |                   |                                                                           | January 2020                                  | IT released an RFP on behalf of Public Works for Zero Waste Management software on October 18, 2018. The RFP was for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System and a Route Optimization System. One proposal was received. If the proposal is accepted, software installation and implementation is anticipated to begin immediately upon contract execution in May 2019, with software operational by December 2019.<br><b>March 24, 2020 Update</b><br><b>Partially Implemented</b>                                                                                                                                                      |
|                                                                                                                                    |                   |                                                                           | July 2024                                     | IT released an RFP for a Zero Waste Management System and Professional Services consisting of a Waste Billing System, a Waste Computerized Maintenance Management System will allow a follow-up RFP for Route Optimization System on October 18, 2018. One proposal was received. IT and Legal are in the process of finalizing a contract with the vendor with software installation to follow.<br><b>August 24, 2022 Update.</b><br><b>Dropped</b><br>Contract awarded to AMCS to install new customer account & financial software platform to be up and running by mid-2024.                                                                                                                                                                   |
| 1.10                                                                                                                               | Public Works      | Agree.                                                                    | December 2016                                 | <b>September 20, 2016 Update</b><br>We agree that the actual service levels should be compared against route books but believe that enforcing the policy to have drivers do onsite comparisons is no longer an efficient use of our drivers’ time. We are exploring other options, such as using student interns to do the comparisons.<br><b>January 23, 2018 Update</b><br><b>Implemented</b><br>The Zero Waste drivers are reminded monthly to verify actual service levels with the route books for their collection routes by the Zero Waste Management Team. The Zero Waste dispatcher(s) are in constant communication with the drivers to ensure service levels are correct. If service levels are not corrected, Zero Waste Supervisor(s) |





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|                                                                                                                                    |                   |                                                                           | June 2020                                     | <p><b><u>March 12, 2019 Update</u></b><br/> <b>Partially Alternately Implemented</b><br/>                     Given the roll-out issues associated with the November 1st implementation of the City's new enterprise resource planning system, "Erma", staff time has been rerouted to resolve. This project is on hold.</p> |





Office of the City Manager

INFORMATION CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Public Works Department

Subject: Audit Status Report – Lease Audit: Conflicting Directives Hinder Contract Oversight

INTRODUCTION

The Office of the City Auditor presented a June 2009 Leases Audit: Conflicting Directives Hinder Contract Oversight. The City Auditor conducted the audit to determine whether facility leases were properly initiated, tracked, recorded, and renewed or terminated; whether monitoring of collection activities was effective and efficient; and whether payments and receipts were properly recorded. This report is the seventh and final update to the 2009 Lease Audit, which is slated for no further follow-up action as recommended by the City Auditor for all audits more than five years old.

CURRENT SITUATION AND ITS EFFECTS

This report is the seventh and final update to the 2009 Lease Audit. In recognition of its goal to implement Lease Audit recommendations, Public Works has committed to providing status updates of real property matters to City Council, thereby providing information on properties owned and leased by the City and progress updates on revisions to Administrative Regulation 6.6: *Negotiating and Preparing City Lease or License Agreements, Acquiring/or Disposing of Real Property* as recommended in the 2009 Lease Audit.

BACKGROUND

In June 2009, the City Auditor's Office issued its report Leases Audit: Conflicting Directives Hinder Contract Oversight. The objective of the audit was to determine the effectiveness of the City's facility lease oversight and resulted in recommendations aimed at improving lease oversight and management. The City Auditor requested the City Manager continue to report to Council on the status of those recommendations until all were fully implemented or otherwise addressed. The sixth and most recent status report was presented to City Council on May 29, 2018.

The original Audit Report included twenty-four recommendations, seventeen of which have been closed; fifteen were implemented as recommended; one was implemented with an alternative solution; and one was closed after management reconsidered it and reported it would not be implemented because it would neither be appropriate nor

realistic to do so. The May 2018 report stated that the seven remaining recommendations are partially implemented and that further implementation should be suspended.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

When resources become available, the City Manager and Public Works aim to develop an implementation plan to improve property management citywide. Alternatively, the City Auditor may choose to launch a new performance audit with updated recommendations.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Currently, Public Works' Property Management Unit has one (1) full-time employee. Any increase in these services would very likely require additional staffing and budget.

CONTACT PERSON

Dionne Early, Community Development Project Coordinator, Public Works,  
(510) 981-6453

Andrew Brozyna, Deputy Director of Operations, Public Works, (510) 981-6396

Attachment:

1. Audit Findings and Recommendations Response Form



| Audit Title: Leases Audit: Conflicting Directives Hinder Contract Oversight                         |                                                                                                                                                                          |                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| Finding                                                                                             | Recommendation                                                                                                                                                           | Lead Department | Status of Outstanding Audit Recommendations and Implementation Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| The City's 2002 plan to centralize property and facility lease management has not been implemented. | 1.1 The City Manager should formalize and approve the division of responsibilities between the Public Works department and other departments regarding lease management. | City Manager    | <p><b>Original Audit Response:</b> City Manager and Public Works agreed with recommendation.</p> <p><b>10/28/13 Status:</b> Partially Implemented</p> <p><b>1/31/17 Status Update:</b> Partially Implemented/Further Implementation Needed.</p> <p><b>5/29/18 Status Update:</b> Partially Implemented. Despite nearly nine years of attempting to decentralize property management within the City of Berkeley, particularly in regards to lease management, the effort has not been successful. The City's contract with Contra Costa County Real Estate Division does provide some real property services, but the Community Development Project Coordinator responsible for Public Works property management continues to have to play an active role in all Departments' real property decision-making and lease management. The City Manager's Office will work with the various departments that currently support property management to develop an alternative citywide approach by functional responsibility. For example, some portions of property management, such as facility maintenance and lease negotiations may be centralized, but doing so will require additional resources. Further status reports for this recommendation will be submitted until it is "alternatively implemented."</p> <p><b>11/3/22 Status Update:</b> Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p> |

