



Planning Commission

# AGENDA

## REGULAR MEETING OF THE PLANNING COMMISSION

This meeting is held in a wheelchair accessible location.

Wednesday, May 3, 2023

5:30 PM

North Berkeley Senior Center

1901 Hearst Avenue, Berkeley

See “*MEETING PROCEDURES*” below.

All written materials identified on this agenda are available on the Planning Commission webpage: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>

### PRELIMINARY MATTERS

- 1. Roll Call:** **Merker, Blaine**, appointed by Councilmember Kesarwani, District 1  
**Vincent, Jeff, Chair**, appointed by Councilmember Taplin, District 2  
**Moore III, John E. “Chip”**, appointed by Councilmember Bartlett, District 3  
**Oatfield, Christina**, appointed by Councilmember Harrison, District 4  
**Mikiten, Elisa**, appointed by Councilmember Hahn, District 5  
**Marthinsen, Emily**, appointed by Councilmember Wengraf, District 6  
**Twu, Alfred**, appointed by Councilmember Robinson, District 7  
**Hauser, Savlan**, appointed by Councilmember Droste, District 8  
**Ghosh, Barnali, Vice Chair**, appointed by Mayor Arreguín
- 2. Land Acknowledgement:** 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.

- 3. **Order of Agenda:** The Commission may rearrange the agenda or place items on the Consent Calendar.
- 4. **Public Comment:** Comments on subjects not included on the agenda. Speakers may comment on agenda items when the Commission hears those items. (See “Public Testimony Guidelines” below):
- 5. **Planning Staff Report:** In addition to the items below, additional matters may be reported at the meeting. **Next Commission meeting: June 7, 2023.**
- 6. **Chairperson’s Report:** Report by Planning Commission Chair.
- 7. **Committee Reports:** Reports by Commission committees or liaisons. In addition to the items below, additional matters may be reported at the meeting.
- 8. **Approval of Minutes:** Approval of Draft Minutes from the meeting on April 19, 2023.
- 9. **Future Agenda Items and Other Planning-Related Events:** None.

**AGENDA ITEMS:** All agenda items are for discussion and possible action. Public Hearing items require hearing prior to Commission action.

- 10. **Action:** **Public Hearing: Tentative Tract Map #8639**  
**Recommendation:** Hold a public hearing to consider Tentative Map #8639 pursuant to BMC Section 21.16.047.  
**Written Materials:** Attached.  
**Presentation:** N/A.
- 11. **Action:** **Public Hearing: Accessory Dwelling Unit Amendments**  
**Recommendation:** Review the proposed zoning ordinance amendments to Title 23 relating to ADUs to conform to current state law and HCD guidance. Take public comment, discuss draft ordinance amendments, and make a recommendation to City Council.  
**Written Materials:** Attached.  
**Presentation:** N/A.
- 12. **Action:** **Public Hearing: State Law Technical Edits**  
**Recommendation:** Review the proposed zoning ordinance amendments to update the BMC in accordance with state laws related to special needs housing, employment housing, family day care home and parking as well as additional non-substantive edits. Take public comment, discuss draft ordinance amendments, and make a recommendation to City Council.  
**Written Materials:** Attached.  
**Presentation:** N/A.

- 13. Action:** *Poll for Special Meeting on July 19, 2023*  
**Recommendation:** Vote to hold a Special Meeting on the third Wednesday of July 2023.  
**Written Materials:** N/A.  
**Presentation:** N/A.

**ADDITIONAL AGENDA ITEMS:** In compliance with Brown Act regulations, no action may be taken on these items. However, discussion may occur at this meeting upon Commissioner request.

**Information Items:** None.

**Communications:**

- General.

**Late Communications:** (Received after the packet deadline):

**Late Communications:** (Received and distributed at the meeting):

**ADJOURNMENT**

**Meeting Procedures**

**Public Testimony Guidelines:**

Speakers are customarily allotted up to two minutes each and may not cede their time to another speaker. The Commission Chair may limit the number of speakers and the length of time allowed to each speaker to ensure adequate time for all items on the Agenda. **To speak during Public Comment or during a Public Hearing, please line up behind the microphone.** Customarily, speakers are asked to address agenda items when the items are before the Commission rather than during the general public comment period. Speakers are encouraged to submit comments in writing. See "Procedures for Correspondence to the Commissioners" below.

**Consent Calendar Guidelines:**

The Consent Calendar allows the Commission to take action with no discussion on projects to which no one objects. The Commission may place items on the Consent Calendar if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should submit a speaker card prior to the start of the meeting, or raise his or her hand and advise the Chairperson, and the item will be pulled from the Consent Calendar for public comment and discussion prior to action.

**Procedures for Correspondence to the Commissioners:**

To distribute correspondence to Commissioners prior to the meeting date, submit comments by 12:00 p.m. (noon), eight days before the meeting day (Tuesday) (email preferred):

- If correspondence is more than 20 pages, requires printing of color pages, or includes pages larger than 8.5x11 inches, please provide 15 copies.
- Any correspondence received after this deadline will be given to Commissioners on the day just prior to the meeting.
- Staff will not deliver to Commissioners any additional written (or emailed) materials received after 12:00 p.m. (noon) on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Planning Commission Secretary just before, or at the beginning, of the meeting.
- Written comments should be directed to the Planning Commission Secretary, at the Land Use Planning Division (Attn: Planning Commission Secretary).

***Communications are Public Records:*** Communications to Berkeley boards, commissions, or committees are public records 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.

***Written material*** may be viewed in advance of the meeting at the Department of Planning & Development, Permit Service Center, **1947 Center Street, 3<sup>rd</sup> Floor**, during regular business hours.

***Note: If you object to a project or to any City action*** or procedure relating to a project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else in the public hearing on the project, or in written communication delivered at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to these applications is governed by Section 1094.6, of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

***Meeting Access:*** This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services Specialist, at 981-6418 (V) or 981-6347 (TDD), at least three business days before the meeting date.

***Please refrain from wearing scented products to public meetings.***



Planning Commission

1                   **DRAFT MINUTES OF THE REGULAR PLANNING COMMISSION MEETING**  
2                   **April 19, 2023**

3    The meeting was called to order at 5:37 p.m.

4    **Location:** South Berkeley Senior Center, 2939 Ellis Street, Berkeley, CA 94703

5    **1. ROLL CALL:**

6       **Commissioners Present:** Blaine Merker, Jeff Vincent, Chip Moore, Christina Oatfield, Elisa  
7       Mikiten, Emily Marthinsen, Savlan Hauser, Barnali Ghosh, and Brandon Yung (alternate for  
8       Commissioner Twu).

9  
10       **Commissioner Absent:** Alfred Twu (excused absence).

11  
12       **Staff Present:** Temporary Secretary Claudia Garcia, Clerk Zoe Covello, Justin Horner, and  
13       Ashley James.

14   **2. LAND ACKNOWLEDGEMENT.**

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

30   **3. ORDER OF AGENDA:** No changes.

31   **4. PUBLIC COMMENT PERIOD:** 2.

32   **5. PLANNING STAFF REPORT:**

- 33 • Beginning at the May 3<sup>rd</sup> Planning Commission meeting, which is in two weeks, all  
34 Planning Commission meetings will meet at the North Berkeley Senior Center starting  
35 at 5:30pm. Staff will make sure there are clear directions to the Gooseberry Room,  
36 which is on the first floor.
- 37 • Highlighted a memo from the Department of Parks Recreation and Waterfront Director  
38 Scott Ferris to the Planning Commissioners, sharing the latest project materials for  
39 the Waterfront Specific Plan.
- 40 • The 2022 Annual Progress Reports on the City's General Plan and Housing Element  
41 – which includes unit tracking – were submitted April 1<sup>st</sup> to the State Department of  
42 Housing and Community Development. The City issued building permits for 887 units  
43 in 2022, including 88 very low income units and 58 low income units. You can  
44 download the unit tracking information from the Housing Element webpage and staff  
45 are working with the Communications team to add the General Plan APR's to the  
46 General Plan webpage.
- 47 • In BART-related news. We have a couple of upcoming community meetings related to  
48 planning for Ashby and North Berkeley BART station areas:
  - 49 ○ **Thursday 4/20:** 6:30 PM to 8:30 PM at the Ed Roberts Campus (3075 Adeline  
50 St.). BART is hosting a community meeting that will focus on Ashby BART's  
51 operational requirements and their impact on future development and potential  
52 connection to Adeline St.
  - 53 ○ **Wednesday 5/10:** 6:00 PM to 8:00 PM at the North Berkeley Senior Center  
54 (1901 Hearst Ave.). North Berkeley Housing Partners (the development and  
55 design team) will host a public "open house" to solicit input on a variety of  
56 topics related to the future development at the N. Berkeley BART station area.  
57 This meeting will inform and is part of the City's process to develop of the City's  
58 Objective Design Standards for the site.
- 59 • We have some exciting items lined up for our next few Planning Commission  
60 meetings:
  - 61 ○ On May 3<sup>rd</sup>, the tentative agenda includes three public hearing items: a  
62 tentative tract map for 3000 San Pablo, a revised ADU ordinance, and zoning  
63 amendments to bring the City's special needs, employment housing, day care,  
64 and parking regulations to match state law.
  - 65 ○ For June 7<sup>th</sup>, the tentative agenda is to bring forward a discussion item on Part  
66 II of zoning amendments to support Berkeley businesses. I believe several  
67 commissioners were around for Part I in 2020.
- 68 • There were 5 late communications received regarding the Southside item tonight.

#### 69 Information Items:

- 70 • *April 19, 2023* - Memo from Scott Ferris, Director, Parks Recreation and Waterfront to  
71 the Planning Commission. Berkeley Waterfront Specific Plan (WSP) Update - Attached.
- 72 • *March 20, 2023* – City Council Meeting. Update on the Waterfront Specific Plan for the  
73 City of Berkeley Public Tidelands Area.  
74 [https://berkeleyca.gov/sites/default/files/documents/2023-  
75 0320%20WS%20Item%2001%20Update%20on%20the%20Waterfront%20Specific%20  
76 Plan.pdf](https://berkeleyca.gov/sites/default/files/documents/2023-0320%20WS%20Item%2001%20Update%20on%20the%20Waterfront%20Specific%20Plan.pdf)

77 **Communications:**

- 78       • General.

79 **Late Communications:** *See agenda for links.*

- 80       • Supplemental Packet One.  
81       • Supplemental Packet Two.

82 **6. CHAIR REPORT:**

- 83       • Bird Safe Glass Ordinance Recommendation to Council - Commissioner Twu took the  
84       lead in drafting a memo on behalf of the Planning Commission to City Council. Vice  
85       Chair Ghosh, Chair Vincent, and staff reviewed the memo. It will be in the packet for  
86       the June 6<sup>th</sup> City Council meeting.

87 **7. COMMITTEE REPORT:** Reports by Commission committees or liaisons. In addition to the  
88       items below, additional matters may be reported at the meeting.

- 89  
90       • None.

91 **8. APPROVAL OF MINUTES:**

92       Motion/Second/Carried (Mikiten/Moore) to approve the Planning Commission Meeting  
93       Minutes from March 1, 2023.

94  
95       Ayes: Merker, Vincent, Moore, Oatfield, Mikiten, Marthinsen, Hauser, Ghosh, Yung. Noes:  
96       None. Abstain: None. Absent: None. (9-0-0-0)

97

98 **9. OTHER PLANNING RELATED EVENTS:**

- 99       • None.

100 **AGENDA ITEMS**

101 **10. Discussion: Southside Zoning Modification Project**

102 Senior Planner Ashley James presented on the proposed zoning ordinance amendments for  
103 parcels within the Southside Plan Area. Public comment was taken, and the commissioners  
104 discussed the draft ordinance amendments and provided feedback to staff.

105 **Public Comments:** 11

106       Motion/Second/Carried (Vincent/Mikiten) to adjourn the meeting at 7:53pm.

107  
108       Ayes: Merker, Vincent, Moore, Oatfield, Mikiten, Marthinsen, Hauser, Ghosh, Yung Noes:  
109       None. Abstain: None. Absent: None. (9-0-0-0)



110

111 **Members in the public in attendance: 24**

112 **Public Speakers: 13**

113 **Length of the meeting: 2 hr 16 minutes**



**Planning and Development Department**  
Land Use Planning Division

## STAFF REPORT

DATE: May 3, 2023  
TO: Members of the Planning Commission  
FROM: Brian Garvey, Assistant Planner  
SUBJECT: Public Hearing: Tentative Tract Map for 3000 San Pablo Avenue

---

### RECOMMENDATION:

Hold Public Hearing to approve Tentative Map #8639, and recommend that the City Council review and certify the map pursuant to Berkeley Municipal Code (BMC) Section 21.16.047, subject to the attached Findings and Conditions (see Attachment 1) and consistent with Berkeley's Tentative Maps Ordinance (BMC 21.16), Subdivision Map Act, and General Plan.

### BACKGROUND

Tentative Map #8639 would convert the sole ownership of the entire property into individual units at 3000 San Pablo Avenue. The proposed project includes 78 dwelling units with a total of 86 beds. The project includes 1,248 square feet of commercial space for one tenant space on the ground floor. Use Permit ZP2019-0155 for the development project was approved by Zoning Adjustments Board (ZAB) on July 9, 2020. The subject lot includes bicycle storage, parking for 43 vehicles, and 2,320 square feet of usable open space.

Building permits for the construction of the new mixed-use building was issued in 2021.

### I. Application Basics

#### A. Table 1: Chronology of Subdivision Application:

November 4, 2023	Map Application submitted.
March 14, 2023	Map Application considered complete.
May 3, 2023	Subdivision Map Act deadline (50 days from complete)
May 3, 2023	Planning Commission hearing

**B. CEQA Determination:**

Construction of the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”). Approval of the Tentative Map is also categorically exempt pursuant to Section 15301 (“Existing Facilities”) of the CEQA Guidelines which involves the operations and permitting of existing facilities involving no expansion of use beyond prior approvals. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

**C. Parties Involved:**

Applicant: Morgan Read, Read Investments, 2025 Fourth Street Berkeley, CA  
Property Owner: R & S Ashby, LLC 2025 Fourth Street Berkeley, CA

**II. Project Description**

On July 9, 2020, ZAB found the project at 3000 San Pablo Avenue consistent with the 2002 General Plan, the goals and policies of the West Berkeley Commercial (C-W) District, and State Density Bonus Law. ZAB approved Use Permit #ZP2019-0155 to construct a six story, mixed-use building with 78 dwelling units (including seven very Low-Income units), 1,248 square feet of commercial space, 2,230 square feet of usable open space, 50 bicycle parking spaces, and 43 vehicular parking spaces.

**III. Analysis**

**A. Subdivision Map Act Consistency:**

The Public Works Department has reviewed the form and content of the Tentative Tract Map, and has verified that it contains the content required by the Subdivision Map Act, including the subdivision number, the legal address of the legal owner or subdivider, sufficient legal description to define the boundary of the proposed subdivision, the location, pavement and right of way width, grade and name of existing streets or highways, the widths, location, and identity of all existing easements. The Public Works Department has determined that the Tentative Tract Map is suitable for review by the Planning Commission.

**B. Tentative Maps Ordinance (BMC Chapter 21.16) Consistency:**

The Planning Commission may approve, conditionally approve, or deny the tentative map in accordance with Berkeley Municipal Code (BMC) Section 21.16.047. According to this section of the Code, the Planning Commission shall deny approval of the tentative map if it can make any of the following findings from BMC Section 21.16.047.A through 21.06.047.G. Staff analysis relating to whether the findings can be made follow.

- A: That the proposed map is not consistent with the applicable general and specific plans.*
- B: That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.*
- C. The site is not physically suitable for the proposed density of development.*

Staff Analysis: The subject property and proposed improvements were evaluated and found to be consistent with the General Plan and Zoning Ordinance, and the density was found to be physically appropriate for the site and consistent with applicable zoning regulations, in conjunction with the Zoning Permits issued by the Zoning Adjustments Board on July 9, 2020. Therefore, Staff does not believe that either Findings A, B or C can be made.

- D. That the design of the subdivision or the type of the improvements is likely to cause environmental damage or substantially and avoidably injure fish, or wildlife, or their habitat.*
- E. That the design of the subdivision or the type improvements is likely to cause serious public health problems.*

Staff Analysis: The potential for substantial environmental damage, or harm to fish and wildlife, or their habitat, or the likelihood of public health problems was evaluated when the Use Permits for the project were approved by the ZAB in order to determine whether any of the exceptions to the CEQA Exemption for in-fill development were present. No potential environmental or public health impacts were found. Staff does not believe that either Findings D or E can be made.

- F. That conflicts with existing public access easements, in accordance with Section 6674(g), of the Subdivision Map Act, which states: "That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision."*

Staff Analysis: The City of Berkeley Public Works department has verified that the proposed Subdivision will not conflict with any easements of record, or with

any easements established by judgment of a court. Staff does not believe that Finding F can be made.

*G. That the design of the subdivision does not provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.*

Staff Analysis: Subdivision of the project into condominiums will not alter passive or natural heating or cooling opportunities since it is limited to the subdivision of existing multiple family residences. Staff does not believe that Finding G can be made.

**C. Inclusionary Housing and Affordable Housing Mitigation Fee**

Use Permit #ZP2019-0155 utilized State Density Bonus Law, per Table 2 below:

**Table 2: Base Project and Density Bonus Calculations**

Floor	Base Project		Proposed Project	
	Residential Gross Floor Area (GFA)	Base Units	Residential GFA with Density Bonus Units (DBU)	Total Units (Base + DBU)
1 <sup>st</sup>	3,007	0	3,007	0
2 <sup>nd</sup>	12,582	19	10,783	16
3 <sup>rd</sup>	12,582	19	10,783	16
4 <sup>th</sup>	12,582	20	10,783	16
5 <sup>th</sup>	--	--	10,783	16
6 <sup>th</sup>	--	--	8,688	14
<b>Totals:</b>	<b>40,752</b>	<b>58</b>	<b>54,827</b>	<b>78</b>
<b>Average Unit Size</b>	<b>Base Project: 703 sq. ft.</b>		<b>Proposed Project: 703 sq. ft.</b>	
<b>Qualifying Units</b>	<b>Desired Density Bonus</b>	<b>Required % Very Low Income</b>	<b>Raw # (11% of Base Units)</b>	<b>Rounded Up</b>
7	35%	11%	6.38	7
<b>Seven VLI Units Allows For:</b>		<b>Rounded Up</b>	<b>Total (Base+DBU)</b>	
20.3 DBU		21 DBU	79 Units (78 proposed)	

The Use Permit includes the development of over five market rate units, it is subject to the provisions of BMC Section 21.28.070 (Affordable Housing Mitigation Fee). Table 3 (below) provides a breakdown of how the proposed Very Low-Income (VLI) units are considered in the calculation of the Affordable Housing Mitigation Fee (AHMF). BMC Section 21.28.070.D states that projects that include VLI Units, including Qualifying Units, qualify to pay a proportional discounted fee if providing fewer than the number of units equal to 20 percent of the total units in the project per the following equation

$$[A \times \text{Fee}] - [(B+C)/(A \times 20\%) \times (A \times \text{Fee})]$$

Where: A = Total number of units in the project, B = Number of VLI Units provided in the project, and C = Number of Low-Income Units provided in the project.

**Table 3: Inclusionary Units and AHMF Calculations**

Description	Number of Units	Notes
<b>Units in Project</b>	Base units for Density Bonus: 58 Total number of units: 79	Per Use Permit #ZP2019-0155
<b>Inclusionary Units required per BMC Chapter 22.20</b>	12 (20% of total units)	Other options: <ul style="list-style-type: none"> <li>• 7 x Fee; or</li> <li>• 7 units + (0.6 x Fee)</li> </ul>
<b>Below Market Rate units per Density Bonus Law</b>	7 VLI (11% of base units)	Per Government Code 65915
<b>Proportional Discount per BMC Section 22.20.065.D</b>	12 – 7 = 5	[A x Fee] – [(B+C)/(A x 20%) x (A x Fee)]

As a condition for approval of the Use Permit, the project will comply with the applicable Below Market Rate (BMR) affordable housing requirements for rental by:

- 1.) Providing seven (7) deed-restricted units as affordable rental housing units for VLI households to comply with the State Density Bonus Law (Government Code Section 65915)

Conditions of Approval for Use Permit #ZP2019-0155 required a Regulatory Agreement with the City that implements State Density Bonus Law (Government Code Section 65915) and the Use Permit. The Regulatory Agreement requires that the BMR units will be reasonably dispersed throughout the project, will be of the same size as the non-BMR units in the project, and will be comparable with the design of non-BMR units in terms of appearance, materials and finish quality.

The approved BMR units will remain as permanent rental units in perpetuity at the assumed VLI household price levels in accordance with BMC Chapter 22.20.065. This would result in the BMR units remaining as rental units while the remaining units may be sold to individual property owners.

If the applicant proposes to convert to approved VLI rental units to Moderate-Income for-sale units, the City will reassess the number of units required for Moderate-Income for-sale units as defined by BMC Section 23.328.060 (Inclusionary Unit Requirements

for Ownership Properties), and State Density Bonus and require modification of the Use Permit or Regulatory Agreement.

#### **IV. Public Notice/Comment**

BMC Section 21.16.045 requires public notice. Notice was provided as follows:

- Published in the Berkeley Voice on **April 21, 2023**;
- Posted at the subject property on **April 24, 2023**; and
- Mailed to the applicant and owner of the subject property, and to owners and occupants of properties abutting upon or confronting San Pablo Avenue and Ashby Avenue on **April 24, 2023**.

At the time of the writing of this report, there has been no public comment received.

#### **DISCUSSION AND NEXT STEPS**

After reviewing report, Planning Commission will hold a public hearing, receive public comment, and through a vote, make a recommendation to City Council on Tentative Map [#8639](#).

#### **ATTACHMENTS**

1. Findings and Conditions
2. Tentative Tract Map #8639
3. Condominium Plans for Tentative Map #8639
4. Notice of Public Hearing

---

**FINDINGS AND CONDITIONS**

MAY 3, 2023

## **3000 SAN PABLO AVENUE**

**TENTATIVE TRACT MAP #8639 TO 1) DEMOLISH AN EXISTING TWO-STORY COMMERCIAL BUILDING; AND 2) CONSTRUCT A SIX-STORY, MIXED-USE BUILDING WITH 78 DWELLING UNITS (INCLUDING SEVEN VERY LOW-INCOME UNITS), 1,248 SQUARE FEET OF COMMERCIAL SPACE, 2,320 SQUARE FEET OF USABLE OPEN SPACE, 50 BICYCLE PARKING SPACES AND 43 VEHICULAR PARKING SPACES.**

### **CEQA FINDINGS**

---

1. Construction of the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”). Approval of the Tentative Map is also categorically exempt pursuant to Section 15301 (“Existing Facilities”) of the CEQA Guidelines which involves the operations and permitting of existing facilities involving no expansion of use beyond prior approvals. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

### **TENTATIVE MAP FINDINGS**

---

2. Pursuant to Berkeley Municipal Code Section 21.16.047, the Planning Commission cannot make any of the seven findings for denial of the tentative map for the following reasons:
  - A. The proposed Tentative Tract Map #8639 is consistent with the applicable General Plan policies because:
    1. The proposed Tentative Map is consistent with Policy LU-3 Infill Development. It exemplifies an appropriate infill, mixed-use development for its particular location in the West Berkeley Commercial (C-W) District.
    2. The project is consistent with Policy H-32 Regional Housing Needs, as it will convert the sole ownership of the entire property into 78 dwelling units including seven deed-



restricted affordable units and commercial space for one tenant, to meet the City's share of regional housing needs.

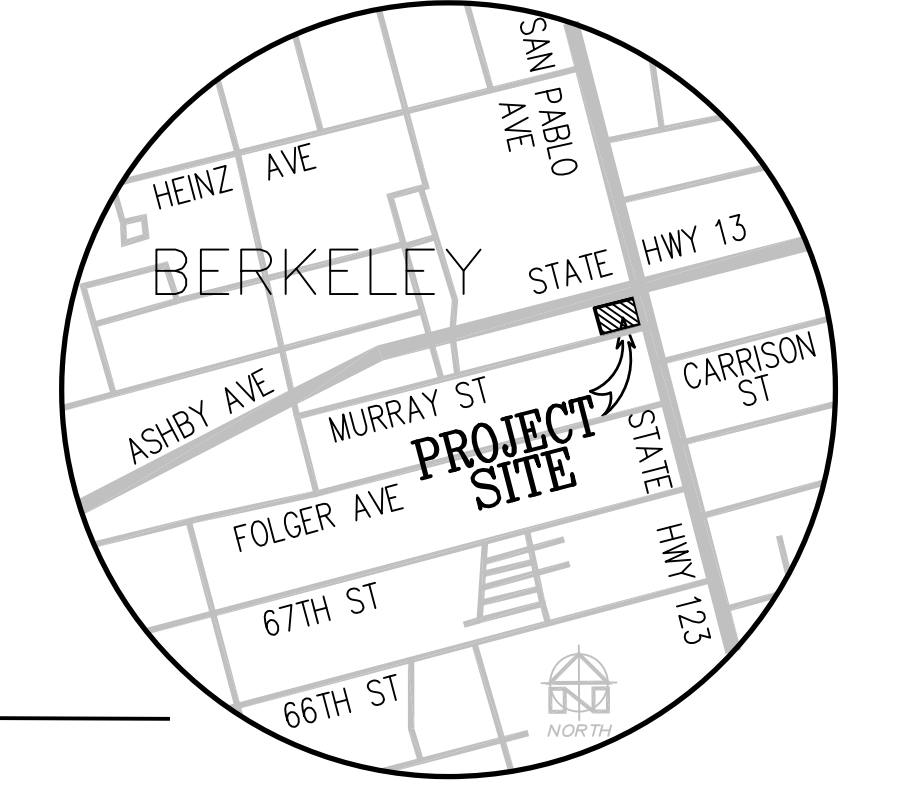
- B. The design and development of the project proposed to be subdivided is consistent with the City of Berkeley's General Plan because:
1. The project is consistent with Action B of Policy LU-7 Neighborhood Quality of Life. It encourages sensitive infill residential development in a manner that minimizes negative impacts on adjacent residential uses and is compatible with existing development patterns.
  2. The project is consistent with Policy LU-3 Infill Development and Policy UD-16 Context because it is architecturally compatible in design and scale with land uses along San Pablo Avenue and within the surrounding neighborhood.
- C. The project site and proposed improvements were evaluated and found to be consistent with the General Plan and Zoning Ordinance, and the density was found to be physically suitable for the site and consistent with applicable zoning regulations, in conjunction with the Zoning Permits issued by the Zoning Adjustments Board on July 9, 2020.
- D. The project will not have adverse environmental effects or substantially and avoidably injure fish or wildlife in their habitat since it is limited to the subdivision of condominium units in a building that has been evaluated to determine whether any of the exceptions to the CEQA Exemption for in-fill development relating to environmental damage or harm to fish and wildlife or their habitat, and none were found.
- E. The design of the subdivision and the proposed improvements will not likely cause serious health problems.
- F. The project will not conflict with any public access easements, as determined pursuant to a review by the Berkeley Public Works Department.
- G. The project will not alter passive or natural heating or cooling opportunities because it was designed to minimize solar access impacts and minimize detrimental shadows to existing buildings adjacent to the property, as evaluated in its use permit approvals for ZP2019-0155.

## STANDARD CONDITIONS

---

1. The Final Map shall be submitted for certification and shall be recorded in compliance with the *Berkeley Municipal Code*, Title 21, and with the *Subdivision Map Act* of the State of California.
2. A copy of the Conditions, Covenants, and Restrictions shall be filed with the Planning and Development Department prior to approval of the Final Map.

3. Prior to approval of the Final Tract Map, an Affordable Housing Agreement shall be entered into with the City's Housing Department that specifies the number, location, and pricing of units that will be affordable in order to remain compliant with Berkeley Municipal Code 23C.12 [Inclusionary Housing Requirements] and California Government Code 65915-65918 [Density Bonuses and Other Incentives] regulations applied when project Use Permits were issued.
4. The *Standard conditions of approval for all subdivisions, new condominiums and commercial condominium conversions within the City of Berkeley*, dated January 1994, applies and shall be satisfied prior to approval of the Final Map. (Attachment 1, Exhibit A)



**VICINITY MAP**  
 NOT TO SCALE

**GENERAL NOTES**

- OWNER/DEVELOPER: READ INVESTMENTS  
 2025 FOURTH STREET  
 BERKELEY, CA 94710  
 SCOTT HUFFMAN
- ENGINEER: LUK AND ASSOCIATES  
 738 ALFRED NOBEL DRIVE  
 HERCULES, CA 94547  
 JACKIE LUK, PLS 8934  
 (510) 724-3388
- ASSESSOR'S PARCEL NO.: 053-1633-001-01 & 053-1633-001-02(PORCION)
- TOTAL LOT AREA: 0.322 ACRES (14,010 S.F.)
- ZONING: EXISTING: C-W - WEST BERKELEY COMMERCIAL  
 PROPOSED: C-W - WEST BERKELEY COMMERCIAL

**NOTES**

- DATE OF FIELD SURVEY: JANUARY 21, 2022
- THE UTILITIES SHOWN HEREON ARE BY SURFACE OBSERVATION AND RECORD INFORMATION ONLY AND NO WARRANTY IS GIVEN HEREIN AS TO THEIR EXACT LOCATION. IT IS THE RESPONSIBILITY OF THE DEVELOPER AND/OR CONTRACTOR TO VERIFY THE EXACT LOCATION OF THE UTILITIES WITH THE APPROPRIATE UTILITY COMPANY OR AGENCY.
- UTILITY JURISDICTIONS / PROVIDERS ARE AS FOLLOWS:  
 STORM DRAINS: CITY OF BERKELEY  
 SANITARY SEWER: CITY OF BERKELEY  
 WATER: EAST BAY MUNICIPAL UTILITY DISTRICT (EBMUD)  
 ELECTRICITY: PACIFIC GAS & ELECTRIC CO.  
 NATURAL GAS: PACIFIC GAS & ELECTRIC CO.
- THERE ARE NO CEMETERIES ON OR WITHIN 100 FEET OF THE SUBJECT PROPERTY
- THERE IS NO OBSERVED EVIDENCE OF SITE USE AS A SOLID WASTE DUMP, SUMP OR SANITARY LANDFILL

**TITLE REPORT**

THE TITLE REPORT USED IN THIS MAP WAS ISSUED BY CHICAGO TITLE COMPANY, PRELIMINARY REPORT ORDER NO. 36200754-362-LE4-OP, DATED AS OF JUNE 30, 2022 AT 7:30 AM, REFERRED TO HEREON AS THE "PTR".

**LEGAL DESCRIPTION**

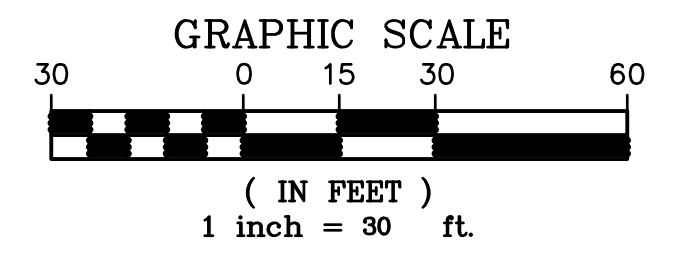
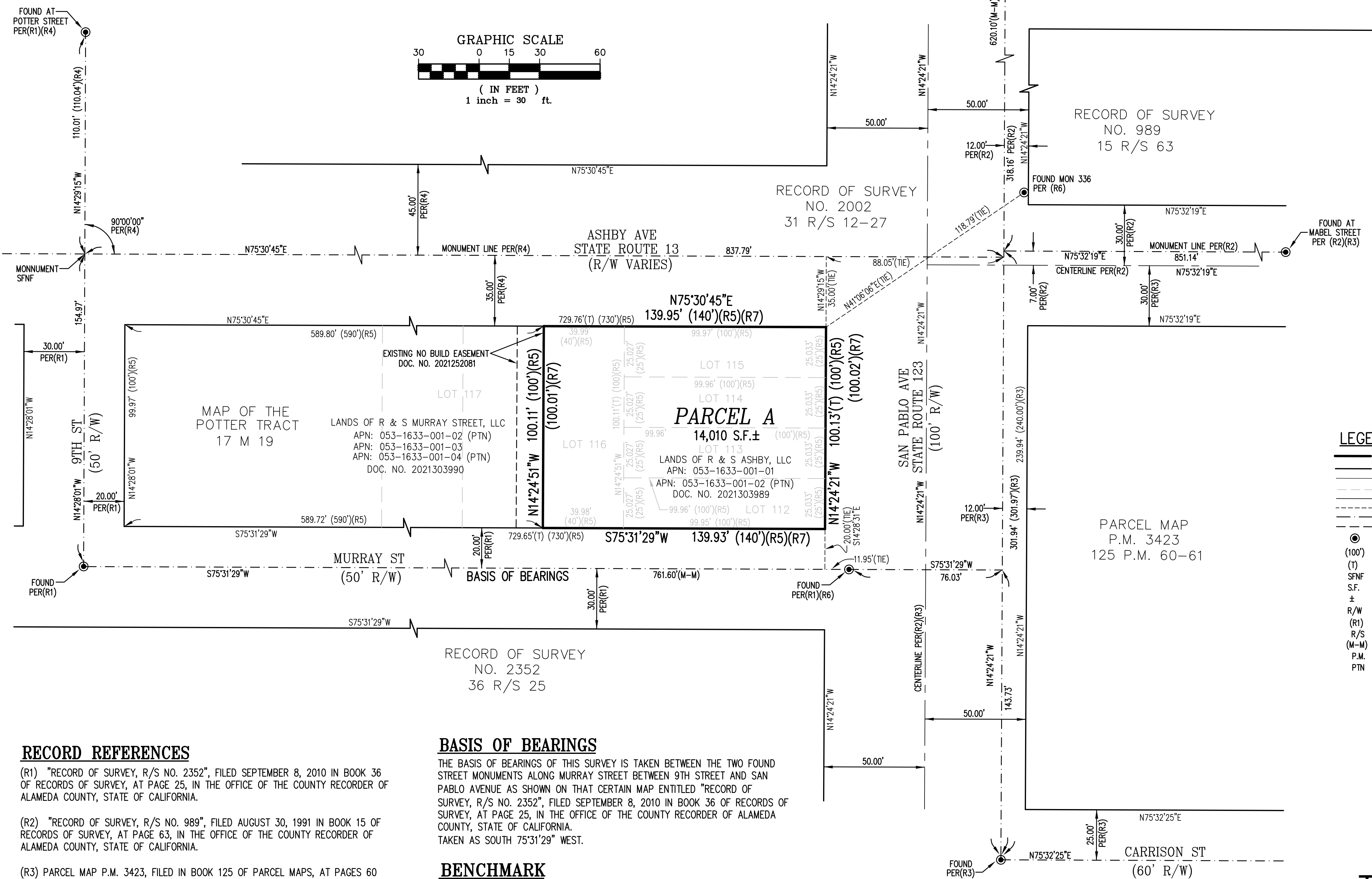
THE LAND REFERRED TO IS SITUATED IN THE COUNTY OF ALAMEDA, CITY OF BERKELEY, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN REAL PROPERTY, SITUATE IN THE CITY OF BERKELEY, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING ALL OF LOTS 112, 113, 114, AND LOT 116 AS SAID LOTS ARE DELINEATED AND SO DESIGNATED ON THAT CERTAIN MAP ENTITLED "MAP OF THE POTTER TRACT, BERKELEY, ALAMEDA CO., CA." FILED JUNE 3, 1892 IN LIBER 17 OF MAPS, PAGE 19, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHEASTERLY CORNER OF SAID LOT 112; THENCE ALONG THE SOUTHERLY LINE OF SAID LOTS 112 AND LOT 116, SOUTH 75° 31' 29" WEST 140.00 FEET; THENCE ALONG A LINE RUNNING PARALLEL WITH AND 140.00 DISTANT THEREFROM THE EASTERLY LINE OF SAID LOTS 112, 113, 114 AND 115, BEING THE WESTERLY RIGHT OF WAY LINE OF SAN PABLO AVENUE (100.00 FEET WIDE), NORTH 14° 20' 29" WEST 100.01 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF ASHBY AVENUE (80 FEET WIDE); THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE AND THE NORTHERLY LINE OF SAID LOTS 115 AND 116, NORTH 75° 31' 16" EAST 140.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 115, AND SAID WESTERLY RIGHT OF WAY LINE OF SAN PABLO AVENUE; THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE AND THE EASTERLY LINE OF LOTS 112, 113, 114 AND 115, SOUTH 14° 20' 29" EAST 100.02 FEET TO THE POINT OF BEGINNING.

AS SAID PARCEL IS DESCRIBED AS ADJUSTED PARCEL 1 IN OF THAT CERTAIN LOT LINE ADJUSTMENT LOLA-348 RECORDED SEPTEMBER 8, 2021 IN RECORDER'S SERIAL NUMBER 2021303988.

