



Office of the City Manager

PUBLIC HEARING

June 2, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Deputy City Manager

Subject: Ashby and North Berkeley BART Station Areas: Proposed Zoning and General Plan Amendments, City and BART Joint Vision and Priorities, Associated Environmental Review Documents and City and BART Memorandum of Agreement

RECOMMENDATION

Conduct a public hearing and upon conclusion:

1. Adopt a Resolution (a) certifying the Final Environmental Impact Report (EIR), adopting the California Environmental Quality Act (CEQA) Findings and Statement of Overriding Considerations, adopting mitigation measures, and adopting a Mitigation Monitoring and Reporting Program (MMRP) for the proposed zoning and General Plan, Municipal Code, and Map amendments; (b) amending the General Plan to include the Ashby and North Berkeley BART Mixed Use Transit Oriented Development General Plan Land Use Classification text and map amendments; and (c) adopting the City and BART Joint Vision and Priorities (JVP) for Transit Oriented Development at the Ashby and North Berkeley BART Stations (**Attachment 1, Exhibits A - F**); and
2. Adopt first reading of an Ordinance to amend the Berkeley Municipal Code to create the Residential-BART Mixed-Use District Residential Zone District (Chapter 23.202.150) and additional conforming amendments to other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into the Berkeley Zoning Ordinance (**Attachment 2**); and
3. Adopt a Resolution adopting the Memorandum of Agreement (MOA) regarding North Berkeley and Ashby Transit-Oriented Developments (**Attachment 3**).

SUMMARY

The development of the Ashby and the North Berkeley BART station sites is a complex, multi-year, multi-phase process, including ongoing community engagement. The first set of key milestones and actions for the City Council to consider relate to compliance with Assembly Bill (AB) 2923 and issues that require resolution to facilitate issuance of the

first of two solicitations for developer teams for the North Berkeley and Ashby BART station areas.

This report provides an overview of these key milestones and actions for consideration by the City Council and the BART Board of Directors, and how they relate to the overall planning process. For ease of reference, the Current Situation and Its Effects section of this report is organized as follows:

- A. Proposed zoning and General Plan Amendments
- B. City and BART Joint Vision and Priorities for Transit-Oriented Development at the Ashby and North Berkeley BART Station (“JVP”)
- C. Environmental Review
- D. City and BART Memorandum of Agreement (“MOA”)

The proposed zoning and General Plan amendments and JVP have been shaped and discussed over the past two years of public engagement and the environmental review documents have been publicly available since October 2021 (Draft EIR) and February 2022 (FEIR: Response to Comments), respectively. The draft City and BART MOA is the product of the last several months of negotiation. It builds on the existing City and BART Memorandum of Understanding (MOU), executed in March 2020, and outlines performance milestones, minimum project requirements, and a process by which the City and BART will collaborate on next steps.

The MOA clarifies the processes that BART and/or the City will pursue moving forward to develop BART-owned property at North Berkeley BART Station and includes a timeline for pending actions related to the Ashby BART site. The City and BART anticipate entering into a separate MOA later in 2022 to address issues specific to the Ashby BART site.<sup>1</sup> Both the City Council and the BART Board of Directors must approve each MOA for it to become effective.

#### FISCAL IMPACTS OF RECOMMENDATION

There are a variety of potential fiscal impacts to the City related to Ashby and North Berkeley BART transit-oriented development (TOD), including the allocation of

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<sup>1</sup> The Ashby BART site has more complex issues related to the City’s option to purchase the air rights over the western parking lot, and to right-of-way and infrastructure issues that are currently being studied. These studies are looking at potential roadway reconfigurations of Adeline Street and options for the Berkeley Flea Market using space in the Adeline Street right-of-way and/or a portion of the adjacent Ashby BART station area. See the 4/19/22 Council Worksession Report (<https://berkeleyca.gov/sites/default/files/2022-04/2022-04-19%20WS%20Item%2002%20Ashby%20and%20North%20Berkeley%20BART.pdf>), p.7 for a more detailed description of these studies. City and BART staff have been engaging with the Berkeley Flea Market Board and anticipate broader community engagement in Summer 2022. City staff anticipate bringing more information to Council on these topics in Fall 2022.

affordable housing funding, capital expenditures related to Adeline Street roadway reconfiguration, and operational costs related to on-street parking management adjacent to the stations. The actions in the above recommendations under consideration by the City Council do not result in direct fiscal impacts, since future funding commitments will return to Council for action. Staff will provide more detail about these potential fiscal impacts in advance of possible future actions.

### CURRENT SITUATION AND ITS EFFECTS

Advancing transit-oriented development at the Ashby and North Berkeley BART station areas is a Strategic Plan Priority Project, advancing our goals to:

- Create affordable housing and housing support service for our most vulnerable community members.
- Champion and demonstrate social and racial equity.
- Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

Spurred by the passage of AB 2923, the Berkeley City Council and BART Board of Directors approved a Memorandum of Understanding (MOU) to plan for TOD at the stations in December 2019 and January 2020, respectively. Over the past two years, staff from the City Manager's Office, Planning and Development, City Attorney's Office, Health Housing and Community Services and Public Works have focused on the milestones outlined in the MOU. As required in the MOU, City staff led an extensive public process that began in June 2020 and included eight public meetings of the Council-appointed Community Advisory Group (CAG), three community workshops and many other meetings.

Achievement of the MOU milestones will allow advancement to the next important stage of issuing solicitations for potential developer teams, starting with the Request for Qualifications (RFQ) for the North Berkeley site. Staff is requesting that Council review and consider the documents outlined in the Recommendations above. The key elements of these documents are outlined below and provided as attachments to this report. Pursuant to their purview, the Planning Commission held a public hearing on items A through C (above) on April 6, 2022, and recommended that the City Council:

- Certify the EIR;
- Consider a set of companion recommendations for incorporation into the zoning, JVP, future Objective Design Standards, or other agreement between the City and BART, as appropriate;<sup>2</sup>
- Adopt EIR "Alternative 3: Increased Height" as the preferred alternative and revise the zoning and General Plan amendments to conform to Alternative 3 (See sections A and C below for more information about the staff and Planning

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<sup>2</sup> See Minutes of 4/6/22 Planning Commission Meeting for Companion Recommendations, available at: [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2022-04-06\\_Final%20Minutes\\_1.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2022-04-06_Final%20Minutes_1.pdf)

Commission recommendations about the proposed zoning and CEQA considerations).

**A. Proposed Zoning and General Plan Amendments**

Zoning for the Ashby and North Berkeley BART station areas must be amended to be consistent with AB 2923 (**Attachment 2**).<sup>3</sup> The proposed zoning amendments will create a new Residential - BART Mixed Use (R-BMU) zoning district and amend the Zoning Map to apply the new R-BMU zoning district to the Ashby and North Berkeley BART sites.

General Plan amendments are needed to ensure consistency between the Zoning Ordinance and the General Plan (**Attachment 1, Exhibits A and B**). The General Plan changes will add a new land use classification (the Ashby/North Berkeley BART Transit Oriented Development) and the General Plan map will be updated for the Ashby and North Berkeley BART sites. The Ashby/North Berkeley BART TOD General Plan Land Use Classification is informed by the AB 2923 development parameters.

The proposed zoning standards governing development and allowed uses for the Ashby and North Berkeley BART stations consist primarily of the new Residential – BART Mixed Use District, Chapter 23.202.150, as well as additional conforming amendments to other sections of the Berkeley Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into the Zoning Ordinance (see Table 1 below).<sup>4</sup>

| <b>Table 1. Proposed Amendments to the Berkeley Zoning Ordinance</b> |
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| 1. Section 23.106.050: Floor Area Ratio                              |
| 2. Table 23.108.020: Zoning Districts                                |
| 3. Section 23.202.020: Allowed Land Uses                             |
| 4. Section 23.202.040: Use-Specific Regulations                      |
| 5. Section 23.202.150: R-BMU Residential BART Mixed Use District     |

<sup>3</sup> AB 2923 requires BART to develop TOD zoning standards for eligible BART-owned properties within Alameda, San Francisco and Contra Costa counties, establishing minimum local zoning requirements for height, density, parking, and floor area ratio. Cities and counties have until July 1, 2022 to rezone BART’s property to align with or exceed the AB 2923 baseline zoning standards. Otherwise, BART’s TOD standards become the baseline zoning standards for BART’s property governed by AB2923.

<sup>4</sup> See the 4/6/22 Planning Commission Agenda ([https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-04-06%20PC%20Agenda\\_linked\\_1.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-04-06%20PC%20Agenda_linked_1.pdf)) which includes links to Item 9 and Supplemental Packet 1.A. for proposed zoning and General Plan amendments, City and BART Joint Vision and Priorities document and links to associated CEQA documents.

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| 6. Section 23.302.070.E: Use Specific Regulations              |
| 7. Section 23.302.070.G: Use Specific Regulations              |
| 8. Section 23.3304.140: Area Plans                             |
| 9. Section 23.308.020: Emergency Shelters                      |
| 10. Section 23.310.030.A: Alcoholic Beverage Sales and Service |
| 11. Section 23.310.030.B: Alcoholic Beverage Sales and Service |
| 12. Section 32.312.030: Live/Work                              |
| 13. Section 23.322.030: Parking and Loading                    |
| 14. Section 23.322.0910: Bicycle Parking                       |
| 15. 23.502.020: Glossary                                       |

- 1. Basic Development Standards and Definitions.** The R-BMU zoning sets forth regulations for development standards and related definitions (if different from those already included in the Berkeley Municipal Code or because they do not exist).
- **New Definitions.** Terms that are defined in the proposed zoning include: Lot Area, Floor Area Ratio, Dwelling Units Per Acre, Private Usable Open Space and Public Open Space. New definitions are required because BART will maintain ownership and control over areas of the site that include critical station infrastructure, as well as retain ownership of the rest of the land and enter into long-term ground leases with future developers. This modifies the context of “private” and “public” areas.
  - **Basic Development Standards.** Development standards for Minimum Lot Area, Floor Area Ratio, Building Height, Minimum Residential Density, Parking (Vehicle and Bicycle) and Open Space (Private and Public) are included in Table 23.202.150-2. As noted above, at its April 6<sup>th</sup> meeting the Planning Commission recommended that the Council adopt EIR “Alternative 3: Increased Height” as the preferred alternative and revise the zoning and General Plan amendments to conform to Alternative 3. Table 2 below shows a comparison of development standards presented by staff and recommended by the Planning Commission, which differ with regards to Maximum Height and Maximum Floor Area Ratio (only).<sup>5</sup> Both sets of standards are consistent with the requirements of AB 2923. See Section C. Environmental Review for more information about Alternative 3 and the EIR.

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<sup>5</sup> Attachment 2 – Draft Ordinance is annotated to reflect both the 4/6/22 staff recommendation for maximum height and FAR and the Planning Commission recommendation for maximum height and FAR.

**Table 2: Comparison of 4/6/22 Staff Recommendation and Planning Commission Recommendation: R-BMU District Development Standards**

|                                    | <b>4/6/22 Staff Recommendation</b>   | <b>4/6/22 PC Recommendation<br/>(Per EIR “Alternative 3:<br/>Increased Height”)</b> |
|------------------------------------|--|---|
| Lot Area,<br>Minimum               | No minimum   | Same  |
| Floor Area Ratio<br>(FAR), Maximum | 4.2  | 5.5   |
| Main Building<br>Height, Maximum   | 80 feet and 7 stories  | 12 stories (130 feet)   |
| Residential<br>Density, Minimum    | 75 dwelling units per acre   | Same  |
| Residential<br>Parking             | None required, maximum of 0.5<br>spaces per dwelling unit  | Same  |
| Non-Residential<br>Parking         | No minimum, 1.5 spaces per<br>1,000 sf maximum   | Same  |
| Bicycle Parking                    | Minimum of 1 space per unit,<br>50% of which shall be<br>covered and secure and 1<br>space per 1,000 sf of<br>commercial use | Same  |

**2. Allowed Uses.** Following the format of the Zoning Ordinance, allowed and prohibited uses are specified in Section 23.202.020 of the Berkeley Municipal Code and also in Table 23.202.150-1, related to Street-Facing Ground Floor Uses. The allowed land uses are the same for both BART sites except for the following commercial uses, which require a Use Permit for the North Berkeley site but would be permitted with a Zoning Certificate for the Ashby BART site:

- General Retail
- Gyms and Group Class Instruction
- Office uses above the ground floor; and
- Food Service Establishments of 3,000 sf or less (establishments larger than 3,000 sf would be permitted with an Administrative Use Permit).

The approval process for the initial establishment of a land use in a new building will follow the R-BMU Master Development Permit process outlined in Section 23.202.150G (see description below), and any use not listed in Table 23.202-1 for the R-BMU District can be approved through this process. After the initial establishment of a land use, any change of use of an existing building or portion of a building will require the permits indicated in Section 23.202.020 and Table 23.202-1 for the R-BMU District. Table 23.202.150-1, and Figure 23.202.150-1 include requirements for active ground-floor uses or residential uses depending on whether a building fronts on a larger arterial street or a smaller, primarily residential street.

3. **Other Development Standards.** The proposed zoning also includes some limited requirements relating to shaping the volume and massing of future development. Greater detail related to building form is anticipated to be addressed during the process to prepare objective design standards for each station area (described in more detail below). These development standards address the following:
  - Street-Facing Ground Floor Frontages
  - Open Space
  - Setbacks and Step-backs<sup>6</sup>
  - Frontage Improvements, Ground Floor Residential and Non-Residential Frontage
  - On-Site Pedestrian Access
  - Transparency
  - Building Entrances
  - Parking Design and Access
4. **Approval Process.** The BART stations are large sites which will require additional technical analysis and multiple phases to complete. In order to address the long-term implementation of the development at the BART sites, the proposed zoning outlines an approval process governed by a “Master Development Permit” (MDP). The MDP includes two types of approvals/submittals:
  - **Preliminary Development Plan (PDP).** At a minimum, the PDP must demonstrate that the plan meets the development standards set forth in Section 202.23.150C and the other requirements of the R-BMU district, as well as demonstrate compliance with any established Objective Design Standards. It must include maps, drawings and information for the site and surrounding area relating to:

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<sup>6</sup> The proposed zoning ordinance included as Item 9, Attachment 1, Exhibit A to the 4/6 Planning Commission inadvertently omitted a change noted in the November 3, 2021 Planning Commission meeting staff report. In the draft ordinance attached to this staff report, Section 23.202.150 F.5 (Front Upper-Story Stepbacks) was corrected such that it no longer specifies the length of the required upper story step back.

- Streets, driveways, sidewalks and pedestrian ways, and off-street parking and loading areas;
  - Location and approximate dimensions of structures;
  - Utilization of structures, including land uses and the number of dwelling units;
  - Estimated population;
  - Space reserved for public uses, including schools, parks, playgrounds, and other open spaces;
  - Major landscaping features;
  - Relevant operational data;
  - Drawings and elevations (establishing the scale, character, and relationship of buildings, streets, and open spaces); and
  - A development phasing plan describing the order in which various portions of the development will be built, along with a proposed schedule for such phases.
- **Final Development Plan (FDP).** The FDP can be for one or more phases identified in the PDP. It needs to demonstrate compliance with the PDP and with any established Objective Design Standards. At a minimum, it must include more detailed information related to:
    - Location of utility facilities;
    - Detailed building and landscaping plans and elevations;
    - Design and location of signs;
    - Plans for street improvements; and
    - Grading or earth-moving plans.
  - **Public Review Process.** The public notice and hearing process for a Master Development Permit shall be the same as for Use Permits as defined in BMC Section 23.404, except that notice shall be mailed or delivered to all businesses, residents and owners of property located within five hundred (500) feet of the subject property. PDPs and FDPs shall be reviewed by the Zoning Adjustments Board, the decisions of which are appealable to the City Council. As noted below, under Section 5. State Law and Proposed Zoning, the approval process set forth in the proposed zoning would be significantly changed if a developer is eligible for and decides to use the streamlined approach pursuant to Senate Bill (SB) 35, as specified in AB 2923.
- 5. State Law and Proposed Zoning.** Two state laws, AB 2923 and the State Density Bonus, constrain the City's independent ability to shape the project through zoning and typical development approval processes, as part of its land use authority. However, the City also retains separate discretionary authority related to its roles as an affordable housing funder and as a property owner through its option to purchase the air rights over the western parcel at the Ashby BART station.
- a. **AB 2923.** Adopted in 2018, AB 2923 provides that "eligible TOD projects" on BART property that meet certain affordability criteria are entitled to a



streamlined approval process, as outlined under SB 35. The BART sites will likely achieve high levels of affordability; therefore, it is likely that the BART sites will be eligible for this streamlined approval process. This means that they could be exempt from elements of the development permit review process proposed for the BART sites and entitled to ministerial approvals by staff, which bypasses discretionary review by the Zoning Adjustments Board and/or the City Council (including any discretionary requirements in the PDP and FDP). Because of this, the City has been discussing with BART an Objective Design Standards (ODS) process that would allow the City and the community to have a strong voice in the design quality of the development at both stations. The process to develop and requirements to comply with the ODS will be formalized in the City and BART MOA (See Section D. City and BART MOA below).

- b. **State Density Bonus.**<sup>7</sup> Projects proposed under the R-BMU zoning will also be eligible to utilize the State Density Bonus, which under certain circumstances could require the City to grant a developer more density or height than otherwise permitted under the R-BMU zoning. Future development on the station sites may be eligible to utilize provisions of the State Density Bonus Law, which incentivizes the development of affordable and senior housing, including up to a 50 percent increase in project density for most projects, depending on the amount of affordable housing provided, and for certain projects which are 100 percent affordable, no maximum controls on density. If the future development qualifies under the State Density Bonus Law, it will also be eligible for a certain number of concessions and for waivers of development standards, such as height, minimum setbacks, or FAR, which would otherwise physically preclude the construction of the development. Whether or how future development project(s) will utilize the State Density bonus are difficult to predict. See memorandum prepared by Street Level Advisors (**Attachment 5**) for a discussion of ways in which the City can ensure its housing subsidy dollars are being spent appropriately in light of a density bonus.

## **B. City and BART Joint Vision and Priorities for Ashby and North Berkeley BART**

The March 2020 MOU between BART and the City of Berkeley calls for the City and BART, with input from the City's Community Advisory Group (CAG), to establish a "Joint Vision and Priorities" document for the Ashby and North Berkeley BART station areas. The goal of this document is to provide a concise statement of the City and BART's shared, high-level expectations for future development of both the Ashby and North Berkeley BART properties. Per the MOU, the JVP will be incorporated into future Request(s) for Qualifications (RFQs) for development of both the Ashby and North

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<sup>7</sup> California Government Code Sections 65915 – 65918.

Berkeley Station areas. The JVP will help guide the process from developer selection through project construction.

The JVP builds on the framework provided by the City and BART's adopted plans, policies and regulations, and the additional land use, site planning and financial feasibility studies undertaken as part of this planning process. The JVP is organized around five key topics: Affordable Housing, Public and Civic Space, Land Use, Building Form, and Station Access. The JVP includes aspirational statements as well as minimum requirements. Each topic includes an overall vision statement, followed by "shared priorities" for both station areas, and additional priorities specific to each station, if applicable. The five topic areas include:

- **Affordable Housing.** The JVP establishes baseline requirements, as well as some aspirational goals for housing development, including the total number of housing units, affordability levels, 10-year time horizon to deliver units, sequencing of affordable housing units, unit-type, and type of developers desired. This section was informed by financial feasibility analyses that estimated the City subsidy required to achieve varying levels of affordable housing.<sup>8</sup> The Ashby-specific priorities include the Adeline Corridor Specific Plan goal of striving for 100% affordable housing, development that prioritizes inclusion of residents with disabilities, and a preference for those who live in or have been displaced from South Berkeley.
- **Public and Civic Space.** The shared priorities consist of designing new public and civic space to minimize maintenance costs, supporting new public and civic space and station access goals while maximizing space for affordable housing.
  - o For Ashby: Priorities include designing and programming public and civic space to reinforce South Berkeley's role as the historic hub for African American/Black life in the Bay Area; providing a permanent and improved space for the Berkeley Flea Market in a prominent location (on Adeline Street and/or the Ashby site); and addressing the specific need to increase parks and usable green spaces.
  - o For North Berkeley: Creating a connection to the Ohlone Greenway is identified as a priority.
- **Land Use.** The shared priorities emphasize that land uses at the two BART sites should serve community needs and be predominantly transit-oriented housing, complemented by public space and non-residential uses that encourage community interaction, customized to meet the unique needs of each station and neighborhood.
  - o For Ashby: Priorities for non-residential uses include those that reinforce the area's historic role as a center of neighborhood commerce, social connection, economic empowerment and Black identity and culture. Non-residential uses should support adjacent uses such as the Flea Market, the Ed Roberts Campus

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<sup>8</sup> See 4/27/21 City Council Meeting Staff Report (Item 31) and Attachment 1 – Estimate of City Subsidy Needed for MOU-Required Minimum of 35% Affordable Housing (or more) at Ashby and North Berkeley BART Station Areas (Memorandum prepared by Street Level Advisors):  
<https://cityofberkeley.box.com/s/v0hpb9yzccy14ipb1zg7m7pyy06b82uj>

- and existing theaters and other businesses, and not negatively impact businesses south of the Ashby BART station along Adeline Street.
- o For North Berkeley: Uses in future development at North Berkeley should be focused on meeting neighborhood needs and complementing nearby University Avenue businesses, and existing parks. Non-residential uses should be oriented towards the station entrance and/or Sacramento Street.
  - **Building Form.** The shared priorities provide high-level guidance about overall site and building design such as: building height, location and orientation, scale, architectural variety, ground-floor non-residential frontages. The station-specific priorities provide additional guidance about building massing and its relationship to existing surrounding development, such as focusing density and larger building forms towards arterial streets or the interior of the site and providing massing breaks, step-downs and other design elements that create a residential character and scale.
  - **Station Access.** The shared priorities emphasize utilizing space, financial and other resources to prioritize affordable housing and other desired community benefits, transportation demand management, wayfinding and signage, and curbside management in order to secure safe and equitable access.
    - o For Ashby: Station-specific priorities relate to pedestrian and bicycle connections to and through the site, and to reconfiguring Adeline Street to create safer space for all modes of transportation.
    - o For North Berkeley: Station-specific priorities relate to considering the role of adjacent streets in multi-modal access planning for the station and to prioritize any parking for commuters over parking for residential and/or potential community or non-profit retail uses.

### C. Environmental Review

An Environmental Impact Report (EIR) was prepared for the Ashby and North Berkeley BART Station Zoning Standards project (the Project). The EIR was made available for review through the City's website at [www.cityofberkeley.info/bartplanning](http://www.cityofberkeley.info/bartplanning), at the Planning and Development Department at 1947 Center Street (2ndFloor), and at the following locations in the City:

- Tarea Hall Pittman South Branch Library, 1901 Russell Street
- West Branch Library, 1125 University Avenue
- Central (Downtown) Library, 2090 Kittredge Street.

The environmental review process for the Project has included:

- A Notice of Preparation (NOP) of a Draft EIR was circulated to potentially interested parties and agencies on November 20, 2020.
- The City held an EIR scoping meeting as part of the regularly scheduled Planning Commission meeting on December 2, 2020.
- The Draft EIR (DEIR) were made available for public review on Friday, October 15, 2021.

- A Notice of Availability (NOA) for the DEIR was distributed to State and local planning agencies on October 15, 2021.
- A Planning Commission hearing on the DEIR on November 3, 2021.
- The public comment period on the DEIR closed on December 1, 2021.
- A Notice of Availability/Release of Final EIR (FEIR) and the FEIR was published in March 30, 2021.
- A Planning Commission hearing on the FEIR and associated environmental review documents on April 6, 2022.

1. **Draft EIR.** As noted above, the Proposed Project (staff recommendation) involves General Plan amendments and the adoption of new AB 2923-compliant transit-oriented zoning for the Ashby and North Berkeley BART stations. The Proposed Project does not propose specific development projects, but for the purposes of environmental review, includes a buildout projection which represents a reasonably foreseeable maximum amount of development for the Plan Area through 2030. The Proposed Project's buildout projection would include the total development of 2,400 housing units and 125,000 square feet of commercial space across the two sites. In light of the Planning Commission's recommendation to adopt zoning that conforms to Alternative 3 as the Proposed Project, see also section 1b below for more detail about Alternative 3.

a. **Potentially Significant Impacts Identified in the Draft EIR.** All significant environmental impacts, relevant City Standard Conditions of Approval, and mitigation measures are disclosed in the EIR and summarized in the CEQA Findings and Statement of Overriding Considerations (see **Attachment 1, Exhibit E**). Other than the impacts discussed below, all of the significant environmental effects of the Project can be reduced to less than significant levels through implementation of Standard Conditions of Approval and/or mitigation measures identified in the EIR. The DEIR identified one significant and unavoidable environmental impact related to Noise (temporary construction noise) and one significant and unavoidable cumulative impact related to historic resources. The findings include a statement of overriding consideration that explains why the benefits of the project outweigh its significant environmental effects and should be approved.

b. **Alternatives.** As required by Section 15126.6 of the CEQA Guidelines, an EIR must examine a range of reasonable alternatives to the proposed project that would feasibly obtain most of the CEQA Project Objectives, and avoid or substantially lessen the Project's significant environmental impacts. Because of the constraints of AB 2923, the range of alternatives is limited. The following alternatives are evaluated in the DEIR and briefly summarized here (see also **Attachment 1, Exhibit E**):

- **Alternative 1: No Project Alternative/Implement AB 2923 Zoning Standards.** The No Project Alternative (Alternative 1), which is required to be analyzed by CEQA Guidelines section 15126.6(e)(1), assumes that the City takes no action to rezone the station sites. Under the provisions of AB 2923 both station sites then would be effectively rezoned with the development standards included in that bill. This alternative assumes the following development standards in AB 2923 would apply to the station sites: minimum density of 75 units per acre; height of 7 stories (or higher); and FAR of 4.2 (or higher). Alternative 1 would involve the same density, height, and FAR standards as the proposed project, but would not include the same standards with respect to setbacks; therefore, this project would allow for 2,500 units between both sites (1,250 units at each site).
- **Alternative 2: BART Rider Parking Alternative.** Alternative 2 assumes that 15 to 30 percent of current BART rider parking on the main BART station sites would be replaced at the Ashby BART site and 25 to 40 percent of current BART rider parking would be replaced at the North Berkeley BART site.<sup>9</sup> The existing BART rider parking spaces in the auxiliary lots, northwest of the North Berkeley BART station, would remain with the proposed project and all the alternatives, because they are not considered developable for other uses. For purposes of analysis, the higher number of the estimated range was used for this alternative, which would result in 160 vehicle parking spaces at Ashby BART station and 300 vehicle parking spaces at North Berkeley BART station, all located in above-ground parking garages. Alternative 2 would involve an estimated 400 fewer residential units compared to the proposed project.
- **Alternative 3: Increased Height.** The Increased Height Alternative would allow for the development of 12-story buildings on the station sites, whereas the Proposed Project would allow for buildings up to seven stories. Increasing the maximum building height by 5 stories would allow for an increase in FAR, assumed to be up to 5.5. Buildout under this alternative could include up to 3,600 residential units combined for both sites, or 1,200 more than under the Proposed Project. It is assumed that the change in allowable building height would not affect the size of commercial use, which would still be an estimated 125,000 square feet. All other proposed development standards, including vehicle and bicycle parking requirements, minimum open space, and minimum public space, would remain the same as the Proposed Project.

In light of the recommendation of the Planning Commission that City Council

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<sup>9</sup> The ultimate decision on BART rider replacement parking is under BART purview and the number of replacement parking spaces would be determined by BART's ongoing access planning efforts. The parking totals assumed in the alternative do not reflect actual project proposals being considered by BART nor do they reflect any adopted or proposed BART targets, goals, policies or programs.

adopt zoning conforming to Alternative 3 as “the Proposed Project”, additional information is included to clarify the discussion of Alternative 3 (Increased Height Alternative in the Section 6.4 of the Draft EIR) in the Ashby and North Berkeley BART Stations TOD Zoning Project EIR (see **Attachment 6**). The additional information clarifies that the projected buildout analyzed for Alternative 3 includes potential development resulting from the Proposed Project (staff recommendation) and a density bonus of 50 percent and a concession to allow for a height increase up to 12 stories, as well as an increase in Floor Area Ratio to 5.5, up to a maximum projected buildout of 3,600 dwelling units. Furthermore, the additional information includes supplemental analysis (primarily in the issue areas of air quality, energy, greenhouse gas emissions, land use, and noise) to clarify potential impacts associated with Alternative 3 that are discussed in Section 6.4 of the EIR.

2. **Final EIR.** The Final EIR prepared by the City of Berkeley for the Ashby and North Berkeley BART Stations TOD Zoning Project (“the Project”) consists of the Draft EIR and Response to Comments on the Draft EIR. The City received written and oral comments about the Draft EIR and the Ashby and North Berkeley BART Stations Zoning Standards during the official public comment period for the EIR (from October 15 through December 1, 2021). All of the written comments are reproduced in their entirety in the Response to Comments document of the Final EIR. Responses to all of the comments that pertain to the EIR are addressed in this same document, including specific revisions to text in the Draft EIR that are being made to correct errors or omissions or to clarify information presented in the Draft EIR in response to comments received during the public review period (Chapter 5, FEIR). In no case do these revisions result in a greater number of impacts or impacts of a substantially greater severity than those set forth in the Draft EIR such that recirculation of the Draft EIR would be required.

Staff has provided draft CEQA findings that apply to either the April 6<sup>th</sup> staff proposed zoning recommendation or the Planning Commission proposed zoning recommendation (as described above in section B of this report). The CEQA findings for these two options are provided in **Attachment 1, Exhibit E**, which is an exhibit to the Resolution certifying the EIR, adopting the CEQA Findings and Statement of Overriding Considerations, adopting the mitigation measures and incorporating them into the project, and adopting the Mitigation Monitoring Report Program (MMRP). The CEQA Findings provide a Statement of Overriding Considerations explaining the why the benefits of the project outweigh its significant environmental effects and should be approved.

3. **Mitigation Monitoring Reporting Program (MMRP).** The EIR identifies the applicable mitigation measures that will be implemented to reduce the impacts

associated<sup>10</sup> with the Proposed Project. CEQA requires a public agency to adopt a monitoring and reporting program for ensuring compliance with any required mitigation measures applied to proposed development. The table in the MMRP lists the mitigation measures that may be included as performance standards in the zoning, contractual obligations, and/or conditions of approval for the project (**Attachment 1, Exhibit F**).

4. **California Environmental Quality Act (CEQA) Findings and Statement of Overriding Considerations.** The Final EIR identifies significant environmental impacts that will result from implementation of the Proposed Project and Alternative 3. The City finds that the inclusion of certain mitigation measures as part of Proposed Project and Alternative 3 will reduce all but the following significant impacts to levels that are less than significant: construction-related noise and cultural resources in the cumulative setting. No feasible mitigation measures have been identified to reduce these impacts to a less-than-significant level or mitigation measures have been identified but would not reduce impacts to a level of less than significant; these impacts will remain significant unavoidable impacts of the Proposed Project and Alternative 3. As noted above, the EIR analyzes and the supplemental analysis (**Attachment 6**) clarifies that Alternative 3 includes the development potential for the Proposed Project and if a future applicant were to request a density bonus of 50 percent and request a concession to allow for a height increase, as well as an increase in Floor Area Ratio to 5.5, up the projected buildout of 3,600 units.

As required by CEQA, the City Council must consider and adopt proposed zoning based on the information provided and determine if there are specific considerations associated with “the Project” as adopted by Council, that serve to override and outweigh its significant unavoidable effects by adopting CEQA Findings and Statement of Overriding Considerations (**Attachment 2, Exhibit E**).<sup>11</sup>

#### **D. City and BART Memorandum of Agreement (MOA)**

In addition to the proposed zoning and General Plan amendments and the City and BART Joint Vision and Priorities document, the City and BART have also negotiated a MOA that expands upon the March 2020 MOU between the City and BART to reflect changes in the anticipated project schedule and encompass topics not addressed previously (**Attachment 3**).<sup>12</sup> The MOA clarifies the processes that BART and/or the

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<sup>10</sup> For Mitigation Measure CR-1: Ashby BART Station Interpretive Display, BART has been added, along with the City of Berkeley, in recognition that BART would be part of approvals of on-site installation at the Ashby BART site.

<sup>11</sup> CEQA Guidelines Section 15093(b).

<sup>12</sup> City and BART March 2020 MOU: [https://www.bart.gov/sites/default/files/docs/BART-Berk%20MOU\\_Signed3-6-2020.pdf](https://www.bart.gov/sites/default/files/docs/BART-Berk%20MOU_Signed3-6-2020.pdf)

City will pursue moving forward to develop BART-owned property at North Berkeley BART Station and includes a timeline for pending actions related to the Ashby BART site. The City and BART anticipate entering into a separate MOA later in 2022 to address issues specific to the Ashby BART site.<sup>13</sup> Both the City Council and the BART Board of Directors must approve each of the MOA(s) in order to be effective.

## BACKGROUND

The current planning and development activities build upon community planning efforts, the most recent of which date back to 2018, to establish a vision and goals for future development of the Ashby and North Berkeley BART stations. This includes the Adeline Corridor Specific Plan (adopted by Council in December 2020) and a community process to develop North Berkeley BART Development Goals and Objectives (approved by Council in May 2019).<sup>14</sup>

BART, the City and other public agencies have different roles and responsibilities related to the Ashby and North Berkeley BART stations:

- BART is a transit operator and the property owner. Consistent with state, regional and city policies, BART undertakes TOD to increase ridership and reinvest in BART operations, create affordable housing to address the regional housing crisis, and contribute to neighborhood vitality, among other goals. BART's approach is to enter into long-term ground-leases with developers selected competitively via Requests for Qualifications (RFQs) or Proposals (RFPs).
- The City has land use authority to adopt zoning regulations that set development standards and the approval process for proposed development projects. State laws, such as AB 2923 and the State Density Bonus Law, substantially limit municipalities' discretionary authority regarding development standards and the project approval process for projects that meet specified development standards and affordability levels. However, the City plays a separate role as a funder for affordable housing projects, and retains an option to purchase the air rights over the western parcel at Ashby BART. This may restore some of the discretion limited by State laws.
- Other public agencies (e.g., Alameda County Transportation Commission, Caltrans, AC Transit) have varying degrees of regulatory authority related to circulation and access around the station areas.