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| <p>The City's 2002 plan to centralize property and facility lease management has not been implemented.</p> | <p>1.2</p> | <p>The Public Works department should determine and formally define the role of the real property administration staff given available resources.</p> | <p>City Manager</p> | <p><b>Original Audit Response:</b> City Manager and Public Works agreed with recommendation.<br/> <b>10/28/13 Status:</b> Partially Implemented/Further Implementation Suspended.<br/> <b>1/31/17 Status Update:</b> Partially Implemented/Further Implementation Needed.<br/> <b>5/29/18 Status Update:</b> Partially Implemented. The City continues to not have dedicated real property administration staff identified in every department. The Interdepartmental Real Property Working Group meetings have made it clear that each department has specific and varied real property needs. This resulted in the group disbanding, and each department is instead working with Public Works' Community Development Project Coordinator on an as-needed basis. Full implementation of this recommendation will be completed once an alternative citywide approach to property management has been identified and implemented.<br/> <b>11/3/22 Status Update:</b> Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p> |
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| <p>The City's 2002 plan to centralize property and facility lease management has not been implemented.</p> | <p>1.3</p> | <p>Develop and finalize a property management plan that documents the specific responsibilities of Public Works and of other departments for lease management.</p>       | <p>Public Works</p> | <p><b>Original Audit Response:</b> City Manager and Public Works agreed with recommendation.<br/> <b>10/28/13 Status:</b> Partially Implemented/Further Implementation Suspended.<br/> <b>1/31/17 Status Update:</b> Partially Implemented/Further Implementation Needed.<br/> <b>5/29/18 Status Update:</b> Partially Implemented. Full implementation of this recommendation will be completed once an alternative citywide approach to property management has been identified and implemented.<br/> <b>11/3/22 Status Update:</b> Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p>                                                                                                                                                                                                                                                                                                                                                 |
| <p>The City's 2002 plan to centralize property and facility lease management has not been implemented.</p> | <p>1.4</p> | <p>The property management plan should be coordinated with affected City departments, including the Contract Administrator in Finance/Purchasing, before finalizing.</p> | <p>Public Works</p> | <p><b>Original Audit Response:</b> Public Works agreed with recommendation.<br/> <b>10/28/13 Status:</b> Partially Implemented<br/> <b>1/31/17 Status Update:</b> Partially Implemented/Further Implementation Needed.<br/> <b>5/29/18 Status Update:</b> Partially Implemented. A new Contract Administrator/General Services Manager (GSM) was hired summer 2016. The GSM is an important partner in improving lease boilerplates, contract templates, and RFP guidance associated with property management. While significant improvements in coordination have occurred, as stated above, a property management plan structured around decentralization has not been completed. Full implementation of this recommendation will be completed once an alternative citywide approach to property management has been identified and implemented.<br/> <b>11/3/22 Status Update:</b> Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p> |

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| <p>The City's 2002 plan to centralize property and facility lease management has not been implemented.</p> | <p>1.5</p> | <p>Formally communicate the plan with all affected City departments.</p> | <p>City Manager</p> | <p><b>Original Audit Response:</b> Public Works agreed with recommendation.<br/> <b>10/28/13 Status:</b> Partially Implemented<br/> <b>1/31/17 Status Update:</b> Partially Implemented/Further Implementation Needed.<br/> <b>5/29/18 Status Update:</b> Partially Implemented. The Interdepartmental Real Property Working Group meetings were terminated. A team folder on the City's shared drive continues to be used to share property management documents. No plan to continue decentralized management of property in the City of Berkeley is being developed. Full implementation of this recommendation will be completed once an alternative citywide approach to property management has been identified and implemented.<br/> <b>11/3/22 Status Update:</b> Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p> |
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| <p>City staff did not comply with City rules and regulations because the City lacks clear guidelines and simple tools for effective lease negotiations, review, approval, and oversight.</p> | <p>2.1</p> | <p>Administrative Regulation 6.6 and Contracts Online should be updated to give clear direction to City staff regarding administration and execution of lease agreements.</p> | <p>Public Works</p> | <p><b>Original Audit Response:</b> Public Works and Finance agreed with recommendation.<br/> <b>11/9/10 Status:</b> Contracts Online Updated<br/> <b>10/28/13 Status:</b> Partially Implemented<br/> <b>1/31/17 Status Update:</b> Partially Implemented/Further Implementation Needed.<br/> <b>5/29/18 Status Update:</b> Partially Implemented. While updates to Contracts Online were completed, leases must be updated, usually with the assistance of outside counsel, to ensure all current requirements from local, states and federal levels are addressed. A generic template does not work for the majority of revenue or expenditure leases involving the City. Updating AR 6.6 will not sufficiently clarify administration and execution of City lease agreements. A suite of Administrative Regulations will be developed that cover the full spectrum of the City’s real property needs to ensure staff and City Council follow a process that is fully transparent and adheres to accepted public outreach processes.<br/> <b>11/3/22 Status Update:</b> Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p> |
| <p>There are no performance measures to document expectations of and performance by the Real Property Administrator or departmental lease managers.</p>                                      | <p>3.3</p> | <p>Public Works should update the City’s real property administration policies and procedures to align with management’s expectations.</p>                                    | <p>Public Works</p> | <p><b>Original Audit Response:</b> Public Works agreed with recommendation.<br/> <b>10/28/13 Status:</b> Partially Implemented<br/> <b>1/31/17 Status Update:</b> Partially Implemented/Further Implementation Needed.<br/> <b>5/29/18 Status Update:</b> Partially Implemented/Further Implementation. Public Works will update the City’s real property administration policies and procedures once an alternative citywide approach to property management has been identified and implemented.<br/> <b>11/3/22 Status Update:</b> Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |





Office of the City Manager

INFORMATION CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Audit Status Reports: Fleet Replacement Fund Short Millions & Rocky Road: Berkeley Streets At Risk and Significantly Underfunded

INTRODUCTION

On November 19, 2020, the City Auditor published the Rocky Road: Berkeley Streets at Risk and Significantly Underfunded Audit Report<sup>1</sup>, reviewing the funding resources to sufficiently maintain City streets, and asking if Public Works has clear policies and processes to guide paving decisions. This is the first status report regarding this audit. On June 2, 2021, the City Auditor published the Fleet Replacement Fund Short Millions Audit Report<sup>2</sup>, reviewing the solvency of the fund to sufficiently replace vehicles and asking if Public Works has the key information necessary to manage the Fleet program. This is the first status report to City Council on the efforts made to implement the Audit Report's recommendations for Fleet.