APN: 053-1633-001-01 AND 053-1633-001-02 (PORCION)(OLD)  
 053-1633-001-07 (NEW)



RECORD OF SURVEY  
 NO. 2352  
 36 R/S 25

RECORD OF SURVEY  
 NO. 2002  
 31 R/S 12-27

RECORD OF SURVEY  
 NO. 989  
 15 R/S 63

PARCEL MAP  
 P.M. 3423  
 125 P.M. 60-61

**LEGEND**

	BOUNDARY OF SUBJECT PROPERTY
	RIGHT OF WAY LINE
	INTERIOR PROPERTY LINE
	OLD LOT LINE
	CENTERLINE
	TIE LINE
	MONUMENT LINE
	EASEMENT LINE
	FOUND STREET MONUMENT AS NOTED
(100')	RECORD DATA
(T)	TOTAL
SNF	SEARCH FOR AND NOT FOUND
S.F.	SQUARE FEET
±	MORE OR LESS
R/W	RIGHT OF WAY
(R1)	REFERENCE
R/S	RECORDS OF SURVEY
(M-M)	MONUMENT TO MONUMENT
P.M.	PARCEL MAP(S)
PTN	PORCION

**RECORD REFERENCES**

- "RECORD OF SURVEY, R/S NO. 2352", FILED SEPTEMBER 8, 2010 IN BOOK 36 OF RECORDS OF SURVEY, AT PAGE 25, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA.
- "RECORD OF SURVEY, R/S NO. 989", FILED AUGUST 30, 1991 IN BOOK 15 OF RECORDS OF SURVEY, AT PAGE 63, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA.
- PARCEL MAP P.M. 3423, FILED IN BOOK 125 OF PARCEL MAPS, AT PAGES 60 TO 61, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA.
- "PARCEL MAP NO. 8179", FILED NOVEMBER 10, 2005 IN BOOK 284 OF PARCEL MAPS, AT PAGES 91 TO 93 INCLUSIVE, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA.
- "MAP OF THE POTTER TRACT, BERKELEY, ALAMEDA CO., CAL.", FILED JUNE 3, 1892 IN LIBER 17 OF MAPS, AT PAGE 19, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA.
- "RECORD OF SURVEY, R/S NO. 2002", FILED JUNE 23, 2006 IN BOOK 31 OF RECORDS OF SURVEY, AT PAGES 12 TO 27 INCLUSIVE, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA.
- GRANT DEED, RECORDED SEPTEMBER 8, 2021 AS DOCUMENT NUMBER 2021303989, OFFICIAL RECORDS OF ALAMEDA COUNTY, STATE OF CALIFORNIA.

**BASIS OF BEARINGS**

THE BASIS OF BEARINGS OF THIS SURVEY IS TAKEN BETWEEN THE TWO FOUND STREET MONUMENTS ALONG MURRAY STREET BETWEEN 9TH STREET AND SAN PABLO AVENUE AS SHOWN ON THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY, R/S NO. 2352", FILED SEPTEMBER 8, 2010 IN BOOK 36 OF RECORDS OF SURVEY, AT PAGE 25, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, STATE OF CALIFORNIA. TAKEN AS SOUTH 75°31'29" WEST.

**BENCHMARK**

SURVEY CONTROL POINT CUT CROSS IN CONCRETE. ELEVATION = 176.73', CITY OF BERKELEY DATUM.

**SURVEYOR'S STATEMENT**

THIS SURVEY WAS DONE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE LAND SURVEYORS ACT IN JULY 2022.

*Jackie Luk*  
 DATE: JULY 26, 2022  
 JACQUELINE LUK, P.L.S. 8934  
 FOR LUK & ASSOCIATES, INC.



**SHEET INDEX**

- GENERAL NOTES AND BOUNDARY SURVEY
- EXISTING TOPOGRAPHIC SURVEY

**TENTATIVE TRACT MAP #8639**

**1-Lot SUBDIVISION FOR CONDOMINIUM PURPOSES  
 78 RESIDENTIAL UNITS AND 1 COMMERCIAL UNIT**

BEING A ONE LOT SUBDIVISION OF THAT PARCEL OF LAND AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED SEPTEMBER 8, 2021 AS DOCUMENT NUMBER 2021303989, OFFICIAL RECORDS OF ALAMEDA COUNTY, STATE OF CALIFORNIA

**3000 SAN PABLO AVENUE**  
 CITY OF BERKELEY - ALAMEDA COUNTY - CALIFORNIA  
 JULY 2022 SCALE: 1"=30'

Prepared By  
**Luk and Associates**  
 Civil Engineers - Land Planners - Land Surveyors  
 738 Alfred Nobel Drive  
 Hercules, California 94547  
 (510) 724-3388



**VICINITY MAP**



**PROJECT DIRECTORY**

OWNER/APPLICANT:  
 RI BERKELEY, LLC  
 2025 Fourth Street  
 Berkeley, CA 94710

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

ARCHITECT:  
 Jesse Markman, Principal  
 JETT Landscape Architecture + Design  
 2 Theatre Square, #218  
 Orinda, CA 94563  
 925.254.5422

**PROJECT DESCRIPTION**

PROJECT ADDRESS: 3000 San Pablo Avenue, Berkeley, CA 94702 (APN: 053 163300101)

SCOPE OF WORK:  
 REMOVAL OF EXISTING 2-STORY COMMERCIAL STRUCTURE AND CONSTRUCTION OF NEW 6-STORY MIXED-USE BUILDING WITH 78-DWELLING UNITS, GROUND LEVEL LOBBIES, PARKING AND COMMERCIAL, WITH STATE OF CALIFORNIA DENSITY BONUS.

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

ZONING: C-W

SEE SHEET A0.1 FOR COMPLETE ZONING & BUILDING CODE DATA

**DRAWING LIST**

SHEET NO. & TITLE	
<b>ARCHITECTURAL</b>	
A0.0	GENERAL INFORMATION
A0.1	ZONING & BUILDING CODE DATA
A0.1.1	ZONING MAP & SURVEY COMPARISON
A0.2	DENSITY BONUS DIAGRAMS
A0.3A	GREEN POINTS CHECKLIST
A0.3B	GREEN POINTS CHECKLIST
A0.3C	GREEN POINTS CHECKLIST
A0.4A	SHADOW STUDIES
A0.4B	SHADOW STUDIES
A0.4C	SHADOW STUDIES
A0.5	SITE CONTEXT PHOTOS
A0.6	VICINITY MAP
A1.0	SITE SURVEY
A2.1	GROUND LEVEL / SITE PLAN
A2.2	PLAN AT LEVELS 2-5
A2.3	PLAN AT LEVEL 6 / ROOF DECK
A2.4	ROOF PLAN
A3.1	BUILDING ELEVATIONS
A3.2	BUILDING ELEVATIONS
A3.3	BUILDING ELEVATIONS
A3.4	BUILDING ELEVATIONS
A3.5	STREET STRIP ELEVATION
A3.6	PERSPECTIVE VIEWS
A3.7	PERSPECTIVE VIEWS
A3.8	PERSPECTIVE VIEWS
A3.9	PERSPECTIVE VIEWS
A3.10	PERSPECTIVE VIEWS
A3.11	PERSPECTIVE VIEWS
A3.12	PERSPECTIVE VIEWS
A3.13	PHOTO CONTEXT VIEWS
A3.14	PHOTO CONTEXT VIEWS
A3.15	PERSPECTIVE VIEWS
A4.1	BUILDING SECTION
A4.2	WALL SECTIONS & DETAILS
SW-1	PRELIM. STORMWATER MANAGEMENT PLAN
MAT	MATERIAL BOARD
<b>LANDSCAPE</b>	
L1.01	LANDSCAPE CONCEPT PLAN - GROUND LEVEL
L1.02	LANDSCAPE CONCEPT PLAN - LEVEL 2
L1.03	LANDSCAPE CONCEPT PLAN - LEVEL 6
L1.04	PLANT LEGEND - IMAGES & NOTES

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

**AQUATIC  
 ASHBY**

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

GENERAL  
 INFORMATION

**A0.0**



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

**AQUATIC  
 ASHBY**

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

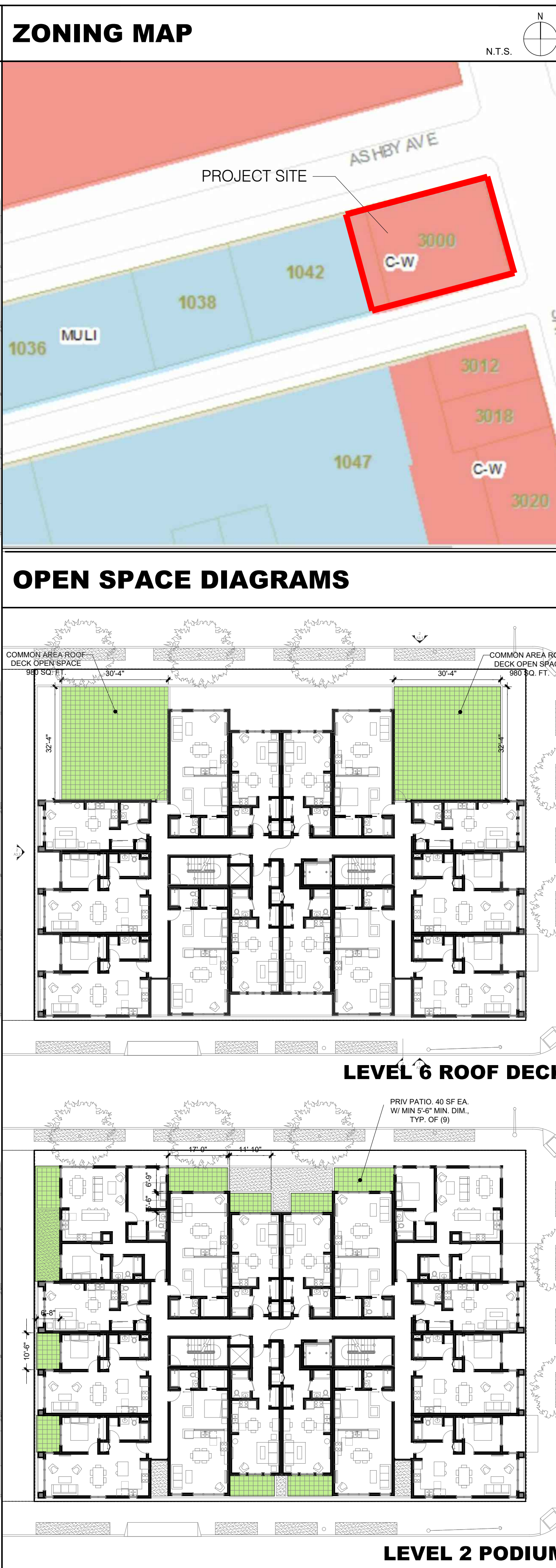
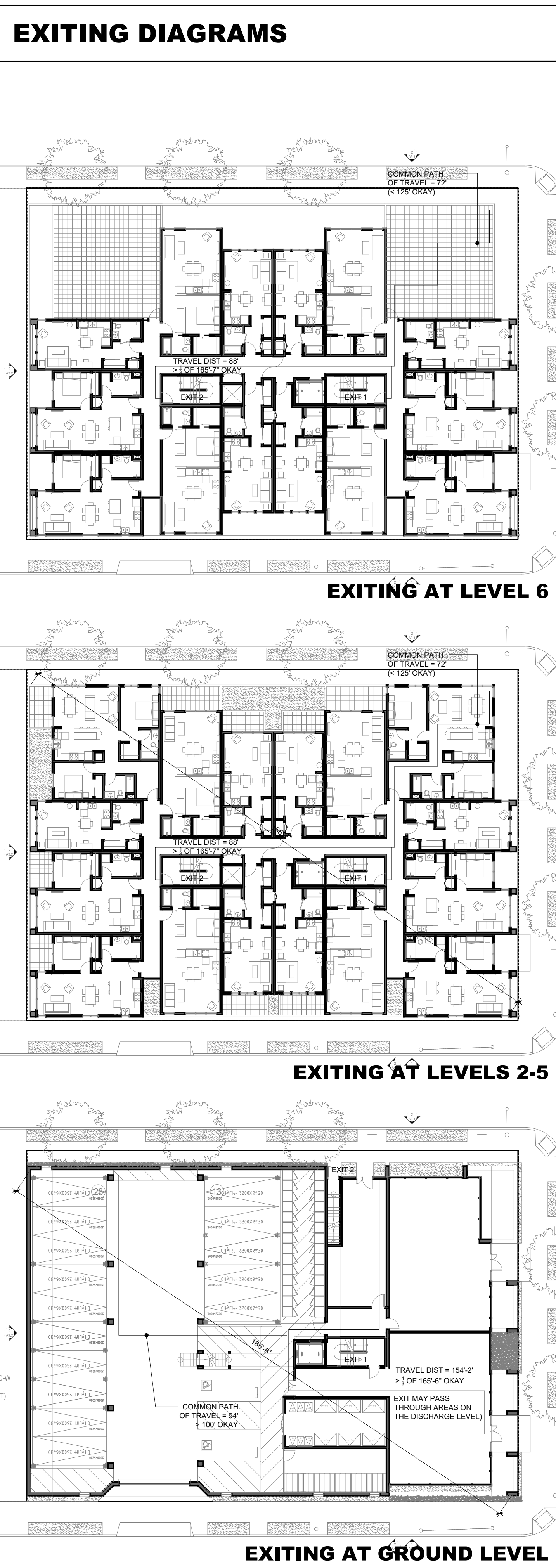
JOB: 1901

SHEET:

**ZONING &  
 BUILDING CODE  
 DATA**

**A0.1**

BUILDING CODE DATA						
<b>Building Information</b> 9/27/2019						
Occupancy Type	Mixed Use Apartments (R-2) Type III-A over Type I-A Storage, Garage, Retail, (S-2, R-2, M) with 3-hour horizontal assembly per CBC 510.2					
Construction Type	Type I-A (Story 1), III-A (Stories 2-6)					
<b>Building Story and Height Limitation (CBC Table 504.3 &amp; 504.4)</b>						
* story count measured from floor above Type I-A per CBC 510.2						
Occupancy Type	Construction Type	Allowable Stories	Proposed Stories	Allowable Building Height	Proposed Building Height	
Ground Floor (Storage, Apartments, Commercial)	I-A	UL	1	UL	19'-0"	
R-2 (Apartment)	III-A	5*	5*	85'	50'-0"	
<b>Building Below Horizontal Separation Code Area Limitation Analysis - Type I-A</b>						
<b>Allowable Building Area Analysis - Separated Occupancies (CBC Table 506.2 506.3 &amp; 506.2.4)</b>						
Occupancy	Type	Allowable Area			Proposed	%
S-2 (Storage, Garage, Mech, R-2 (Common Areas)	I-A	UL			7,820	
M	I-A	UL			3,007	
<b>Type I-A Sub-Total</b>					1,248	
					12,075	
<b>Building Above Horizontal Separation Code Area Limitation Analysis - Type III-A</b>						
<b>Allowable Building Area Analysis - Separated Occupancies (CBC Table 506.2 506.3 &amp; 506.2.4)</b>						
Aa = Allowable Area = [At + (NS x If)]						
If = Frontage Increase = (F/P - 0.25)W/30						
At = Area (Table 506.2)	NS = Area (Table 506.2)	F = 231'	P = 532'	W = 30'		
Occupancy	Type	At	NS	If	Aa	Proposed %
Second Floor R-2 (Apartments)	III-A	72,000	24000	0.184	76,416	10,908 14%
Third Floor R-2 (Apartments)	III-A	72,000	24000	0.184	76,416	10,908 14%
Fourth Floor R-2 (Apartments)	III-A	72,000	24000	0.184	76,416	10,908 14%
Fifth Floor R-2 (Apartments)	III-A	72,000	24000	0.184	76,416	10,908 14%
Sixth Floor R-2 (Apartments)	III-A	72,000	24000	0.184	76,416	8,813 12%
<b>Type III-A Second-Fifth Total</b>					52,445	
<b>Total Allowed per CBC 506.2.4 (200%)</b>						69%
<b>Separations of Occupancies (CBC 508.4)</b>						
Occupancies	Rating	Occupancies			Rating	
R-2 to S-2 & M	1 Hour	S-2 to M			1 Hour	
Between Dwelling Units	1 Hr Floor & Walls (CBC 708.3&711.3)			S-2 to M		
<b>Fire Resistance of Exterior Walls (Table 602)</b>						
<b>Ground Floor Type I-A (R-2, S-2, B)</b>						
Wall Location	Fire Sep. Dist.	Rating	Fire Sep. Dist.	Rating		
	X<5	1	10<X<30	1		
	5<X<10	1	X≥30	0		
<b>Floors 2-6 Type III-A (R-2)</b>						
Wall Location	Fire Separation Distance		Rating			
	X<5		10<X<30			
	5<X<10		1			
			X≥30			
			0			
<b>Fire Resistance of Requirements (Table 601)</b>						
<b>Type I-A</b>						
Building Element	Required	Provided				
Structural Frame	3	3				
Bearing Walls - Exterior	3	3				
Bearing Wall - Interior	3	3				
Non-bearing Walls - Exterior	See Table 602					
Non-bearing Wall - Interior	0	0				
Floor Construction	2	2				
Roof Construction	1 1/2	NA				
<b>Floors 2nd-6th Type III-A</b>						
Building Element	Required	Provided				
Structural Frame	1	1				
Bearing Walls - Exterior	2	2				
Bearing Wall - Interior	1	1				
Non-bearing Walls - Exterior	See Table 602					
Non-bearing Wall - Interior	0	0				
Floor Construction	1	1				
Roof Construction	1	1				
<b>REFUSE AND RECYCLING</b>						
<b>Waste and Recycling Calculation</b>						
# of Bedrooms	Factor	Occupants	Total cuft required (.25cy or 50 gallons / 3)	Waste (40%)	Recycling (40%)	Organics (20%)
84	1.75	147	12.25 cy	2,450 gal	4,900 gal	980 gal
<b>Space Calculation</b>			Container Quantities	Space Required	150% Additional	
Waste	Recycling	Organics	Factor/container	Space/Container	Required	Provided
2 cy bin (404 gal)	3	3	28 sf	168 sf		
96 gallon cart		6	7 sf	42 sf		
64 gallon cart			6 sf			
Total capacity	1212 gal	1212 gal	576 gal	210 sf	315 sf	394



ZONING CODE DATA					
<b>CITY OF BERKELEY ZONING TABULATIONS</b>					
	PROPOSED	PERMITTED/REQUIRED	ALLOWABLE W/ 35% DENSITY BONUS		
NUMBER OF DWELLING UNITS	78		78		
COMMERCIAL AREA	1,248		1,248		
PARKING	SEE TABLE	SEE TABLE	SEE TABLE		
BIKE PARKING	52	2			
FRONT YARD SETBACK (SAN PABLO)	0'	0'			
STREET SIDE YARD SETBACK (ASHBY)	4'-6"	0'			
STREET SIDE YARD SETBACK (MURRAY)	1'-6"	0'			
REAR YARD SETBACK	0'	0'			
BUILDING HEIGHT	70' **	**			
BUILDING STORIES	6 **	**			
LOT AREA	14,000	14,000			
LOT AREA (ACRES)	0.32	0.32			
GROSS FLOOR AREA (SEE TABLE)	56,700				
BUILDING FOOTPRINT	12,075	14,000			
LOT COVERAGE	86%	100%			
USABLE OPEN SPACE (SEE TABLE)	SEE TABLE	SEE TABLE			
BASE PROJECT FAR	NA	NA			
DENSITY BONUS PROJECT FAR	4.05	4.05			
** Via Density Bonus Waiver					
<b>FAR CALCULATIONS</b>					
	BASE PROJECT ALLOWABLE	ALLOWABLE W/ 35% DENSITY BONUS	PROPOSED W/ DENSITY BONUS		
SITE AREA	14,000	14,000	14,000		
FAR	3.00	4.05	4.05		
FLOOR AREA	42,000	56,700	56,700		
<b>PROPOSED FLOOR AREA WITH DENSITY BONUS</b>					
	COMMERCIAL	RESIDENTIAL	TOTAL		
LEVEL 6		8,813	8,813		
LEVEL 5		10,908	10,908		
LEVEL 4		10,908	10,908		
LEVEL 3		10,908	10,908		
LEVEL 2		10,908	10,908		
LEVEL 1 (EXCLUDES PARKING)	1,248	3,007	4,255		
TOTAL FLOOR AREA W/ DENSITY BONUS	1,248	55,452	56,700		
FAR (FLOOR AREA RATIO)			4.05		
<b>DWELLING UNIT TABLE</b>					
UNIT TYPE	STUDIO	LOFT	1-BED	2-BED	TOTAL
LEVEL 6	6	4	4		14
LEVEL 5	6	4	4	2	16
LEVEL 4	6	4	4	2	16
LEVEL 3	6	4	4	2	16
LEVEL 2	6	4	4	2	16
GROUND					
TOTAL	30	20	20	8	78
PERCENTAGE OF TOTAL					
	38%	26%	26%	10%	100%
<b>OPEN SPACE TABLE</b>					
	UNITS	RATIO	TOTAL	TOTAL INCLUDING NON-QUAL AREAS	
BASE UNITS	58	40	2,320		
DENSITY BONUS UNITS	20	waiver			
TOTAL REQUIRED WITH WAIVERS			2,320	3,315	
TOTAL AREA PROVIDED					
PODIUM LEVEL PRIVATE DECKS			360	1,203	
GROUND LEVEL LANDSCAPE AREAS				152	
ROOF DECK COMMON AREAS			1,960	1,960	
<b>PARKING CALCULATIONS (Density Bonus Method)</b>					
	STUDIO	LOFT	1-BED	2-BED	TOTAL
RESIDENTIAL PARKING					
NUMBER OF UNITS	30	20	20	8	86
NUMBER OF BEDROOMS PER UNIT	1	1	1	2	
TOTAL BEDROOMS	30	20	20	16	86
RESIDENTIAL PARKING AT .5 SPACES / BEDROOM					43
COMMERCIAL PARKING	AREA	RATIO	PER	TOTAL	
COMMERCIAL (FOOD USE)	1,248		2	1000	2
TOTAL DENSITY BONUS PARKING REQUIREMENT					45
TOTAL PARKING PROVIDED					43
PARKING WAIVER					2
<b>ROOFTOP ARCHITECTURAL ELEMENTS CALCS</b>					
	LEVEL	AREA			
	LEVEL 6	8,813			
	LEVEL 5	10,908			
	LEVEL 4	10,908			
	LEVEL 3	10,908			
	LEVEL 2	10,908			
	LEVEL 1	12,075	INCLUDES PARKING		
AVERAGE AREA		10753			
TOTAL AREA OF ROOFTOP ELEMENTS		300			
% AREA OF ROOFTOP ARCHITECTURAL FEATURES		2.8%			
ALLOWABLE % (PER 23E.04.020C)		15.0%			

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

TRACHTENBERG  
ARCHITECTS

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

AQUATIC  
ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

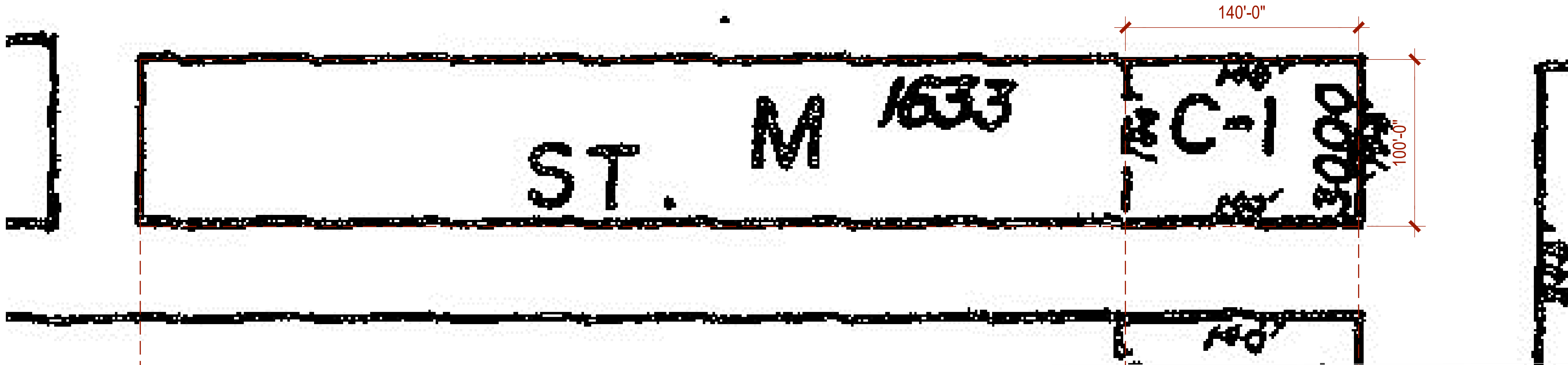
ALL DRAWINGS AND WRITTEN MATERIAL APPEARING  
HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED  
WORK OF THE ARCHITECT AND MAY NOT BE  
DUPLICATED, USED OR DISCLOSED WITHOUT WRITTEN  
CONSENT OF TRACHTENBERG ARCHITECTS.

JOB: 1901

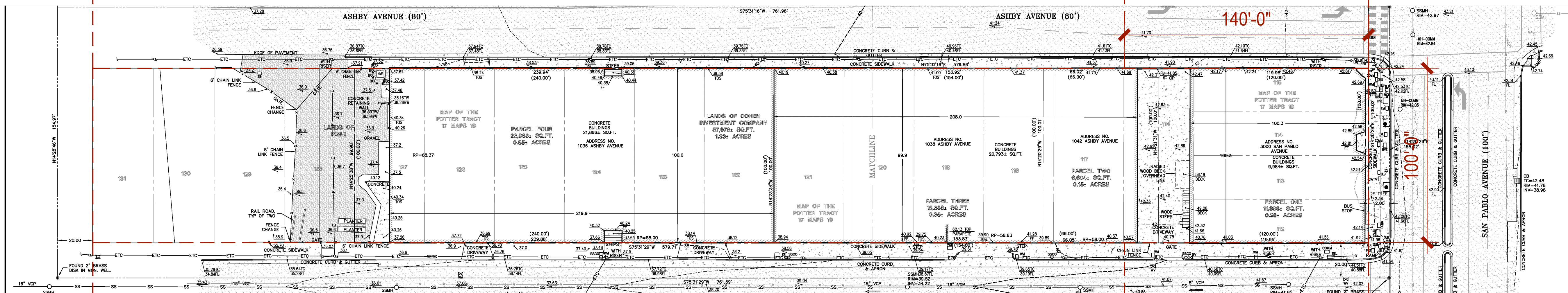
SHEET:

ZONING MAP &  
SURVEY COMPARISON \*

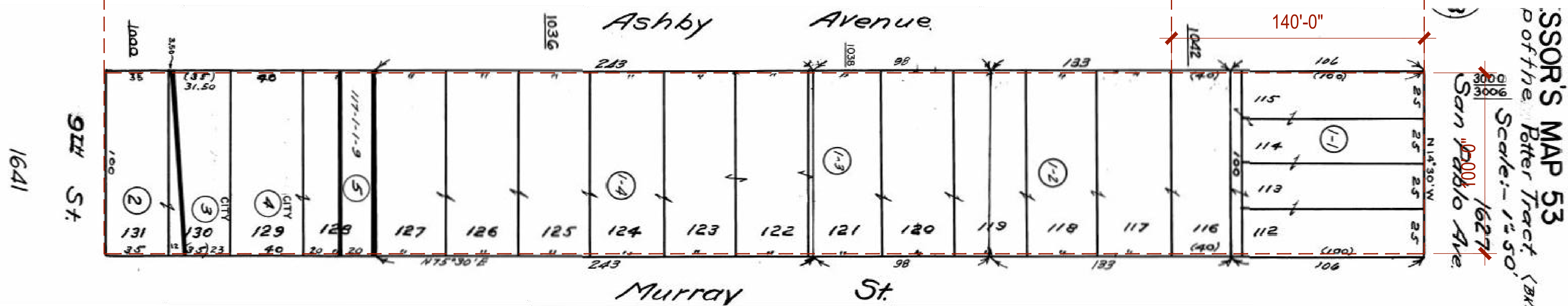
A0.1.1



OFFICIAL ZONING MAP\*



SURVEY



ASSESSOR'S PARCEL MAP

\* AS REVIEWED WITH THE CITY OF BERKELEY ZONING  
ADMINISTRATOR/ PRINCIPAL PLANNER, GREG POWELL ON 3.22.2019





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

**AQUATIC  
 ASHBY**

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

**GREEN BUILDING  
 CHECKLIST**

**A0.3A**

**NEW HOME RATING SYSTEM, VERSION 7.0**  
**MULTIFAMILY CHECKLIST**

The GreenPoint Rated checklist tracks green features incorporated into the home. GreenPoint Rated is administered by Build It Green, a non-profit whose mission is to promote healthy, energy and resource efficient buildings in California.

The minimum requirements of GreenPoint Rated are: verification of 50 or more points; Earn the following minimum points per category: Community (2), Energy (25), Indoor Air Quality/Health (6), Resources (6), and Water (6); and meet the prerequisites CALGreen Mandatory, E5.2, H6.1, J5.1, O1, O7.

Directions for Use: Column A is a dropdown menu with the options of "Yes", "No", or "TBD" or a range of percentages to allocate points. Select the appropriate dropdown and the appropriate points will appear in the blue "points achieved" column.

The criteria for the green building practices listed below are described in the GreenPoint Rated New Home Rating Manual. For more information please visit [www.builditgreen.org/greenpointrated](http://www.builditgreen.org/greenpointrated).  
 Build It Green is not a code enforcement agency.

A home is only GreenPoint Rated if all features are verified by a Certified GreenPoint Rater through Build It Green.

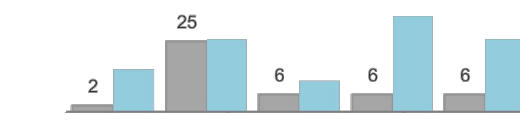
New Home Multifamily Version 7  
 Project Name: Aquatic Ashby  
 Street: 3000 San Pablo  
 City: Berkeley  
 Project Zip: 94702

Total Points Targeted: 112

Certification Level: G Id

POINTS REQUIRED

■ Minimum Points  
 ■ Targeted Points



Measures	Points Achieved	Possible Points					Notes
		Community	Energy	IAQ/Health	Resources	Water	
<b>CALGreen</b>							
Yes CALGreen Res (REQUIRED)	4	1	1	1	1	1	
<b>A. SITE</b>							
No A1. Construction Footprint	0				1		
<b>A2. Job Site Construction Waste Diversion</b>							
No A2.1 75% C&D Waste Diversion (Including Alternative Daily Cover)	0				2		
Yes A2.2 65% C&D Waste Diversion (Excluding Alternative Daily Cover)	2				2		
TBD A2.3 Recycling Rates from Third-Party Verified Mixed-Use Waste Facility					1		
<b>A3. Recycled Content Base Material</b>							
No A4. Heat Island Effect Reduction (Non-Roof)	0		1				
Yes A5. Construction Environmental Quality Management Plan Including Flush-Out	1			1			
<b>A6. Stormwater Control: Prescriptive Path</b>							
No A6.1 Permeable Paving Material	0					1	
Yes A6.2 Filtration and/or Bio-Retention Features	0					1	
TBD A6.3 Non-Leaching Roofing Materials						1	
No A6.4 Smart Stormwater Street Design	0	1					
Yes A7. Stormwater Control: Performance Path	0					3	
<b>B. FOUNDATION</b>							
No B1. Fly Ash and/or Slag in Concrete	0					1	
No B2. Radon-Resistant Construction	0			2			
Yes B3. Foundation Drainage System	2				2		
NIA B4. Moisture Controlled Crawlspace	0			1			
<b>B5. Structural Pest Controls</b>							
Yes B5.1 Termite Shields and Separated Exterior Wood-to-Concrete Connections	1					1	
Yes B5.2 Plant Trunks, Bases, or Stems at Least 36 Inches from the Foundation	1					1	
<b>C. LANDSCAPE</b>							
17.00% Enter the landscape area percentage							
Yes C1. Plants Grouped by Water Needs (Hydrozoning)	1					1	
Yes C2. Three Inches of Mulch in Planting Beds	1					1	
<b>C3. Resource Efficient Landscapes</b>							
Yes C3.1 No Invasive Species Listed by Cal-IPC	1				1		
Yes C3.2 Plants Chosen and Located to Grow to Natural Size	1				1		
Yes C3.3 Drought Tolerant, California Native, Mediterranean Species, or Other Appropriate Species	3					3	
<b>C4. Minimal Turf in Landscape</b>							
Yes C4.1 No Turf on Slopes Exceeding 10% and No Overhead Sprinklers Installed in Areas Less Than Eight Feet Wide	2					2	
Yes C4.2 Turf on a Small Percentage of Landscaped Area	2					2	
No C5. Trees to Moderate Building Temperature	0		1	1		1	
Yes C6. High-Efficiency Irrigation System	2				2		
Yes C7. One Inch of Compost in the Top Six to Twelve Inches of Soil	2					2	
No C8. Rainwater Harvesting System	0					3	
No C9. Recycled Wastewater Irrigation System	0					1	
Yes C10. Submeter or Dedicated Meter for Landscape Irrigation	2					2	
No C11. Landscape Meets Water Budget	0					1	
<b>C12. Environmentally Preferable Materials for Site</b>							
No C12.1 Environmentally Preferable Materials for 70% of Non-Plant Landscape Elements and Fencing	0					1	
No C12.2 Play Structures and Surfaces Have an Average Recycled Content ≥20%	0					1	
Yes C13. Reduced Light Pollution	1	1					
No C14. Large Stature Tree(s)	0	1					
No C15. Third Party Landscape Program Certification	0					1	
TBD C16. Maintenance Contract with Certified Professional						1	
No C17. Community Garden	0	2					

© Build It Green

GreenPoint Rated New Home Multifamily Checklist Version 7.0

Project Name: Aquatic Ashby Project Street: 3000 San Pablo Project City: Berkeley Project Zip: 94702		Points Achieved	Community	Energy	IAQ/Health	Resources	Water
<b>D. STRUCTURAL FRAME AND BUILDING ENVELOPE</b>							
<b>D1. Optimal Value Engineering</b>							
No	D1.1 Joists, Rafters, and Studs at 24 Inches on Center	0		1		2	
Yes	D1.2 Non-Load Bearing Door and Window Headers Sized for Load	1				1	
No	D1.3 Advanced Framing Measures	0				2	
No	D2. Construction Material Efficiencies	0				1	
<b>D3. Engineered Lumber</b>							
TBD	D3.1 Engineered Beams and Headers					1	
Yes	D3.2 Wood I-Joists or Web Trusses for Floors	1				1	
Yes	D3.3 Engineered Lumber for Roof Rafters	1				1	
No	D3.4 Engineered or Finger-Jointed Studs for Vertical Applications	0				1	
Yes	D3.5 OSB for Subfloor	0.5				0.5	
Yes	D3.6 OSB for Wall and Roof Sheathing	0.5				0.5	
No	D4. Insulated Headers	0	1				
<b>D5. FSC-Certified Wood</b>							
TBD	D5.1 Dimensional Lumber, Studs, and Timber					6	
TBD	D5.2 Panel Products					3	
<b>D6. Solid Wall Systems</b>							
No	D6.1 At Least 90% of Floors	0				1	
No	D6.2 At Least 90% of Exterior Walls	0	1			1	
No	D6.3 At Least 90% of Roofs	0	1			1	
Yes	D7. Energy Heels on Roof Trusses	1		1			
No	D8. Overhangs and Gutters	0	1			1	
<b>D9. Reduced Pollution Entering the Home from the Garage</b>							
No	D9.1 Detached Garage	0				2	
No	D9.2 Mitigation Strategies for Attached Garage	0				1	
<b>D10. Structural Pest and Rot Controls</b>							
Yes	D10.1 All Wood Located At Least 12 Inches Above the Soil	1				1	
Yes	D10.2 Wood Framing in Restrooms, Bathrooms, or Other Areas with Moisture-Resistant Materials Other Than Wood	1				1	
Yes	D10.3 Moisture-Resistant Materials in Wet Areas (such as Kitchens, Bathrooms, Utility Rooms, and Basements)	2			1	1	
<b>E. EXTERIOR</b>							
TBD	E1. Environmentally Preferable Decking					1	
TBD	E2. Flashing Installation Third-Party Verified					2	
Yes	E3. Rain Screen Wall System	2				2	
Yes	E4. Durable and Non-Combustible Cladding Materials	1				1	
<b>E5. Durable Roofing Materials</b>							
Yes	E5.1 Durable and Fire Resistant Roofing Materials or Assembly	1				1	
Yes	E5.2 Roofing Warranty for Shingle Roofing	Y	R	R	R	R	R
No	E6. Vegetated Roof	0	2	2			
<b>F. INSULATION</b>							
<b>F1. Insulation with 30% Post-Consumer or 60% Post-Industrial Recycled Content</b>							
No	F1.1 Walls and Floors	0				1	
No	F1.2 Ceilings	0				1	
<b>F2. Insulation that Meets the CDPH Standard Method—Residential for Low Emissions</b>							
No	F2.1 Walls and Floors	0			1		
No	F2.2 Ceilings	0			1		
<b>F3. Insulation That Does Not Contain Fire Retardants</b>							
No	F3.1 Cavity Walls and Floors	0			1		
No	F3.2 Ceilings	0			1		
No	F3.3 Interior and Exterior Insulation	0			1		
<b>G. PLUMBING</b>							
<b>G1. Efficient Distribution of Domestic Hot Water</b>							
Yes	G1.1 Insulated Hot Water Pipes	1		1			
Yes	G1.2 WaterSense Volume Limit for Hot Water Distribution	1				1	
No	G1.3 Increased Efficiency in Hot Water Distribution	0				2	
<b>G2. Install Water-Efficient Fixtures</b>							
Yes	G2.1 WaterSense Showerheads 1.8 gpm with Matching Compensation Valve	2				2	
Yes	G2.2 WaterSense Bathroom Faucets with 1.0gpm or less	1				1	
≤1.28 gpf	G2.3 WaterSense Toilets with a maximum performance (map) 1.6 gpm or no less than 0.8 gpm 1.28gpf OR 1.1 gpf	1				2	
No	G2.4 Urinals with Flush Rate of ≤ 0.1 Gallons/Flush	0				1	
No	G3. Pre-Plumbing for Graywater System	0				1	
No	G4. Operational Graywater System	0				3	
Yes	G5. Thermostatic Shower Valve or Auto-Diversion Tub Spout	1				1	
Yes	G6. Submeter Water for Tenants	2				2	
<b>H. HEATING, VENTILATION, AND AIR CONDITIONING</b>							

© Build It Green

GreenPoint Rated New Home Multifamily Checklist Version 7.0

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

**AQUATIC  
 ASHBY**

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

**GREEN BUILDING  
 CHECKLIST**

**A0.3B**

Project Name: Aquatic Ashby Project Street: 3000 San Pablo Project City: Berkeley Project Zip: 94702		Points Achieved	Community	Energy	IAQ/Health	Resources	Water
<b>H1. Sealed Combustion Units</b>							
TBD	H1.1 Sealed Combustion Furnace				1		
TBD	H1.2 Sealed Combustion Water Heater				2		
No	H2. High Performing Zoned Hydronic Radiant Heating System	0	1	1			
<b>H3. Effective Ductwork</b>							
Yes	H3.1 Duct Mastic on Duct Joints and Seams	1		1			
Yes	H3.2 Pressure Balance the Ductwork System	1		1			
No	H4. ENERGY STAR® Bathroom Fans Per HVI Standards with Air Flow Verified	0			1		
<b>H5. Advanced Practices for Cooling</b>							
No	H5.1 ENERGY STAR Ceiling Fans in Living Areas and Bedrooms	0		1			
No	H5.2 Operate Windows and Skylights Located to Induce Cross Ventilation in At Least One Room in 80% of Units	0		1			
<b>H6. Whole House Mechanical Ventilation Practices to Improve Indoor Air Quality</b>							
Yes	H6.1 Meet ASHRAE Standard 62.2-2010 Ventilation Residential Standards	Y	R	R	R	R	R
No	H6.2 Advanced Ventilation Standards	0			2		
Yes	H6.3 Outdoor Air is Filtered and Tempered	1			1		
<b>H7. Effective Range Design and Installation</b>							
Yes	H7.1 Effective Range Hood Ducting and Design	1			1		
No	H7.2 Automatic Range Hood Control	0			1		
No	H8. High Efficiency HVAC Filter (MERV 13+)	0			1		
No	H9. Advanced Refrigerants	0			1		
<b>I. RENEWABLE ENERGY</b>							
No	I1. Pre-Plumbing for Solar Water Heating	0		1			
Yes	I2. Preparation for Future Photovoltaic Installation	1		1			
0.00%	I3. Onsite Renewable Generation (Solar PV, Solar Thermal, and Wind)	0		25			
<b>I4. Net Zero Energy Home</b>							
No	I4.1 Near Zero Energy Home	0		2			
No	I4.2 Net Zero Electric	0		4			
<b>I5. Energy Storage System</b>							
No	I5.1 Energy Storage System	0		1			
No	I6. Solar Hot Water Systems to Preheat Domestic Hot Water	0		4			
No	I7. Photovoltaic System for Multifamily Projects	0		8			
<b>J. BUILDING PERFORMANCE AND TESTING</b>							
No	J1. Third-Party Verification of Quality of Insulation Installation	0			1		
No	J2. Supply and Return Air Flow Testing	0		1	1		
No	J3. Mechanical Ventilation Testing	0			1		
No	J4. Combustion Appliance Safety Testing	0			1		
<b>J5. Building Energy Performance</b>							
1.00%	J5.1 Home Meets or Exceeds Energy Compliance Pathway	7		30			
1.00%	J5.2 Non-Residential Spaces Outperform Title 24	1		15			
Yes	J6. Title 24 Prepared and Signed by a CABEC Certified Energy Analyst	1		1			
TBD	J7. Participation in Utility Program with Third-Party Plan Review				1		
TBD	J8. ENERGY STAR for Homes				1		
No	J9. EPA Indoor airPlus Certification					1	
No	J10. Blower Door Testing	0			3		
No	J11. Compartmentalization of Units	0		1	1		
<b>K. FINISHES</b>							
<b>K1. Entryways Designed to Reduce Tracked-In Contaminants</b>							
No	K1.1 Entryways to Individual Units	0			1		
Yes	K1.2 Entryways to Buildings	1			1		
TBD	K2. Zero-VOC Interior Wall and Ceiling Paints				2		
Yes	K3. Low-VOC Caulks and Adhesives	1			1		
<b>K4. Environmentally Preferable Materials for Interior Finish</b>							
TBD	K4.1 Cabinets					2	
TBD	K4.2 Interior Trim					2	
TBD	K4.3 Shelving					2	
TBD	K4.4 Doors					2	
TBD	K4.5 Countertops					1	
<b>K5. Formaldehyde Emissions in Interior Finish Exceed CARB</b>							
TBD	K5.1 Doors				1		
TBD	K5.2 Cabinets and Countertops				2		
TBD	K5.3 Interior Trim and Shelving				2		
TBD	K6. Products That Comply With the Health Product Declaration Open Standard				2		
TBD	K7. Indoor Air Formaldehyde Level Less Than 27 Parts Per Billion				2		
No	K8. Comprehensive Inclusion of Low Emitting Finishes				1		
TBD	K9. Durable Cabinets					2	
TBD	K10. At Least 25% of Interior Furniture Has Environmentally Preferable Attributes					1	
<b>L. FLOORING</b>							

Project Name: Aquatic Ashby Project Street: 3000 San Pablo Project City: Berkeley Project Zip: 94702		Points Achieved	Community	Energy	IAQ/Health	Resources	Water
TBD	L1. Environmentally Preferable Flooring						
TBD	L2. Low-Emitting Flooring Meets CDPH 2010 Standard Method--Residential				3		
Yes	L3. Durable Flooring	1				1	
No	L4. Thermal Mass Flooring	0		1			
<b>M. APPLIANCES AND LIGHTING</b>							
Yes	M1. ENERGY STAR® Dishwasher	1					1
<b>M2. Efficient Clothes Washing and Drying</b>							
CEE Tier 2	M2.1 CEE-Rated Clothes Washer	2		1			2
Yes	M2.2 Energy Star Dryer	1		1			
No	M2.3 Solar Dryer/ Laundry Lines	0		0.5			
<20 cubic feet	M3. Size-Efficient ENERGY STAR Refrigerator	2		2			
<b>M4. Permanent Centers for Waste Reduction Strategies</b>							
TBD	M4.1 Built-In Recycling Center						1
TBD	M4.2 Built-In Composting Center						1
<b>M5. Lighting Efficiency</b>							
Yes	M5.1 High-Efficacy Lighting	2		2			
Yes	M5.2 Lighting system designed to reduce power consumption in accordance with ASHRAE 90.1-2010 by Lighting Consultant	2		2			
TBD	M6. Electric Vehicle Charging Stations and Infrastructure			2			
No	M7. Central Laundry	0					1
Yes	M8. Gearless Elevator	1		1			
<b>N. COMMUNITY</b>							
<b>N1. Smart Development</b>							
Yes	N1.1 Infill Site	2	1				1
No	N1.2 Designated Brownfield Site	0	1				1
>35	N1.3 Conserve Resources by Increasing Density	4		2			2
Yes	N1.4 Cluster Homes for Land Preservation	2	1				1
	N1.5 Home Size Efficiency	9					9
811	Enter the area of the home, in square feet						
2	Enter the number of bedrooms						
<b>N2. Home(s)/Development Located Near Major Transit Stop</b>							
Yes	N2.1 Within 1/2 Mile of a Major Transit Stop	1	1				
Yes	N2.2 Within 1/2 mile of a Major Transit Stop	0	2				
<b>N3. Pedestrian and Bicycle Access</b>							
63	N3.1 Pedestrian Access to Services Within 1/2 Mile of Community Services	2	2				
	Enter the number of Tier 1 services						
23	Enter the number of Tier 2 services						
No	N3.2 Connection to Pedestrian Pathways	0	1				
No	N3.3 Traffic Calming Strategies	0	2				
Yes	N3.4 Sidewalks Buffered from Roadways and 5-8 Feet Wide	1	1				
Yes	N3.5 Bicycle Storage for Residents	1	1				
Yes	N3.6 Bicycle Storage for Non-Residents	1	1				
1 space per unit	N3.7 Reduced Parking Capacity	2	2				
<b>N4. Outdoor Gathering Places</b>							
Yes	N4.1 Public or Semi-Public Outdoor Gathering Places for Residents	1	1				
No	N4.2 Public Outdoor Gathering Places with Direct Access to Tier 1 Community Services	0	1				
<b>N5. Social Interaction</b>							
No	N5.1 Residence Entries with Views to Calers	0	1				
Yes	N5.2 Entrances Visible from Street and/or Other Front Doors	1	1				
No	N5.3 Porches Oriented to Street and Public Space	0	1				
<b>N6. Passive Solar Design</b>							
No	N6.1 Heating Load	0		2			
No	N6.2 Cooling Load	0		2			
<b>N7. Adaptable Building</b>							
Yes	N7.1 Universal Design Principles in Units	2	1			1	
No	N7.2 Full-Function Independent Rental Unit	0	1				
<b>N8. Affordability</b>							
No	N8.1 Dedicated Units for Households Making 80% of AMI or Less	0	2				
No	N8.2 Units with Multiple Bedrooms for Households Making 80% of AMI or Less	0	1				
TBD	N8.3 At Least 20% of Units at 120% AMI or Less are For Sale		1				
<b>N9. Mixed-Use Developments</b>							
No	N9.1 Live/Work Units Include a Dedicated Commercial Entrance	0	1				
Yes	N9.2 At Least 2% of Development Floor Space Supports Mixed Use	1	1				5.2% of developed space devoted to commercial
No	N9.3 Half of the Non-Residential Floor Space is Dedicated to Community Service	0	1				
<b>N8. Resiliency</b>							
TBD	N8.1 Climate Impact Assessment		1		1	1	
TBD	N8.2 Strategies to Address Assessment Findings		1		1	1	

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

**AQUATIC  
 ASHBY**

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

**GREEN BUILDING  
 CHECKLIST**

**A0.3C**

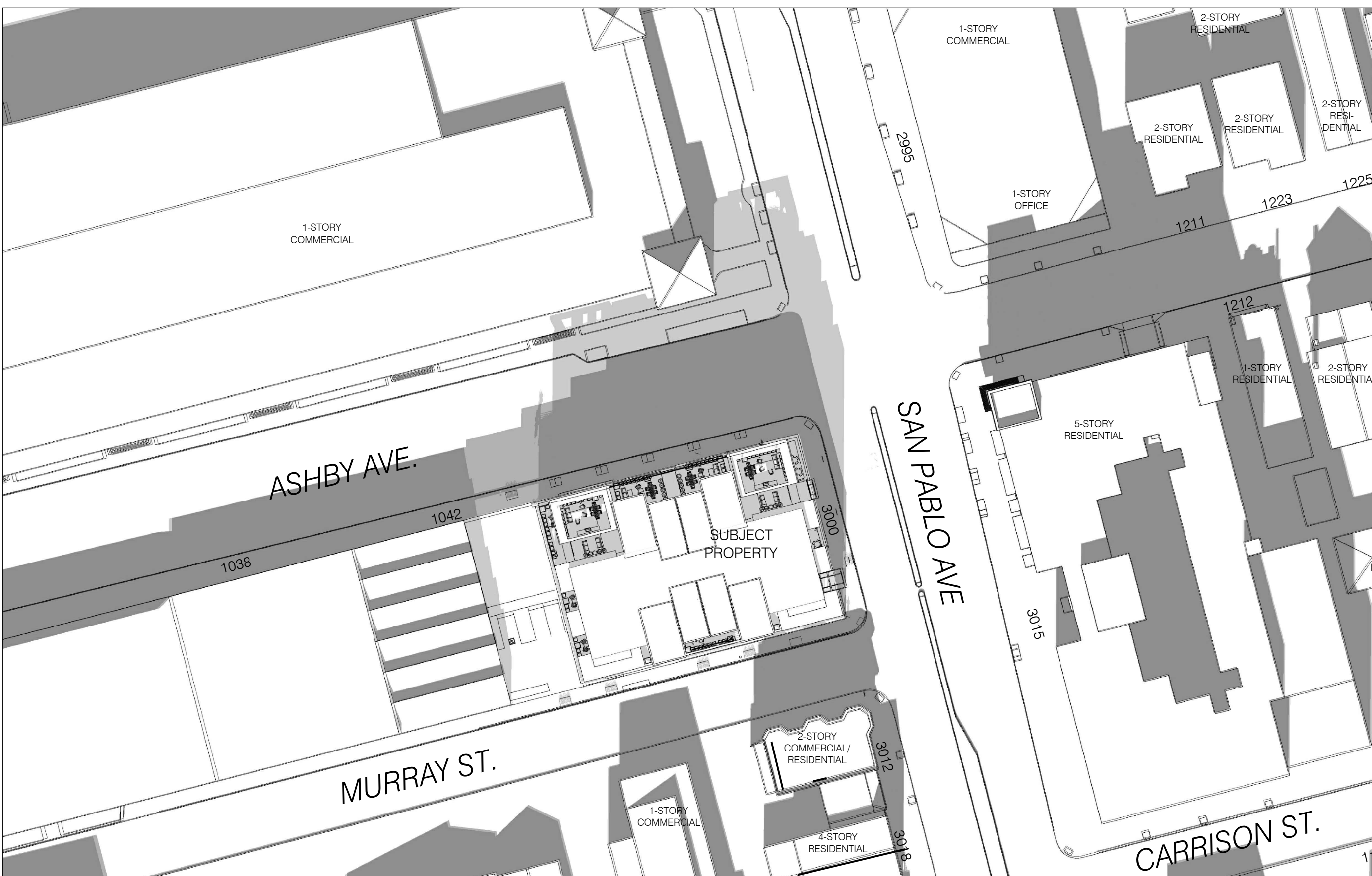
Project Name: Aquatic Ashby Project Street: 3000 San Pablo Project City: Berkeley Project Zip: 94702		Points Achieved	Community	Energy	MO/Health	Resources	Water
<b>N9. Social Equity</b>							
No	N9.1 Diverse Workforce	0	1			1	
No	N9.2 Community Location	0	1		1		
<b>O. OTHER</b>							
Yes	O1. GreenPoint Rated Checklist in Blueprints	Y	R	R	R	R	R
TBD	O2. Pre-Construction Kickoff Meeting with Rater and Subcontractors			0.5		1	0.5
No	O3. Orientation and Training to Occupants—Conduct Educational Walkthroughs	0		0.5	0.5	0.5	0.5
No	O4. Builders or Developer's management staff are Licensed Green Building Professionals	0		0.5	0.5	0.5	0.5
<b>O5. Home System Monitors</b>							
No	O5.1 Energy Home System Monitors	0		1			
No	O5.2 Water Home System Monitors	0					1
<b>O6. Green Building Education</b>							
TBD	O6.1 Marketing Green Building		2				
TBD	O6.2 Green Building Signage			0.5			0.5
Yes	O7. Green Appraisal Addendum	Y	R	R	R	R	R
No	O8. Detailed Durability Plan and Third-Party Verification of Plan Implementation	0				1	
No	O9. Residents Are Offered Free or Discounted Transit Passes	0	2				
TBD	O10. Vandalism Deterrence Practices and Vandalism Management Plan					1	
Yes	O11. Tobacco Free Buildings	2			2		
TBD	O12. Integrated Pest Management Plan					1	
<b>P. DESIGN CONSIDERATIONS</b>							
<b>P1. Acoustics: Noise and Vibration Control</b>							
	Enter the number of Tier 1 practices		1		1		
	Enter the number of Tier 2 practices						
<b>P2. Mixed-Use Design Strategies</b>							
TBD	P2.1 Tenant Improvement Requirements for Build-Outs				1		1
No	P2.2 Commercial Loading Area Separated for Residential Area	0			1		
Yes	P2.3 Separate Mechanical and Plumbing Systems	1			1		
<b>P3. Commissioning</b>							
TBD	P3.1 Design Phase			1	1		
TBD	P3.2 Construction Phase			2	1		
TBD	P3.3 Post-Construction Phase			2	1		
No	P4. Building Enclosure Testing	0		1	1	1	
<b>Summary</b>							
Total Available Points in Specific Categories		404	46	141	69	94	54
Minimum Points Required in Specific Categories		50	2	25	6	6	6
<b>Total Points Achieved</b>		<b>112.0</b>	<b>15.0</b>	<b>26.0</b>	<b>11.0</b>	<b>34.0</b>	<b>26.0</b>



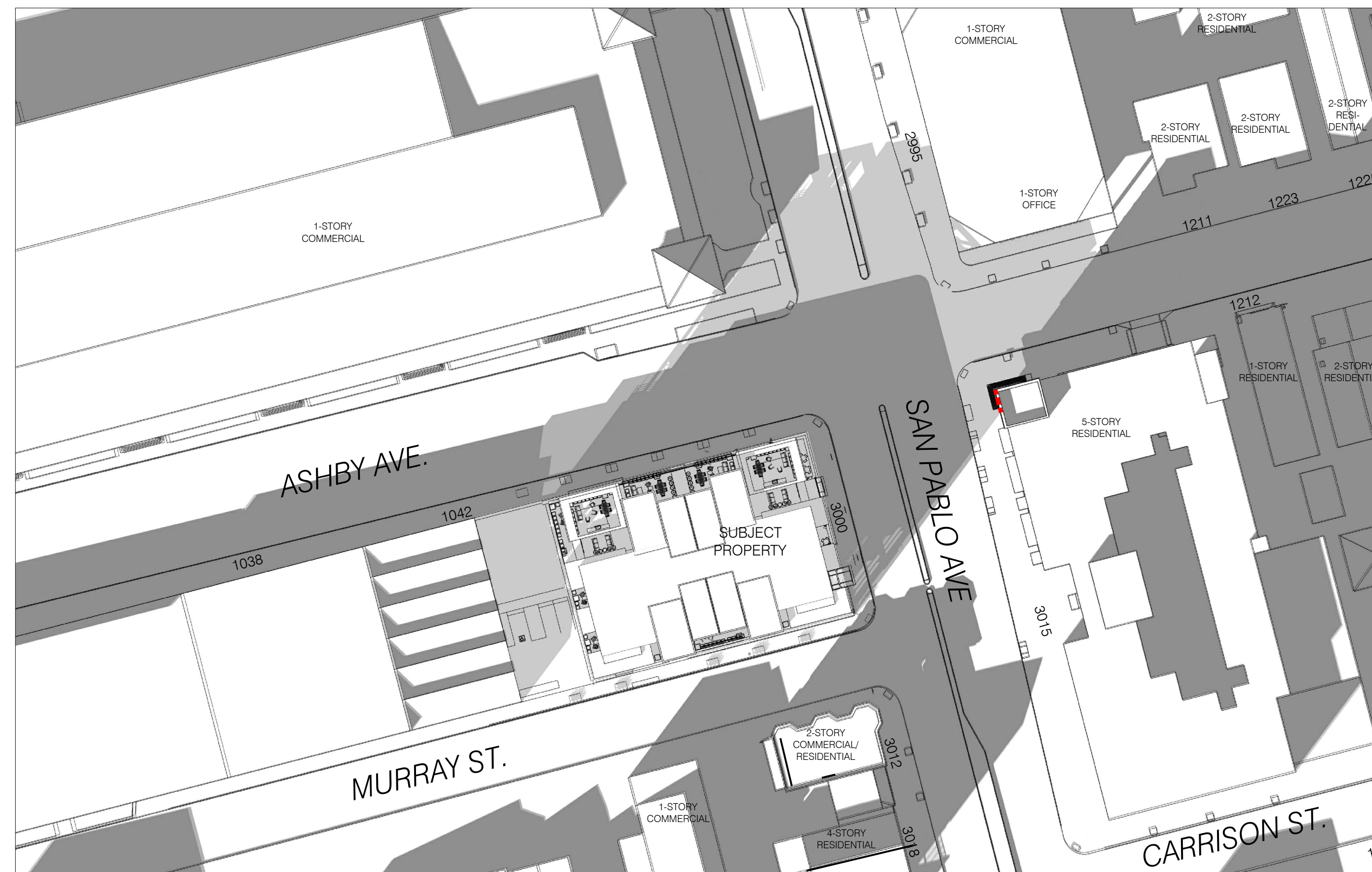
4 SHADOW STUDY AXONOMETRIC - DEC 21: 2-HRS BEFORE SUNSET  
 NTS



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



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



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

**TRACHTENBERG  
 ARCHITECTS**

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

**AQUATIC  
 ASHBY**

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:  
 SHADOW STUDIES  
 DECEMBER 21ST

**A0.4A**







4 - VIEW FROM SAN PABLO & ASHBY LOOKING WEST



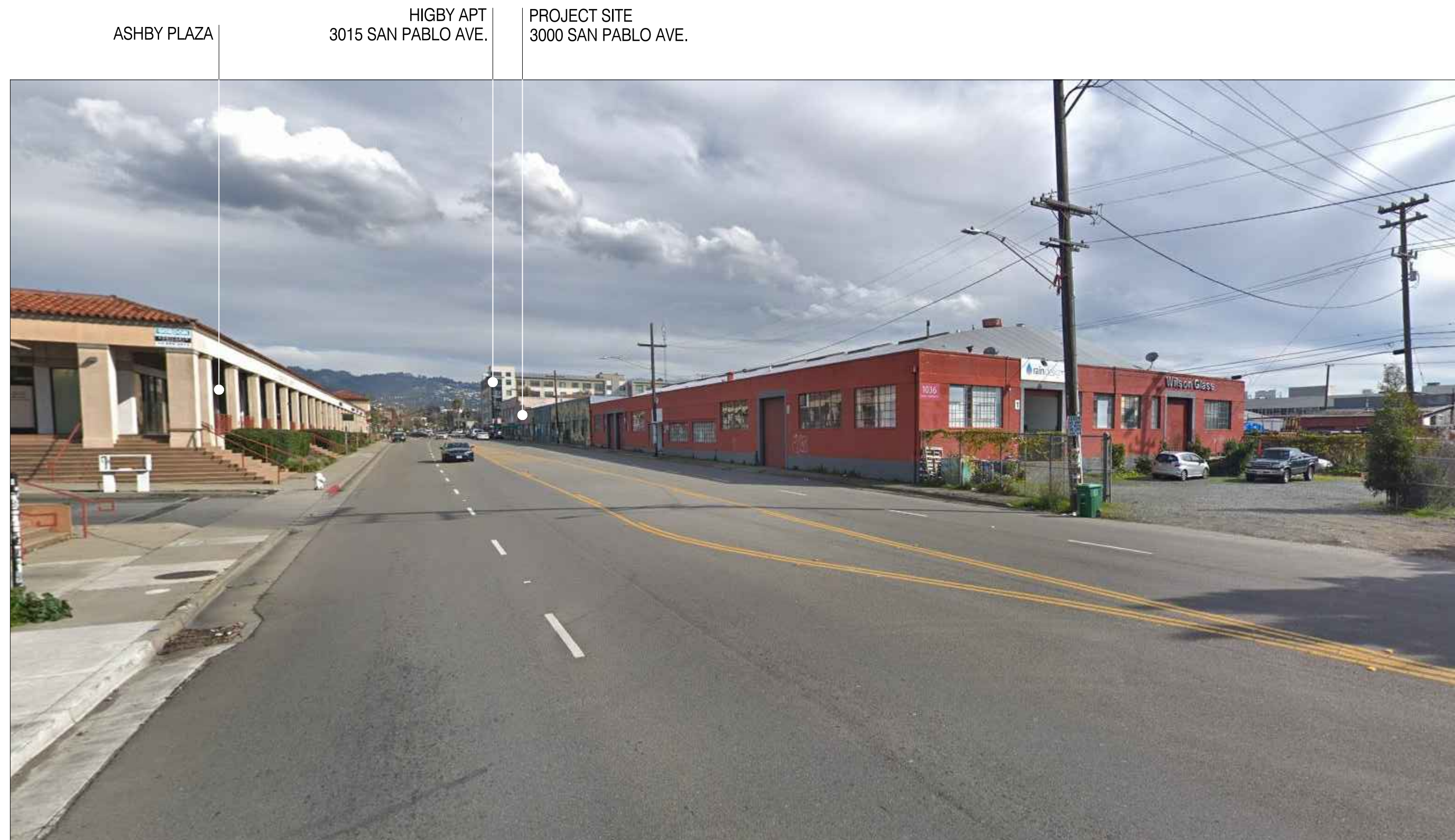
2 - VIEW FROM SAN PABLO & MURRAY LOOKING WEST

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

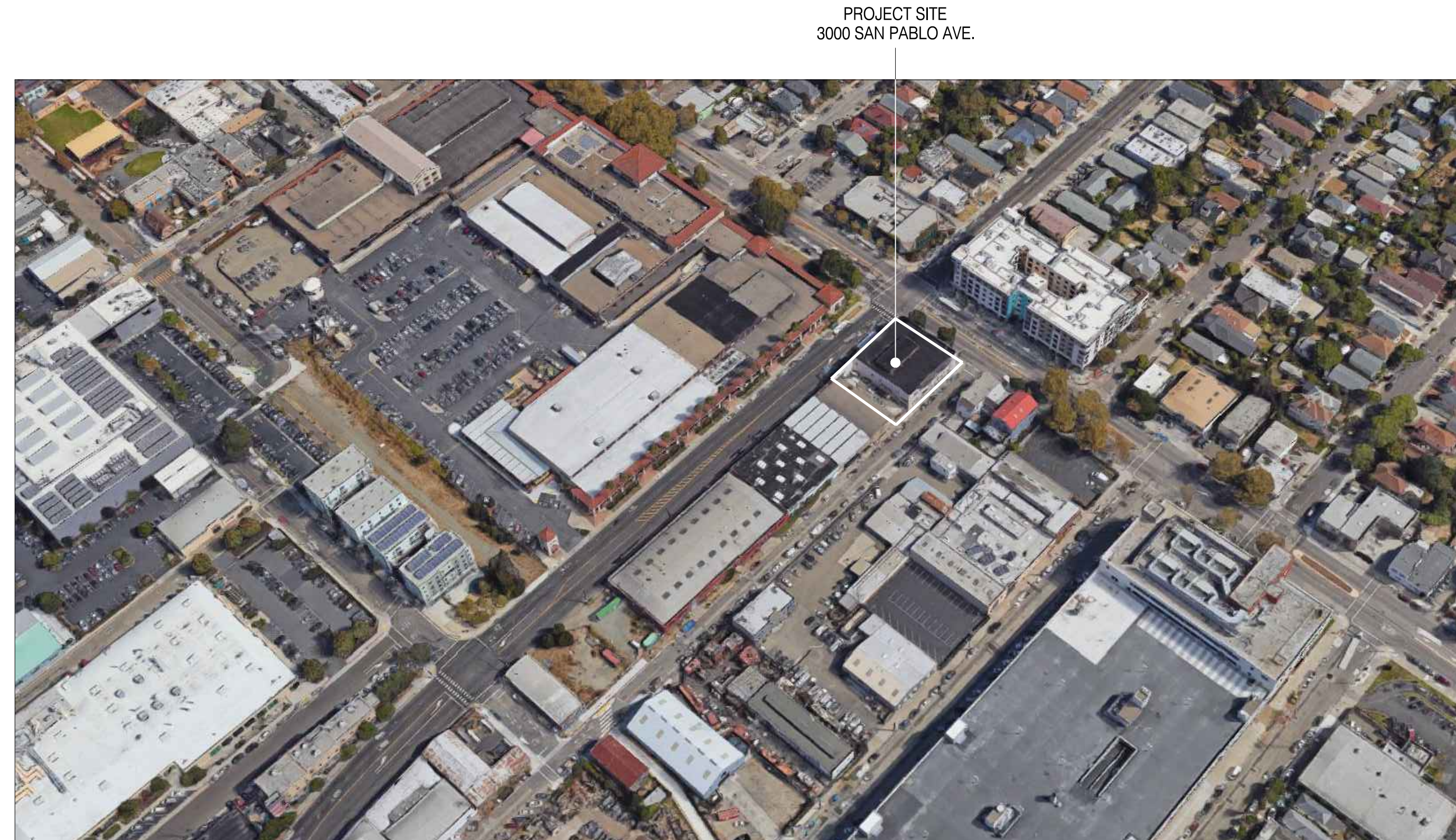
**AQUATIC  
ASHBY**

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL



3 - VIEW FROM ASHBY AVE. LOOKING EAST



1 - GOOGLE EARTH BIRD'S EYE CONTEXT VIEW

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

JOB: 1901

SHEET:

SITE CONTEXT  
PHOTOS

**A0.5**

TRACHTENBERG  
ARCHITECTS

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

### AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

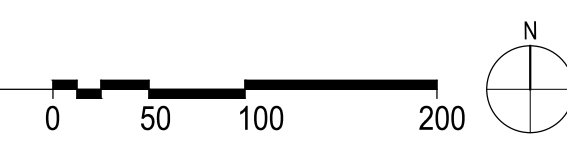
SHEET:

VICINITY MAP

# A0.6



1  
-  
VICINITY MAP  
1" = 100'-0" @ 11" X 17" 1" = 50'-0" @ 24" X 36"













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

# AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

PLAN AT  
LEVEL 6

# A2.3



1 PLAN AT LEVEL 5  
1/16"=1'-0" @ 11x17 1/8"=1'-0" @ 24x36







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

# AQUATIC ASHBY

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

BUILDING  
 ELEVATIONS

# A3.1

INTEGRAL COLOR STUCCO WITH HARD TROWEL FINISH    BRICK    ALUMINUM WINDOWS    CORRUGATED METAL PANEL    METAL INFILL PANEL    SHADING CANOPY    CORRUGATED METAL PANEL    METAL EAVE, PTD.



1 EAST ELEVATION  
 1/16" = 1'-0" @ 11X17    1/8" = 1'-0" @ 24X36



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

# AQUATIC ASHBY

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

BUILDING  
 ELEVATIONS

# A3.2



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

TRACHTENBERG  
ARCHITECTS

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

### AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

BUILDING  
ELEVATIONS

# A3.3

CORRUGATED METAL PANEL    SHADING CANOPY    INTEGRAL COLOR STUCCO WITH HARD TROWEL FINISH    METAL INFILL PANEL    ALUMINUM WINDOWS    METAL EAVE, PTD.    BRICK



1  
-

### WEST ELEVATION

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



TRACHTENBERG  
 ARCHITECTS

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

**AQUATIC  
 ASHBY**

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

BUILDING  
 ELEVATIONS

**A3.4**



INTEGRAL COLOR STUCCO  
 WITH HARD TROWEL FINISH

ALUMINUM  
 WINDOWS

METAL  
 INFILL PANELS

METAL EAVE,  
 PTD.

BRICK

CORRUGATED  
 METAL PANEL

T.O. STAIR &  
 ELEV. OVERRUN

EXEMPTED FROM  
 HT. CALC B/C NO  
 HABITABLE SPACE

ROOF

69'-0"

10'-0"

6TH FLOOR

59'-0"

10'-0"

5TH FLOOR

49'-0"

10'-0"

4TH FLOOR

39'-0"

69'-0"

3RD FLOOR

29'-0"

10'-0"

2ND FLOOR

19'-0"

19'-0"

AVG. GROUND FLOOR

0'-0"

GARAGE ENTRANCE

THE AQUATIC

CLEAR GLASS GLAZING

(SAN PABLO)

1  
 -

**SOUTH ELEVATION**

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



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

# AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

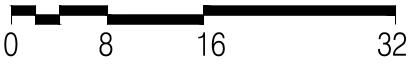
ALL DRAWINGS AND WRITTEN MATERIAL APPEARING  
HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED  
WORK OF THE ARCHITECT AND MAY NOT BE  
DUPLICATED, USED OR DISCLOSED WITHOUT WRITTEN  
CONSENT OF TRACHTENBERG ARCHITECTS.

JOB: 1901

SHEET:

STREET STRIP  
ELEVATIONS

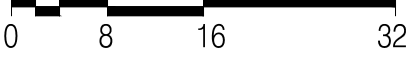
# A3.5



2

## STREET STRIP ELEVATION @ SAN PABLO

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



1

## STREET STRIP ELEVATION @ ASHBY

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



**TRACHTENBERG  
ARCHITECTS**

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

## **AQUATIC ASHBY**

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

PERSPECTIVE VIEWS

# **A3.6**

TRACHTENBERG  
ARCHITECTS

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

## AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

PERSPECTIVE VIEWS

# A3.7



TRACHTENBERG  
ARCHITECTS

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

## AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

PERSPECTIVE VIEWS

# A3.8



1  
ASHBY / SAN PABLO CORNER

TRACHTENBERG  
ARCHITECTS

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

### AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

PERSPECTIVE VIEWS

# A3.9



1 ASHBY / SAN PABLO CORNER

TRACHTENBERG  
ARCHITECTS

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

## AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

PERSPECTIVE VIEWS

# A3.10



1  
ASHBY LOOKING WEST

TRACHTENBERG  
ARCHITECTS

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

## AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

PERSPECTIVE VIEWS

# A3.11



1  
ASHBY LOOKING EAST





TRACHTENBERG  
ARCHITECTS

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

## AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

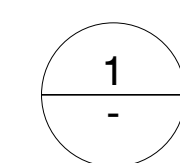
09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

PERSPECTIVE VIEWS



SAN PABLO LOOKING NORTHWEST

# A3.12

TRACHTENBERG  
ARCHITECTS

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

## AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

PERSPECTIVE VIEWS

# A3.13



1  
-

SAN PABLO LOOKING SOUTH

TRACHTENBERG  
ARCHITECTS

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

**AQUATIC  
ASHBY**

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

PHOTO CONTEXT  
VIEWS

**A3.14**



4 SAN PABLO LOOKING SOUTH - AFTER



2 SAN PABLO LOOKING NORTH - AFTER



3 SAN PABLO LOOKING SOUTH - BEFORE



1 SAN PABLO LOOKING NORTH - BEFORE



2  
-  
ASHBY LOOKING EAST - AFTER



1  
-  
ASHBY LOOKING EAST - BEFORE

TRACHTENBERG  
ARCHITECTS

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

**AQUATIC  
ASHBY**

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

PHOTO CONTEXT  
VIEWS

**A3.15**



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

# AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

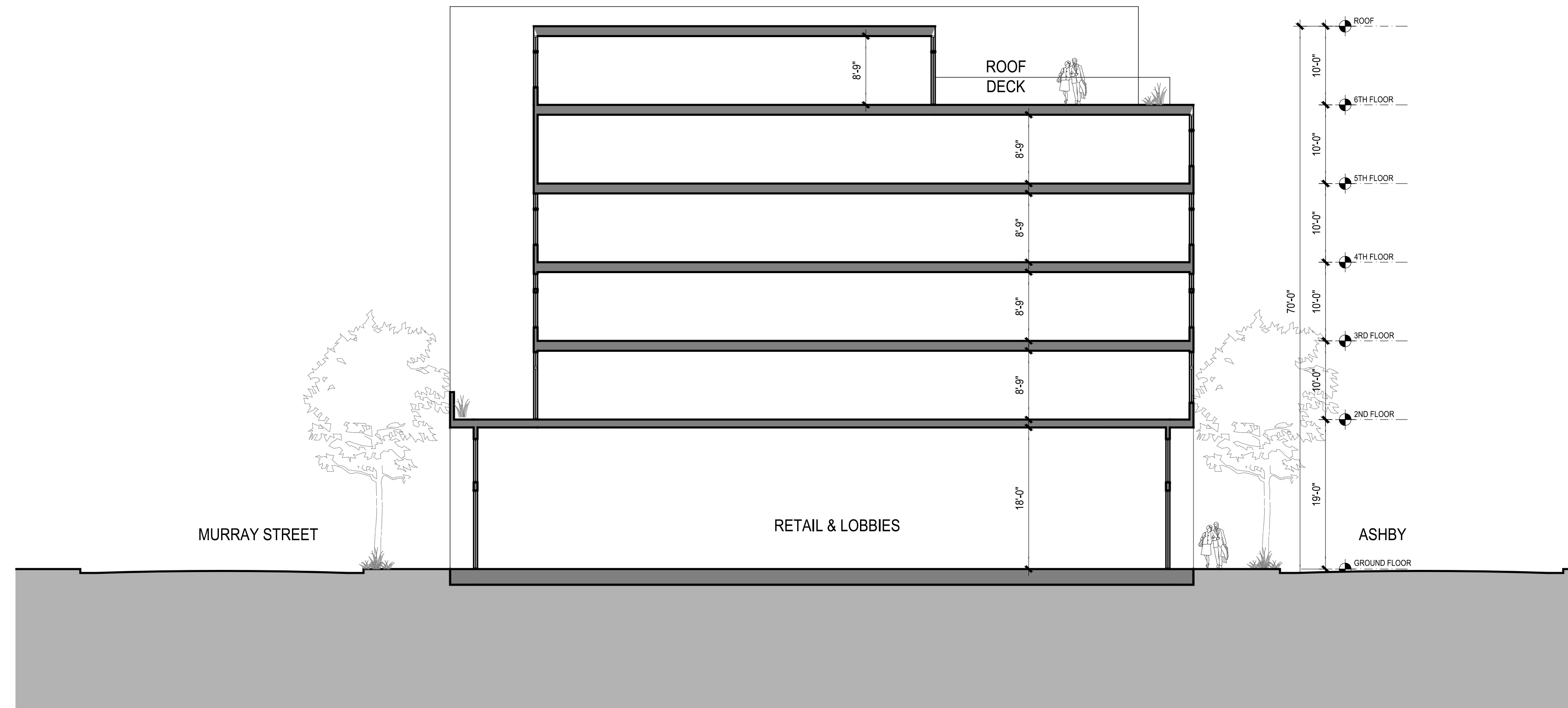
ALL DRAWINGS AND WRITTEN MATERIAL APPEARING  
HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED  
WORK OF THE ARCHITECT AND MAY NOT BE  
DUPLICATED, USED OR DISCLOSED WITHOUT WRITTEN  
CONSENT OF TRACHTENBERG ARCHITECTS.

JOB: 1901

SHEET:

BUILDING  
SECTION

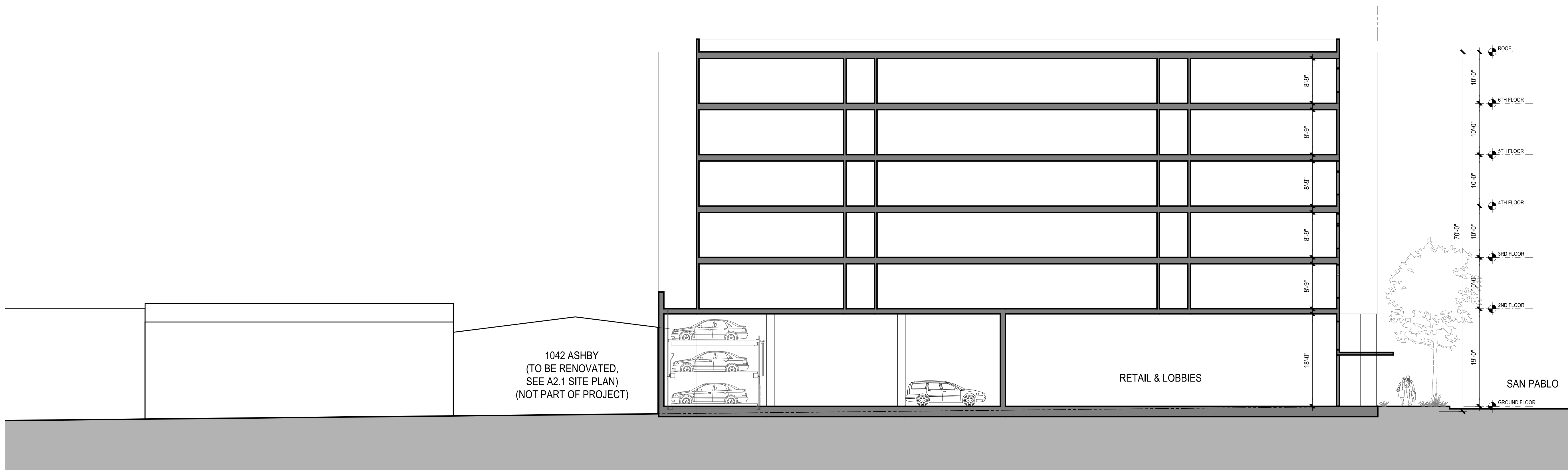
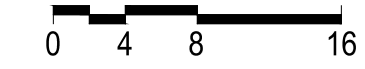
# A4.1



2

## N-S SECTION

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



1

## E-W SECTION

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



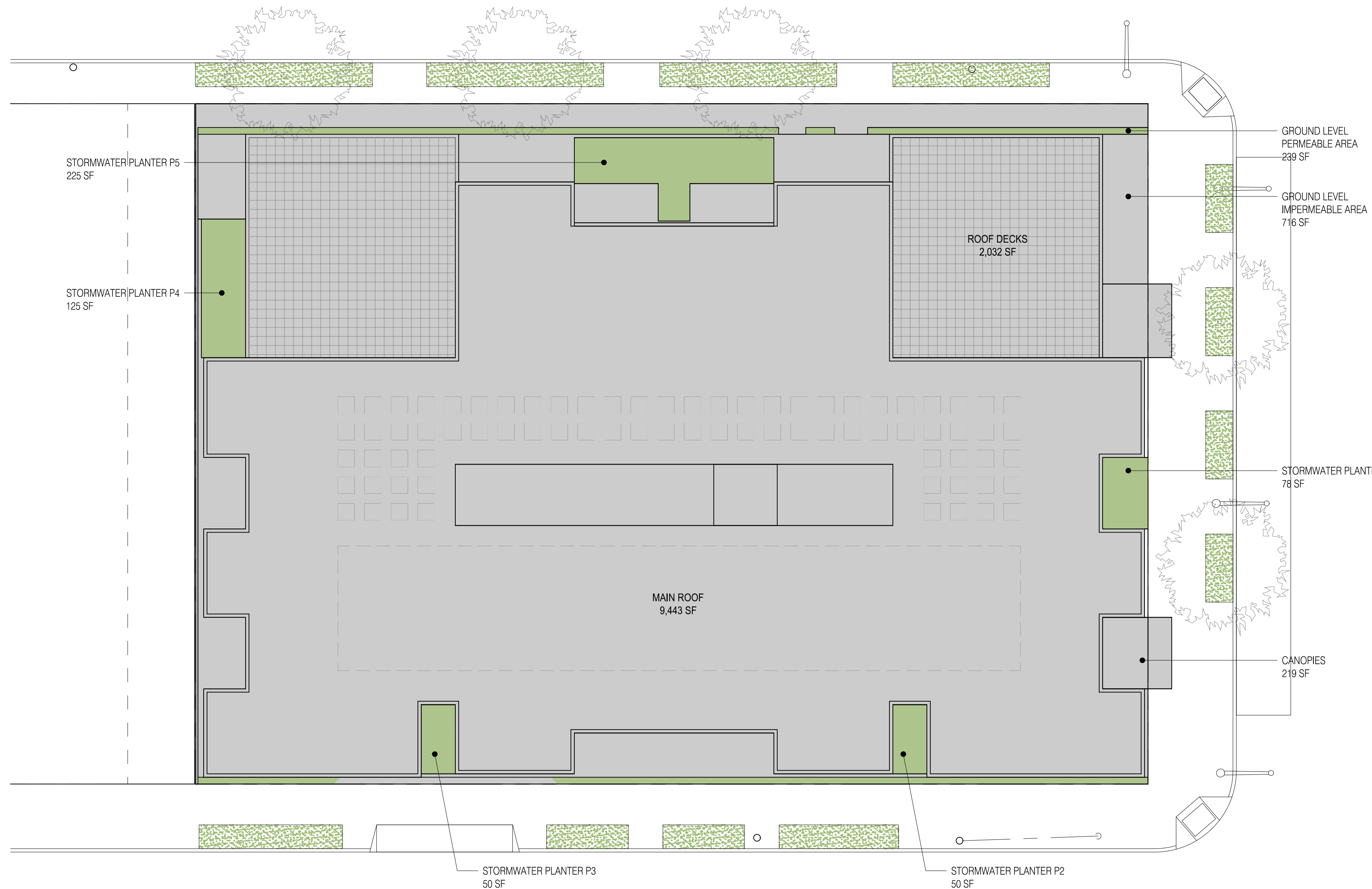


2421 Fourth Street  
 Berkeley, California 94710  
 510.649.1414  
 www.TrachtenbergArch.com

# AQUATIC ASHBY

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL



STORMWATER CALCULATIONS									
<b>C3 APPLICABILITY</b>									
TOTAL SITE AREA	14,000								
C3 THRESHOLD	10,000								
C3 REGULATED PROJECT	YES								
<b>REQUIRED FLOW-THROUGH PLANTERS</b>									
LOCATION	GROSS SF	SELF-TREATING AREA	TREATMENT AREA	%	TOTAL TREATMENT AREA	TOTAL PROVIDED PLANTER AREA	PERVIOUS PAVING	FILTER VAULT	
ROOFS	9443	0	9443	4%	378				
ROOF DECKS	2032	813	1219	4%	49				
PODIUM	1345	808	537	4%	21	450			
CANOPIES	217	0	217	4%	9				
GROUND LEVEL	1038	239	799	4%	32	78			
<b>TOTAL</b>	<b>14075</b>	<b>1860</b>	<b>12215</b>	<b>4%</b>	<b>489</b>	<b>528</b>	<b>0</b>	<b>0</b>	
<b>PROVIDED TREATMENT PLANTERS</b>									
LEVEL	PLANTER					PLANTER AREA			
GROUND LEVEL	P1					78			
PODIUM LEVEL	P2					50			
	P3					50			
	P4					125			
	P5					225			
<b>TOTAL PLANTERS</b>						<b>528</b>			
<b>SPECIAL PROJECTS</b> (Appendix K)									
<b>CRITERIA FOR CATEGORY C (TRANSIT ORIENTED DEVELOPMENT) SPECIAL PROJECTS</b>									
1. Be characterized as a non auto-related land use project. That is, Category C specifically excludes any Regulated Project that is a stand-alone surface parking lot; car dealership; auto and truck rental facility with onsite surface storage; fast-food restaurant, bank or pharmacy with drive-through lanes; gas station, car wash, auto repair and service facility; or other auto-related project unrelated to the concept of Transit-Oriented Development.									Yes
2. If a commercial, achieve at least an FAR of 2.1.									N/A
3. If a residential development project, achieve at least a density of 25 DU/Ac.									N/A
4. If a mixed use development project, achieve at least an FAR of 2.1 or a gross density of 25 DU/Ac.									Yes
<b>LOCATION CREDITS</b>									
% of the C.3.d Amount of Runoff that May Receive Non-LID	Project Site Location								QUALIFIES
50%	50% or more of the site is located within a ½ mile radius of an existing or planned transit hub								N/A
25%	50% or more of the site is located within a ½ mile radius of an existing or planned transit hub								N/A
25%	100% of the site is located within a PDA								N/A
<b>DENSITY CREDITS</b>									
% of the C.3.d Amount of Runoff that May Receive Non-LID	Land Use Type	Density Required to Obtain the Density Credit		PROPOSED	QUALIFIES				
10%	Commercial	2	FAR		N/A				
10%	Residential or Mixed Use	30	DU/Acre	243	YES				
20%	Commercial	4	FAR		N/A				
20%	Residential or Mixed Use	60	DU/Acre	243	YES				
30%	Commercial	6:1	FAR		N/A				
30%	Residential or Mixed Use	100	DU/Acre	243	YES				
<b>MINIMIZED SURFACE PARKING CREDITS</b>									
To qualify for any Minimized Surface Parking Credits, a Category C Special Project must first qualify for one of the Location Credits listed in Provision C.3.e.ii.(5)(c) above. (i) A Category C Special									YES
% of the C.3.d Amount of Runoff that May Receive Non-LID	Percentage of the Total Post-Project Impervious Surface Dedicated to At-Grade, Surface Parking				PROPOSED	QUALIFIES			
10%	10% or less				0	YES			
20%	0% (except for emergency vehicle access, ADA accessibility and passenger and freight loading zones)				0	YES			
<b>TOTAL CREDITS</b>	<b>50%</b>								
<b>LOCATION CREDITS</b>	<b>0%</b>								
<b>DENSITY CREDITS</b>	<b>30%</b>								
<b>MINIMIZED SURFACE PARKING CREDITS</b>	<b>20%</b>								

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

JOB: 1901

SHEET:

PRELIMINARY STORMWATER MANAGEMENT PLAN

# SW-1

TRACHTENBERG  
 ARCHITECTS

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

**AQUATIC  
 ASHBY**

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

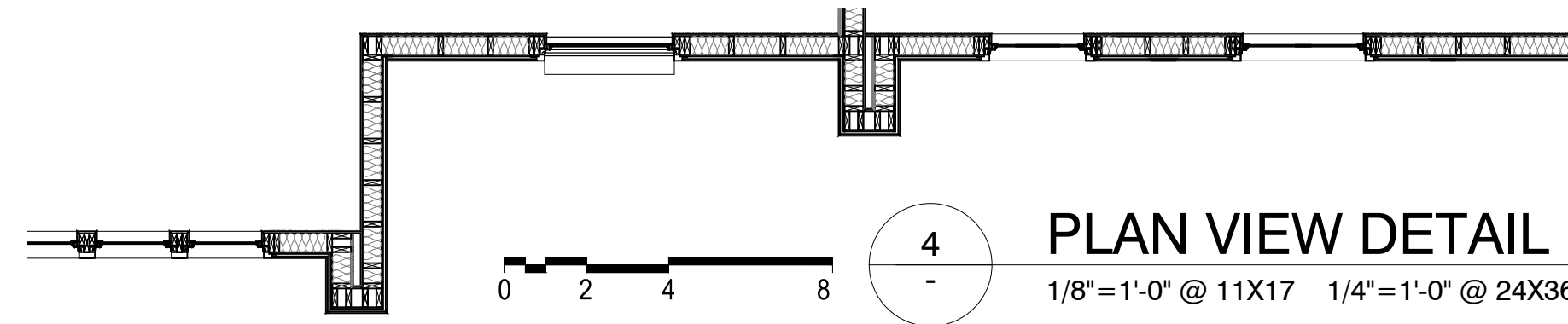
ALL DRAWINGS AND WRITTEN MATERIAL APPEARING  
 HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED  
 WORK OF THE ARCHITECT AND MAY NOT BE  
 DUPLICATED, USED OR DISCLOSED WITHOUT WRITTEN  
 CONSENT OF TRACHTENBERG ARCHITECTS.

JOB: 1901

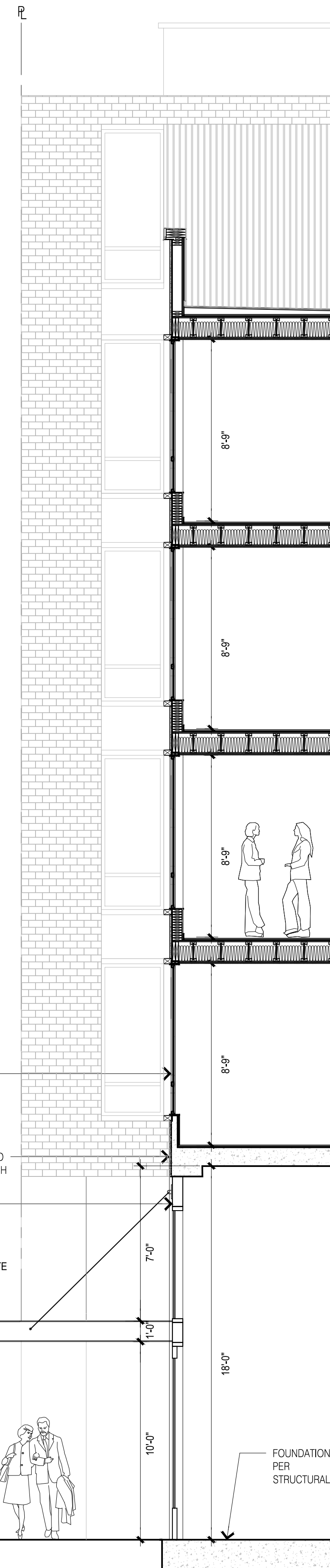
SHEET:

**WALL SECTIONS &  
 DETAILS**

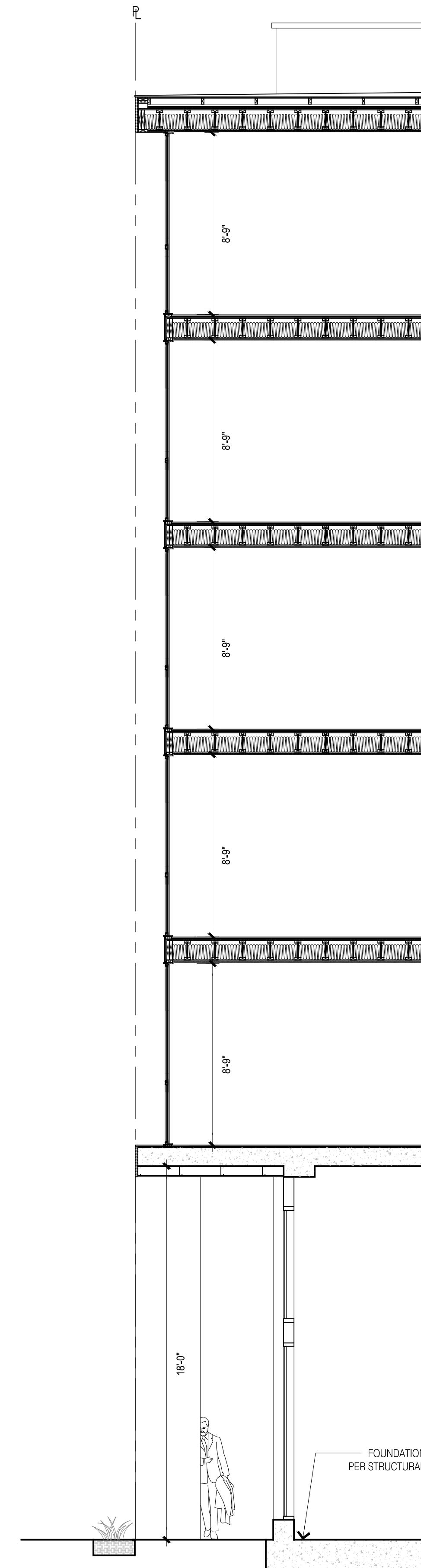
**A4.2**



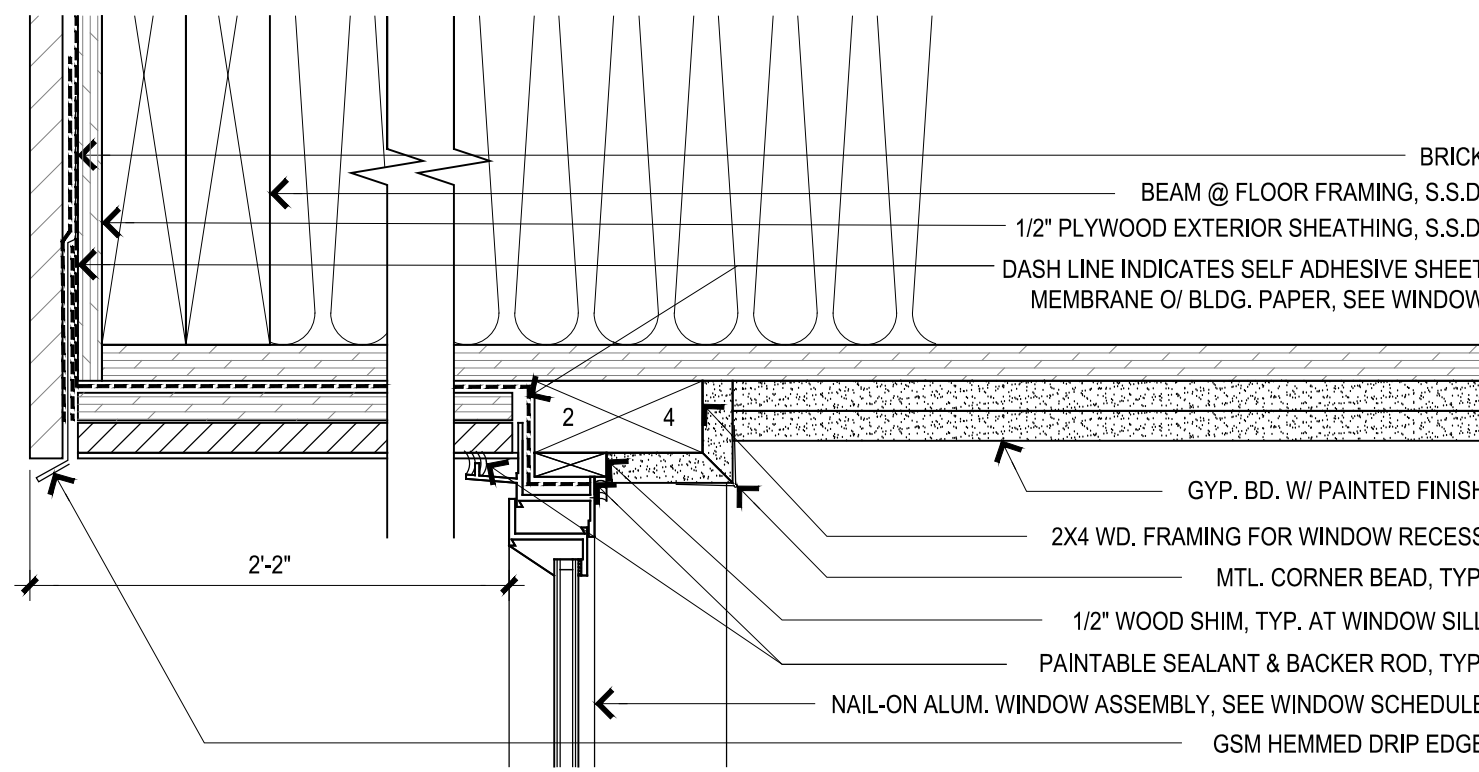
**3 ELEVATION DETAIL**  
 1/8"=1'-0" @ 11X17 1/4"=1'-0" @ 24X36



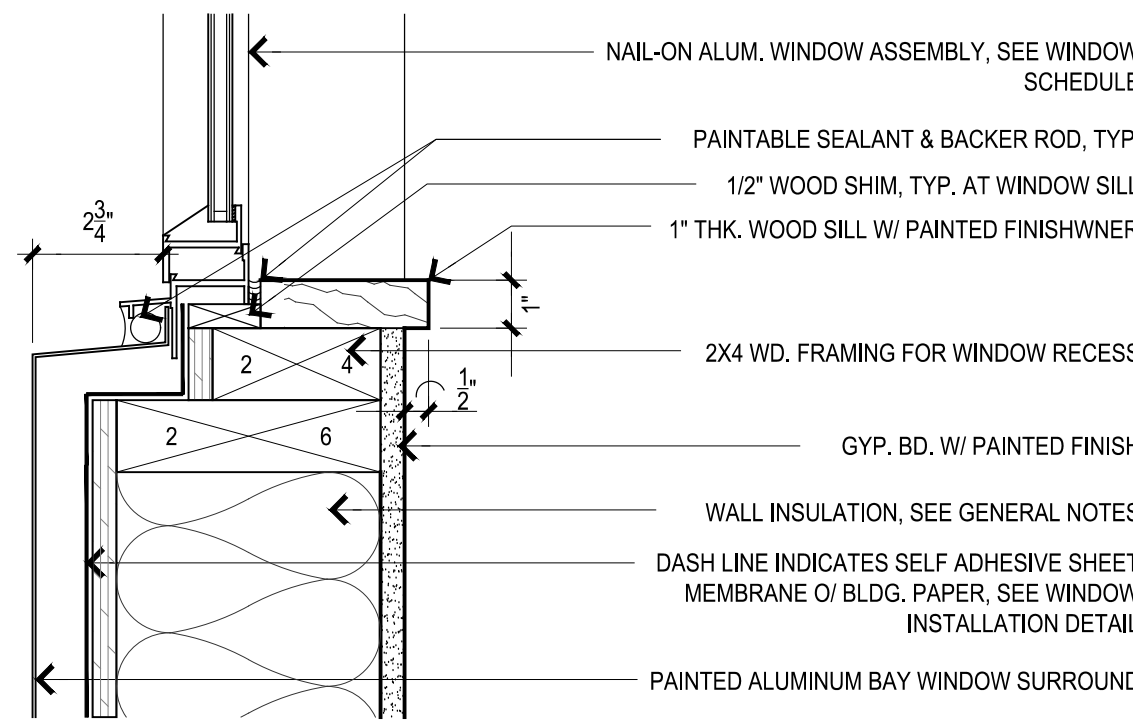
**2 SECTION @ AWNING**  
 1/8"=1'-0" @ 11X17 1/4"=1'-0" @ 24X36



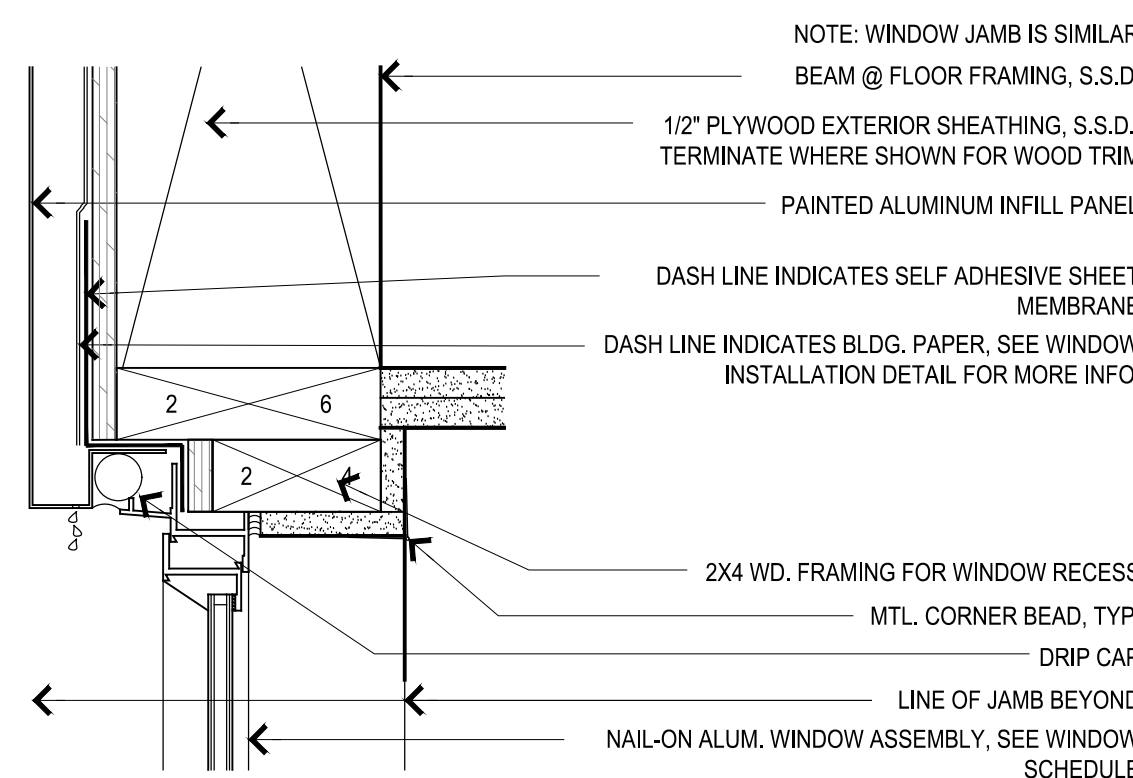
**1 SECTION @ BAY**  
 1/8"=1'-0" @ 11X17 1/4"=1'-0" @ 24X36



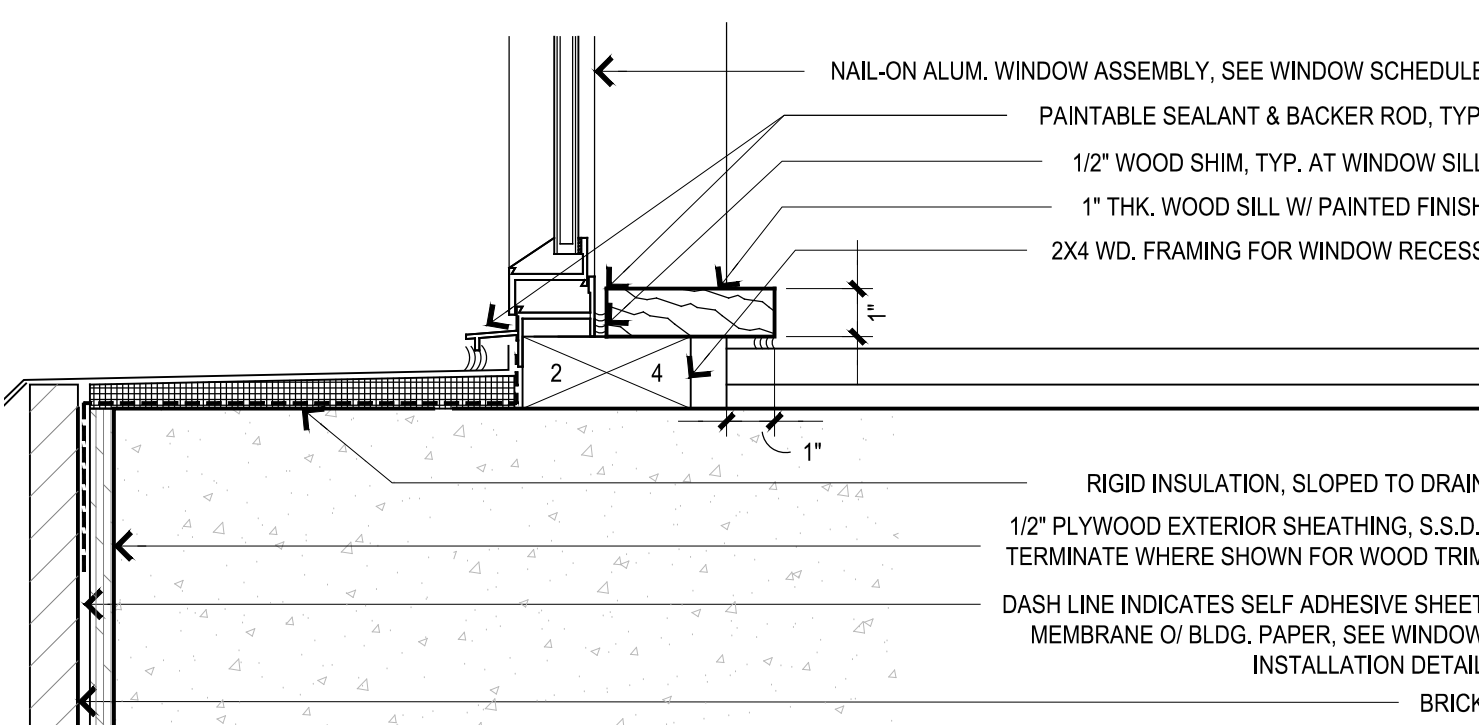
**5 TYP. HEAD @ T.O. SURROUND**  
 6"=1'-0" @ 11X17 3"=1'-0" @ 24X36



**6 TYP. SILL AT FILL PANEL**  
 6"=1'-0" @ 11X17 3"=1'-0" @ 24X36

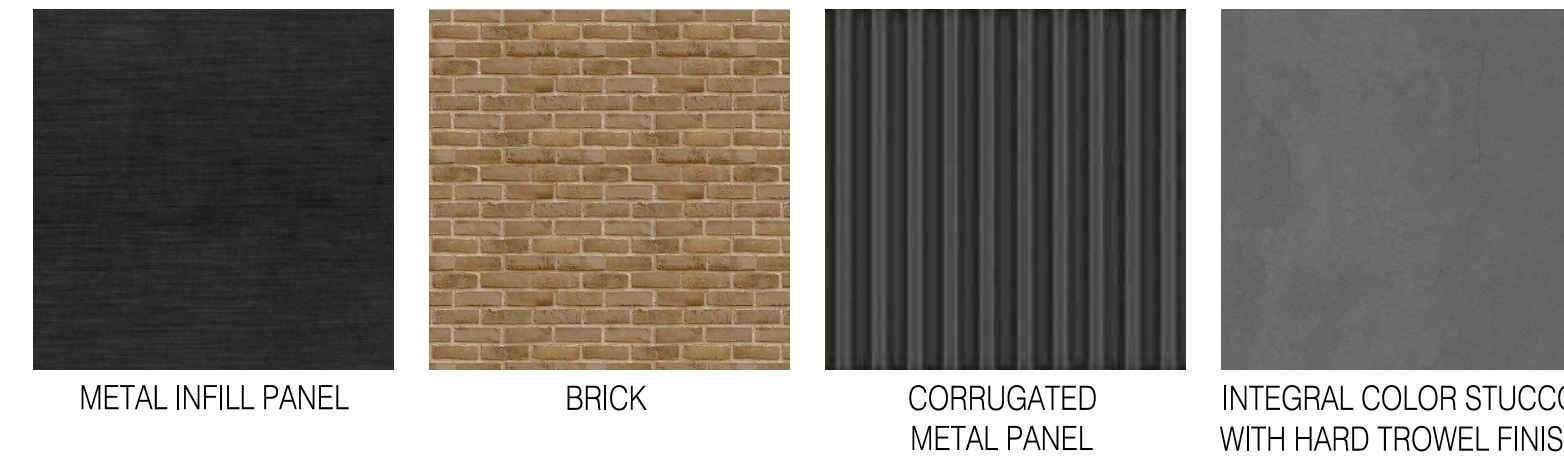


**7 HEAD @ FILL PANEL**  
 3"=1'-0"



**8 TYP. SILL @ PODIUM**  
 6"=1'-0" @ 11X17 3"=1'-0" @ 24X36

TRACHTENBERG  
ARCHITECTS



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



# AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

MATERIAL  
BOARD

# MAT

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



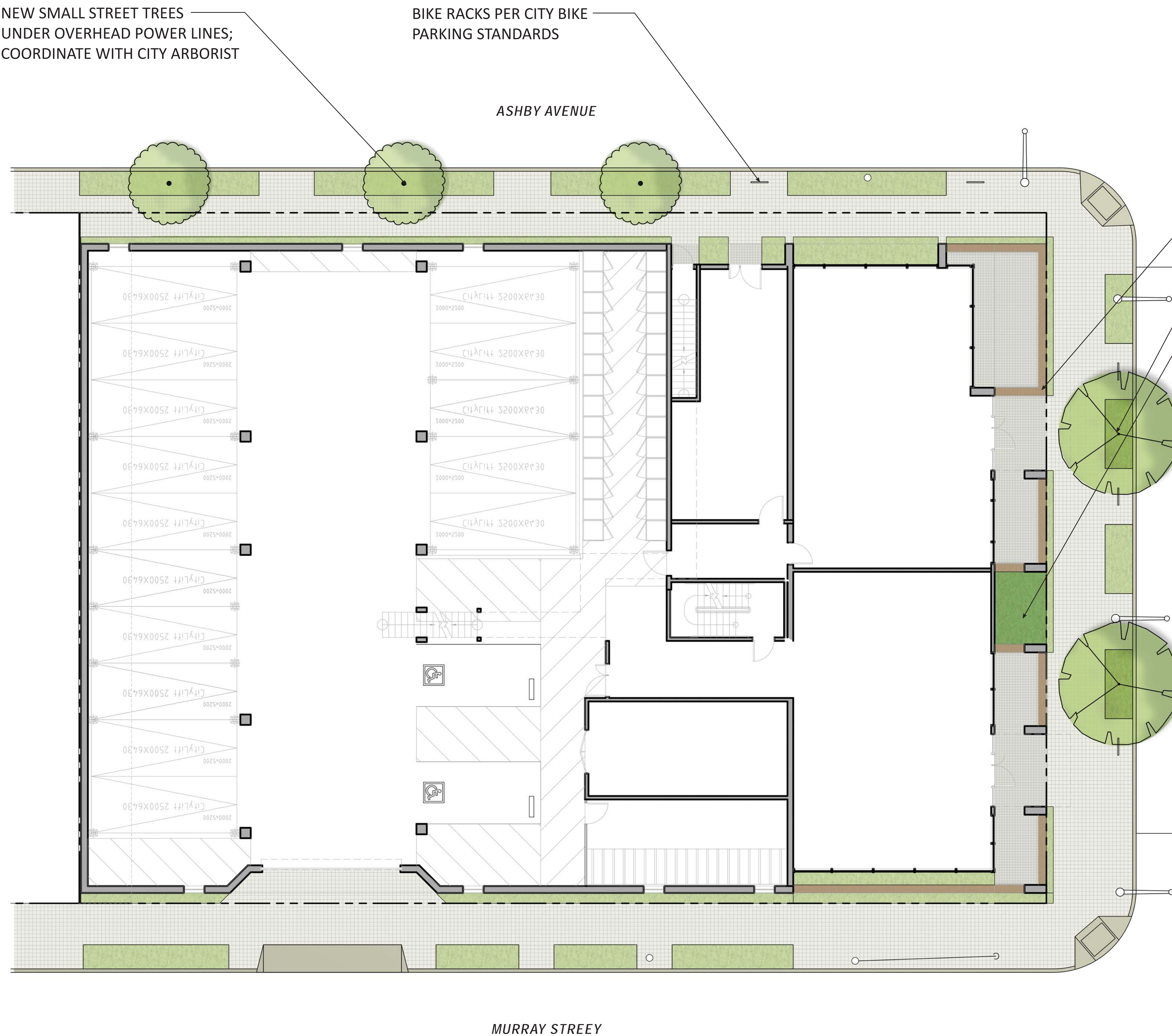
REFERENCE IMAGES



SEAT WALL

NEW SMALL STREET TREES  
 UNDER OVERHEAD POWER LINES;  
 COORDINATE WITH CITY ARBORIST

BIKE RACKS PER CITY BIKE  
 PARKING STANDARDS



TRACHTENBERG  
 ARCHITECTS

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

JETT  
 LANDSCAPE ARCHITECTURE + DESIGN

CRLA #3335 · 2 Theatre Square #218 · Orinda CA · 94563  
 925.254.5422 · www.jett.land

**AQUATIC  
 ASHBY**

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

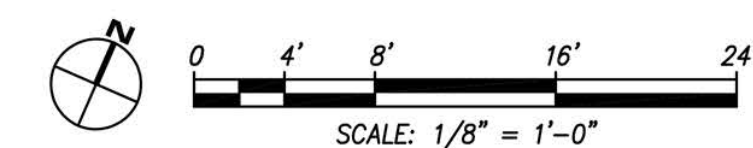
ALL DRAWINGS AND WRITTEN MATERIAL APPEARING  
 HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED  
 WORK OF THE ARCHITECT AND MAY NOT BE  
 DUPLICATED, USED OR DISCLOSED WITHOUT WRITTEN  
 CONSENT OF TRACHTENBERG ARCHITECTS.