The Berkeley City Council and BART Board of Directors approved an MOU to plan for TOD at the stations in December 2019 and January 2020, respectively. The MOU was executed in March 2020 and established a process for community engagement, development of zoning, station access, affordable housing decisions, and other relevant

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<sup>13</sup> See footnote #1 above.

<sup>14</sup> See March 29, 2022 Off Agenda Memos to Mayor and City Council (<https://berkeleyca.gov/sites/default/files/2022-04/Transit-Oriented%20Development%20%28TOD%29%20BART%20Stations%20032922.pdf>) for an overview about public engagement related to the Ashby and North Berkeley BART Station areas, and [www.cityofberkeley.info/bartplanning](http://www.cityofberkeley.info/bartplanning) for meeting materials for specific meetings.



topics. In 2020, BART secured major grants from Caltrans and the Federal Transit Administration to support planning for TOD, providing approximately \$1,700,000 for work specifically targeting Berkeley BART station area TOD projects, including affordable housing finance and economic analysis, station access planning, and community engagement.

Over the past two years, City and BART staff have utilized the goals and processes established in the MOU to advance towards development projects, including meeting with a Council-appointed CAG and holding community meetings and public meetings of the Planning Commission to develop the draft City and BART Joint Vision and Priorities for the two BART sites and the proposed zoning consistent with AB 2923 and associated General Plan amendments. In April 2021, City Council approved a reservation of \$53 million in City affordable housing funds to support at least 35 percent of the housing units proposed at each of the stations that are deed-restricted low, very-low and/or extremely low-income affordable housing.<sup>15</sup>

The City team engaging with BART on this multifaceted effort include staff from Planning and Development, Health Housing and Community Services, Public Works, the Offices of the City Manager and the City Attorney, and Mayor Arreguin and staff from the Mayor's Office. This team has regularly updated Councilmembers Bartlett and Kesarwani, given their representation of BART station districts. Many of the important details of the future BART station projects—such as project-specific station access and parking management, site and building design, affordable housing unit count, and affordability levels and populations served—cannot be determined until after developer teams have been selected and actual projects have been designed.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Creating equitable, transit-oriented mixed-use development that includes affordable housing and housing support services for Berkeley's most vulnerable community members is a City Strategic Plan goal, which also helps advance the environmental goals of being a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

#### RATIONALE FOR RECOMMENDATION

The documents for consideration before the City Council represent completion of key milestones outlined in the MOU approved by Council and the BART Board. Adoption of zoning that aligns with AB 2923 by July 1, 2022 also is compliant with requirements of AB 2923.

The combination of the zoning and General Plan amendments and City and BART Joint Vision and Priorities for the Ashby and North Berkeley BART station areas represent the culmination of a two-year effort of engagement with the public, Commissions and

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<sup>15</sup> For more information about how the City subsidy estimate was derived, see footnote #8.

Council, BART and other public agencies. These documents, in conjunction with the MOA include requirements for meaningful City participation embedded in the process agreed to by City and BART, such as community engagement and future City Council approval of ODS.

These documents also provide transparency for the City, BART, the community and future developer teams regarding the next steps of the process and roles regarding developer selection, affordable housing phasing and funding, ODS, minimum project requirements, cooperation regarding seeking grants and resolving issues such as managing parking around the stations. Ultimately, cooperation between City and BART will yield greater affordable housing than would be possible if BART proceeded alone, under authority granted under AB 2923.

#### ALTERNATIVE ACTIONS CONSIDERED

The Council could consider not adopting zoning that aligns with AB 2923 by the stipulated deadline of July 1, 2022, and/or not adopting the City and BART JVP and the MOA. In such a case, BART's Transit-Oriented Development standards would go into effect and the City's existing affordable housing requirement (20 percent) would be required. BART and the future selected developer(s) would be able to move forward a North Berkeley project and a project on the eastern parcel at the Ashby BART Station area independently of the City, and/or BART could choose instead to work with another City. As noted above, these projects would be eligible for the State Density Bonus and/or a streamlined approval process under AB 2923, dependent on the levels of affordable housing proposed as part of the projects.

#### CONTACT PERSON

Alisa Shen, Principal Planner, Planning and Development Department, (510) 981-7409

#### Attachments:

##### 1: Resolution

- Exhibit A: General Plan Amendment
- Exhibit B: General Plan Land Use Diagram Amendment
- Exhibit C: General Plan and Zoning Amendment Findings
- Exhibit D: City and BART Joint Vision and Priorities for Transit-Oriented Development at the Ashby and North Berkeley BART Station Areas
- Exhibit E: CEQA Findings: Certification of EIR, Rejection of Alternatives and Statement of Overriding Considerations
- Exhibit F: Mitigation Monitoring and Reporting Program

##### 2: Ordinance (annotated with w/ Staff Recommendation and Planning Commission Recommendation)

- Exhibit A: Zoning Map Amendment

##### 3: Resolution

Exhibit A: Memorandum of Agreement with BART regarding next steps to plan for Transit Oriented Development at the Ashby and North Berkeley BART Station Areas *(Note: This exhibit will be shared separately as a supplemental communication)*

4: Public Hearing Notice

5: Proposed Framework to Ensure Appropriate Developer Contribution in BART Projects, Memorandum Prepared by Street Level Advisors, May 2022

6: Supplemental Alternative 3 Analysis, Memorandum Prepared by Rincon Consultants, May 2022

## REFERENCED LINKS

1. Draft Environmental Impact Report (DEIR):  
[https://berkeleyca.gov/sites/default/files/documents/AA\\_Ashby%20and%20North%20Berkeley%20BART%20Stations%20Zoning%20Project%20DEIR%20October%202021.PDF](https://berkeleyca.gov/sites/default/files/documents/AA_Ashby%20and%20North%20Berkeley%20BART%20Stations%20Zoning%20Project%20DEIR%20October%202021.PDF)
2. Final Environmental Impact Report (FEIR):  
[https://berkeleyca.gov/sites/default/files/documents/Ashby%20and%20NB%20BART%20Stations%20TOD%20Zoning%20Project\\_Final%20EIR\\_3-29-22.pdf](https://berkeleyca.gov/sites/default/files/documents/Ashby%20and%20NB%20BART%20Stations%20TOD%20Zoning%20Project_Final%20EIR_3-29-22.pdf)

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

A RESOLUTION (A) CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE ASHBY AND NORTH BERKELEY BART STATIONS TRANSIT-ORIENTED DEVELOPMENT ZONING PROJECT (SCH# 2020110320) (“EIR”) , ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS AND A STATEMENT OF OVERRIDING CONSIDERATIONS, MITIGATION MEASURES, AND A MITIGATION MONITORING AND REPORTING PROGRAM; (B) ADOPTING GENERAL PLAN AMENDMENTS FOR THE ASHBY AND NORTH BERKELEY BART STATION AREAS; (C) ADOPTING THE CITY AND BART JOINT VISION AND PRIORITIES DOCUMENT FOR TRANSIT ORIENTED DEVELOPMENT (“TOD”) AND THE IMPLEMENTATION OF ASSEMBLY BILL 2923 (“AB 2923”) AT THE ASHBY AND NORTH BERKELEY BART STATION AREAS

WHEREAS, the City of Berkeley and the San Francisco Bay Area Rapid Transit District (“BART”) executed a Memorandum of Understanding (“MOU”) to cooperatively pursue Transit Oriented Development (“TOD”) at the Ashby and North Berkeley BART station areas in March 2020; and

WHEREAS, City staff and a consultant team have been working with a Council-appointed Community Advisory Group (CAG) and BART staff since June 2020 to develop zoning and associated General Plan amendments that are consistent with Assembly Bill 2923 and a City-BART Joint Vision and Priorities (“JVP”) document for the Ashby and North Berkeley BART station areas; and

WHEREAS, the City Council of the City of Berkeley has the authority to approve land use amendments to the General Plan (“the amendments”) in order to address unforeseen circumstances and changing priorities; and

WHEREAS, the City Council of the City of Berkeley desires to adopt the City-BART JVP for the Ashby and North Berkeley BART station areas to implement the amendments; and

WHEREAS, the amendments serve the public interest by encouraging transit-oriented development, sustainable development, and the development of affordable housing.; and

WHEREAS, the amendments were prepared to provide high-quality transit-oriented development, affordable housing, civic and public space, multi-modal transportation and site access, high-quality building design and architecture, and a mix of land uses that contributes positively to the community; and

WHEREAS, the proposed amendments are consistent and compatible with the General Plan by promoting high-quality, well-designed transit-oriented development and facilitating the development of affordable housing; and

WHEREAS, the amendments would not be detrimental to the public health, safety and welfare of the City because they would not directly result in changes to the physical characteristics of any property or existing structure, but, as described above, could facilitate development that would be completed in compliance with current codes and regulations. New development also would be reviewed for compliance with BMC and CEQA and would be constructed in compliance with California Building and Safety Code as adopted by the City of Berkeley; and

WHEREAS the amendments do not change the designation to reduce the intensity of use allowed under the existing General Plan or zoning pursuant to Gov. Code section 66300(b)(1); and

WHEREAS pursuant to the provisions and requirements of the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*) (“CEQA”) and the State CEQA Guidelines (Title 14, Sections 15000 *et seq.* of the California Code of Regulations (“CEQA Guidelines”), the City of Berkeley, as lead agency, prepared an Environmental Impact Report for the Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project (SCH No. 2020110320) (“EIR” or “Final EIR”); and

WHEREAS the project consists of certifying the Environmental Impact Report for the Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project, adopting CEQA findings and a statement of overriding considerations, mitigation measures, and a mitigation monitoring and reporting program; (b) adopting General Plan amendments for the Ashby and North Berkeley BART station areas; (c) adopting the City and BART Joint Vision and Priorities document for Transit Oriented Development (“Project”); and

WHEREAS on November 20, 2020 the City issued a Notice of Preparation of a Draft Environmental Impact Report (Draft EIR) to analyze the environmental effects of the General Plan amendment; and

WHEREAS a duly noticed Draft EIR scoping hearing was held by the Planning Commission on December 2, 2020 to receive comments on the scope and content of the Draft EIR; and

WHEREAS a Notice of Availability/Release of a Draft EIR was issued October 15, 2021, along with the publication of the Draft EIR itself, both of which were made available to the public/governmental agencies for review and comment; and

WHEREAS, November 3, 2021, the Planning Commission held a duly noticed public hearing and took public testimony, which was preceded by the distribution of notices in accordance with State and local noticing requirements; and

WHEREAS a Notice of Availability/Release of a Final EIR was issued, and a Final EIR was published on March 30, 2022; and

WHEREAS the Final EIR consists of the October 2021 Draft EIR and the March 2022 Final EIR; and

WHEREAS, on June 2, 2022, the City Council held a duly noticed public hearing and took public testimony, which was preceded by the distribution of notices in accordance with State and local noticing requirements; and

WHEREAS, all documents constituting the record of this proceeding are and shall be retained by the City of Berkeley Planning and Development Department, Land Use Planning Division, at 1947 Center Street, Berkeley, California.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley, as the final decision-making body for the lead agency, certifies that the Final EIR for the Project has been completed in compliance with CEQA and reflects the independent judgment and analysis of the City;

BE IT FURTHER RESOLVED that no recirculation of the EIR is required; and

BE IT FURTHER RESOLVED that the City Council as the final decision-making body for the lead agency, hereby adopts and incorporates by reference into this Resolution the CEQA Findings and Statement of Overriding Considerations (Exhibit E) with regard to the significant environmental effects of the Project; and

BE IT FURTHER RESOLVED that the City Council adopts and incorporates into the Project all of the mitigation measures that are within the responsibility and jurisdiction of the City that are identified in the CEQA Findings; and

BE IT FURTHER RESOLVED that the City Council adopts and incorporates by reference into this Resolution the Mitigation Monitoring and Reporting Program (Exhibit F); and

BE IT FURTHER RESOLVED by the City Council that the General Plan and the General Plan Land Use Diagram is hereby amended, as shown in Exhibits A and B; and

BE IT FURTHER RESOLVED that the City Council adopts the City and BART Joint Vision and Priorities document (Exhibit D).

Exhibits:

- A. General Plan Text Amendment
- B. General Plan Land Use Diagram Amendment
- C. General Plan and Zoning Amendments – Required Findings for Approval
- D. City and BART Joint Vision and Priorities for Transit Oriented Development for the Ashby and North Berkeley BART Stations
- E. CEQA Findings Statement of Overriding Considerations
- F. Mitigation Monitoring and Reporting Program

### **Proposed GP Land Use Classification**

A new General Plan Land Use Classification is proposed for both BART sites: the Ashby and North Berkeley BART Transit Oriented Development (TOD) classification.

### **Ashby and North Berkeley BART Transit Oriented Development (TOD)**

These areas leverage their location and the proximity of the BART stations to provide high-quality transit-oriented development, affordable housing, civic and public space, multi-modal transportation and site access, high-quality building design and architecture, and a mix of land uses that contributes positively to the community. Building intensity will permit a Floor Area Ratio (FAR) of at least 4.2, development at a height of at least 7 stories, and a development density of at least 75 dwelling units per acre.

1. Ashby BART Site General Plan Land Use Classification:  
Ashby and North Berkeley BART Transit Oriented  
Development

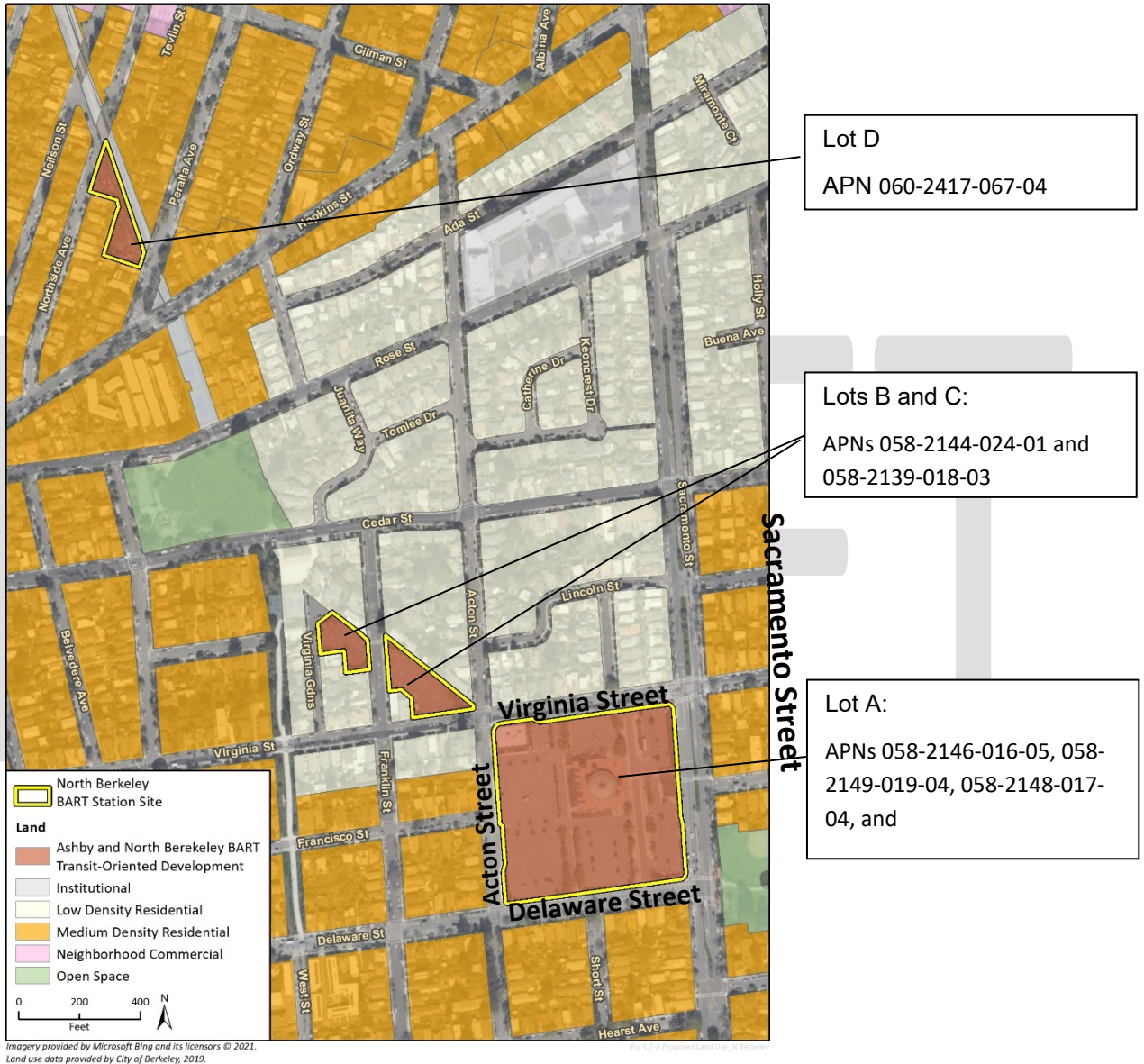


West Lot  
APN 053-1597-039-04

East Lot  
APN 053-1703-009-00



## 2. North Berkeley BART Site: General Plan Land Use Classification: Ashby and North Berkeley BART Transit Oriented Development



The Planning Commission's role is to conduct a public hearing, consider testimony, and make a recommendation to the City Council regarding the proposed General Plan and zoning amendments according to BMC Section 22.04.020 (Amendment -- Procedures Required -- Planning Commission and City Council Authority), BMC Chapter 23A.20 (Zoning Ordinance Amendments), and California Government Code Sections 65353 and 65853. The following two sets of findings support the proposed General Plan and zoning amendments for the Ashby and North Berkeley BART sites.

*A. General Plan Amendment Findings:*

- 1. The proposed amendments are in the public interest.** The proposed General Plan amendments serve the public interest by encouraging transit-oriented development, sustainable development, and the development of affordable housing.
- 2. The proposed amendments are consistent and compatible with the General Plan.** The proposed General Plan amendments are consistent with General Plan policies, including Policy H-12 (Transit-Oriented New Construction), Policy LU-11 (Pedestrian- and Bicycle-Friendly Neighborhoods), Policy LU-23 (Transit-Oriented Development), Policy LU-25 (Affordable Housing Development), Policy LU-30 (Ashby BART Station) as well as Policy T-10 (Trip Reduction), Policy UD-16 (Context), UD-26 (Pedestrian-Friendly Design) and Policy UD-33 Sustainable Design), among others. As noted in the General Plan, "given the broad scope of the General Plan, inherent tensions exist between Plan objectives and policies that must be balanced against one another through the decision-making process on particular development and land use decisions. It is not the intent of the General Plan to predetermine these decisions, but rather to help guide the decision-making process."
- 3. The potential effects of the proposed amendments have been evaluated and have been determined not to be detrimental to the public health, safety, or welfare.** The proposed General Plan amendments could facilitate development that would be completed in compliance with current codes and regulations. New development also would be reviewed for compliance with BMC and CEQA and would be constructed in compliance with California Building and Safety Code as adopted by the City of Berkeley.
- 4. The proposed amendments have been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA).** The General Plan amendments require the discretionary approval of the City of Berkeley; therefore, the project is subject to the environmental review requirements of CEQA. In accordance with *CEQA Guidelines* §15121 (California Code of Regulations, Title 14), a DEIR was prepared that analyzes any adverse environmental effects of the proposed General Plan amendments. Development encouraged under the General Plan amendments would be subject to the mitigation measures included in the Final EIR.

*B. Zoning Amendment Findings:***1. The proposed zoning amendments are in the public interest.**

The proposed zoning amendments serve the public interest by encouraging transit-oriented development, sustainable development, and the development of affordable housing.

**2. The proposed zoning amendments are compatible with adjacent zoning districts.**

At the North Berkeley BART site, the R-BMU district's primary development site is bounded by Sacramento, Virginia, Acton and Delaware Streets. This site's nearby residential zoning districts include the Single Family Residential (R-1) and Restricted Two-family Residential (R-2) districts. The Ashby BART site includes the west parking lot, which is surrounded on two sides by public rights-of-way and on its third side by the Ashby BART station, and the east parking lot, which is surrounded on two sides by public rights-of-way, and on two sides by parcels zoned Commercial-Adeline Corridor (C-AC) and Restricted Multiple-Family Residential (R-2A).

The R-BMU district includes development standards that limit height and bulk, require public open space, and require ground-floor uses. The R-BMU district will facilitate development that considers the scale and character of the surrounding built environment that it is compatible with adjacent zoning districts while ensuring compliance with AB 2923.

R-BMU district provisions include the requirement to obtain a Master Development Permit (MDP) as part of project review. The purpose of the MDP, in part, is to ensure any development on the BART station site achieves "a high standard of site and building design that fulfills the City and BART Joint Vision and Priorities (JVP) for the Ashby and North Berkeley BART Stations Areas relating to...Building Form." The JVP includes a shared Building Form priority for Context ("Building design should consider the scale and character of the surrounding built environment."), Location and Orientation ("Locate and design new buildings to enhance public spaces while mitigating impacts on existing neighbors..."); and Building Scale ("Provide regular breaks in building forms...to respond to the existing neighborhood context and character..."). Approval of an MDP requires a finding that the proposed plan is consistent with the JVP. In addition, the overall planning process for the BART station also includes the development of Objective Design Standards, which are intended to codify the design aspects of the JVP.

**3. The proposed zoning amendments allow uses which would be compatible with adjacent districts uses.**

The initial establishment of land uses for new buildings in the R-BMU district will be determined by the R-BMU Master Development Permit (MDP) process outlined in the proposed zoning ordinance amendment. Uses permitted under the MDP must fulfill

the land use principles laid out in the City – BART Ashby and North Berkeley BART Joint Vision and Priorities document:

Land uses at Ashby and North Berkeley Stations will serve community needs; provide significant amounts of new housing; complement neighborhood businesses, services, and institutions; create a welcoming environment for all; support BART ridership; and improve quality of life for current and future residents. Ground-floor uses should be pedestrian-oriented and contribute positively to public space and the pedestrian experience.

Land use changes after the establishment of initial uses in the MDP will be subject to permits included in the R-BMU section of the Zoning Ordinance's *Allowed Land Uses in Residential Districts Table*. Allowed land uses in this table are similar to uses currently at the Ashby BART Station site under its current C-AC zoning. At the North Berkeley BART station site, more commercial uses are permitted than in adjacent residential zoning districts, but these commercial uses are subject to a Use Permit (Public Hearing) process, through which any incompatibilities can be addressed, prohibited, or subject to conditions.

**4. The potential effects of the proposed rezone will not be detrimental to the public health, safety and welfare.**

The proposed zoning amendments would not result in changes to the physical characteristics of the property or existing structure, but, as described in Finding 1 above, will facilitate compliance with current codes and regulations. New development would be reviewed for compliance with CEQA and be constructed to comply with the State Building and Safety Code as adopted by the City of Berkeley.

**5. The proposed zoning amendments are consistent with California Government Code Section 66300(b)(1)(A).**

California Government Code section 66300(b)(1)(A) prohibits a locality from changing the General Plan designation or zoning of residential parcels to a less intensive use or in a manner which reduces the allowable intensity of a permitted residential use. The amendments provide as least the same or higher density as existing zoning.

## Joint Vision & Priorities for Transit-Oriented Development for Ashby and North Berkeley BART Stations

### Background

The December 10, 2019 Memorandum of Understanding (MOU) between BART and the City of Berkeley calls for the City and BART, with input from the City's Community Advisory Group (CAG) to establish a "joint vision and priorities" document. The goal of this document is to provide a concise statement of the City and BART's shared, high-level expectations for future development of both the Ashby and North Berkeley BART properties.

Per the MOU, this "joint vision and priorities" document will be incorporated into future Request(s) for Qualifications (RFQs) for development of both the Ashby and North Berkeley Station development, and will help guide the process from developer selection through project construction. This City-BART Joint Vision and Priorities document will be one of three key outcomes of the CAG process for both North Berkeley and Ashby BART development (along with updated zoning consistent with AB 2923, and the RFQs for developers).

## Affordable Housing

### VISION

New housing at a variety of income levels at both the Ashby and North Berkeley BART Stations will address the City's housing crisis, stem the displacement of residents—especially of the African American community in Berkeley—and support more equitable access to housing for lower-income families and individuals. New housing must also be created quickly to reflect the urgency of the climate crisis, capturing the inherent environmental benefits of walkable, transit-oriented housing in Berkeley's most transit-rich areas. North Berkeley and Ashby will provide a new model for delivering affordable housing in neighborhoods that are rich in infrastructure and strategically located to make regional transit, economic opportunity, and community amenities more broadly and equitably accessible.

### Shared Priorities

- A. **Housing Priorities.** Maximize the number of new homes, and especially permanently affordable, deed-restricted homes. We anticipate a range of 500-1200 units at each station with a variety of unit sizes.

Attachment 1, Exhibit D

- B. **Urgency.** Deliver new housing within 10 years, by 2031, to reflect the urgency of the climate and housing crises.
  
- C. **Affordable Housing Goal.** The City and BART will strive to maximize the number of permanently affordable, deed-restricted housing units within the funding that can be identified.
  - 1. Affordable housing may be developed in multiple phases over a number of years.
  - 2. The amount of affordable housing which can be provided at each site within the 10-year time frame will depend on many outside factors including the availability of state and federal housing resources.
  - 3. At a minimum, at least 35% of the new units at each site will be restricted affordable housing. It is anticipated that each site could achieve at least 50% affordable housing, subject to the timely availability of financing.
  - 4. The City and BART will work together to support selected developers in proactively assembling affordable housing subsidies in order to exceed the minimum.
  - 5. If both sites are able to provide at least 50% affordable housing in a way that is financially feasible, and if additional funding becomes available, the priority for that additional funding would be to maximize the number of affordable units at Ashby station in recognition of the ongoing threat of displacement to the historic community of South Berkeley.
  
- D. **Income Targets:** At least 35% of new housing at each site must be affordable to households earning an average of up to 60% of Area Median Income (AMI). Of that, at least 20% (or 7% of total units at each site) must be affordable to Extremely Low-income households, those earning up to 30% of AMI. Additional affordable units should prioritize Very Low Income (up to 50% of AMI) households and Low Income (up to 80%) households but may include some housing restricted with households with incomes up to 120% of AMI.
  
- E. **Sequencing.** Affordable housing should be built prior to, or along with, any market rate housing.
  
- F. **Displacement Prevention.** Affordable housing should provide a preference for residents of Berkeley who are facing displacement, or who have been displaced from Berkeley in the past due to economic or discriminatory reasons.
  
- G. **Developer Selection.** In the developer selection process, prioritize a nonprofit master developer or a partnership between a private developer and one or more community-based organizations who have experience showing accountability towards equity goals in the City of Berkeley.

Attachment 1, Exhibit D

- H. **Developer Accountability.** The selected developers must have a demonstrated commitment and feasible plans to produce affordable housing and be willing to be held accountable for making affordability the first priority. Selecting a developer who merely pledges a best effort to provide affordable units would not be sufficient.
- I. **Funding.** BART and the City of Berkeley should proactively seek new, innovative funding solutions to help achieve two truly visionary, equitable, and sustainable projects.
- J. **Clustering and Integration.** Affordable units may be clustered into one or more 100% affordable housing buildings on the BART sites but must be designed in a way that integrates with the larger project and shares the same design standards and quality.
- K. **Inclusive Housing Design.** The selected developer will prioritize affordable housing for renters with various needs, including but not limited to families, people with physical or mental disabilities, and formerly homeless people.

Priorities for Ashby

- A. **Adeline Corridor Affordable Housing Goal.** Consistent with the Adeline Corridor Specific Plan, the City and BART should strive for a goal of 100% deed-restricted affordable housing, prioritizing extremely low, very-low and low-income affordable housing.
- B. **Residents with Disabilities.** Ashby BART should be developed in a way that prioritizes the inclusion of residents with disabilities, who are likely to benefit from proximity to the Ed Roberts Campus.
- C. **South Berkeley Preference.** To address past and current displacement, the development should provide a preference to applicants who either currently live in South Berkeley or have been displaced from the community. This preference must be implemented in a way which is consistent with the City's Fair Housing goals and federal law.

**Public and Civic Space**

VISION

New public and civic space at both Ashby and North Berkeley BART will provide a community anchor, open space amenity, and memorable neighborhood gathering space that is accessible to all. It will be available for programmed community uses and activities, as well as for informal, unprogrammed public use by residents, visitors, and transit riders alike. New public space will enhance the ability of all community members to walk, roll, and take transit, supporting better station access and healthy, climate-friendly active

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transportation. North Berkeley will be a nexus of active transportation centered along a major new connection of the Ohlone Greenway. Ashby will be anchored by a market and oriented along a street built for people and multiple modes of transportation.

Shared Priorities

- A. **Maintenance Costs.** New civic space should be designed in a way that minimizes the ongoing cost of operations and maintenance to BART and the City.
- B. **New Public Space.** Pursue new public space design in a way that delivers on the vision while maximizing the number of on-site affordable housing units.
- C. **Station Access.** Design the public realm to support priorities in the Access section of this document.

Priorities for Ashby

- A. **Hub for African American Life.** Reinforce South Berkeley's historic role as a hub for African American culture and life in the Bay Area.
- B. **Flea Market.** Provide a permanent, viable home for the Berkeley Community Flea Market – offering supportive amenities such as public restrooms, limited office/storage space, electrical and water access and weather protection - in a prominent location.
- C. **Stakeholder Input.** Public space will be designed with input from the Flea Market, Lorin Business Association, neighborhood residents, representatives from the disability community, and other neighborhood stakeholders. Facilities for the Flea Market will be designed in collaboration with the vendors and Community Services United.
- D. **Adeline Design.** Reconfigure Adeline Street to transform a four-lane arterial into a safer space for all modes of transportation, creating a more walkable, vibrant place. Flea Market and/or other public activities may occur on some or all of this portion of Adeline Street.
- E. **Green Space.** Expand the availability of green space for the neighborhood.

Priorities for North Berkeley

- A. **Ohlone Greenway Connection.** The development should include a protected bikeway that connects the disjointed ends of the Ohlone Greenway to each other and to BART, providing a primary access route and orientation of the development that enables a prioritized pedestrian and bicycle connection from approximately the southeast corner of the site to the northwest corner of the site and across the streets.



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- B. **Public Space Use.** Public space should provide opportunities for both active and passive public use, with strong connections to the station entrance, the Ohlone Greenway, or other public spaces and pedestrian facilities.
  
- C. **Street Design.** The design of surrounding streets should be considered as a strategy to accommodate public space needs, and improve safety for pedestrians and bicycles. Explore the feasibility of reducing the width and number of traffic lanes in adjacent streets to their original (pre-BART) condition, aligning curbs with adjacent blocks in a manner that builds upon and is consistent with the City and BART's recent Complete Streets and roadway improvement projects in the area. Streets may retain their current width where there is some functional use for the extra space, such as bike lanes and cycle tracks that previously did not exist, and there may be bulb-outs at intersections.

## Land Use

### VISION

Land uses at Ashby and North Berkeley Stations will serve community needs; provide significant amounts of new housing; complement neighborhood businesses, services, and institutions; create a welcoming environment for all; support BART ridership; and improve quality of life for current and future residents. Ground-floor uses should be pedestrian-oriented and contribute positively to public space and the pedestrian experience.

### Shared Priorities

- A. **Overall Mix of Uses.** At both stations, the predominant use will be transit-oriented housing and transit uses, complemented by public space and appropriate non-residential uses. Additional priorities for these uses are found in the Affordable Housing, Public and Civic Space, and Station Access and Parking Management sections of this document.
  
- B. **Non-residential Spaces.** Curate and program any non-residential spaces to provide interest and character, encourage community gathering, support social interactions, and provide unique neighborhood activities and services. Any non-residential uses should be customized to meet the unique needs of each station and neighborhood.

### Priorities for Ashby

- A. **Role of Non-residential Uses.** Non-residential uses at Ashby should reinforce the area's historic role as a center of neighborhood commerce, cultural expression, social connection, and economic empowerment.
  
- B. **Non-Residential Active Frontages.** Non-residential uses should have active frontages oriented towards Adeline Street, Ashby Avenue, and the future Flea Market public

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space. Ground-floor uses should activate public space and complement the Flea Market, while promoting everyday activities when the Flea Market isn't occurring.

- C. **Prioritized Non-residential Uses.** The following types of potential non-residential uses should be prioritized, though not all are anticipated to be present in any one development project<sup>1</sup>:
1. The Berkeley Flea Market, and indoor or outdoor spaces related to the Flea Market
  2. Businesses and organizations that reinforce the neighborhood's historic role as a center of Black culture and identity
  3. Businesses, organizations, or services that are oriented towards, or provide economic opportunity for people in the neighborhood or their descendants who were involuntarily displaced, interned, or historically disenfranchised on the basis of race
  4. New uses that expand and complement the role and mission of the Ed Roberts Campus and empower those living with disabilities
  5. Spaces for cultural activities, performance, display, community activities, or other uses and amenities that support the area's role as an arts and culture district.

Priorities for North Berkeley

- A. **Role of Non-residential Uses.** Non-residential uses such as retail, services, or indoor community spaces is anticipated to have a limited role at North Berkeley.
- B. **Non-residential Active Frontages.** Non-residential uses that do occur should be oriented with active frontages towards the station entry and/or Sacramento Street.
- C. **Respect Neighborhood Needs.** Non-residential uses that do occur should be focused towards meeting neighborhood needs and complementing the existing range of businesses and services already available nearby.
- D. **Potential Non-Residential Uses.** Non-residential uses may include the following<sup>2</sup>:
1. Uses that help reduce the need for driving in North Berkeley, such as commuter-focused amenities, childcare, community services, or satellite locations for existing community businesses or organizations
  2. Small-scale walkable retail or café type uses
  3. Space for activities, gatherings, or events.

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<sup>1</sup> Specific permitted and prohibited uses for Ashby Station will be identified in the zoning code.

<sup>2</sup> Specific permitted and prohibited uses for North Berkeley Station will be identified in the zoning code.

## Building Form

### VISION

New buildings at Ashby and North Berkeley Stations will be beautiful, creatively designed, well-proportioned, create visual and physical connections with the neighborhood through its architectural design and contribute positively to the physical fabric and long-term quality of life of the neighborhood. They will provide elements that neighborhood residents currently enjoy – such as natural light, air, direct outdoor access, variety, quiriness, walkability, and sociability – in a denser, transit-oriented format that supports BART ridership. Buildings should exhibit a level of architectural diversity that expresses the social, racial, economic, and design diversity that is desired at both stations. Ground-floor spaces and building frontages should activate public space, while providing a sense of place and character to the stations and the surrounding neighborhood.