CURRENT SITUATION AND ITS EFFECTS

The Street Paving Audit Report noted two findings and five recommendations for the Public Works Department to review, implement and report to Council. As of this report, three recommendations have been implemented and two recommendations have been partially implemented.

The Fleet Audit Report noted two findings and twelve recommendations for the Public Works Department to review, implement and report to Council. As of this report, there are updates to the status of all twelve recommendations. The first set of seven recommendations was related to the underfunding of the replacement fund. One recommendation has been partly implemented, the remaining six recommendations have been started. The second set of five recommendations focused on Public Works having critical information available to inform management and decision making. All five recommendations under this finding have been started.

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<sup>1</sup> Rocky Road: Berkeley Streets at Risk and Significantly Underfunded <https://berkeleyca.gov/sites/default/files/2022-01/Rocky-Road-Berkeley-Streets-at-Risk-and-Significantly-Underfunded.pdf>

<sup>2</sup> Audit: Fleet Replacement Fund Short Millions: <https://berkeleyca.gov/sites/default/files/2022-01/Fleet-Replacement-Fund-Short-Millions.pdf>

The attachment provides a detailed table of audit report recommendations, steps towards corrective action, and implementation updates. The next status report will be in May.

### BACKGROUND

Public Works' Engineering Division is responsible for capital projects to maintain over 216 centerline miles of streets in Berkeley, while the Streets & Utilities Division handles day-to-day maintenance of those streets. Public Works' Equipment Maintenance Division manages the maintenance, purchase, and replacement of the City's 730 fleet vehicles, heavy duty trucks and large equipment, including public safety, fire, and alternative fuel vehicles and equipment. Public Works' Administrative and Fiscal Services Division is responsible for the Department's budget and fiscal oversight, regulatory compliance and reporting, and analytical support for routine and special projects in all Public Works operating divisions.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Public Works replaces vehicles with alternative fuel, hybrid and electric vehicles whenever possible given availability of fleet technology, available budget and charging infrastructure. Streets that are improved to benefit all users help encourage more bicycling and walking, which lowers greenhouse gas emissions. Streets that are improved to include green infrastructure help reduce pollution and clean stormwater before it reaches the Bay.

### POSSIBLE FUTURE ACTION

Public Works will continue to address the remaining three partially implemented recommendations in the Streets Audit and the twelve started and partially implemented recommendations in Fleet Audit.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

In the biennial budget adoption for FY 2023 and FY 2024, the City Council allocated an increase of \$5,000,000 (FY2023) and \$9,100,000 (FY2024) to street paving in the Capital Improvement Fund. The Council also passed a funding guideline to approve an \$8,000,000 increase in future fiscal years. This funding is intended to raise paving funding to levels sufficient to maintain current pavement conditions. The Measure L Bond Measure, if approved by Berkeley voters on November 8, 2022, would raise \$300,000,000 towards street and traffic safety improvements, including improvements that advance bicycle and pedestrian use and safety. Project funding would be allocated over several years to raise the pavement condition index (PCI) to 70 or above, which is a "Good" status.

### CONTACT PERSON

Sean O'Shea, Administrative & Fiscal Services Manager (510) 981-6306  
Joe Enke, Manager of Engineering (510) 981-6411  
Greg Ellington, Equipment Management Superintendent (510) 981-9469



Attachment:

1. Audit Findings and Recommendations Response Report – Streets
2. Audit Findings and Recommendations Response Report - Fleet

| Audit Title: Rocky Road: Berkeley Streets at Risk and Significantly Underfunded                                                     |                |                                                                                                                                                                                                                                                                                                                                                                                       |                 |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| Finding                                                                                                                             | Recommendation |                                                                                                                                                                                                                                                                                                                                                                                       | Lead Department | Expected or Actual Implementation Date | Status of Audit Recommendations, Corrective Action Plan, and Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Without significant additional funding, Berkeley streets will continue to deteriorate and deferred maintenance costs will increase. | 1.1            | Annually, conduct a budget analysis, based on the deferred maintenance needs at that point in time, to determine what level of funding is necessary to achieve the desired goals of the Street Rehabilitation Program. Report findings to City Council. This information will be helpful during updates to the Five-Year Street Rehabilitation Plan and during the budgeting process. | Public Works    | Ongoing                                | <u>Partly Implemented:</u><br>The City received a PTAP grant to fund a consultant (PEI) to survey the entire City's paving condition. The consultant's report is pending. The newly adopted Street Rehab policy says that the City will conduct funding sufficiency analysis based on existing deferred maintenance. This analysis will be included as part of the biannual Paving Plan adoption. Public Works will propose a budget as part of the biannual CIP adoption to address the paving needs, based on available resources, and will present any funding shortfalls to the Council. |
| Without significant additional funding, Berkeley streets will continue to deteriorate and deferred maintenance costs will increase. | 1.2            | Identify funding sources to achieve and maintain the goals of the Street Rehabilitation Program.                                                                                                                                                                                                                                                                                      | Public Works    | Ongoing                                | <u>Partly Implemented:</u><br>Funding sources for street improvement are identified in the Capital Improvement Program budget. The City Council also approved a ballot measure for the November 2022 ballot which if passed, will provide up to \$300,000,000 to improve Berkeley's streets, sidewalks and bike and ped infrastructure. Approximately \$230 million would be allocated to Street Rehabilitation and Repair.                                                                                                                                                                  |