JOB: 1901

SHEET:

LANDSCAPE CONCEPT  
 PLAN - GROUND LEVEL

**L1.01**



TRACHTENBERG  
ARCHITECTS

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

**JETT**  
LANDSCAPE ARCHITECTURE + DESIGN

CRLA #3335 · 2 Theatre Square #218 · Orinda CA · 94563  
925.254.5422 · www.jett.land

### AQUATIC ASHBY

3000 San Pablo Ave.  
Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

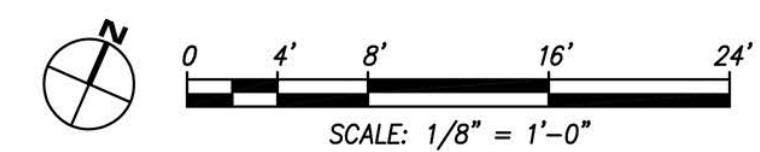
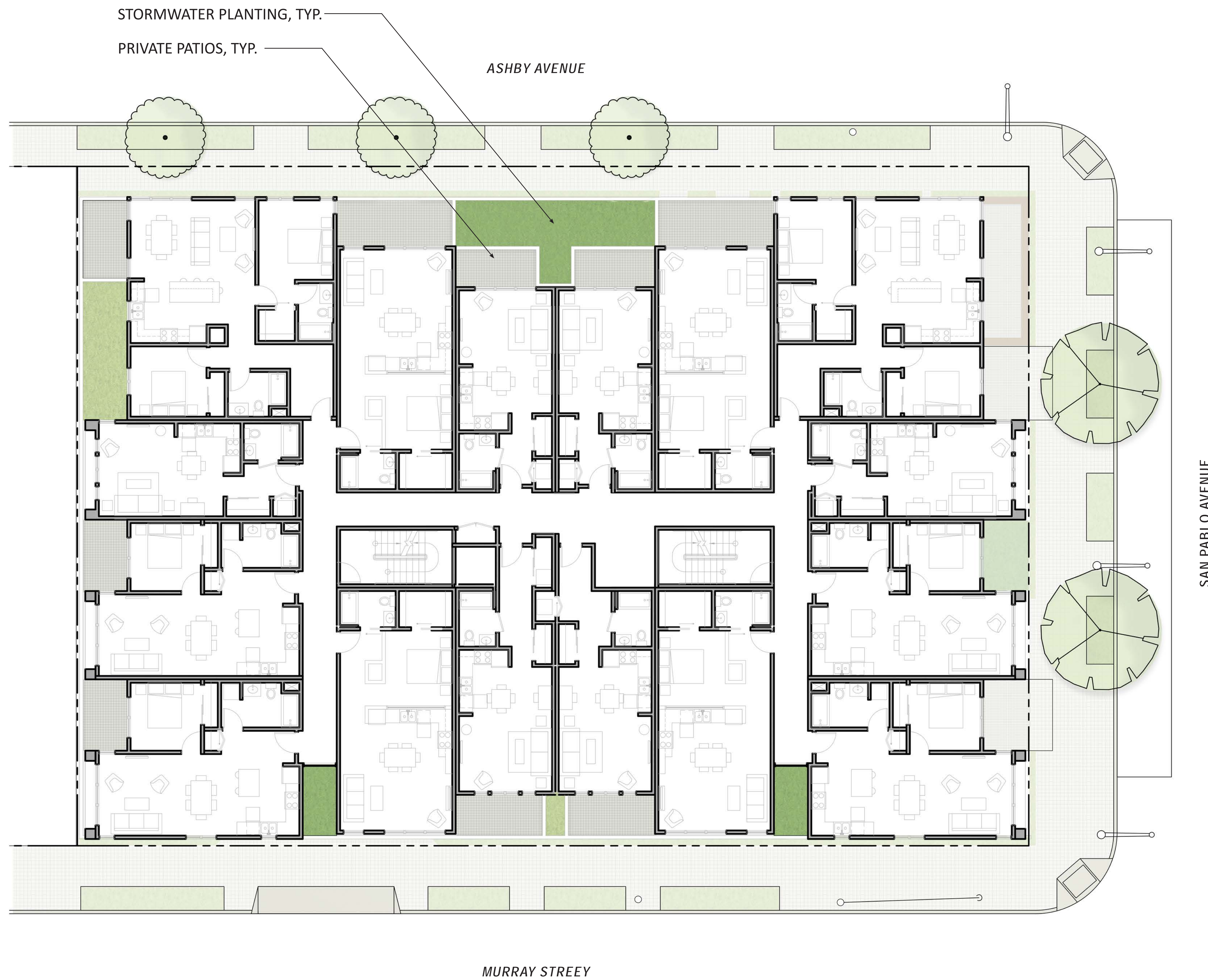
ALL DRAWINGS AND WRITTEN MATERIAL APPEARING  
HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED  
WORK OF THE ARCHITECT AND MAY NOT BE  
DUPLICATED, USED OR DISCLOSED WITHOUT WRITTEN  
CONSENT OF TRACHTENBERG ARCHITECTS.

JOB: 1901

SHEET:

LANDSCAPE CONCEPT  
PLAN - LEVELS 2-5

# L1.02



REFERENCE IMAGES



OUTDOOR KITCHEN



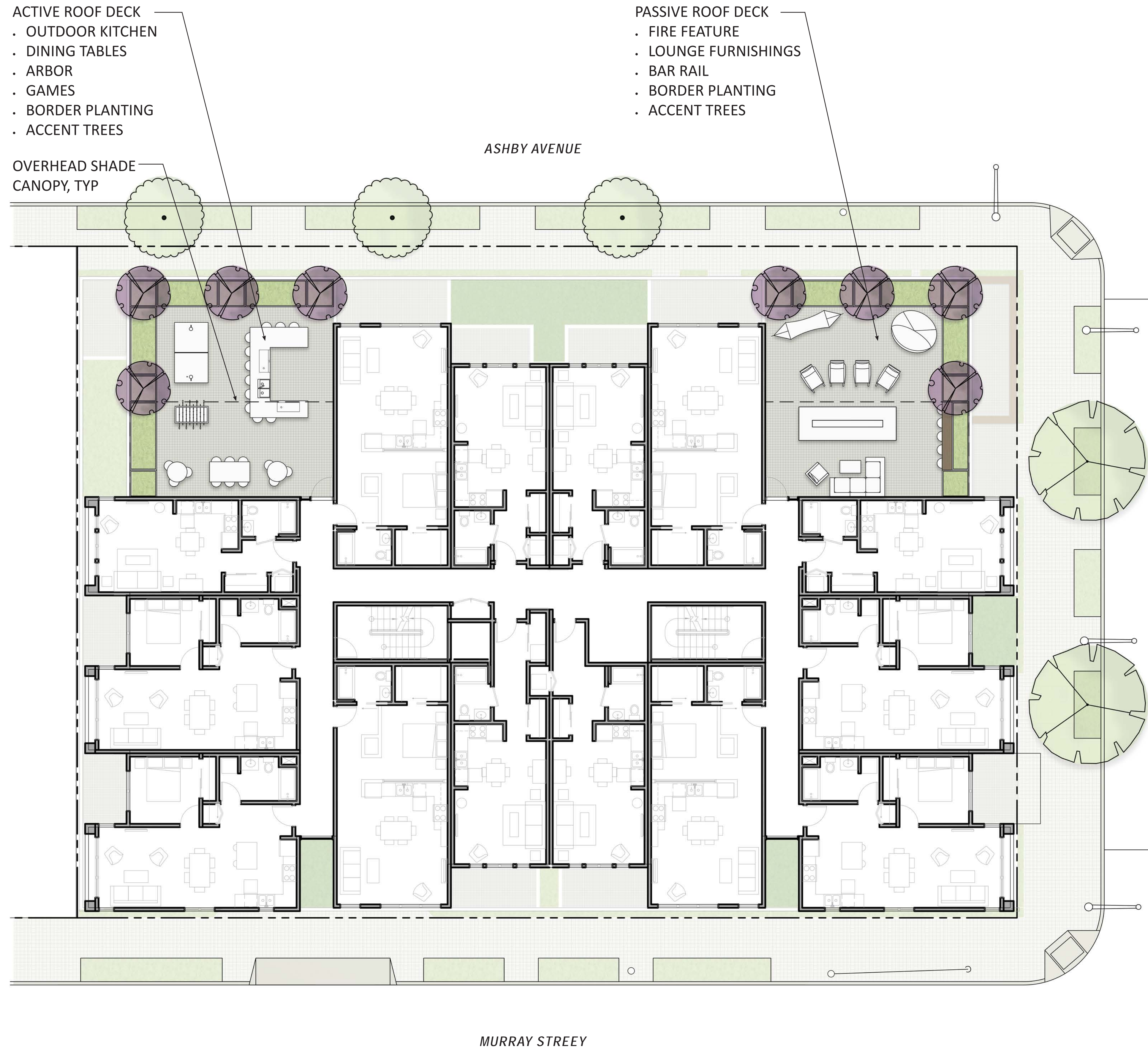
FIRE FEATURE



BAR RAIL



GAMES



TRACHTENBERG  
 ARCHITECTS

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

JETT

LANDSCAPE ARCHITECTURE + DESIGN  
 CRLA #3335 · 2 Theatre Square #218 · Orinda CA · 94563  
 925.254.5422 · www.jett.land

AQUATIC  
 ASHBY

3000 San Pablo Ave.  
 Berkeley, CA 94702

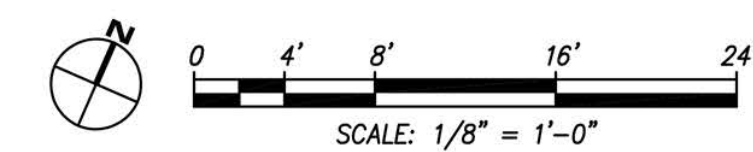
09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

LANDSCAPE CONCEPT  
 PLAN - LEVEL 6



L1.03



LARGE SHADE TREES

ACCENT/SMALL TREES



SHRUBS/GRASSES

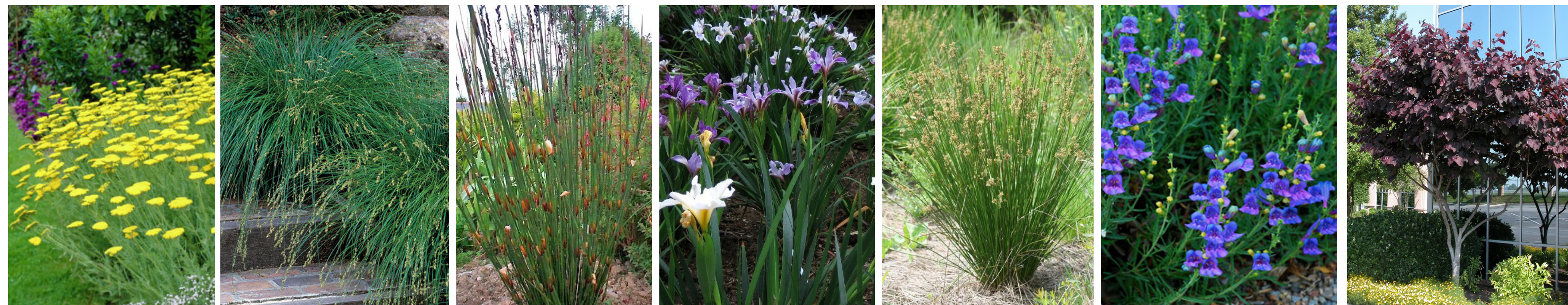


ACCENT PLANTING



GROUNDCOVER

VINES



C3 STORMWATER PLANTING

**PRELIMINARY PLANT PALETTE**

**LARGE SHADE TREES**

- BETULA NIGRA 'DURA HEAT' - RIVER BIRCH
- OLEA EUROPAEA 'SWAN HILL' - FRUITLESS OLIVE
- PLATANUS X ACERIFOLIA - LONDON PLANE TREE

**SMALL ACCENT TREES**

- ACER PALMATUM - JAPANESE MAPLE
- CERCIS OCCIDENTALIS - WESTERN REDBUD
- LAGERSTROEMIA INDICA - CRAPE MYRTLE
- LAURUS NOBILIS - SWEET BAY

**MEDIUM AND SMALL SHRUBS**

- AGAVE ATTENUATA - FOX TAIL AGAVE
- HELICTOTRICHON SEMPERVIRENS - BLUE OAT GRASS
- LOMANDRA LONGIFOLIUM
- PITTOSPORUM CRASSIFOLIUM - KARO
- POLYSTICHUM MUNITUM P WESTERN SWORD FERN

**ACCENT PLANTINGS**

- ANIGOZANTHOS - KANGAROO PAW
- CLIVIA MINIATA - KAFFIR LILY
- CORREA SPP - AUSTRALIAN FUCHSIA
- ECHEVERIA 'FRED IVES' - GRAPTOVERIA 'FRED IVES'
- LIBERTIA PEREGRINANS - ORANGE LIBERTIA
- PHORMIUM - NEW ZEALAND FLAX

**GROUNDCOVER**

- AJUGA REPTENS - BLUE BUGLE
- CEANOTHUS 'DIAMOND HEIGHTS' - VARIEGATED CALIFORNIA LILAC
- HELICHRYSUM PETIOLARE - LICORICE PLANT
- SENECIO SERPENS - BLUE CHALKSTICKS

**VINES**

- CLEMATIS ARMANDII - EVERGREEN CLEMATIS

**C3 STORMWATER PLANTING**

- ACHILLEA MILLEFOLIUM - YARROW
- CAREX DIVULSA - BERKELEY SEDGE
- CHONDROPETALUM TECTORUM - CAPE RUSH
- IRIS DOUGLASIANA
- JUNCUS PATENS - CA GRAY RUSH
- LOMANDRA LONGIFOLIA - DWARF MAT RUSH
- PENSTEMON 'BLUE SPRINGS' - FOOTHILL PENSTEMON
- CERCIS CANADENSIS 'FOREST PANSY'

**GENERAL PLANTING AND IRRIGATION NOTES:**

1. LANDSCAPE AND IRRIGATION PLANS SHALL COMPLY WITH THE CRITERIA OF THE CALIFORNIA MODEL WATER EFFICIENCY ORDINANCE AND APPLY THOSE CRITERIA FOR THE EFFICIENT USE OF WATER IN THE LANDSCAPE DESIGN PLAN.
2. LANDSCAPE AND IRRIGATION PLANS SHALL COMPLY WITH ALL APPLICABLE CITY CODES AND ORDINANCES.
3. ALL PLANTING AREAS SHALL BE TOP-DRESSED WITH A 3" LAYER OF ORGANIC, UN-DYED MULCH RECYCLED FROM LOCAL ORGANIC MATERIALS SUCH AS TREE TRIMMINGS, PLANT, OR CLEAN WOOD WASTE.
4. 50% OF ALL SHRUBS AND GROUNDCOVER SHALL BE A MINIMUM OF 5-GALLON SIZE OR LARGER.
5. IRRIGATION SYSTEM IS TO BE A FULLY AUTOMATIC WEATHER-BASED SYSTEM USING LOW FLOW DRIP AND BUBBLER SYSTEM.
6. STREET TREES SHALL BE TIED INTO IRRIGATION SYSTEM.



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



CRLA #3335 · 2 Theatre Square #218 · Orinda CA · 94563  
 925.254.5422 · www.jett.land

**AQUATIC  
 ASHBY**

3000 San Pablo Ave.  
 Berkeley, CA 94702

09.27.2019 ZONING SUBMITTAL

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

JOB: 1901

SHEET:

PLANT LEGEND,  
 IMAGES AND NOTES

**L1.04**





# PLANNING COMMISSION

## Notice of Public Hearing Wednesday, May 3, 2023

### Tentative Tract Map #8639 – 3000 San Pablo Ave

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 21.16.047, on **Wednesday, May 3, 2023 at 5:30 p.m.** at the **North Berkeley Senior Center**, 1901 Hearst Ave, Berkeley (wheelchair accessible).

The agenda will be posted on the Planning Commission website (<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>) no later than 5pm on Friday, April 28, 2023.

### PROJECT DESCRIPTION

Tentative Tract Map #8639 would subdivide 78 dwelling units (including 7 units available to very low-income households), and one commercial tenant space within a six-story mixed use building. The project would provide 1,248 square feet of commercial space, 2,320 square feet of usable open space, 38 long-term bicycle parking spaces, and 43 vehicular parking spaces. The development project was approved by the Zoning Adjustments Board (ZAB) on July 9, 2020.



**PROJECT APPLICANT:** David Trachtenberg, 2421 Fourth Street, Berkeley, CA 94710

#### LOCATION:

3000 San Pablo Ave, Berkeley CA, 94702

The zoning map is available online:

<https://berkeley.maps.arcgis.com/apps/webappviewer/index.html?id=2c7dfafbb1f64e159f4fdf28a52f51c6&showLayers=Berkeley%20Parcels;Base%20Data;Planning%20and%20Building>

**ENVIRONMENTAL REVIEW STATUS:** Construction of the project is categorically exempt pursuant to Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”), and approval of the Tentative Map is also categorically exempt pursuant to Section 15331 of the CEQA Guidelines, which involves the operations and permitting of existing facilities involving no expansion of use beyond prior approvals.

## **PUBLIC COMMENT & FURTHER INFORMATION**

---

All persons are welcome to attend the hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. Written comments must be directed to:

Zoe Covello  
Planning Commission Clerk  
Email: [PlanningPC@cityofberkeley.info](mailto:PlanningPC@cityofberkeley.info)

City of Berkeley, Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Correspondence received by **12 pm on Tuesday, April 25, 2023** will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12pm on Monday, May 1, 2023** will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication one day before the public hearing.
- Correspondence received by **5pm one day before this public hearing**, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication by 5pm on the day of the public hearing.
- Correspondence received after 5pm one day before this public hearing will be saved as part of the public record.

Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Planning Commission Secretary just before, or at the beginning, of the meeting.

## **COMMUNICATION ACCESS**

---

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. All materials will be made available via the Planning Commission agenda page online at: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.

## **FURTHER INFORMATION**

---

Questions should be directed to Brian Garvey, at (510) 981-7424 or [bgarvey@cityofberkeley.info](mailto:bgarvey@cityofberkeley.info).

Current and past agendas are available on the City of Berkeley website at: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: May 3, 2023

TO: Members of the Planning Commission

FROM: Zoe Covello, Assistant Planner  
Grace Wu, Principal Planner

SUBJECT: Amendments to Title 23 Relating to Accessory Dwelling Units (ADUs) to Conform to Current State Law and Guidance from the California Department of Housing and Community Development

---

### RECOMMENDATION

Planning Commission is asked to hold a public hearing, receive and provide comment on the proposed Zoning Ordinance amendments pertaining to Accessory Dwelling Units and Junior Accessory Dwelling Units, and make a recommendation for consideration by the City Council.

### SUMMARY

City staff have prepared amendments to Title 23 (Zoning Ordinance) of the Berkeley Municipal Code (BMC) in response to: (a) recent changes in State laws pertaining to Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (Junior ADU) that took effect on January 1, 2023, and (b) feedback from the California Department of Housing and Community Development (HCD) finding that the City of Berkeley's current ADU ordinance does not comply with State law.

These amendments will serve to bring the City's ADU ordinance into compliance with current State law and HCD guidance.

This report provides:

1. Background on Berkeley's existing ADU ordinance and fire safety concerns;
2. A summary of new State ADU Law;
3. A summary of HCD's finding of noncompliance and staff's proposed response for addressing the issues raised; and
4. Proposed Zoning Ordinance amendments and rationale.



## BACKGROUND

### ADU Regulations in the City of Berkeley

The City of Berkeley's current ADU Ordinance was amended in accordance with the State of California law (Government Code Sections 65852.2<sup>1</sup> and 65852.22<sup>2</sup>) and took effect on March 17, 2022. The primary ordinance regulating ADU development in the City is Berkeley Municipal Code (BMC), Chapter 23.306: Accessory Dwelling Units. This chapter allows ADUs on properties located in a zoning district that permits residential use, and provides development standards based on the location of the property. The ordinance currently includes separate development standards for properties that are located in certain zoning districts within the Hillside Overlay [R-1(H), R-2(H), R-2A(H)] and the ES-R district.

In addition to Chapter 23.306, the City adopted Chapter 12.99: Wildfire Hazard Evacuation Risk Mitigation Ordinance, which serves to *"permit and promote the construction of accessory dwelling units and junior accessory dwelling units while protecting human life and health, promoting the public health, safety, and general welfare, and minimizing public and private losses due to dangerous conditions in specific areas"* in accordance with Government Code 65852.2, subdivision (a)(1)(A), which allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."<sup>3</sup>

Chapter 12.99 was adopted in response to a short-term Council referral in January 2021. The referral provided direction to amend the local ADU zoning ordinance and Berkeley's Fire Code, requesting that a set of ordinance amendments and implementation programs be evaluated and recommended to Council to address emergency access and egress. The referral also requested parking and objective development standards to address the constraints presented by the high fire hazard conditions and narrow and curving roadways in Fire Zones 2 and 3.

In response to the January 2021 referral, Planning and Development Department staff proposed revisions to development standards to limit allowable ADU size and increase front yard setbacks in the City's Very High Fire Hazard Severity Zone, which encompasses a significant portion of the Hillside Overlay.

On April 7, 2021, the Planning Commission held a public hearing and recommended staff's proposed amendments to City Council, adding that the maximum height for ADUs be increased from 16 feet to 18 feet. City Council adopted Chapter 23.306 (Accessory Dwelling Unit Ordinance) as submitted by the City Manager with amendments from

---

<sup>1</sup> Government Code Section 65852.2,  
<https://leginfo.ca.gov/faces/selectFromMultiples.xhtml?lawCode=GOV&sectionNum=65852.2>

<sup>2</sup> Government Code Section 65852.22,  
[https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=65852.22](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=65852.22)

<sup>3</sup> Prior to adopting Chapters 23.306 and 12.99, the City had previously prohibited the construction of ADUs in the ES-R district (Zone 3) and on any lot with frontage on a roadway of less than 26 feet width in the Hillside Overlay, subject to discretionary review. After the ADU ordinance adopted in December 2019 expired on December 4, 2020, the City had been operating without any local provisions for ADUs; all ADUs in residential districts were regulated only by State law, allowing their development without regard to street width or parking.

Councilmember Kesarwani.<sup>4</sup> City Council further amended the ordinance with regards to the three-year rolling date for ADU conversions and the addition of balconies to prohibited projections.

On October 26, 2021, City Council referred to the City Manager a request to develop a set of public safety regulations that address public safety issues stemming from new development in fire-prone areas. Those safety regulations resulted in the adoption of Chapter 12.99 (Wildfire Hazard Evacuation Risk Mitigation Ordinance) on January 25, 2022.

### 2022 State ADU Law Updates - SB 897, AB 2221, and AB 2097

Three new State ADU laws took effect January 1, 2023, codified in Government Code section 65852.2 pertaining to ADUs, necessitating an update to the City of Berkeley's ADU ordinance. These new State ADU laws relate to:

- 1. Maximum height limits.** SB 897<sup>5</sup> increases ADU height standards for both attached and detached ADUs in the following circumstances:
  - An attached ADU on a lot in any permissible zoning district shall have a height limitation no less than 25 feet.
  - A detached ADU that is located either on a lot in any permissible zoning district that is within a 0.5 mile of a major transit stop or high-quality transit corridor as defined in Public Resources Code (PRC) Section 21155 or on a lot with an existing or proposed duplex or multi-family, multi-story (two or more stories) building shall have a height limitation of no less than 18 feet. An additional two feet (totaling 20 feet maximum height) is allowed for a detached ADU on a lot in any permissible zoning district that is within 0.5 miles of a transit stop or high-quality transit corridor as defined in PRC Section 21155 to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.
- 2. Prohibiting development standards that preclude 800 square foot ADUs.** Under AB 2221<sup>6</sup>, local agencies are prohibited from establishing lot coverage, floor area ratio, open space, or minimum lot size standards that would physically preclude construction of an 800 square foot ADU, including a minimum front setback.
- 3. Required connections between a Junior ADU and the main dwelling unit.** SB 897 requires both a separate entrance to the Junior ADU from the main entrance to the structure and an interior connection to the main living area of the

---

<sup>4</sup> Councilmember Kesarwani's amendments included protection for non-habitable space in multi-family buildings, clarified rules that apply to Accessory Structures being converted into ADUs, clarified owner occupancy requirements for JADUs, and modified noticing requirements for tenants and neighbors. <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-01-18%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf>

<sup>5</sup> Senate Bill 897, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB897](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB897).

<sup>6</sup> Assembly Bill 2221, [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB2221](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2221).

single family dwelling if a Junior ADU shares sanitation facilities with the primary dwelling unit.

- 4. Changes to off-street parking related to ADUs.** While parking may be provided voluntarily, per AB 2097<sup>7</sup> no off-street parking may be required for an ADU or a Junior ADU if the lot is located within a 0.5 mile of public transit, as defined in PRC Section 21155. Note, the existing ADU ordinance already has provisions for reduced parking requirements within a 0.5 mile walking distance of public transit.<sup>8</sup>

The proposed revisions to the zoning ordinance reflect these changes, which can be found in the Discussion section below.

#### 2022 Letter from HCD Requesting Amendments to the City's ADU Ordinance

On October 17, 2022, the City received a letter from HCD stating that they had reviewed the City's current ADU ordinances (BMC Sections 23.306 and 12.99, the "Ordinances") and found that the Ordinances do not comply with Government Code Section 65852.2 (see **Attachment 4**).

#### *Efficiency Kitchen Definition*

HCD found a discrepancy between the definition of "Efficiency Kitchen" contained within Ordinance No. 7,797-N.S. (Chapter 23.306) and Government Code §65852.22(a)(6)(A) and requested that the City remove the sink requirement from its zoning definition, as well as the reference to a working refrigerator in the definition of a "Junior Accessory Dwelling Unit."

#### *Wildfire Hazard Evacuation Risk Mitigation Ordinance*

Regarding Ordinance No. 7,799-N.S (Chapter 12.99), HCD found that the City did not make adequate findings with respect to ADU development impacts on traffic flow and public safety when the City adopted limitations on the quantity and size of ADU development in the Hillside Overlay.

HCD asserts that the traffic simulation study referenced in Chapter 12.99 is not specific to ADUs and Junior ADUs and therefore cannot be used to justify the restriction on the number of ADUs in the Hillside Overlay. Additionally, the traffic simulation study does not provide data on how many lots are likely to add ADUs, does not identify specific impacts new ADUs may have on evacuations, and does not account for the potential for ADUs to be excluded from requiring a parking space given the availability of public transit in the Hillside Overlay. Furthermore, HCD adds that even if the City adequately justified the restriction of ADUs under this subdivision, it may not justify restrictions on ADUs that fall under subdivision (e) because local development standards do not apply to ADUs created under Government Code section 65852.2, subdivision (e).

<sup>7</sup> Assembly Bill 2097, [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB2097](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2097).

<sup>8</sup> GOV 65852.2(j)(11) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

Government code section 65852.2, subdivision (e) requires local agencies to ministerially approve building permit applications for the creation of ADUs within a residential or mixed-use zone.

Regarding Section 12.99.030 – *Total Number of Units Permitted*, HCD asserts that the City’s decision to limit the number of units allowed per lot in the Hillside Overlay to one ADU *or* one Junior ADU conflicts with Government Code Section 65852.2, subdivisions (e)(1)(A), (B), (C), and (D), which requires a local agency to ministerially approve an application for a building permit within a residential or mixed-use zone to create one ADU *and* one Junior ADU per lot.

## DISCUSSION

To conform to State ADU law and respond to HCD’s letter, staff recommend amendments to Title 23 of the BMC that achieve the following purposes:

1. Remove standards that provide a distinction between parcels within and outside of the Hillside Overlay, and apply non-Hillside Overlay ADU standards citywide where residential uses are permitted<sup>9</sup>;
2. Bring the City’s zoning code into compliance with current State ADU law and guidance, including SB 897, AB 2221, and AB 2097; and
3. Clarify and/or correct minor technical edits associated with the related ordinance sections, and edit for consistency with existing BMC style guidelines.

### 23.106 Rules of Measurement

Consistent with the State Exemption ADU provisions of Subdivision (c) in Government Code 65852.2, staff propose amending 23.106.020(B) and 23.106.030(D) to exclude up to 800 square feet of area associated with an existing or proposed ADU or Junior ADU from lot coverage and gross floor area calculations. Presently, once an ADU is built, it counts towards lot coverage, which can mean that even minor future additions would require a Use Permit. By amending 23.106.020(B) and 23.106.030(D) to exclude up to 800 square feet of area, the regulation is consistent with State law, removes a barrier to development, and aligns with the State’s goal of incentivizing the development of ADUs.

### 23.306 Accessory Dwelling Units (Organization)

The proposed ordinance simplifies the ADU Chapter by consolidating seven sections into four, maintaining consistency with other Chapters of Title 23 (**see Table 1**).

---

<sup>9</sup> Staff will also recommend to City Council to repeal BMC Section 12.99. However, as this public hearing is only pertaining to Title 23 of the BMC, this action is not up for discussion this evening.

*Table 1: Chapter 23.306 - Existing and Proposed Sections*

Existing Sections	Proposed Sections
23.306.010– Purposes	23.306.010– Purpose
23.306.020– Applicability and Definitions	23.306.020– Applicability
23.306.030– Permit Procedures	23.306.030– Development Standards
23.306.040– Development Standards	23.306.040– Permit Procedures
23.306.050– Deed Restrictions	
23.306.060– Neighbor Noticing	
23.306.070– Rooftop Decks and Balconies	

23.306.010 Accessory Dwelling Units (Purpose)

The proposed ordinance adds a reference to the latest California Government Code Section 65852.1 and removes subsection (f) which states that the purpose of the chapter is to reduce potential impacts of new development in the Very High Fire Hazard Severity Zones (VHFHSZ), Wildland-Urban Interface Fire Areas, and Hillside Overlay. This allows for compliance with HCD’s finding that the current ordinances do not meet the exceptions included in State law that allow for the creation of a separate set of regulations in the Hillside Overlay.

23.306.020 Accessory Dwelling Units (Applicability)

The proposed ordinance removes subsection (b), which defines the Hillside Overlay for the purposes of this chapter, and removes the reference to Chapter 12.99, to comply with HCD’s finding that the City does not sufficiently justify the creation of a separate set of regulations in the Hillside Overlay.

The proposed amendment includes a new subsection clarifying that ADUs and Junior ADUs do not count towards density calculations established by the underlying zoning districts. This is consistent with HCD guidance in the HCD ADU Handbook Update.<sup>10</sup>

Staff also propose amending the maximum number of units permitted on a lot with a duplex or multi-family dwelling to allow for two detached ADUs *and* at least one interior ADU (**see Table 2**). In 2022 HCD changed its interpretation regarding the total number of ADUs that "must" be allowed by local governments on any given parcel. Whereas in the 2020 ADU Handbook, HCD wrote that "local governments are not required to allow (a) and (b) together or (c) and (d) together," in the 2022 ADU Handbook HCD rewrote that "local governments must allow (a) and (b) together or (c) and (d) together." Although this change in HCD's interpretation is not supported by any corresponding change in state law, the proposed ordinance is drafted to be consistent with HCD's new interpretation.

<sup>10</sup> HCD Accessory Dwelling Unit Handbook, <https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf>.

*Table 2: Existing and Proposed Maximum Density Standards on a Lot with a Duplex or Multi-Family Dwelling*

Existing Maximum Density	Proposed Maximum Density
Either: a. Up to two detached ADUs; <u>or</u> b. At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot.	Two detached ADUs <u>and</u> at least one interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot

**23.306.030 Accessory Dwelling Units (Development Standards)**

In response to HCD’s letter and to bring the development standards section into compliance with State law, staff propose removing standards that are specific to parcels located in the Hillside Overlay. Instead, the development standards apply to ADUs and Junior ADUs citywide.

Staff also recommend a number of technical revisions to the development standards section, including: removing Junior ADU standards from the development standards table and including all relevant information in subsection (B), as well as replacing footnotes from the development table with a subsection for supplemental standards.

Within subsection (C), staff propose technical edits to amend the provisions related to projections to align with other sections of the code, including permitting bay windows and balconies on attached ADUs outside of the Hillside Overlay as long as there remains at least a two-foot setback from property lines, as the code allows for non-ADUs of the same placement and size to have both. However, because detached ADUs are permitted to be built much closer to the property line than primary dwelling units (and attached ADUs), staff propose continuing to prohibit the projections of bay windows and balconies into setbacks for those types of ADUs citywide.

In addition to these technical revisions, a number of the standards have been changed to match State law. **Table 3** provides the proposed development standards and the rationale informing the recommended changes. This table does not include all ADU development standards; it only includes the standards that are proposed to be amended.

**Table 3: Proposed Revisions to ADU Development Standards & Rationale**

Basic Standard	Proposed Standards	Rationale/Intent
Building Height, Maximum	Detached, New Construction – 20 ft.	The maximum building height for Attached, New Construction has been increased from 20 ft. to 25 ft. to match State law (SB 897). The current maximum building height for Detached New Construction already exceeds the 18 ft. required by State law.
	Attached, New Construction – 25 ft.	
Lot Line Setbacks, Minimum	Front of Interior Lot – Same as underlying district	Staff propose adding a standard for front setbacks on through lots to ensure that there are standards for such parcels, consistent with existing regulations for Accessory Buildings.
	Front of Through Lot - Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer	
Building Separation for Detached ADU, Minimum	3 ft.	To conform with Building Code’s definition of attached versus detached buildings, staff propose adding a minimum building separation standard (in addition to a Detached ADU supplemental standard – see below).
Required Off-Street Parking Spaces	See 23.322.030 – Required Parking Spaces	Move to BMC 23.322 – Parking and Loading to be consistent with other parking standards.
<b>Supplemental Standard</b>		
State Exemption ADU	No lot coverage, floor area ratio, open space, front setback, or minimum lot size standard in the underlying district shall preclude at least an 800 square foot accessory dwelling unit.	To match the State Law.
Junior ADU Shared Sanitation Facility	If a Junior ADU shares a sanitary facility with a single family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.	To match the State Law.
Junior ADU Floor Area	The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single family dwelling.	To clarify the rules of measurement for gross floor area if a sanitation facility is shared.
Detached or Attached ADU	If an ADU is located within 3 feet of an exterior wall of a main building, it is considered attached.	See the rationale/intent for establishing a Building Separation, Minimum (above).

- **AUP for Addition over 14 feet.** While this section does not regulate residential additions, staff note that attached ADUs proposed as residential additions over 14 feet would be required to receive AUP approval in order to reach their maximum allowable height (they can now go up to 25 feet – see Table 3).<sup>11</sup> Removing the AUP process would be in keeping with the State’s intent to streamline the ADU development process and further remove barriers to

<sup>11</sup> Residential additions can go up to 14 ft., but require an AUP to go up to 28 ft.

development. The Planning Commission is asked to consider removing the AUP requirement for residential additions for attached ADUs.

### 23.306.040 Accessory Dwelling Units (Permit Procedures)

Under the current procedure, it is required that notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission of a building permit to the Planning Department, and shall include the project address, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor. The cost of materials, postage, and staff time is paid for by the applicant – currently a fixed fee of \$460.

The requirement for neighbor noticing presents a number of challenges for staff, applicants, and members of the public. ADU permits are building permits, and cannot be printed out or shared online with members of the public (unlike zoning permits). For neighbors interested in seeing proposed ADU plans, this means that they must visit the Permit Service Center in-person and look at the plans accompanied by a staff member. Additionally, ADU permits are non-discretionary permits, so members of the public ultimately do not have a means of providing feedback on or appealing a proposed ADU. Staff have found there is often an expectation from public posting or receiving notice of a proposed ADU that there is a public review process involved, and there is not.

- **Neighbor Noticing.** While staff made no changes to Neighbor Noticing, with the exception of moving it to the Permit Procedures section, staff are asking Planning Commission to consider removing the Neighbor Noticing requirement.

### 23.322.020 Parking and Loading (Applicability)

Per AB 2097, no off-street parking may be required for an ADU or a Junior ADU if the lot is located within a 0.5 mile of public transit, as defined in PRC Section 21155. The City of Berkeley's existing ADU ordinance already has provisions for reduced parking requirements within a 0.5 mile walking distance of public transit. To comply with AB 2097, staff recommend adding a location exemption for parking, which would state that "Off-street parking spaces are not required for new uses or buildings, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2." This change will also be brought as a part of the State Law Technical Edits ordinance amendments package, which is why it is shown in blue in **Attachment 1**.

Staff propose amending BMC Tables 23.322-1, 23.322-2, and 23.322-4 to specify off-street parking standards for ADUs in Residential, Commercial, and Manufacturing Districts (previously specified in Chapter 23.306). Staff also propose amending Table 23.322-1 to bring the residential off-street parking standards into compliance with State law by allowing for one parking space per ADU unless it is located within 0.5 miles of



public transit as defined in Section 21155 of the Public Resources Code or it satisfies the criteria defined in subdivision (d) of Government Code Section 65852.2.

#### BMC 23.322.080(E)(2) Other Setback Areas

This section, formerly referred as BMC 23.322.080(D)(2), is recommended to be amended to include the following standards:

- a. On a lot with an existing or proposed ADU, replacement of off-street parking for the main building or required off-street parking for an ADU, is allowed in any configuration on the lot, including within the front yard setback; or
- b. Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback.

Currently, parking flexibility only applies to replacement parking for main dwelling units and new parking provided for an ADU. To account for ADU projects seeking to provide new parking spaces for both the main dwelling and the ADU, staff propose allowing for the same flexibility in lot configuration for the main dwelling unit's proposed new parking space as is allowed for the ADU's parking space. Encouraging off-street parking in the Hillside Overlay can mitigate safety and evacuation access concerns.

#### 23.324.060 Exemptions to Nonconforming Uses, Structures, and Buildings

Notably, in the current ADU ordinance, minor alterations in nonconforming setbacks, such as for windows and doors, as well as minor excavations, require an AUP. To reduce the amount of process, time, and money for staff and applicants seeking to make minor alterations to their ADUs, staff propose allowing "by-right" alterations to nonconforming existing structures or buildings that are proposed to be converted to an ADU. Staff proposes to add BMC 23.324.060(C) to include the following standards:

*C. Accessory Dwelling Units.* The following additions or enlargements of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate:

1. Alterations of a portion of a building or structure (including windows and other openings) within a minimum required setback.
2. Alterations of a portion of a building or structure (including windows and other openings) exceeding the height limit.

#### 23.502.020 Defined Terms

*Junior ADU.* Staff proposes relocating the definition for "Junior Accessory Dwelling Unit" within the definition of "Accessory Dwelling Unit" and striking out the reference to a working refrigerator in response to HCD's findings.

*Addition, Major Residential.* The definition for “Addition, Major Residential” is recommended to be amended to add a subsection that exempts the floor area associated with an existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet, from qualifying. This would eliminate the requirement for an AUP to add an ADU or Junior ADU to a house, thus matching the State’s intent of streamlining the processing of ADU development locally.

*Efficiency Kitchen.* The proposed ordinance amends the definition of an “Efficiency Kitchen” by removing the requirement for a sink in response to HCD’s findings.

## **ENVIRONMENTAL REVIEW**

The project is statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h).

## **NEXT STEPS**

Staff recommend that Planning Commission adopt the proposed revisions. The next step will be to advance these proposed revisions – as well as repeal of Chapter 12.99 – to City Council.

Public safety remains a significant concern regarding increasing density in the Hillside Overlay. As stated in California Government Code Section 51175, the Legislature has found that wildfires pose a serious threat to the preservation of the public peace, health and safety. The legislature has determined that it is necessary that all levels of government work to implement preventive measures to ensure the preservation of the public peace, health, and safety.

Due to these state- and locally-recognized safety concerns, staff are working with the Fire Department to collect additional data on the health and safety impacts of increased development in the Hillside Overlay. On March 14, 2022, the Fire Department was authorized by the City Manager to execute a contract with KLD Engineering, P.C., for Evacuation and Response Time Modeling from April 1, 2023 through June 30, 2024 as part of an effort to collect data and forecast the number of vehicles and people that may need to be evacuated during a wildfire or other emergency.<sup>12</sup> The study will also be analyzing how major evacuation routes will operate under emergency conditions, and whether there would be any public safety impacts resulting from projected development of new ADUs, Junior ADUs, and their associated extra vehicles in the Very High Fire Hazard Severity Zone.

In addition to this study, the City is in the process of updating the Disaster and Safety Plan, which will similarly provide an opportunity to collect data and engage community

---

<sup>12</sup> Revised Agenda, Berkeley City Council Meeting, March 14, 2023. Item 4: Contract: KLD Engineering, P.C. for Evacuation and Response Time Modeling From: City Manager. <https://berkeleyca.gov/sites/default/files/city-council-meetings/2023-03-14%20REVISED%20Agenda%20Packet%20-%20Council%20%28WEB%29.pdf>

members, which could inform the making of findings to support the reinstatement of provisions or other controls on ADU production in the hills.

Staff plan to bring the Fire Department's study findings, as well as other potential research and community engagement findings, back to Planning Commission and City Council by summer 2024.

## **ATTACHMENTS**

1. Draft Amended ADU Ordinance
2. Ordinance No. 7,797-N.S. (Chapter 23.306), dated January 18, 2022.
3. Ordinance No. 7,799-N.S. (Chapter 12.99), dated January 25, 2022.
4. Letter from HCD - Review of Berkeley's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, § 65852.2), dated October 17, 2022.
5. Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENTS TO THE RULES OF MEASUREMENT (BMC 23.106), ACCESSORY DWELLING UNIT (ADU) ORDINANCE (BMC 23.306), PARKING AND LOADING (BMC 23.322), EXEMPTIONS TO NONCONFORMING USES, STRUCTURES, AND BUILDINGS (BMC 23.324.060), AND DEFINED TERMS (BMC 23.502.020) RELATING TO ADUS

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

Section 1. That Berkeley Municipal Code 23.106.020(B) is amended to read as follows:

B. *Exclusions.* The lot coverage calculation excludes:

1. Uncovered porches, landings and stairs;
2. Uncovered decks, except that a deck on the roof of a building or accessory structure or over an enclosed space or paved ground area is included in the lot coverage calculation; and
3. The area of the roof of a subterranean structure, when such a structure is not more than 3 feet above finished grade.
4. The area of any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 2. That Berkeley Municipal Code 23.106.030(D) is amended to read as follows:

D. *Excluded Areas.* The following areas are excluded from gross floor area calculation:

1. Covered or uncovered areas used for off-street parking or loading spaces.
2. Driveways ramps between floors and maneuvering aisles of a multi-level parking garage.
3. Mechanical, electrical, and telephone equipment rooms below finished grade.
4. Areas which qualify as usable open space.
5. Arcades, porticoes, and similar open areas for non-residential uses which are:
  - (a) Located at or near street level;
  - (b) Accessible to the general public; and
  - (c) Are not designed or used as sales, display, storage, service, or production areas.

6. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot. See 23.306 Accessory Dwelling Units.

Section 3. That Berkeley Municipal Code 23.306 is amended to read as follows:

**Sections:**

- 23.306.010– Purposes
- 23.306.020– Applicability ~~and Definitions~~
- 23.306.030– ~~Development Standards~~ Permit Procedures
- 23.306.040– ~~Permit Procedures~~ Development Standards
- ~~23.306.050– Deed Restrictions~~
- ~~23.306.060– Neighbor Noticing~~
- ~~23.306.070– Rooftop Decks and Balconies~~

**23.306.010 Purposes.**

~~The purposes of this Chapter are to~~ This Chapter establishes accessory dwelling unit (ADU) and junior accessory dwelling unit (JADU) standards that:

- A. Implement California Government Code Section 65852.1, 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.
- ~~F. Reduce potential impacts of new development in Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas as designated in the BMC Chapter 19.48 and as may be amended from time to time, and the Hillside Overlay District (HOD) due to unique conditions and hazards within these areas that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety consistent with Government Code 65852.2, subdivision (a)(1)(A), which allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."~~

**23.306.020 Applicability ~~and Definitions~~.**

- A. The provisions of this chapter apply to zoning districts where residential uses are permitted, on lots that have at least one existing or proposed Dwelling Unit or

Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.

~~B. For purposes of this Chapter the Hillside Overlay District (HOD) includes all lots within Berkeley's designated Very High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas that are zoned R-1H (Single Family Residential—Hillside Overlay), R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), or ES-R (Environmental Safety Residential).~~

~~B. *Number of ADUs and JADUs Permitted Per Lot.* See Table 23.306-1—ADU and Junior ADU Maximum Number of Units per Lot. Except as expressly modified by Chapter 12.99, the following number of ADUs and JADUs shall be the maximum number of accessory units permitted on lots subject to this Chapter.~~

~~C. *Density Exemption.* ADUs and Junior ADUs do not count towards the minimum or maximum density established by the underlying zoning district.~~

TABLE 23.306-1—ADU AND JUNIOR ADU MAXIMUM NUMBER OF UNITS PER LOT

<u>Use, Primary</u>	<u>ADU and JADU, Maximum Per Lot</u>
<u>Single Family Dwelling, one unit on lot</u>	<u>1 ADU and 1 JADU, both are permitted</u>
<u>Single Family Dwelling, more than one unit on lot</u>	<u>1 ADU</u>
<u>Duplex or Multi-Family Dwelling</u>	<u>2 detached ADUs and at least one interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot</u>
<u>Group Living Accommodation</u>	<u>1 ADU</u>

~~C.~~

- ~~1. Lot with one Single Family Dwelling: One ADU and/or one JADU.~~
- ~~2. Lot with more than one Single Family Dwelling: One ADU.~~
- ~~3. Lot with a Duplex or Multiple-Family Dwelling, either:
 
  - ~~(a) Up to two detached ADUs; or~~
  - ~~(b) At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot.~~~~
- ~~4. Lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory: One ADU~~

**23.306.030 Permit Procedures.**

- ~~A. *Zoning Certificate.* An application for an ADU or JADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including Development Standards, Deed Restrictions, and Neighborhood Noticing.~~
- ~~1. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a Building Permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.~~
  - ~~2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code Section 65852.2(e)(1).~~
  - ~~3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or JADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.~~

**23.306.0340 Development Standards.**

- A. *Basic Standards.* See Table 23.306-~~21~~: ADU ~~and JADU~~ Development Standards.

TABLE 23.306-~~21~~. ADU ~~AND JADU~~ DEVELOPMENT STANDARDS

<b><u>BASIC STANDARDS</u></b>		<b><u>SUPPLEMENTAL STANDARDS</u></b>
<u>Gross Floor Area, Maximum</u>		<u>23.306.030(A)(1);</u>
<u>Studio or 1 bedroom</u>	<u>850 sq. ft.</u>	<u>23.306.030(A)(2);</u>
<u>2+ bedrooms</u>	<u>1,000 sq. ft.</u>	<u>23.306.030(A)(3);</u> <u>23.306.030(A)(4)</u>
<u>Building Height, Maximum</u>		
<u>Conversion</u>	<u>Same as existing structure</u>	<u>23.306.030(A)(2);</u> <u>23.306.030(A)(4)</u>
<u>Detached, New Construction</u>	<u>20 ft.</u>	<u>23.306.030(A)(5)</u>
<u>Attached, New Construction</u>	<u>25 ft.</u>	<u>23.306.030(A)(5)</u>
<u>Lot Line Setbacks, Minimum</u>		
<u>Front of Interior Lot</u>	<u>Same as underlying district</u>	<u>23.306.030(A)(1)</u>
<u>Front of Through Lot</u>	<u>Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer</u>	<u>23.306.030(A)(6)</u>
<u>Rear</u>	<u>4 ft.</u>	
<u>Interior Side</u>	<u>4 ft.</u>	
<u>Street Side</u>	<u>4 ft.</u>	
<u>Building Separation for Detached ADU, Minimum</u>	<u>3 ft.</u>	<u>23.306.030(A)(5)</u>
<u>Required Off-Street Parking</u>	<u>See 23.322.030– Required</u>	

<u>Spaces</u>	<u>Parking Spaces</u>	
---------------	-----------------------	--

1. State Exemption ADU. No lot coverage, floor area ratio, open space, front setback, or minimum lot size standard in the underlying district shall preclude at least an 800 square foot accessory dwelling unit.
2. Existing Building Conversion. An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for maximum gross floor area in Table 23.306-2. ADU Development Standards is allowed a physical addition of no more than 150 square feet. The addition must comply with maximum height and setback requirements.
3. Duplex or Multi-Family Dwelling Conversion. Interior ADU(s) must be created entirely through non-habitable residential portions of the existing main building that are not within the living space of a dwelling unit (e.g. basement, attic, garages, storage room).
4. Accessory Building or Accessory Structure Conversion. An ADU converted from an accessory building or accessory structure legally established at least three years prior to submission of an ADU application that does not comply with the maximum height, size, and/or rear and side setback requirements is allowed to maintain non-conformity to the same dimensions of the existing accessory building or accessory structure, provided that the existing side and rear setbacks are sufficient for fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing accessory building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.
5. Detached or Attached ADU. Detached ADUs shall maintain a minimum 3-foot separation from other buildings on the lot. If an ADU is located within 3 feet of an exterior wall of a main building, it is considered attached for the purposes of applying the development standards in Table 23.306-2 ADU Development Standards.
6. Detached ADU Setback Exceptions. If there is a lesser setback allowed in 23.304.060-Accessory Buildings and Enclosed Accessory Structures for a comparable accessory building or accessory structure in the underlying zoning district, that setback shall apply.

	<b>ADU<sup>1</sup></b>	<b>JADU</b>
Maximum Size Outside of HOD <sup>2</sup>		500-sf
Studio or 1 bedroom	850-sf	N/A
2+ bedrooms	1000-sf	
Maximum Size Within HOD	800-sf	500-sf



	ADU <sup>4</sup>	JADU
Maximum Height Outside of HOD	20 ft.	N/A
Maximum Height Within HOD	16 ft.	
Front Yard Setback	Same as underlying district	
Rear Setback	4 ft <sup>3</sup>	
Side Setback	4 ft <sup>3</sup>	
Required Off-Street Parking Outside of HOD	None <sup>4</sup>	
Required Off-Street Parking Within HOD	The lesser of 1 space per bedroom or ADU <sup>5, 6</sup>	None <sup>6</sup>

~~[1] An ADU converted from an Accessory Building or Accessory Structure legally established at least three years prior to submission of an ADU application that does not comply with the Maximum Height, Size, and/or Rear and Side Setback requirements is allowed to maintain non-conformity to the same dimensions of the existing Accessory Building or Accessory Structure, provided that the existing side and rear setbacks are sufficient for fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing Accessory Building or Accessory Structure shall comply with the development standards in this table.~~

~~[2] An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for Maximum Size in this table is allowed a physical addition of no more than 150 square feet. The addition must comply with Maximum Height and Setback requirements in this table.~~

~~[3] If there is a lesser setback allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district, that setback shall apply.~~

~~[4] Replacement parking is not required. Replacement of off-street parking for the Main Building is allowed and does not need to comply with Parking Maximums (BMC 23.322.070) nor Parking Layout and Design (BMC 23.322.080).~~

~~[5] No off-street parking shall be required for ADUs that satisfy the criteria defined in subdivision (d) of California Government Code section 65852.2 or any successor provision thereto.~~

~~[6] If an applicant provides off-street parking for an ADU or a JADU in the HOD, parking shall be allowed in any configuration on the lot, including within the front yard setback.~~

## B. Junior ADUs.

1. Basic Standards. A Junior ADU shall be contained entirely within an existing or proposed single family dwelling or its attached garage, and have no more than 500 square feet in floor area.

2. Junior ADU Shared Sanitation Facility. If a Junior ADU shares a sanitary facility with a single family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.
3. Junior ADU Floor Area. The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single family dwelling.

B.C. Projections.

1. ~~Except as limited by Paragraph B.2 of this Section, architectural features (Outside of the Hillside Overlay.~~

(a) Attached ADU. Chimneys, ~~w~~Water ~~h~~Heater ~~e~~Enclosures, ~~f~~Flues, ~~h~~Heating and ~~c~~Cooling ~~e~~Equipment, ~~e~~Eaves, ~~c~~Cornices, ~~c~~Canopies, ~~a~~Awnings, ~~bay windows, and balconies~~) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines.

4.(b) Detached ADU. Chimneys, ~~water heater enclosures, flues, heating and cooling equipment, eaves, cornices, canopies, and awnings may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines.~~ ~~Bay windows and balconies shall may not project into a required setback.~~ ~~Bay windows and balconies shall not project into a setback.~~

2. Within the Hillside Overlay. No projections shall be allowed within ~~at~~the required setback ~~on lots that are within the Hillside Overlay District.~~

- 2.D. Rooftop Decks within the Hillside Overlay. Roofs on detached ADUs within the Hillside Overlay may not be designed, converted, or used as usable open space.

**23.306.0450 Permit Procedures Deed Restrictions.**

A. Zoning Certificate. An application for an ADU or Junior ADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including development standards, deed restrictions, and neighborhood noticing.

1. If an application to create an ADU or Junior ADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a building permit shall not be issued for the ADU or Junior ADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired. See 23.404.060(A) Post-Decision Provisions (Effective Dates).
2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or Junior ADU that complies with the requirements of Government Code Section 65852.2(e)(1).

3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or Junior ADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.

B. Neighbor Noticing.

1. Scope and Timing of Notice. Notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department.
2. Content of Notice. Notice shall provide the address of the project, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor by e-mail or phone.
3. Mailing Fees. The applicant shall be responsible for the cost of materials, postage and staff time necessary to process and mail notices.

A.C. Deed Restriction. The property owner shall file a deed restriction with the Alameda County Recorder which states:

- The Junior ADU shall not be sold separately from the main building;
- The ADU shall not be sold separately from the main building unless the conditions of BMC 23.306.0450(D) ADUs Developed by a Qualified Nonprofit Developer -B are met;
- The ADU and/or Junior ADU shall not be rented for a term that is shorter than 30 days; and
- If the property includes a Junior ADU, the Junior ADU, or the Single Family Dwelling in which the Junior ADU is located, shall be owner-occupied.

B.D. ADUs Developed by a Qualified Nonprofit Developer. An ADU built or developed by a "qualified nonprofit corporation" may be sold or conveyed separately from the mMain bBuilding to a "qualified buyer," as such terms are defined in subdivision (b) of Section 65852.26 of the California Government Code. The ADU must be held pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:

- Delineation of all areas of the property that are for the exclusive use of a cotenant;
- Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;
- Procedures for dispute resolution among cotenants before resorting to legal action;

4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;
6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence; and
7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility.

~~23.306.060 Neighbor Noticing.~~

~~A. *Scope and Timing of Notice.* Notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department.~~

~~B. *Content of Notice.* Notice shall provide the address of the project, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.~~

~~C. *Mailing Fees.* The applicant shall be responsible for the cost of materials, postage and staff time necessary to process and mail notices.~~

~~23.306.070 Rooftop Decks and Balconies.~~

~~A. Notwithstanding any provisions of this Title to the contrary, roofs on lots within the Hillside Overlay District may not be designed, converted or used as Usable Open Space.~~

Section 4. That Berkeley Municipal Code 23.322.020 is amended to read as follows:

**23.322.020– Applicability**

- A. *New Uses and Buildings.* In all districts, off-street parking and loading as required by this chapter shall be provided when:
  1. A new building is constructed or moved onto a lot; and
  2. A new use is established where no use previously existed.

B. *Enlargement and Intensification.*

1. Where an existing use or structure is enlarged or intensified, but where there is no change in use, additional off-street parking and loading is required to serve only the enlarged or intensified area. Additional parking is not required to remedy parking deficiencies existing before the expansion or enlargement.
2. As used in this section, enlarging or intensifying a use or structure includes, but is not limited to adding or creating floor area, dwelling units, guest rooms, seats, or employees.

C. *Changes of Use.*

1. *Commercial Districts.* In the Commercial Districts, off-street parking is required for a change in use only when the structure is expanded to include new floor area.
2. *Manufacturing and R-SMU Districts.*
  - (a) In the Manufacturing and R-SMU districts, off-street parking is required for a change in use only when:
    - i. The structure is expanded to include new floor area; and/or
    - ii. The use is changed to one with a numerical parking standard greater than the district minimum.
  - (b) If the new use is changed to one with a higher numerical parking standard than the district minimum, the new use must provide the incremental difference between the two numerical parking standards. A higher numerical parking standard may be reduced to the district minimum as provided in Section 23.322.050(A)(2) (Change of Use).
  - (c) As used in this section, the “district minimum” parking requirement is:
    - iii. 2 spaces per 1,000 square feet of floor area in the Manufacturing Districts; and
    - iv. 1 space per 1,000 square feet of floor area in the R-SMU district.
3. **All Other Residential Districts.** In all Residential Districts except for R-SMU, off-street parking spaces are required for all changes in use.

D. *Location Exemption.* Off-street parking spaces are not required for new uses or buildings, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2.

Section 5. That Berkeley Municipal Code Table 23.322-1 is amended to read as follows:

TABLE 23.322-1: REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

Land Use	Number of Required Off-street Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	<u>Junior ADU: None required</u> <u>ADU outside of Hillside Overlay: None required</u> <u>ADU within Hillside Overlay: 1 per ADU unless satisfies the criteria in subdivision (d) of Government Code Section 65852.2. See Chapter 23.306</u>
Dwellings, including Group Living Accommodations	<u>R-3, R-4, and R-5 Districts (1-9 units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit.</u> <u>R-3, R-4, and R-5 District (10 or more units): If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per 1,000 sq. ft. of gross floor area</u> <u>All Other Districts: If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit</u> <u>All Other Locations: None required</u>
Dormitories, Fraternity and Sorority Houses, Rooming & Boarding Houses, Senior Congregate Housing	<u>If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager.</u> <u>All Other Locations: None required.</u>
Rental of Rooms	<u>If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers</u> <u>All Other Locations: None required</u>
<b>Non-Residential Uses</b>	
All non-residential uses except uses listed below	<u>R-SMU District: 1 per 1,000 sq. ft.</u> <u>R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft.</u> <u>All Other Residential Districts: See 23.322.030.A.2</u>
Community Care Facility	<u>R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft.</u> <u>All Other Residential Districts: <del>One per two non-resident employees</del> <u>None required</u></u>
Food Service Establishment	<u>R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft.</u> <u>All Other Residential Districts: 1 per 300 sq. ft.</u>
Hospital	<u>R-SMU District: 1 per 1,000 sq. ft.</u>

Land Use	Number of Required Off-street Parking Spaces
	<u>R-BMU District</u> : None required; no more than 1.5 spaces per 1,000 sq. ft. All Other Residential Districts: 1 per each 4 beds plus 1 per each 3 employees
Library	R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft. All Other Residential Districts: 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft. All Other Residential Districts: 1 per 300 sq. ft.
Non-Medical Offices	<u>R-SMU District</u> : 1 per 1,000 sq. ft. R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft. All Other Residential Districts: 1 per 400 sq. ft.
Hotels, Tourist	1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees
[1] Excludes community care facilities which under state law must be treated in the same manner as a single-family residence.	

Section 6. That Berkeley Municipal Code Table 23.322-2 is amended to read as follows:

TABLE 23.322-2: REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)

Land Use	Required Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	<del>See Chapter 23.306</del> None required
Dwellings, including Group Living Accommodations	<u>If located on a roadway less than 26 feet. in width in the Hillside Overlay</u> : 1 per unit <u>All Other Locations</u> : None required
Hotel, Residential	None required
Mixed-Use Residential (residential use only)	None required
Senior Congregate Housing	None required
<b>Non-Residential Uses</b>	

Land Use	Required Parking Spaces
All non-residential uses except uses listed below	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Hospital	1 per each 4 beds plus 1 per each 3 employees
Library	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 1 per 500 sq. ft. of publicly accessible floor area
Nursing Home	1 per 3 employees
Medical Practitioners	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 1 per 300 sq. ft.
Hotels, Tourist	<u>C-DMU District</u> : 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts</u> : 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Motels, Tourist	<u>C-DMU District</u> : 1 per 3 guest/sleeping rooms or suites <u>C-C, C-U, C-W Districts</u> : 1 per guest/sleeping room plus 1 for owner or manager [1] <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Large Vehicle Sales and Rental	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-SA District</u> : 1 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Small Vehicle Sales and Service	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-SA District</u> : 1 per 1,000 sq. ft. <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Manufacturing	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-W District</u> : 1 per 1,000 sq. ft [1] <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Wholesale Trade	<u>C-DMU District</u> : 1.5 per 1,000 sq. ft. <u>C-W District</u> : 1 per 1,000 sq. ft <u>All Other Commercial Districts</u> : 2 per 1,000 sq. ft.
Live/Work	If workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area
<u>Notes:</u> [1] Spaces must be on the same lot as building it serves	

Section 7. That Berkeley Municipal Code Table 23.322-4 is amended to read as follows:



TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

Land Use	Required Parking Spaces
<b>Residential Uses</b>	
Accessory Dwelling Unit	<del>See Chapter 23.306</del> <u>None required</u>
Dwellings	None required
Group Living Accommodation	None required
<b>Non-Residential Uses</b>	
All non-residential uses except uses listed below	2 per 1,000 sq. ft.
Art/Craft Studio	1 per 1,000 sq. ft.
Community Care Facility	<del>1 per 2 non-resident employees</del> <u>None required</u>
Food Service Establishment	1 per 300 sq. ft.
Library	1 per 500 sq. ft. of publicly accessible floor area
Laboratories	1 per 650 sq. ft.
Nursing Home	1 per 5 residents, plus 1 per 3 employees
Medical Practitioners	One per 300 sq. ft.
Large Vehicle Sales and Rental	<u>MU-LI District:</u> 1.5 per 1,000 sq. ft. <u>All Other Districts:</u> 1 per 1,000 sq. ft. of display floor area plus 1 per 500 sq. ft. of other floor area; 2 per service bay
Manufacturing	<u>MU-R District:</u> 1.0 per 1,000 sq. ft. <u>All Other Districts:</u> 1 per 1,000 sq. ft. for spaces less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Storage, warehousing, and wholesale trade	1 per 1,000 sq. ft. for spaces of less than 10,000 sq. ft.; 1 per 1,500 sq. ft. for spaces 10,000 sq. ft. or more
Live/Work	<u>MU-LI District:</u> 1 per 1,000 sq. ft. of work area where workers/clients are permitted <u>MU-R District:</u> if workers/clients are permitted in work area, 1 per first 1,000 sq. ft. of work area and 1 per each additional 750 sq. ft. of work area
<b>Notes:</b> [1] For multiple dwellings where the occupancy will be exclusively for persons over the age of 62, the number of required off-street parking spaces may be reduced to	

Land Use	Required Parking Spaces
25% of what would otherwise be required for multiple-family dwelling use, subject to obtaining a Use Permit.	

Section 8. That Berkeley Municipal Code 23.322.080 is amended to read as follows:

### **23.322.080– Parking Layout and Design**

#### *A. Traffic Engineering Requirements.*

1. All off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way must conform to the City of Berkeley’s Traffic Engineering requirements.
2. The Traffic Engineer shall determine whether the size, arrangement, and design of off-street parking spaces, access driveways, circulation patterns, and ingress and egress connections to the public right-of-way are adequate to create usable, functional, accessible, and safe parking areas, and are adequately integrated with Berkeley’s overall street pattern and traffic flows.

*B. Dimensional Standards.* Dimensional requirements and standards for off-street parking spaces, driveways, and other access improvements, and maneuvering aisles shall be incorporated in administrative regulations, subject to the review and approval by the City Manager and ZAB.

*C. Access Orientation in Non-Residential Districts.* Access to new parking areas in a Non-Residential District that serve commercial uses shall be oriented in such a way as to minimize the use of streets serving primarily residential uses.

*D. Residential Parking Lots in Non-Residential Districts. Parking lots in a non-residential district used exclusively for residential parking must comply with standards in Section 23.322.080 that apply in Residential Districts.*

#### ~~*E.*~~ *Placement--Residential Districts.*

1. *Side Setback Areas.*
  - (a) One new off-street parking space in a required side setback area, where none exists, is allowed by right.
  - (b) The space must be constructed of a permeable surface unless the Public Works Department or Office of Transportation determines it is infeasible.
  - (c) The space must be screened as required by 23.322.080.HG (Screening).
  - (d) The location of the space shall minimize impact on usable open space.

2. *Other Setback Areas.* No portion of an off-street parking space may be located in a required front, street side, or rear setback area unless:

(a) ~~The parking space location is authorized by Chapter 23.306 (Accessory Dwelling Units)~~On a lot with an existing or proposed ADU, replacement of required off-street parking for the main building or required off-street parking for an ADU is allowed in any configuration on the lot, including within the front setback; or

(b) Within the Hillside Overlay on a lot with an existing or proposed ADU, where no legal off-street parking exists for the main building, required parking provided for the main building is allowed in any configuration on the lot, including within the front yard setback; or

~~(b)~~(c) The Zoning Officer approves an AUP, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.

3. *Multifamily Buildings.*

(a) An off-street parking space may not be located closer than 10 feet in horizontal distance from a door or a window of a building with three or more dwelling units where the space is on the same or approximately the same level as the building.

(b) For the purposes of this section, a window whose bottom edge or point is more than 6 feet in vertical height from the level of the subject off-street parking space is not considered on the same or approximately the same level.

(c) The Zoning Officer may approve an ~~d~~ AUP to grant an exception to this requirement.

E.F. *Placement--Non-Residential Districts.*

1. *Where Prohibited.* Except when otherwise allowed by this chapter, ground-level off-street parking spaces are not permitted within 20 feet of the lot's street frontage unless the parking is entirely within a building with walls.

2. *Corner Lots.* For a corner lot, the ZAB may approve a Use Permit to allow the parking within 20 feet of the street frontage facing the secondary street.

3. *C-W District.*

(a) Off-street automobile parking in the C-W district is not permitted between the front lot line and a main structure within a designated node.

(b) Outside of a designated node, off-street automobile parking may be allowed between the front lot line and a main structure with a Use Permit or AUP. If the project requires ZAB approval, a Use Permit is required. An AUP is required for all other projects.

- (c) To approve the AUP or Use Permit, the review authority must find that one or more of the following is true:
- i. Parking in the rear or on the side of the property is impractical because of the lot's depth and/or width.
  - ii. Parking in the rear of the property would result in adverse impacts on abutting residential or other uses.
  - iii. Parking in the rear or on the side of the property would result in the placement of a driveway in an unsafe location.
  - iv. Continuation or re-establishment of parking in front of the building is necessary for the reuse of an existing structure which is substantially set back from the front lot line.

**F.G. Grade Change.** This subsection applies to off-street parking spaces in all districts, except for parking decks in Residential Districts.

1. The difference in elevation between a parking space and the finished grade on adjacent areas of the lot may not exceed 5 feet at any point.
2. Where there is a difference in elevation between a parking space and adjacent finished grade, the parking space shall be setback from a lot line as shown in Table 23.322-7.

TABLE 23.322-7. REQUIRED SETBACKS FOR PARKING SPACES WITH ADJACENT GRADE CHANGES

DIFFERENCE IN ELEVATION	MINIMUM SETBACK
Parking space lower than finished grade	
3 to 5 ft	4 ft.
Less than 3 ft	No min. setback
Parking space higher than finished grade	6 ft.

**G.H. Screening.**

1. Table 23.322-8 shows required parking space screening. Screening must effectively screen parked vehicles from view from buildings and uses on adjacent, abutting, and confronting lots. Screening may not interfere with pedestrian safety.

TABLE 23.322-8. REQUIRED PARKING SPACE SCREENING

DISTRICTS	WHEN REQUIRED	REQUIRED SCREENING FEATURE	SCREENING FEATURE HEIGHT
All Residential Districts	2 or more parking spaces, or any parking space partly	Continuous view-obscuring wood fence, masonry wall, or evergreen hedge which	4 ft. min and 6 ft. max.

	or entirely within a required rear setback area	may be broken only for access driveways and walkways	
All Commercial and Manufacturing Districts	2 or more parking spaces	Wall, fence, or evergreen shrubbery hedge in a landscape strip	Parking adjacent to public right-of-way or front lot line: 3 ft. min. and 4 ft. max. Parking adjacent to rear or side lot line: 4 ft. min and 6 ft. max.

2. In the C-W, M, MM, MU-LI districts, screening and landscape buffers are not required for any portion of a parking lot adjacent to Third Street (Southern Pacific Railroad).

**H.I. Landscape Buffers.**

1. All paved areas for off-street parking spaces, driveways, and any other vehicle-related paving must be separated from adjacent lot lines and the public right-of-way by a landscaped strip as shown in Table 23.322-9.

TABLE 23.322-9. REQUIRED LANDSCAPE BUFFERS

DISTRICT/NUMBER OF SPACES	MINIMUM WIDTH OF LANDSCAPE STRIP	
	AREAS ADJACENT TO SIDE OR REAR LOT LINES	AREAS ADJACENT TO PUBLIC RIGHT-OF-WAY OR FRONT LOT LINE
Residential Districts		
1-3 spaces	2 ft.	2 ft.
4 spaces or more	4 ft. [1]	4 ft. [1]
Commercial and Manufacturing Districts		
1 space	None required	None required
2-3 spaces	2 ft.	3 ft.
4 spaces or more	4 ft. [1]	4 ft. [1]

Note:

[1] Calculated as average width along the full length of landscape strip.

2. In all districts, this landscape buffer requirement does not apply to driveways that serve two adjacent lots when adjacent to a side lot line.
3. In the Residential Districts, this landscape buffer requirement also does not apply to pedestrian walkways that are separated from such areas by a landscaped strip at least two feet wide.

~~J.~~J. *Paved Setback Areas.* In Residential Districts, the total area of pavement devoted to off-street parking spaces, driveways, and other vehicle-related paving may not exceed 50 percent of any required setback area that runs parallel to and abuts a street.

~~J.~~K. *Driveway Width.*

1. A driveway may not exceed 20 feet in width at any lot line abutting a street or one-half of the width of the street frontage of the lot, whichever is less.
2. In a Non-Residential district, the Zoning Officer may modify this requirement with an AUP.

~~K.~~L. *Driveway Separation.* On a single lot in a Residential District, driveways must be spaced at least 75 feet from one another, as measured along any continuous lot line abutting a street.

~~L.~~M. *Tandem Parking.* Tandem spaces that provide required off-street parking require an AUP, except when allowed by right by Chapter 23.306 (Accessory Dwelling Units).

~~M. Residential Parking Lots in Non-Residential Districts. Parking lots in a non-residential district used exclusively for residential parking must comply with standards in this section that apply in Residential Districts.~~

N. *Carports.* A carport shall meet the minimum horizontal and vertical dimensions specified by the City's Traffic Engineer to be used for one or more legal parking spaces required under this chapter.

Section 9. That Berkeley Municipal Code is amended to add a new Section 23.324.060(C) to read as follows:

C. Accessory Dwelling Units. The following additions or enlargements of a lawful nonconforming existing structure or building that is an existing ADU or proposed to be converted to an ADU are permitted with a Zoning Certificate:

1. Alterations of a portion of a building or structure (including windows and other openings) within a minimum required setback.
2. Alterations of a portion of a building or structure (including windows and other openings) exceeding the height limit.

Section 10. That Berkeley Municipal Code 23.502.020(A)(4) is amended to read as follows:

4. Accessory Dwelling Unit (ADU). An attached or detached secondary dwelling unit that is located on the samea lot as a proposed or existing single family dwelling, duplex, multi-family dwelling use, or group living accommodation in a zoning

~~district where residential uses are permitted and provides independent living facilities for one or more persons. An ADU must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: Exterior or independent access to the ADU, living and sleeping quarters, a full kitchen, and a full bathroom. An ADU also includes the following: (a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code, or (b) A manufactured home, as defined in Section 18007 of the Health and Safety Code.~~

~~—*Junior Accessory Dwelling Unit (JADU)*. A unit that is contained entirely within the walls of an existing or proposed single family dwelling, or a single family dwelling unit's attached garage. A JADU must include a separate exterior entrance and, at minimum, an efficiency kitchen with a working refrigerator. A JADU may include separate sanitation facilities or may share sanitary facilities with a single family dwelling. The property owner must reside in either the Single Family Dwelling or the JADU.~~

~~4. with a proposed or existing Single Family Dwelling, Duplex, Multi-Family Dwelling Use or Group Living Accommodation. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: 1) exterior or independent access to the Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:~~

~~(a) An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.~~

Section 11. That Berkeley Municipal Code 23.502.020(A)(8) is amended to read as follows:

8. *Addition, Residential*. The creation of any new portion of a main building which results in a vertical or horizontal extension of the building, or results in additional residential gross floor area to an existing main building, as long as such new gross floor area does not exceed 15 percent of the lot area or 600 square feet, whichever is less. For purposes of this definition gross floor area does not include:

- (a) Additions of gross floor area devoted to required off-street parking spaces, creation of mezzanines or lofts within the building's shell;
- (b) Making previously unusable attics into habitable floor area (except where new areas with vertical clearance of 6 feet or greater are created through expansions of the building shell);

(c) Excavations of earth within the existing building footprint (i.e. expansion of existing basements or new basements), or

(d) Replacement of existing floor area that was lawfully constructed and is located entirely within the addition's shell.

~~(d)~~(e) The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.

Section 12. That Berkeley Municipal Code 23.502.020(A)(9) is amended to read as follows:

9. *Addition, Major Residential.*

(a) A residential addition greater than 15 percent of the lot area or 600 square feet. Floor area from all residential additions since October 31, 1991, with the exception of:

i. Additions that are entirely subsumed within previously existing floor area; and

ii. The floor area associated with any existing or proposed accessory dwelling unit or junior accessory dwelling unit, up to 800 square feet per lot.

(b) The floor area of subsequent stories where the addition does not exceed the district residential addition height limit, shall count towards the calculation of gross floor area for the purposes of this definition.

(c) Any new floor, except as exempted under (9)(a), shall be treated as a new major residential addition for the purpose of permit processing, when the cumulative square footage exceeds 15 percent of the lot area or 600 square feet, whichever is less.

Section 13. That Berkeley Municipal Code 23.502.020(E)(1) is amended to read as follows:

1. *Efficiency Kitchen.* A ~~kitchen that includes a sink, a~~ cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.

Section 14. That Berkeley Municipal Code 23.502.020(J) is amended to read as follows:

J. "J" Terms.



~~1. *Junior Accessory Dwelling Unit (JADU)*. A unit that is contained entirely within the walls of a Single Family Dwelling. A JADU must include a separate exterior entrance and an Efficiency Kitchen with a working refrigerator. A JADU may include separate sanitation facilities or may share sanitary facilities with a Single Family Dwelling. The property owner must reside in either the Single Family Dwelling or the JADU.~~

ORDINANCE NO. 7,797-N.S.

AMENDMENTS TO THE ACCESSORY DWELLING UNIT (ADU) ORDINANCE (BMC 23.306) AND DEFINED TERMS (BMC 23.502.020) RELATING TO ADUS

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

Section 1. That Berkeley Municipal Code 23.306 is amended to read as follows:

**23.306 Accessory Dwelling Units**

**Sections:**

- 23.102.010– Purposes.
- 23.102.020– Applicability.
- 23.102.030– Permit Procedures.
- 23.306.040– Development Standards.
- 23.306.050– Deed Restrictions.
- 23.306.060– Neighborhood Noticing.

**23.102.010 – Purposes**

The purposes of this Chapter are to:

- A. Implement California Government Code Section 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in high fire severity areas and the Hillside Overlay District due to unique conditions and hazards within these areas that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety, consistent with Government Code 65852.2, subdivision (a)(1)(A), which allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."

**23.102.020 – Applicability.**

A. The provisions of this chapter apply to zoning districts where residential uses are permitted, on lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.

1. Exceptions. The provisions of this chapter that permit ADUs and JADUs do not apply to lots in the R-1H (Single-Family Residential—Hillside Overlay), R-2H (Restricted Two-Family Residential—Hillside Overlay), or R-2AH (Restricted Multiple-Family Residential—Hillside Overlay) Districts. In such districts, ADUs and JADUs shall only be permitted to the extent required by subdivision (e)(1) of Government Code Section 65852.2.

B. Number of ADUs and JADUs Permitted Per Lot.

1. Lot with one Single Family Dwelling: One ADU and/or one JADU.
2. Lot with more than one Single Family Dwelling: One ADU.
3. Lot with a Duplex or Multi-Family Dwelling, either:
  - a. Up to two detached ADUs; or
  - b. At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages, storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot.
4. Lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory: One ADU.

**23.102.030 – Permit Procedures.**

A. Zoning Certificate. An application for an ADU or JADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including Development Standards, Deed Restrictions, and Neighborhood Noticing.

1. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a Building Permit shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.
2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code Section 65852.2(e)(1).

3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or JADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.

**23.306.040 Development Standards.**

A. Basic Standards. See Table 23.306-1: ADU and JADU Development Standards.

**TABLE 23.306-1 ADU AND JADU DEVELOPMENT STANDARDS**

	ADU <sup>1</sup>	JADU
Maximum Size <sup>2</sup>		500 sf
Studio or 1 bedroom	850 sf	N/A
2 + bedrooms	1000 sf	
Maximum Height	20 ft.	
Front Yard Setback	Same as underlying district	
Rear Setback	4 ft <sup>3</sup>	
Side Setback	4 ft <sup>3</sup>	
Required Off-Street Parking	None <sup>4</sup>	
<p>[1] An ADU converted from an Accessory Building or Accessory Structure legally established at least three years prior to submission of an ADU application, that does not comply with the Maximum Height, Size, and/or Rear and Side Setback requirements, is allowed to maintain non-conformity to the same dimensions of the existing Accessory Building or Accessory Structure. Any physical additions to the existing Accessory Building or Accessory Structure shall comply with the development standards in this table.</p> <p>[2] An ADU created entirely through conversion, with no modifications to the existing building envelope that exceeds the development standards for Maximum Size in this table is allowed a physical addition of no more than 150 square feet. The addition must comply with Maximum Height and Setback requirements in this table.</p> <p>[3] If there is a lesser setback allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district, that setback shall apply.</p> <p>[4] Replacement parking is not required. Replacement of off-street parking for the Main Building is allowed and does not need to comply with Parking Maximums (BMC 23.322.070) nor Parking Layout and Design (BMC 23.322.080).</p>		

B. Projections. Architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows and balconies may not project into a setback.

**23.306.050 - Deed Restrictions.**

A. The property owner shall file a deed restriction with the Alameda County Recorder which states:

1. The JADU shall not be sold separately from the Main Building;

2. The ADU shall not be sold separately from the Main Building unless the conditions of BMC 23.306.050 B are met;
  3. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days; and
  4. If the property includes a JADU, the JADU, or the Single Family Dwelling in which the JADU is located, shall be owner-occupied.
- B. ADUs Developed by a Qualified Nonprofit Developer. An ADU built or developed by a “qualified nonprofit corporation” may be sold or conveyed separately from the Main Building to a “qualified buyer,” as such terms are defined in subdivision (b) of Section 65852.26 of the California Government Code. The ADU must be held pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:
1. Delineation of all areas of the property that are for the exclusive use of a cotenant;
  2. Delineation of each cotenant’s responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;
  3. Procedures for dispute resolution among cotenants before resorting to legal action;
  4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
  5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;
  6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer’s principal residence; and
  7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
  8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility.

### **23.306.060 – Neighbor Noticing.**

A. Scope and Timing of Notice. Notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department.

B. Content of Notice. Notice shall provide the address of the project, allowable hours of construction, and a link to the City’s ADU webpage and information for tenants of the subject property on how to contact a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.

C. Mailing Fees. The applicant shall be responsible for the cost of materials, postage and staff time necessary to process and mail notices.

Section 2. That the definition of Accessory Dwelling Unit in Berkeley Municipal Code Chapter 23.502.020.A.4 is amended to read as follows:

#### **23.502.020.A.4**

**Accessory Dwelling Unit.** A secondary dwelling unit that is located on a lot in a zoning district where residential uses are permitted with a proposed or existing Single Family Dwelling, Duplex, Multi-Family Dwelling Use or Group Living Accommodation. An Accessory Dwelling Unit must comply with local building, housing, safety and other code requirements, except as expressly modified in Chapter 23.306, and provide the following features independent of other dwelling units on the lot: 1) exterior or independent access to the Accessory Dwelling Unit; 2) living and sleeping quarters; 3) a full kitchen; and 4) a full bathroom. An Accessory Dwelling Unit also includes the following:

- a. An efficiency unit, as defined in Section 17958.1 of the Health and Safety Code.
- b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.

Section 3. That the definition of Primary Dwelling Unit in Berkeley Municipal Code Chapter 23.502.020.P.16 is rescinded.

#### **23.502.020.P.16**

Section 4. That the definition of Efficiency Kitchen is adopted in Berkeley Municipal Code Chapter 23.502.020.E.1 as follows:

#### **23.502.020.E.1**

**Efficiency Kitchen:** A kitchen that includes a sink, a cooking facility with appliances (e.g. microwave, toaster, oven, hot plate), and food preparation counter space and cabinets.

Section 5. That the definition of Junior Accessory Dwelling Unit (JADU) is adopted in Berkeley Municipal Code Chapter 23.502.020.J.1 as follows:

**23.502.020.J.1**

**Junior Accessory Dwelling Unit (JADU):** A unit that is contained entirely within the walls of a Single Family Dwelling. A JADU must include a separate exterior entrance and an Efficiency Kitchen with a working refrigerator. A JADU may include separate sanitation facilities or may share sanitary facilities with a Single Family Dwelling. The property-owner must reside in either the Single Family Dwelling or the JADU.

Section 6. 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 January 18, 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.7,799-N.S.

AMENDMENTS TO THE ACCESSORY DWELLING UNIT (ADU) ORDINANCE (BMC 23.306) AND ADOPTION OF A WILDFIRE HAZARD EVACUATION RISK MITIGATION ORDINANCE (BMC 12.99)

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

Section 1. Berkeley Municipal Code Chapter 23.306 is amended to read as follows

**23.306 Accessory Dwelling Units**

**Sections:**

- 23.306.010 Purposes.
- 23.306.020 Applicability and Definitions.
- 23.306.030 Permit Procedures.
- 23.306.040 Development Standards.
- 23.306.050 Deed Restrictions.
- 23.306.060 Neighborhood Noticing.
- 23.306.070 Rooftop Decks and Balconies.

**23.306.010 Purposes.**

The purposes of this Chapter are to:

- A. Implement California Government Code Section 65852.2 and 65852.22.
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure.
- F. Reduce potential impacts of new development in Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas as designated in the BMC Chapter 19.48 and as may be amended from time to time, and the Hillside Overlay District (HOD) due to unique conditions and hazards within these areas that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety consistent with Government Code 65852.2, subdivision (a)(1)(A), which allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."



**23.306.020 Applicability and Definitions.**

- A. The provisions of this chapter apply to zoning districts where residential uses are permitted, on lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.
- B. For purposes of this Chapter the Hillside Overlay District (HOD) includes all lots within Berkeley's designated Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas that are zoned R-1H (Single-Family Residential—Hillside Overlay), R-2H (Restricted Two-Family Residential—Hillside Overlay), R-2AH (Restricted Multiple-Family Residential—Hillside Overlay), or ES-R (Environmental Safety-Residential).
- C. **Number of ADUs and JADUs Permitted Per Lot.** Except as expressly modified by Chapter 12.99, the following number of ADUs and JADUs shall be the maximum number of accessory units permitted on lots subject to this Chapter.
  - 1. Lot with one Single Family Dwelling: One ADU and/or one JADU.
  - 2. Lot with more than one Single Family Dwelling: One ADU.
  - 3. Lot with a Duplex or Multiple-Family Dwelling, either:
    - a. Up to two detached ADUs; or
    - b. At least one ADU converted from non-habitable portions of the existing Main Building that are not within the living space of a Dwelling Unit (e.g. basement, attic, garages storage room). The maximum number of ADUs converted from portions of the existing Main Building that are not within the living space of a Dwelling Unit shall not exceed 25% of the total number of existing Dwelling Units on the lot.
  - 4. Lot with a Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory: One ADU.

**23.102.010 – Permit Procedures.**

- A. Zoning Certificate. An application for an ADU or JADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including Development Standards, Deed Restrictions, and Neighborhood Noticing.
  - 1. If an application to create an ADU or JADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a Building Permit

shall not be issued for the ADU or JADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired.

2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or JADU that complies with the requirements of Government Code Section 65852.2(e)(1).
3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or JADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.

**23.306.040 Development Standards.**

A. **Basic Standards.** See Table 23.306-1: ADU and JADU Development Standards.

**TABLE 23.306-1 ADU AND JADU DEVELOPMENT STANDARDS**

	ADU <sup>1</sup>	JADU
Maximum Size Outside of HOD <sup>2</sup>		500 sf
Studio or 1 bedroom	850 sf	N/A
2 + bedrooms	1000 sf	
Maximum Size Within HOD	800 sf	500 sf
Maximum Height Outside of HOD	20 ft.	N/A
Maximum Height Within HOD	16 ft.	
Front Yard Setback	Same as underlying district	
Rear Setback	4 ft <sup>3</sup>	
Side Setback	4 ft <sup>3</sup>	
Required Off-Street Parking Outside of HOD	None <sup>4</sup>	
Required Off-Street Parking Within HOD	The lesser of 1 space per bedroom or ADU <sup>6,7</sup>	None <sup>6</sup>

[1] An ADU converted from an Accessory Building or Accessory Structure legally established at least three years prior to submission of an ADU application that does not comply with the Maximum Height, Size, and/or Rear and Side Setback requirements is allowed to maintain non-conformity to the same dimensions of the existing Accessory Building or Accessory Structure, provided that the existing side and rear setbacks are sufficient for fire and safety as set forth in California Building Standards Code adopted in BMC Title 19. Any physical additions to the existing Accessory Building or Accessory Structure shall comply with the development standards in this table.

[2] An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for Maximum Size in this table is allowed a physical addition of no more than 150 square feet. The addition must comply with Maximum Height and Setback requirements in this table.

[3] If there is a lesser setback allowed for a comparable Accessory Building or Accessory Structure in the underlying zoning district, that setback shall apply.

[4] Replacement parking is not required. Replacement of off-street parking for the Main Building is allowed and does not need to comply with Parking Maximums (BMC 23.322.070) nor Parking Layout and Design (BMC 23.322.080).

[5] No off-street parking shall be required for ADUs that satisfy the criteria defined in subdivision (d) of California Government Code section 65852.2 or any successor provision thereto.

[6] If an applicant provides off-street parking for an ADU or a JADU in the HOD, parking shall be allowed in any configuration on the lot, including within the front yard setback.

## B. Projections.

1. Except as limited by Paragraph B.2 of this Section, architectural features (Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment, Eaves, Cornices, Canopies, Awnings) may project two feet into the required setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows may not project into a setback. Bay windows shall not project into a setback.

2. No projections shall be allowed within the required setbacks on lots that are within the Hillside Overlay District.

## 23.306.050 - Deed Restrictions.

A. The property owner shall file a deed restriction with the Alameda County Recorder which states:

1. The JADU shall not be sold separately from the Main Building;
2. The ADU shall not be sold separately from the Main Building unless the conditions of BMC 23.306.050 B are met;
3. The ADU and/or JADU shall not be rented for a term that is shorter than 30 days; and
4. If the property includes a JADU, the JADU, or the Single Family Dwelling in which the JADU is located, shall be owner-occupied.

B. ADUs Developed by a Qualified Nonprofit Developer. An ADU built or developed by a "qualified nonprofit corporation" may be sold or conveyed separately from the Main Building to a "qualified buyer," as such terms are defined in subdivision (b) of Section 65852.26 of the California Government Code. The ADU must be held pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:

1. Delineation of all areas of the property that are for the exclusive use of a cotenant;
2. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;
3. Procedures for dispute resolution among cotenants before resorting to legal action;
4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;
6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence; and
7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility.

### **23.306.060 – Neighbor Noticing.**

**A. Scope and Timing of Notice.** Notice of an ADU application shall be mailed to owners and tenants of the subject, adjacent, confronting and abutting properties within ten working days of submission to the Planning Department.

**B. Content of Notice.** Notice shall provide the address of the project, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.

**C. Mailing Fees.** The applicant shall be responsible for the cost of materials, postage and staff time necessary to process and mail notices.

### **23.306.070 Rooftop Decks and Balconies.**

A. Notwithstanding any provisions of this Title to the contrary, roofs on lots within the Hillside Overlay District may not be designed, converted or used as Usable Open Space.

Section 2. Berkeley Municipal Code Chapter 12.99 is adopted to read as follows:

**12.99 Wildfire Hazard Evacuation Risk Mitigation Ordinance**

**Sections**

- 12.99.010 Title and Purposes
- 12.99.020 Applicability
- 12.99.030 Total Number of Units Permitted

**12.99.010 Title and Purposes**

- A. This Chapter may be referred to as the “Wildfire Hazard Evacuation Risk Mitigation Ordinance.”
  
- B. The purposes of this chapter are to permit and promote the construction of accessory dwelling units and junior accessory dwelling units while protecting human life and health, promoting the public health, safety, and general welfare, and minimizing public and private losses due to dangerous conditions in specific areas.
  
- C. Government Code 65852.2, subdivision (a)(1)(A) allows local agencies to regulate ADUs based on "adequacy of water and sewer service, and the impacts of traffic flow and public safety."
  
- D. The Hillside Overlay District, as defined in BMC 23.306.020B, has unique conditions and hazards that require additional restrictions on ADUs and JADUs because of impacts of traffic flow and public safety:
  - 1. Wildfires, earthquakes and landslides put residents of the Hillside Overlay District at significant risk.
  - 2. The Hayward fault bisects the Hillside Overlay District.
  - 3. Due to the maze of narrow, steep, and winding streets, the Hillside Overlay District has extremely poor emergency access egress and evacuation conditions. Safety is compromised by a substandard street infrastructure that has limited accessibility for emergency responders as well as inadequate capacity for fast and reliable escape. A majority of street widths in the Hillside Overlay District have substandard widths, and difficulty of navigation in most areas is exacerbated by one or more conditions including steep slopes, sharp curves and acute-angled corners.
  - 4. A study published by UC Berkeley researchers concluded that in the best-case scenario, if each household evacuated from the Berkeley hills with one vehicle, estimated evacuation time would be two hours and 245 vehicles would be exposed to immediate fire danger. However, if each household evacuated with 1.7 vehicles, evacuation time would increase to three hours and 782 vehicles

would be exposed to immediate fire danger. Doubling the number of households in these areas through the addition of just one ADU or JADU, assuming only one evacuation vehicle per household, would likely produce similar outcomes to the 1.7 vehicle-per-household evacuation scenario, likely with a larger total number of residents at risk.

5. Berkeley's Hillside Overlay District is comprised of the most difficult-to-access and evacuate areas in Berkeley's Very-High Fire Hazard Severity Zones and Wildland-Urban Interface Fire Areas. In addition, the Hayward Fault traverses the full length of these zones, with violent (Level 9 of 10) shaking predicted in the US Geologic Services Hayward Fault earthquake scenario (HayWired). Scientists at UC Berkeley's Seismology Lab have determined that the Hayward Fault is probably California's most dangerous, with a 31.7% chance of a 6.7 magnitude or greater earthquake in the next 26 years.
6. The City's Hazard Mitigation Plan, adopted December 10, 2019, identifies Earthquake and Wildland-Urban Interface Fire as "Likely" and "Catastrophic" events. Increasing density and intensity by permitting both one ADU and one JADU (2 total) in addition to the primary home, on every parcel in the Hillside Overlay District, representing a 200% increase in units allowed on most parcels, will seriously exacerbate the very extremely hazardous conditions that currently exist with respect to traffic flow and public safety in the likely event of a catastrophic wildfire or earthquake, necessitating reasonable limitations that reduce exposure to hazardous conditions

#### **12.99.020 Applicability**

- A. Lots within the Hillside Overlay District (HOD), as defined in BMC 23.306.020 B, shall be subject to the provisions of this Chapter.

#### **12.99.030 Total Number of Units Permitted**

- A. Notwithstanding any provisions of Chapter 23.306 to the contrary, no more than one ADU or JADU shall be permitted per lot that is subject to this Chapter.

Section 3. Severability. If any provision or clause of this Ordinance or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses, and to this end the provisions and applications of this Ordinance are severable.

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.

At a regular meeting of the Council of the City of Berkeley held on January 25, 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.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



October 17, 2022

Jordan Klein, Director  
Planning and Development Department  
1947 Center Street, 3<sup>rd</sup> Floor  
City of Berkeley, CA 94704

Dear Jordan Klein:

**RE: Review of Berkeley's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, § 65852.2)**

Thank you for submitting the City of Berkeley's (City) accessory dwelling unit (ADU) Ordinance Nos. 7,797-N.S. and 7,799-N.S. (collectively, Ordinances), both adopted on February 8, 2022, to the California Department of Housing and Community Development (HCD). The Ordinances were received on February 23, 2022. HCD has reviewed the Ordinances and submits these written findings pursuant to Government Code section 65852.2, subdivision (h). HCD finds that the Ordinances do not comply with section 65852.2 in the manner noted below. Under that statute, the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than November 17, 2022.

The Ordinances address many statutory requirements; however, HCD finds that the Ordinances do not comply with State ADU Law in the following respects:

**Ordinance No. 7,797-N.S.**

- Section 23.502.020.E.1 and J.1 – *Efficiency Kitchen* – The Ordinance defines efficiency kitchen as including a sink and having a working refrigerator. However, the sink requirement, previously specified in Government Code section 65862.22, subdivision (a)(6), was removed and statute does not specify any type of appliances, thereby creating more options to satisfy the appliance requirement. Efficiency kitchen is now defined as “[a] cooking facility with appliances.” (Gov. Code, § 65852.22, subd. (a)(6)(A).) It shall include “[a] food preparation counter and storage cabinets that are in reasonable size in relation to the size of the junior accessory dwelling unit.” (Gov. Code, § 65852.22, subd. (a)(6)(B).) The City must remove the sink requirement as well as the reference to a working refrigerator to comply with existing statute.



Jordan Klein, Director  
Page 2

**Ordinance No. 7,799-N.S.**

- Section 12.99 – *Wildfire Hazard Evacuation Risk Mitigation Ordinance* – To restrict ADUs and Junior Accessory Dwelling Units (JADUs) in the Hillside Overlay District, the Ordinance relies on a local agency’s ability to designate areas where ADUs may be permitted based on the impact on traffic flow and public safety per Government Code 65852.2, subdivision (a)(1)(A). The Ordinance provides general information regarding the Hillside Overlay District and its topography and location within Berkeley’s Very High Fire Hazard Severity Zone (VHFHSZ). In addition, the Ordinance refers to a study published by UC Berkeley, and upon further communication by HCD with the City on March 4, 2022, the City provided information regarding a traffic simulation study (*Developing Transportation Response Strategies for Wildfire Evacuations via an Empirically Supported Traffic Simulation of Berkeley, California, Wong, 2021*) conducted within the Hillside Overlay District.

However, while HCD is sympathetic to concerns about fire safety and the need to ensure adequate evacuation in the event of a fire, the City has not adequately demonstrated that new ADUs will actually impact public safety in the VHFHSZ. The traffic simulation study is not specific to ADUs and JADUs, and therefore its information and conclusions do not adequately justify the restriction of ADUs in the Hillside Overlay District per Government Code 65852.2, subdivision (a)(1)(A). Specifically, the City relies on the study, which looks at total vehicular use, to conclude that additional ADUs will create an evacuation hazard. This study, however, does not provide data on how many lots are likely to add ADUs or what specific impact new ADUs might have on evacuations. Moreover, the City does not account for the potential for ADUs to be excluded from requiring a parking space given the availability of public transit in the Hillside Overlay District. HCD is aware that AC Transit serves the Berkeley Hills location, exempting many, if not all, potential lots from parking space requirements for new ADUs.

Furthermore, even if the City would provide adequate justification for this restriction on ADUs under this subdivision, the City may not justify such a restriction on ADUs that fall under subdivision (e), as local development standards (such as an area restriction based on VHFHSZ designation) provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), do not apply to ADUs created under Government Code section 65852.2, subdivision (e).

In summary, the City must remove these restrictions and permit applications pursuant to Government Code 65852.2, subdivisions (a) and (e).

Jordan Klein, Director  
Page 3

- Section 12.99.030 – *Total Number of Units Permitted* – The Ordinance limits the number of units allowed per lot in the Hillside Overlay District to one ADU or JADU. However, this limitation conflicts with the Government Code section 65852.2, subdivisions (e)(1)(A) and (B), requirement to allow for both an ADU and JADU on a lot with a proposed or existing single-family dwelling, should certain conditions be met. In addition, this limitation conflicts with Government Code section 65852.2, subdivisions (e)(1)(C) and (D), for lots with existing multifamily structures. The City must amend this prohibition to explicitly permit applications per Government Code 65852.2, subdivision (e).

In response to the findings in this letter, and pursuant to Government Code section 65852.2, subdivision (h)(2)(B), the City must either amend the Ordinances to comply with State ADU Law or adopt the Ordinances without changes. Should the City choose to adopt the Ordinances without the changes specified by HCD, the City must include findings in its resolution that explain the reasons the City finds that the Ordinances comply with State ADU Law despite the findings made by HCD. Accordingly, the City's response should provide a plan and timeline to bring the Ordinances into compliance.

Please note that, pursuant to Government Code section 65852.2, subdivision (h)(3)(A), if the City fails to take either course of action and bring the Ordinances into compliance with State ADU Law, HCD may notify the City and the California Office of the Attorney General that the City is in violation of State ADU Law.

HCD appreciates the City's efforts in the preparation and adoption of the Ordinances and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please feel free to contact Mike Van Gorder, of our staff, at (916) 916-776-7541 or at [mike.vangorder@hcd.ca.gov](mailto:mike.vangorder@hcd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a long horizontal flourish extending to the right.

David Zisser  
Assistant Deputy Director  
Local Government Relations and Accountability



# PLANNING COMMISSION

---

## Notice of Public Hearing

---

**Wednesday, May 3, 2023**

### **Adoption of Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code to bring the Accessory Dwelling Unit (ADU) Ordinance into Compliance with State Law & Guidance**

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.412, on **Wednesday, May 3, 2023 at 5:30 p.m.** at the **North Berkeley Senior Center, 1901 Hearst Ave, Berkeley** (wheelchair accessible). In accordance with the Brown Act, Planning Commission meetings will be held in person only.

The agenda will be posted on the Planning Commission website (<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>) no later than 5pm on Friday, April 28, 2023.

#### **PROJECT DESCRIPTION**

---

The proposed amendments to the City's Zoning Ordinance (Title 23) respond to recent changes in Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (Junior ADU) State laws that took effect on January 1, 2023 and a letter from the California Department of Housing and Community Development (HCD) requiring the City of Berkeley take action to bring its Ordinance into compliance with State ADU Law. The amendments would modify the following sections: BMC Sections 23.106 (Rules of Measurement), 23.306 (Accessory Dwelling Unit (ADU) Ordinance), 23.322 (Parking and Loading), 23.324.060 (Exemptions to Nonconforming Uses, Structures, and Buildings), and 23.502.020 (Defined Terms) relating to ADUs. The proposed amendments also include conforming technical edits to the BMC (for example, renumbering of tables and figures).

Additional considerations may include: The AUP requirement for residential additions for attached ADUs, neighbor noticing requirements for ADUs, and the AUP requirement for alterations in nonconforming setbacks.

**LOCATION:** Affected districts include: R-1, R-1A, ES-R, R-2, R-2A, R-3, R-4, R-5, R-S, R-SMU, R-BMU, C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-DMU, C-W, C-AC, and MU-R. The zoning map is available online:

<https://berkeley.maps.arcgis.com/apps/webappviewer/index.html?id=2c7dfafbb1f64e159f4fdf28a52f51c6&showLayers=Berkeley%20Parcels;Base%20Data;Planning%20and%20Building>

#### **ENVIRONMENTAL REVIEW STATUS**

---

The project is statutorily exempt from the California Environmental Quality Act by Guidelines Section 15282(h).

## **PUBLIC COMMENT & FURTHER INFORMATION**

---

All persons are welcome to attend the hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. Written comments must be directed to:

Zoe Covello  
Planning Commission Clerk  
Email: [PlanningPC@cityofberkeley.info](mailto:PlanningPC@cityofberkeley.info)

City of Berkeley, Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Correspondence received by **12 pm on Tuesday, April 25, 2023** will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12pm on Monday, May 1, 2023** will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication one day before the public hearing.
- Correspondence received by **5pm one day before this public hearing**, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication by 5pm on the day of the public hearing.
- Correspondence received after 5pm one day before this public hearing will be saved as part of the public record.

Members of the public may submit written comments just before or at the beginning of the meeting by providing 15 printed copies of the correspondence to the Planning Commission Secretary.

## **COMMUNICATION ACCESS**

---

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. All materials will be made available via the Planning Commission agenda page online at <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.

## **FURTHER INFORMATION**

---

Questions should be directed to Zoe Covello, at (510) 981-7474 or [zcovello@cityofberkeley.info](mailto:zcovello@cityofberkeley.info).

Current and past agendas are available on the City of Berkeley website at: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.



Planning and Development Department  
Land Use Planning Division

## STAFF REPORT

DATE: May 3, 2023

TO: Members of the Planning Commission

FROM: Robert Rivera, Senior Planner

SUBJECT: Amendments to Title 23 for Consistency with State Law Related to Special Needs and Employment Housing, Family Day Care Home, Parking, and Associated Technical Edits

---

### RECOMMENDATION

The Planning Commission is asked to conduct a public hearing to: 1) discuss zoning amendments required to align with State laws related to special needs housing, employment housing, family day care home, and parking, as well as additional non-substantive edits to the sections of the Berkeley Municipal Code (BMC) listed below; and 2) make a recommendation to City Council to approve the proposed Zoning Ordinance amendments (**Attachment 1**).

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.110 R-4 Multi-Family Residential District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use Specific Regulations (Commercial Districts)
- 23.204.060 C-U University Commercial District
- 23.206.020 Allowed Land Uses and Permit Requirements (Manufacturing Districts)
- 23.206.040 Use Specific Regulations (Manufacturing Districts)
- 23.206.050 Protected Industrial Uses
- 23.206.080 MU-LI Mixed Use-Light Industrial District (Land Use Regulations)
- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- 23.304.030 Setbacks
- 23.304.040 Building Separation in Residential Districts
- 23.308.020 Applicability and Nonconformities (Emergency Shelters)
- 23.308.030 Standards for Emergency Shelters
- 23.322.020 Applicability (Parking and Loading)
- 23.322.030 Required Parking

- 23.502.020 Glossary

## **SUMMARY**

In response to recent changes in housing-related State laws, and programs adopted in the City's 2023-2031 Housing Element, staff has prepared Zoning Ordinance amendments to align land use standards with State law requirements for special needs and employment housing, family day care home, and parking. Furthermore, staff has incorporated technical, non-substantive amendments identified as necessary to maintain consistency throughout the Zoning Ordinance.

## **BACKGROUND**

On January 18, 2023, The Berkeley City Council adopted an updated Housing Element for the period 2023-2031 (Resolution No. 70,669-N.S). On February 28, 2023, the State Department of Housing and Community Development (HCD) found the adopted Housing Element in substantial compliance with State Housing Element Law (Article 10.6 of the Gov. Code) and stated the City must continue timely and effective implementation of all programs. Program 31 – Zoning Code Amendments: Special Needs Housing - requires the City of Berkeley to review and adopt new zoning provisions by December 2023 to align land use standards with State law requirements for special needs housing. In addition, staff is also bringing forward related parking, family day care home, and employee housing amendments required for compliance with other recently approved State laws, as well as technical edits to ensure consistency throughout the Zoning Ordinance (**Attachment 1**).

## **DISCUSSION**

The following is a summary of State law requirements related to special needs and employment housing, family day care home, parking, and also non-substantive technical edits identified by the Zoning Officer. Each section provides a brief summary and references a summary table that identifies the Zoning Ordinance section and the proposed changes (**Attachment 2**).

### Emergency Shelter (AB 139 & AB 2339)

AB 139 (2019) limits the development standards that local jurisdictions can impose on emergency shelters. Jurisdictions are limited to regulating the following objective standards:

- Maximum number of beds,
- Sufficient parking to accommodate all staff, provided that this standard does not require more parking for shelters than other residential or commercial uses in the same zone,
- Size and location of onsite client waiting and intake areas,
- Proximity to other shelters, provided that shelters are not required to be more than 300 feet apart,
- Length of stay,

- Lighting,
- Provision of onsite management,
- Security during operating hours.

AB 2339 (2022) provides that the sites identified for emergency shelters must be in areas where residential uses are permitted or are otherwise suitable, thus prohibiting local governments from situating shelters in industrial zones or other areas disconnected from services which may include, health care, transportation, retail, employment, and social services.

To address AB 139, staff propose removing standards that local jurisdictions cannot regulate and included Emergency Shelter in applicable Allowed Use Tables. No substantive changes for permit types or thresholds for number of beds are included. Staff also updated the definition of Emergency Shelter to clarify that 24-hour services may be included. Staff has not made any changes in response to AB 2339 because sites identified for emergency shelters are permitted and located in all areas where residential uses are permitted.

#### Low Barrier Navigation Center (AB 101)

AB 101 (2019) defines “low barrier navigation centers” as:

*“A Housing First, low barrier, service enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.”*

Housing First refers to serving individuals experiencing homelessness by prioritizing a safe place to live. Low barrier shelters may also provide additional flexibility, such as allowing partners to share living spaces or pets.

AB 101 requires local jurisdictions to permit low barrier navigation centers by right in zones that allow mixed-use development and nonresidential zones that permit multifamily uses, provided the facility meets certain standards.

The Berkeley Zoning Ordinance does not currently define or address low barrier navigation centers. Consistent with AB 101, staff propose adding the use permitted by right with a ZC in each zoning district that permits multifamily. Also, staff propose a definition of “low barrier navigation center” that is consistent with State law.

#### Supportive Housing (AB 2162)

AB 2162 (2018) requires local jurisdictions to allow supportive housing projects with 50 or fewer units in all zones where multifamily and mixed-use residential development is permitted, provided the project meets other specified criteria pursuant to [Government Code Section 65651\(a\)](#)<sup>1</sup>. Additionally, parking is not required for supportive housing

---

<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=65651](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=65651).

projects located within one half-mile of a public transit stop as required by [Government Code Section 65654](#).

Currently, the Zoning Ordinance includes supportive housing within the definition of Community Care Facility, as well as a separate stand-alone definition for supportive housing. Proposed amendments would remove supportive housing from the community care facility definition, amend Residential, Commercial and Manufacturing zoning use tables to be consistent with State law criteria, and amend the definition to be consistent with the California Health and Safety Code.

Projects consistent with the criteria under Government Code Section 65651(a) would be permitted by-right, with a Zoning Certificate, in all zones where multifamily and mixed-use residential development is permitted. If a project does not qualify under the criteria, the project would not be considered supportive housing and would fall under another definition for housing with permit requirements consistent with the respective allowed use table.

#### Employee Housing Act

The Employee Housing Act (Health and Safety Code 17021.5) requires local jurisdictions to consider employee housing providing accommodations for six or fewer employees as a single-family structure with a residential land use designation. Thus, the proposed changes amend the definition of Single-Family Dwelling to include employee housing.

#### Household definition

The 2023-2031 Housing Element – Program 31 identified the City’s definition of household as a necessary update to remove constraints on housing for persons with disabilities by updating the definition to align with current City practices. The City does not require proof of single lease, rental agreements or proof of shared living expenses and therefore staff proposes to remove the requirements from the definition of household. Staff also reviewed the Zoning Ordinance to ensure that this change does not impact other regulations where reference to “household” is made.

#### Lanterman Developmental Disabilities Service Act (Lanterman Act)

In accordance with State law, State licensed residential facilities for six or fewer persons are a permitted use in all zones where residential use is permitted, with no minimum parking requirement for non-resident employees. The following State statutes require that small (serving six or fewer persons) licensed group homes be treated like other residential uses and include: facilities for persons with disabilities and other facilities (Welfare & Inst. Code 5116), residential health care facilities (Health & Safety Code 1267.8, 1267.9, & 1267.16), residential care facilities for the elderly (Health & Safety Code 1568.083 - 1568.0831, 1569.82 – 1569.87), community care facilities (Health & Safety Code 1518, 1520.5, 1566 - 1566.8, 1567.1), pediatric day health facilities (Health & Safety Code 1267.9;1760 – 1761.8), and facilities for alcohol and drug treatment (Health & Safety Code 11834.23).



Currently, the Zoning Ordinance permits conversion of an existing dwelling into a residential care facility, regardless of the number of residents, with a Zoning Certificate. New construction of a residential care facility would require a Use Permit, which is the same review procedure applied to other residential development. Proposed amendments would make that consistent within the MU-R District. Parking for non-resident employees is the other non-compliant development standard and the proposed amendment would remove parking requirements for nonresident employees to be consistent with State law.

#### Supportive Child Care Family Home Expansion (SB 234)

SB 234 (2019) considers all family daycare homes for up to 14 children, operating under the standards defined by State law, a residential use and prohibits the requirement of a business license.

Currently, the Zoning Ordinance requires a Zoning Certificate for all family day care homes and the City does not require a business license. Proposed amendments edit the definition of family day care home to clarify that they are considered an activity allowed as part of residential use and amend the residential use table to align with the change. Staff also amended the definition of “child-serving uses” in the MU-LI and MU-R District to remove reference to family day care homes.

#### Minimum Parking Requirements (AB 2097)

AB 2097 (2022) prohibits the City from imposing a minimum off-street automobile parking requirement on most development projects in any zoning district located within one half-mile of a transit stop as defined in Section 21155 of Public Resource Code<sup>2</sup>, which defines a high-quality transit corridor as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

The proposed amendments include a location exemption from the minimum off-street parking requirements and codify language consistent with State law to preserve the City’s ability to impose minimum parking requirements in limited instances, such as parking requirements for hotels and event centers.

#### Technical Edits

On October 12, 2021, the City Council passed Ordinance No. 7,787-N.S., which replaced Title 23 (“the old Zoning Ordinance”) of the Berkeley Municipal Code and adopted a new Title 23 (“the new Zoning Ordinance”) to make the City’s Zoning Ordinance easier to understand and administer. The City Council gave staff direction to make minor changes to comply with State law or codify prior zoning interpretations. Staff was directed to regularly return to the Planning Commission and City Council with amendments necessary to maintain the integrity of the new Zoning Ordinance.

---

<sup>2</sup>[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=)

Proposed non-substantive amendments correct mistakes and errors identified by the Zoning Officer, City staff, and the public, as inconsistent with the old Zoning Ordinance. The following technical edits are proposed:

- **R-4 Lot and Height Standards.** The development standards for residential additions allow a building height of 16 feet, but the footnote requires a permit for heights greater than 14 feet and text was omitted from the old Zoning Ordinance. Staff propose to correct the error.
- **C-U Setback Standards.** Text from the old Zoning Ordinance pertaining to minimum rear setbacks—for lots on the south side of University Avenue abutting lots in residential districts—was omitted from the new Zoning Ordinance. Staff proposes to re-insert the minimum rear setback requirement to correct the error. Staff also proposes to correct an error pertaining to rear setbacks for lots in the C-U on the south side of University Avenue *not* abutting lots in residential districts. Staff proposes no minimum setback to match the old Zoning Ordinance, which did not require a rear setback. Finally, staff proposes to remove Note #2 in Table 23.204-12 (C-U Setback Standards) to remove confusion; the old Zoning Ordinance referenced calculation of rear setback area as an example, and not a requirement.
- **MU-LI Building Materials and Garden Supplies.** The old Zoning Ordinance allowed building materials and garden supplies stores up to 20,000 square feet with an AUP and 20,000 square feet or larger with a Use Permit. The new Zoning Ordinance limits building materials and garden supplies stores to 2,000 square feet. Proposed text corrects this error and permits uses and sizes consistent with the old Zoning Ordinance.
- **Allowed Building Projections.** If all criteria are met<sup>3</sup>, a Reasonable Accommodation (AUP) is required for all wheelchair ramps, while stairs, decks and porches are not subject to minimum setback requirements. Proposed amendments would make standards consistent across sections and clarify development requirements for accessibility features.
- **Protected Industrial Uses.** The old Zoning Ordinance did not apply change of use findings for all permits in the MM and MU-LI Districts – which must provide replacement space. Findings were only applied when a use permit was required. Staff has clarified the applicability to only apply when the change of use requires a use permit. Similarly, for the MU-R Zoning District, the old Zoning Ordinance did not require a use permit to change a protected industrial use for all changes from manufacturing, warehousing and wholesale. The new Zoning Ordinance requires a permit for all change of uses regardless of the permit requirements. The proposed changes correct this error.

## ENVIRONMENTAL REVIEW

Staff recommends that the Planning Commission make a recommendation to the City Council that:

---

<sup>3</sup> <https://berkeley.municipal.codes/BMC/23.406.090>

- The proposed Zoning Ordinance amendments related to *special needs housing and employment housing* are within the scope of the analysis of the City of Berkeley 2023-2031 Housing Element EIR (SCH#2022010331) certified by the City Council on January 18, 2023 (Resolution No. 70,669-N.S.) and would not result in any new or substantially more severe significant impacts.
- The proposed amendments related to *family day care home, parking, and technical edits* do not constitute a project under the requirements of the California Environmental Quality Act, together with State CEQA guidelines collectively, “CEQA”) because they have no potential for resulting in a physical change to the environment.

In the event that this Ordinance is found to be a project under CEQA, they are subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendments may have a significant effect on the environment.

#### **NEXT STEPS**

Upon receiving Planning Commission recommendation and public comment, Staff will forward a proposed draft Zoning Ordinance to City Council for consideration and adoption.

