



Planning and Development Department  
Land Use Planning Division

**SENT VIA E-MAIL**

January 20, 2023

Joanna Griffith  
Community Housing Development Corporation of North Richmond  
1535A Fred Jackson Way  
Richmond, CA 04801  
[jgriffith@communityhdc.org](mailto:jgriffith@communityhdc.org)

**RE: PLN2022-0099 – 1708 Harmon Street, Letter of Compliance  
SB35 (Government Code Section 65913.4) Application for a Mixed-Use Development (80  
units – 100% affordable housing)**

Dear Ms. Griffith:

You have applied for approval of a development project pursuant to Government Code Section 65913.4 [Senate Bill (SB) 35]. City staff has completed its review of the application and has found it to be:  
1) eligible for SB 35, ministerial review, and 2) consistent with all applicable objective zoning standards.

**Summary of Project's Consistency with SB 35 and the City's Objective Criteria**

Under Government Code Section 65913.4(a), a development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and not subject to a conditional use permit if the development satisfies all of the following objective planning standards [see Section 65913.4(a) for standard details]:

**(1) Criterion: Multifamily housing development**

**City analysis:** The application includes 80 dwelling units, as indicated in submitted application materials.

**(2) Criterion: Site location:**

**(A) In urbanized area or urban cluster**

**City analysis:** The City of Berkeley is within the boundaries of an Urbanized Area and Urban Cluster, according to 2010 US Census from the Census Bureau. The applicant has submitted verification of location with an assessor's map and parcel (APN 053-153300103) and address (1708 Harmon Street, Berkeley, CA 94703).

**(B) Adjoining parcels developed with urban uses**

**City analysis:** The site is surrounded by urban uses. The applicant has submitted verification with a vicinity map and aerial imagery.

(C) Residential use or residential mixed-use development allowed on the site

**City analysis:** The site is in the C-AC Adeline Corridor Commercial Zoning District. Permitted uses include multi-family residential developments, mixed-use developments (e.g. residential/commercial; office/other commercial), religious assembly, retail stores, offices, food service establishments, vehicle sales, industrial and heavy commercial (Berkeley Municipal Code Chapter 23.204.020). In addition, the General Plan land use designation for the site is “Adeline Corridor Mixed Use”, which is characterized by a “pedestrian-oriented commercial development and multi-family residential structures.” The applicant has submitted plans showing that the project gross building area is approximately 62,864 square feet, and that 100% of the building area is dedicated to multi-family residential use, which is over the required 66.6% threshold.

Pursuant to State Density Bonus, Government Code Sections 65915(b)(1)(G), 65915(d)(2)(D), and 65915(f)(3)(D)(ii), the project has a base density of 38 units, is eligible for the 42-unit density increase, and four concessions (lot coverage, front/side setbacks, and FAR).

(3) Criterion: Commitment to land use restriction for the affordable units in the project for the required duration

**City analysis:** The applicant has submitted statements acknowledging commitments to land use restriction and duration. The project contains 80 units – 79 below market rate and one non-below market rate, manager’s unit. Pursuant to the State Density Bonus, Section 65915(b)(1)(G), the project is providing 100% of the residential units (inclusive of the density bonus units, and exclusive of one manager’s unit) as affordable to lower income levels. In compliance with this section, the project has designated 58 Very Low Income (73%), and 21 Extremely Low Income units (27%). The applicant will be required to record a regulatory agreement with the City for the affordable units for a duration of 55 years. If the units are subdivided for sale, they will be subject to income qualifications and resale restrictions.

(4) Criterion: Location in the City of Berkeley, which has issued less fewer building permits for low income housing units than allocated under Regional Housing Needs Assessment; commitment to affordability distribution for units in the project that meets requirements in this section

**City analysis:** The City of Berkeley has made insufficient progress towards its Lower income RHNA (Very Low and Low income). The applicant has submitted plans and statements regarding unit affordability and to demonstrate satisfaction of this criterion. The project has designated 58 Very Low Income (73%), and 21 Extremely Low Income units (27%) in the development. In total, 100% of the units (exclusive of one manager’s unit) are for households making at or below 80 percent of the area median income.

(5) Criterion: Consistency with objective standards

**City analysis:** The applicant has submitted plans and an Objective Standards Compliance Table (Sheet A0.2 of Plans) to verify that the project is consistent with all relevant objective zoning standards.

(6) Criterion: Site location in special zones:

(A) Coastal zone.

**City analysis:** The applicant has submitted a map to verify that the site is not within a coastal zone.

(B) Farmland

**City analysis:** The applicant has submitted a map to verify that the site is not designated “Urban and Built-Up Land” by the California Department of Conservation.

(C) Wetlands

**City analysis:** The applicant has submitted a map to verify that the site is not within a wetland.

(D) Fire hazard severity zone.

**City analysis:** The applicant has submitted a map to verify that the site is not within a very high fire hazard severity zone.

(E) Hazardous waste site.

**City analysis:** The applicant has submitted documentation verifying that the site is not listed as a hazardous materials site.

(F) Earthquake fault zone.

**City analysis:** The applicant has submitted a map to verify that the site is not within an earthquake fault zone.

(G) Special flood hazard area

**City analysis:** The applicant has submitted a map to verify that the site is not within a flood hazard area.

(H) Regulatory floodway

**City analysis:** The applicant has submitted a map to verify that the site is not within a regulatory floodway.

(I) Natural community conservation plan

**City analysis:** Staff verifies that the site is not located within the boundaries of an adopted conservation plan, because there are no adopted natural community conservation plans within the City of Berkeley.

(J) Habitat for protected species

**City analysis:** Staff found no evidence that the site contains habitat for protected species identified as candidate, sensitive, or species of special status.

(K) Conservation easement

**City analysis:** Staff verifies that the site is not within a conservation easement, because there are no lands under conservation easement in the City of Berkeley.

(7) Criterion: Site with housing or historic significance

- (A) Demolition of rent/price restricted housing or long existing housing
- (B) Site with history of tenant occupancy within the last ten years

**City analysis:** Staff verifies that the site contains a church, church accessory structures, and church parking lot, and has been occupied by this use for more than 10 years.

(C) Demolition of a historic structure that was placed on a national, state, or local historic register

**City analysis:** Historic resource evaluations submitted for a prior entitlement indicate that the site is not listed on a historic register. Therefore, the project would not require the demolition of a historic structure.

(D) Site is/was occupied by tenants, and subsequently offered for sale to the general public

**City analysis:** Staff verifies that the building on the site contains a church, church accessory structures, and church parking lot, and would not require the demolition of housing.

(8) Criterion: Commitment to prevailing wage rates and skilled workforce

- (A) Commitment to prevailing wage rates unless project is entirely a public work
- (B) Commitment to hiring a skilled workforce if project qualifies for one of the criteria in this section

**City analysis:** The applicant has submitted a statement committing to providing prevailing wages as required the general prevailing rate of per diem wages for the type of work and geographic area, for a project that is not a public work. The application is not required to use a skilled and trained workforce to complete the development because none of the criteria in section 8(B)(i) apply to the project.

(9) Criterion: Subdivision of a parcel that is subject to the Subdivision Map Act. If subject to the Act, that one of these apply:

- (A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).
- (B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8).

**City analysis:** The applicant has submitted plans showing that the project is consistent with objective subdivision standards in the local subdivision ordinance. The applicant has also acknowledged that the development will receive financing or funding by means of a low-income housing tax credit and is therefore subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8).