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| <p>The Streets Rehabilitation and Repair Policy is out-of-date and Public Works is not following it.</p> | <p>2.1</p> | <p>Update the Street Rehabilitation and Repair Policy annually and define who is responsible for ensuring the Policy is updated, as stated in the Policy.</p> | <p>Public Works</p> | <p>January 2022</p> | <p><u>Implemented:</u><br/>Public Works Commission approved a Street Rehabilitation and Repair Policy March, 2021, which was received and revised after consideration at the FITES Commission in May 2021, and ultimately adopted by City Council on January 25, 2022. The Policy and Five Year Paving Plan were considered and adopted on the same Council agenda. The Street and Maintenance Policy shall be adopted by City Council at a minimum interval of 5 years, after review by the Transportation and Infrastructure Commission.</p> |
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| <p>The Streets Rehabilitation and Repair Policy is out-of-date and Public Works is not following it.</p> | <p>2.2</p> | <p>When updating the Street Rehabilitation and Repair Policy, incorporate equity to align with Vision 2050 and clearly define how it will be applied to the street maintenance and rehabilitation planning process.</p>                                                                                         | <p>Public Works</p> | <p>January 2022</p> | <p><u>Implemented:</u><br/>The updated Street Rehabilitation and Repair Policy was adopted with clear language placing Equity as an objective: "The benefits of good infrastructure shall be distributed equally throughout the entire community regardless of income, political influence, or demographic characteristics of the residents in the area. Equity means that disadvantaged residents with more pressing needs experience benefits sooner than others, as defined by the City within the adopted Five Year Plan." The policy also calls for the designation of an Equity Zone, serving neighborhoods with historic underinvestment, which is to be prioritized to achieve the PCI goals of 70 sooner than the remainder of the City.</p> |
| <p>The Streets Rehabilitation and Repair Policy is out-of-date and Public Works is not following it.</p> | <p>2.3</p> | <p>Define goals and performance measures to guide the Street Rehabilitation and Repair Policy and Street Rehabilitation Program that align with other plans and policies relevant to street paving (e.g., Complete Streets Policy, Vision 2050, etc.). Regularly report to Council on performance measures.</p> | <p>Public Works</p> | <p>January 2022</p> | <p><u>Implemented:</u><br/>Performance Metrics are included as a major part of the adopted Specific Policy. Key areas: 1) The goal is to get to standard PCI of 70 for roadways: Arterials, Collectors, Bus Routes, Bikeway Network, and Equity Zone. 2) Funding should be prioritized with Equity in mind 3) Performance metrics reporting will be included with the biannual Paving Plan review.</p>                                                                                                                                                                                                                                                                                                                                                |

| Audit Title: Fleet Replacement Fund Short Millions          |                |                                                                                                                                                                                                                                                                                                                                            |                 |                                        |                                                                                                                                                                                                                                                                                     |
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| Finding                                                     | Recommendation |                                                                                                                                                                                                                                                                                                                                            | Lead Department | Expected or Actual Implementation Date | Status of Audit Recommendations, Corrective Action Plan, and Progress Summary                                                                                                                                                                                                       |
| The Replacement Fund is underfunded by millions of dollars. | 1.1            | Calculate the dollar value of the City’s replacement needs. Use results from the recent rate study to adjust departments’ replacement fees to cover their share of the costs associated with vehicle replacement, including customization and personnel.                                                                                   | Public Works    | Ongoing                                | <u>Partly Implemented:</u><br>The current fleet replacements costs have been updated in FUND\$ Fleet Management System to include all costs, and have been reflected in the FY 23 & FY 24 Operating budget and the five year replacement schedule communicated in the FY 23-27 CIP. |
| The Replacement Fund is underfunded by millions of dollars. | 1.2            | Conduct an analysis of the City’s current fleet and determine the optimal fleet size to provide services efficiently and effectively. This analysis should include fleet units identified as reserve, backup, and “pool” vehicles. The outcome of the analysis should be a plan to achieve and provide funding for the optimal fleet size. | Public Works    | February - May 2023                    | <u>Started:</u><br>Staff issued an RFP to analyze its fleet and received two solicitations. Public Works has selected Mercury Associates to be the consultant to lead the study.                                                                                                    |

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| <p>The Replacement Fund is underfunded by millions of dollars.</p> | <p>1.3</p> | <p>Work with the City Manager’s Office to adjust the funding model of the Equipment Replacement Fund or adopt a new one to ensure appropriate funding for timely fleet replacement, such as annually transferring money from the General Fund based on an assessment of the City’s overall fleet needs and priorities. Expand the current vehicle and equipment replacement policy to ensure transparency of key provisions of the new or updated model.</p> | <p>Public Works</p> | <p>Ongoing</p> | <p><u>Started:</u><br/>Public Works presented an Equipment Replacement Fund deficit reduction proposal in its departmental budget presentation to the Budget &amp; Finance Policy Committee and in submittals for General Fund consideration to the City Manager. While not funded in FY 23/24, the department will keep monitoring the fund health and make funding proposals in future budget development cycles.</p> |
| <p>The Replacement Fund is underfunded by millions of dollars.</p> | <p>1.4</p> | <p>Revise the vehicle and equipment replacement policy to include that Public Works should regularly assess the personnel expenditures related to vehicle and equipment replacement and ensure that they are appropriate and proportional to their duties.</p>                                                                                                                                                                                               | <p>Public Works</p> | <p>Ongoing</p> | <p><u>Started:</u><br/>Draft policy has been updated and is going through final departmental review.</p>                                                                                                                                                                                                                                                                                                                |
| <p>The Replacement Fund is underfunded by millions of dollars.</p> | <p>1.5</p> | <p>Revise the vehicle and equipment replacement policy to prevent replacing unfunded vehicles by ensuring that contributed funds are available for the purchase.</p>                                                                                                                                                                                                                                                                                         | <p>Public Works</p> | <p>Ongoing</p> | <p><u>Started:</u><br/>Draft policy has been updated and is going through final departmental review.</p>                                                                                                                                                                                                                                                                                                                |

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| The Replacement Fund is underfunded by millions of dollars. | 1.6 | Develop an Administrative Regulation that clarifies Public Works' responsibilities to manage the fleet and maintain sufficient fleet replacement funding.                                                                                                                                                                                                                                        | Public Works | Ongoing | <u>Started:</u><br>The department has drafted a policy document for use instead of an AR.                                                              |
| The Replacement Fund is underfunded by millions of dollars. | 1.7 | To help secure the funding needed for transitioning to electric vehicles by 2030, work with the City Manager's Office to develop a budgetary plan to purchase electric vehicles. The plan should align with the City's fleet electrification goals and take into consideration the current economic downturn, funding availability, available infrastructure, and electric vehicle availability. | Public Works | Ongoing | <u>Started:</u><br>EV purchases for FY 23-24 have been outlined in the budget. A budgetary plan for transitioning to EVs by 2030 is not yet available. |