### Shared Priorities

- A. **Height Variation.** AB 2923 does not permit the City's zoning controls to restrict building height below seven stories on the station sites. The City and BART will support variations in building height and form at both stations. It is anticipated that some buildings and some portions of buildings will be shorter than the maximum height in keeping with good urban design practice.
- B. **Context.** Building design should consider the scale and character of the surrounding built environment.
- C. **Location and Orientation.** Locate and design new buildings to enhance public spaces while mitigating impacts on existing neighbors through site orientation, setbacks, lines of sight between buildings, landscape and topography.
- D. **Equitable Design Quality.** Design affordable housing units in a way that integrates with the larger project and shares the same design standards and quality.
- E. **Small Blocks.** Prioritize site designs with smaller blocks and building footprints instead of larger blocks.
- F. **Architectural Variety.** Design buildings to provide visual interest with variation in height, scale, massing, rooflines, materials, and architectural styles.
- G. **Building Scale.** Provide regular breaks in building forms, as well as both horizontal and vertical detail to respond to the existing neighborhood context and character, particularly at the edges of the site.
- H. **Unit Diversity.** Encourage building forms that allow a diversity of unit sizes, types, and configurations.

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- I. **Sunlight.** Seek to configure buildings and include design strategies that allow sunlight to reach public spaces, and design outdoor spaces, outdoor seating and active retail frontages, if provided, to maximize southern, western, and/or eastern exposure.
- J. **Outward-facing Entrances.** For ground-floor housing units, encourage outward-facing entrances with a range of design treatments and access strategies. These could include stoops, front doors, courtyard and forecourt entrances, ramped or at-grade universally accessible entries, outward-facing and visually permeable lobby entrances, and transition spaces from private frontages to public spaces.
- K. **Ground-floor Non-residential Frontages.** For ground-floor non-residential uses, provide frequent windows and doors, visual connection between indoors and outdoors, frontage onto public space, direct access to the pedestrian circulation network, and activation strategies such as outdoor seating, dining, display spaces, public art, and architectural detailing.
- L. **Universal Accessibility.** Preference building designs with universally accessible units and elevator redundancy to promote accessibility for seniors and those with disabilities.
- M. **BART Entrances.** Ensure that BART entrances are featured prominently and integrated into the overall site plan.
- N. **Integrated Green Space.** Integrate gardens, courtyards, roof terraces, trees, native landscaping, and other green spaces into building architecture and site design.

Priorities for Ashby

- A. **Massing and Height Focus.** Focus density, larger building forms and height towards Adeline Street and Ashby Avenue on the west parking lot parcel, and towards the rear of the Ed Roberts Campus on the east parking lot parcel.
- B. **Active Frontages.** Connect new buildings to Adeline Street and Ashby Avenue with direct pedestrian access, minimal setbacks, and active frontages to complement the existing active uses across the street.
- C. **Site Design.** Ensure that building form, scale, and the overall site plan provide sufficient space for the Flea Market and other civic and community uses.

Priorities for North Berkeley

- A. **Massing and Height Focus.** Focus density, larger building forms and height towards the Ohlone Greenway and the center of the site, as well as towards Sacramento Street.
- B. **Massing Breaks and Step-downs.** Provide massing breaks, step-downs in height, and frequent pedestrian building entrances along Delaware Street, Acton Street, and Virginia Street, with building forms and frontages that create a residential character and scale.

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- C. **Active Frontages.** Prioritize active frontages, public space programming, and car-free activities along the Ohlone Greenway.

**Station Access**

Vision

Station access investments in and around the stations will enhance community vibrancy, safety, equity, and health while improving the quality of the public space and pedestrian experience, both within and beyond the station areas. Priority access investments are those that encourage people to walk, bike, roll, ride transit, and use shared micro-mobility options, while still providing flexibility for changing technologies and trends. Access investments will be distributed equitably to improve the experience for people of all ages, all abilities, and all income levels getting to and moving through the stations.

Shared Priorities

- A. **Housing and Community Benefits.** Favor affordable housing and other community benefits over BART rider parking and TOD resident parking in any physical or financial decision-making.
- B. **Non-Automobile Access.** Increase the share of BART riders who access the stations via modes other than driving alone and parking. Prioritize access improvements in the surrounding neighborhoods and within the station areas that offer safe, comfortable, affordable, cost-effective alternatives for all BART customers, particularly those with mobility challenges. Future access planning should consider the rapid evolution for mobility trends and technologies and consider the adaptability of the station access plans to future foreseeable and unforeseeable mobility patterns and their ability to handle ridership growth without running into capacity constraints.
- C. **Equitable Access.** Provide safe and secure station access options for people of all ages, abilities, races and ethnicities, genders, and income levels.
- D. **Parking Options.** Minimize the need for new structured on-site BART customer parking by maximizing the use of available parking capacity along the corridor (such as Center Street parking garage, shared parking with the TOD or with other sites, and on-street parking management).
- E. **Transportation Demand Management.** Any future development must include aggressive and innovative Transportation Demand Management strategies to reduce the vehicle miles traveled (VMT) and greenhouse gas (GHG)

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emissions by residents, visitors, and employees by 20% by complying with BART's Transportation Demand Management program.

- F. **Parking and Traffic Impacts.** Limit the impacts of parking and driving on residents of the developments and surrounding neighborhoods (such as noise, air quality, GHG, and collisions) through transportation demand management, multi-modal circulation and access planning, infrastructure improvements, parking management, and other best practices.
- G. **Market Rate Pricing for Parking.** Explore parking pricing that is better aligned with market demand as a possible strategy to promote BART rider and on-street parking availability, with consideration of the impacts of parking pricing on low income residents and BART riders.
- H. **Prioritize Curb Space.** Buses and shuttles will be located to prioritize people with disabilities, active loading of passengers (over waiting vehicles), services available to the public, and the number of people transferring to BART. Different types of passenger loading zones will be incorporated for quick pick-ups and drop-offs, those that need to wait for their passenger, accessible loading areas, ride apps and taxis.
- I. **Wayfinding and Signage.** Provide clear, accessible, adaptable station access signage and wayfinding to facilitate how people get to/from and through the station area consistent with the Metropolitan Transportation Commission's standards.

Priorities for Ashby

- A. **Pedestrian & Bicycle Connections.** Provide high-quality, safe pedestrian and bicycle connections to and through the site, including an off-street protected bicycle facility extending along Adeline Street, at least between Ashby Avenue and the intersection with MLK Way, with the potential to extend further through related Adeline improvement efforts.
- B. **Adeline Design.** Reconfigure Adeline Street to transform a four-lane arterial into a safer space for all modes of transportation, creating a more walkable, vibrant place.

Priorities for North Berkeley

- A. **Adjacent Streets.** Consider the role and design of adjacent streets – including Sacramento Street, Delaware Street, Virginia Street, and Acton Street – in multi-modal access planning for the North Berkeley Station.
- B. **Commuter Parking Priority.** Where parking would be provided, maximize parking for commuters over parking for residential and/or potential community, non-profit, or retail uses.

# CEQA Findings and Statement of Overriding Considerations

## Ashby and North Berkeley BART Stations Transit-Oriented Development (TOD) Zoning Project Pursuant to Sections 15091 and 15093 of the State CEQA Guidelines and Section 21081 of the Public Resources Code

The Final Environmental Impact Report (Final EIR) prepared by the City of Berkeley (City) for the Ashby and North Berkeley BART Stations Transit-Oriented Development (TOD) Zoning Project (“the project”) consists of the Draft EIR and Response to Comments on the Draft EIR. The Final EIR identifies significant environmental impacts that will result from implementation of the project. The City finds that the inclusion of certain mitigation measures as part of project approval will reduce all but the following significant impacts to levels that are less than significant: construction-related noise and cultural resources in the cumulative setting. No feasible mitigation measures have been identified to reduce these impacts to a less-than-significant level or mitigation measures have been identified but would not reduce impacts to a level of less than significant; these impacts will remain significant unavoidable impacts of the project. These impacts will be overridden due to specific considerations that are described within this document.

As required by CEQA, the City, in adopting these CEQA Findings and Statement of Overriding Considerations, also adopts a Mitigation Monitoring and Reporting Program (MMRP) for the project. The City finds that the MMRP, which is incorporated by reference, meets the requirements of Public Resources Code Section 21081.6 by providing for the implementation and monitoring of measures intended to mitigate potentially significant effects of the project. In accordance with CEQA and the *CEQA Guidelines*, the City adopts these findings as part of the project approval. Pursuant to Public Resources Code Section 21082.1(c)(3), the City also finds that the Final EIR reflects the City’s independent judgment as the lead agency for the project.

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## SECTION 1: INTRODUCTION

### 1.1 Statutory Requirements for Findings

Section 15091 of the *CEQA Guidelines* states that:

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:
- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
  - (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
  - (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

In short, CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to avoid or mitigate significant environmental impacts that will otherwise occur with implementation of the project. Project mitigation or alternatives are not required, however, where they are infeasible or where the responsibility for modifying the project lies with another agency.<sup>1</sup>

For those significant effects that cannot be mitigated to a less-than-significant level, the public agency is required to find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.<sup>2</sup> The *CEQA Guidelines* state in section 15093 that:

“If the specific economic, legal, social, technological, or other benefits of a propos[ed] project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered ‘acceptable.’”

### 1.2 Record of Proceedings

For purposes of CEQA and the findings set forth herein, the record of proceedings for the City’s decision on the project consists of: a) matters of common knowledge to the City, including, but not limited to, federal, State and local laws and regulations; and b) the following documents which are in the custody of the City:

- Notice of Preparation and other public notices issued by the City in conjunction with the project dated November 20, 2020 (see Appendix A of the Draft EIR for the Notice of Preparation);
- The Draft EIR, which was made available for public review on October 15, 2021;
- All written and verbal comments submitted by agencies, organizations and members of the public during the public comment period and at public hearings on the Draft EIR and responses to those comments (see Response to Comments Document, dated March 2022);
- The Mitigation Monitoring and Reporting Program;

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<sup>1</sup> *CEQA Guidelines*, 2012. Section 15091 (a), (b).

<sup>2</sup> Public Resources Code Section 21081(b).



- All findings and resolutions adopted by the City in connection with the project, and all documents cited or referred therein;
- All final reports, studies, memoranda, maps, correspondence, and all planning documents prepared by the City or the consultants to each, or responsible or trustee agencies with respect to: a) the City's compliance with CEQA; b) development of the project site; or c) the City's action on the project; and
- All documents submitted to the City by agencies or members of the public in connection with development of the project.

### 1.3 Organization/Format of Findings

Section 2 of these findings sets forth the objectives of the project and contains a summary description of the project and project alternatives. Section 3 identifies the potentially significant effects of the project which were determined to be mitigated to a less-than-significant level. All numbered references identifying specific mitigation measures refer to numbered mitigation measures found in the Draft EIR and Response to Comments Document. Section 4 identifies the project's potential environmental effects that were determined not to be significant, and do not require mitigation. Section 5 discusses the feasibility of project alternatives. Section 6 identifies the significant impacts of the project, including cumulative impacts that cannot be mitigated to a less-than-significant level even though all feasible mitigation measures have been identified and incorporated into the project. Section 7 includes the City's Statement of Overriding Considerations.

## SECTION 2: ASHBY AND NORTH BERKELEY BART STATIONS TRANSIT-ORIENTED DEVELOPMENT (TOD) ZONING PROJECT

This section lists the objectives of the proposed project, provides a brief description of the project, and lists the project alternatives evaluated in the Draft EIR.

### 2.1 Project Objectives

The Ashby and North Berkeley BART Stations Transit-Oriented Development (TOD) Zoning Project is intended to achieve the following project objectives:

1. **Compliance with Assembly Bill (AB) 2923:** AB 2923, enacted in 2018, requires the adoption of transit-oriented development zoning standards establishing specific local zoning requirements for height, density, parking, and floor area ratio for BART-owned properties within ½-mile of station entrances in Alameda, Contra Costa and San Francisco counties. If local standards are not adopted, then State/BART standards will apply. The Ashby and North Berkeley BART stations are both subject to AB 2923.
2. **Environmental Sustainability.** Promote environmental sustainability by encouraging healthy, fossil-fuel free, energy- and water-efficient transit-oriented development that includes location efficiency and sustainable low carbon transportation modes

### 2.2 Project Description

The proposed project for the purposes of review under the California Environmental Quality Act (CEQA) would result in:

- A new Residential - BART Mixed-Use District (R-BMU) zoning district, a new Ashby and North Berkeley BART Transit Oriented Development General Plan Land Use Classification, and would apply these new designations to the Ashby and North Berkeley BART station sites. The R-BMU zoning district includes provisions for allowed uses, general development standards, specific development and design standards, and provisions for the approval of a Master Development Permit for development of the station area. The general development standards include a maximum height of 80 feet/7 stories, a maximum FAR of 4.2 and a minimum residential density of 75 dwelling units per acre. The EIR analyzed a projected buildout of 2,400 dwelling units across both station areas.

- A City and BART Joint Vision and Priorities (JVP) document to guide transit-oriented development for the Ashby and North Berkeley BART Station Areas. The JVP is intended to articulate the City and BART's shared, high-level expectations for future developers on key topics and will be incorporated into future Request(s) for Qualifications for development of both station sites. The JVP document includes visions and priorities related to affordable housing, public and civic space, land use, building form, and station access.

### 2.3 Alternatives

Based on the project objectives and anticipated environmental consequences, and pursuant to Section 15126.6 of the *CEQA Guidelines*, the following project alternatives were selected for analysis:

- **Alternative 1: No Project Alternative.** The No Project Alternative assumes that the City takes no action to rezone the station sites. By default, both station sites would be effectively rezoned with the following development standards included in AB 2923:
  - Density of 75 units per acre
  - Height of 7 stories
  - Floor Area Ratio (FAR) of 4.2

Alternative 1 assumes that the AB 2923 development standards are maximums. This alternative also includes AB 2923's parking standards. This alternative would involve the same density, height, and FAR as the proposed project, but would not include other development standards that are included in the proposed project. This alternative would meet the CEQA-related project objective to comply with AB 2923. It would also meet the project objective to promote "green" development as well as location efficiency and sustainable transportation modes.

- **Alternative 2: BART Rider Parking.** Alternative 2 includes structured parking designated for BART riders at each site. The alternative assumes that the station sites would include 160 vehicle parking spaces at Ashby BART station and 300 vehicle parking spaces at North Berkeley BART station, all located in above-ground parking garages, separate from any other parking provided for the mixed-use developments. In addition to examining the physical environmental effects of including dedicated BART rider parking, the alternative also considers the loss of development potential, if any, due to the commitment of surface area at the station sites to above-ground BART rider parking. This alternative would meet the CEQA-related project objective to comply with AB 2923 by allowing new development consistent with the law's development standards at the station sites. It would also meet the project objective to promote location efficiency and sustainable transportation modes, but to a lesser extent than would the proposed project.
- **Alternative 3: Increased Height.** Alternative 3 would allow for the development of 12-story buildings on the station sites and a maximum FAR of 5.5. Increasing the maximum building height by 70 percent compared to the proposed project would allow for a corresponding increase in the number of residential units. All of the other development standards in the proposed project, vehicle and bicycle parking requirements, minimum open space, and minimum public space, would remain the same. Given this Alternative's increased height and FAR, it could serve as an example of a development under the proposed project that utilizes the State Density Bonus. alternative would meet the CEQA-related project objective to comply with AB 2923, by allowing new development consistent with the law's development standards at the station sites. By further increasing residential density in a Transit Priority Area, it would also meet the project objective to promote green development as well as location efficiency and sustainable transportation modes, to a greater extent than would the proposed project.

Refer to Chapter 6, *Alternatives*, of the Draft EIR for the complete alternatives analysis.

## SECTION 3: EFFECTS DETERMINED TO BE MITIGATED TO LESS-THAN-SIGNIFICANT LEVELS

The Draft EIR identified certain potentially significant effects that could result from the project. However, the City finds for each of the significant or potentially significant impacts identified in this section (Section 3) that based upon substantial evidence in the record, changes or alterations have been required or incorporated into the project which avoid or substantially lessen the significant effects as identified in the Final EIR<sup>3</sup> and, thus, that adoption of the mitigation measures set forth below will reduce these significant or potentially significant effects to less-than-significant levels. These measures will be imposed on development projects as part of the City and BART review and approval process through zoning performance standards, contractual obligations, and/or other means. In addition, City Conditions of Approval and compliance with City and other regulations will further reduce project impacts.

### 3.1 Air Quality

**Impact AQ-2:** Future development under the proposed project would result in the temporary generation of air pollutants during construction, which would affect local air quality. Compliance with the BAAQMD Basic Construction Mitigation Measures would be required for future development within the project sites to implement measures to reduce construction emissions. This impact would be less than significant with mitigation incorporated.

**Mitigation Measure AQ-1: Construction Emissions Measures.** As part of the City's development approval process, the City shall require applicants for future development projects within the project sites to comply with the current Bay Area Air Quality Management District's basic control measures for reducing construction emissions of PM10 (Table 8-2, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the May 2017 BAAQMD CEQA Guidelines).

**Finding:** The City finds that the foregoing mitigation measure has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

**Facts in Support of Finding:** Implementation of Mitigation Measure AQ-1 would require future development projects within the project sites to comply with measures to reduce air pollution emissions during construction. Impacts would be less than significant with implementation of Mitigation Measure AQ-1 to require the BAAQMD Basic Construction Measures and required application of the City's air quality standard condition of approval.

### 3.2 Biological Resources

**Impact BIO-1:** The projects sites are highly urbanized and no special-status species have been recorded. However, future development under the proposed project could affect special status species. This impact would be less than significant with mitigation incorporated

**Mitigation Measure BIO-1: Worker Environmental Awareness Program.** Prior to initiation of construction activities (including staging and mobilization), all personnel associated with project construction shall attend a Worker Environmental Awareness Program (WEAP) training, conducted by a qualified biologist, to aid workers in recognizing special status resources that may occur in the construction area. The specifics of this program shall include identification of the sensitive species and habitats, a description of the regulatory status and general ecological characteristics of sensitive resources, and review of the limits of construction and mitigation measures required to reduce impacts to biological resources within the work area. A fact sheet conveying this information shall also be prepared for distribution to all contractors, their employers, and other personnel involved with construction. All

<sup>3</sup> CEQA Guidelines, 2012. Section 15091.

construction employees shall sign a form provided by the trainer indicating they have attended the WEAP and understand the information presented to them. The form shall be submitted to the City to document compliance.

**Mitigation Measure BIO-2: Mitigation Measure BIO-2: Special-status Bat Species Avoidance and Minimization.** Development that involves removal of mature trees large enough to contain crevices and hollows that could support bat roosting, focused surveys to determine the presence/absence of roosting bats shall be conducted prior to demolition or tree removal. If active maternity roosts are identified, a qualified biologist shall establish avoidance buffers applicable to the species, the roost location and exposure, and the proposed construction activity in the area. If active non-maternity day or night roosts are found on the project site, measures shall be implemented to passively relocate bats from the roosts prior to the onset of construction activities. Such measures may include removal of roosting site 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. These measures shall be presented in a Bat Passive Relocation Plan that shall be submitted to, and approved by, CDFW prior to issuance of grading permit.

**Finding:** The City finds that the foregoing mitigation measures have been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

**Facts in Support of Finding:** With implementation of Mitigation Measures BIO-1 and BIO-2, impacts to special status species during construction of development projects encouraged by the proposed project would be avoided. This impact would be less than significant.

### 3.3 Cultural Resources

**Impact CR-1:** The proposed project would guide development on the Ashby BART station site, which qualifies as a historical resource pursuant to CEQA. However, with mitigation, impacts would be less than significant.

**Mitigation Measure CR-1: Ashby BART Station Interpretive Display.** The proposed project shall be designed to include a permanent, high-quality on-site interpretive display in a publicly-accessible location, preferably near or within the publicly accessible civic plaza at the Ashby BART Station. The display shall focus on the station's history, particularly the community-led effort for the station to be underground and the subsequent use of the land by the community. The interpretive display will be prepared by a professional exhibit designer and historian meeting the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61). The goal of the interpretive display is to educate the public about the property's historic themes and associations within broader cultural contexts and shall include incorporate elements of public art as appropriate. Plans for the display shall be subject to review and approval by the Land Use Planning Division prior to installation.

**Finding:** The City finds that the foregoing mitigation measure has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

**Facts in Support of Finding:** Implementation of Mitigation Measure CR-1 would reduce potential impacts because it would communicate the history of the site. This would mitigate the potential impact to the Ashby BART Station's ability to convey its significance, which would result from a change in setting. With mitigation, impacts would be less than significant.

### 3.4 Geology and Soils

**Impact GEO-1:** Because the project sites are underlain by geologic units assigned a high paleontological sensitivity, paleontological resources may be encountered during ground-disturbing activities associated with project construction. Construction activities could potentially uncover and disturb paleontological resources beneath the surface. This impact would be less than significant with mitigation incorporated

**Mitigation Measure GEO-1: Paleontological Resources Studies.** Because the project sites are underlain by geologic units assigned a high paleontological sensitivity, paleontological resources may be encountered during ground-disturbing activities associated with project construction (e.g., grading, excavation, or other ground disturbing construction activity).

1. **Qualified Paleontologist.** The project applicant shall retain a Qualified Paleontologist to implement the following measures prior to excavations that have potential to impact paleontological resources. The Qualified Paleontologist shall direct all mitigation measures related to paleontological resources. A qualified professional paleontologist is defined by the SVP standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010).
  - a. The qualified professional paleontologist shall design a Paleontological Resources Mitigation and Monitoring Program (PRMMP) for submission to the City prior to the issuance of grading permits. The Plan will outline the procedures and protocol for conducting paleontological monitoring and mitigation. Monitoring shall be conducted by a qualified paleontological monitor who meets the minimum qualifications per standards set forth by the SVP. The PRMMP shall address the following procedures and protocols:
    - Timing and duration of monitoring
    - Procedures for work stoppage and fossil collection
    - The type and extent of data that should be collected with any recovered fossils
    - Identify an appropriate curatorial institution
    - Identify the minimum qualifications for qualified paleontologists and paleontological monitors
    - Identify the conditions under which modifications to the monitoring schedule can be implemented
    - Details to be included in the final monitoring report.
    - Prior to issuance of a grading permit, copies of the PRMMP shall be submitted for review to the Department of Planning and Development at the City of Berkeley.
2. **Paleontological Worker Environmental Awareness Program (WEAP).** Prior to any ground disturbance, the applicant shall incorporate information on paleontological resources into the Project's Worker Environmental Awareness Training (WEAP) materials, or a stand-alone Paleontological Resources WEAP shall be submitted to the Department of Planning and Development at the City of Berkeley. The Qualified Paleontologist or his or her designee shall conduct training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The Paleontological WEAP training shall be fulfilled simultaneously with the overall WEAP training, or at the first preconstruction meeting at which a Qualified Paleontologist attends prior to ground disturbance. Printed literature (handouts) shall accompany the initial training. Following the initial WEAP training, all new workers and contractors must be trained prior to conducting ground disturbance work.

3. **Paleontological Monitoring.** Paleontological monitoring shall be conducted during any ground disturbing construction activities (i.e., grading, trenching, foundation work) in previously undisturbed (i.e., intact) Pleistocene alluvial fan and fluvial deposits (Qpaf), as well as ground disturbance exceeding depths of five feet within project areas mapped as Quaternary young (late to middle Holocene) alluvial and fluvial deposits (Qhaf)). Paleontological monitoring shall be conducted by a qualified paleontological monitor, who is defined as an individual who has experience with collection and salvage of paleontological resources and meets the minimum standards of the SVP (2010) for a Paleontological Resources Monitor. The duration and timing of the monitoring will be determined by the Qualified Paleontologist and the location and extent of proposed ground disturbance. If the Qualified Paleontologist determines that full-time monitoring is no longer warranted, based on the specific geologic conditions at the surface or at depth, he/she may recommend that monitoring be reduced to periodic spot-checking or cease entirely. Paleontological monitoring is not required for ground-disturbing activities that impact previously disturbed sediments (e.g., artificial fill) only.
4. **Fossil Discoveries.** In the event of a fossil discovery by the paleontological monitor or construction personnel, all work in the immediate vicinity of the find shall cease. A Qualified Paleontologist shall evaluate the find before restarting construction activity in the area. If it is determined that the fossil(s) is (are) scientifically significant, the Qualified Paleontologist shall complete the following conditions to mitigate impacts to significant fossil resources:
  - a. **Salvage of Fossils.** If fossils are discovered, all work in the immediate vicinity shall be halted to allow the paleontological monitor, and/or lead paleontologist to evaluate the discovery and determine if the fossil may be considered significant. If the fossils are determined to be potentially significant, the qualified paleontologist (or paleontological monitor) shall recover them following standard field procedures for collecting paleontological as outlined in the PRMMP prepared for the project. Typically, fossils can be safely salvaged quickly by a single paleontologist and not disrupt construction activity. In some cases, larger fossils (such as complete skeletons or large mammal fossils) require more extensive excavation and longer salvage periods. In this case the paleontologist shall have the authority to temporarily direct, divert or halt construction activity to ensure that the fossil(s) can be removed in a safe and timely manner. If fossils are discovered, the Qualified Paleontologist (or Paleontological Monitor) shall recover them as specified in the project's PRMMP.
  - b. **Preparation and Curation of Recovered Fossils.** Once salvaged, significant fossils shall be identified to the lowest possible taxonomic level, prepared to a curation-ready condition, and curated in a scientific institution with a permanent paleontological collection (such as the UCMP), along with all pertinent field notes, photos, data, and maps. Fossils of undetermined significance at the time of collection may also warrant curation at the discretion of the Qualified Paleontologist.
5. **Final Paleontological Mitigation Report.** Upon completion of ground disturbing activity (and curation of fossils if necessary) the Qualified Paleontologist shall prepare a final mitigation and monitoring report outlining the results of the mitigation and monitoring program. The report should include discussion of the location, duration and methods of the monitoring, stratigraphic sections, any recovered fossils, and the scientific significance of those fossils, and where fossils were curated. The report shall be submitted to the Department of Planning and Development at the City of Berkeley. If the monitoring efforts produced fossils, then a copy of the report shall also be submitted to the designated museum repository.

Finding: The City finds that the foregoing mitigation measure has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: Implementation of Mitigation Measure GEO-1 require appropriate procedures to reduce potential impacts to paleontological resources during ground-disturbing activities in highly

sensitive geological formations; as such, impacts to paleontological resources would be reduced to less-than significant levels. GEO-1 establishes procedures to be followed in the event that a unique paleontological resource is discovered, and the ongoing implementation of GEO-1 would not create additional impacts to paleontological resources.

### 3.5 Greenhouse Gas Emissions

**Impact GHG-1:** Construction and operation of future development under the proposed project would generate temporary and long-term increases in GHG emissions. However, with mitigation, the project's year 2030 emissions would not exceed the locally-applicable, project-specific 2030 efficiency threshold of 1.1 MT of CO<sub>2</sub>e per person per year. This impact would be less than significant with mitigation.

**Mitigation Measure GHG-1: GHG Reduction Program.** Applicants for future development allowed under the proposed project shall prepare and implement a Greenhouse Gas Reduction Program (GGRP) that includes on-site GHG reduction measures to reduce the project's total remaining GHG emissions to 1.1 MT of CO<sub>2</sub>e per service person per year or less (a total of approximately 1,355 MT of CO<sub>2</sub>e per year). Potential options include, but would not be limited to:

- Supply 100 percent of electricity from renewable energy resources. Current options include opting into EBCE's Renewable 100, PG&E's Solar Choice, or PG&E's Regional Renewable Choice.
- Install additional electric vehicle charging stations beyond those required under BMC Chapter 19.37 within proposed parking areas.
- Implement a transportation demand program that includes measures beyond those required by the City of Berkeley Transportation Demand Management (TDM) requirements. Program measures may include priority parking spaces for carpools, electric rideshare vehicles for residents and employees, and a bicycle sharing program.
- Prohibit installation of natural gas fireplaces.
- Use electric-powered construction equipment.
- Use electric-powered landscape equipment.

**Finding:** The City finds that the foregoing mitigation measure has been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

**Facts in Support of Finding:** Implementation of Mitigation Measure GHG-1 could feasibly reduce GHG emissions by at least 1,369 MT of CO<sub>2</sub>e per year to 1.1 MT of CO<sub>2</sub>e per service person per year through use of renewable electricity. Given the reduction achieved by quantifiable on-site GHG emissions reduction measures with implementation of Mitigation Measure GHG-1, project emissions would equal but not exceed the 2030 threshold of 1.1 MT of CO<sub>2</sub>e per service person.

### 3.6 Hazards and Hazardous Materials

**Impact HAZ-3:** There is one listed hazardous materials site located on or potentially adjacent to the North Berkeley BART station site. In addition, there are unknown former commercial and industrial uses within the North Berkeley BART station site and Ashby BART station site that may have included the use and storage of hazardous materials, including a gasoline service station. Therefore, hazardous materials in subsurface soils may be encountered during grading (construction) and construction workers or nearby residents could be exposed to contaminated soil resulting from development of a contaminated property. This impact would be less than significant with mitigation.

**Mitigation Measure HAZ-1: Property Assessment – Phase I and II ESAs.** Prior to issuance of a grading permit, the project applicant will retain a qualified environmental professional (EP), as defined by ASTM E-1527 to prepare a project specific Phase I ESA in accordance with standard ASTM methodologies, to assess the land use history of the property that will be developed.

The determination of specific areas that require a Phase II ESA (i.e., soil, groundwater, soil vapor subsurface investigations) will be evaluated by the project applicant after the site-specific Phase I ESAs have been completed. The Phase II ESA will be completed prior to construction and will be based on the results of the Phase I ESA. Specifically, if the Phase I ESAs identify recognized environmental conditions or potential concern areas, the project applicant will retain a qualified environmental consultant, California Professional Geologist (PG) or California Professional Engineer (PE), to prepare a Phase II ESA of the project site that will be developed, to determine whether the soil, groundwater, and/or soil vapor has been impacted at concentrations exceeding regulatory screening levels for commercial/industrial land uses.

As part of the Phase II ESA, the qualified environmental consultant will screen the analytical results against the San Francisco Regional Water Quality Control Board environmental screening levels (ESL). These ESLs are risk-based screening levels for direct exposure of a construction worker under various depth and land use scenarios. The lead agency will review and approve the Phase I ESA prior to demolition and grading (construction).

If the Phase II ESA for the development site indicates that contaminants are detected in the subsurface at the project site, the project applicant will take appropriate steps to protect site workers and the public. This may include the preparation of a Soil Management Plan for Impacted Soils (see Mitigation Measure HAZ-2) prior to project construction.

If the Phase II ESA for the contaminant site indicates that contaminants are present at concentrations exceeding hazardous waste screening thresholds for contaminants in soil and/or groundwater (California Code of Regulations [CCR] Title 22, Section 66261.24 Characteristics of Toxicity), the project applicant will take appropriate steps to protect site workers and the public. This may include the completion of remediation (see Mitigation Measure HAZ-3) at the project site prior to onsite construction.

**Mitigation Measure HAZ-2: Soil Management Plan for Impacted Soils.** If impacted soils or other impacted wastes are present at the project site, the project applicant will retain a qualified environmental consultant (PG or PE), to prepare a Soil Management Plan (SMP) prior to construction. The SMP, or equivalent document, will be prepared to address onsite handling and management of impacted soils or other impacted wastes, and reduce hazards to construction workers and offsite receptors during construction. The plan must establish remedial measures and/or soil management practices to ensure construction worker safety, the health of future workers and visitors, and the off-site migration of contaminants from the site. These measures and practices may include, but are not limited to:

- Stockpile management including stormwater pollution prevention and the installation of BMPs
- Proper disposal procedures of contaminated materials
- Monitoring and reporting
- A health and safety plan for contractors working at the site that addresses the safety and health hazards of each phase of site construction activities with the requirements and procedures for employee protection
- The health and safety plan will also outline proper soil handling procedures and health and safety requirements to minimize worker and public exposure to hazardous materials during construction.

The City of Berkeley will review and approve the development site Soil Management Plan for Impacted Soils prior to issuance of a grading permit.

**Mitigation Measure HAZ-3: Remediation.** If soil present within the construction envelope at the development site contains chemicals at concentrations exceeding hazardous waste screening thresholds for contaminants in soil (California Code of Regulations [CCR] Title 22, Section 66261.24), the project applicant will retain a qualified environmental consultant (PG or PE), to conduct additional analytical testing and recommend soil disposal recommendations, or consider other remedial engineering controls, as necessary.



The qualified environmental consultant will utilize the development site analytical results for waste characterization purposes prior to offsite transportation or disposal of potentially impacted soils or other impacted wastes. The qualified environmental consultant will provide disposal recommendations and arrange for proper disposal of the waste soils or other impacted wastes (as necessary), and/or provide recommendations for remedial engineering controls, if appropriate.

The project applicant will review and approve the disposal recommendations prior to transportation of waste soils offsite, and review and approve remedial engineering controls, prior to construction.

Remediation of impacted soils and/or implementation of remedial engineering controls may require additional delineation of impacts; additional analytical testing per landfill or recycling facility requirements; soil excavation; and offsite disposal or recycling.

The City of Berkeley will review and approve the development site disposal recommendations prior to transportation of waste soils offsite and review and approve remedial engineering controls, prior to issuance of a grading permit.

Finding: The City finds that the foregoing mitigation measures have been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

Facts in Support of Finding: Implementation of mitigation measure HAZ-1 would require completion of a Phase I Environmental Site Assessment (ESA) to investigate the former site uses, and, possibly, the completion of a Phase II ESA to physically investigate the subsurface for potential impacts. Where potential impacts are identified in the Phase II ESA, implementation of mitigation measure HAZ-2 will address the onsite handling and management of impacted soils or other impacted wastes and will reduce hazards to construction workers and offsite receptors during construction. Where remediation of onsite soils or other impacted wastes is necessary, implementation of mitigation measure HAZ-3 would address the offsite removal and proper disposal of impacted soils or other impacted wastes.

Implementation of mitigation measures HAZ-1, HAZ-2, and HAZ-3 would identify, manage onsite, and/or remove hazardous material impacted soils prior to construction (demolition and grading) and would reduce construction workers exposure to hazards resulting from development of a potential hazardous materials site to a less than significant level.

### 3.7 Noise

**Impact N-2:** The proposed project would facilitate new development that would introduce additional operational noise sources on the project sites. With implementation of mitigation to reduce noise from on-site mechanical equipment and trash hauling activity, operational noise would not exceed applicable standards. Operational noise impacts would be less than significant with mitigation.

Mitigation Measure N-2: HVAC Noise Reduction Measures. Prior to the issuance of building permits, applicants for development projects on the project sites shall retain a qualified acoustical consultant to review the type, location, and design of heating, ventilation, and cooling (HVAC) equipment. The acoustical consultant shall determine specific noise reduction measures as necessary to comply with the City's daytime and nighttime exterior noise standards in Section 13.40.050 of the Berkeley Municipal Code at properties in the R-1, R-2, and C-SA zones. Noise reduction measures could include, but are not limited to, selecting HVAC equipment that emits low noise levels, locating HVAC equipment as far from off-site sensitive receptors as possible, and installing equipment enclosures. The City's Planning and Development Department shall review the type, location, and design of HVAC equipment in site plans to verify that the project has incorporated recommended noise reduction measures.

**Mitigation Measure N-3: Trash Hauling Noise Reduction Measures.** Prior to the issuance of building permits, applicants for development projects on the project sites shall retain a qualified acoustical consultant to review the location and design of proposed loading areas. The acoustical consultant shall recommend measures as necessary to ensure that trash hauling noise at loading areas does not exceed the City's exterior noise standards in Section 13.40.050 of the Berkeley Municipal Code at neighboring properties. This includes compliance with noise standards that may not be exceeded for any period of time and for more than one minute in a given hour. Noise reduction measures could include, but are not limited to, locating loading areas as far as possible from off-site sensitive receptors, shielding loading areas to block the line of sight to sensitive receptors, and installing a damping treatment on dumpsters. The City's Planning and Development Department shall review the layout and design of loading areas in site plans to verify that the project has incorporated recommended noise reduction measures.

**Finding:** The City finds that the foregoing mitigation measures have been incorporated into the project to avoid or substantially lessen the significant environmental effect identified in the Final EIR to a less-than-significant level.

**Facts in Support of Finding:** Implementation of Mitigation Measure N-2 would reduce the exposure of sensitive receptors to HVAC noise. For example, placing HVAC equipment within an enclosure would result in a sound transmission loss of at least 9 dBA, with the amount of noise reduction depending on the enclosure material selected and the frequency of noise. With this amount of noise reduction, HVAC noise would be an estimated 44 dBA  $L_{eq}$  at residences near the Ashby BART station site and 40 dBA  $L_{eq}$  at residences near the North Berkeley BART station site. These noise levels would not exceed the City's exterior noise standard of 45 dBA in residential zones.

Implementation of Mitigation Measure N-3 would ensure that trash hauling noise does not exceed the City's exterior noise standards at sensitive receptors. Noise reduction measures that may be required by Mitigation Measure N-3 include locating loading areas as far as possible from sensitive receptors, shielding loading areas, and installing damping material on dumpsters. Shielding would block the line of sight to sensitive receptors, reducing noise exposure by at least 5 dBA. Damping materials can reduce noise from emptying dumpsters by 4 to 5 dBA (DSA Engineers 2003). In combination, these measures could reduce exposure to trash hauling noise to below the City's exterior noise standards. As discussed above, the estimated increase in traffic noise also would not exceed the FTA's criteria. Therefore, with implementation of mitigation measures N-2 and N-3, operational noise from development allowed by the proposed project would have a less than significant impact.

## **SECTION 4: EFFECTS DETERMINED TO BE LESS THAN SIGNIFICANT OR NOT SIGNIFICANT**

The City finds that, based upon substantial evidence in the record, as discussed below, the following impacts associated with the project are not significant or are less than significant. The Draft EIR provides a detailed analysis of the less-than-significant impacts of the proposed project for all issue areas.

### **4.1 Aesthetics**

Senate Bill (SB) 743 was signed into law on September 27, 2013. According to SB 743, which became effective January 1, 2014, "aesthetics...impacts of a residential, mixed-use, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment." Pursuant to Section 21099 of the California Public Resources Code, a "transit priority area" is defined in as an area within 0.5 mile of an existing or planned major transit stop. A "major transit stop" is defined in Section 21064.3 of the California Public Resources Code as a rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

The proposed rezoning provides a vision and planning framework for future growth and development in on the project sites that includes infill residential projects. The project sites are within a transit priority area and as such meet the criteria of SB 743. The Ashby BART station site and North Berkeley BART station site are rail transit stations and are served by multiple bus lines connecting the stations to the community, and the ancillary parking lots encompassed in the project sites are within 0.5 miles of the nearest BART stations.

Because implementation of the proposed rezoning would result in residential, mixed-use, and employment center projects on infill sites within a transit priority area, aesthetics impacts may not be considered significant impacts on the environment.

Pursuant to CEQA Statute §21099.d, "aesthetic impacts do not include impacts on historical or cultural resources." Additional analysis of impacts related to historic or cultural resources is warranted in the EIR. This analysis is included in Section 4.2, Cultural Resources, of this EIR. In addition, Section 4.7, Land Use and Planning, includes a discussion of the proposed rezoning's consistency with City plans and goals, including applicable ones related to design and aesthetics.

#### **4.2 Agricultural and Forest Resources**

There are no agricultural lands on or adjacent to the project sites. None of the properties on or adjacent to the project sites are under a Williamson Act contract. Also, no properties on or adjacent to the project sites are zoned for timberland or contain forest land or significant stands of trees (City of Berkeley 2001a). Therefore, there would be no impacts with respect to agricultural lands, Williamson Act contracts, timberland, or forest resources.

#### **4.3 Air Quality**

**Impact AQ-1.** The proposed project would be consistent with BAAQMD's 2017 Clean Air Plan because it would not result in significant and unavoidable criteria pollutant emissions, would support the primary goals of the 2017 Plan, and would include applicable 2017 Plan control strategies. This impact would be less than significant.

**Impact AQ-3.** Development would be consistent with the applicable control measures of the 2017 Clean Air Plan and would not result in a VMT increase that would be proportionally greater than its anticipated population increase. Therefore, this impact would be less than significant.

**Impact AQ-4.** The proposed project would not expose sensitive receptors to substantial concentrations of carbon monoxide (CO). In addition, construction activities allowed under the project would occur over a limited period, and new residential units would be required to include filters that would minimize potential exposure to substantial toxic air contaminant (TAC) emissions. Therefore, this impact would be less than significant.

**Impact AQ-5.** The proposed project would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people. No impact would occur.

#### **4.4 Biological Resources**

**Impact BIO-2.** Implementation of the proposed project would not result in impacts to riparian habitat or other sensitive habitats. No impact would occur.

**Impact BIO-3.** Implementation of the proposed project would not result in impacts to federally protected wetlands. No impact would occur.

**Impact BIO-4.** Implementation of the proposed project would not impact the movement of native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors. No Impact would occur.

**Impact BIO-5.** Implementation of the proposed project would not conflict with local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance. No impact would occur.

**Impact BIO-6.** Implementation of the proposed project would not conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan. No impact would occur.

#### **4.5 Cultural Resources**

**Impact CR-2.** Known individual historical resources, including three historic districts eligible for inclusion in the NRHP, have been identified adjacent to or in proximity to the Ashby BART station project site. Development of the project site would introduce new visual elements that would alter the settings of known historical resources. However, impacts would be less than significant.

**Impact CR-3.** The North Berkeley and Ashby BART station sites do not contain known archaeological resources. Nonetheless, development facilitated by the proposed project has the potential to impact unrecorded archaeological resources. However, with compliance with City of Berkeley standard conditions of approval, impacts would be less than significant.

**Impact CR-4.** Ground-disturbing activities associated with development under the proposed project could result in damage to or destruction of human burials. However, adherence to existing regulations regarding the discovery of human remains and to City of Berkeley standard conditions of approval would reduce potential impacts to a less than significant level.

**Impact CR-5.** Project site preparation and construction associated with development and right-of-way improvements under the proposed project could adversely impact tribal cultural resources (TCR). However, with compliance with City of Berkeley standard conditions of approval, impacts would be less than significant.

#### **4.6 Geology and Soils**

**Impact GEO-1.** The project area is near the Hayward Fault Zone and other faults. Therefore, the project area is subject to seismically-induced ground shaking and other seismic hazards, including liquefaction, which could damage structures in the project area and result in loss of property and risk to human health and safety. However, incorporation of State-mandated building standards and compliance with General Plan policies would ensure impacts would be less than significant.

**Impact GEO-2.** With adherence to applicable laws and regulations, the proposed project would not result in substantial soil erosion or the loss of topsoil. Therefore, impacts would be less than significant.

**Impact GEO-3.** The project area is located on expansive soils. Proper soil engineering practices would be required to ensure that soil conditions would not result in significant adverse impacts. With required implementation of standard engineering practices, impacts associated with unstable or expansive soils would be less than significant.

**Impact GEO-4.** The proposed project would not include septic tanks or alternative wastewater disposal systems. No impact would occur.

#### **4.7 Energy**

**Impact E-1.** Project construction and operation would require temporary and long-term consumption of energy resources. However, the project would not result in the wasteful, inefficient, or unnecessary consumption of energy resources. This impact would be less than significant.

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**Impact E-2.** The project would be consistent with the energy efficiency and renewable energy policies of the City's Climate Action Plan (CAP) and General Plan. This impact would be less than significant.

#### **4.8 Greenhouse Gas Emissions**

**Impact GHG-2.** The proposed project would be consistent with the goals of Plan Bay Area 2040 and the City's CAP. Therefore, the project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions. This impact would be less than significant.

#### **4.9 Hazards and Hazardous Materials**

**Impact HAZ-1.** Implementation of the proposed project would include development of residential or commercial land uses that could involve the use, storage, disposal, or transportation of hazardous materials. Upset or accident conditions on the project sites could involve the release of hazardous materials into the environment. However, required adherence to existing regulations and the nature of the proposed land uses would ensure that impacts would be less than significant.

**Impact HAZ-2.** Implementation of the proposed project would not involve facilities that would produce or emit hazardous materials near schools. This impact would be less than significant.

**Impact HAZ-4.** The project sites are not located in an airport land use plan or in the vicinity of a private airstrip. Impacts related to airports would not occur.

**Impact HAZ-5.** Implementation of the proposed project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. This impact would be less than significant.

#### **4.10 Hydrology and Water Quality**

**Impact HYD-1.** Future development under the proposed project would involve ground-disturbing activities and the use of heavy machinery that could release materials, including sediments and fuels, which could adversely affect water quality. In addition, operation of potential future development could result in discharges to storm drains that could be contaminated and affect downstream waters. However, compliance with required permits and existing regulations, and implementation of Best Management Practices contained therein, would ensure that potential water quality impacts would be less than significant.

**Impact HYD-2.** Construction of future development facilitated by the proposed project would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table. Further, implementation of low impact development measures and on-site infiltration required under the C.3 provisions of the MRP, compliance with General Plan goals and policies, and compliance with the Berkeley Municipal Code would increase the potential for groundwater recharge. Impacts would be less than significant.

**Impact HYD-3.** Future development facilitated by the proposed project would not substantially alter the existing drainage pattern of the project sites, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site or substantially increase the rate or amount of surface runoff in a manner which would result in flooding or exceed the capacity of stormwater drainage systems. Impacts related to drainage patterns would be less than significant.

**Impact HYD-4.** Development facilitated by the proposed project would not impede or redirect flood flows or expose people or structures to other flood hazards such as tsunamis or seiches. Impacts would be less than significant.

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#### 4.11 Land Use and Planning

**Impact LU-1.** Implementation of the proposed project would not result in the physical division of an established community. This impact would be less than significant.

**Impact LU-2.** The proposed project would implement and be consistent with the goals and policies of applicable land use plans and policies adopted for the purpose of avoiding or mitigating an environmental effect. This impact would be less than significant.

**Impact LU-3.** The proposed project would not conflict with an applicable habitat conservation plan or natural community conservation plan. There would be no impact.

#### 4.12 Mineral Resources

The project sites are not designated as a significant mineral resources zone and mineral resource extraction in this area would be generally incompatible with existing and planned uses (City of Berkeley 2001c). As such, no mineral resource impacts would occur.

#### 4.13 Noise

**Impact N-4:** The station sites are located outside of noise contours associated with airports. Therefore, new development facilitated by the proposed project would not be exposed to excessive noise levels from aircraft operations, and no impact would occur.

#### 4.14 Population and Housing

**Impact PH-1:** Implementation of the proposed project could allow up to an additional approximately 5,424 residents and 465 jobs. This population growth would not exceed planned growth in Berkeley and would occur in a designated transit-rich, Priority Development Area. Therefore, this impact would be less than significant.

**Impact PH-2:** There is no existing housing within either of the project sites. Implementation of the proposed project would not displace existing housing units or people and would increase the city's housing stock. No impact would occur.

#### 4.15 Public Services and Recreation

**Impact PS-1:** Future development under the proposed project would introduce new residential and non-residential uses on the project sites, contributing to the potential future need for a new fire station in Berkeley. If the Fire Department proposes a new station and identifies an appropriate site, the City will conduct a separate evaluation of the station's environmental impacts under CEQA. A potential future facility would likely be infill development and is unlikely to cause additional significant environmental impacts. Therefore, the proposed project would have a less than significant impact related to fire protection facilities.

**Impact PS-2:** Implementation of the proposed project would facilitate development of new residential and non-residential uses to the project sites, generating additional need for the City of Berkeley Police Department's protection services. If the Police Department proposes a new station serving either of the project sites and identifies an appropriate site, the City will conduct a separate evaluation of the station's environmental impacts under CEQA. Therefore, the proposed project would have a less than significant impact related to police protection services.

**Impact PS-3:** Implementation of the proposed project would generate an estimated 230 students to each project site and a total of 460 overall. However, with payment of state-mandated school impact fees, impacts related to public school operating capacity would be less than significant.

**Impact PS-4:** Implementation of the proposed project would add an estimated combined 2,400 residential units and an estimated 5,424 residents to the project sites, which would increase use of parks. However, the

project sites are served by existing and future proposed parks and recreational facilities and would not require the construction or expansion of such facilities. Therefore, impacts would be less than significant.

#### **4.16 Transportation and Traffic**

**Impact T-1:** The proposed project would not conflict with an applicable plan, ordinance, or policy. This impact would be less than significant.

**Impact T-2:** The proposed project would not exceed an applicable VMT threshold of significance. This impact would be less than significant.

**Impact T-3:** The proposed project would not substantially increase hazards due to a design feature or incompatible use. This impact would be less than significant.

**Impact T-4:** The proposed project would not result in inadequate emergency access. This impact would be less than significant.

**Impact T-5:** The proposed project, in combination with past, present, and reasonably foreseeable projects, would not result in a significant cumulative impact. Impacts would be less than significant.

#### **4.17 Utilities and Service Systems**

**Impact UTL-1:** New development facilitated by the proposed project would include new sources of wastewater, which would flow through the existing pipe network and to EBMUD's main wastewater treatment plant (MWWTP). The wastewater treatment plant has adequate capacity to serve development under the proposed project. Local conveyance infrastructure would be upgraded as necessary during implementation of the proposed project, in already developed utility corridors. Impacts related to wastewater infrastructure would be less than significant.

**Impact UTL-2:** Development facilitated by the proposed rezoning would increase water demand. Existing and projected water supply would be adequate to serve the project sites demands, with demand management measures required by EBMUD. Impacts related to water supplies would be less than significant.

**Impact UTL-3:** Implementation of the proposed rezoning would generate an increase of approximately 5.3 tons of solid waste per day, or 10.6 cubic yards per day. Because landfills that serve the City of Berkeley have adequate capacity to serve development facilitated by the proposed project, impacts related to solid waste facilities would be less than significant.

#### **4.18 Wildfire**

The project sites are not located in or near a Very High Fire Hazard Safety Zone, as both are approximately 1.2 miles away from the nearest such zone, which is in the eastern margins of the city in the Berkeley Hills. Therefore, the project would not impair an adopted emergency response or evacuation plan related to wildfire; exacerbate wildfire risks; or expose people to post-fire risks related to runoff, flooding, or landslides. No impact would occur.

## SECTION 5: FEASIBILITY OF PROJECT ALTERNATIVES

### 5.1 Project Alternatives

The Final EIR included three alternatives: the No Project alternative, the BART Rider Alternative, and the Increased Height Alternative. The City hereby concludes that the Final EIR sets forth a reasonable range of alternatives to the Ashby and North Berkeley BART Station Transit Oriented Development (TOD) Zoning Standards Project that address the significant impacts of the project, so as to foster informed public participation and informed decision making. The City finds that the alternatives identified and described in the Final EIR were considered and further finds the No Project Alternative (Alternative 1) and the BART Rider Alternative (Alternative 2) are infeasible for the specific economic, social, or other considerations set forth below pursuant to Public Resources Code section 21081(b). The City finds that the Increase Height Alternative (Alternative 3) is not infeasible, as it would meet the CEQA project objectives, would include the project design and development standards, programmatic priorities, and the open space and alternative transportation elements included in the proposed R-BMU zoning district and the Joint Vision and Priorities document, and would be subject to the Objective Design Standards developed as part of project planning.

**5.1.1 Alternative 1 - No Project Alternative.** The No Project Alternative (Alternative 1) assumes that the City takes no action to rezone the station sites. By default, both station sites would be effectively rezoned with the development standards included in AB 2923. This alternative assumes the following development standards in AB 2923 would apply to the station sites:

- Density of 75 units per acre
- Height of 7 stories
- Floor Area Ratio (FAR) of 4.2

Alternative 1 assumes that the AB 2923 development standards are maximums. This alternative would involve the same density, height, and FAR as the proposed project, but would not include the same standards with respect to setbacks and stepbacks; therefore, this project is assumed, for the purpose of analysis, to allow 2,500 units between both sites (1,250 units at each site). With respect to ground-floor commercial space, the No Project Alternative would have a similar buildout to the proposed project (combined total of 125,000 square feet on both sites).

The following parking standards under AB 2923 also would apply to the station sites:

- No minimum vehicle parking space requirement;
- A maximum of 0.5 vehicle parking spaces per residential unit and 1.5 vehicle parking spaces per 1,000 square feet of office space;
- A minimum of one secure bicycle parking space per unit; and
- Shared or unbundled vehicle parking must be permitted.

**Findings:** Similar to the proposed project, the No Project Alternative would allow for the development of multi-story buildings with residential and commercial uses on the station sites, but it would allow for an estimated additional 50 units on each station site. The footprint of the project sites would remain the same, and generally the amount of site preparation and grading for construction would remain the same. Therefore, impacts caused by the construction and operation of new development would be similar in nature to those of the proposed project but incrementally increased. The No Project Alternative would also meet the project objectives of compliance with AB 2923 and encouraging sustainable transit-oriented development.

**5.1.2 Alternative 2 – BART Rider Parking:** Alternative 2 includes a dedicated above-ground parking garage for BART riders at each site (160 vehicle parking spaces at Ashby BART station and 300 vehicle parking spaces at North Berkeley BART station). All other policies, standards, and guidelines in the proposed project would remain. Accommodating new parking garages would reduce the site acreage available for residential buildout, relative to the proposed project, which, for the purpose of analysis, is assumed would result in approximately 400 fewer dwelling units.



Findings: Similar to the proposed project, Alternative 2 would allow for the development of multi-story buildings with residential and commercial uses on the station sites, but it would result in an estimated 400 fewer dwelling units and 460 more vehicle parking spaces. The footprint of the development on the project sites would remain the same, and generally the amount of site preparation and grading for construction would remain the same. This alternative would meet the CEQA-related project objective to comply with AB 2923 by allowing new development consistent with the law's development standards at the station sites. It would also meet the project objective to promote location efficiency and sustainable transportation modes, but to a lesser extent than would the proposed project because increased supply of vehicle parking would reduce the amount of residential space that could be provided and encourage vehicle use by making it more convenient to drive.

**5.1.3 Alternative 3 – Increased Height.** The Increased Height Alternative would allow for the development of 12-story buildings on the station sites, whereas the proposed project would allow for buildings up to seven stories tall. Increasing the maximum building height by 70 percent compared to the proposed project would allow for a corresponding increase in the number of residential units. Buildout under this alternative would include, for the purpose of analysis, up to 3,600 residential units combined for both sites, or 1,200 more than under the proposed project. It is assumed that the change in allowable building height would not affect the allowable commercial use, which would still be an estimated 125,000 square feet. All other development standards included in the proposed project would remain the same. This alternative would meet the CEQA-related project objective to comply with AB 2923 by allowing new development consistent with the law's development standards at the station sites. By further increasing residential density in a Transit Priority Area, it would also meet the project objective to promote "green" development as well as location efficiency and sustainable transportation modes, to a greater extent than would the proposed project.

Findings: Similar to the proposed project, Alternative 3 would allow for the development of multi-story buildings with residential and commercial uses on the station sites, but it would result in buildings up to height of 12 stories and as many as 1,200 more residential units. The footprint of the project sites would remain the same, and generally the amount of site preparation and grading for construction would remain the same. This alternative would meet the CEQA-related project objective to comply with AB 2923 by allowing new development consistent with the law's development standards at the station sites. It would also meet the project objective to promote location efficiency and sustainable transportation modes to a greater extent than would the proposed project because it includes more residential units.

## **5.2 Environmentally Superior Alternative**

Section 15126.6(e)(2) of the CEQA Guidelines requires that an environmentally superior alternative be identified among the selected alternatives.

Among the development options, Alternative 3 is considered the environmentally superior alternative as it would have the most benefits regionally due to the resulting increase in density in proximity to transit, which is an effective way to encourage alternative transportation and reduce vehicle use and associated air quality and GHG emissions, as detailed in Plan Bay Area 2040 and the City's Climate Action Plan. Therefore, Alternative 3 is the environmentally superior alternative.

## **SECTION 6: SIGNIFICANT EFFECTS THAT CANNOT BE MITIGATED TO A LESS-THAN-SIGNIFICANT LEVEL**

As discussed in the Draft EIR, the proposed project and Alternative 3 would result in significant unavoidable impacts related to noise and traffic. A number of mitigation measures are presented, but none would reduce these impacts to a less-than-significant level. The City makes findings of overriding consideration for these impacts in Section 7, below.

## 6.1 Noise

**Impact N-1:** Future development under the proposed project would temporarily generate high noise levels near the project sites. Although conditions of approval would restrict the hours of construction activity and minimize noise from equipment to the extent feasible, construction noise could still exceed the City's standards at sensitive receptors. Therefore, the impact from a temporary increase in construction noise would be significant and unavoidable.

**Mitigation Measure N-1: Foundation Pile Noise and Vibration Reductions Measures.** The City shall require the construction contractor at individual future developments on the project sites to implement one of the following measures to minimize noise and vibration from the installation of pile foundations:

- Use of an impact or sonic pile driver shall not occur; or
- Use of drilled piles only with temporary noise barriers and/or blankets with a minimum height of 10 feet shall be constructed along the southern project site boundary. The temporary noise barriers and/or blankets may be constructed of material with a minimum weight of two pounds per square foot with no gaps or perforations. Temporary noise barriers and/or blankets may be constructed of, but not limited to, 5/8-inch plywood, 5/8-inch oriented strand board, and hay bales; or
- If an alternative method for foundation piles is proposed other than drilled piles (e.g., micro piles), the method shall be reviewed by a qualified acoustician to ensure that noise and vibration levels do not exceed the City's noise standards and applicable Caltrans vibration criteria for human annoyance. The analysis shall be performed prior to project approval from the City.

**Finding:** The City finds impacts related to construction noise have been mitigated to the maximum extent feasible. Despite the implementation of mitigation measures, impacts would remain significant and unavoidable. The City finds that although this impact would be significant and unavoidable, the impact is acceptable when weighed against the overriding social, economic, and other considerations set forth in the Statement of Overriding Considerations (Section 7 of these Findings).

**Facts in Support of Finding:** During the construction of future development on the project sites, reductions of up to 31 dBA Leq may be necessary to meet the City's standards for construction noise from stationary sources (as low as 50 dBA on weekends and holidays in residential zones). As discussed above, the City's standard conditions of approval for large projects would reduce construction noise levels to the maximum extent feasible. These conditions would include the installation of temporary sound barriers, which are the most effective advanced measure to reduce noise from construction sites adjacent to sensitive receptors. It is estimated that the standard conditions of approval would reduce construction noise levels by at least 5 dBA Leq. In addition, Mitigation Measure N-1 would require alternatives to pile driving such as augur drilling of piles, which would reduce construction noise by 6 to 7 dBA Leq during the building construction phase. These reduction measures would reduce construction noise to the extent feasible. However, construction noise levels from grading activity would still reach an estimated 73 dBA Leq at residences next to the Ashby BART station site, which would exceed the City's standards of 60 dBA on weekdays and 50 dBA on weekends and holidays in residential zones. Furthermore, grading noise would be an estimated 64 dBA Leq at residences next to the North Berkeley BART station site, which would exceed the same standards. Therefore, this impact would be significant and unavoidable.

## 6.2 Cumulative Impacts

The City finds that the proposed project will result in cumulatively considerable impacts to historic resources.

Cumulative development could occur within or in close proximity to any of the three known historic districts adjacent to the Ashby BART Station. The Adeline Corridor Specific Plan includes a framework for additional residential and commercial development in the corridor near the Ashby BART station that is intended to respect and protect historic resources. However, policies and regulations would not in all cases preclude impacts to built environment historical resources, such as changes to the setting of known historic districts. It

would be speculative to predict the specific level of cumulative impact of future development. Nevertheless, it is conservatively projected that development of sites in the vicinity, other than the Ashby BART Station, could result in the alteration or loss of some historical built environment resources, with potentially significant cumulative impacts. These effects are not caused by the proposed project, so no mitigation is required.

## SECTION 7: STATEMENT OF OVERRIDING CONSIDERATIONS

CEQA requires the decision-making agency to balance the benefits of a project against its significant unavoidable impacts when determining whether to approve a project. If the benefits of the project outweigh its unavoidable adverse environmental effects, those effects may be considered acceptable.<sup>4</sup> CEQA requires the agency to state in writing the specific reasons for considering a project acceptable when significant impacts are not avoided or substantially lessened. Those reasons must be based on substantial evidence in the Final EIR or elsewhere in the administrative record.<sup>5</sup> The proposed project and Alternative 3 would result in significant unavoidable impacts related to construction noise and a cumulative impact with respect to cultural resources, even after incorporation of all feasible mitigation measures. These significant unavoidable impacts are identified and discussed in Section 6 of these Findings. The City further finds that these significant unavoidable impacts are outweighed by the benefits of the proposed project or Alternative 3, each of which, independently of the others, constitutes overriding consideration warranting approval of the proposed project. Those benefits, and additional considerations related to this finding, are as follows:

- The proposed project and Alternative 3 ensure that the City of Berkeley complies with state law, namely AB 2923.
- The proposed project and Alternative 3 will encourage sustainable transit-oriented development that foster a diverse mix of uses to provide safe and convenient access for all people of all ages, abilities and income levels to meet daily needs: to live, work, play, dine, shop, and socialize with one another other.
- The proposed project and Alternative 3 will encourage affordable housing, community facilities, and public improvements desired by the community.
- The proposed project and Alternative 3 will encourage development of a variety of types of housing at a range of income levels.
- The proposed project and Alternative 3 will improve safety, connectivity, accessibility and access along and across the Ashby and North Berkeley BART stations for all people of all ages, abilities and income levels to meet daily needs: to live, work, play, dine, shop, and socialize with one another other.
- The proposed project and Alternative 3 will facilitate new parks, plazas and other public spaces for persons of all abilities, age and incomes.
- The proposed project and Alternative 3 will support Transportation Demand Management and encourage public transit, walking and bicycling as preferred modes of transportation.
- The proposed project and Alternative 3 will create a sustainable urban environment that incorporates green building features, green infrastructure and ecology, sustainable energy systems, water efficiency and conservation, and sustainable transportation systems.
- The proposed project and Alternative 3 will put the City in a better position to apply for grants because granting entities often prioritize applications for programs/capital improvements that are included in approved community plans that have undergone CEQA review.

On balance, the City finds that there are specific economic, legal, social, technological, or other benefits of the [Project as adopted by Council] serves to override and outweigh the significant unavoidable effects of the [Project as adopted by Council]. Therefore, pursuant to *CEQA Guidelines* Section 15093(b), the City finds that these significant adverse environmental effects are considered acceptable.

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<sup>4</sup> *CEQA Guidelines*, 2019. Section 15093(a)

<sup>5</sup> *CEQA Guidelines*, 2019. Section 15093(b)

## **SECTION 8: INCORPORATION BY REFERENCE**

These findings incorporate the text of the Final Environmental Impact Report for the Ashby and North Berkeley BART Stations Transit-Oriented Development (TOD) Zoning Project by reference and in their entirety. Without limitation, this incorporation is intended to elaborate on the scope and nature of mitigation measures, the basis for determining the significance of impacts, the comparative analysis of alternatives, the determination of the environmentally superior alternative, and the reasons for approving the Project in spite of the potential for associated significant and unavoidable adverse impacts.

## **SECTION 9: RECIRCULATION NOT REQUIRED**

No significant new information was added to the Draft EIR or the Final EIR as a result of the public comment process. The Final EIR responds to comments, and clarifies, amplifies, and makes insignificant modifications to the Draft EIR. It does not identify any new significant effects on the environment or a substantial increase in the severity of an environmental impact requiring major revisions to the Draft EIR. Similarly, the revised project would not result in new or substantially more severe significant impacts than disclosed previously in the Draft EIR. Therefore, recirculation of the EIR is not required.

## **SECTION 10: RECORD OF PROCEEDINGS**

Various documents and other materials related to the project constitute the record of proceedings upon which the City bases its findings and decisions contained herein. Those documents and materials are located in the offices of the custodian for the documents and materials, which is the City of Berkeley Department of Planning and Development, 1947 Center Street, 2<sup>nd</sup> floor, Berkeley, CA 94704.

## **SECTION 11: SUMMARY**

A. Based on the foregoing Findings and the information contained in the record, the City has made one or more of the following Findings with respect to each of the significant effects of the Project:

1. Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effects identified in the Final EIR.
2. Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other public agency.
3. Specific economic, legal, social, technological, or other considerations, make infeasible the mitigation measures or alternatives identified in the Final EIR that would otherwise avoid or substantially lessen the identified significant environmental effects of the Project.

B. Based on the foregoing Findings and the information contained in the record, the City determines that:

1. All significant effects on the environment due to the approval of the Project have been eliminated or substantially lessened where feasible.
2. Any remaining significant effects on the environment found to be unavoidable are acceptable due to the factors described in the Statement of Overriding Considerations, above.

## Mitigation Monitoring and Reporting Program

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The Environmental Impact Report (EIR) identifies the applicable mitigation measures that will be implemented to reduce the impacts associated with the Ashby and North Berkeley BART Stations Transit-Oriented Development (TOD) Zoning Project. The California Environmental Quality Act (CEQA) requires a public agency to adopt a monitoring and reporting program for assessing and ensuring compliance with any required mitigation measures applied to proposed development. As stated in section 21081.6(a)(1) of the Public Resources Code:

...the public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment.

Section 21081.6 also provides general guidelines for implementing mitigation monitoring programs and indicates that specific reporting and/or monitoring requirements, to be enforced during project implementation, shall be defined as part of adopting an Environmental Impact Report.

The mitigation monitoring table lists those mitigation measures that may be included as performance standards in the zoning, contractual obligations, and/or conditions of approval for the project. To ensure that the mitigation measures are properly implemented, a monitoring program has been devised which identifies the timing and responsibility for monitoring each measure. Future project applicants will have the responsibility for implementing the measures that apply to development activity, and BART and the various City of Berkeley departments will have the primary responsibility for monitoring and reporting the implementation of the mitigation measures.

City of Berkeley  
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| Mitigation Measure/Condition of Approval   | Implementation Procedures  | Monitoring and Reporting Action   | Monitoring Timing                                       | Monitoring Responsibility  | Compliance Verification (Initial, Date, Comments) |
|--|--|---|---|--|---|
| <b>Air Quality</b>   |  |   |   |  |   |
| <b>AQ-1: Construction Emissions Measures</b>   |  |   |   |  |   |
| <p>As part of the City's development approval process, the City shall require applicants for future development projects within the project sites to comply with the current Bay Area Air Quality Management District's basic control measures for reducing construction emissions of PM<sub>10</sub> (Table 8-2, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the May 2017 BAAQMD CEQA Guidelines).</p>   | <p>Project applicants shall comply with BAAQMD control measures for reducing construction emissions.</p>   | <p>Review all demolition, grading, and building permits to ensure compliance.</p>         | <p>Prior to permit approval and during construction</p> | <p>City of Berkeley Department of Planning &amp; Development</p> |   |
| <b>Biological Resources</b>  |  |   |   |  |   |
| <b>BIO-1: Worker Environmental Awareness Program</b>   |  |   |   |  |   |
| <p>Prior to initiation of construction activities (including staging and mobilization), all personnel associated with project construction shall attend a Worker Environmental Awareness Program (WEAP) training, conducted by a qualified biologist, to aid workers in recognizing special status resources that may occur in the construction area. The specifics of this program shall include identification of the sensitive species and habitats, a description of the regulatory status and general ecological characteristics of sensitive resources, and review of the limits of construction and mitigation measures required to reduce impacts to biological resources within the work area. A fact sheet conveying this information shall also be prepared for distribution to all contractors, their employers, and other personnel involved with construction. All construction employees shall sign a form provided by the trainer indicating they have attended the WEAP and understand the information presented to them. The form shall be submitted to the City to document compliance.</p> | <p>Project applicants shall ensure construction personnel attend a WEAP training conducted by a qualified biologist and consisting of the required program components. Project applicants shall prepare and distribute fact sheet and ensure signatures by construction personnel.</p> | <p>Monitor compliance with WEAP training and verify signed forms have been submitted.</p> | <p>Prior to ground disturbing activities</p>            | <p>City of Berkeley Department of Planning &amp; Development</p> |   |

| Mitigation Measure/Condition of Approval  | Implementation Procedures  | Monitoring and Reporting Action   | Monitoring Timing   | Monitoring Responsibility  | Compliance Verification (Initial, Date, Comments) |
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| <b>BIO-2: Special-status Bat Species Avoidance and Minimization</b>   |  |   |   |  |   |
| <p>Development that involves removal of mature trees large enough to contain crevices and hollows that could support bat roosting, focused surveys to determine the presence/absence of roosting bats shall be conducted prior to demolition or tree removal. If active maternity roosts are identified, a qualified biologist shall establish avoidance buffers applicable to the species, the roost location and exposure, and the proposed construction activity in the area. If active non-maternity day or night roosts are found on the project site, measures shall be implemented to passively relocate bats from the roosts prior to the onset of construction activities. Such measures may include removal of roosting site 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. These measures shall be presented in a Bat Passive Relocation Plan that shall be submitted to, and approved by, CDFW prior to issuance of grading permit.</p> | <p>For development that involves removal of mature trees, project applicants shall obtain a qualified biologist to conduct surveys. Based on the results of the survey, project applicant shall incorporate measures to relocate bats.</p> | <p>For construction that meets the criteria, review and approve presence/absence survey. If active maternity roosts are identified, review all demolition, grading, and building permits to ensure relocation measures have been implemented.</p> | <p>Prior to issuance of grading permit<br/>Ongoing during construction activities</p> | <p>City of Berkeley<br/>Department of Planning &amp; Development</p> |   |
| <b>Cultural Resources</b>   |  |   |   |  |   |
| <b>CR-1: Ashby BART Station Interpretive Display</b>  |  |   |   |  |   |
| <p>The proposed project shall be designed to include a permanent, high-quality on-site interpretive display in a publicly-accessible location, preferably near or within the publicly accessible civic plaza at the Ashby BART Station. The display shall focus on the station's history, particularly the community-led effort for the station to be underground and the subsequent use of the land by the community. The interpretive display will be prepared by a professional exhibit designer and historian meeting the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61). The goal of the interpretive display is to educate the public about the property's historic themes and associations within broader cultural contexts and shall include incorporate</p>   | <p>Project applicants shall prepare and implement a permanent, high quality on-site interpretive display meeting the requirements of the measure.<br/>Project applicants shall obtain review and approval of the display from the City</p> | <p>Review/approve a permanent, high quality on-site interpretive display in a publicly-accessible location</p>  | <p>Prior to installation</p>  | <p>City of Berkeley<br/>Department of Planning &amp; Development</p> |   |

City of Berkeley  
 Ashby and North Berkeley BART Stations TOD Zoning Project

| Mitigation Measure/Condition of Approval   | Implementation Procedures  | Monitoring and Reporting Action  | Monitoring Timing  | Monitoring Responsibility  | Compliance Verification (Initial, Date, Comments) |
|--|--|--|--|--|---|
| <p>elements of public art as appropriate. Plans for the display shall be subject to review and approval by the Land Use Planning Division prior to installation.</p>   | <p>of Berkeley and BART.</p>   |  |  |  |   |
| <p><b>Geology and Soils</b></p>  |  |  |  |  |   |
| <p><b>GEO-1: Paleontological Resources Studies</b></p>   |  |  |  |  |   |
| <p>Because the project sites are underlain by geologic units assigned a high paleontological sensitivity, paleontological resources may be encountered during ground-disturbing activities associated with project construction (e.g., grading, excavation, or other ground disturbing construction activity).</p> <p>1. <b>Qualified Paleontologist.</b> The project applicant shall retain a Qualified Paleontologist to implement the following measures prior to excavations that have potential to impact paleontological resources. The Qualified Paleontologist shall direct all mitigation measures related to paleontological resources. A qualified professional paleontologist is defined by the SVP standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010).</p> <p>a. The qualified professional paleontologist shall design a Paleontological Resources Mitigation and Monitoring Program (PRMMP) for submission to the City prior to the issuance of grading permits. The Plan will outline the procedures and protocol for conducting paleontological monitoring and mitigation. Monitoring shall be conducted by a qualified paleontological monitor who meets the minimum qualifications per standards set forth by the SVP. The PRMMP shall address the following procedures and protocols:</p> <ul style="list-style-type: none"> <li>▪ Timing and duration of monitoring</li> </ul> | <p>Project applicants shall retain a qualified paleontologist.</p> <p>Project applicants shall implement a Worker Environmental Awareness Training (WEAP) on paleontological resources.</p> <p>Project applicants shall hire paleontological monitor, and if fossils are discovered, follow procedures for managing resources.</p> <p>Project applicants shall prepare final Paleontological Monitoring report and shall obtain review and approval of the report from the City of Berkeley.</p> | <p>Verify that qualified paleontologist has been retained and measures have been implemented</p> | <p>Prior to issuance of grading permit, periodically during construction</p> | <p>City of Berkeley Department of Planning &amp; Development</p> |   |



| Mitigation Measure/Condition of Approval  | Implementation Procedures | Monitoring and Reporting Action | Monitoring Timing | Monitoring Responsibility | Compliance Verification (Initial, Date, Comments) |
|---|---------------------------|---------------------------------|-------------------|---------------------------|---|
| <ul style="list-style-type: none"> <li>▪ Procedures for work stoppage and fossil collection</li> <li>▪ The type and extent of data that should be collected with any recovered fossils</li> <li>▪ Identify an appropriate curatorial institution</li> <li>▪ Identify the minimum qualifications for qualified paleontologists and paleontological monitors</li> <li>▪ Identify the conditions under which modifications to the monitoring schedule can be implemented</li> <li>▪ Details to be included in the final monitoring report.</li> </ul> <p style="margin-left: 40px;">Prior to issuance of a grading permit, copies of the PRMMP shall be submitted for review to the Department of Planning and Development at the City of Berkeley.</p> <p>2. <b>Paleontological Worker Environmental Awareness Program (WEAP).</b> Prior to any ground disturbance, the applicant shall incorporate information on paleontological resources into the Project’s Worker Environmental Awareness Training (WEAP) materials, or a stand-alone Paleontological Resources WEAP shall be submitted to the Department of Planning and Development at the City of Berkeley. The Qualified Paleontologist or his or her designee shall conduct training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The Paleontological WEAP training shall be fulfilled simultaneously with the overall WEAP training, or at the first preconstruction meeting at which a Qualified Paleontologist attends prior to ground disturbance. Printed literature (handouts) shall accompany the initial training. Following the initial WEAP training, all new workers and contractors must be trained prior to conducting ground disturbance work.</p> |                           |                                 |                   |                           |   |

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| Mitigation Measure/Condition of Approval  | Implementation Procedures | Monitoring and Reporting Action | Monitoring Timing | Monitoring Responsibility | Compliance Verification (Initial, Date, Comments) |
|---|---------------------------|---------------------------------|-------------------|---------------------------|---|
| <p>3. <b>Paleontological Monitoring.</b> Paleontological monitoring shall be conducted during any ground disturbing construction activities (i.e., grading, trenching, foundation work) in previously undisturbed (i.e., intact) Pleistocene alluvial fan and fluvial deposits (Qpaf), as well as ground disturbance exceeding depths of five feet within project areas mapped as Quaternary young (late to middle Holocene) alluvial and fluvial deposits (Qhaf). Paleontological monitoring shall be conducted by a qualified paleontological monitor, who is defined as an individual who has experience with collection and salvage of paleontological resources and meets the minimum standards of the SVP (2010) for a Paleontological Resources Monitor. The duration and timing of the monitoring will be determined by the Qualified Paleontologist and the location and extent of proposed ground disturbance. If the Qualified Paleontologist determines that full-time monitoring is no longer warranted, based on the specific geologic conditions at the surface or at depth, he/she may recommend that monitoring be reduced to periodic spot-checking or cease entirely. Paleontological monitoring is not required for ground-disturbing activities that impact previously disturbed sediments (e.g., artificial fill) only.</p> <p>4. <b>Fossil Discoveries.</b> In the event of a fossil discovery by the paleontological monitor or construction personnel, all work in the immediate vicinity of the find shall cease. A Qualified Paleontologist shall evaluate the find before restarting construction activity in the area. If it is determined that the fossil(s) is (are) scientifically significant, the Qualified Paleontologist shall complete the following conditions to mitigate impacts to significant fossil resources:</p> <p>a. <b>Salvage of Fossils.</b> If fossils are discovered, all work in the immediate vicinity shall be halted to allow the paleontological monitor, and/or lead paleontologist to evaluate the discovery and determine if the fossil may</p> |                           |                                 |                   |                           |   |

| Mitigation Measure/Condition of Approval   | Implementation Procedures | Monitoring and Reporting Action | Monitoring Timing | Monitoring Responsibility | Compliance Verification (Initial, Date, Comments) |
|--|---------------------------|---------------------------------|-------------------|---------------------------|---|
| <p>be considered significant. If the fossils are determined to be potentially significant, the qualified paleontologist (or paleontological monitor) shall recover them following standard field procedures for collecting paleontological as outlined in the PRMMP prepared for the project. Typically, fossils can be safely salvaged quickly by a single paleontologist and not disrupt construction activity. In some cases, larger fossils (such as complete skeletons or large mammal fossils) require more extensive excavation and longer salvage periods. In this case the paleontologist shall have the authority to temporarily direct, divert or halt construction activity to ensure that the fossil(s) can be removed in a safe and timely manner. If fossils are discovered, the Qualified Paleontologist (or Paleontological Monitor) shall recover them as specified in the project's PRMMP.</p> <p>b. <b>Preparation and Curation of Recovered Fossils.</b> Once salvaged, significant fossils shall be identified to the lowest possible taxonomic level, prepared to a curation-ready condition, and curated in a scientific institution with a permanent paleontological collection (such as the UCMP), along with all pertinent field notes, photos, data, and maps. Fossils of undetermined significance at the time of collection may also warrant curation at the discretion of the Qualified Paleontologist.</p> <p>5. <b>Final Paleontological Mitigation Report.</b> Upon completion of ground disturbing activity (and curation of fossils if necessary) the Qualified Paleontologist shall prepare a final mitigation and monitoring report outlining the results of the mitigation and monitoring program. The report should include discussion of the location, duration and methods of the monitoring, stratigraphic sections, any recovered fossils, and the scientific significance of those fossils, and where fossils were curated. The report shall be submitted to the Department of Planning and</p> |                           |                                 |                   |                           |   |

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|---|---------------------------|---------------------------------|-------------------|---------------------------|---|
| Development at the City of Berkeley. If the monitoring efforts produced fossils, then a copy of the report shall also be submitted to the designated museum repository. |                           |                                 |                   |                           |   |

**Greenhouse Gas Emissions**

**GHG-1: Renewable Electricity Resources**

|   |   |   |                              |   |  |
|---|---|---|------------------------------|---|--|
| <p>Applicants for future development allowed under the proposed project shall prepare and implement a Greenhouse Gas Reduction Program (GGRP) that includes on-site GHG reduction measures to reduce the project's total remaining GHG emissions to 1.2 MT of CO<sub>2</sub>e per service person per year or less (a total of approximately 1,027 MT of CO<sub>2</sub>e per year). Potential options include, but would not be limited to:</p> <ul style="list-style-type: none"> <li>▪ Supply 100 percent of electricity from renewable energy resources. Current options include opting into EBCE's Renewable 100, PG&amp;E's Solar Choice, or PG&amp;E's Regional Renewable Choice.</li> <li>▪ Install additional electric vehicle charging stations beyond those required under BMC Chapter 19.37 within proposed parking areas.</li> <li>▪ Implement a transportation demand program that includes measures beyond those required City of Berkeley Transportation Demand Management (TDM) requirements. Program measures may include priority parking spaces for carpools, electric rideshare vehicles for residents and employees, and a bicycle sharing program.</li> <li>▪ Prohibit installation of natural gas fireplaces.</li> <li>▪ Use electric-powered construction equipment.</li> <li>▪ Use electric-powered landscape equipment.</li> </ul> | <p>Project applicants shall prepare and implement a GHG Reduction Program. Project applicants shall obtain review and approval of the report from the City of Berkeley.</p> | <p>Verify GHG Reduction Program has been prepared and implemented</p> | <p>During project review</p> | <p>City of Berkeley Department of Planning &amp; Development, Applicants for future development</p> |  |
|---|---|---|------------------------------|---|--|

| Mitigation Measure/Condition of Approval   | Implementation Procedures  | Monitoring and Reporting Action         | Monitoring Timing   | Monitoring Responsibility                                      | Compliance Verification (Initial, Date, Comments) |
|--|--|---|---|--|---|
| <b>Hazards and Hazardous Materials</b>   |  |   |   |  |   |
| <b>HAZ-1: Property Assessment – Phase I and II ESAs</b>  |  |   |   |  |   |
| <p>Prior to issuance of a grading permit, the project applicant will retain a qualified environmental professional (EP), as defined by ASTM E-1527 to prepare a project specific Phase I ESA in accordance with standard ASTM methodologies, to assess the land use history of the property that will be developed.</p> <p>The determination of specific areas that require a Phase II ESA (i.e., soil, groundwater, soil vapor subsurface investigations) will be evaluated by the project applicant after the site-specific Phase I ESAs have been completed. The Phase II ESA will be completed prior to construction and will be based on the results of the Phase I ESA. Specifically, if the Phase I ESAs identify recognized environmental conditions or potential concern areas, the project applicant will retain a qualified environmental consultant, California Professional Geologist (PG) or California Professional Engineer (PE), to prepare a Phase II ESA of the project site that will be developed, to determine whether the soil, groundwater, and/or soil vapor has been impacted at concentrations exceeding regulatory screening levels for commercial/industrial land uses.</p> <p>As part of the Phase II ESA, the qualified environmental consultant will screen the analytical results against the San Francisco Regional Water Quality Control Board environmental screening levels (ESL). These ESLs are risk-based screening levels for direct exposure of a construction worker under various depth and land use scenarios. The lead agency will review and approve the Phase I ESA prior to demolition and grading (construction).</p> <p>If the Phase II ESA for the development site indicates that contaminants are detected in the subsurface at the project site, the project applicant will take appropriate steps to protect site workers and the public. This may include the</p> | <p>Project applicant will retain a qualified EP to prepare a Phase I ESA.</p> <p>Based on the results, project applicants will retain a qualified EP to prepare a Phase II ESA and based on the results, implement measures to protect the public and workers.</p> | <p>Review Phase I and Phase II ESAs</p> | <p>Prior to issuance of building or engineering permits</p> | <p>City of Berkeley Department of Planning and Development</p> |   |

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| <p>preparation of a Soil Management Plan for Impacted Soils (see Mitigation Measure HAZ-2) prior to project construction. If the Phase II ESA for the contaminant site indicates that contaminants are present at concentrations exceeding hazardous waste screening thresholds for contaminants in soil and/or groundwater (California Code of Regulations [CCR] Title 22, Section 66261.24 Characteristics of Toxicity), the project applicant will take appropriate steps to protect site workers and the public. This may include the completion of remediation (see Mitigation Measure HAZ-3) at the project site prior to onsite construction.</p>  |  |  |   |  |   |
| <b>HAZ-2: Soil Management Plan for Impacted Soils</b>   |  |  |   |  |   |
| <p>If impacted soils or other impacted wastes are present at the project site, the project applicant will retain a qualified environmental consultant (PG or PE), to prepare a Soil Management Plan (SMP) prior to construction. The SMP, or equivalent document, will be prepared to address onsite handling and management of impacted soils or other impacted wastes, and reduce hazards to construction workers and offsite receptors during construction. The plan must establish remedial measures and/or soil management practices to ensure construction worker safety, the health of future workers and visitors, and the off-site migration of contaminants from the site. These measures and practices may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>▪ Stockpile management including stormwater pollution prevention and the installation of BMPs</li> <li>▪ Proper disposal procedures of contaminated materials</li> <li>▪ Monitoring and reporting</li> <li>▪ A health and safety plan for contractors working at the site that addresses the safety and health hazards of each phase of site construction activities with the requirements and procedures for employee protection</li> <li>▪ The health and safety plan will also outline proper soil handling procedures and health and safety requirements</li> </ul> | <p>Project applicants shall retain a qualified consultant to prepare a SMP. Project applicants shall obtain review and approval of the report from the City of Berkeley.</p> | <p>Review and approve updated SGMP and review all demolition, grading, and building permits to ensure compliance</p> | <p>Prior to issuance of building or engineering permits</p> | <p>City of Berkeley Department of Planning and Development</p> |   |

| Mitigation Measure/Condition of Approval  | Implementation Procedures  | Monitoring and Reporting Action  | Monitoring Timing                          | Monitoring Responsibility                                      | Compliance Verification (Initial, Date, Comments) |
|---|--|--|--|--|---|
| <p>to minimize worker and public exposure to hazardous materials during construction.</p> <p>The City of Berkeley will review and approve the development site Soil Management Plan for Impacted Soils prior to issuance of a grading permit.</p>   |  |  |  |  |   |
| <b>HAZ-3: Remediation</b>   |  |  |  |  |   |
| <p>If soil present within the construction envelope at the development site contains chemicals at concentrations exceeding hazardous waste screening thresholds for contaminants in soil (California Code of Regulations [CCR] Title 22, Section 66261.24), the project applicant will retain a qualified environmental consultant (PG or PE), to conduct additional analytical testing and recommend soil disposal recommendations, or consider other remedial engineering controls, as necessary.</p> <p>The qualified environmental consultant will utilize the development site analytical results for waste characterization purposes prior to offsite transportation or disposal of potentially impacted soils or other impacted wastes. The qualified environmental consultant will provide disposal recommendations and arrange for proper disposal of the waste soils or other impacted wastes (as necessary), and/or provide recommendations for remedial engineering controls, if appropriate.</p> <p>The project applicant will review and approve the disposal recommendations prior to transportation of waste soils offsite, and review and approve remedial engineering controls, prior to construction.</p> <p>Remediation of impacted soils and/or implementation of remedial engineering controls may require additional delineation of impacts; additional analytical testing per landfill or recycling facility requirements; soil excavation; and offsite disposal or recycling.</p> <p>The City of Berkeley will review and approve the development site disposal recommendations prior to</p> | <p>If soil present within the construction envelope at the development site contains chemicals at concentrations exceeding hazardous waste screening thresholds for contaminants in soil, project applicant shall retain a qualified environmental consultant (PG or PE), conduct additional analytical testing, and implement soil disposal recommendations and other remedial engineering controls, as necessary.</p> <p>Project applicant shall obtain review and approval of the controls from the City of Berkeley.</p> | <p>If soil present within the construction envelope at the development site contains chemicals at concentrations exceeding hazardous waste screening thresholds for contaminants in soil, verify a qualified environmental consultant (PG or PE) has conducted additional analytical testing and recommend soil disposal recommendations, or consider other remedial engineering controls, as necessary.</p> | <p>Prior to issuance of grading permit</p> | <p>City of Berkeley Department of Planning and Development</p> |   |

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| Mitigation Measure/Condition of Approval   | Implementation Procedures  | Monitoring and Reporting Action  | Monitoring Timing  | Monitoring Responsibility                                       | Compliance Verification (Initial, Date, Comments) |
|--|--|--|--|---|---|
| <p>transportation of waste soils offsite and review and approve remedial engineering controls, prior to issuance of a grading permit.</p>  |  |  |  |   |   |
| <b>Noise</b>   |  |  |  |   |   |
| <b>N-1: Foundation Pile Noise and Vibration Reduction Measures</b>   |  |  |  |   |   |
| <p>The City shall require the construction contractor at individual future developments on the project sites to implement one of the following measures to minimize noise and vibration from the installation of pile foundations:</p> <ul style="list-style-type: none"> <li>▪ Use of an impact or sonic pile driver shall not occur; or</li> <li>▪ Use of drilled piles only with temporary noise barriers and/or blankets with a minimum height of 10 feet shall be constructed along the southern project site boundary. The temporary noise barriers and/or blankets may be constructed of material with a minimum weight of two pounds per square foot with no gaps or perforations. Temporary noise barriers and/or blankets may be constructed of, but not limited to, 5/8-inch plywood, 5/8-inch oriented strand board, and hay bales; or</li> </ul> <p>If an alternative method for foundation piles is proposed other than drilled piles (e.g., micro piles), the method shall be reviewed by a qualified acoustician to ensure that noise and vibration levels do not exceed the City's noise standards and applicable Caltrans vibration criteria for human annoyance. The analysis shall be performed prior to project approval from the City.</p> | <p>Project applicants shall implement one of two options to minimize noise and vibration from the installation of pile foundations.</p> <p>Project applicant shall obtain review and approval from the City of Berkeley.</p> | <p>Verify that construction contractor is implementing one of two options to minimize noise and vibration from the installation of pile foundations.</p> | <p>Prior to issuance of grading permit, periodically during construction</p> | <p>City of Berkeley Department of Planning and Development.</p> |   |



| Mitigation Measure/Condition of Approval   | Implementation Procedures  | Monitoring and Reporting Action  | Monitoring Timing                             | Monitoring Responsibility                                       | Compliance Verification (Initial, Date, Comments) |
|--|--|--|---|---|---|
| <b>N-2: HVAC Noise Reduction Measures</b>  |  |  |   |   |   |
| <p>Prior to the issuance of building permits, applicants for development projects on the project sites shall retain a qualified acoustical consultant to review the type, location, and design of heating, ventilation, and cooling (HVAC) equipment. The acoustical consultant shall determine specific noise reduction measures as necessary to comply with the City’s daytime and nighttime exterior noise standards in Section 13.40.050 of the Berkeley Municipal Code at properties in the R-1, R-2, and C-SA zones. Noise reduction measures could include, but are not limited to, selecting HVAC equipment that emits low noise levels, locating HVAC equipment as far from off-site sensitive receptors as possible, and installing equipment enclosures. The City’s Planning and Development Department shall review the type, location, and design of HVAC equipment in site plans to verify that the project has incorporated recommended noise reduction measures.</p> | <p>Project applicants shall retain a qualified acoustical consultant to review the HVAC equipment. Project applicants shall implement measures recommended by consultant. Project applicants shall obtain review and approval from the City of Berkeley.</p> | <p>Verify a qualified acoustical consultant has reviewed the type, location, and design of HVAC equipment and that noise reduction measures have been implemented.</p>         | <p>Prior to issuance of building permits.</p> | <p>City of Berkeley Department of Planning and Development.</p> |   |
| <b>N-3: Trash Hauling Noise Reduction Measures</b>   |  |  |   |   |   |
| <p>Prior to the issuance of building permits, applicants for development projects on the project sites shall retain a qualified acoustical consultant to review the location and design of proposed loading areas. The acoustical consultant shall recommend measures as necessary to ensure that trash hauling noise at loading areas does not exceed the City’s exterior noise standards in Section 13.40.050 of the Berkeley Municipal Code at neighboring properties. This includes compliance with noise standards that may not be exceeded for any period of time and for more than one minute in a given hour. Noise reduction measures could include, but are not limited to, locating loading areas as far as possible from off-site sensitive receptors, shielding loading areas to block the line of sight to sensitive receptors, and installing a damping treatment on dumpsters. The City’s Planning and Development Department shall review the</p>                   | <p>Project applicants shall retain a qualified acoustical consultant to review the loading areas. Project applicants shall implement measures recommended by consultant. Project applicants shall obtain review and approval from the City of Berkeley</p>   | <p>Verify the qualified acoustical consultant has reviewed the location and design of proposed loading areas measures to reduce trash hauling noise have been implemented.</p> | <p>Prior to issuance of building permits.</p> | <p>City of Berkeley Department of Planning and Development.</p> |   |

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| Mitigation Measure/Condition of Approval   | Implementation Procedures | Monitoring and Reporting Action | Monitoring Timing | Monitoring Responsibility | Compliance Verification (Initial, Date, Comments) |
|--|---------------------------|---------------------------------|-------------------|---------------------------|---|
| layout and design of loading areas in site plans to verify that the project has incorporated recommended noise reduction measures. |                           |                                 |                   |                           |   |

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ORDINANCE NO. -N.S.

AMENDING TITLE 23 OF THE BERKELEY MUNICIPAL CODE TO ESTABLISH THE RESIDENTIAL—BART MIXED USE (R-BMU) ZONING DISTRICT

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

Section 1. That Berkeley Municipal Code Section 23.106.050 is amended to read as follows:

**23.106.050 Floor Area Ratio.**

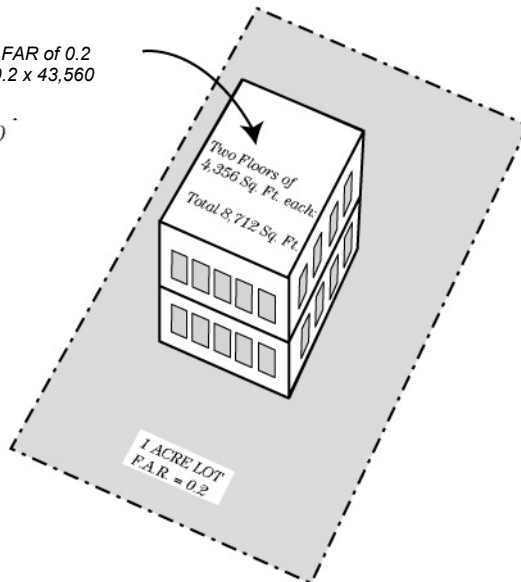
**A. Floor Area Ratio Defined.** Floor area ratio (FAR) means the quotient resulting from division of the gross floor area of all buildings on a lot by the area of the lot. See Figure 23.106-1: Floor Area Ratio.

1. Floor Area Ratio Defined in R-BMU: In the R-BMU district, FAR means the quotient resulting from division of the Gross Floor Area of all buildings on a lot by the Lot Area. In a single integrated development on contiguous lots, the permitted Floor Area Ratio shall be computed upon the basis of the total area of all such lots.

**FIGURE 23.106-1: FLOOR AREA RATIO**

Maximum Floor Area for a FAR of 0.2 on a 43,560 Sq. Ft. Lot = 0.2 x 43,560 Sq. Ft. = 8,712 Sq. Ft.

(1 Acre)



**A.B. Development on Contiguous Lots.** In a single integrated development on contiguous lots, the permitted floor area ratio is calculated using the total combined area of all such lots.

Section 2. That Berkeley Municipal Code Section 23.108.020 is amended to read as follows:

**23.108.020 Zoning Districts**

**A. Districts.** Berkeley is divided into districts as shown in Table 23.108-1: Zoning Districts. Unique regulations apply within each district as established in Chapters 23.202 – 23.208 (Zoning Districts).

**TABLE 23.108-1: ZONING DISTRICTS**

| <b>DISTRICT SYMBOL</b>       | <b>NAME OF DISTRICT</b>                |
|------------------------------|--|
| <b>Residential Districts</b> |  |
| R-1                          | Single-Family Residential              |
| R-1A                         | Limited Two-family Residential         |
| ES-R                         | Environmental Safety Residential       |
| R-2                          | Restricted Two-family Residential      |
| R-2A                         | Restricted Multiple-family Residential |
| R-3                          | Multiple-family Residential            |
| R-4                          | Multi-family Residential               |
| R-5                          | High Density Residential               |
| R-S                          | Residential Southside                  |
| R-SMU                        | Residential Southside Mixed Use        |
| <u>R-BMU</u>                 | <u>Residential BART Mixed Use</u>      |
| <b>Commercial Districts</b>  |  |
| C-C                          | Corridor Commercial                    |
| C-U                          | University Avenue Commercial           |
| C-N                          | Neighborhood Commercial                |
| C-E                          | Elmwood Commercial                     |
| C-NS                         | North Shattuck Commercial              |
| C-SA                         | South Area Commercial                  |
| C-T                          | Telegraph Avenue Commercial            |
| C-SO                         | Solano Avenue Commercial               |
| C-DMU                        | Downtown Mixed-Use                     |
| C-W                          | West Berkeley Commercial               |

| DISTRICT SYMBOL                | NAME OF DISTRICT            |
|--------------------------------|-----------------------------|
| C-AC                           | Adeline Corridor Commercial |
| <b>Manufacturing Districts</b> |                             |
| M                              | Manufacturing               |
| MM                             | Mixed Manufacturing         |
| MU-LI                          | Mixed Use-Light Industrial  |
| MU-R                           | Mixed Use-Residential       |
| <b>Special Districts</b>       |                             |
| S                              | Specific Plan               |
| U                              | Unclassified                |

Section 3. That Berkeley Municipal Code Section 23.202.020 is amended to read as follows:

### **23.202.020 Allowed Land Uses**

**A. Allowed Land Uses.** Table 23.202-1: Allowed Land Uses in Residential Districts identifies allowed land uses and required permits in the Residential Districts. All land uses are defined in Chapter 23.502—Glossary. Permit requirements are described in Chapter 23.406—Specific Permit Requirements.

**B. Unlisted Land Uses.** Any land use not listed in Table 23.202-1: Allowed Land Uses in Residential Districts is not permitted in the Residential District.

| ZC = Zoning Certificate<br>AUP = ADMINISTRATIVE USE PERMIT<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply<br><b>** - Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D</b> | RESIDENTIAL DISTRICTS                      |        |        |                                     |  |        |            |        |        |        |        | R-BMU* | USE-SPECIFIC REGULATIONS<br>APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |  |
|---|--|--------|--------|-------------------------------------|--|--------|------------|--------|--------|--------|--------|--------|---|--|
|   | R-1  | R-1A   | ES-R   | R-2                                 | R-2A                                       | R-3    | R-4        | R-5    | R-S    | R-SMU  |        |        |   |  |
| <b>Residential Uses</b>   |  |        |        |                                     |  |        |            |        |        |        |        |        |   |  |
| Accessory Dwelling Unit   | See 23.306—<br>Accessory Dwelling Units    |        | NP     | See 23.306—Accessory Dwelling Units |  |        |            |        |        |        |        |        |   |  |
| Dwellings   |  |        |        |                                     |  |        |            |        |        |        |        |        |   |  |
| Single-Family   | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | NP     |   |  |
| Two-Family  | NP   | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | NP     |   |  |
| Multi-Family  | NP   | NP     | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |   |  |
| Group Living Accommodation  | NP   | NP     | NP     | NP                                  | NP   | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |   |  |
| Senior Congregate Housing   | NP   | NP     | NP     | NP                                  | See 23.302.070.H– Use-Specific Regulations |        |            |        |        |        |        |        |   |  |
| Mixed-Use Residential   | NP   | NP     | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |   |  |
| <b>Public and Quasi-Public Uses</b>   |  |        |        |                                     |  |        |            |        |        |        |        |        |   |  |
| Child Care Center   | UP(PH)                                     | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |   |  |
| Club/Lodge  | UP(PH)                                     | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |   |  |
| Columbaria  | AUP*                                       | AUP*   | NP     | AUP*                                | AUP*                                       | AUP*   | AUP*       | AUP*   | AUP*   | AUP*   | AUP*   | NP     | 23.302.070.C– Use-Specific Regulations  |  |
| Community Care Facility   | See 23.202.040.A– Use-Specific Regulations |        |        |                                     |  |        |            |        |        |        |        |        |   |  |
| Community Center  | UP(PH)                                     | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |   |  |
| Emergency Shelter   | NP   | NP     | NP     | NP                                  | NP   | NP     | See 23.308 |        |        |        |        |        |   |  |
| Family Day Care Home, Large   | ZC   | ZC     | ZC     | ZC                                  | ZC   | ZC     | ZC         | ZC     | ZC     | ZC     | ZC     | ZC     |   |  |
| Family Day Care Home, Small   | ZC   | ZC     | ZC     | ZC                                  | ZC   | ZC     | ZC         | ZC     | ZC     | ZC     | ZC     | ZC     |   |  |
| Hospital  | NP   | NP     | NP     | NP                                  | NP   | UP(PH) | UP(PH)     | UP(PH) | NP     | UP(PH) | UP(PH) | NP     |   |  |
| Library   | UP(PH)                                     | UP(PH) | NP     | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |   |  |
| Nursing Home  | NP   | NP     | NP     | –                                   | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | NP     |   |  |
| Park/Playground   | ZC   | ZC     | UP     | ZC                                  | ZC   | ZC     | ZC         | ZC     | ZC     | ZC     | ZC     | ZC     |   |  |
| Public Safety and Emergency Service   | UP(PH)                                     | UP(PH) | UP(PH) | UP(PH)                              | UP(PH)                                     | UP(PH) | UP(PH)     | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) |   |  |

| ZC = Zoning Certificate<br><b>AUP = ADMINISTRATIVE USE PERMIT</b><br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply<br>** - Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D | RESIDENTIAL DISTRICTS |             |             |             |             |             |             |             |             |             |               | <b>USE-SPECIFIC REGULATIONS</b><br>APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |  |
|---|-----------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|---------------|--|--|
|   | R-1                   | R-1A        | ES-R        | R-2         | R-2A        | R-3         | R-4         | R-5         | R-S         | R-SMU       | <u>R-BMU*</u> |  |  |
| Public Utility Substation/Tank  | UP(PH)                | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)        | UP(PH)   |  |
| Religious Assembly  | UP(PH)                | UP(PH)      | NP          | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)        | UP(PH)   |  |
| School  | UP(PH)                | UP(PH)      | NP          | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)        | UP(PH)   |  |
| <b>Commercial Uses</b>  |                       |             |             |             |             |             |             |             |             |             |               |  |  |
| Alcoholic Beverage Service  | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)*       | <u>UP(PH)</u><br>*<br>-  | 23.310—Alcoholic Beverage Sales and Service  |
| Food Products Store   | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)*       | <u>UP(PH)</u><br>*<br>-  | 23.202.140.B.3– R-SMU Residential Southside District   |
| Food Service Establishment  | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)*       | <u>UP(PH)</u><br>*<br>-  | 23.302.070.E– Use-Specific Regulations   |
| <u>Group Class Instruction</u>  | <u>NP</u>             | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>     | <u>UP(PH)</u><br>*<br>-  | <u>23.202.150.C – R-BMU Residential BART Mixed Use District</u>  |
| <u>Gym/Health Club</u>  | <u>NP</u>             | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>   | <u>NP</u>     | <u>UP(PH)</u><br>*<br>-  | <u>23.202.150.C – R-BMU Residential BART Mixed Use District</u>  |
| Hotel, Tourist  | NP                    | NP          | NP          | NP          | NP          | NP          | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)      | UP(PH)        | NP   |  |
| Laundromat and Cleaner  | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | UP(PH)        | UP(PH)   |  |
| Office  | NP                    | NP          | NP          | NP          | NP          | NP          | UP(PH)      | UP(PH)      | NP          | UP(PH)      | UP(PH)        | <u>UP(PH)</u><br>*<br>-  | <u>23.202.150.C – R-BMU Residential BART Mixed Use District</u>  |
| Parking Lot/Structure   | UP(PH)<br>*           | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)*       | <u>UP(PH)</u><br>*<br>-  | 23.302.070.G– Unenclosed Accessory Structures in Residential Districts<br><br>23.322.100– On-site Loading Spaces |
| Personal and Household Service, General   | NP                    | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | NP          | ZC*           | <u>ZC*</u>   | 23.202.140.B.2– R-SMU Residential Southside District   |
| Retail, General   | NP                    | NP          | NP          | NP          | NP          | NP          | UP(PH)<br>* | UP(PH)<br>* | UP(PH)<br>* | UP(PH)*     | UP(PH)*       | <u>UP(PH)</u><br>*   | 23.202.040.B– Use-Specific Regulations   |

| ZC = Zoning Certificate<br>AUP = ADMINISTRATIVE USE PERMIT<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>* Use-Specific Regulations Apply<br>** - Required permits for specific uses are set forth in the R-BMU Master Development Permit (MDP). See 23.202.150.A and 23.202.150.D | RESIDENTIAL DISTRICTS                         |        |        |        |        |        |        |        |        |        |        | USE-SPECIFIC REGULATIONS<br>APPLIES TO USES WITH AN ASTERISK FOLLOWING THE PERMIT REQUIREMENT (E.G., ZC*) |                           |
|--|---|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---|---------------------------|
|  | R-1   | R-1A   | ES-R   | R-2    | R-2A   | R-3    | R-4    | R-5    | R-S    | R-SMU  | R-BMU* |   |                           |
| Veterinary Clinic  | NP  | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | UP(PH) | UP(PH) |   |                           |
| Theater  | NP  | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | UP(PH) |   |                           |
| Video Tape/Disk Rental   | NP  | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | UP(PH) | NP     |   |                           |
| <b>Industrial and Heavy Commercial Uses</b>  |   |        |        |        |        |        |        |        |        |        |        |   |                           |
| Commercial Excavation  | UP(PH)  | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH) | UP(PH)  |                           |
| <b>Other Uses</b>  |   |        |        |        |        |        |        |        |        |        |        |   |                           |
| Accessory Uses   | See 23.302.020.A– General Use Regulations     |        |        |        |        |        |        |        |        |        |        |   |                           |
| <u>Art/Craft Studio</u>  | NP  | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | ZC  |                           |
| <u>ATM: Exterior and Attached to Bank or Interior or Exterior and Not With Bank</u>  | NP  | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | AUP   |                           |
| Home Occupations   | See 23.302.040– Home Occupations              |        |        |        |        |        |        |        |        |        |        |   |                           |
| <u>Live/Work</u>   | NP  | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | UP(PH)<br>*<br>-  | 23.312-Live/Work          |
| <u>Public Market, Open Air</u>   | NP  | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | AUP   |                           |
| <u>Public Market, Enclosed</u>   | NP  | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | NP     | AUP   |                           |
| Short-Term Rental  | ZC*   | ZC*    | NP     | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*   | 23.314—Short-Term Rentals |
| Temporary Uses   | See 23.302.030– Temporary Uses and Structures |        |        |        |        |        |        |        |        |        |        |   |                           |
| Urban Agriculture, Low-Impact  | ZC*   | ZC*    | NP     | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*    | ZC*   | 23.318—Urban Agriculture  |
| Urban Agriculture, High-Impact   | AUP*  | AUP*   | NP     | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*   | AUP*  | 23.318—Urban Agriculture  |
| Wireless Telecommunication Facility  | See 23.332—Wireless Communication Facilities  |        |        |        |        |        |        |        |        |        |        |   |                           |



Section 4. That Berkeley Municipal Code Section 23.202.040.B is amended to read as follows:

**B. General Retail.**

**1.** In the R-4, R-5, R-S, and R-SMU districts, general retail uses must be:

~~**1.(a)**~~ Accessory to another use;

~~**2.(b)**~~ Contained within a building with no street access; and

~~**3.(c)**~~ Without displays of merchandise visible from the street.

**2.** In the R-BMU district, General Retail is:

~~**(a)**~~ Permitted with a Use Permit at the North Berkeley BART station;

~~**(b)**~~ Permitted with a Zoning Certificate at the Ashby BART station.

Section 5. That Berkeley Municipal Code Section 23.202.150 is hereby added to read as follows:

**23.202.150: R-BMU Residential BART Mixed Use District**

**A. District Purpose.** The purpose of the BART Mixed-Use (R-BMU) district is to address City of Berkeley priorities such as affordable housing, civic and public space, multi-modal transportation and site access, high-quality building design and architecture, and a mix of land uses that contributes positively to the community, and to establish zoning standards in compliance with AB 2923.

**B. Definitions.** For the purpose of this Section (23.202.150), the following definitions apply:

**1. Lot Area.** The total horizontal area within a lot's boundary lines, minus the square footage of any buildings, facilities or equipment that are, or shall be, under the control of the San Francisco Bay Area Rapid Transit District (BART).

**2. Floor Area Ratio (FAR).** The quotient resulting from division of the Gross Floor Area of all buildings on a lot by the Lot Area. In a single integrated development on contiguous lots, the permitted Floor Area Ratio shall be computed upon the basis of the total area of all such lots.

**3. Dwelling Units per Acre.** The quotient resulting from the total number

of dwelling units on a site by the Lot Area.

**C. Allowed Land Uses.**

1. **General.** See Section 23.202.020 (Allowed Land Uses), which indicates identifies allowed land uses and which are prohibited.
  - a. The initial establishment of a land use in a new building will follow the R-BMU Master Development Plan process outlined in Section 23.202.150D. below.
  - b. The change of use of an existing building or portion of a building will require the permits indicated in Section 23.202.020 and Table 23.202-1 for the R-BMU District.
  - c. Any use not listed in Table 23.202-1 for the R-BMU District can be approved through the Master Development Plan process outlined in Section 23.202.150D below for the initial establishment of a land use in a new building.
  - d. Uses subject to supplemental regulations are shown in in Table 23.202-1 with an asterisk (\*) following the permit requirement (e.g., ZC\*). The Use-Specific Regulations column in Table 23.204-1 identifies the location of these regulations in the Zoning Ordinance.
2. **Group Class Instruction and Gym/Health Clubs.** Group class instruction and gym/health club uses are permitted at the Ashby BART station with a Zoning Certificate. Group class instruction and gym/health club uses are permitted at the North Berkeley BART station with a Use Permit.
3. **Office.** At the Ashby BART station, office uses above the ground floor are permitted with a ZC. All other office uses in the R-BMU require a Use Permit.

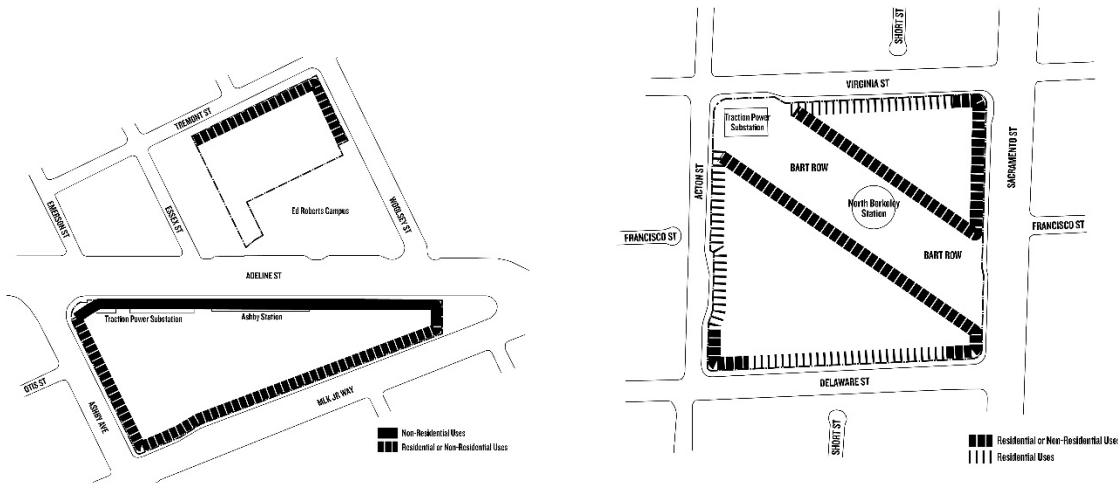
**D. Ground-floor Uses.** See Table 23.202-27.

**TABLE 23.202-27: PERMITTED STREET-FACING GROUND FLOOR USES**

| <u>Frontage Locations</u>  | <u>Permitted Street-Facing Ground Floor Uses</u>  |
|----------------------------|---|
| <u>Along Ashby and MLK</u> | <u>Non-Residential Uses or non-residential accessory spaces to residential buildings, such as community rooms. At least 50% of the combined frontage of MLK and Ashby must include active ground -floor uses. Active uses at corner locations are encouraged.</u> |
| <u>Along Adeline</u>       | <u>Non-Residential Uses or non-residential accessory spaces to residential buildings, such as community rooms</u>   |

|  |                                     |
|--|-------------------------------------|
| Along Woolsey, Tremont [1], or fronting interior public spaces   | Residential or Non-Residential Uses |
| Along Sacramento, along the Ohlone Greenway, or within 50 feet of any street corner                      | Residential or Non-Residential Uses |
| Along Delaware, Acton, or Virginia   | Residential Uses                    |
| [1] Public entrances for non-residential uses fronting Tremont Street must be located on Woolsey Street. |                                     |

**FIGURE 23.202-3 PERMITTED STREET-FACING GROUND FLOOR USES**



1. Ashby BART Station Site

b. North Berkeley BART Station Site

**E. Additional Permit Requirements.** See Section 23.202.030 (Additional Permit Requirements).

**F. Development Standards.**

1. **Basic Standards.** See Table 23.202-28.
2. **Supplemental Standards.** Supplemental standards that apply in the R-BMU district are noted in Table 23.202-28.

**TABLE 23.202-28: R-BMU DEVELOPMENT STANDARDS**

|   |            | <b>Supplemental Standards</b> |
|---|------------|-------------------------------|
| Lot Area, Minimum                         | No minimum | <a href="#">23.304.020</a>    |
| Private Usable Open Space, Minimum [1][2] |            | <a href="#">23.302.090</a>    |
| Per Dwelling Unit                         | 40 sf/DU   | <a href="#">23.302.090</a>    |

|   |   |                            |
|---|---|----------------------------|
| <a href="#">Per Group Living Accommodation Resident</a>   | <a href="#">15 sf/resident</a>  | <a href="#">23.302.090</a> |
| <a href="#">Public Open Space, Minimum</a>  |   |                            |
| <a href="#">Per Dwelling Unit</a>   | <a href="#">35 sf/unit</a>  |                            |
| <a href="#">Per Group Living Accommodation Resident</a>   | <a href="#">18 sf/resident</a>  |                            |
| <a href="#">Floor Area Ratio (FAR), Maximum</a>   | <a href="#">[Staff Recommendation] 4.2</a><br><a href="#">[PC Recommendation] 5.5</a>   |                            |
| <a href="#">Main Building Height, Maximum [3]</a>   | <a href="#">[Staff Recommendation-A] 80 feet and 7 stories</a><br><a href="#">[PC Recommendation] 130 feet and 12 stories</a> | <a href="#">23.304.050</a> |
| <a href="#">Residential Density, Minimum</a>  | <a href="#">75 dwelling units per acre</a>  |                            |
| <p><a href="#">[1] Private Usable Open Space may be provided as any combination of personal and common private space.</a><br/> <a href="#">[2] Additional public space may substitute for up to 50% of required Private Usable Open Space.</a><br/> <a href="#">[3] Building Height Measurement: In the case of a roof with a parapet wall, building height shall be measured to the top of the roof and parapets may exceed the height limits by up to five feet by right.</a></p> |   |                            |

**3. Additional Open Space Requirements.**

**a. Definitions**

- i. Private Usable Open Space:** Outdoor space, including natural and landscaped ground areas, pools, patios, decks and balconies designed for active or passive recreational use and which is accessible to the occupants of a building on the same lot. See also 23.304.090 (Usable Open Space) for standards.
- ii. Public Open Space:** Outdoor space, including natural and landscaped ground areas, pools, patios, decks designed for active or passive recreational use and which is accessible to the general public. Minimum dimensions for Public Open Spaces shall be 20’ in any direction and 400 square feet minimum.

**b. Public Space Design.**

- i.** Land area made available for public access to and through the station, and on-site public amenities, may be offered as dedication to the City or may be owned and maintained by another party with dedication of a public access easement. Public Open Space must be accessible to the public during daylight hours and include signage indicating public access.
- ii.** Public spaces shall include site furnishings and design

elements to encourage active or passive use.

- iii. Public spaces shall have a direct, accessible connection to the public circulation network.
- iv. Adjacent publicly owned space may contribute to the minimum public space requirement for the project, if it is designed, integrated and maintained as part of the project and complies with all other requirements for public space design identified in this section (23.202.150(D)3(b)).

c. **Rooftop Open Space.** Rooftops may be utilized as Private Usable Open Space or Public Open Space meeting the requirements of 23.202.150.A.3 (Additional Open Space Requirements – Definitions). Rooftop space designated Public Open Space must also meet the requirements of 23.202.150.A.3.B (Public Space Design). No more than 25% of Public Open Space requirements can be met with Rooftop Open Space.

#### **4. Front Setbacks.**

- a. Setbacks are not required at Martin Luther King Jr. Way, Adeline Street, Sacramento Street.
- b. Setbacks along all other frontages along public rights-of-way and internal publicly accessible pathways shall range from 5 feet (minimum) to 15 feet (maximum) for at least 50 percent of any building's linear street frontage, including all frontages within 50 lineal feet of an intersecting corner.

5. **Front Upper-Story Step-backs.** Any street-facing building frontage above four stories in height that is not within 100 linear feet of Sacramento Street, Adeline Street, Ashby Avenue, or Martin Luther King Jr. Way, shall step back from the property line for portions of the building above four stories.

6. **Ground-floor Residential Frontage.** For ground-floor residential uses, outward facing building entrances may include any of the following: stoops, front doors, courtyard and forecourt entrances, ramped or at-grade universally accessible entries, outward-facing and visually permeable lobby entrances, or other outward-facing residential entrance, with transition spaces from private frontages to public spaces.

7. **Ground-floor Non-Residential Frontage.** For ground-floor non-residential uses, outward-facing building entrances and activation strategies may include outdoor seating, dining, display spaces, performance spaces, public art, architectural detailing, and extensions of the public sidewalk.

8. **Frontage Improvements.** Any area between a building and the front

property line, or any area between a building and on-site public space or the public circulation network, shall be improved as part of a wider sidewalk, outdoor seating area, outdoor dining area, yard area, landscaping, or other usable open space.

**9. On-site Pedestrian Access.** Pedestrian accessways shall be provided for all new construction and for additions of 10,000 square feet or more of gross floor area in accordance with the following standards:

- a. Internal Connections.** A system of publicly accessible pedestrian walkways shall connect all buildings on a site to each other, to on-site bicycle and automobile parking areas, to any on-site open space areas or pedestrian amenities, and to the publicly accessible pedestrian circulation network.
- b. To the Public Circulation Network.** A publicly accessible on-site walkway shall connect the building lobby entry or entries on each street or on-site pathway frontage to the public pedestrian circulation network. Connections to publicly accessible on-site walkways provided at least every 300 feet along portions of the development site perimeter that are adjacent to public rights-of-way.
- c. To Neighbors.** Publicly accessible pedestrian access shall be provided from residential and commercial building entrances and public space to adjoining residential and commercial areas.
- d. To Transit.** Publicly accessible pedestrian connections from the public circulation network shall be provided to all transit stops and entrances including elevators outside the station.
- e. Illumination.** All publicly accessible pedestrian connections shall include nighttime illumination pursuant to Ordinance N.S.-7424.

**10. Transparency.**

- a. Required Openings.** Ground-level exterior walls facing and within 20 feet of a front lot line or publicly accessible pathway or Public Open Space shall run in a continuous plane for no more than 30 feet without a window, door, or other similar building opening.
- b. Non-Residential Transparency.** For non-residential ground-floor uses facing a front lot line, publicly accessible pathway or Public Open Space, a minimum of 50% of the building wall area located between three and seven feet above ground level shall be transparent with a visible light transmittance of not less than 80%.

**11. Building Entrances.**

- a. **Minimum Number of Entrances Required.** There shall be a minimum of at least one building entrance at an average distance of 50 linear feet of ground-floor non-residential building frontage, and at least one building lobby entrance for every 200 feet of ground-floor residential building frontage.
- b. **Ground Floor Residential Entries.** All ground floor residential units shall provide entries to the street in the form of stoops or other exterior entries, or balcony or patio without entrance to the street, with a minimum area of 20 square feet.
- c. **Separate Entrances Required.** Buildings containing a mix of residential and non- residential uses shall provide separate building entrances for each major use category. Amenity areas such as exercise rooms do not require separate building entrances from the primary use.
- d. **Entrance Orientation.** Principal building entrances shall face a public street, publicly accessible pathway, or Public Open Space.
- e. **Illumination.** Building entries and addresses shall be illuminated to provide nighttime visibility from adjacent streets, public accessways, and common areas.

**12. Ground-Floor Non-Residential Space Dimensions.** The minimum ground floor height for non-residential uses is 15 feet, as measured from the ground level floor to the first floor above.

**13. Parking Design and Access.**

- a. **Unbundled Parking Required.** All parking spaces shall be leased separately from the residential unit or commercial space except where prohibited by affordable housing financing sources.
- b. **Structured Parking Required.** All new off-street parking shall be located within an enclosed structure, with the exception of curb-side pickup and drop-off, curb-side metered parking, ADA parking, or small-scale surface parking for security and station operations and maintenance purposes only.
- c. **Structured Parking Design.** Parking garages shall be located underground or located behind conditioned building space at any adjacent street, sidewalk, or other publicly accessible accessway or open space. Conditioned building space is not required along shared interior lot lines of abutting parcels.
- d. **Vehicular Entry.** Parking garage vehicular entrances facing the street shall be no more than 20 feet wide.

- e. **Pedestrian Entry.** Parking garage pedestrian entrances shall be provided at-grade, connecting directly to the public pedestrian circulation network, on each street-facing frontage.
- f. **Light Screening.** Parking garages shall be designed such that interior lighting is fully shielded and automobile headlamps are not visible from adjacent buildings, parcels, streets, public parks, publicly accessible outdoor space or designated open space area.

14. **Mitigation Measures.** Projects under this section are subject to applicable measures identified in the adopted Mitigation Monitoring and Reporting Program of the Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project Final EIR.

### **G. BART Mixed Use District Master Development Permit (MDP)**

1. Purpose of the R-BART Mixed Use District Master Development Permit (MDP) process. The purpose of these provisions is to prescribe the procedure for the review of development on parcels in the R-BART Mixed Use District, in order to allow for the predictable buildout of the sites over time and achieve a high standard of site and building design that fulfills the City and BART Joint Vision and Priorities for the Ashby and North Berkeley BART Station Areas relating to:
  - Affordable Housing
  - Public and Civic Space
  - Land Use
  - Building Form and;
  - Station Access.
2. Applicability of the Ashby and North Berkeley BART Master Development Permit (MDP). These provisions shall apply to all land within the R-BART Mixed Use District.
3. Preliminary Development Plan. The preliminary development plan shall include, at a minimum, the following:
  - a. A plan of the entire development, defined as either the North Berkeley BART Station Area or Ashby BART Station Area, showing the items listed below. Such development plan shall include maps and information on the surrounding area within one hundred (100) feet of the development. All elements listed in this paragraph shall be characterized as existing or proposed, and sufficiently detailed to indicate intent and impact.



- Streets, driveways, sidewalks and pedestrian ways, and off-street parking and loading areas;
  - Location and approximate dimensions of structures;
  - Utilization of structures, including activities and the number of living units;
  - Estimated population;
  - Reservations for public uses, including schools, parks, playgrounds, and other open spaces;
  - Major landscaping features;
  - Relevant operational data; and
  - Drawings and elevations clearly establishing the scale, character, and relationship of buildings, streets, and open spaces.
- b. A table demonstrating that the plan meets the development standards set forth in Section 23.202.150.F and the other requirements of this Chapter, including compliance with any Objective Development Standards.
- c. A development phasing plan describing the order in which various portions of the development will be built, along with a proposed schedule for such phases.
4. Notice of Application and Public Hearing for Preliminary Development Plan.
- a. Preliminary Development Plans shall be reviewed by the Zoning Adjustments Board, the decisions of which are appealable to the City Council.
- b. The public notice and hearing process for a Master Development Permit shall be the same as for Use Permits as defined in BMC Section 23.404, except that notice shall be mailed or delivered to all businesses, residents and owners of property located within five hundred (500) feet of the subject property.
- c. The Board shall determine whether the proposal conforms to the permit criteria set forth in Section 23.202.150.D8, and may approve or disapprove the application and the accompanying Preliminary Development Plan or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria and regulations. In so doing, the Board

may, in its discretion, authorize submission of the Final Development Plan in stages corresponding to different units or elements of the development. It may do so only upon evidence assuring completion of the entire development in accordance with the Preliminary Development Plan and staged development schedule.

## 5. Final Development Plan

The applicant shall file with the Planning and Development Department a Final Development Plan for one or more of the phases identified in the Preliminary Development Plan.

a. The Final Development Plan shall conform in all major respects with the approved Preliminary Development Plan and shall include the following additional information:

- Location of water, sewerage, and drainage facilities;
- Detailed building and landscaping plans and elevations;
- Character and location of signs;
- Plans for street improvements; and
- Grading or earth-moving plans.

The Final Development Plan shall be sufficiently detailed to indicate the ultimate operation and appearance of the development, including compliance with the Objective Development Standards. Final Development Plans shall be reviewed by the Zoning Adjustments Board.

b. The public notice and hearing process for a Final Development Plan shall be the same as for Use Permits as defined in BMC Section 23B.32, except that notice shall be mailed or delivered to all businesses, residents and owners of property located within five hundred (500) feet of the subject property.

## 6. City Engineer's Report

Within thirty (30) days after the filing of the Final Development Plan, the Zoning Officer shall forward it to the City Engineer for review of public improvements, including streets, sewers, and drainage. The Zoning Adjustments Board shall not act on a Final Development Plan until it has first received a report from the City Engineer or until more than thirty (30) days have elapsed since the plan and application were sent to the City Engineer,

whichever is the shorter period.

#### 7. Appeal to Council

The process for appeal to Council for a Master Development Permit, Preliminary Development Plan and/or Final Development Plan shall be the same as for Use Permits as defined in BMC Section 23B.32.

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#### 8. Findings

- a. That the location, design, size, and uses are consistent with the General Plan and with any other applicable plan, development control map, design guidelines, or ordinance adopted by the City Council or Planning Commission;
- b. That the location, design, and size are consistent with the City of Berkeley and San Francisco Bay Area Rapid Transit District (BART) Joint Vision and Priorities document for the Ashby and North Berkeley BART Station Areas adopted by the City Council and the BART Board of Directors.

#### 9. Adherence to the Approved Plan and Modification.

Variations of up to ten percent (10%) from any numerical or non-numerical standard set forth on the Master Development Permit may be authorized by the Zoning Officer through an Administrative Use Permit. Variations of more than ten percent (10%) may be authorized by a Master Development Plan permit modification by the Zoning Adjustments Board.

#### 10. Revocation of Permits

If a Final Development Plan for an initial portion of a site has not been submitted within 10 years after approval of the applicable Master Development Plan for all or a majority portion of the site, the City Council may revoke the approval of the remainder of the Master Development Permit. If Final Development Plans for the entirety of a site have not been submitted within 20 years after approval of the applicable Master Development Permit, the City Council may revoke the remainder of the Master Development Permit.

Section 6. That Berkeley Municipal Code Section 23.302.070.E.2 is amended to read as follows:

**4.2 Permits Required in Commercial Districts and in the R-BMU.** Table 23.302-7 shows permits required for food service establishments in the commercial districts and in the R-BMU.

**TABLE 23.302-7: PERMIT REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS**

| DISTRICT/USE SIZE  | PERMIT REQUIRED       |
|--|-----------------------|
| C-C, C-U, C-T, C-W   |                       |
| Under 1,500 sq. ft   | ZC                    |
| 1,500 sq. ft. or more  | AUP                   |
| C-N, C-NS, C-SA, C-SO  |                       |
| Under 1,000 sq. ft   | ZC                    |
| 1,000 sq. ft. or more  | AUP                   |
| <u>R-BMU, Ashby BART Station</u><br>C-AC, South Shattuck and North Adeline Subareas  |                       |
| 3,000 sq ft or less  | ZC                    |
| Over 3,000 sq ft   | AUP                   |
| C-AC, South Adeline Subarea  |                       |
| 1,500 sq ft or less  | ZC                    |
| Over 1,500 sq ft   | AUP                   |
| <u>R-BMU, North Berkeley BART Station</u>  | <u>UP(PH)</u>         |
| C-E  | AUP [ <del>1</del> 2] |
| C-DMU  |                       |
| Under 3,000 sq. ft outside the Arts District Overlay   | ZC                    |
| 3,000 sq. ft. or more  | AUP                   |
| Any size within the Arts District Overlay  | AUP [ <del>2</del> 3] |
| Notes:   |                       |
| [1] All food service uses in the C-E district require an AUP and may not be considered as an incidental use except when accessory to a food product store. |                       |
| [2] See 23.204.130.D.3 for required findings.  |                       |

**Section 7.** That Berkeley Municipal Code Section 23.302.070.G.2 is amended to read as follows:

2. Table 23.302-9 shows required permits for the exclusive or primary use of a lot for off-street parking spaces.

**TABLE 23.302-9: PERMIT REQUIREMENTS FOR PARKING LOTS/STRUCTURES**

| DISTRICT                        | PERMIT REQUIRED  |
|---------------------------------|--|
| <b>Residential Districts</b>    |  |
| R-3                             | Use Permit for all parking lots and structures. [1]  |
| R-S, R-SMU, <u>R-BMU</u>        | Use Permit for parking structures only. Parking lots are not permitted.  |
| All other residential districts | Use Permit for all parking lots and structures.  |
| <b>Commercial Districts</b>     |  |
| C-C, C-U                        | Zoning Certificate for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.  |
| C-SO                            | AUP for parking lots and structures with 5 spaces or fewer. Use Permit for more than 5 spaces.   |
| C-DMU                           | AUP for parking lots with 8 spaces or fewer. Use Permit for all parking structures. Lots with more than 8 spaces not permitted.  |
| C-N, C-E, C-NS, C-SA            | Use Permit for all parking lots and structures.  |
| C-T                             | Use Permit for all parking structures. All parking lots not permitted.   |
| C-W                             | AUP for parking lots and structures with 10 spaces or fewer. Use Permit for parking lots and structures with more than 10 spaces.  |
| <b>Manufacturing Districts</b>  |  |
| M, MM                           | AUP for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district.   |
| MU-LI                           | Zoning Certificate for parking lots and structures with 10 or fewer spaces exclusively for uses in the district. AUP for parking lots and structures with 11 spaces or more exclusively for uses in the district. Use Permit for parking lots and structures with any number of spaces not exclusively for uses in the district. |
| MU-R                            | Zoning Certificate for parking lots and structures exclusively for uses in the district. Use Permit for parking lots and structures not exclusively for uses in the district.  |
| Notes:                          |  |

[3] Parking lots and structures in the R-3 district are not permitted within the Southside Plan area

Section 8. That Berkeley Municipal Code Section 23.304.140 is amended to read as follows:

**23.304.140 Area Plans.**

A. *Downtown Area Plan.* Projects in the Downtown Area Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the Downtown Area Plan Final EIR.

B. *Southside Plan.*

1. *Mitigation Measures.* Projects in the Southside Plan boundaries are subject to the applicable mitigation measures in the adopted Mitigation Monitoring Program of the Southside Plan Final EIR.

2. *Permit Findings.* To approve an AUP or Use Permit for a project in the Southside Plan boundaries, the review authority must find that the project complies with the Southside Plan's adopted Mitigation Monitoring Program (MMP).

C. *West Berkeley Plan.* Projects in the West Berkeley Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the West Berkeley Plan Final EIR.

D. *Adeline Corridor Plan.* Projects in the Adeline Corridor Plan boundaries are subject to the applicable mitigation measure in the adopted Mitigation Monitoring Program of the Adeline Corridor Plan Final EIR.

*E. Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project.* Projects in the Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project boundaries are required to implement all the applicable mitigation measure in the adopted Mitigation Monitoring Program of the Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project EIR.

Section 9. That Berkeley Municipal Code Section 23.308.020.C is amended to read as follows:

C. **Required Permits.** Table 23.308-1 shows permits required for emergency shelters.

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

| DISTRICTS   | PERMIT REQUIRED [1] |
|---|---------------------|
| <b>Residential Districts</b>  |                     |
| R-1, R-1A, ES-R, R-2, R-2A, R-3   | Not Permitted       |
| R-4, R-5, R-S, <del>and R-SMU</del> , <u>and R-BMU</u>                                      |                     |
| 15 beds or fewer [1]  | ZC                  |
| More than 15 beds   | UP(PH)              |
| <b>Commercial Districts</b>   |                     |
| C-C, C-U, C-N, C-E, C-NS, C-SA, C-T, C-SO, C-W, C-AC  |                     |
| 25 beds or fewer  | ZC                  |
| More than 25 beds   | UP(PH)              |
| C-DMU   |                     |
| 60 beds or fewer  | ZC                  |
| More than 60 beds   | UP(PH)              |
| <b>Manufacturing Districts</b>  |                     |
| M, MM, MU-LI, MU-R  | Not Permitted       |
| Notes:<br>[4] See also permit requirements based on floor area of use in Table 23.308.040-1 |                     |

Section 10. That Berkeley Municipal Code Section 23.310.030.A is amended to read as follows:

**A. Permits Required.** Table 23.310-1 shows permits required for alcoholic beverage service when incidental to a food service establishment.

**TABLE 23.310-1: PERMITS REQUIRED FOR ALCOHOLIC BEVERAGE SERVICE**

| District  | Permit Required Based on<br>Type of Beverages Served When Incidental to Food<br>Service |                   |
|---|---|-------------------|
|   | Beer and Wine   | Distilled Spirits |
| R-SMU   | UP(PH)  | UP(PH)            |
| All Commercial<br>Districts, except C-AC,<br><u>and R-BMU</u> | ZC  | UP(PH)            |
| C-AC  | ZC  | AUP               |
| MU-LI, MU-R   | UP(PH)  | UP(PH)            |

Section 11. That Berkeley Municipal Code Section 23.310.030.B.3 is amended to read as follows:

**B. Use Limitations.**

- 3. **C-NS and R-BMU Districts.** In the C-NS district, distilled spirit service is allowed only for full-service restaurants. Distilled spirit service is not allowed for carry out food stores and quick-service restaurants.

Section 12. That Berkeley Municipal Code Section 23.312.030.B is amended to read as follows:

**B. Residential Districts.**

- 1. **All Residential Districts Except R-BMU.** Live/work units are not permitted.
- 2. **R-BMU District: A Use Permit is required for live/work units.**

Section 13. That Berkeley Municipal Code Section 32.322.030.A.1 is amended to read as follows:

**A. Residential Districts.**

- 1. **Spaces Required.** Table 23.322-1 shows minimum required off-street parking spaces in the Residential Districts.

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

| Land Use  | Number of Required Off-street Parking Spaces   |
|---|--|
| <b>Residential Uses</b>   |  |
| Accessory Dwelling Unit   | See Chapter 23.306   |
| Dwellings, including Group Living Accommodations                | <p><u>R-3, R-4, and R-5 Districts (1-9 units):</u> If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit.</p> <p><u>R-3, R-4, and R-5 District (10 or more units):</u> If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per 1,000 sq ft of gross floor area</p> <p><u>All Other Districts:</u> If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per unit</p> <p><u>All Other Locations:</u> None required</p> |
| Dormitories, Fraternity and Sorority Houses, Rooming & Boarding | <p>If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each 5 residents, plus 1 for manager.</p> <p>All Other Locations: None required.</p>  |



| Land Use   | Number of Required Off-street Parking Spaces  |
|--|---|
| Houses, Senior Congregate Housing  |   |
| Rental of Rooms  | If located on a roadway less than 26 feet in width in the Hillside Overlay: 1 per each two roomers<br>All Other Locations: None required  |
| <b>Non-Residential Uses</b>  |   |
| All non-residential uses except uses listed below  | R-SMU District: 1 per 1,000 sq. ft.<br><u>R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft.</u><br><u>All Other Residential Districts: See 23.322.030.A.2</u>                            |
| Community Care Facility  | <u>R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft.</u><br><u>All Other Residential Districts: One per two non-resident employees</u>   |
| Food Service Establishment   | <u>R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft.</u><br><u>All Other Residential Districts: 1 per 300 sq. ft.</u>  |
| Hospital   | R-SMU District: 1 per 1,000 sq. ft.<br><u>R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft.</u><br><u>All Other Residential Districts: 1 per each 4 beds plus 1 per each 3 employees</u> |
| Library  | <u>R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft.</u><br><u>All Other Residential Districts: 1 per 500 sq. ft. of publicly accessible floor area</u>                                  |
| Nursing Home   | 1 per 3 employees   |
| Medical Practitioners  | <u>R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft.</u><br><u>All Other Residential Districts: 1 per 300 sq. ft.</u>  |
| Non-Medical Offices  | R-SMU District: 1 per 1,000 sq. ft.<br><u>R-BMU District: None required; no more than 1.5 spaces per 1,000 sq. ft.</u><br><u>All Other Residential Districts: 1 per 400 sq. ft.</u>                             |
| Hotels, Tourist  | 1 per 3 guest/sleeping rooms or suites plus 1 per 3 employees   |
| [1] Excludes community care facilities which under state law must be treated in the same manner as a single-family residence |   |

Section 14: That Berkeley Municipal Code Section 23.322.090 is amended to read as follows:

**23.322.090 – Bicycle Parking**

A. Parking Spaces Required.

1. **Non-Residential Bicycle Parking.** Table 23.322-10 shows districts where bicycle parking is required, land uses requiring bicycle parking, and the number of required spaces. Bicycle parking is required for new construction and for expansions to existing buildings that add new floor area.

**TABLE 23.322-10: REQUIRED NON-RESIDENTIAL BICYCLE PARKING**

| District   | When Required  | Required Spaces            |
|--|--|----------------------------|
| <u>R-BMU</u>                                       | <u>New commercial space</u>  | <u>1 per 1,000 sq. ft.</u> |
| R-S, R-SMU   | New commercial space   | 1 per 2,000 sq. ft.        |
| All Commercial Districts except for C-E and C-T    | New floor area or for expansions of existing industrial, commercial, and other non-residential buildings | 1 per 2,000 sq. ft.        |
| All Manufacturing Districts except for C-E and C-T | New floor area or for expansions of existing industrial, commercial, and other non-residential buildings | 1 per 2,000 sq. ft.        |
| C-E, C-T   | None required  | N/A                        |

a. In the C-DMU district, the Zoning Officer, in consultation with the City Traffic Engineer, may approve an AUP to modify the bicycle parking requirement in Table 23.322-10 for Tourist Hotels.