(10) Criterion: Mobilehome, recreational vehicle, and other special occupancy parks

**City analysis:** The applicant has submitted plans showing that the project is not on a site governed by these laws.

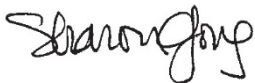
**Additional Requirements and Next Steps**

Per the Streamlined Ministerial Approval Process Guidelines, Section 301(a)(4), “Approval of ministerial processing does not preclude imposing standard conditions of approval as long as those conditions are objective and broadly applicable to development within the locality, regardless of streamlined approval, and such conditions implement objective standards that had been adopted prior to submission of a development application. This includes any objective process requirements related to the issuance of a building permit. However, any further approvals, such as demolition, grading and building permits or, if required, final map, shall be issued on a ministerial basis subject to the objective standards.” (California Department of Housing and Community Development, 2018, Updated March 30, 2021, p.12) Therefore, the project is subject to the City’s Standard Conditions of Approval (Attachment C).

Please be sure to read these documents thoroughly to better understand project requirements moving forward into the building permit phase, which is the next step.

If you have any questions, please contact me at (510) 981-7429 or via email at [SGong@cityofberkeley.info](mailto:SGong@cityofberkeley.info).

Sincerely,



Sharon Gong  
Senior Planner, Department of Planning & Development

Attachments:

- Attachment A: Objective Standards Compliance Table
- Attachment B: Density Bonus and Affordability Statements
- Attachment C: Standard Conditions of Approval
- Attachment D: Project Plans

PROJECT INFORMATION

APN # 052-1533-01-43

PROJECT LOCATION: 1708 HARMON ST, BERKELEY, CALIFORNIA 94703-2431

PROJECT DESCRIPTION: NEW CONSTRUCTION OF A 5-STORY BUILDING WITH TWO WINGS. IT HAS GROUND LEVEL PARKING AND 4 STORIES OF OFFICE SPACE ABOVE. THE BUILDING IS LOCATED AT THE CORNER OF KING ST. AND HARMON ST. WILL BE DEMOLISHED. THE EXISTING CHURCH BUILDING AT THE CORNER OF ALCATRAZ AVE AND KING STREET WILL REMAIN. DESIGNATED KING ST. WING IS LOCATED AT CORNER OF KING ST. AND HARMON ST. WITH PROPOSED (38) ONE-BEDROOM, DESIGNATED ELLIS ST. WING IS LOCATED ALONG ELLIS ST. WITH PROPOSED (40) ONE-BED UNITS AND (1) 2-BED UNIT. TOTAL UNIT COUNT IS 80 UNITS. THIS PROJECT ALSO INCLUDES COMMUNITY SPACE, OFFICES, COMPUTER ROOM, LAUNDRY ROOMS AND STORAGE ROOMS.

ZONING: ADLINE CORRIDOR SPECIFIC PLAN (TIER 1)

TYPE OF CONSTRUCTION: CONSTRUCTION TYPE 1-A, @ PODIUM LEVEL TYPE VA 1 HOUR SPRINKLED

OCCUPANCY GROUP: R-5 MULTIFAMILY RESIDENTIAL (100% AFFORDABLE)

LOT AREA: 1.053 ACRES (45,897 SF)

LOT COVERAGE: 75 % (SEE TABLE)

NUMBER OF STORIES: 5 STORIES TOTAL

FIRE SPRINKLER: YES - 1 HOUR

GROSS BUILDING AREA: 1ST FLOOR BLDG AREA = 20,240 SF (GARAGE LEVEL)  
2ND FLOOR BLDG AREA = 16,060 SF  
3RD FLOOR BLDG AREA = 16,202 SF  
4TH FLOOR BLDG AREA = 16,202 SF  
TOTAL GROSS BLDG AREA = 83,104 SF  
TOTAL GROSS BLDG AREA = 83,104 SF (EXCLUDING GARAGES)

PARKING: ELLIS ST. WING = 33 (30 FULL SIZE + 3 COMPACT) KING ST. WING = 47 (30 FULL SIZE + 17 COMPACT) FULL SIZE PARKING = 60' X 16' 7" COMPACT SIZE PARKING = 8' 0" X 16' 0"