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| <p>Public Works lacks information on vehicle and equipment replacement for decision making.</p> | <p>2.1</p> | <p>Conduct a needs assessment of vehicles overdue for replacement and create a plan that documents a timeline and cost for replacement. Report the findings to City Council.</p>                                                                                                                                                                                                               | <p>Public Works</p> | <p>Ongoing</p> | <p><u>Started:</u><br/>Backlog vehicles to be purchased have been included in the FY 23-24 budget, though a formal needs assessment has not been completed.</p> |
| <p>Public Works lacks information on vehicle and equipment replacement for decision making.</p> | <p>2.2</p> | <p>Update the vehicle and equipment replacement policy to include criteria for prioritizing fleet replacement. The policy should include a requirement to communicate a delay in replacement of their fleet to affected departments. In Administrative Regulation described in recommendation 1.6, specify that the vehicle and equipment replacement policy should include such criteria.</p> | <p>Public Works</p> | <p>Ongoing</p> | <p><u>Started:</u><br/>Policy update is in draft form and awaits final approval.</p>                                                                            |



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| <p>Public Works lacks information on vehicle and equipment replacement for decision making.</p> | <p>2.3</p> | <p>Work with the vendor of the new fleet management system to configure it to address the data issues identified in this report, including:</p> <ul style="list-style-type: none"> <li>• Tracking Replacement Funds collected and leftover funds by department;</li> <li>• Zeroing out the balance after a vehicle is replaced;</li> <li>• Adjusting the replacement date and reporting the rationale if a replacement is deferred;</li> </ul> <p>and</p> <ul style="list-style-type: none"> <li>• Displaying any information needed to prioritize replacements based on specified criteria.</li> </ul> | <p>Public Works</p> | <p>December 2022</p> | <p><u>Started:</u><br/>Data issues have been presented to the vendor/project management team, though the new data system has not yet been implemented.</p>   |
| <p>Public Works lacks information on vehicle and equipment replacement for decision making.</p> | <p>2.4</p> | <p>Clean and update the vehicle and equipment database before migrating it to the new fleet management system to ensure accuracy and data integrity.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>Public Works</p> | <p>December 2022</p> | <p><u>Started:</u><br/>Data cleanup is underway however the Assetworks implementation is behind schedule and the go-live date is planned for the future.</p> |

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| Public Works lacks information on vehicle and equipment replacement for decision making. | 2.5 | Update the vehicle and equipment replacement policy or develop a separate policy to require staff manage the City's data appropriately to ensure accurate complete information to support management decisions. | Public Works | Ongoing | <u>Started:</u><br>Policy update is in draft form and awaits final approval. |
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Office of the City Manager

INFORMATION CALENDAR

November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Audit Recommendation Status - Data Analysis of the City of Berkeley's Police Response

CURRENT SITUATION AND ITS EFFECTS

The City Auditor's report included 2 recommendations. One of the recommendations has been implemented and one of the recommendations is partly implemented. The next status update report will be in 6 months.

BACKGROUND

On July 2, 2021, the City Auditor's Office issued its audit, *Data Analysis of the City of Berkeley's Police*<sup>1</sup> This audit report included 2 recommendations. The purpose of this report is to update the City Council on the Police Department's progress on implementing the City Auditor's recommendations. This is the first status report for this audit.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

FISCAL IMPLICATIONS

Costs are not yet known and will depend on yet to be determined contracts and other factors including staff time.

CONTACT PERSON

Captain Kevin Schofield, Police Department, (510) 981-5815

## Attachment:

1. Audit Findings and Recommendations Response Report

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<sup>1</sup> City Auditor's Office Data Analysis Audit (7/2/2021)

<https://berkeleyca.gov/sites/default/files/2022-01/Data-Analysis-Berkeley-Police-Response.pdf>

| Audit Title: Data Analysis of Berkeley's Police Response                                          |                                                                                                                                                                                                                                                                                                                                                                                       |                 |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| Finding                                                                                           | Recommendation                                                                                                                                                                                                                                                                                                                                                                        | Lead Department | Expected or Actual Implementation Date | Status of Audit Recommendations, Corrective Action Plan, and Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| The City can improve the transparency of Police Department activity data on the Open Data Portal. | 1.1 To improve access to data, we recommend the Berkeley Police Department make calls for service data available on the City's Open Data Portal for all call types allowable by Berkeley Police Department policy and law, and update regularly to facilitate transparency. This data should be published in machine ready format, and contain as many years of data as is available. | Police          | Ongoing                                | <p><u>Status: Partly Implemented</u></p> <p>The outside vendor assigned to this project, GTG, is still working with staff to implement the recommended solutions. As of August 12, 2022, the project is over 80% completed. This is the most recent update from the vendor:</p> <p>ITEMS THAT ARE COMPLETED:</p> <ul style="list-style-type: none"> <li>Police Department ArcGIS Hub               <ul style="list-style-type: none"> <li>•AGOL Access provided</li> <li>•ArcGIS Hub design and configuration                   <ul style="list-style-type: none"> <li>oMet with Berkeley PD and will proceed with adding a new page to the existing PD Transparency Hub rather than building a whole new Hub site</li> <li>oOpen Data configuration to replace Socrata</li> </ul> </li> <li>•Addition of web applications to Hub</li> </ul> </li> <li>Crime Mapping solution replacement               <ul style="list-style-type: none"> <li>•SQL Query Update</li> <li>•Verification of GIS data update from SQL                   <ul style="list-style-type: none"> <li>oBerkeley to create enterprise geodatabase</li> <li>oUpdate to include additional fields from CAD export</li> </ul> </li> <li>•Deployment of scheduled scripts                   <ul style="list-style-type: none"> <li>oUpdated script to accommodate new CAD fields in export</li> </ul> </li> <li>•Publishing GIS data                   <ul style="list-style-type: none"> <li>oAwaiting necessary access from City of Berkeley to publish GIS data to the ArcGIS Server</li> </ul> </li> </ul> </li> </ul> |

