



Z O N I N G  
A D J U S T M E N T S  
B O A R D  
NOTICE OF DECISION

**DATE OF BOARD DECISION:** June 23, 2022

**DATE NOTICE MAILED:** ~~June 30, 2022~~ July 5, 2022

**APPEAL PERIOD EXPIRATION:** ~~July 14, 2022~~ July 19, 2022

**EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification)<sup>1</sup>:** July 20, 2022

## 747 (787) Bancroft Way (Phase III)

Use Permit #ZP2021-0096 to demolish six existing buildings and construct a 159,143-square-foot, three-story building containing 124,539 square feet of research and development space and 34,604 square feet of light manufacturing space, and a surface parking lot containing 76 off-street parking spaces and five loading spaces.

The Zoning Adjustments Board of the City of Berkeley, after conducting a public hearing, **APPROVED** the following permits:

- Variance pursuant to BMC Section 23.406.050(B)(1), to allow replacement of protected floor area to be made available after the demolition or change of use of the space.
- Use Permit pursuant to BMC Section 23.326.070, to demolish main buildings used for non-residential purposes.
- Use Permit pursuant to BMC Section 23.206.050, to change more than 25 percent of manufacturing and warehouse uses to research and development uses.
- Use Permit pursuant to BMC Section 23.206.030(A) to construct between 20,000 and 30,000 square feet of new floor area as Manufacturing and Wholesale Trade.
- Administrative Use Permit pursuant to BMC Section 23.322.100(C)(5), to reduce the number of on-site loading spaces from seven to five.
- Administrative Use Permit pursuant to BMC Section 23.206.020 to establish more than 30,000 square feet of research and development use.
- Administrative Use Permit pursuant to BMC Section 23.304.050 to allow architectural elements to exceed the height limit in a non-residential district.

### **ZONING:** Mixed-Use Light Industrial (MU-LI)

<sup>1</sup> Pursuant to BMC Section 23B.32.090, the City Council may certify any ZAB decision for review during the 14-day appeal period after the notice of the ZAB's decision is issued. Certification has the same effect as an appeal. However, BMC Section 1.04.070 suspends or "tolls" the Council's deadline to certify when the Council is on recess. Thus, in cases where the 14-day appeal period is scheduled to *end* during a Council recess, the certification deadline is extended past the end of the recess for the remainder of the appeal period. In cases where the appeal period *begins* during a Council recess, the certification deadline is extended until 14 days after the first Council meeting after the recess. *Extension of the certification deadline has no effect on the appeal deadline.*

**APPLICANT:** Matthew Jefferies, Skidmore, Owings & Merrill, One Maritime Plaza, San Francisco CA

**PROPERTY OWNER:** Steelwave CDS, LLC, 999 Baker Way, Suite 200 San Mateo, and 101 California Street, Suite 800, San Francisco CA

**ENVIRONMENTAL REVIEW STATUS:** It is staff’s recommendation that ZAB adopt the proposed mitigated negative declaration prepared pursuant to Article 6 of the CEQA Guidelines.

**FINDINGS, CONDITIONS, MMRP AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE**

	Yes	No	Abstain	Absent	Recused
DUFFY	X				
KAHN				X	
KIM	X				
O’KEEFE	X				
OLSON	X				
SANDERSON	X				
THOMPSON	X				
VINCENT	X				
TREGUB	X				
<b>BOARD VOTE: 8</b>		<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>



**ATTEST:**  
Samantha Updegrave, Zoning Adjustments Board  
Secretary

**PUBLICATION OF NOTICE:**

Pursuant to BMC Section 23B.32.050, this notice shall be mailed to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before the date of the Board action. This notice shall also be filed with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.

**FURTHER INFORMATION:**

Questions about the project should be directed to the project planner, Sharon Gong, at (510) 981-7429 or [sgong@cityofberkeley.info](mailto:sgong@cityofberkeley.info). All project application materials, including full-size plans, may be viewed online at: <https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>, or in the Permit Service Center at the Zoning Counter at 1947 Center Street, Third Floor, during normal office hours.

**TO APPEAL THIS DECISION (see Section 23B.32.050 of the Berkeley Municipal Code):**

To appeal a decision of the Zoning Adjustments Board to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley. The City Clerk's telephone number is (510) 981-6900.
2. Submit the required appeal fee (checks and money orders payable to "City of Berkeley"):
  - A. The fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
  - B. The fee for all appeals by Applicants is \$2,500.
3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown on page 1 (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Adjustments Board at, or prior to, the public hearing.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

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# ATTACHMENT 2

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## FINDINGS AND CONDITIONS

JUNE 23, 2022

### **747 (787) Bancroft Way (Phase III)**

**Use Permit #ZP2021-0096 to demolish six existing buildings and construct a 159,143-square-foot, three-story building containing 124,539 square feet of research and development space and 34,604 square feet of light manufacturing space, and a surface parking lot containing 76 off-street parking spaces and five loading spaces.**