TOTAL PARKING SPACES = 61 (28 FULL SIZE + 28 COMPACT)

| OPEN SPACE                                   |                      |
|----------------------------------------------|----------------------|
| ELLIS ST. WING: COURTYARD & COMMUNITY GARDEN | = 3205 SF            |
| ELLIS ST. WING 4TH FLOOR: PATIO              | = 365 SF             |
| NEW PROPOSED OPEN SPACE                      | = 3570 SF (PARCEL 1) |
| EXISTING OPEN SPACE                          | = 2895 SF (PARCEL 2) |
| TOTAL OPEN SPACE AREA = 6265 SF              |                      |
| REQUIRED OPEN SPACE: 40 SF / UNIT            |                      |
| 80 UNITS X 40 SF/UNIT = 3200 SF              |                      |

| ELLIS STREET BUILDING                        |            |
|----------------------------------------------|------------|
| 1 BED UNIT                                   | 2 BED UNIT |
| 1ST FLOOR (PARKING)                          | -          |
| 2ND FLOOR                                    | 5073 SF    |
| 3RD FLOOR                                    | 6624 SF    |
| 4TH FLOOR                                    | 6327 SF    |
| 5TH FLOOR                                    | 5450 SF    |
| TOTAL                                        | 23,474 SF  |
| TOTAL UNITS @ ELLIS ST. BUILDINGS = 80 UNITS |            |
| TOTAL HOUSING AREA = 45,926 SF               |            |

| KING STREET BUILDING |                  |
|----------------------|------------------|
| 1 BED UNIT           | RESIDENTIAL AREA |
| 1ST FLOOR            | -                |
| 2ND FLOOR            | 5073 SF          |
| 3RD FLOOR            | 5777 SF          |
| 4TH FLOOR            | 5777 SF          |
| 5TH FLOOR            | 5121 SF          |
| TOTAL                | 22,452 SF        |

PROJECT INFORMATION

AB 2345: AN ACT TO AMEND SECTION 65400 AND 65915 OF GOVERNMENT CODE RELATED TO HOUSING AFFORDABILITY

THE BILL WOULD DEFINE THE TERM "NATURAL OR CONSTRUCTED IMPEDIMENTS" FOR PURPOSES OF DETERMINING WHETHER A DEVELOPMENT HAS UNOBSTRUCTED ACCESS TO A TRANSIT STOP. THE BILL WOULD AUTHORIZE A DEVELOPMENT TO REQUEST THAT A CITY, COUNTY OR SPECIAL DISTRICT PROVIDE A TRANSIT STOP TO A DEVELOPMENT IF THE DEVELOPMENT REQUESTS A TRANSIT STOP TO A TRANSIT STOP. THE BILL WOULD AUTHORIZE A DEVELOPMENT TO REQUEST THAT A CITY, COUNTY OR SPECIAL DISTRICT PROVIDE A TRANSIT STOP TO A DEVELOPMENT IF THE DEVELOPMENT REQUESTS A TRANSIT STOP TO A TRANSIT STOP.

1. The bill would authorize a development to request that a city, county or special district provide a transit stop to a development if the development requests a transit stop to a transit stop.

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EPHESIAN LEGACY COURT  
1708 Harmon Street, Berkeley, CA 94703

PLANNING SUBMITTAL  
REVISION DATE: JAN 20, 2023

ZONING & PROJECT  
INFORMATION

A0.2



## 1708 Harmon St. Senior Housing

Berkeley, CA 94704

December 14, 2022

### Density Bonus Eligibility Statement

- a. Number of "base project" units: 38 Units.
- b. Number of affordable units and level of affordability: 80-Units (100%) Low to Very Low-Income Households as defined in Section 50105 of the Health and Safety Code.
- c. Percent density bonus requested and allowed under Section 65915: 110% increase (project is within ½ of transit center)
- d. We request the following concessions necessary to accommodate the density bonus
  - Lot coverage percentage to accommodate density bonus units – to meet the lot coverage requirement we would have to increase the height of the building, which would put the project into a Type 3 construction category and increase construction costs.
  - Reduce required front/side setback to accommodate density bonus units– to meet the setback requirement we would also have to increase the height of the building, which would put the project into a Type 3 construction category and increase construction costs.
  - Increase the FAR to accommodate density bonus units – the lower FAR would reduce the number of units and the overall square footage of the building. Reducing the square footage of the building will reduce the construction and financing economies of scale making the project more expensive and less competitive.