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|                                                                                   |     |                                                                                                                                                                                                                                                              |        |           | <ul style="list-style-type: none"> <li>• Development of Berkeley Crime Viewer application Parcel Condition Widget</li> <li>• Rebuild widget in ArcGIS Online                             <ul style="list-style-type: none"> <li>o Develop new GIS web application to replace the current 'Portal'</li> <li>o Rebuild custom widget in AGOL using COTS tools and Arcade expressions, rather than custom code</li> </ul> </li> <li>• Provide new web application to City of Berkeley for website and Hub</li> <li>• Update application reference once PROD server has been upgraded to 10.9 City-wide ArcGIS Hub</li> <li>• Provided spreadsheet for content</li> </ul> <p>ITEMS STILL A WORK IN PROGRESS:</p> <ul style="list-style-type: none"> <li>• Spreadsheet filled out with Berkeley content to include in the Hub                             <ul style="list-style-type: none"> <li>o Applications</li> <li>o Open Data Layers</li> <li>o Other Hub links</li> <li>o External Links</li> </ul> </li> <li>• ArcGIS Hub site completed with all requested content, items, links, and materials Training</li> <li>• Training on deployed GIS solutions</li> <li>• Documentation on deployed GIS solutions</li> </ul> |
| Berkeley Police Department can better track mental health and homelessness calls. | 2.1 | To improve access to data, we recommend the Berkeley Police Department identify all calls for service where there is an apparent mental health issue and/or homelessness component in a manner that protects the privacy rights of the individuals involved. | Police | 6/29/2022 | <p><u>Status: Implemented</u></p> <p>Starting July 1, 2021, the department formally began utilizing "H" homeless and "MH" mental health disposition codes when closing out any call involving a homeless person or a person with mental health issues. Officers were instructed that they were not required to ask people what their housing status is unless necessary for identification purposes. Unless there are mental health issues which are related to the call, they are not required to ask them what their mental health status is either. Officers are expected to use their best judgement / perception in determining if a call is related to a homeless issue or someone suffering from a mental health issue. If so, they are directed to add the "H" and/or "MH" disposition to the CAD disposition.</p>                                                                                                                                                                                                                                                                                                                                                                                                |





Police Department

INFORMATION CALENDAR  
November 3, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Audit Recommendation Status – 911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale

CURRENT SITUATION AND ITS EFFECTS

The City Auditor's report included 14 recommendations. As of this report, 11 recommendations have been implemented, 1 was dropped (in consultation with the Auditors Office) and 2 are partly implemented. Please see attachment for further details regarding individual recommendations.

BACKGROUND

On April 25, 2019, the City Auditor's Office issued its audit, *911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale*<sup>1</sup>. This audit report included 14 recommendations. The purpose of this report is to update City Council on the Berkeley Police Department's (BPD) progress on implementing the City Auditor's recommendations. This is the 2<sup>nd</sup> status update report to City Council with the next update planned for May 2023.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

FINANCIAL IMPLICATIONS

Associated costs will depend on the outcome of the recommendations. That work is in progress and nearly completed.

CONTACT PERSON

Captain Kevin Schofield, 510-981-5815.

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<sup>1</sup> City Auditor's Office Dispatcher Audit (04/25/19) <https://berkeleyca.gov/sites/default/files/2022-01/Dispatch-%20Workload-Fiscal-%20Year-2018.pdf>

| Audit Title: 911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                 |                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| Finding                                                                                | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Lead Department | Expected or Actual Implementation Date | Status of Audit Recommendations, Corrective Action Plan, and Progress Summary                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| It is taking longer to answer 911 calls and there are not enough call takers.          | 1.1 Conduct an annual staffing analysis of required minimum staffing levels and budgeted dispatchers to ensure budget staffing requests and scheduling efforts meet demand and limit the use of overtime where possible (see also Finding 2). Use the staffing analysis to communicate to Council and the public during the annual appropriations process: <ul style="list-style-type: none"> <li>• Service level demands</li> <li>• The full-burdened cost of budgeting for additional staff</li> <li>• Whether there is sufficient funding available to budget for the additional staff or a shortfall (quantified in dollars)</li> <li>• Additional staffing requests, if needed</li> </ul> | Police          | 5/10/2022                              | <u>Status: Implemented</u><br>Current employees continue to be staffed during days and times that mirror call volume reports (ECats). Data on service level demands continues to be reviewed monthly. Current budget does not support additional staff, however analysis of overtime expenditures was conducted as part of Call Taker recommendation. This revealed that additional positions could be funding via overtime savings.                                                                                  |
| It is taking longer to answer 911 calls and there are not enough call takers.          | 1.2 Use the staffing analysis performed in response to recommendation 1.1, to determine future resource needs of the Communications Center, including staffing, equipment, and physical space. Take into account planned changes to services and factors that may influence call volume.                                                                                                                                                                                                                                                                                                                                                                                                       | Police          | Ongoing                                | <u>Status: Partly Implemented</u><br>A part of Measure FF passed in 2021 provided additional funding to improve Berkeley's 9-1-1 dispatch system and implement an accredited priority dispatching and emergency medical dispatching program. The Fire Department contracted with Federal Engineering to conduct an analysis of the staffing, infrastructure, and technology needs of the Communications Center to implement these programs. Analysis work began in February 2022. The consultant's report is pending. |



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| <p>The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.</p> | <p>2.1</p> | <p>Open all dispatcher positions to continuous recruitment.</p>                                                                                                                                                                                                      | <p>Police</p> | <p>6/29/2022</p> | <p><u>Status: Implemented</u><br/>In June of 2022 Human Resources changed the Public Safety Dispatcher I position to open and continuous hiring.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.</p> | <p>2.2</p> | <p>Work with Communications Center staff to create a specific recruitment plan for dispatcher positions including recruitment events and marketing material. Use recruitment best practices to reach potential applicants and increase the number of applicants.</p> | <p>Police</p> | <p>5/10/2022</p> | <p><u>Status: Implemented</u><br/>Recruitment and Retention Team continues to actively recruit and implement new strategies for reaching a diverse and broad group of Communications Center applicants. Communications Center personnel have been included in recruitment materials, interview processes, applicant “sit alongs”, and applicant outreach. On September 24, 2019 BPD launched a recruitment-specific website, <a href="http://www.joinberkeleypd.com">www.joinberkeleypd.com</a>, and accompanying social media accounts all specifically designed for BPD by an experienced marketing firm. This included recruitment videos, language, and images specifically targeting potential Communications Center applicants.</p> <p>BPD implemented a program (“Text bpdjobs to (510) 399-1814) that leads applicants through immediate response text conversations where recruiters can gather information on applicants quickly and efficiently, and applicants can be provided testing and job information.</p> <p>Another new strategy implemented during the most recent recruitment period included advertising on a worldwide employment related search engine (indeed.com). One of the Supervising Public Safety Dispatchers personally contacted the more than 600 applicants once the application period was open to inform them of such and to provide them with POST test preparation materials and other test information. She also coordinated sit-alongs with those interested in doing so.</p> |