2. **Residential Parking.** Table 23.322-11 shows the types of residential projects, including the residential portion of mixed-use projects, for which bicycle parking is required.

**TABLE 23.322-11: REQUIRED RESIDENTIAL BICYCLE PARKING**

| Use                           | Long-Term Parking Requirement [1]   | Short-Term Parking Requirement [1] |
|-------------------------------|---|------------------------------------|
| Dwelling Units (1 to 4 units) | <u>R-BMU: 1 space per unit</u><br><u>All other districts:</u> None required | None required                      |
| Dwelling Units (5 units or    | <u>R-BMU: 1 space per</u>   | 2, or 1 space per 40               |

| Use   | Long-Term Parking Requirement [1]  | Short-Term Parking Requirement [1]                  |
|---|--|---|
| more)   | <p><u>unit</u></p> <p><u>All other districts:</u> 1 space per 3 bedrooms</p> | bedrooms, whichever is greater                      |
| Group Living Accommodations, Dormitories, Fraternity and Sorority Houses, Rooming and Boarding Houses, Transitional Housing   | 2, or 1 space per 2.5 bedrooms, whichever is greater                         | 2, or 1 space per 20 bedrooms, whichever is greater |
| <p>[1] Long-Term Parking and Short-Term Parking shall meet the design standards included in Appendix F of the 2017 <i>Berkeley Bicycle Plan</i>, or as subsequently amended by the Transportation Division.</p> |  |   |

**B. Bicycle Parking Standards.** The following standards apply to required bicycle parking spaces in a non-residential district:

1. Bicycle parking spaces shall be located in either a locker, or in a rack suitable for secure locks, and shall require location approval by the City Traffic Engineer and Zoning Officer.
2. Bicycle parking shall be located in accordance to the Design Review Guidelines and other design specifications promulgated by the Transportation Division.

Section 15: That Berkeley Municipal Code Section 23.502.020.L.14-20 are amended to read as follows:

**14. Lot Area.** The total horizontal area within a lot's boundary lines.

a. Lot Area in R-BMU Only: The total horizontal area within a lot's boundary lines, minus the square footage of any buildings, facilities or equipment that are, or shall be, under the control of the San Francisco Bay Area Rapid Transit District (BART).

**15. Lot Coverage.** See 23.106.020 (Lot Coverage).

**16. Lot Depth.** The average distance from the front lot line to the rear lot line measured in the general direction of the side lines.

**17. Lot Frontage.** That dimension of a lot's front lot line abutting on a street.

**18. Lot Lines.** The boundaries between a lot and other property or the public right-of-way.

**19. Lot Line, Front.** The shorter of the two intersecting lot lines along the rights-of-way of a corner lot shall be deemed to be the front of the lot for purposes of determining the lot frontage and for yard requirements. In the case of a lot having equal frontage, or in the case of an irregularly shaped lot, the Zoning Officer shall determine the front in such a manner as to best promote the orderly development of the immediate area.

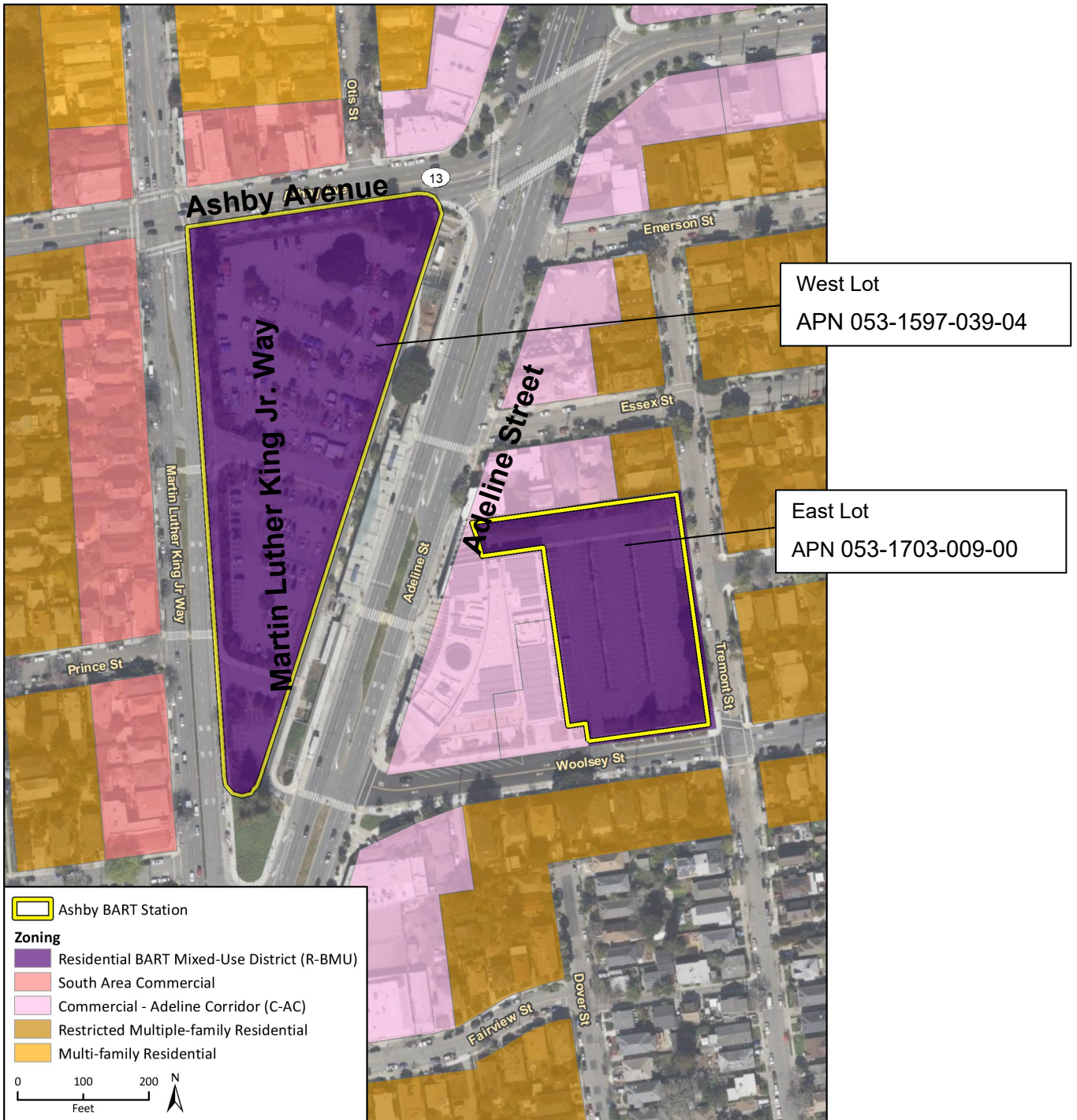
**20. Lot Width.** The average distance between the side lot lines measured at right angles to the lot depth.

Section 16. Objective design standards, including, but not limited to, BART station functionality, public realm, building form and massing (e.g. vertical and horizontal articulation) building facade design, and open space shall be presented to the Council for adoption within one-year from the adoption of this code section.

Section 17. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

### Attachment 2, Exhibit A: Proposed Zoning Maps

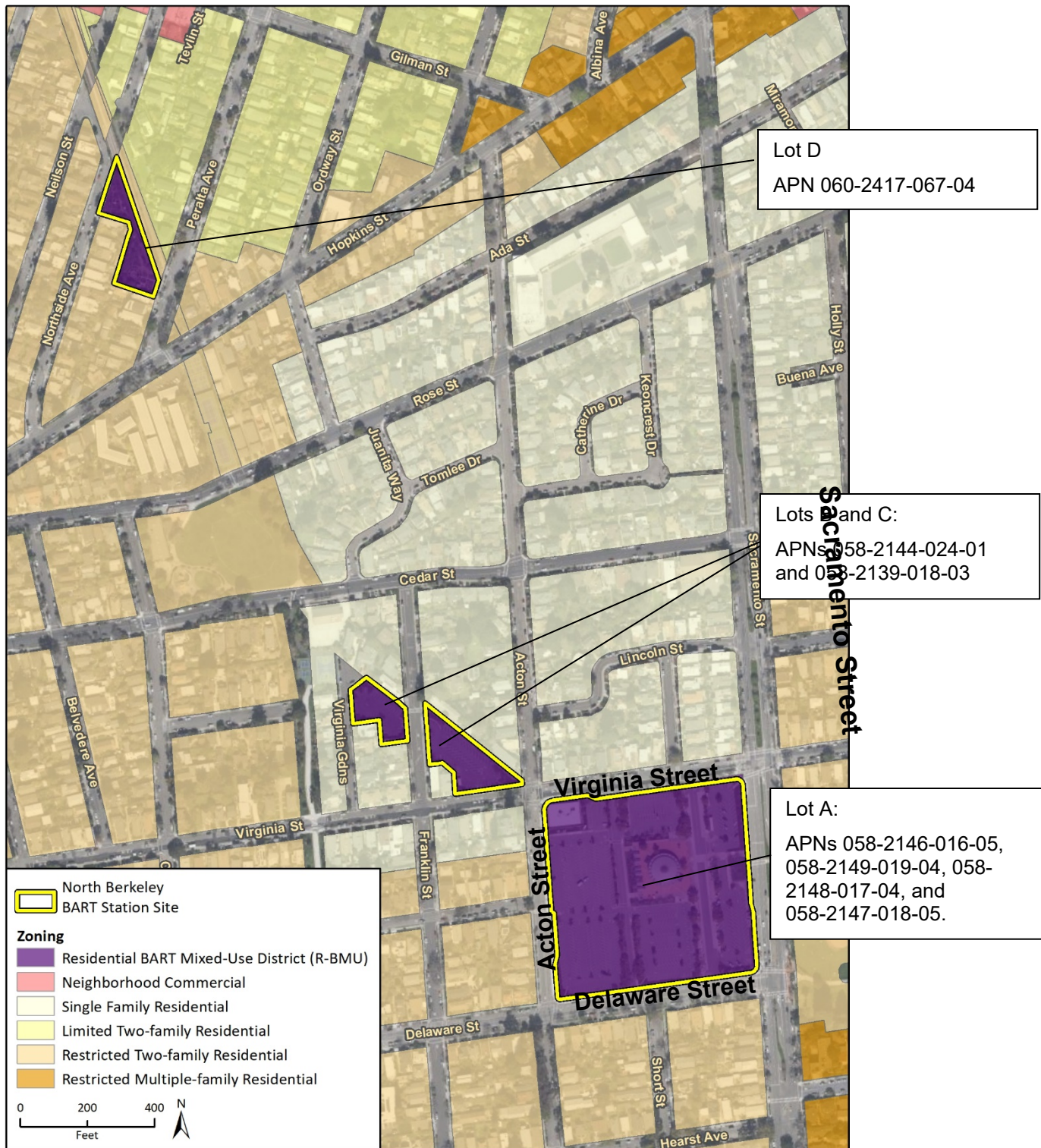
#### 1. Ashby BART Site: Residential – BART Mixed Use



Imagery provided by Microsoft Bing and its licensors © 2021.  
Land use data provided by City of Berkeley, 2019.

Fig. A.2-2 Proposed Zoning, Ashby

## 2. North Berkeley BART Site: Residential – BART Mixed Use



Imagery provided by Microsoft Bing and its licensors © 2021.  
Land use data provided by City of Berkeley, 2019.

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

APPROVAL OF A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE CITY OF BERKELEY AND THE BAY AREA RAPID TRANSIT DISTRICT (BART) REGARDING NORTH BERKELEY AND ASHBY TRANSIT-ORIENTED DEVELOPMENTS

WHEREAS, the City of Berkeley and the San Francisco Bay Area Rapid Transit District (“BART”) executed a Memorandum of Understanding (“MOU”) to cooperatively pursue Transit Oriented Development (“TOD”) at the Ashby and North Berkeley BART station areas in March 2020; and

WHEREAS, in furtherance of the MOU, the City of Berkeley and BART have negotiated a Memorandum of Agreement (MOA) regarding the projects at the North Berkeley and Ashby BART stations; and

WHEREAS, the MOA is not intended to cover all issues that may arise between BART and the City with respect to the projects, it is the intention of the MOA to provide the City, BART, and potential developers with a basic understanding as to how the project negotiation and entitlement process will proceed at the North Berkeley and Ashby BART stations; the objectives and minimum requirements for the projects in terms of design, affordability, and infrastructure; and the anticipated City and BART contributions to the projects, and the FEIR certified on June 2, 2022, analyzes this MOA.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves and authorizes the City Manager to enter into a Memorandum of Agreement (MOA) regarding North Berkeley and Ashby Transit-Oriented Developments, in substantially the form presented in Exhibit A, and to take such actions as may be necessary and appropriate to implement the MOA.

Exhibits

A: Form of Memorandum of Agreement (MOA) regarding North Berkeley and Ashby Transit-Oriented Developments

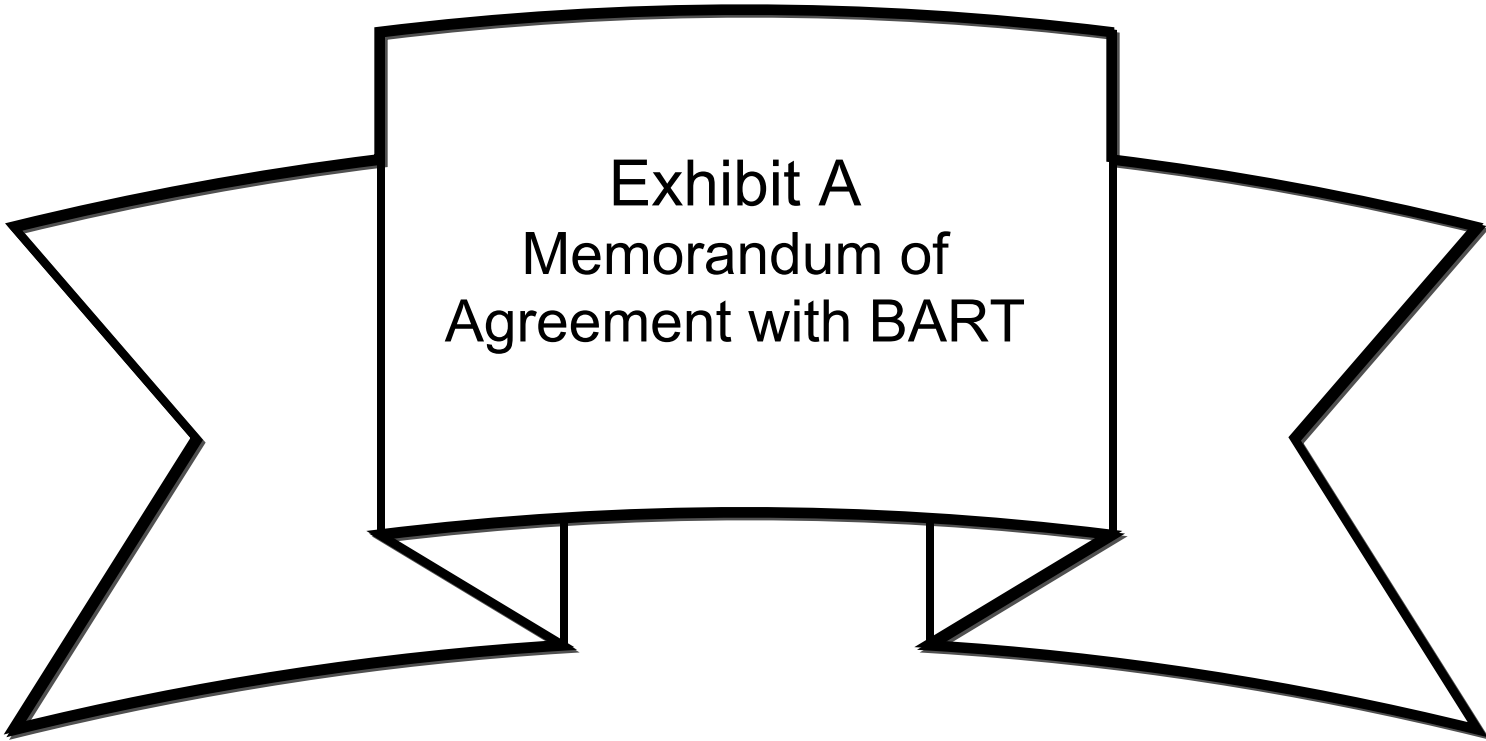


Exhibit A  
Memorandum of  
Agreement with BART

This exhibit will be submitted to the City Council as Supplemental Material.

If you have questions regarding this report, please contact the person noted on the agenda.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

or from:

**The City of Berkeley, City Council's Web site**  
<https://berkeleyca.gov/your-government/city-council/city-council-agendas>



**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**Adoption of Zoning Ordinance Amendments to Title 23 of the Berkeley Municipal Code, Zoning Map Amendments, General Plan Amendments, General Plan Map Amendments, Adoption of the City and BART Joint Vision and Priorities (JVP) Document, Adoption of a Memorandum of Agreement Between the City and BART, and Certification of the Final Environmental Impact Report for the Ashby and North Berkeley BART Station Transit Oriented Development Zoning Standards Project**

**The public may participate in this hearing by remote video or in-person.**

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted to consider:

1. A resolution (a) certifying the Final Environmental Impact Report, adopting the CEQA findings for the proposed zoning and General Plan, Municipal Code, and Map amendments, and adopting the Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program (MMRP); (b) amending the General Plan to include the Ashby and North Berkeley BART Mixed Use Transit Oriented Development General Plan Land Use Classification text and map amendments; and (c) adopting the City and BART Joint Vision and Priorities (JVP) for Transit Oriented Development at the Ashby and North Berkeley BART Stations; and
2. An Ordinance to amend the Berkeley Municipal Code to create the Residential-BART Mixed-Use District Residential Zone District (Chapter 23.202.150) and additional conforming amendments to other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into the Berkeley Zoning Ordinance; and
3. A resolution adopting the Memorandum of Agreement (MOA) regarding North Berkeley and Ashby Transit-Oriented Developments.

The hearing will be held on **June 2, 2022 at 6:00pm** at the Berkeley Unified School District Board Room located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of **May 23, 2022**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Alisa Shen, Principal Planner, Department of Planning and Development at 510-981-7409.

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to [council@cityofberkeley.info](mailto:council@cityofberkeley.info) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** May 20, 2022- The Berkeley Voice

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way on May 19, 2022, as well as on the City's website, on May 23, 2022.

\_\_\_\_\_  
Mark Numainville, City Clerk



## MEMO

To: Margot Ernst, City of Berkeley  
From: Rick Jacobus, Street Level Advisors  
RE: Ensuring an appropriate developer contribution in BART projects  
Date: May 18, 2022

In order to maximize the amount of affordable housing that will be feasible at the Ashby and North Berkeley BART Stations, Berkeley has proactively set aside \$53 million in Measure O and Housing Trust Fund money. This funding is likely to be necessary for developers to achieve even the minimum 35% affordable housing called for in the Joint Vision and Priorities and will certainly be key to reaching any higher goal. But it is also necessary for the City to take steps to ensure that this funding is additive and not used simply to reduce funding that would otherwise be provided by developers.

The approach proposed below would allow developers to comply with the City's Affordable Housing Mitigation Fee (AHMF) or future inclusionary housing policy by proposing an alternative that the city could approve which would:

- Provide at least the required 20% affordable units onsite but clustered into 100% affordable projects;
- Leverage outside resources such as the Low Income Housing Tax Credits and state funding while also providing deeper affordability than would be required for onsite units under the AHMF;
- Utilize City funding only to expand the number of affordable units or depth of affordability beyond the 20% required by the AHMF;
- Ensure that the market rate developer contributes at least a Developer Minimum Contribution based on the current AHMF requirements; and
- Ensure that projects that include more market rate units (including those that utilize the State Density Bonus) provide a greater developer contribution.

**A. Recommended Requirements:**

Once a development team has been selected and has developed detailed development plans, the team may apply for the City's development subsidy. To apply, the developer must submit an application through the City's Housing Trust Fund (HTF) program. The application must:

1. Be accompanied by an Affordable Housing Compliance Plan covering the entire development site (including all market and affordable buildings) which describes the specific strategy that will be used to meet BART and the City's affordable housing requirements;
2. Demonstrate that the market rate portions of the Project contribute financially to the provision of Affordable Housing in an amount at least equal to the Developer Minimum Contribution (defined below);
3. Demonstrate that the request for City Affordable Housing Subsidy complies with the City's existing Affordable Housing Trust Fund Guidelines; and
4. Demonstrate that the request for City Affordable Housing Subsidy does not exceed the BART station specific Maximum City Subsidy standard (defined below).

Concurrent with approval of City development subsidy and after review of an Affordable Housing Compliance Plan, the City Council would approve a limited exception to the AHMF that would allow projects at the BART site to cluster units into 100% affordable buildings provided that these projects provide 20% of total units affordable at income levels matching the Housing Trust Fund Guidelines (average affordability of 60% of AMI, 20% of units affordable below 30% of AMI). These units must be provided without city subsidy.

### **Affordable Housing Compliance Plan**

Any commitment for City funding beyond the predevelopment stage will require an Affordable Housing Compliance Plan (AHCP) approved by the Berkeley City Council prior to the award of subsidy funds. If project plans change after a plan is approved, City financing will require the developer to submit a revised plan for approval.

The AHCP shall include:

- a. A description of the proposed means of compliance with the City's revised Affordable Housing Regulations in effect at the time (AHMF/inclusionary zoning). If necessary, a request for exception from any City affordable housing requirements along with a justification for why an exception is necessary.
- b. Site Plan showing the location of the market rate and affordable housing units/developments
- c. Unit and bedroom count for the market rate units and the affordable units, including the specific affordability restrictions for each set of units
- d. Phasing Plan covering the entire site and demonstrating that the affordable units will be constructed in advance or concurrent with the market rate units.
- e. A description of the proposed Developer Contribution to affordable housing that ensures that cash or in-kind contributions from the project meet or exceed the Expected Developer Contribution identified in the developer's response to the Request for Qualifications. This description will identify specific in-kind and cash contributions as well as their likely timing. The land discount granted by BART cannot be included as in-kind contribution for the purposes of the Developer Contribution.

- f. An attached report completed by a third-party economic analysis firm approved by the City of Berkeley which:
1. compares the proposed level of affordability (number of units and depth of affordability) to the level that would be provided by a hypothetical project at the same site that complied with the City's Affordable Housing Requirements in effect at the time through the onsite compliance option; and
  2. compares the proposed developer contribution (cash and in kind) to the required Developer Minimum Contribution established by the City in the RFQ and the Expected Developer Contribution identified in the applicant's response to the RFQ, if higher.

### **Developer Minimum Contribution**

In order to ensure that City subsidy is increasing the level of affordability that would otherwise be required under the City's affordable housing requirements, any project applying for City Affordable Housing Subsidy must demonstrate a Developer Minimum Contribution toward the required 20% onsite units. The Minimum Contribution **would not be a new fee** paid to the City, but rather a contribution from the market rate project(s) to the associated affordable project(s) on the site to partially pay for the provision of the required 20% onsite units. The Developer Minimum Contribution must have a documented value of at least \$39,746 per market rate unit to be developed on the Site (including any Bonus units available as a result of the density bonus). This amount would be adjusted annually to reflect changes in the Consumer Price Index.

The Minimum Contribution can be provided in the form of one or more cash contributions to Nonprofit sponsors of affordable housing components of the project or through documented in-kind expenditures on behalf of the affordable housing projects that have been approved by the City. The value of land discount provided by BART may not be counted toward this developer contribution. The city will provide guidance for identifying appropriate in-kind expenditures and pro-rating project wide expenditures for this purpose. *Developers are encouraged to propose contribution amounts above this minimum in order to improve their project's competitiveness under the Scoring Criteria of the RFQ.*

### **Maximum City Subsidy**

The City will limit its subsidy to no more than an average of \$200,000 per deed restricted lower income unit, counting only units provided beyond the 20% which would be required by the AHMF.

City Subsidy will be limited to 100% affordable projects which meet the Housing Trust Fund Guidelines (including an average income limit of 60% of AMI with at least 20% of units targeting households earning 30% of AMI or less). Applicants may include additional moderate-income

units in their overall affordable housing mix and for the purposes of counting the affordable housing share for the Scoring Criteria but may not request city subsidy for those units.

After a developer is selected, the City may provide a detailed table identifying different subsidy maximums for differing unit sizes and affordability levels for affordable units, but any table will ensure that a typical 100% affordable housing project meeting the City's Housing Trust Fund Guidelines would be eligible for up to an average of \$200,000 per supplemental unit.

### **B. Economic Feasibility**

The economics of different potential projects will vary significantly. High construction costs and the need for expensive infrastructure may mean that any project on these sites will face feasibility challenges. The Developer Minimum Contribution described above is intended to impose roughly the same financial burden that the City imposes on all other residential projects. This burden may be too much for some, otherwise feasible, projects. At the same time, some potential projects may be able to contribute even more.

In a perfect world, the City, instead of setting a *minimum* contribution, would require that a market rate project contribute *as much as possible* while maintaining an economically feasible project. In practice, there are no successful models of City requirements that achieve this goal. Cities often conduct feasibility studies to ensure that their minimum requirements are very roughly within the range of what is feasible, but these studies are too imprecise to be used to maximize the contribution requirement. There are simply too many variables in projects like these for a city to be able to effectively impose a requirement that fully maximizes the contribution without requiring too much.

It is important to keep in mind that while the proposed Developer Minimum Contribution sets a floor on the developer's investment, the BART RFQ will strongly incentivize proposals that exceed this minimum and maximize the amount of affordable housing. Projects that appear to be highly profitable even after accounting for the Minimum Contribution will be likely to propose higher contributions in order to win the RFQ competition. While this does not guarantee that developers won't earn any excess profits, it is a more reliable way for the City to capture the highest possible contribution without accidentally overburdening the projects in a way that prevents development.

### **C. Examples and Background**

This section attempts to illustrate the City's policy options by highlighting what WOULD BE required under each program in isolation and then showing how they combine. To make it somewhat easier to follow, we are using an imaginary project with base zoning that allowed for 700 units at 7 stories. This does not exactly correspond to either BART station but allows more round numbers in the examples below.

### **Berkeley's Affordable Housing Mitigation Fee**

Under Berkeley's Affordable Housing Mitigation Fee (AHMF), a 700 unit project would choose between providing 140 affordable units disbursed onsite (70 at 50% of AMI and 70 at 80%) or paying the fee of \$39,746 per unit (\$27.8 Million).

In the absence of the density bonus, developers would nearly always choose to pay the fee. In 2020, Street Level Advisors estimated that provision of onsite units reduced the market resale value of a typical project by \$425,000 per affordable unit. The Mitigation Fee is less than half as expensive. Each affordable unit that is *not* provided onsite increases the fee due by \$198,730 (\$39,746 times 5)

If the developer paid the fee, the city would invest the funds into 100% affordable housing projects. The City's subsidy per project varies quite a bit, but several recent projects have required just under \$200,000 per unit. At this rate \$27.8 million would fund 139 units (very nearly 20%).

In other words, it costs the City a lot less to provide the affordable units with the fee than it would cost a developer to include them mixed into a market rate project. The primary reason for this is "leverage." The city funded nonprofit affordable housing projects also generally receive federal Low Income Housing Tax Credit (LIHTC) and tax-exempt bond financing as well as substantial grants from the state of California. This outside money provides the majority of the subsidy necessary for each affordable unit. When a developer includes BMR units onsite in a mixed-income building, they can't use this outside funding.

### **State Density Bonus Law**

But in spite of the fact that it is clearly cheaper for developers to pay the fee than provide onsite units, most projects in Berkeley have included some affordable units. The reason for this is the State Density Bonus. State law allows developers to build at higher densities than local zoning allows if they provide affordable 'qualifying units' in their projects. But the law requires cities to allow projects to count any inclusionary BMR units as 'qualifying units' under the density bonus. This means that any project complying with Berkeley's AHMF with onsite units would automatically be eligible for a 50% density bonus. For a project with 700 base units this would theoretically allow up to 350 additional units.

Berkeley's ordinance allows projects to provide some units onsite and pay a fee for the remainder. As a result, the most profitable strategy in Berkeley at this time is to provide Very Low Income (VLI) units onsite in a project in order to qualify for the density bonus but pay a 'remainder' fee rather than providing the required low-income units.

The bottom line is that any project can achieve the maximum 50% density bonus simply by complying with the City's AHMF.

### **Clustering Affordable Units**

Currently, the City's AHMF requires that on-site units be integrated and disbursed in market rate buildings. In order to access state and federal affordable housing funds, affordable units generally need to be clustered into 100% affordable buildings. The JVP for Berkeley's BART developments encourages this clustering because this outside subsidy is key to achieving much higher levels of affordable housing.

A number of cities, including recently San Jose, have adopted housing policies which include specific rules to allow and even encourage this kind of clustering. Clustering affordable units on one parcel of a larger market rate project allows 'onsite' units to benefit from the same ability to leverage state and federal funds that the City utilizes when it collects the fee. In a sense, it puts the onsite and fee options on equal footing. But there is a risk that outside subsidy could be used to reduce the developer's cost rather than to serve more households. For this reason, San Jose set a minimum developer contribution based on their In-lieu fee. This new alternative allows San Jose to get affordable units on the same sites as new market rate projects and they are built on the same timeline instead of many years later.

Berkeley may not have enough large master planned projects to warrant the challenge of designing a clustering policy as a standard part of its AHMF. But for the BART projects specifically, allowing clustering makes sense. A clustering policy combined with a Developer Minimum Contribution allows a project to include a LIHTC funded affordable housing project without reducing the developer's contribution to affordable housing.

It is clear that the State Density Bonus is intended to allow clustering of affordable units and that developers are meant to be allowed to use those projects as qualifying units for additional density that is applied elsewhere in a master planned development<sup>1</sup>.

Rather than crafting a complex addition to the City-wide affordable housing policy, Berkeley could adopt a limited exception to the AHMF that would allow projects at the BART sites to cluster units provided that achieve deeper affordability levels and include a Developer Minimum Contribution.

This approach would split the benefit of allowing clustering, capturing some benefit to enable deeper affordability while simultaneously improving feasibility which should enable developers to propose higher shares of affordable units in order to be competitive in BART's RFP.

## JVP Minimums

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<sup>1</sup> The relevant section of the Density bonus law reads "(i) 'Housing development,' as used in this section, means a development project for five or more residential units, including mixed-use developments. For the purposes of this section, 'housing development' also includes a subdivision or common interest development, as defined in Section 4100 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located."



The JVP requires a minimum of 35% Affordable Housing and an expectation of 50% or more for both sites. The JVP also requires no less than 7% of units serve Extremely Low Income (ELI) tenants and that overall, the affordable units have an average affordability of 60% AMI or less – closely matching the City’s Trust Fund requirements. It may be possible that developers could meet these minimum affordability levels with no city subsidy, but a 2020 analysis by Street Level Advisors concluded that exceeding 20% affordability would likely not be financially feasible without direct city subsidy.

Because the exact maximum affordability share that will be financially feasible will depend on many details of each specific proposed project, the City and BART have decided to use the scoring for the RFPs to encourage proposals that maximize the affordability.

In order to make these higher levels of affordability possible, the city has allocated \$53 million in local housing funding and is exploring strategies to provide even greater levels of subsidy. The City needs a mechanism for ensuring that this subsidy is used to provide either additional affordable units or deeper affordability than would otherwise be provided by a comparable project.

The simplest way to do that would be to limit the City subsidy to only units provided above and beyond the 20% of units described above. However, legally or administratively separating units into city subsidized and non-city subsidized units in a single tax credit project would be impractical. Instead, the City can limit the amount of subsidy provided based on the number and depth of affordability of these extra units.

If the City requires a developer contribution to cover the cost of providing 20% affordable units, they could allow developers to apply for City subsidy only for additional “supplemental” units. The maximum City contribution to any project could be calculated as \$200,000 times the number of supplemental units meeting the City’s Housing Trust Fund Affordability guidelines. Obviously, the investment would also be limited by the available funding (\$53 million or some higher amount if additional funding is secured).

This approach also ensures that projects utilizing the density bonus contribute more than projects that build to the base zoning because the Developer Minimum Contribution is tied to the total number of units not simply the ‘base’ units. In addition to the increased contribution, BART’s minimum 35% requirement would also ensure that the number of affordable units would increase as density increases.

Three examples to illustrate the math:

| Examples                         |           | A            |     | B            |     | C            |
|----------------------------------|-----------|--------------|-----|--------------|-----|--------------|
| Total Units                      |           | 700          |     | 1000         |     | 1000         |
| Affordable Market                | 35%       | 245          | 35% | 350          | 50% | 500          |
|                                  |           | 455          |     | 650          |     | 500          |
| Minimum Contributor \$           | 39,746    | 18,084,430   |     | 25,834,900   |     | 19,873,000   |
| Required Units - No City \$      | 20%       | 140          | 20% | 200          | 20% | 200          |
| Supplemental Units - City Funded | 15%       | 105          | 15% | 150          | 30% | 300          |
| Total                            | 35%       | 245          | 35% | 350          | 50% | 500          |
| Max City Subsidy                 | \$200,000 | \$21,000,000 |     | \$30,000,000 |     | \$60,000,000 |

**Example A:** A 700 unit project that did not use the density bonus would need to provide at least 245 affordable units (35%). Under this policy, the affordable project would require a developer contribution no less than \$18 million (\$39,746 times 455 market rate units). The first 20% of units (140 units) would be provided without City subsidy. The affordable developer could request City funding for the supplemental units of up to \$21 million (\$200,000 times 105 units (15%)).

**Example B:** A project that included 1000 units (using the density bonus or otherwise) would need to provide at least 350 affordable units (35%). This project would need to provide 200 affordable units without city funding and the developer would need to document a Developer Minimum Contribution of \$25.8 million to help fund those 200 units. The additional 150 'supplemental' units would be eligible for city funding of not more than \$30 million, however this might exceed the amount of funding that is available for any site. For example, if the maximum available was \$26.5 (half of the current \$53 million) a project proposing 150 supplemental affordable units would be receiving for only \$177,000 per supplemental unit instead of \$200,000. This would not be outside the range of typical funding requests.