#### **ATTACHMENTS**

1. Draft Ordinance – Zoning Ordinance Amendments
2. Reference Matrix – Proposed Zoning Ordinance Amendments Pursuant to State Law and Other Technical Edits
3. Public Hearing Notice

ORDINANCE NO. -N.S.

AMENDMENTS TO THE RESIDENTIAL DISTRICT CHAPTER (BMC 23.202), COMERCIAL DISTRICT CHAPTER (BMC 23.204), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), USE-SPECIFIC REGULATIONS (SUPPLEMENTAL USE REGULATIONS) (BMC 23.302.070), GENERAL DEVELOPMENT STANDARDS CHAPTER (BMC 23.304), EMERGENCY SHELTERS CHAPTER (BMC 23.308), PARKING AND LOADING CHAPTER (BMC 23.322), AND GLOSSARY (BMC 23.502.020) FOR CONSISTENCY WITH STATE LAW RELATED TO SPECIAL NEEDS AND EMPLOYMENT HOUSING, FAMILY DAY CARE HOME, PARKING, AND ASSOCIATED TECHNICAL EDITS

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

Section 1. That the lines named “Emergency Shelter, 15 beds or fewer” is amended and the lines “Emergency Shelter, more than 15 beds”; “Low Barrier Navigation Center” and “Supportive Housing” are hereby added and the lines “Family Day Care Home, Large” and “Family Day Care Home, Small”; are hereby removed under Public and Quasi-Public Uses in Table 23.202-1 Allowed Land Uses in Residential Districts, within Berkeley Municipal Code 23.202.020; to read as follows:

Table 23.202-1: Allowed Land Uses in Residential Districts

ZC = Zoning Certificate AUP = ADMINISTRATIVE USE PERMIT UP(PH) = Use Permit NP = Not Permitted * Use-Specific Regulations Apply **--Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D	RESIDENTIAL DISTRICTS											USE-SPECIFIC REGULATIONS APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*)	
	R-1	R-1A	ES-R	R-2	R-2A	R-3	R-4	R-5	R-S	R-SMU	R-BMU*		
<b>Public and Quasi-Public Uses</b>													
Emergency Shelter, <u>15 beds or fewer</u>	NP	NP	NP	NP	NP	NP	See 23.308 ZC	ZC	ZC	ZC	ZC	23.308 - Emergency Shelters	

<u>Emergency Shelter, more than 15 beds</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	
<del>Family Day Care Home, Large</del>	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	
<del>Family Day Care Home, Small</del>	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	<del>ZC</del> -	
<u>Low Barrier Navigation Center</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	
<u>Supportive Housing</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>23.302.070.1</u> <u>- Supportive</u> <u>Housing</u>

Section 2. The Berkeley Municipal Code Table 23.202-14 is amended to read as follows:

Table 23.202-14. R-4 LOT AND HEIGHT STANDARDS

Basic Standards		Supplemental Standards
Lot Area, Minimum		23.304.020– Lot Requirements
New Lots	5,000 sq. ft.	
Per Group Living Accommodation Resident	350 sq. ft. [1]	
Usable Open Space, Minimum		23.304.090– Usable Open Space
Per Dwelling Unit	200 sq. ft.	
Per Group Living Accommodation Resident	90 sq. ft.	
Floor Area Ratio, Maximum		No maximum
Main Building Height, Average		23.304.050– Building Height
New Buildings and Non-Residential Additions	35 ft. and 3 stories [2]	
Residential Additions	16 ft. [3]	

Notes:

1. One additional resident is allowed for remaining lot area between 200 and 350 square feet.
2. Maximum 65 ft and six stories allowed with Use Permit.
3. Height greater than 164 ft. up to 35 ft. allowed with an AUP. Height greater than 35 ft. up to 65 ft. -and six stories allowed with a Use Permit.

Section 3. That the lines named “Emergency Shelter, 25 beds or fewer” is amended; and the lines “Emergency Shelter, 26 to 60 beds”; “Emergency Shelter, more than 60 beds”; “Low Barrier Navigation Center”; and “Supportive Housing” are hereby added under the Public and Quasi-Public Uses in Table 23.204-1, Allowed Uses in the Commercial Districts, within Berkeley Municipal Code 23.204.020, Allowed Land Uses, to read as follows:

Table 23.204-1. Allowed Uses in the Commercial Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit NP = Not Permitted -- = Permitted with AUP, see 23.204.020(B) [#] = Table Note Permit Requirement * Use-Specific Regulations Apply	COMMERCIAL DISTRICTS											USE-SPECIFIC REGULATIONS	
	C-C	C-N	C-U	C-E	C-NS	C-NA	C-SA	C-T	C-SO	C-DMU	C-AC		
<b>Public and Quasi-Public Uses</b>													
<u>Emergency Shelter, <del>25</del> beds or fewer</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>23.308 - Emergency Shelters</u>
<u>Emergency Shelter, 26 to 60 beds</u>	<u>UP (P H)</u>	<u>UP (P H)</u>	<u>UP (P H)</u>	<u>UP (P H)</u>	<u>UP (P H)</u>	<u>UP (P H)</u>	<u>UP (P H)</u>	<u>UP (P H)</u>	<u>UP (P H)</u>	<u>ZC</u>	<u>UP (P H)</u>	<u>UP (P H)</u>	

<u>Emergency Shelter, more than 60 beds</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	<u>UP</u> <u>(P</u> <u>H)</u>	
<u>Low Barrier Navigation Center</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	<u>ZC</u>	
<u>Supportive Housing</u>	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>ZC</u> * -	<u>23.302.0</u> <u>70.1-</u> <u>Supportiv</u> <u>e</u> <u>Housing</u>

Section 4. That Berkeley Municipal Code Table 23.204-12 is amended to read as follows:

Table 23.204-12. C-U SETBACK STANDARDS

<b>Lot Line &amp; Project Conditions</b>	<b>Required Setback</b>
<b>Front</b>	
Ground-floor non-residential uses fronting University Avenue	Average 2 ft. 2 ft. at all sidewalk pedestrian entries
Ground-floor residential uses fronting University Avenue	Average 2 ft. Maximum 10 ft.[1]
Fronting a street other than University Avenue and confronting a non-residential district	No <u>minimum-</u>
<b>Rear</b>	
Lots on south side of University Avenue abutting lots in residential districts	<u>Minimum of 10 ft. or 10% of lot depth, whichever is greater, and an average of 20 ft. [2] {3}</u>
Lots on north side of University Avenue	See 23.204.060.D.5- C-U University Commercial District (Solar Access)
<u>All other lots-Lots on south side of University Avenue not abutting lots in residential districts</u>	<u>No minimum 10 ft. or 10% of lot depth, whichever is greater</u>

Interior Side	No minimum
Street Side	2 ft. average
All setbacks for lots on South Side of University Avenue fronting a street other than University Avenue	As required by 23.304.030.C.2–Setbacks (Lots Adjacent to Residential Districts) [4]

Notes:

1. A maximum setback of 10 feet is only permitted for landscaping that enhances the streetscape and provides privacy for residential units on the first floor.
- ~~2. Rear setback area must be greater than or equal to the width of the lot in feet multiplied by 20 feet.~~
- 3.2. See 23.304.030(C)(-2)(-b) (Modifications in Commercial Districts) for allowed reductions.
- 4.3. If a lot fronting a side street is consolidated into a single project with the adjacent University Avenue-fronting lot, the project must conform to the setback standards in this table.

Section 5. That the lines named Low Barrier Navigation Center; and Supportive Housing under the Public and Quasi-Public Uses in Table 23.206-1, Allowed Uses in Manufacturing Districts, within Berkeley Municipal Code 23.206.020, Allowed Land Uses and Permit Requirements, are hereby added to read as follows:

Table 23.206-1. Allowed Uses in Manufacturing Districts

ZC = Zoning Certificate AUP = Administrative Use Permit UP(PH) = Use Permit -- = Permitted with an AUP, see 23.206.020(B) NP = Not Permitted [#] = Floor Area Permit Requirement * Use-Specific Standards Apply	MANUFACTURING DISTRICTS				<b>Use-Specific Standards</b> Applies to uses with an asterisk following the permit requirement (e.g., ZC*)
	M	MM	MU-LI	MU-R	
<b>Public and Quasi-Public Uses</b>					
<u>Low Barrier Navigation Center</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>ZC</u>	



<u>Supportive Housing</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>ZC*</u>	<u>23.302.070.1 – Supportive Housing</u>
---------------------------	-----------	-----------	-----------	------------	--

Section 6. Notes in Table 23.206-1, Allowed Uses in Manufacturing Districts, within Berkeley Municipal Code 23.206.020, Allowed Land Uses and Permit Requirements, are amended to read as follow:

Notes:

[1] Requires an AUP for uses 20,000 sq. ft. to 30,000 square feet. Requires a Use Permit for uses more than 30,000 sq. ft.

[2] Not permitted 20,000 sq. ft. or more.

[3] Requires a Use Permit if 5,000 sq. ft. or more

[4] Requires a Use Permit for uses more than 20,000 sq. ft.

~~[5] Not permitted over 2,000 sq. ft.~~

~~[56]~~ Not permitted over 3,000 sq. ft.

~~[67]~~ Requires a Use Permit for uses more than 40,000 sq. ft.

~~[78]~~ Requires a Use Permit for uses 20,000 sq. ft. to 40,000 square feet.

~~[89]~~ Requires an AUP for uses 20,000 sq. ft. to 40,000 square feet. Requires a Use Permit for uses more than 40,000 sq. ft.

~~[940]~~ Requires an AUP for uses 10,000 sq. ft. to 20,000 square feet. Requires a Use Permit for uses more than 20,000 sq. ft.

[104] Allowed with Zoning Certificate if under 1,000 sq. ft. Requires Use Permit if over 20,000 sq. ft.

[112] Requires an AUP for uses more than 20,000 sq. ft.

[123] Not permitted 1,500 sq. ft. or more.

[134] Requires a Use Permit for sales area 1,501 to 3,000 sq. ft. Not permitted over 3,000 sq. ft.

[145] Requires Use Permit for markets over 5,000 sq. ft.

Section 7. That Berkeley Municipal Code Section 23.206.040(C)(1) is amended to read as follows:

1. As used in this section, "child-serving use" means a school, child care center, ~~family day care~~ or park/recreational facility used by children. Family day care homes are exempt from these regulations and thus not included in the definition of "child-serving use."

Section 8. That Berkeley Municipal Code 23.206.050(A)(3)(a) is amended to read as follows:

- a) To approve a Use Permit required by Table 23.206-6 for changes to a protected industrial use in the MM and MU-LI districts, the review authority must find that replacement space is provided as required by Paragraph 4 (Replacement Space) below.

Section 9. That Berkeley Municipal Code 23.206.050(B) is amended to read as follows:

*B. Protected Industrial Uses in the MU-R District.*

1. *Protected Industrial Uses Defined.* Manufacturing, warehousing, and wholesale trade are protected industrial uses in the MU-R district. Protections apply only to legally-established uses.
- ~~2. *Permit Required.* Except as allowed by Section 23.206.050.B.4 (Exempt from Permit Requirement), a Use Permit is required to change a protected industrial use to any use that is not a protected industrial use.~~
- ~~3.2. *Permit Findings.* To approve a~~ When a Use Permit ~~, when is~~ required for a change of use from a protected industrial use, by Section 23.206.050.B.2 (Permit Required), the review authority must find that:
  - a) The change of use will not have a materially detrimental impact on the character of the MU-R district as a light industrial district, with particular reference to the character of the blocks and parts of blocks in the part of the district that is contiguous with the site; and
  - b) Appropriate mitigation has been made for loss of the manufacturing, wholesale trade, or warehouse space in excess of 25 percent of that space through providing such space elsewhere in Berkeley, payment into the West Berkeley Building Acquisition Fund, or by other appropriate means.
- ~~4.3. *Exempt from Permit Requirement.*~~ A protected industrial use may be changed to an art/craft studio or contractor use with the permit required by Section [23.206.020](#) (Allowed Land Uses and Permit Requirements). Approval of an art/craft studio or contractor use within a protected industrial space does not eliminate any protections for the prior protected use and such protections will remain if the new non-protected use ceases.

Section 10. That Berkeley Municipal Code 23.206.080(B)(6) is amended to read as follows:

6. *General Retail.* Allowed general retail uses in the MU-LI district are limited to food product stores and building materials and garden supply stores. Other types of general retail uses are not permitted. Food product stores are not permitted if over 2,000 square feet. Building materials and garden supply stores are permitted with an AUP if under 20,000 square feet and with a Use Permit if 20,000 square feet or more.

Section 11. That Berkeley Municipal Code 23.206.090(B)(3) is amended to read as follows:

3. *Community Care Facility.* Community care facilities are allowed in the MU-R district ~~only~~ as a change of use. New construction is ~~not~~ permitted with a Use Permit.

Section 12. That Berkeley Municipal Code 23.302.070(I) through (K) is hereby added and re-lettered to read as follows:

I. Supportive Housing.

1. Permits Required. Supportive housing shall be allowed by right in zones where multifamily and mixed uses are permitted, if the proposed housing development satisfies requirements pursuant to Government Code Section 65651(a).

J. *Smoke Shops.* In all districts, smoke shops are not permitted within 1,400 feet of a school or public park.

K. *Warehouse Storage for Retail Use.*

1. In all districts where retail uses are allowed, on-site storage of goods is allowed as an accessory use to a primary retail use on the lot.
2. The storage of goods for a contiguous and directly accessible retail space is allowed in the MU-LI and MU-R districts subject to the following:
  - a) An AUP is required for storage 3,000 square feet or less; a Use Permit is required for storage more than 3,000 square feet.
  - b) Except for food product stores in the MU-LI district, the storage is permitted only for uses within the district. Storage for retail uses wholly or partially outside the district is not permitted.

Section 13. That Berkeley Municipal Table 23.304-2 is amended to read as follows:

Table 23.304-2: Allowed Building Projections

Building Feature	Maximum Projection into Required Setback (must maintain 3 ft minimum from interior side lot line)			
	Front	Rear	Interior Side	Street Side
Chimneys, Water Heater Enclosures, Flues, Heating and Cooling Equipment	2.5 ft.	2.5 ft.	1.5 ft.	2.5 ft.
Eaves, Cornices, Canopies, Awnings and Bay Windows [1]	2.5 ft.	2.5 ft.	1.5 ft.	2.5 ft.
Uncovered decks, porches, landings and stairs when 30 inches or more above grade at any point [2]	6 ft.	6 ft.	1.5 ft.	2.5 ft.
Balconies and fire escapes [1]	6 ft.	6 ft.	1.5 ft.	2.5 ft.

Notes:

1. Projecting bay windows and balconies may not exceed 25% of the length of building wall to which its attached.
2. Uncovered decks, porches, landings and stairs less than 30 inches in height (not including railings) are not subject to minimum setback requirements.

Section 14. That Berkeley Municipal Code 23.304.030(B)(4) is amended to read as follows:

4. *Accessibility for Persons with Disabilities.* Wheelchair ramps, lifts, and other structures to accommodate persons with disabilities that are less than 30 inches above grade (not including railings) are not subject to minimum setback requirements.

- Any accessibility feature with a height above grade (not including railings) of 30 inches or more may project into a required interior side or rear setback area with approval of a reasonable accommodation request. See Section 23.406.090 (Reasonable Accommodation). Preferred designs would comply with the following:

- a) One side yard with a pedestrian pathway of at least 3 feet in width that provides access to the rear yard shall be maintained on the lot, and-

- b) The projection may not block access to or encroach into any required off-street parking space or driveway leading to such space unless there is no other feasible location for the accessibility feature.

Section 15: That Berkeley Municipal Code Section 23.308.020(C) is hereby removed as follows:

~~C. **Required Permits.** Table 23.3081 shows permits required for emergency shelters.~~

~~**TABLE 23.308-1: PERMIT REQUIREMENTS FOR EMERGENCY SHELTERS**~~

<del>DISTRICTS</del>	<del>PERMIT REQUIRED [1]</del>
<del><b>Residential Districts</b></del>	
<del>R-1, R-1A, ES-R, R-2, R-2A, R-3</del>	<del>Not Permitted</del>
<del>R-4, R-5, R-S, R-SMU, and R-BMU</del>	
<del>15 beds or fewer [1]</del>	<del>ZC</del>
<del>More than 15 beds</del>	<del>UP(PH)</del>
<del><b>Commercial Districts</b></del>	
<del>C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-AC</del>	
<del>25 beds or fewer</del>	<del>ZC</del>
<del>More than 25 beds</del>	<del>UP(PH)</del>
<del>C-DMU</del>	
<del>60 beds or fewer</del>	<del>ZC</del>
<del>More than 60 beds</del>	<del>UP(PH)</del>
<del><b>Manufacturing Districts</b></del>	
<del>M, MM, MU-LI, MU-R</del>	<del>Not Permitted</del>
<del>Notes:</del>	
<del>[1] See also permit requirements based on floor area of use in Table 23.308-2.</del>	

Section 16: That Berkeley Municipal Code 23.308.030(A) is amended to read as follows:

- A. *All Districts.* The following standards apply to emergency shelters in all districts.
1. No individual or household mayshall be denied emergency shelter because of an inability to pay.
  2. No emergency shelter shall be located within 300 feet of another emergency shelter, except when a Use Permit is approved to allow less of a buffer distance.

3. When abutting a Residential District, all ~~waiting and intake areas areas for shelter activities and uses, including but not limited to waiting and intake, personal storage, facility storage, and recreation,~~ shall be located indoors.
  4. ~~The following e~~Emergency shelter facilities are required ~~to have~~
- 5.4. ~~A~~an area for onsite client intake equal to one-quarter of the area provided for client beds. This may be a multi-use area.
  - a. ~~Shower and restroom facilities~~
- 6.5. ~~The following incidental uses are permitted in~~ emergency shelter facilities are optional:
  - a. ~~Secure personal storage.~~
  - b. ~~Daytime services.~~
  - c.a. ~~Meal services~~On-site cafeteria.
  - d. ~~Communal kitchen.~~
  - e. ~~Laundry equipment for clients.~~
  - f.b. ~~Child care~~ center.
  - g. ~~Vehicle and/or bicycle parking.~~
- 7.6. ~~Lighting shall be provided in all exterior areas, including pathways, parking areas, courtyards, rear yard areas, and spaces between structures. Lighting shall be directed in a manner that does not cast light onto neighboring properties.~~
- 8.7. ~~On-site management and security~~ shall be provided at all times the facility is in operation and on-site management shall be provided at least one hour before and after facility operation hours.
9. ~~The shelter operator shall prepare and implement a Shelter Safety and Management Plan. The Plan shall be available to the public upon request and shall address the following:~~
  - a. ~~Client congregation outside of the shelter facility to prevent queuing within the public right-of-way.~~
  - b. ~~Eligibility criteria, enforcement rules, and procedures for disruptive clients.~~
  - c. ~~Number and responsibilities of on-site support staff, training standards, other management procedures, and a primary and secondary contact person.~~
  - d. ~~Bed bug prevention.~~
  - e. ~~Refuse collection.~~
  - f. ~~Security procedures.~~
  - g. ~~Separation of sleeping areas and restrooms by gender and for families.~~
  - h. ~~Consistency with the Alameda County Wide Homeless Continuum of Care: Health, Safety and Accessibility Standards for Shelter Facilities in Alameda County.~~
- 10.8. ~~The shelter provider shall conduct a community meeting after giving notice to all owners and occupants on record with the Alameda County Assessor within a 100-foot radius of the proposed shelter location. A community meeting~~

shall not be required when the target population of the proposed shelter requires privacy due to safety concerns as determined by the Zoning Officer.

Section 17. That Berkeley Municipal Code 23.308.030(C) is amended to read as follows:

C. *Findings.* To approve a Use Permit for an emergency shelter, ~~under Section 23.308.020.C (Required Permits) or 23.308.030.B.2 (Standards in Residential Districts),~~ the Zoning Adjustments Board (ZAB) must find that a:  
 A larger shelter facility will help meet the City’s goals pertaining to emergency housing of the homeless.;

- ~~1. The circumstances of the subject property make the larger facility appropriate; and~~
- ~~2. Design features will minimize impacts on the surrounding area. (Ord. 7787-NS § 2 (Exh. A), 2021)~~

Section 18. That the line named; Community Care Facility; in Table 23.322-1, Required Off Street Parking in Residential Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read as follows:

TABLE 23.322-1. REQUIRED OFF-STREET PARKING IN RESIDENTIAL DISTRICTS

Non-Residential Uses	
Community Care Facility	R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft. All other Residential Districts: <u>None required</u> <del>One per two non resident employees</del>

Section 19. That the line named; Community Care Facility; in Table 23.322-4, Required Off Street Parking in Manufacturing Districts, within Berkeley Municipal Code 23.322.030, Required Parking Spaces, is amended to read as follows:

TABLE 23.322-4: REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS

Non-Residential Uses	
Community Care Facility	<u>None required</u> <del>1 per 2 non-resident employee</del>

Section 20. That Berkeley Municipal Code 23.322.020(D) is hereby added to read as follows:

- D. Location Exemption. Off-street parking spaces are not required for new uses or buildings, or an enlargement or intensification of an existing use or structure, that is located within 0.5 miles of a major transit stop, as defined by Section 21155 of the California Public Resources Code, unless otherwise authorized by Government Code Section 65863.2.

Section 21. That Berkeley Municipal Code 23.502.020(C)(17) is amended to read as follows:

17. *Community Care Facility.* A state-licensed facility for the non-medical care and supervision of children, adolescents, adults or elderly persons. This use includes community care facilities as defined in California Health and Safety Code (H&SC) Section 1500 et seq, residential care facilities for the elderly (H&SC Section 1569 et seq.), facilities for the mentally disordered or otherwise handicapped (California Welfare and Institutions Code Section 5000 et seq.), alcoholism or drug abuse recovery or treatment facilities (H&SC Section 11834.02), ~~supportive housing (California Government Code Section 65582),~~ and other similar facilities. This use excludes medical care institutions, skilled nursing facilities, nursing homes, foster homes, family day care homes, child care facilities, supportive housing and transitional housing.

Section 22. That Berkeley Municipal Code 23.502.020(E)(3) is amended to read as follows:

3. *Emergency Shelter.* Temporary lodging for homeless persons with minimal supportive services that may include 24-hour services and that may be limited to occupancy of six months or less as defined in Health and Safety Code Section 50801(e).

Section 23. That Berkeley Municipal Code 23.502.020(F)(3) is amended to read as follows:

3. *Family Day Care Home.* An establishment providing day care for 14 or fewer children in a dwelling unit as licensed by the California Department of Social Services. A family day care home is considered an activity allowed as part of residential use in any zoning district in which residential uses are either permitted or conditionally permitted. must be incidental to must be operated in the dwelling unit or accessory building where the family day care operator resides.



~~(a) Small Family Day Care Home. A family day care home for eight or fewer children, including children who live at the home.~~

~~(b) Large Family Day Care Home. A family day care home for nine to fourteen children, including children who live at the home.~~

Section 24. That Berkeley Municipal Code 23.502.020(H)(10) is amended to read as follows:

10. *Household*. One or more persons, whether or not related by blood, marriage or adoption, with common access to and use of all living, kitchen and eating areas within a single dwelling unit, sharing a dwelling unit in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the household and other similar characteristics indicative of a single household.

Section 25. That Berkeley Municipal Code 23.502.020(L)(21) is hereby added as follows:

21. *Low Barrier Navigation Center*. A Housing First, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, healthy services, shelter, and housing. Low barrier includes best practices to reduce barriers to entry, such as allowing partners, pets, storage of personal items, and privacy pursuant to California Government Code Section 65660 and includes services to connect people to permanent housing through a service plan and services staffing and a coordinated entry system pursuant to Section 576.400(d) or Section 578.7(a)(8), as applicable, of Title 24 of the Code of Federal Regulations.

Section 26. That Berkeley Municipal Code Section 23.502.020(S)(16) is amended to read as follows:

16. *Single-Family Dwelling*. A building designed for and occupied exclusively by one household, or provides accommodations for six or fewer employees and qualifies as "employee housing" pursuant to Healthy and Safety Code Section 17021.5

Section 27. That Berkeley Municipal Code Section 23.502.020(S)(32) is amended to read as follows:

32. *Supportive Housing*. As defined in Health and Safety Code 50675.14(b) (2): Housing with no limit on length of stay, (2): Housing with no limit on length of stay, Any

~~dwelling unit or a Group Living Accommodation,~~ that is occupied by the target population as defined ~~in Health and Safety Code 50675.14(b)(3) in subdivision (d) of Section 53260 of the CA Health and Safety Code, with no limit on length of stay,~~ that is linked to on- or off-site services that assist the supportive housing residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community.

Section 28. 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.

Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

Table 1 Proposed Amendments to address State Laws

State Laws	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
<p><b>AB 139 (Emergency Shelters 2019)</b> limits the development standards that local jurisdictions can impose on emergency shelters.</p> <p><b>AB 2339 (Emergency Shelters 2022)</b> provides that the sites identified for emergency shelters must be in areas where residential uses are permitted or are otherwise suitable</p>	<p>23.202.020 Allowed Land Use (Residential)            23.204.040 Allowed Land Uses (Commercial)            23.308.020(C) Applicability and Nonconformities (Emergency Shelters);            23.308.030(A) Standards for Emergency Shelters;            23.308.030(C) Findings (Emergency Shelters);            23.502.020(E)(3) Defined Terms;</p>	<p>Staff removed standards that local jurisdictions cannot regulate pursuant to AB139 and included Emergency Shelter in applicable Allowed Use Tables. No substantive changes for permit types or thresholds for number of beds are included.</p> <p>Staff also updated the definition of Emergency Shelter to clarify that 24-hour services may be included.</p>
<p><b>AB 101(Low Barrier Navigation Center)</b> defines “low barrier navigation centers” and requires local jurisdictions to permit low barrier navigation centers by right in zones that allow mixed-use development and nonresidential zones that permit multifamily uses, provided the facility meets certain standards.</p>	<p>23.202.020 Allowed Land Uses (Residential)            23.204.020 Allowed Land Uses (Commercial)            23.206.020 Allowed Land Uses (Manufacturing)            23.502.020(L)(21) Defined Terms</p>	<p>AB 101 permits low barrier navigation centers by right in zones that permit multifamily uses. Consistent with AB 101, staff added the use permitted by right with a ZC in each zoning district that permits multifamily. Also, staff added a definition consistent with State law.</p>
<p><b>AB 2162 (Supportive Housing)</b> requires local jurisdictions to allow supportive housing projects with 50 or fewer units in all zones where multifamily and mixed-use residential development is</p>	<p>23.202.020 Allowed Land Uses (Residential)            23.204.020 Allowed Land Uses (Commercial)            23.206.020 Allowed Land Uses (Manufacturing)</p>	<p>Staffed amended Community Care Facility definition to exclude supportive housing; supportive housing is already defined separately. Staff amended the definition to be consistent with the California Health and Safety Code and</p>

Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

State Laws	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
permitted, provided the project meets other specified criteria.	23.302.070(I) Use-Specific Regulation 23.502.020(C)(17) Defined Terms 23.502.020(S)(32) Defined Terms	amended the City-wide Use Specific Regulations to include criteria requirements under AB 2162.
<b>Health and Safety Code HSC 17021.5 (Employee Housing Act)</b> requires local jurisdictions to consider employee housing providing accommodations for six or fewer employees as a single-family structure with a residential land use designation.	23.502.020(S)(16) Defined Terms	Staff updated Single-Family Dwelling definition to include “employee housing” to align with the requirements from Health and Safety Code 17021.5
<b>House Element (Household definition)</b> as part of Program-31 requires the City to update the definition of household to remove constraint on housing for persons with disabilities.	23.502.020(H) Defined Terms	Staff updated the definition of household to be consistent with current practice. The city does not require proof of single lease, rental agreements or proof of shared living expenses and therefore staff proposes to remove the requirements from the definition of household.
<b>Lanterman Developmental Disabilities Service Act (Residential Care)</b> requires local jurisdictions to allow licensed residential facilities for six or fewer persons as a permitted use in all zones where residential use is permitted.	23.206.090(B)(3) MU-R Mixed Use-Residential District (Community Care Facility) 23.322.030 Required Parking (Residential and Manufacturing Districts)	Community Care Facility parking requirements for non-resident employees have been removed consistent with State law. Staff also amended use specific standards to allow new development of community care facilities with a Use Permit, consistent with multifamily use, in the MU-R District.
<b>SB 234 (Supportive Child Care Family Home Expansion)</b>	23.202.020 Allowed Land Uses (Residential)	Staff amended the definition for “family day care home” definition consistent

Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

State Laws	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
<p>considers all family daycare homes for up to 14 children, that operate under the standards of State law, a by-right residential use and prohibits the requirement of a business license.</p>	<p>23.206.040(C)(1) Use-Specific Regulation            23.502.020(F)(3) Defined Terms</p>	<p>with SB 234 and removed family day care home from the Use Table as it is considered a residential use. Staff also amended child-serving uses in the MU-LI and MU-R District to remove reference to family day care homes.</p>
<p><b>AB 2097 (Minimum Parking Requirements)</b> prohibits the City from imposing a minimum off-street automobile parking requirement on most<sup>1</sup> development projects in any zoning district located within ½ mile of a transit stop or high-quality transit corridor as defined in Section 21155 of Public Resource Code<sup>2</sup> which defines a high-quality transit corridor as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.</p>	<p>23.322.020(D) Applicability</p>	<p>Consistent with state law, staff included a location exemption for all development projects within ½ mile of major transit stop.</p>

<sup>1</sup> "Project" does not include a project where any portion is designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging, except where a portion of a housing development project is designated for use as a residential hotel, as defined in Section 50519 of the Health and Safety Code.

<sup>2</sup> [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=13.&title=&part=&chapter=4.2.&article=)

Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

Table 2 Proposed Technical Zoning Amendments

Technical Edits/Corrections	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
<b>R-4 Lot and Height Standards</b>	23.202.110 E. (Development Standards) Table 23-202-14 R-4 Lot and Height Standards	The development standards for residential additions allow a building height of 16 feet but the footnote requires a permit for heights greater than 14 feet and text was omitted from the old Zoning Ordinance. Staff proposed to correct the error.
<b>C-U Setback Standards</b>	23.204.060 D. (Development Standards) Table 23.204-12: C-U Setback Standards	Text was omitted from the old Zoning Ordinance and staff proposes to include the text to correct the error.
<b>MU-LI Building Materials and Garden Supplies</b>	23.206.080(B)(6) (Land use Regulations) Notes for Table 23.206-1	Old Zoning Ordinance allowed building materials and garden supplies stores up to 20,000 sq. ft. with an AUP. New Zoning Ordinance limits building materials and garden supplies stores to 2,000 sq. ft. Proposed text corrects error and permit uses consistent with the old Zoning Ordinance.
<b>Allowed Building Projections</b>	23.304.030 (Setbacks)	A Reasonable Accommodation (AUP) is required for all wheelchair ramps, if all criteria are met, while stairs, decks and porches are not subject to minimum setback requirements.  Proposed amendments would make standards consistent across sections and clarify requirements for accessibility features.

Summary of Proposed Amendments to the Berkeley Municipal Code pursuant to State Law and Other Technical Edits – Reference Matrix

Technical Edits/Corrections	Amended Berkeley Municipal Code Section(s)	Proposed Amendment(s)
<p><b>Protected Industrial Uses</b></p>	<p>23.206.050(B) Protected Industrial Uses</p>	<p>The old Zoning Ordinance did not apply change of use findings for all permits in the MM and MU-LI Districts – which must provide replacement space. Findings were only applied when a use permit was required. Staff has clarified the applicability to only apply when the change of use requires a use permit. Similarly, for the MU-R Zoning District, the old Zoning Ordinance did not require a use permit to change a protected industrial use for all changes from manufacturing, warehousing and wholesale. The new Zoning Ordinance requires a permit for all change of uses regardless of the permit requirements. The proposed changes correct this error.</p>



# PLANNING COMMISSION

---

## Notice of Public Hearing

---

### Wednesday, May 3, 2023

### **Adoption of Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code to Conform to State Law Relating to Special Needs Housing, Employment Housing, Child Care, and Parking; and Non-Substantive Technical Corrections**

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.412, on **Wednesday, May 3, 2023 at 5:30 p.m.** at the **North Berkeley Senior Center**, 1901 Hearst Ave, Berkeley (wheelchair accessible). The agenda will be posted on the Planning Commission website (<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>) no later than 5pm on Friday, April 28, 2023. The agenda will be posted on the Planning Commission website (<https://berkeleyca.gov/your-government/boards-commissions/planning-commission>) no later than 5pm on Friday, April 28, 2023.

#### **PROJECT DESCRIPTION**

The proposed amendments to the City's Zoning Ordinance (Title 23) respond to recent changes in State law related to housing, child care, and parking, and the requirements of the City's 2023-2031 Housing Element to align the City's land use standards to State law requirements for special needs and employment housing, by December 2023. The proposed amendments also include non-substantive technical corrections to ensure consistency throughout the Zoning Ordinance. Proposed amendments affect the following sections of Title 23:

- 23.202.020 Allowed Land Uses (Residential Districts)
- 23.202.110 R-4 Multi-Family Residential District
- 23.204.020 Allowed Land Uses (Commercial Districts)
- 23.204.040 Use Specific Regulations (Commercial Districts)
- 23.204.060 C-U University Commercial District
- 23.206.020 Allowed Land Uses and Permit Requirements (Manufacturing Districts)
- 23.206.040 Use Specific Regulations (Manufacturing Districts)
- 23.206.050 Protected Industrial Uses
- 23.302.070 Use-Specific Regulations (Supplemental Use Regulations)
- 23.304.030 Setbacks
- 23.304.040 Building Separation in Residential Districts
- 23.308.020 Applicability and Nonconformities (Emergency Shelters)
- 23.308.030 Standards for Emergency Shelters
- 23.322.020 Applicability (Parking and Loading)
- 23.322.030 Required Parking
- 23.502.020 Glossary



Posted on April 19, 2023

## **ENVIRONMENTAL REVIEW STATUS**

---

Staff recommends that the Planning Commission make a recommendation to the City Council that the proposed Zoning Ordinance amendments related to housing are within the scope of the analysis of the City of Berkeley 2023-2031 Housing Element EIR (SCH#2022010331) certified by the City Council on January 18, 2023 (Resolution No. 70,669-N.S.) and would not result in any new or substantially more severe significant impacts. The proposed amendments related to childcare and parking, as well as the proposed technical edits to the zoning code, are exempt from CEQA pursuant to CEQA Guidelines 14 Cal. Code. Regs Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the amendments may have a significant effect on the environment.

## **PUBLIC COMMENT & FURTHER INFORMATION**

---

All persons are welcome to attend the hearing and will be given an opportunity to address the Commission. Comments may be made verbally at the public hearing and/or in writing before the hearing. Written comments must be directed to:

Zoe Covello  
Planning Commission Clerk  
Email: [PlanningPC@cityofberkeley.info](mailto:PlanningPC@cityofberkeley.info)

City of Berkeley, Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Correspondence received by **12 pm on Tuesday, April 25, 2023**, will be included as a Communication in the agenda packet. Correspondence received after this deadline will be conveyed to the Commission and the public in the following manner:

- Correspondence received by **12pm on Monday, May 1st, 2023** will be included in a Supplemental Packet, which will be posted to the online agenda as a Late Communication one day before the public hearing.
- Correspondence received by **5pm one day before this public hearing**, will be included in a second Supplemental Packet, which will be posted to the online agenda as a Late Communication by 5pm on the day of the public hearing.
- Correspondence received after 5pm one day before this public hearing will be saved as part of the public record.
- It will not be possible to submit written comments at the meeting.

## **COMMUNICATION ACCESS**

---

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. All materials will be made available via the Planning Commission agenda page online at <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.

Posted on April 19, 2023

**FURTHER INFORMATION**

---

Questions should be directed to Robert Rivera at (510)-981-7480 or [rivera@cityofberkeley.info](mailto:rivera@cityofberkeley.info).

Current and past agendas are available on the City of Berkeley website at: <https://berkeleyca.gov/your-government/boards-commissions/planning-commission>.

**Communications**

---

**From:** Wu, Grace  
**Sent:** Wednesday, April 19, 2023 10:29 AM  
**Cc:**  
**Subject:** A few Planning Commission items

Dear Commissioners,

It's a Planning Commission evening today! A reminder that tonight's meeting starts at **5:30pm in-person at the South Berkeley Senior Center** (2939 Ellis Street). Staff are bringing back a [discussion item](#) on Southside Zoning Amendments.

A few important items (please read all):

1. **Alternate Commissioner.** Commissioner Yung (from ZAB) will be serving as alternate for Commissioner Twu.
2. **Alternate Secretary.** Claudia Garcia (co-secretary of ZAB) will be stepping in for me tonight as Planning Commission Secretary.
3. **May 3<sup>rd</sup> meeting and beyond.** Starting in May 2023 (in two weeks), all future Planning Commission meetings will be at the **North Berkeley Senior Center (1901 Hearst Ave, Berkeley, CA 94709)** due to scheduling conflicts at South Berkeley Senior Center. The start time will remain 5:30pm. We have the first floor Gooseberry Room assigned and may shift rooms depending on anticipated audience size. Staff will have wayfinding signs posted and will announce this change at tonight's meeting.

Sincerely,

Grace

---

**Grace Wu**, AICP, LEED AP (she/her)  
Principal Planner, Land Use Planning Division  
1947 Center St., 2<sup>nd</sup> Floor, Berkeley, CA 94704  
**E:** [gwu@cityofberkeley.info](mailto:gwu@cityofberkeley.info) | **P:** 415-961-9518  
<https://berkeleyca.gov/construction-development>  
[Zoning](#) | [Permit Forms](#) | [Boards & Commissions](#)

**Updated Hours. Permit Service Center is available Monday-Thursday, 8:30am to 2:00pm.** Face masks and social distancing are encouraged at the Permit Service Center.