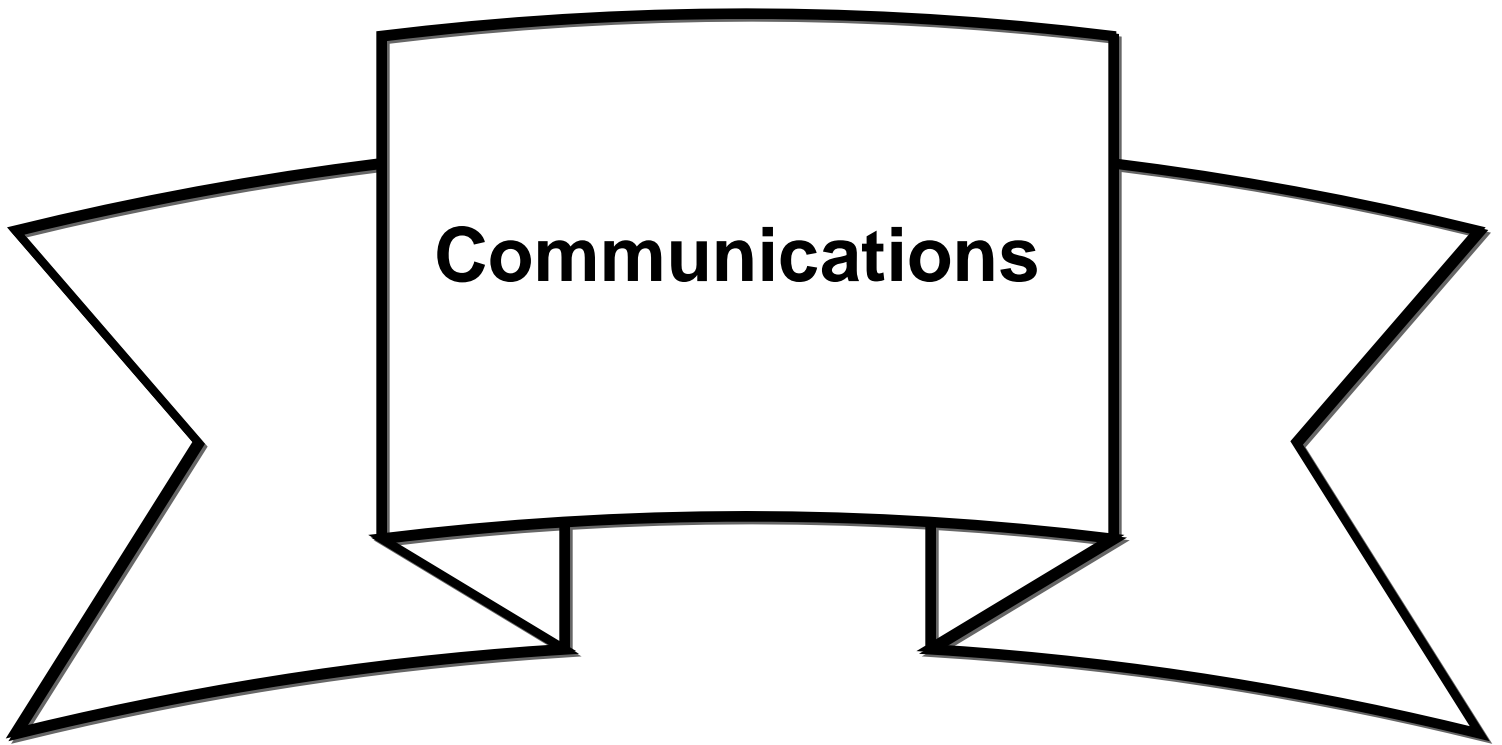
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| <p>The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.</p> | <p>2.3</p> | <p>Identify and implement feasible option to improve turnaround time on background checks for dispatcher positions. This can include outsourcing background investigations or working with Human Resources to ensure that the Department is able to complete all background investigations in a timely manner.</p> | <p>Police</p> | <p>5/10/2022</p> | <p><u>Status: Implemented</u></p> <p>Two independent background investigation firms are working with BPD to complete backgrounds. Turn-around times have met promised delivery dates, with most being completed within a month. This has relieved pressure on internal background investigators and significantly shortened the time from application period to job offer. Data is being collected and reviewed regularly regarding turn-around times. This current pace will allow BPD to remain swift and competitive while hiring quality applicants and also ensure that we can hold multiple recruitment periods in a single year.</p> |
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| <p>The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.</p> | <p>2.4</p> | <p>Design a way to retain staff that are unable to pass the Police Desk training, for example, keep staff as PSD I and have them work as a call taker or create a new job classification for a call taking position.</p> | <p>Police</p> | <p>5/10/2022</p> | <p><u>Status: Dropped</u><br/> Call Taker proposal written and subsequently approved by the Chief. Initial meeting held with affected bargaining unit and Human Resources. Union voiced concerns about separating job duties within the Communications Center and the Call Taker position being misused. Next steps include Human Resources reviewing job classification and conducting comp survey, followed by BPD and HR meeting again with the union. Union is considering submitting counter proposal to Call Taker position, to possibly rewrite trainees. It became clear that the majority of those failing the training program were failing due to inability to pass call taking, and that the call taking training was often extending over six months. The most recent trainee who failed due to inability to pass Police Desk who would have been qualified to work in the Call Taker position was in 2011.</p> <p>A determination was made to focus on improving the training program for Call Taker training (and overall training program) to increase the success rate for trainees moving from PSD I to PSD II. This would also alleviate the Union’s stated concerns. Additionally, BPD will conduct a review of both the training program as well as the feasibility/benefit of moving forward with a Call Taker position at the next Audit Status Update.</p> |
| <p>The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.</p> | <p>2.5</p> | <p>Evaluate the results from dispatcher recruitment routinely (e.g., annually or at the end of a recruitment cycle) to determine areas for improvement. Update recruitment plans.</p>                                    | <p>Police</p> | <p>5/10/2022</p> | <p><u>Status: Implemented</u><br/> Personnel and Training, working in conjunction with the Communications Center, now tracks applicant progress through the recruitment, testing, hiring and training process. Data collected includes information regarding where the applicant/employee was “lost” and what steps are in place or required to allow the applicant (or future applicants) to successfully move forward in the process. Data is reviewed at each stage, and at the end of each cycle will be assessed for effectiveness.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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| <p>The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.</p> | <p>2.6</p> | <p>Implement an automated scheduling software that has built-in decision-making capabilities to automatically fill shifts based on specified qualifications and staff availability.</p> | <p>Police</p> | <p>Ongoing</p>  | <p><u>Status: Partly Implemented</u><br/>Care Systems Inc. was selected and approved by City Council on May 24, 2022 for an electronic scheduling solution. Contract completion is pending. The system integrates scheduling and overtime management.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.</p> | <p>2.7</p> | <p>Decrease the concentration of overtime among dispatchers.</p>                                                                                                                        | <p>Police</p> | <p>7/1/2022</p> | <p><u>Status: Implemented</u><br/>Since the last update we have successfully promoted 3 Public Safety Dispatcher II employees. Currently there are 2 Public Safety Dispatcher I employees in training. In April 2021 we implemented the use of Google Sheets (Drive) where all shifts and overtime are readily viewable and signup is done online. Minimum mandatory overtime hours are set for each Dispatcher per week for equity. Voluntary overtime signup is completed in stages in order to distribute overtime equitably between all Dispatchers. Trainees who have passed Call Taking, Fire Desk, or Records desk are able to assist and work overtime on select desks as needed. On May 25, 2022 City Council approved the hiring of Care Systems Inc. for an electronic staffing solution for the police department. The system integrates scheduling and provides timely and accurate information on overtime usage and an approval process. Recruitment and hiring for Public Safety Dispatchers (PSD) is now open and continuous. Overtime expenditure for the Communications Center from fiscal year 2019 through 2021 trended downward.</p> |