#### **PERMITS REQUIRED**

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- Variance pursuant to BMC Section 23.406.050(B)(1), to allow replacement of protected floor area to be made available after the demolition or change of use of the space.
- Use Permit pursuant to BMC Section 23.326.070, to demolish main buildings used for non-residential purposes.
- Use Permit pursuant to BMC Section 23.206.050, to change more than 25 percent of manufacturing and warehouse uses to research and development uses.
- Use Permit pursuant to BMC Section 23.206.030(A) to construct between 20,000 and 30,000 square feet of new floor area as Manufacturing and Wholesale Trade.
- Administrative Use Permit pursuant to BMC Section 23.322.100(C)(5), to reduce the number of on-site loading spaces from seven to five.
- Administrative Use Permit pursuant to BMC Section 23.206.020 to establish more than 30,000 square feet of research and development use.
- Administrative Use Permit pursuant to BMC Section 23.304.050 to allow architectural elements to exceed the height limit in a non-residential district.

#### **I. CEQA FINDINGS**

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The Notice of Intent (NOI) to adopt a CEQA Mitigated Negative Declaration and Initial Study (IS/MND) were published on March 9, 2022 and the public review period ended at 5:00 P.M. on April 7, 2022. The Draft IS/MND was filed with the Alameda County Clerk-Recorder and was submitted to the State Clearinghouse (SCH # 2022030275) for distribution to interested state and regional agencies. Six comment letters were received on the Draft IS/MND; responses to those comments were provided. No substantive changes to Draft IS/MND resulted.

The Zoning Adjustments Board has considered has considered the Mitigated Negative Declaration together with comments received during the public review process, and finds, on the basis of the whole record before it, that: (1) no potentially significant effects were identified that could not be reduced to less than significant levels by implementation of the mitigation measures and/or the City's standard conditions of approval, (2) there is no substantial evidence the project will have a significant effect on the environment, and (3) the Mitigated Negative Declaration reflects the lead agency's independent judgment and analysis. The record of proceedings upon which this decision is based is located at the Land Use Planning Division, 1947 Center Street, 2<sup>nd</sup> Floor, Berkeley, California 94704.

## II. FINDINGS FOR APPROVAL

1. As required by Section 23.406.040(E)(1) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because the project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements as well as to the Mitigation Measures identified in the IS/MND to ensure proper mitigation of any potential environmental impact. These standard conditions and Mitigation Measures will ensure the project would not be detrimental to adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
2. As required by Section 23.406.050(F) of the BMC, the Zoning Adjustments Board finds that the Variance to allow replacement of 34,604 square feet of the total 59,621 square feet of protected floor area requiring replacement to be located within the newly constructed building after demolition or elimination of the floor area within the existing buildings is permissible because:
  - A. Finding 1: *"There are exceptional or extraordinary circumstances or conditions applying to the land, building or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings and/or uses in the same District."*

Requiring the retention of protected uses on-site during the course of construction makes the project infeasible. There are multiple issues associated with the project site which in combination make it infeasible to phase grading and site preparation which could otherwise possibly allow for retention of protected area during construction. In order to build the 787 Bancroft Way building, the project needs to demolish the buildings within and immediately outside the new building footprint and build the parking that is required for the additional floor area.

Large Multi-Use Site - The project site is one of the largest development sites in West Berkeley, containing multiple buildings with protected uses under the West Berkeley Plan, which lends a complexity to the site atypical in other West Berkeley locations.

Grading Program - Grading the entire west block at one time is the only feasible option for site preparation activities. If the site were phased for the purposes of retaining the existing buildings protected uses during construction, the applicant team would need to both off-haul and import dirt at different points in time. Phased grading would contribute additional unnecessary truck trips and associated air quality, noise, and traffic impacts to the neighborhood.

- B. Finding #2: *"The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the subject property's owner"*.

Property Right Impacts due to Protected Use Requirements - The Zoning Ordinance creates an impossible threshold for replacement of protected uses by requiring replacement at time

of demolition as opposed to at the time of occupancy. In order to develop the site, the entire property must be cleared at one time – temporarily eliminating the protected use floor areas. The project and associated public improvements to Fourth Street and Bancroft Way are otherwise infeasible.

As conditioned as part of project approval, the project replaces at least 34,604 square feet of protected manufacturing use space in the new building during operation of the project.

Retention of Protected Area During Construction Not Feasible - One option analyzed by the applicant team is the retention of the protected use space during construction by phasing the project. This option adds significant project costs due to construction inefficiencies, anticipated cost escalation, and lost revenue due to timing of marketing and generating leasing revenues. Phased grading and utility connections is inefficient and infeasible. The team explored locating a temporary building on the site during construction, but this would entail hooking up utilities, working around the building for site work, at substantial cost.

The requirement to find replacement space prior to demolition of the projected use will render the project infeasible, thereby, negating the owners' preservation and enjoyment of substantial property rights.

- C. Finding 3: *“The establishment, maintenance or operation of the use or the construction of a building, structure or addition thereof, to be approved will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare and safety and benefit the City as a whole”.*

Achieving Intent of Protected Use Replacement - The variance request results in a temporary gap from the protected use replacement requirements. Once the building is occupied, the protected use area will be reestablished. The new space will be modern and will last long into the future. The same is not true of the existing manufacturing space on the site. As a result, the replacement of protected space within the project in the long-term meets the intent of the West Berkeley Plan, MU-LI District purposes, and the requirements of this finding, while allowing the upgrades associated with redevelopment. The protected use space will be replaced in the new project, specifically as a condition of the new building's occupancy permit.

Neighborhood Benefit - The project would complement and be compatible with surrounding uses, which include warehousing, manufacturing, office, research and development, and laboratories. The project would further contribute to the economic and land use diversity described in the MU-LI district purposes. It would strengthen the Fourth Street retail district and provide a thriving work environment. In these ways, the variance can help support the following purposes of the MU-LI district:

- B. Encourage development of a mixed use-light industrial area for a range of compatible uses;

- E. Provide for the continued availability of manufacturing and industrial buildings for manufacturing uses, especially of larger spaces needed by medium sized and larger light manufacturers;
- G. Provide the opportunity for laboratory development in appropriate locations;

The project will provide community benefits that contribute to the finding of non- detriment described above. Coordinated streetscape improvements along both sides of Fourth Street, and on Bancroft Way improve pedestrian connections. Pedestrian improvements extend to the UPRR tracks and will connect with new pedestrian sidewalk access being built by the Berkeley Commons/600 Addison Street project along Bolivar Drive. This will enable pedestrians to walk on the north side of Bancroft Way all the way to the Aquatic Park, which is not currently possible. Along the project frontage, a mid-block crosswalk improves walkability close to the Fourth Street retail corridor. A new public parklet and street trees provide opportunities for shade and public open space along Fourth Street. Expanded stormwater retention improves on-site management of run-off and improves water quality in the Aquatic Park lagoon and San Francisco Bay.

- D. Finding 4: *“Any other variance findings required by the Section of the Ordinance applicable to that particular Variance.”*

This Finding is not applicable to the Variance request.

- 3. As required by Section 23.206.050(A)(3)(b) or the BMC, the Zoning Adjustments Board finds that the Use Permit request for a change of 59,621 square feet of protected uses in the MU-LI district is permissible, as the new building will contain 34,604 square feet of replacement protected light manufacturing space and buildings under Phase I (2246 Fifth, 2233 Fourth, 2222 Fifth and 2229 Fourth) will contain the remaining 25,017 square feet of replacement protected uses (COA#14 and #58). This replacement space will be available before the demolition of the existing buildings, except as allowed under the Variance findings above.
- 4. As required by Section 23.206.100(A) and 23.206.100(B)(2) of the BMC, the Zoning Adjustments Board finds that the proposed project is:
  - A. Consistent with the purposes of the District: There are ten purposes of the district listed in BMC Section 23.206.080(A). Several focus on encouragement of light industrial uses, a mixed use-light industrial area for a range of compatible uses, continue availability of manufacturing buildings, especially of larger spaces, creation of well-paying jobs which do not require advanced degrees, and laboratory development in appropriate locations. The project will construct a new building containing light manufacturing and R&D uses. As such, the project supports opportunities for light manufacturing and R&D uses which are compatible with neighboring light manufacturing and R&D uses. Adjacent land uses include commercial, manufacturing, R&D, and light industrial, as well as Aquatic Park open space. The project is compatible in use and has been designed with access, circulation, landscaping, setbacks, etc. to further ensure compatibility. The proposed project is expected to generate an estimated net increase of approximately 300 employees, a percentage of which promise to be well paid jobs which do not required advanced degrees.



Other purposes of the district include to support the development of businesses which contribute to the maintenance and improvement of the West Berkeley environment. The project contributes to the maintenance and improvement of the West Berkeley environment through streetscape improvements along Fourth Street, planting of 88 new trees, bioretention systems to improve the quality of stormwater runoff near Aquatic Park and San Francisco Bay, no Natural Gas Construction consistent with the provisions of BMC Chapter 12.80, and achievement of LEED Silver or equivalent.

- B. Compatible with the surrounding uses and buildings: Though taller than existing buildings on the project site, the proposed 45-foot building complies with the MU-LI District's height standard, and is consistent with nearby buildings such as 600 Addison. The proposed project inclusive of protected floor area is compatible with adjacent commercial, manufacturing and wholesale uses.
  - C. Consistent with the adopted West Berkeley Plan: The project is of the scale and design that is appropriate for its surroundings and is compatible with the mix of uses in the area. The project is a substantial investment on an underdeveloped project site, resulting in the creation of approximately 300 new jobs, thereby contributing to the economic vitality of West Berkeley.
  - D. Unlikely to induce substantial change of uses of protected uses in the buildings: The project includes demolition of a total of six buildings containing a total of 59,621 square feet of protected floor area; however, as permissible pursuant to BMC Section 23.206.050(A)(3), replacement space is provided - 34,604 square feet of the required 59,621 square feet of replacement space is provided in the replacement building at 787 Bancroft (subject to approval of a Variance), and the remaining 25,017 square feet of protected floor area is provided in buildings under Phase I. Therefore, the project provides the required replacement protected floor area, consistent with the intent of the zoning district, and the project is unlikely to substantially change the overall square footage of protected uses on site.
  - E. Designed to be supportive of the light industrial character of the District: The project will both include 34,604 square feet of protected use space, as well as include R&D use which is permissible in the District and are deemed to be both compatible with and supportive of the light industrial character of the District.
5. As required by Section 23.326.070 and 23.326.070(C) of the BMC, the Zoning Adjustments Board finds that the proposed demolition of the non-residential buildings is permissible because:
- A. At a duly noticed hearing, the Landmarks Preservation Commission (LPC) reviewed a demolition referral for the existing buildings and took no action to initiate a local historic designation.
  - B. The demolition of the commercial buildings is not materially detrimental to the commercial and public interest of any affected neighborhood in the City. The new building will replace the existing 80,234 square feet of commercial floor area with 125,787 square feet of new gross floor area and will replace the required 59,621 square feet of protected floor area within the project site and within buildings under Phase I (COA #14 and #58). Demolition

of the building will allow redevelopment of the project site which, as discussed in Variance Finding 3 above, complements and is compatible with surrounding uses. In addition, the project constructs streetscape improvements along Fourth Street, which is a benefit to the surrounding community. In addition, it is estimated that the project employs over 300 persons who activate the area and help ensure the economic viability of nearby retail and personal household services uses.

- C. Demolition will be necessary to allow construction of the proposed building given the inclusion of a condition of approval that allows demolition of the existing buildings only after complete construction plans are submitted to the City for the replacement building (COA #19).
6. As required by Section 23.304.050 of the BMC, the Zoning Adjustments Board finds that the proposed mechanical penthouses may exceed the District height limit as the total area of the proposed rooftop projections is 7,957 square feet or 15% of the average floor area of the building.
7. As required by Section 23.322.100(C)(5) of the BMC, the Zoning Adjustments Board finds that the proposed reduction of loading spaces from seven to five is permissible, as the majority of the floor area is a dedicated to R&D use, which demands fewer loading spaces than other industrial uses.
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### III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9. 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.

**IV. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD**

Pursuant to BMC 23.406.040(E)(2), the Zoning Adjustments Board attaches the following additional conditions to this Permit:

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

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

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

**11. Bird-Safe Measures.** Consistent with the intent to reduce bird strikes, the Project Proponent shall submit plans that reflect the following:

- A. At minimum, the same bird-safe measures as in the approved project ZP2019-0215 at 600 Addison (Berkeley Commons).
- B. Bird-safe film on north, east and south façade glazing.
- C. Bird-safe glass for 100 percent of the glazing on the west façade.
- D. Recessed glass and light-colored shades on all windows.
- E. Documentation of consultation with the Golden Gate Audubon Society prior to final decision on the above measures.

**12. Shuttle.** Shuttle service from the 747 Bancroft project site to the nearest BART station shall be operative within one year of the first occupancy in the building. The shuttle service shall be available to the public, but with priority given to employees of the project.

**13. Duplex.** The existing duplex at 2212 Fifth Street shall be available to the public for purchase up to one month prior to the scheduled demolition.

**14. 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.

**15. 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.

**16. Compliance with Conditions and Environmental Mitigations.** The building permit application is subject to verification of compliance to the adopted **Mitigation Monitoring and Reporting Program (Attachment 2 – Exhibit A)**. The applicant shall be responsible for demonstrating compliance with all conditions of approval and mitigation measures per the timeline set forth by this use permit. The applicant shall deposit \$10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with these Conditions of Approval and other applicable conditions and regulations. Should compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses upon the request of the Zoning Officer; any unused deposit will be refunded to the applicant.

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

**17. Protected Floor Area.** The applicant is required to replace and designate 26,274 square feet of floor area within the Phase I buildings<sup>1</sup> for Protected Use only (i.e. Manufacturing, Warehousing, Wholesale Trade, and/or Resource Recovery Enterprise) by comparable space in Berkeley devoted to one or more of protected industrial uses consistent with BMC Section 23.206.050(A)(4):

- a. **Notice of Limitation.** All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a “Notice of Limitation on Use of Property” and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate the location of the protected floor area(s) and that the protected floor area shall not be changed to another use unless so authorized by changes to the underlying regulations of the Zoning Ordinance.
- b. **Verification of Replacement Space.** The Zoning Officer shall verify the location within the building(s) where the required Protected Space is located in conformance with the recorded Notice of Limitation.

<sup>1</sup> Phase I buildings include 2222 and 2246 Fifth Street, 2233 Fourth Street, and 2229 and 2231 Fourth Street.

- 18. Ohlone Storyboard.** The Project sponsor shall include the location and design of a publicly-viewable storyboard in the final plans. The storyboard shall recognize the significance of the Ohlone in this area of Berkeley and discuss or showcase the efforts that are currently underway to discover the Ohlone culture (e.g., food and language). The content of the storyboard will be at the discretion of the Ohlone.
- 19. Ohlone Medicinal/Herb Garden.** The Project sponsor shall include the location and design of an Ohlone medicinal/herb garden at the southwest corner of the Project site for use by, and at the discretion of, the Ohlone. At the discretion of the Ohlone, interpretive signage can also be placed at this location. The garden and any signage shall be included in the final plans.
- 20. 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.
- 21. 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.
- 22. 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.
- 23. 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.
- 24. Toxics.** The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
- A. Environmental Site Assessments:
- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old\*) shall be submitted to TMD for developments for:

- All new commercial, industrial and mixed use developments and all large improvement projects.
  - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
  - EMA is available online at: [http://www.cityofberkeley.info/uploadedFiles/IT/Level\\_3\\_-\\_General/ema.pdf](http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf)
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
- 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
- B. Soil and Groundwater Management Plan:
- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
- 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**

25. Final Design Review. The Project requires approval of a Final Design Review application by the Design Review Committee.
26. Parcel Map Lot Line Adjustment. The applicant shall secure approval of any parcel map or and/or lot line adjustment associated with this Use Permit.
27. Percent for Public Art: Consistent with BMC §23C.23, the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
28. 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.
29. Affordable Housing. As required by Resolution No. 66,617-N.S., adopted June 3, 2014, Owner shall offset the estimated impacts of the project on affordable housing according to the following formulas:

USE	AFFORDABLE UNITS or FEE (updated December 2020)	
Office, Research + Development, Restaurant/Retail, Hotel	1 unit per 52,859 gross square feet	\$5.33 per gross square foot
Industrial/Manufacturing, Warehouse/Storage (except “self-storage”)	1 unit per 105,719 gross square feet	\$2.67 per gross square foot
Self-Storage	1 unit per 54,432 gross square feet	\$5.33 per gross square foot

Based on proposed on net new construction of 78,909 square feet of R&D use, it is estimated that the requirement may be satisfied by:

**Housing Production** - Owner shall cause to be constructed in the City of Berkeley no less than one (1) additional housing affordable to households with income at 30% of the SMSA median income plus a fractional fee for 0.5 dwelling units. Owner must have site control and Use Permit approval for the required Affordable Housing project prior to receipt of the building permit for this non-residential project, and must secure an Occupancy Permit for the required Affordable Housing project no later than 18 months from the receipt of the Occupancy Permit for this non-residential project.

**-OR-**

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

Prior to Building Permit	\$140,194.99
Prior to Occupancy Permit	\$140,194.99
1 Year from Occupancy Permit	\$140,194.99

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

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

USE	FEE
Office, Restaurant/Retail	\$1.48 per gross square foot
Industrial/Manufacturing	\$0.89 per gross square foot
Hotel/lodging	\$1.78 per gross square foot
Warehouse/Storage	\$0.73 per gross square foot
Research & Development	\$0.95 per gross square foot

Based on proposed net new construction of 78,909 square feet of research and development space, it is estimated that the requirement may be satisfied by:

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

Prior to Building Permit	\$24,987.85
Prior to Occupancy Permit	\$24,987.85
1 Year from Occupancy Permit	\$24,987.85

The final payment shall be appropriately secured by the City, e.g., by a letter of credit, bond, Promissory Note, Deed of Trust or another appropriate form of security. Some payments carry interest from the date they would normally be due.

Applicants may request reductions to these fee amounts, under the provisions of BMC Sections 22.20.070 or 22.20.080 relating to lower levels of impact, infeasibility, or overriding benefit to the City.

**31. Solar Photovoltaic (Solar PV).** The proposed parking structure, located at 2213 4th Street (Use Permit #ZP2021-0043), will provide the required solar PV system, on the solar zone specified in Section 110.10 of the 2019 Energy Code, for 747 Bancroft Way and will 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.

- 32. Natural Gas Prohibition.** The project shall comply with the Natural Gas Prohibition pursuant to BMC Chapter 12.80.
- 33. 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.
- 34. 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).
- 35. 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.
- 36. Parking for Disabled Persons.** Per BMC Section 23E.28.040.D of the Zoning Ordinance, "Notwithstanding any reduction in off-street parking spaces that may be granted for mixed-use projects in non-residential districts listed in Sub-title 23E, the requirement for off-street parking spaces for disabled persons in the project shall be calculated as if there had been no reduction in total parking spaces."

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

- 37. 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:**

- 38.** During all earth moving activities, the Project sponsor shall engage a Most Likely Descendent (MLD) or MLD designee to observe the duration of such activities. If an item of Native American cultural relevance is encountered, activity within 25 feet of the find will be stopped to allow the MLD to examine the item and determine whether it should be removed from site, reburied on the site, or left in situ. If items are discovered at the extent of foundation grading, or in areas that will not support the proposed building program, then the MLD may choose to leave the item in situ. An on-site reburial area will be agreed to by the Project sponsor and MLD; only the MLD will be informed about the location of the designated reburial area. Any find of cultural significance will also be subject to the City's standard COAs related to the accidental discovery of archeological resources.
- 39. 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.

**40. 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.

**41. 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.

**42. 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.

**43. 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.

**44. 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.

**45. 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.

**46. 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.

**47. 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.

**48. 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 applicant 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.

**49. 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.

**50. 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.

**51. 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.

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



in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

- J. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
- K. 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.
- L. 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.

**53. 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.

**54. 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.

**55. 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.

**56. 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.

**57. 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.

**58. 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:**

- 59. Compliance with Conditions and Environmental Mitigations.** The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit. Occupancy is subject to verification of compliance to the Mitigation Monitoring and Reporting Program.
- 60. Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **June 10, 2022**, except as modified by conditions of approval.
- 61. Protected Floor Area.** The applicant is required to replace and designate 34,604 square feet of floor area in the new building at 787 Bancroft for Protected Use only (i.e. Manufacturing, Warehousing, Wholesale Trade, and/or Resource Recovery Enterprise) in the new building consistent with BMC Section 23.206.050(A)(4):
- c. **Notice of Limitation.** All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate the location of the protected floor area(s) and that the protected floor area shall not be changed to another use unless so authorized by changes to the underlying regulations of the Zoning Ordinance.
  - d. **On-Site Replacement.** The Zoning Officer shall verify the location within the building(s) where the required Protected Space is located in conformance with the recorded Notice of Limitation. The Zoning Officer may approve the relocation of some or all of the Protected Space within the project so long as the total amount of protected space is not reduced below the amount required as specified in this Condition.
- 62. Off-Site Parking, Deed Restriction.** The project site is composed of four separate parcels which will be adjusted, via a Lot Line Adjustment, to create two parcels, Parcel 1 for the building and Parcel 2 for the surface lot parking to serve Parcel 1. Pursuant to BMC Section 23.322.040(D), a deed restriction must be recorded on Parcel 2 as provided in BMC Section 23.322.040(F) prior to issuance of an occupancy permit or final inspection.
- 63. Off-Site Parking, Availability.** As the required parking for the use is not located on the property where the use is located, and is currently proposed to be located in a new parking garage at 2213 Fourth Street under ZP2021-0043 that is not currently available, prior to issuance of any zoning certificate business license, a certificate of occupancy or final inspection allowing operation of the new parking garage must be issued.
- 64. Ohlone Storyboard.** The Project sponsor shall place a publicly-viewable storyboard on the site that recognizes the significance of the Ohlone in this area of Berkeley and also discusses or showcases the efforts that are currently underway to discover the Ohlone culture (e.g., food and language). The content of the storyboard will be at the discretion of the Ohlone. The storyboard shall be included in the final plans and be installed prior to issuance of a certificate of occupancy or final inspection.

**65. Ohlone Medicinal/Herb Garden.** The Project sponsor shall include the location and design of an Ohlone medicinal/herb garden at the southwest corner of the Project site for use by, and at the discretion of, the Ohlone. At the discretion of the Ohlone, interpretive signage can also be placed at this location. The garden and any signage shall be included in the final plans and be installed prior to issuance of a certificate of occupancy or final inspection.

**At All Times:**

**66. Protected Floor Area.** Unless otherwise permissible through changes to the underlying zoning, 34,604 square feet of floor area of Protected Use only (i.e. Manufacturing, Warehousing, Wholesale Trade, and/or Resource Recovery Enterprise) shall remain within the project site.

**67. 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.

**68. 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.

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

**70. 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.

**71. Loading.** All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.

**72. Transportation Management Program.** The project applicant shall implement a TDM Plan that shall include, at a minimum:

- Provide shuttle service between both Project buildings and a BART Station during weekday peak commute periods (6:00 AM to 10:00 AM and 3:00 PM to 7:00 PM). The Project will also explore the feasibility and if feasible, will coordinate the shuttle service with existing shuttle services, and/or other employers in West Berkeley. Shuttle service will be adjusted based on ridership
- Provide bike lockers, showers, personal lockers, and a repair station on-site to encourage bicycling to the site
- Coordinate with City of Berkeley, and/or other regional agencies to facilitate installation of a BayWheels bikeshare station along the Project frontage
- Offer carpool/ride-matching services, such as ZimRide, ComoVee, or 511.org RideShare, to pair employees interested in forming commute carpools.
- Provide at least 10 spaces of preferential carpool parking, including free parking for carpoolers if employees are charged for on-site parking. Carpool parking spaces not occupied by 10:00 a.m. would be available to other vehicles.

- Require tenants to provide full or partial transit subsidy to project employees. Tenants may offer one of the following to employees that request it:
  - a. A monthly commuter check (or alternatively Clipper Card, which is accepted by BART, AC Transit, and other major transit providers in the Bay Area);
  - b. Subsidized AC Transit bus pass; or
  - c. Subsidized Capital Corridor monthly ticket.
- Regularly provide Project tenants and employees information about various transportation options in the area and the TDM strategies provided by the Project. The main lobby of each Project building shall also provide all the information on transportation options, including a TransitScreen.
- Provide information on the Bay Area Commuter Benefits Program to all building tenants. As of September 30, 2014, Bay Area employers with 50 or more full-time employees within the Bay Area Air Quality Management District (Air District) geographic boundaries are required to register and offer commuter benefits to their employees in order to comply with Air District Regulation 14, Rule 1, also known as the Bay Area Commuter Benefits Program. Employers must select one of four Commuter Benefit options to offer their employees: a pre-tax benefit, an employer-provided subsidy, employer-provided transit, or an alternative commute benefit. (Information about Commute Benefits Program is at [511.org/employers/commuter/overview](http://511.org/employers/commuter/overview).)

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## MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program (MMRP) has been formulated based upon the findings of the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for TheLAB Project (Project). The MMRP, which is provided in Table A, lists mitigation measures recommended in the IS/MND for the proposed project and identifies mitigation monitoring requirements. The Final MMRP must be adopted when the Zoning Adjustments Board makes a final decision on the Project.

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

The MMRP is organized in a matrix format. The first column identifies the impact and the second column identifies the mitigation measure or other measure that would be implemented for each project impact. The third column, entitled "Monitoring Responsibility," refers to the agency responsible for oversight or ensuring that the mitigation measure is implemented. The fourth column, entitled "Monitoring Timing," refers to when the monitoring will occur to ensure that the mitigation action is completed. The fifth column, entitled "Verification," is for the lead agency to provide verification that the measures have been implemented.

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**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Date and Initials)
<b>3.4 Biological Resources</b>				
<p>The proposed Project could have a substantial adverse effect on special-status and other bird species due to potential collisions with various building elements.</p>	<p><b>BIO-1:</b> The Project shall implement applicable measures identified in the U.S. Fish and Wildlife Service’s (USFWS) best practices for reducing bird strikes with buildings.<sup>1</sup> Specifically, and at a minimum, windows of the proposed buildings shall include external film and/or glass coverings designed to reduce bird strikes. Such measures shall incorporate one or more of the following glazing options for 90 percent of the windows on the west facing building façade, or a lesser amount if appropriate and agreed to by a qualified biologist; 100 percent of all glass balcony elements shall include the same treatments:</p> <ul style="list-style-type: none"> <li>● Glass that reflects the ultraviolet light, such as “Ornilux;”</li> <li>● Glass which has photovoltaic cells embedded such as “IQ Glass,” or “Voltalux;”</li> <li>● Dichroic glass;</li> <li>● Fritted glass such as Viracon silk-screen;</li> <li>● Etched glass;</li> <li>● Translucent glass such as “Profilit;” or</li> <li>● Film.</li> </ul> <p>In addition, all exterior lighting included as a part of the proposed project shall light downwards instead of towards the sky, interior lights shall be turned off at night or automatic shades shall be installed on all west-facing windows, and limited to required security lighting during all times of the year. Furthermore, interior plantings shall be located away from any untreated windows where birds may see them and attempt to fly into them.</p>	<p>City of Berkeley Planning and Development Department</p>	<p>Prior to approval of Final Design by the Design Review Committee</p>	

<sup>1</sup> U.S. Fish and Wildlife Service. 2016. Division of Migratory Bird Management. *Reducing Bird Collisions With Buildings And Building Glass Best Practices*. July.

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Date and Initials)
	The proposed building treatments and window glazing shall be incorporated into the Final Design Plans and submitted to the City of Berkeley Planning Department for review and approval by a qualified biologist prior to approval of Final Design by the Design Review Committee.			
Demolition of existing structures could adversely affect special-status and common bat roosts.	BIO-2a: Prior to the initiation of demolition activities occurring during the spring, summer, or fall months (March 1 through November 30), the Project sponsor shall retain a qualified biologist to conduct a presence/absence survey to evaluate the site for the occurrence of bats and bat roosts. The surveys shall be scheduled to allow sufficient time to implement mitigation if bats are found during the survey. The Project sponsor shall submit a memorandum with the demolition permit application identifying the qualified biologist retained to conduct the survey and the date of the survey. A second memorandum detailing the findings shall be prepared by the qualified biologist and submitted to the City after completion of the survey.	City of Berkeley Planning and Development Department	Prior to the initiation of demolition or tree removal activities from March 1 through November 30 and prior to submittal of the demolition permit application	



**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Date and Initials)
	<p><u>BIO-2b</u>: If a bat roost is found in any onsite buildings, the species of bat using the roost shall be identified. If the roost is occupied by common species and is not used as a maternity roost, as determined by a qualified biologist, then methods to encourage the bats to leave the roost or to prevent them from returning to the roost shall be implemented prior to roost removal. A mitigation plan shall be developed by the qualified biologist to specify the methods to be used and the timing of the activities. These methods could include removal of roosting sites during the time of day the roost is unoccupied or the installation of one-way doors, allowing the bats to leave the roost but not to re-enter. This mitigation plan shall be submitted to the City for review and approval prior to the initiation of demolition or tree removal activities.</p>	<p>City of Berkeley Planning and Development Department</p>	<p>Prior to the initiation of demolition or tree removal activities from March 1 through November 30</p>	
	<p><u>BIO-2c</u>: If only common species are observed during the survey of the site and the site is not found to be used as a maternity roost, the Project sponsor shall retain a qualified biologist to conduct preconstruction surveys for bat roosts in existing buildings prior to construction activities. The survey shall take place no more than 30 days prior to construction/demolition/removal activities. Preconstruction surveys shall be repeated if demolition or construction activities are delayed more than 30 days.</p>	<p>City of Berkeley Planning and Development Department</p>	<p>30 days (or fewer) prior to construction, demolition, or removal activities</p>	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Date and Initials)
	<p><u>BIO-2d</u>: If special-status bats (e.g., pallid bat) are found onsite, and the roost would be disturbed or destroyed during development, an artificial roost shall be provided. The roost shall be constructed and placed onsite or at a City- and CDFW-approved off-site mitigation area prior to removal of the original roost. Materials from the roost site shall be salvaged, when feasible, to be used in the construction of artificial roosts. A mitigation plan specifying the construction details and siting of the structure shall be prepared by the qualified biologist and approved by the City and CDFW prior to removal of the existing roost. The Project sponsor shall provide a secure source of funding for the monitoring of the artificial roost for a period of 5 years and for implementing actions to remediate the artificial roost if it does not attract bats. A report documenting the implementation of the plan shall be provided to the City and CDFW within one month of completion of the artificial roost. Annual monitoring reports shall be provided to the City and CDFW by the Project sponsor by November 30 of each year, for the 5-year period. The mitigation plan shall be completed and implemented prior to the issuance of the demolition permit.</p>	<p>City of Berkeley Planning and Development Department</p>	<p>Prior to the removal of any existing roost</p> <p>Annually prior to November 30 for a 5 year period</p>	
	<p><u>BIO-2e</u>: Removal of maternity roosts for any species of bats either common or special-status shall be coordinated with CDFW prior to removal. Maternity roosts for any species of bat, either common or special status, shall not be demolished until a qualified biologist has determined that the young are able to fly independently of their mothers.</p>	<p>City of Berkeley Planning and Development Department</p>	<p>During construction, demolition, or removal activities</p>	

**Table A: Mitigation Monitoring and Reporting Program**

Impact Statement	Mitigation Measures	Monitoring Responsibility	Monitoring Timing	Verification (Date and Initials)
<b>3.17 Transportation</b>				
<p>The proposed Project could substantially increase hazards due to potential conflicts associated with increased pedestrian and cyclist activity at or near at-grade railroad crossings.</p>	<p><u>TRA-1</u>: One or more of the following improvements at the Addison Street and Bancroft Way at-grade railroad crossings shall be implemented prior to issuance of a certificate of occupancy, in coordination with and as required by the Union Pacific Railroad, the California Public Utilities Commission, and the City of Berkeley.</p> <ul style="list-style-type: none"> <li>● Potential improvements at the Addison Street at-grade crossing shall include one or more of the following:                             <ul style="list-style-type: none"> <li>○ Relocate the existing gate on eastbound Addison Street to improve truck turns from the service access driveway;</li> <li>○ Install pedestrian warning devices in the northwest and southeast quadrants of the crossing; and</li> <li>○ If a permanent median is installed on Addison Street, consider providing mountable curbs to allow large trucks and emergency vehicles to access the service access driveway;</li> </ul> </li> <li>● Potential improvements at the Bancroft Way at-grade crossing shall include one or more of the following:                             <ul style="list-style-type: none"> <li>○ Improve the automatic gate and warning devices at the crossing;</li> <li>○ Parking on the north side of Bancroft Way west of the railroad tracks would already be eliminated. Note that parking on the south side of Bancroft Way east of the tracks is currently prohibited.</li> <li>○ Improve the sidewalk on the north side of Bancroft Way, including across the railroad tracks, to meet ADA requirements.</li> </ul> </li> </ul>	<p>City of Berkeley Planning and Development and Public Works Departments</p>	<p>Prior to issuance of a certificate of occupancy</p>	

Source: theLAB Project Initial Study/Mitigated Negative Declaration (LSA 2022).