In summary, the building lot coverage, FAR and setback concessions are needed to accommodate the density bonus units and keep the project cost lower with a more economical Type V construction of rated wood frame over a Type I podium. Building height and parking per State Assembly Bill 2345

Sincerely,

Steven Kodama, FAIA President  
Kodama Diseno, Inc.

Ephesians Legacy Court  
SB35 Application  
January 11, 2023

### **Housing Affordability Statement**

#### Below Market Rate Units

Ephesian Legacy Court will include 80-units of affordable senior housing with an affordability distribution of 58 units (75%) at very low income or 50% AMI or below and 21 units (26%) at extremely low Income or at 30% AMI, and 1 unrestricted manager's unit.

*\* These affordability levels are subject to change within the allowable density bonus guidelines.*

ATTACHMENT C  
CONDITIONS  
JANUARY 20, 2023

## 1708 Harmon Street

SB 35 Zoning Certificate (#PLN2022-0099)

**Application to demolish a non-residential building, reconfigure the two parcels, and construct a five-story, 80-unit, State Density Bonus, 100% affordable housing project (excluding one manager's unit) – 21 units affordable to Extremely Low Income households (27% of units as ELI) and 58 units affordable to Very Low Income households (73% of units as VLI) – with 61 parking spaces (26 spaces for existing church to remain on Parcel 2).**

**1. Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

**2. Compliance Required (BMC Section 23.102.050)**

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

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

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

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

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

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

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial

good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).

- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

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

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

**7. Permit Modifications (BMC Section 23.404.070)**

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

**8. Permit Revocation (BMC Section 23.404.080)**

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

**9. Pay Transparency Acknowledgement (BMC Section 13.104.030)**

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

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

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

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

**11. Posting of Ordinance (BMC Section 13.104.050)**

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

**12. Conditions of Approval (BMC Section 13.104.060)**

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

**13. Indemnification Agreement**

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

**Prior to Submittal of Any Building Permit:**

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

☐ **Project Liaison** \_\_\_\_\_  
Name Phone #

15. Address Assignment. The applicant shall file an “Address Assignment Request Application” with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City’s database prior to the applicant’s submittal of a building permit application.
16. Construction Noise Reduction Program. The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
  - A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
  - B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
  - C. Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
  - D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
  - E. Prohibit unnecessary idling of internal combustion engines.
  - F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
  - G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
  - H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
  - I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.
17. Damage Due to Construction Vibration. The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall take into account project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to

eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake an existing conditions study (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage. This study shall

- establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and
- include written descriptions and photographs.

The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.

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

- 18. Construction Noise Management - Public Notice Required.** At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.
- 19. Construction Phases.** The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.
- 20. Demolition.** Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
- 21. Construction and Demolition Diversion.** Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

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

**A. Environmental Site Assessments:**

- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 2 years old\*) shall be submitted to TMD for developments for:
  - All new commercial, industrial and mixed use developments and all large improvement projects.
  - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
  - EMA is available online at: [http://www.cityofberkeley.info/uploadedFiles/IT/Level\\_3\\_-\\_General/ema.pdf](http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf)
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
- 3) If the Phase I is over 2 years old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