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| <p>The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.</p> | <p>2.8</p> | <p>Develop and implement a Communications Center training plan to ensure compliance with POST training requirements. Evaluate training processes and update training plans routinely.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>Police</p> | <p>5/10/2022</p> | <p><u>Status: Implemented</u><br/>                 Communications Center leadership, in partnership with Personnel and Training, now monitor training hour progress annually (tied to PARs) and quarterly with a goal of training hours being completed throughout the training cycle. At the third quarter of year one of the two year cycle, Communications Center personnel have surpassed training hours that were accomplished near the end of the last two year cycle. Plan implemented to approve a minimum of two Communications Center personnel to training each month, and complete at least two hours of online training as well. In an effort to also improve morale and overall health, focus has been placed completing training hours in classes that provide employee wellness and development.</p> |
| <p>Working conditions adversely affect dispatcher morale.</p>                                                                     | <p>3.1</p> | <p>Create a comprehensive stress management program specifically for the Communications Center that includes the following:<br/>                 - Stress management training for all staff, 8 hours minimum during career<br/>                 - Access to on-site educational resources to help with stress and related risks, e.g., directory of local therapists specializing in treatment of stress and traumatic stress disorders and City programs that provide information on how and where to access help<br/>                 - Procedures assuring participation of staff in critical incidence stress management activities (e.g., debriefing sessions when involved in traumatic call events)<br/>                 - A Peer Support Program<br/>                 - Comprehensive, ongoing training on structured call-taking processes</p> | <p>Police</p> | <p>5/10/2022</p> | <p><u>Status: Implemented</u><br/>                 Multiple courses and online learning materials related to Communications Center/dispatcher stress management have been identified. Communications Center personnel have begun attending this course (goal set of at least two Communications Center personnel attending a class per month) and the department will continue to provide these training opportunities. BPD as a whole continues to aggressively work on improving the overall wellness and improving stress management skills of personnel. All employees have access to a meditation app to support stress reduction, and have access to a fully-equipped gym in the building.</p>                                                                                                                 |

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| <p>Working conditions adversely affect dispatcher morale.</p> | <p>3.2</p> | <p>Develop and implement plans to address workplace cleanliness and equipment and furniture maintenance and replacement.</p>                                                                                                                                                                                                                                                                                    | <p>Police</p> | <p>5/10/2022</p> | <p><u>Status: Implemented</u><br/>                 BPD has implemented a quarterly deep-cleaning schedule. After reviewing the current Hepa filters, it was determined that purchasing new individual filters for each console was not financially prudent, as we have already identified that the existing console must be replaced within the next year. BPD purchased and will install two wall mounted Hepa filters that can work in conjunction with existing (or replacement systems) and are relocatable once a new location /expansion is decided. Additionally, the carpet was replaced in the last 8 years with a low pile, sound reduction carpet that consisted of individual squares so that dirty/stained or otherwise worn areas or squares could be switched out. Replacement timeline for that product is being monitored. Further, the individual console chairs are regularly replaced and over the last several years we have worked with the COB Occupational Health and Safety Specialist to purchase chairs to conform to the specific ergonomic needs of individual dispatchers.</p> |
| <p>Working conditions adversely affect dispatcher morale.</p> | <p>3.3</p> | <p>Conduct regular supervisor level meetings to share information about operations and staffing. Use these meetings to improve understanding of the supervisor role, identify problems, discuss changes that may affect operations, and establish communications plans for distributing information to all staff.</p>                                                                                           | <p>Police</p> | <p>5/10/2022</p> | <p><u>Status: Implemented</u><br/>                 The Communications Manager and supervisor group now conduct formal weekly supervisor level meetings as well as informal group discussions regarding operational needs, project updates and current issues that need addressing. Information from these meetings is shared out to the entire Communications Center via email from the manager or Lieutenant.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>Working conditions adversely affect dispatcher morale.</p> | <p>3.4</p> | <p>Routinely have Police and Fire staff meet with all Center Supervisors to solicit feedback on Center operations and to address any issues. Use these meetings to improve understanding of the dispatcher role and current policies of public safety, identify problems that should be evaluated for further discussion, and discuss known and expected changes that may affect the Communications Center.</p> | <p>Police</p> | <p>5/10/2022</p> | <p><u>Status: Implemented</u><br/>                 BFD attends the formal weekly meeting once a month, or more frequently as needed. BFD and BPD leadership conducted a topic specific meeting to discuss potential physical expansion needs, Emergency Medical Dispatching and the opening of the Communications Center Manager position due to retirement.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |



All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

**City Clerk Department**

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

**Records Online**

<https://records.cityofberkeley.info/>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF