



Planning & Community Development

**Quasi-Judicial Action: Appeal of Design
Commission's Concept Design Review
Approval for a New Mixed-Use Development
740-790 East Green Street**

City Council

October 2, 2023





Project Background

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- On June 22, 2022, the applicant filed an application for Concept Design Review (CDR) for a new mixed-use project at 740-790 E. Green Street, including an application to remove two protected trees.
- The project underwent Environmental Review through an Initial Study (IS), which resulted in preparation of a Mitigated Negative Declaration (MND).
- City Council's review is limited to the Environmental Review and the Design Review (specifically, the project's adherence to applicable design guidelines):
 - > The Council may request that additional environmental information be provided.
 - > The Council may remand the new environmental information to the Design Commission for a report, prior to the Council's final decision on the appeal.



Project Background

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- Project originally submitted as a Planned Development (PD) in 2018:
 - > Applicant withdrew PD application.
- Since the project meets the development standards of the Zoning Code, the only entitlement required is Design Review.
- Design Review is a 3-phase process: Preliminary Review, Concept Review and Final Design Review. Each phase builds upon the other, as the applicant must respond to comments provided at each phase.



Project Background

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- **Project Details**

- > 2.3 acre site on south side of E. Green Street between S. Hudson and Oak Knoll Avenues.
- > Two detached buildings oriented east-west at the north and south sides (254,152 sq. ft.).
- > Three- to five-stories.
- > 4,033 square-foot pocket park.
- > 14,346 square-feet office space & 416 parking spaces.
- > 263 residential units (41 on-site affordable housing units):
 - Includes a 30% Density Bonus.
- > Utilizing City's Affordable Housing Concession Menu:
 - **Height:** 12-foot increase over no more than 60% of the building footprint.
 - **FAR:** 0.5 increase.



Project Background

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- **Applicable Design Guidelines:**
 - > Design-related Goals & Policies of the Land Use Element of the General Plan.
 - > Design Guidelines in the Central District Specific Plan.
- On June 13, 2023, the Design Commission reviewed the application at a noticed public hearing:
 - > Design Commission unanimously approved the Concept Design Review application (6-0) with conditions of approval and adopted the MND.



Project Background

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Aerial Photograph of Project Site



Renderings

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North & partial west elevations
Looking SE from the corner of Green Street & Oak Knoll Avenue



Renderings

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East Elevation
Looking SW from the corner of Green Street & Hudson Avenue



Renderings

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West Elevation
Looking East from Hudson Avenue



Appeal Arguments

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- On June 23, 2023, an appeal was filed by Lozeau Drury, LLP, representing the Supporters Alliance for Environmental Responsibility (“SAFER”).
- Appellant makes 4 arguments related to the Environmental Review only:
 1. Potential for impacts from indoor air emissions;
 2. Potential for impacts related to hazardous substances;
 3. The greenhouse gas analysis adequacy; and
 4. Energy analysis violates CEQA (new argument submitted on September 18, 2023).



Appeal Arguments

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- Dudek, an environmental consulting firm, completed the MND, which includes mitigation measures to reduce possible impacts to less than significant levels.
- The MND was circulated from December 1, 2020 to January 13, 2021.



Appellant Argument #1

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- *There is substantial evidence that the project will have a significant health risk impact from indoor air emissions, particularly formaldehyde in building materials.*
- **Staff Response:**
 - > Discussion of impacts on indoor air quality is not specified or required by the CEQA Guidelines or California's air district guidelines.
 - > CEQA requires study of pollutant levels in **outdoor air** that could harm the public's health. The project was found to not exceed the levels specified by the established standards and therefore will have a less-than-significant impact on air quality.
 - > Furthermore, building materials are required to reduce exposure to toxic substances through compliance with the U.S. Environmental Protection Agency and the California Air Resources Board (CARB) regulations, such as 40 CFR Part 770, Formaldehyde Emission Standards for Composite Wood Products.



Appellant Argument #2

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- *The MND fails to establish a baseline for hazardous substances and its conclusion that the project will not have a significant impact on related to hazardous substances is not supported by substantial evidence.*
- **Staff Response:**
 - > The project underwent a Phase I Environmental Site Assessment (ESA) and a Vapor Intrusion Risk Assessment as part of the IS/MND, which did not result in any hazardous materials being identified on the site in the areas tested.
 - > Because not all of the soil on the site could be tested, the IS/MND includes a Mitigation Measure to ensure that appropriate measures are taken during construction to identify, collect and dispose of any hazardous materials that may be encountered and to minimize and protect individuals from potential exposure to hazardous materials.
 - > With this Mitigation Measure implemented, the project was found to have a less than significant impact related to hazardous materials.



Appellant Argument #3

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- *The MND's greenhouse gas analysis is based on unsupported assumptions.*
- **Staff Response:**
 - > The IS/MND thoroughly reviewed the potential for greenhouse gas emissions from the project based on established best practices.
 - > The Greenhouse Gas Analysis was completed when 2016 Building Standards were in place and the draft IS/MND determined that any impacts would be less-than-significant.
 - > The final IS/MND, completed in 2020, further clarified that the project would be subject to the newer 2019 Building Standards, which has **more stringent** requirements to reduce greenhouse gas emissions.
 - > Further, the California Energy Commission (CEC) concluded the 2019 Building Standards for non-residential projects would generate 30% less greenhouse emissions compared to 2016 standards. This reference is contained as a general example of how reductions are achieved, and is not necessary or relied upon for this project.



New Appellant Argument #4

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- *The appellant submitted a new environmental argument September 18, 2023 (this was not presented to the Design Commission).*
- *The MND's analysis of energy impacts violates CEQA.*
- **Staff Response:**
 - > The IS/MND thoroughly reviewed potential energy impacts from construction and operation of the project.
 - > The CEQA Guidelines cited in this new argument apply to potentially significant effects identified in an EIR:
 - This is an MND and energy was not identified as a potentially significant effect.
 - > The cases cited by appellant are EIR cases, and analyze projects of a completely different magnitude and setting than the project:
 - *Woodland*: 234 acre regional shopping center on undeveloped agricultural land.
 - *Lake Tahoe*: 775 acre project with up to 760 residential units and 6.6 acres of land reserved for commercial uses.
 - This project: Redevelopment of an urban infill site of only 2.33 acres.



Additional Public Comment

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- *Received September 18, 2023.*
- *States that the VT metrics analyzed in initial MND showed significant impacts and that the project reduced the office space by 2,135 sq. ft. to reduce those impacts – How does such a small reduction reduce the impact?*
- **Staff Response:**
 - > The original project included 16,481 sq. ft. of restaurant/café and commercial/retail space and resulted in exceeding VT thresholds.
 - > The revised project reduced the area by 2,135 sq. ft. to 14,348 sq. ft. and changed the entire use to **office only**.
 - > The reduction in area and change in use resulted in no VT impact.



Staff Recommendation

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It is recommended that the City Council:

1. Adopt the Mitigated Negative Declaration and Mitigation Monitoring Reporting Program;
2. Approve a Private Tree Removal to allow for the removal of a 21.5" DBH *Ulmus parvifolia* (Chinese Elm) and a 30.6" DBH *Ficus macrocarpa* 'Nitida' (Indian laurel fig) tree;
3. Find that the project will comply with the purposes of design review, the design-related goals and policies of the Land Use Element of the General Plan, and the Design Guidelines in the Central District Specific Plan; and
4. Deny the appeal and approve the application for Concept Design Review subject to the conditions in Attachment B, which shall be further reviewed by the Design Commission during Final Design Review.



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Findings for Concept Design Review

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1. Find that the project, upon implementation of the conditions of approval, will comply with the purposes of design review, the design-related goals and policies of the Land Use Element of the General Plan, and the Design Guidelines in the Central District Specific Plan



Findings for Tree Removal

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1. Find that the removal of the two protected trees meets finding number 6 of the Tree Protection Ordinance (PMC Section 8.52.075.A): “The project, as defined in Section 17.80.020, includes a landscape design plan that emphasizes a tree canopy that is sustainable over the long term by adhering to the replacement matrix prepared by the city manager and included in the associated administrative guidelines;”



IS/MND Checklist

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	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
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VI. ENERGY. Would the project:

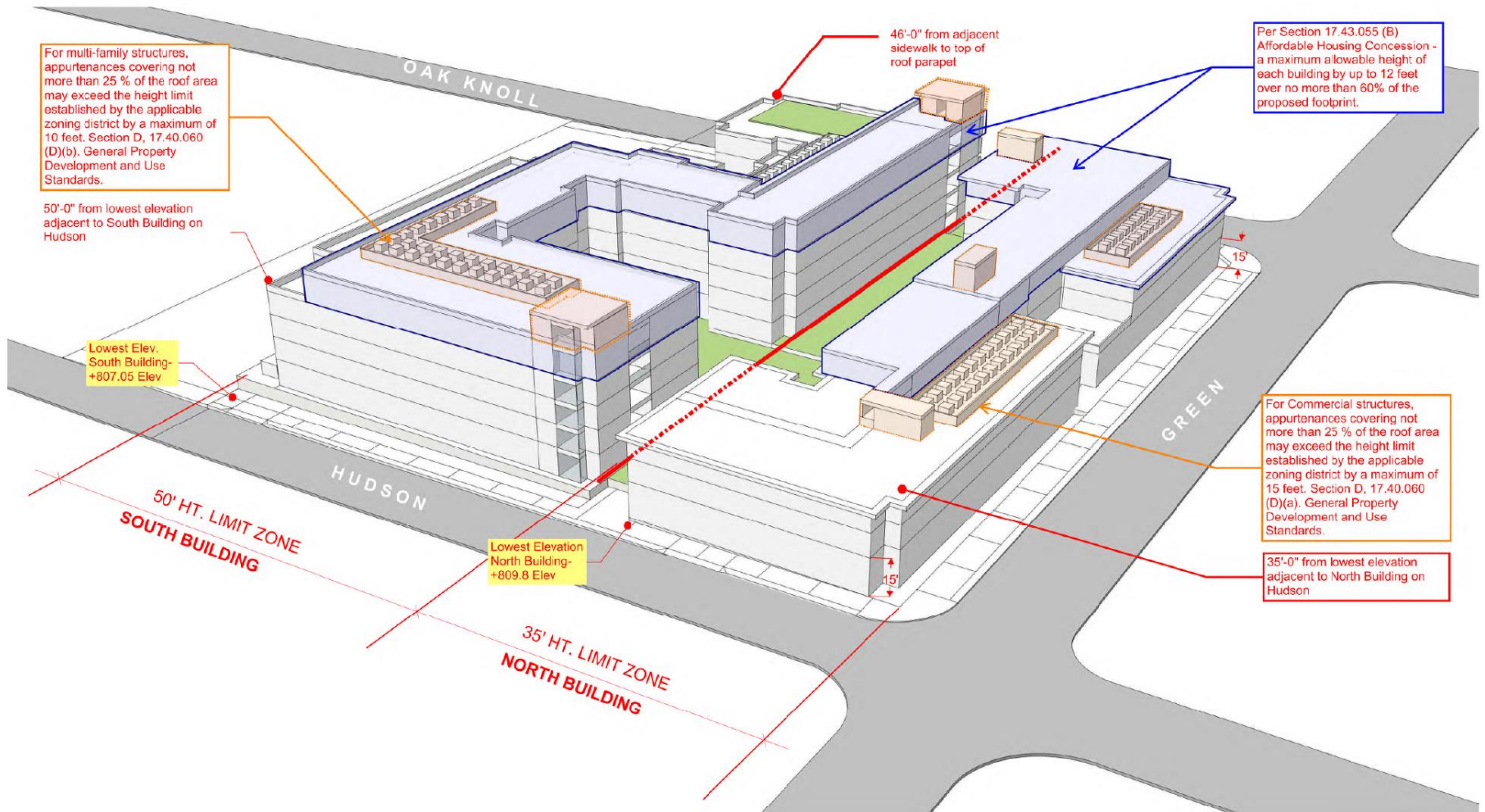
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Refer to Attachment E1, page 226 of the PDF, for complete analysis



Height Concession Diagram

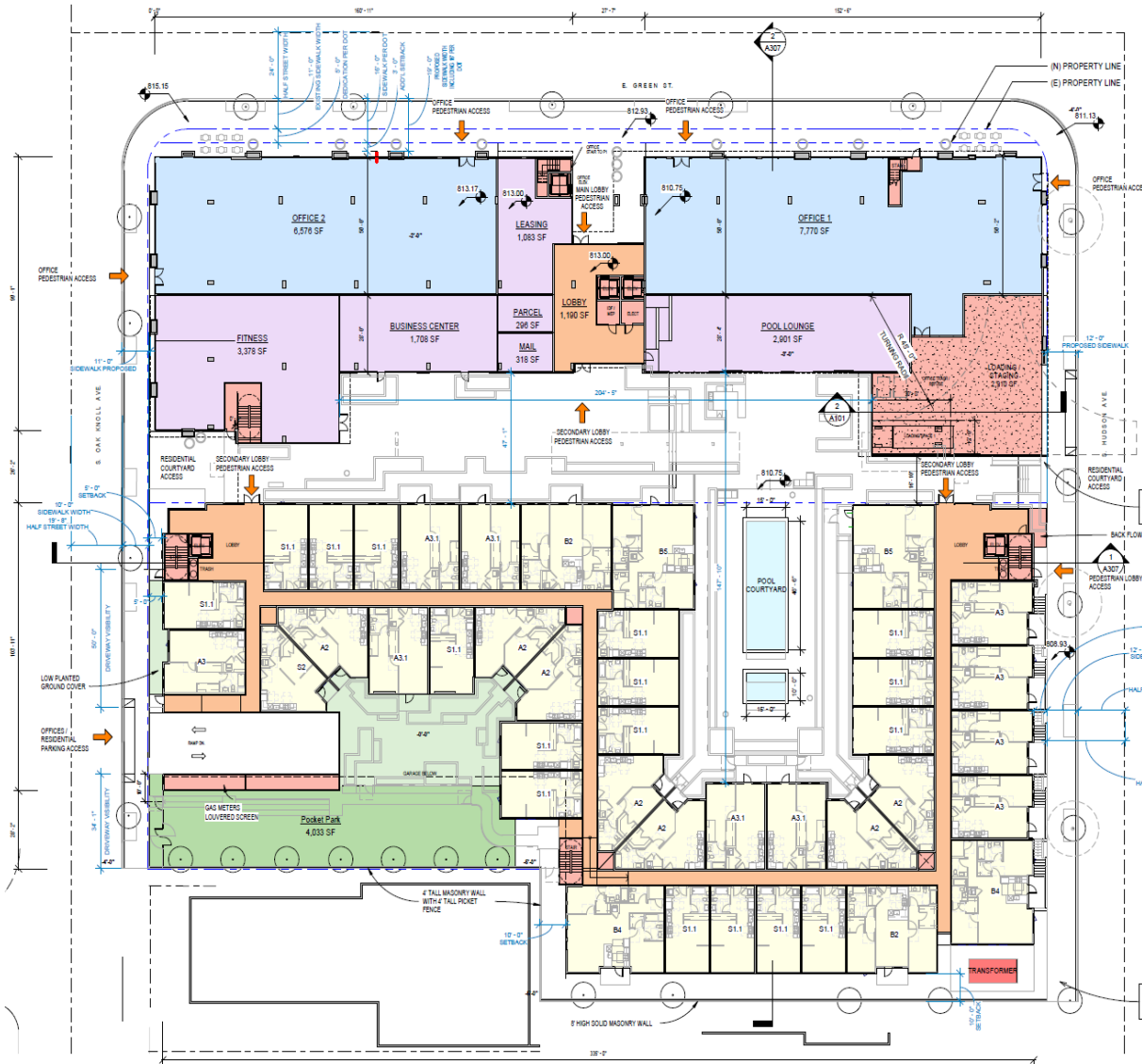
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Ground Floor Plan

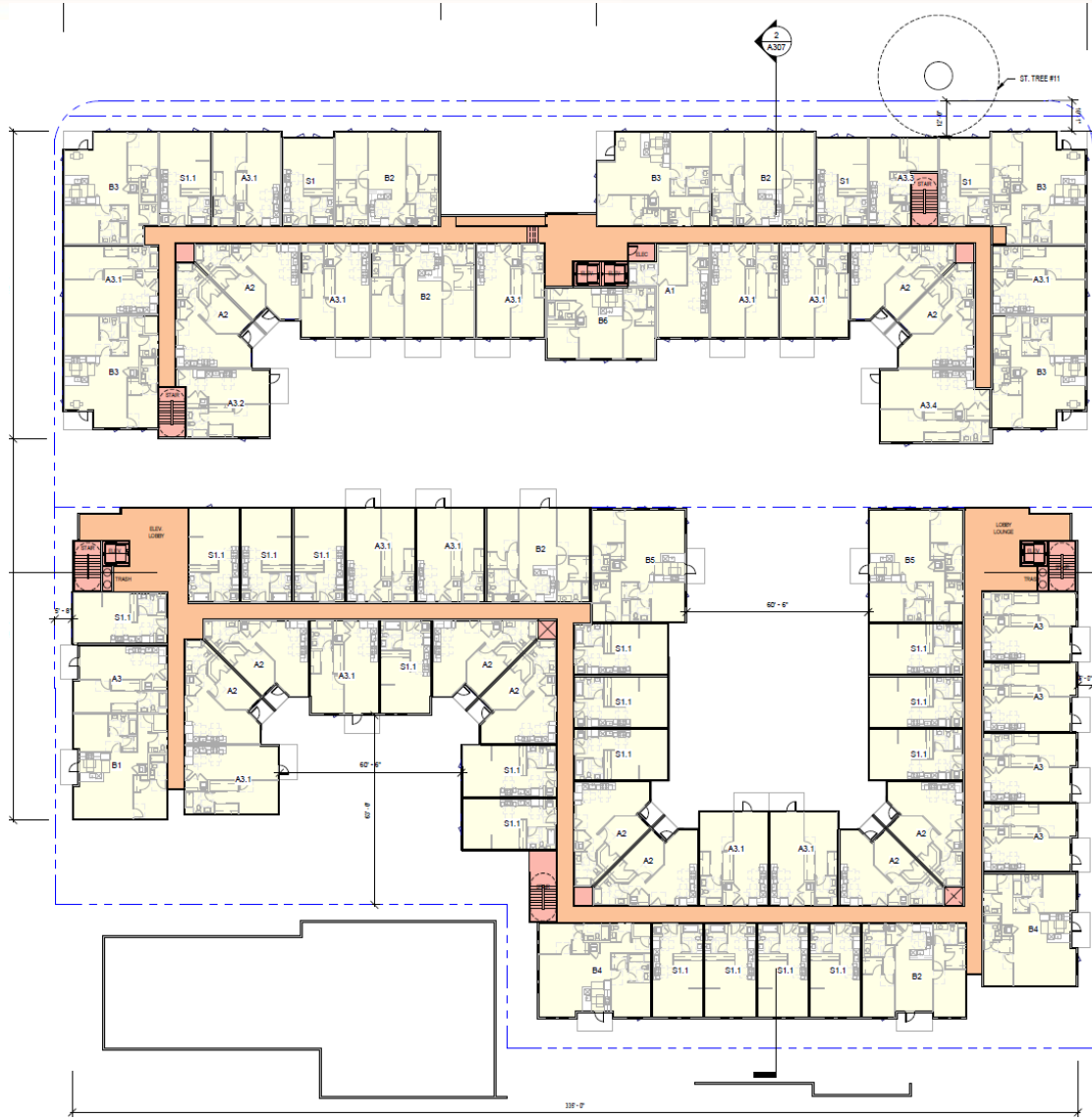
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Third Floor Plan

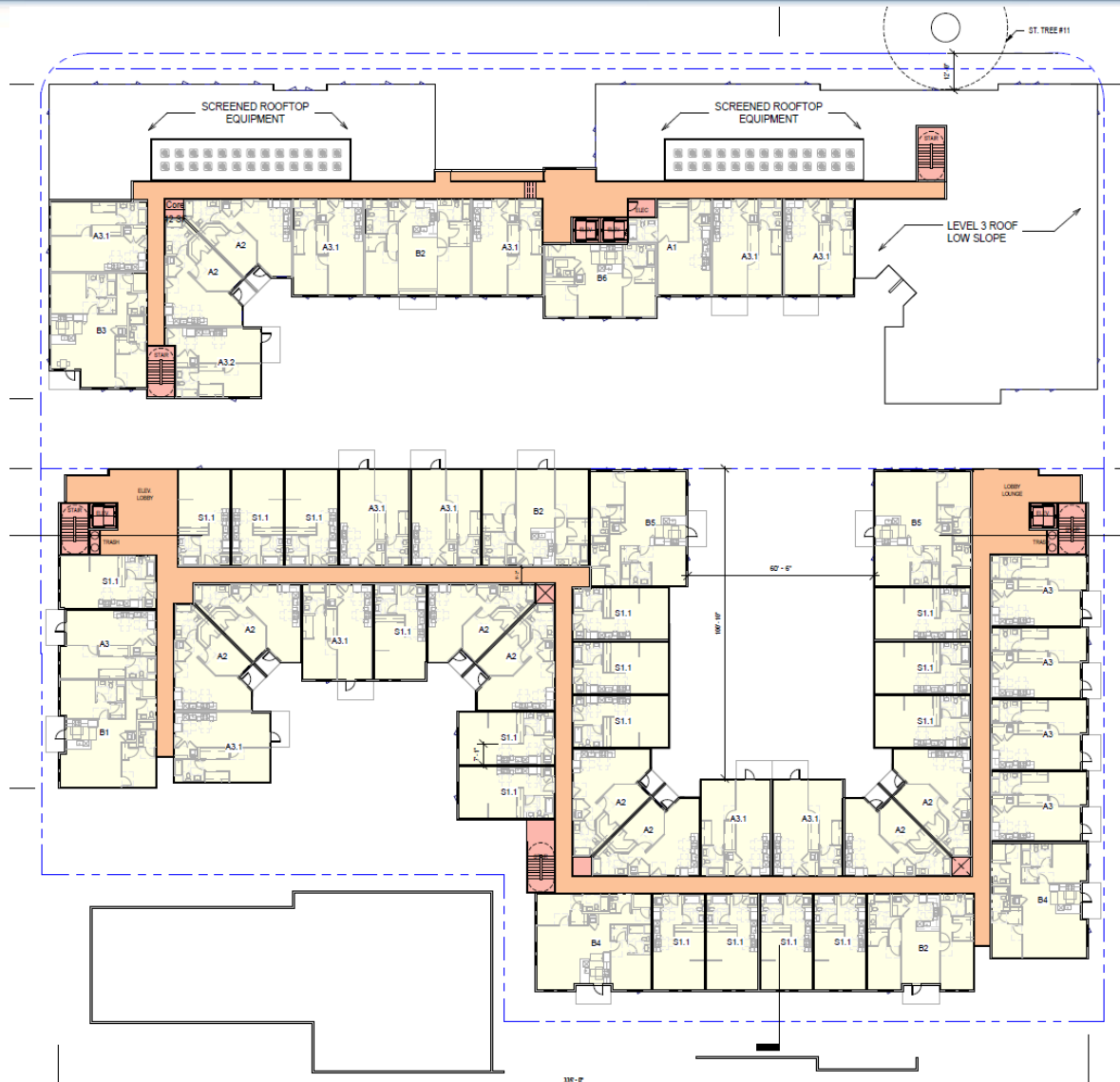
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Fourth Floor Plan

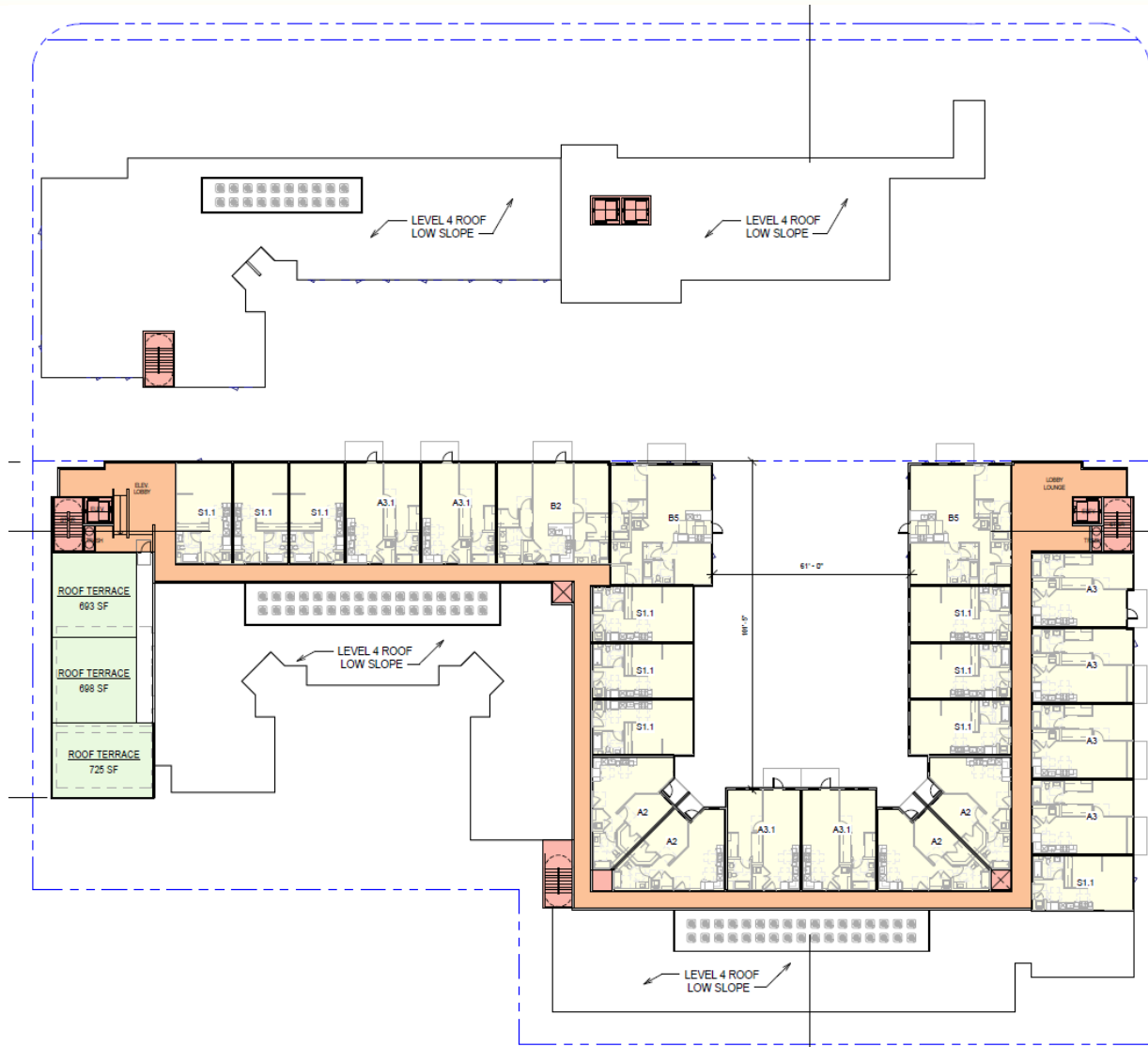
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Fifth Floor Plan

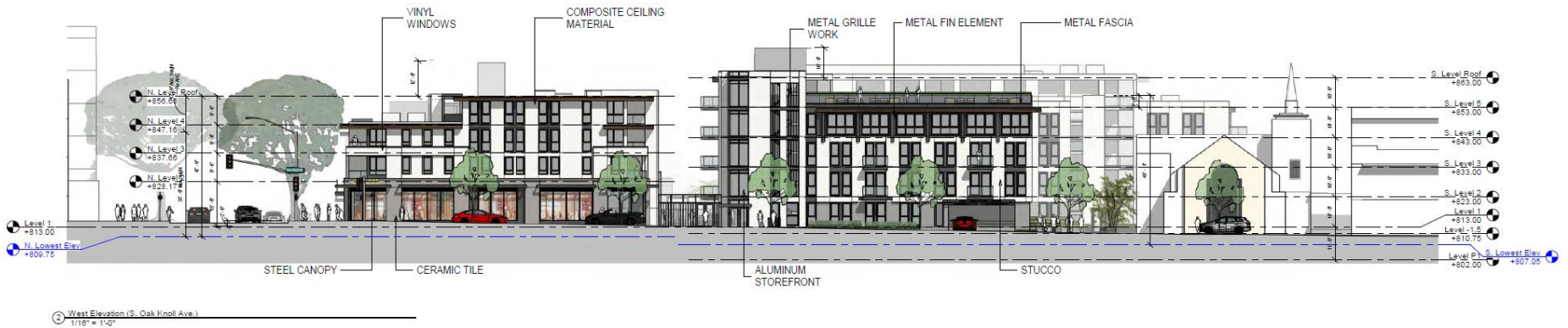
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East and West Elevations

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North and South Elevations

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Courtyard Elevations

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Existing Conditions & Perspectives

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SW view from E. Green St. & S. Hudson Ave.



SE view from E. Green St. & S. Oak Knoll Ave.





Existing Conditions & Perspectives

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S. Oak Knoll Ave. looking south

Project Site



S. Hudson Ave. looking south



Central District Specific Plan

Private Realm Design Guidelines

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- BD 1.2: Integrate new development with its surroundings, emphasizing functional and visual continuity while admitting individual expression.
- BD 1.3: Establish a harmonious transition between newer and older buildings; compatible design should respect the scale, massing and materials of adjacent buildings and landscape.
- BD 2.5: Use articulated sub-volumes as a transition in size to adjacent historic or residential structures that are smaller in scale.
- BD 2.6: Vary three-dimensional character as a building rises skyward; in general, differentiate between the base, middle and top levels of a building.
- BD 3.1: Establish a building's overall appearance on a clear and pleasing set of proportions; a building should exhibit a sense of order.
- BD 8.1: Express roofs in a visually interesting manner that complements the composition of the building and the surrounding area; sculpted roof forms are encouraged.
- BD 8.3: Use a strong, attractively detailed cornice or parapet in conjunction with a flat roof.



Central District Specific Plan

Private Realm Design Guidelines

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- SP 2.1: Locate and orient buildings to positively define public streets and civic spaces, such as public plazas; maintain a continuous building street wall and in general limit spatial gaps to those necessary to accommodate vehicular and pedestrian access.
- SP 2.2: Build to a sufficient height at or near the property line to define the street edge and create a sense of enclosure.
- SP 3.1: Encourage the presence of well-defined outdoor space, such as on-site plazas, interior courtyards, patios, terraces and gardens; these are especially encouraged in association with major developments.
- SP 3.5: Define and contain outdoor spaces through a combination of building and landscape, and discourage oversized spaces that lack containment.
- SP 4.1: Make plazas and courtyards comfortable for human activity and social interaction – standing, sitting, talking, eating.
- SP 4.1: Use plants, furniture and lighting to shape, embellish, enliven and give purpose to outdoor space; lush plants, warm materials and pleasing details are encouraged.
- SP 5.1: Utilize a landscape palette that reflects the history, culture, and climate of the Central District; in general, use a rich, yet coordinated palette of landscape materials to provide scale, texture, and color.