**B. Soil and Groundwater Management Plan:**

- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

**C. Building Materials Survey:**

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

is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

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

**Prior to Issuance of Any Building (Construction) Permit**

23. Parcel Merger. The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
24. HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
25. Solar Photovoltaic (Solar PV). A solar PV system, on the solar zone specified in Section 110.10 of the 2019 Energy Code, shall be installed (subject to the exceptions in Section 110.10) as specified by the Berkeley Energy Code (BMC Chapter 19.36). Location of the solar PV system shall be noted on the construction plans.
26. Electric Vehicle (EV) Charging. Each dwelling unit shall install a listed raceway, wiring, and power to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation as specified by the Berkeley Green Code (BMC Section 19.37.040). Readiness for EV charging and EV charging station installations shall be noted on the construction plans.
27. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELO). MWELO-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET<sub>o</sub>) for Berkeley is 41.8.
28. Prohibition of Natural Gas Infrastructure in New Buildings. The project shall comply with the City of Berkeley Prohibition of Natural Gas Infrastructure in New Buildings (BMC Chapter 12.80).
29. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
30. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

31. Required Parking Spaces for Persons with Disabilities. Per BMC Section 23.322.040.H of the Zoning Ordinance, “If the number of required off-street parking spaces in a non-residential district is reduced as allowed by this chapter, the number of required parking spaces for persons with disabilities shall be calculated as if there had been no reduction in required spaces.”

**Prior to Demolition or Start of Construction:**

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

**During Construction:**

33. Construction Hours. Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
34. Construction Hours- Exceptions. It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.
35. Project Construction Website. The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:
- Contact information (i.e. “hotline” phone number, and email address) for the project construction manager
  - Calendar and schedule of daily/weekly/monthly construction activities
  - The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.
36. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
  - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.

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

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

- A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or
- B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.

In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

- An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
- A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

**38. Public Works - Construction.** Construction must comply with the State-wide general permit requiring owner to (1) notify the State; (2) prepare and implement a Stormwater Pollution Prevention Plan (SWPPP); and (3) monitor the effectiveness of the plan. Additional information may be found online at <http://www.swrcb.ca.gov>. As part of the permit submittal, the Public Works Department will need a) a copy of the "Notice of Intent" filed with the State Water Resources Control Board (SWRCB)/Division of Water Quality; b) the Waste Discharger

Identification (WDID) number issued by the SWRCB for the project; c) a copy of the SWWPP prepared for each phase of the project; and d) the name of the individual who will be responsible for monitoring the site for compliance to the approved SWPPP. (Project site: 1.053 acres)

39. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.
40. Low-Carbon Concrete. The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.
41. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
  - Storage of building materials, dumpsters, debris anywhere in the public ROW;
  - Provision of exclusive contractor parking on-street; or
  - Significant truck activity.

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

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

42. Avoid Disturbance of Nesting Birds. Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the

destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

**43. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
- B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

**44. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

45. Paleontological Resources (*Ongoing throughout demolition, grading, and/or construction*). In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.
46. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
47. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
  - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
  - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
  - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.

- E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
  - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
  - G. All private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).
  - H. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
  - I. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
  - J. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
  - K. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 48. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- 49. Public Works.** The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 50. Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into

the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

51. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
52. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
53. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

**Prior to Final Inspection or Issuance of Occupancy Permit:**

54. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
55. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **January 20, 2023**, except as modified by conditions of approval.

**BELOW MARKET RATE UNITS**

56. Number of Below Market Rate (BMR) Units. The project shall provide 100 percent of all of the units in the development, including total units and density bonus units, but excluding one manager's unit, or **79 lower income** rental dwelling units (58 Very Low Income, and 21 Extremely Low Income), which are required to comply with the State Density Bonus Law (Government Code Section 65915). The designation of BMR Units shall conform to the addresses assigned to the building by the City.
57. Regulatory Agreement. Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements Government Code Section 65915 and this Use Permit. The Regulatory Agreement may include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The applicant shall submit the Regulatory Agreement to the Housing and Community Services Department (HHCS) via email to [affordablehousing@cityofberkeley.info](mailto:affordablehousing@cityofberkeley.info) for review and approval.
58. Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.

**At All Times:**

59. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
  60. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
  61. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.
  62. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
  63. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
  64. Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
  65. Tenant Notification. The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and entertainment uses, and that each occupant shall not seek to impede their lawful operation.
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