**Example C:** A project including 1000 units but proposing 50% affordable housing would have a minimum contribution requirement of only \$19 million because the project would include fewer market rate units. The developer would still have the responsibility of funding 20% of the units without city subsidy. They could do this by increasing the developer contribution above the minimum (if that is financially feasible) or by raising additional outside grant funds. Projects that made this gap up with developer contribution could score better in the selection process because that funding would be more certain than additional fundraising. Either way, the remaining 300 'supplemental' units might face a funding gap. The currently available City funding would not be sufficient. The City is exploring other sources including a new affordable housing bond. If additional resources were available, this policy would limit the total contribution for this project to no more than \$60 million in this case.

Rather than relying on a simple \$200,000 per unit, it would also be possible for the City to develop a table setting different per unit funding caps for different types of units in terms of affordability level or bedroom size (or both).

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## Supplemental Alternative 3 Analysis

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### 1. Introduction

The purpose of this supplemental analysis is to clarify the discussion of Alternative 3 (Increased Height Alternative in the Section 6.4 of the Draft EIR) in the Ashby and North Berkeley BART Stations TOD Zoning Project EIR. This discussion is to clarify that analysis in light of the recommendation of the Planning Commission that City Council adopt Alternative 3 as the project.

Future development on the station sites may be eligible to utilize provisions of the State Density Bonus Law (California Government Code Sections 65915 – 65918), which encourages the development of affordable and senior housing, including up to a 50 percent increase in project densities for projects depending on the amount of affordable housing provided, and up to an 80 percent increase in density for projects that are 100 percent affordable. The State Density Bonus also provides for incentives intended to help make the development of affordable and senior housing economically feasible. These include waivers and concessions, such as reduced setback, height or minimum square footage requirements. Whether future development will utilize the State Density Bonus, or which aspects of State Density Bonus law an individual project would utilize, are difficult to predict. However, it is assumed that to meet affordability goals future development may utilize the State Density Bonus. Alternative 3 includes the development potential for the proposed project if a future applicant were to request a density bonus of 50 percent compared to the base zoning of AB2923 and request a concession to allow for a height increase, as well as an increase in Floor Area Ratio to 5.5. This is realistic possible scenario in light of a number of feasibility studies shared with the community during the Community Advisory Group process, which illustrated overall site constraints and development potential using professional standards of design for access, open space, building efficiency, and unit types. Therefore, this supplemental analysis of Alternative 3 also addresses potential impacts accounting for the possibility that a future applicant could propose to utilize State Density Bonus as part of the proposed project.

This supplemental analysis contains additional information (primarily in the issue areas of air quality, energy, greenhouse gas emissions, land use, and noise) to clarify potential impacts associated with Alternative 3 and the proposed project assuming a 50 percent density bonus. The discussion in Section 6.4 of the EIR, as further clarified in this supplemental information, refers to and incorporates by reference the project's impact analysis throughout the Draft EIR.

### 2. Alternative 3 Description

Alternative 3 would allow for the development of buildings up to 12 stories in height on the station sites, whereas the base zoning associated with the proposed project would allow for buildings up to seven stories. Increasing the maximum building height by 5 stories would allow for an increase in floor area ratio (FAR), assumed to be up to 5.5. Buildout under this alternative could include up to 3,600 residential units combined for both sites, or 1,200 more than the proposed project before any applicable density bonus. It is assumed that the change in allowable building height would not affect the size of commercial use, which would still be an estimated 125,000 square feet. All other proposed development standards as shown in Table 2-1 in Section 2, *Project Description*, including

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vehicle and bicycle parking requirements, minimum open space, and minimum public space, would remain the same, and would include the project design and development standards, programmatic priorities, and the open space and alternative transportation elements included in the proposed R-BMU zoning district and the Joint Vision and Priorities document, and would be subject to the Objective Design Standards developed as part of project planning.

This alternative would meet the project objective to comply with AB 2923, by allowing new development consistent with the law's development standards at the station sites. By further increasing residential density in a Transit Priority Area, it would also meet the project objective to promote green development as well as location efficiency and sustainable transportation modes, to a greater extent than would the proposed project.

### 3. Impact Analysis

#### a. Air Quality

As discussed in Section 4.1, *Air Quality*, of the Draft EIR, projects that meet the Bay Area Air Quality Control District's (BAAQMD) plan-level thresholds for operational emissions would not result in a cumulatively considerable net increase of a criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard. BAAQMD's plan-level thresholds are:

- Consistency with the 2017 Clean Air Plan ("2017 Plan") control measures
- Projected vehicle miles traveled (VMT) or vehicle trip generation increase less than or equal to the projected population increase

Similar to the proposed project as analyzed in Section 4.1, *Air Quality*, of the Draft EIR, Alternative 3 would support the goal of the 2017 Plan to reduce vehicle trips by increasing density in proximity to existing transit, extensive pedestrian and bicycle infrastructure, and commercial/retail destinations, and by not including minimum residential parking standards. Development under this alternative would also be required to be consistent with BAAQMD rules and regulations, including reduction measures for particulate matter. Buildout under this alternative would not preclude planned transit or bike pathways, and would not otherwise disrupt regional planning efforts to reduce VMT and meet air quality standards. Therefore, this alternative would be consistent with the 2017 Plan control measures, the same as the proposed project.

As shown in Table 1, under existing conditions (2020), the total annual VMT of the Transportation Analysis Zones (TAZ) where the project sites are located is estimated to be 42,863,052 with a service population of 9,008 persons (residents + employees). In 2030 (when full buildout is expected), annual VMT for Alternative 3 is estimated to be 68,074,647 with a service population of 17,609 persons. As shown, the rate of increase of VMT associated with buildout under Alternative 3 is 59 percent. This means that there would be a 59 percent increase in VMT with the addition of Alternative 3 compared to existing conditions. However, as also shown in the table, the rate of increase of population with the addition of the proposed project is 95 percent. Therefore, the rate of increase of VMT would not exceed the rate of increase from the proposed population associated with buildout under the alternative. This is primarily because the project would increase density in proximity to existing transit, extensive pedestrian and bicycle infrastructure, and commercial/retail destinations, and would eliminate minimum parking requirements, thereby resulting in low per-capita VMT.

**Table 1 Increase in Population Compared to VMT under Alternative 3**

| Existing Conditions                               | Alternative 3           | Existing Conditions +<br>Alternative 3 | Percent Change |
|---------------------------------------------------|-------------------------|----------------------------------------|----------------|
| <b>Service Population (residents + employees)</b> |                         |                                        |                |
| 9,008 <sup>1</sup>                                | 8,601 <sup>2</sup>      | 17,609 <sup>3</sup>                    | +95%           |
| <b>Annual Vehicle Miles Traveled</b>              |                         |                                        |                |
| 42,863,052 <sup>4</sup>                           | 25,211,595 <sup>5</sup> | 68,074,647                             | +59%           |

<sup>1</sup> See Table 4.1-4 in Section 4.1, *Air Quality*, of the Draft EIR

<sup>2</sup> 8,136 residents (3600 units \* 2.26 persons per household) + 465 employees (see Section 4.9, Population and Housing of the Draft EIR)

<sup>3</sup> Existing service population + project service population. (This number does not include projected growth that is not associated with the proposed project.)

<sup>4</sup> Data provided by Kittleson & Associates. See Table 4.1-4 in Section 4.1, *Air Quality*, of the Draft EIR

<sup>5</sup> See Appendix 1 for Alternative 3 VMT calculations.

Overall, based on the BAAQMD plan-level thresholds listed above, Alternative 3 would be consistent with the 2017 Plan control measures and projected VMT would be less than the projected population increase. Therefore, the operational emissions of this alternative would not result in a cumulatively considerable net increase of a criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard. This impact would be less than significant, the same as the proposed project.

Because more housing units would be constructed under this alternative compared to the proposed project before any applicable density bonus, overall construction emissions would be increased. Future development under this alternative, as with the proposed project, would be required to adhere to the City's standard condition of approval to reduce construction emissions and comply with BAAQMD's construction BMPs in accordance with Mitigation Measure AQ-1. Impacts associated with construction would be slightly increased compared to those under the proposed project but would remain less than significant with mitigation incorporated.

Construction activities facilitated by this alternative would result in temporary exhaust emissions of diesel particulate matter, which is a toxic air contaminant (TAC). Similar to the proposed project, future development on the project sites would be required to comply with the City's standard conditions of approval to control diesel particulate matter during construction, and to prepare and implement a Construction Emissions Minimization Plan. Similar to the proposed project, this alternative would not facilitate the construction of new operational sources of TAC emissions. Therefore, the impact of TAC emissions during the construction and operation of future development would be slightly greater but would be less than significant, the same as the proposed project.

## b. Cultural Resources

Cultural Resources impacts associated with the proposed project are analyzed in Section 4.2, *Cultural Resources*, of the Draft EIR. Similar to the proposed project, this alternative would allow new development at the station sites. The North Berkeley BART station was found not to be eligible for listing on federal, state, or local registers of historical resources. However, as determined in the Historical Resources Evaluation (HRE, Appendix C of the Draft EIR), the Ashby BART Station is recommended eligible for designation as a City of Berkeley Landmark under Criterion 2 in BMC 3.24.110 due to its associations with an history of social activism and community building originating in Berkeley's Black community, which centered on the undergrounding of the Ashby

BART Station and use of the station parking lot as the location of the Berkeley Flea Market. As such, the Ashby BART Station is a historical resource pursuant to Section 15064.5(a)(3) of the CEQA Guidelines. For the same reasons as described in Draft EIR Section 4.2, *Cultural Resources*, with mitigation, measure CUL-1 requiring installation of an interactive display acknowledging the history of the site impacts would be less than significant. Further, for the same reasons as described in Section 4.2, development on the Ashby BART station site would not indirectly affect nearby historic districts or resources. Impacts related to adjacent resources would be the same as under the proposed project and would be less than significant.

Development under this alternative could disturb unrecorded archaeological resources, human remains, and tribal cultural resources, the same as under the proposed project. However, with adherence to existing regulations regarding the discovery of human remains and compliance with City of Berkeley standard conditions of approval, these impacts would remain less than significant, the same as under the proposed project.

As with the proposed project, future development under Alternative 3 would occur within or in close proximity to any of the three known historic districts adjacent to the Ashby BART Station. The Adeline Corridor Specific Plan includes a framework for additional residential and commercial development in the corridor near the Ashby BART station. Policies and regulations would not in all cases preclude impacts to built environment historical resources, such as changes to the setting of known historic districts. It would be speculative to predict the specific level of cumulative impact of future development. Nevertheless, it is conservatively projected that like the proposed project, Alternative 3 development could result in the alteration or loss of some historical built environment resources, with potentially significant cumulative impacts.

**c. Energy**

Energy impacts associated with the proposed project are analyzed in Section 4.3, *Energy*, of the Draft EIR. Alternative 3 would facilitate more residential development that consumes energy than would the proposed project. Project construction would consume energy resources primarily in the form of fuel to operate heavy equipment, light-duty vehicles, machinery, and generators. Temporary power may also be provided for construction trailers and electric construction equipment. Table 2 summarizes the anticipated energy consumption from construction equipment and vehicles, including construction worker trips to and from the project site. As shown in Table 2, construction of Alternative 3 would require approximately 372,334 gallons of gasoline and approximately 181,735 gallons of diesel fuel. As shown on Table 4.3-4 in the Draft EIR, proposed project construction would require approximately 250,755 gallons of gasoline and approximately 144,359 gallons of diesel fuel.

**Table 2 Alternative 3 Construction Energy Usage**

| Source                                 | Fuel Consumption (gallons) |         |
|----------------------------------------|----------------------------|---------|
|                                        | Gasoline                   | Diesel  |
| Construction Equipment & Hauling Trips | –                          | 181,735 |
| Construction Worker Vehicle Trips      | 372,334                    | –       |

See Appendix 1 for energy calculation sheets.

However, similar to the proposed project, energy use during construction would be temporary in nature, and construction equipment used for a project of the size encouraged by Alternative 3 would be comparable to that used by the proposed project. Construction contractors would be required to comply with applicable federal and state regulations to minimize inefficient, wasteful, or unnecessary fuel consumption, and to divert a minimum of 65 percent of construction and demolition debris.

Table 3 summarizes estimated operational energy consumption for development within the project sites. As shown in Table 3, project operation would require approximately 1,082,525 gallons of gasoline and 242,125 gallons of diesel fuel for transportation fuels and 16,642 MWh of electricity and 41,202 therms of natural gas per year. As shown in Table 4.3-5 of the Draft EIR, proposed project operation would require approximately 721,683 gallons of gasoline and 161,417 gallons of diesel fuel for transportation fuels and 18,917 MWh of electricity and 29,934 therms of natural gas per year.

**Table 3 Alternative 3 Operational Energy Usage**

| Source               | Annual Energy Consumption |               |
|----------------------|---------------------------|---------------|
| Transportation Fuels |                           |               |
| Gasoline             | 1,082,525 gallons         | 118,846 MMBtu |
| Diesel               | 242,125 gallons           | 30,861 MMBtu  |
| Natural Gas          | 41,202 therms             | 3,831 MMBtu   |
| Electricity          | 16,642 MWh                | 56,782 MMBtu  |

MWh = megawatt-hours; MMBtu = million British thermal units  
 See Appendix 1 for transportation energy calculation sheets and CalEEMod results.

Similar to the proposed project, future development facilitated by this alternative would be required to comply with all standards in CBC Title 24, which would minimize the wasteful, inefficient, or unnecessary consumption of energy resources by the built environment during operation. Furthermore, this alternative also would increase housing density in proximity to existing transit and commercial uses, which would facilitate the use of transit and alternative transportation modes such as walking and biking. This would minimize the potential for wasteful, inefficient, or unnecessary consumption of vehicle fuels. Therefore, this alternative would have a less than significant impact related to wasteful, inefficient, or unnecessary energy use, the same as the proposed project.

Similar to the proposed project, this alternative would be consistent with applicable policies of the City’s General Plan related to energy efficiency and renewable energy. New residential development would be subject to CALGreen and BMC Chapters 12.80 and 19.36 requirements to reduce air quality impacts and apply green building practices. In addition, the location of increased housing density in a transit-oriented area would reduce use of fossil fuels. Therefore, this alternative would have no impact related to conflicting with or obstructing a plan for renewable energy or energy efficiency, the same as the proposed project.

**d. Greenhouse Gas Emissions**

Table 4 in Section 4.4, *Greenhouse Gas Emissions*, of the Draft EIR summarizes operational GHG emissions associated with development under the proposed project for year 2030 (i.e., the State’s next milestone target year). As shown in the Draft EIR, per capita emissions for the proposed project

would exceed the project-specific, locally-applicable 2030 threshold of 1.2 MT of CO<sub>2</sub>e per resident per year. This impact would be potentially significant, and Mitigation Measure GHG-1 is identified to reduce the impact to less than significant.

As shown in Table 4 below, per capita emissions for Alternative 3 would be 1.2 MT of CO<sub>2</sub>e per capita emissions would not exceed the project-specific, locally-applicable 2030 threshold of 1.2 MT of CO<sub>2</sub>e per resident per year. Though emissions would increase, with the increase in service population the overall per capita emissions would be reduced. Therefore, emissions would be reduced compared to the proposed project and would be less than significant. Therefore, Mitigation Measure GHG-1 would not be required for Alternative 3.

**Table 4 Alternative 3 Combined Annual GHG Emissions (MT of CO<sub>2</sub>e)**

| <b>Emission Source</b>                              | <b>2030</b>   |
|-----------------------------------------------------|---------------|
| Area                                                | 75            |
| Energy                                              | 1,294         |
| Solid Waste                                         | 763           |
| Water                                               | 265           |
| Mobile                                              |               |
| CO <sub>2</sub> and CH <sub>4</sub>                 | 7,942         |
| N <sub>2</sub> O                                    | 83            |
| <b>Total Alternative 3 Emissions</b>                | <b>10,422</b> |
| <b>Alternative 3 Service Population<sup>1</sup></b> | <b>8,601</b>  |
| <b>Net New Emissions Per Service Person</b>         | <b>1.2</b>    |
| <b>2030 Threshold of Significance</b>               | <b>1.2</b>    |
| <b>Threshold Exceeded?</b>                          | <b>No</b>     |

<sup>1</sup> 8,136 residents (3600 units \*2.26 persons per household) + 465 employees (see Section 4.9, *Population and Housing* of the Draft EIR)  
 MT = metric tons; CO<sub>2</sub>e = carbon dioxide equivalents  
 See Appendix 1 for CalEEMod, EMFAC2021, and natural gas to electricity conversion results.

Future development would still receive electricity from providers subject to the statewide Renewable Portfolio Standard (RPS) program, which requires increases in procurement from renewable energy sources to 60 percent by 2030 and 100 percent by 2045. This would minimize carbon emissions associated with electricity use. This alternative also would increase density in a transit-oriented, low-VMT area. In addition, like the proposed project future development on the project sites under this alternative would be subject to CALGreen and associated local amendments in the BMC related to reduction of GHG emissions. Because new emissions from this alternative would not exceed the 2030 GHG threshold of significance, Mitigation Measure GHG-1 would not be required and impacts would be less than significant without mitigation.

To a greater extent than the proposed project, Alternative 3 would facilitate increased density in a transit-oriented, low-VMT area, consistent with the vision of Plan Bay Area 2040 and the City's Climate Action Plan. Therefore, this alternative would meet GHG reduction goals to a greater extent than the proposed project. As with the proposed project, this alternative would have no impact



related to conflicts with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions.

#### **e. Hazards and Hazardous Materials**

Section 4.5 of the Draft EIR analyzes impacts associated with the proposed project related to hazards and hazardous materials. Similar to the proposed project, Alternative 3 would allow for the development of residential and commercial land uses that could involve the use, storage, disposal, or transportation of hazardous materials, and upset or accident conditions on the station sites could involve the release of hazardous materials into the environment. Several schools are located within 0.25 mile of the station sites. However, the transport, storage, use, or disposal of hazardous materials during construction and operation would be subject to federal, state, and local regulations pertaining to the transport, use, storage, and disposal of hazardous materials, which would assure that risks associated with hazardous materials are minimized. Moreover, while the potential residential and commercial uses may involve use and storage of some materials considered hazardous, these materials would be primarily limited to solvents, paints, chemicals used for cleaning and building maintenance, which are typical household chemicals and solvents already in wide use throughout the City. Required adherence to existing regulations and the nature of the proposed land uses would ensure that impacts would remain less than significant.

As discussed in Draft EIR Section 4.5, *Hazards and Hazardous Materials*, one listed hazardous material site is located on or potentially adjacent to the North Berkeley BART station site. In addition, there are unknown former commercial and industrial uses within the North Berkeley BART station site and Ashby BART station site that may have included the use and storage of hazardous materials, including a gasoline service station. Therefore, construction facilitated by this alternative could encounter hazardous materials in subsurface soils during site grading. Construction workers or nearby residents could be exposed to contaminated soil resulting from development of a contaminated property. Mitigation measures HAZ-1 through HAZ-3 would still be required to identify, manage onsite, and/or remove hazardous material impacted soils prior to construction. Similar to the proposed project, this impact would be less than significant with mitigation incorporated.

Because the station sites are not located in areas subject to airport land use plans or wildland fire hazards, this alternative would not result in potential hazards related to aviation or wildland fire hazards. Similar to the proposed project, no impact would occur. Development under this alternative also would add traffic to nearby evacuation routes. However, development on the project sites would be required to conform to the latest fire code requirements, including provisions for emergency access. Therefore, the impact related to impairing or interfering with an emergency response or evacuation plan would remain less than significant.

#### **f. Hydrology and Water Quality**

Section 4.6 of the Draft EIR analyzes impacts associated with the proposed project related to hydrology and water quality. Alternative 3 would involve a similar scale of ground disturbance during future development as the proposed project. As discussed in Draft EIR Section 4.6, *Hydrology and Water Quality*, ground-disturbing activities and the use of heavy machinery could release materials, including sediments and fuels, which could adversely affect water quality. In addition, operation of potential future development could result in discharges to storm drains that could be contaminated and affect downstream waters. However, future development within the station sites would be required to comply with State and local water quality regulations designed to control

erosion and protect water quality during construction. For projects that disturb at least one acre of land, preparation and implementation of a SWPPP would be required. This would include the use of BMPs to control erosion and sediment. In addition, BMC Chapter 21.40 requires project applicants to comply with grading, erosion, and sediment control regulations on file in the Public Works Department and BMC Chapter 17.20 requires BMPs to be implemented to minimize non-stormwater discharges from the site during construction. During operation, future development also would be required to implement LID Measures and on-site infiltration, as required under the C.3 provisions of the MRP. Implementation of LID measures would reduce water pollution from stormwater runoff as compared to existing conditions. Therefore, water quality impacts would remain less than significant, the same as the proposed project.

Similar to the proposed project, future development under this alternative would not draw water from groundwater supplies and would not increase the amount of impervious surfaces on the station sites. Development facilitated by the alternative also would be required to comply with Provision C.3 of the MRP which promotes infiltration. Implementation of LID measures would increase absorption of stormwater runoff and the potential for groundwater recharge. Therefore, the impact on groundwater supplies and recharge would remain less than significant.

Because this alternative would not result in an increase in impervious surfaces, it would not cause a substantial increase in the rate or amount of surface runoff. MRP-regulated projects within the project sites also would be required to treat 80 percent or more of the volume of annual runoff for volume-based treatment measures or 0.2-inch per hour for flow-based treatment measures. Furthermore, projects that create or replace 2,500 square feet or more, but less than 10,000 square feet, of impervious surface must implement site design measures to reduce stormwater runoff. All regulated projects within the City are also required to prepare a SWMP that includes the post-construction BMPs that control pollutant levels. Therefore, development facilitated by this alternative would not substantially alter the existing drainage pattern of the site or area or alter the course of any stream or river, would not result in erosion or siltation, and would not substantially increase the rate of surface runoff in a manner which would result in flooding on- or off-site or exceed capacity of a stormwater system. This impact would remain less than significant, the same as the proposed project.

As discussed in Section 4.6, *Hydrology and Water Quality*, the station sites are not located in a FEMA-designated flood hazard area, in a dam or tsunami inundation area, or near a large water body. As a result, implementation of future development under this alternative would not introduce new flood-related hazards. This impact would remain less than significant, the same as the proposed project.

### **g. Land Use and Planning**

Section 4.6 of the Draft EIR analyzes impacts associated with the proposed project related to land use and planning. Alternative 3 would allow for increased future development of residential and commercial space on the station sites. It does not include elements that would physically divide the established communities around the project sites. For example, no new major roads or other large or linear facilities would be constructed that would physically divide an established community. Both the Ashby BART station site and the North Berkeley BART station site are currently surface parking lots that may be traversed by the public. Future development facilitated by the alternative would preserve pedestrian access to the stations and through the sites. Therefore, no significant land use impacts related to the physical division of an established community would occur.

Similar to the proposed project as analyzed in Section 4.6, *Land Use and Planning*, of the Draft EIR, this alternative would create a R-BMU district with applicable zoning standards, and make associated General Plan amendments, in compliance with AB 2923. Except for allowing greater building height and maximum FAR in a Transit Priority Area, compared to the proposed project before an applicable density bonus, this alternative would include the same development standards as proposed for minimum new lot size, parking supply, and open space provision. *CEQA Guidelines* Appendix G makes explicit the focus on environmental policies and plans, asking if the project would conflict with any applicable land use plan, policy, or regulation “*adopted for the purpose of avoiding or mitigating an environmental effect*” (emphasis added). A policy inconsistency is considered a significant adverse environmental impact only when it is related to a policy adopted for the purpose of avoiding or mitigating an environmental effect and it is anticipated that the inconsistency would result in a significant adverse physical impact based on the established significance criteria. Consistency with the goals and policies of the General Plan are discussed in Table 5, and with the Adeline Corridor Specific Plan (ACSP), which applies only to the Ashby BART station site, in Table 6.

**Table 5 Alternative 3 Consistency with Relevant General Plan Goals and Policies**

| General Plan Policy                                                                                                                                                                                                                                        | Discussion                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Land Use Element</b>                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Maintain and Preserve the Character of Berkeley</b>                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Policy LU-4 Discretionary Review.</b> Preserve and enhance the aesthetic, environmental, economic, and social character of Berkeley through careful land use and design review decisions.                                                               | <b>Consistent.</b> Alternative 3’s transit-oriented development standards would guide future development and future discretionary review would be required.                                                                                                                                                                                                     |
| <b>Maintain and Enhance Berkeley’s Residential Areas</b>                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Policy LU-9 Non-Residential Traffic.</b> Minimize or eliminate traffic impacts on residential areas from institutional and commercial uses through careful land use decisions.                                                                          | <b>Consistent.</b> Alternative 3’s transit-oriented development standards would encourage development that takes advantage of the existing adjacent BART stations and would generate fewer automobile trips than similar development in most other parts of Berkeley.                                                                                           |
| <b>Policy LU-11 Pedestrian- and Bicycle-Friendly Neighborhoods.</b> Ensure that neighborhoods are pedestrian- and bicycle-friendly with well-maintained streets, street trees, sidewalks, and pathways.                                                    | <b>Consistent.</b> Alternative 3 would involve an overall improvement to bicycle and pedestrian access and circulation for the same reasons as for the proposed project as detailed in Impact T-1 in Section 4.11, <i>Transportation</i> , of the Draft EIR.                                                                                                    |
| <b>Maintain and Enhance Berkeley’s Commercial Areas and the Downtown</b>                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Policy LU-21 Transit-Oriented Development.</b> Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley. | <b>Consistent.</b> Alternative 3 would include transit-oriented zoning and development standards around the Ashby and North Berkeley BART stations.                                                                                                                                                                                                             |
| <b>Policy LU-30 Ashby BART Station.</b> Encourage affordable housing or mixed-use development including housing on the air rights above the Ashby BART station and parking lot west of Adeline Street.                                                     | <b>Consistent.</b> Alternative 3’s transit-oriented development rezoning and development standards would allow for 12 stories of development and commercial space (a mix of uses) above the Ashby BART station and development at a density of at least 75 units per acre of housing. The concepts for development on the site include an affordable component. |
| <b>Transportation Element</b>                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Automobile Use Reduction</b>                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                 |

| General Plan Policy                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Policy T-10 Trip Reduction.</b> To reduce automobile traffic and congestion and increase transit use and alternative modes in Berkeley, support, and when appropriate require, programs to encourage Berkeley citizens and commuters to reduce automobile trips, such as:</p> <ol style="list-style-type: none"> <li>1. Participation in a citywide Eco-Pass Program (also see Transportation Policy T-3).</li> <li>2. Participation in the Commuter Check Program.</li> <li>3. Carpooling and provision of carpool parking and other necessary facilities.</li> <li>4. Telecommuting programs.</li> <li>5. "Free bicycle" programs and electric bicycle programs.</li> <li>6. "Car-sharing" programs.</li> <li>7. Use of pedal-cab, bicycle delivery services, and other delivery services.</li> <li>8. Programs to encourage neighborhood-level initiatives to reduce traffic by encouraging residents to combine trips, carpool, telecommute, reduce the number of cars owned, shop locally, and use alternative modes.</li> <li>9. Programs to reward Berkeley citizens and neighborhoods that can document reduced car use.</li> <li>10. Limitations on the supply of long-term commuter parking and elimination of subsidies for commuter parking.</li> <li>11. No-fare shopper shuttles connecting all shopping districts throughout the city.</li> </ol> | <p><b>Consistent.</b> Alternative 3 would involve the adoption of transit-oriented zoning and development standards on existing BART station sites that are also near transit corridors (University Avenue and Adeline Avenue). By its nature, the project focuses growth in proximity to transit which would reduce vehicle trips.</p>                                                                                                                                                                                                                                                                                     |
| <b>Neighborhood Traffic Calming</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><b>Policy T-20 Neighborhood Protection and Traffic Calming.</b> Take actions to prevent traffic and parking generated by residential, commercial, industrial or institutional activities from being detrimental to residential areas.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p><b>Consistent.</b> As discussed under section (k), transportation, of this memo, implementation of Alternative 3 would not significantly impact roadways in surrounding neighborhoods.</p>                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Housing Element</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Expansion of the Housing Supply</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><b>Policy H-12 Transit-Oriented New Construction.</b> Encourage construction of new medium- and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p><b>Consistent.</b> Alternative 3 would involve the adoption of transit-oriented development zoning and development standards to facilitate housing development on two existing BART station sites and along major transit corridors. By its nature, the project focuses growth on a major transit corridor. Future development on the project sites under Alternative 3 would be required to be consistent with the new transit-oriented development requirements and guidelines. As discussed in above under Section (d) Greenhouse Gas Emissions, Alternative 3 is consistent with the City's Climate Action Plan.</p> |

| General Plan Policy                                                                                                                                                                                                                         | Discussion                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Energy Efficiency</b>                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                        |
| <b>Policy H-30 Energy Efficiency and Waste Reduction.</b> Implement provisions of Berkeley’s Climate Action Plan to improve building comfort and safety, reduce energy costs, provide quality housing, and reduce Greenhouse Gas Emissions. | <b>Consistent.</b> Development on the project sites under Alternative 3 would be required to implement provisions of the City’s Climate Action Plan as well as regional and state goals to reduce GHG Emissions.                                                                                                                       |
| <b>Urban Design &amp; Preservation</b>                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                        |
| <b>New Construction and Alterations</b>                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                        |
| <b>Policy UD-26 Pedestrian-Friendly Design.</b> Architecture and site design should give special emphasis to enjoyment by, and convenience and safety for, pedestrians.                                                                     | <b>Consistent.</b> Alternative 3 would involve an overall improvement to bicycle and pedestrian access and circulation for the same reasons as for the proposed project as detailed in Impact T-1 in Section 4.11, <i>Transportation</i> , of the Draft EIR.                                                                           |
| <b>Policy UD-33 Sustainable Design.</b> Promote environmentally sensitive and sustainable design in new buildings.                                                                                                                          | <b>Consistent.</b> Future development under Alternative 3 would be required to be energy efficient and designed to promote sustainable design in accordance with applicable regulations for sustainable development and as discussed above under Greenhouse Gas Emissions, Alternative 3 would not result in significant GHG impacts . |

**Table 6 Alternative 3 Consistency with Relevant ACSP Goals and Policies**

| Adeline Corridor Specific Plan Policy                                                                                                                                                                 | Discussion                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Land Use</b>                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>3.8 Sustainable Building Design and Energy Use.</b> Ensure that the design of new buildings incorporates features that address energy use and further the goals of Berkeley’s Climate Action Plan. | <b>Consistent.</b> As discussed in above under Section (d) Greenhouse Gas Emissions, Alternative 3 is consistent with the City’s Climate Action Plan.                                                                                                                                                                                                                              |
| <b>Transportation</b>                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>6.8 BART.</b> Work with BART to maintain and improve its ability to serve Bay Area travelers and accommodate regional growth, including growth around the Ashby Station.                           | <b>Consistent.</b> As described in Section 2, <i>Project Description</i> , the City and BART have entered into a Memorandum of Understanding (MOU) that establishes a framework for development of the Ashby and North Berkeley BART stations. The City continues to coordinate with BART on project-related activities. This would also apply to development under Alternative 3. |

As shown in Table 5 and Table 6, Alternative 3 is generally consistent with the General Plan and ACSP. Alternative 3 would not cause a significant environmental impact due to a conflict with an applicable land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect and would not cause a significant environmental impact due to such a conflict. As a result, no significant land use impacts would occur, the same as under the proposed project.

**h. Noise**

This alternative could involve construction of buildings up to 12 stories tall. Similar to the proposed project as analyzed in Section 4.8, *Noise*, of the Draft EIR, development under this alternative could potentially involve the use of pile drivers. Mitigation Measure N-1 would apply to minimize noise and vibration from the installation of pile foundations. The impact from vibration would remain less than significant with implementation of Mitigation Measure N-1.

Taller buildings would take more time to build, resulting in a longer duration of construction noise from development on the station sites. Nonetheless, it is assumed that similar construction equipment and phasing would occur. Table 7, below, assumes the use of typical construction equipment in multi-story buildings, including augur drills instead of impact pile drivers to install foundations. Without pile drivers, noise levels from the building construction phase would decrease by an estimated 6 to 7 dBA  $L_{eq}$ . These modeled noise levels do not account for noise control measures, which would further reduce construction noise.

**Table 7 Estimated Construction Noise with Typical Equipment**

| Construction Phase    | Equipment                                                                               | Noise Level (dBA $L_{eq}$ ) |             |             |
|-----------------------|-----------------------------------------------------------------------------------------|-----------------------------|-------------|-------------|
|                       |                                                                                         | At 100 feet                 | At 150 feet | At 400 feet |
| Demolition            | Concrete saw, excavators (3), dozers (2)                                                | 80                          | 77          | 68          |
| Site preparation      | Dozers (3), tractors/loaders/backhoes (4)                                               | 80                          | 76          | 68          |
| Grading               | Excavators (2), grader, dozer, scrapers (2), tractors/loaders/backhoes (2)              | 81                          | 78          | 69          |
| Building construction | Augur drill rig, crane, forklifts (3), generator, tractors/loaders/backhoes (3), welder | 83                          | 79          | 71          |
| Paving                | Pavers (2), paving equipment (2), rollers (2)                                           | 80                          | 77          | 68          |
| Architectural coating | Air compressor                                                                          | 68                          | 64          | 56          |

See Appendix G for RCNM modeling results.

Estimated construction noise from future development under Alternative 3 on the project sites using typical construction equipment could temporarily reach an estimated 83 dBA  $L_{eq}$  at the Ed Roberts Campus. Exterior building materials would reduce noise exposure in indoor classrooms by approximately 20 dBA, resulting in a noise level of up to 63 dBA  $L_{eq}$ . At the backyards of residences on Tremont Street, construction noise could reach 79 dBA  $L_{eq}$ , during building construction. At the backyards of residences near the North Berkeley BART station site, construction noise would reach an estimated 71 dBA  $L_{eq}$ . Grading, demolition, and paving activity would produce similar noise levels at sensitive receptors. As discussed in Section 4.8, *Noise*, of the Draft EIR, conditions of approval would restrict the hours of construction activity and minimize noise from equipment to the extent feasible. Nonetheless, construction noise levels could still exceed the City's standards at sensitive receptors. Therefore, as discussed in Section 4.8 of the Draft EIR the impact from a temporary increase in construction noise under this alternative would be significant and unavoidable.

By allowing for taller buildings with more residential units, this alternative would require more HVAC equipment. With a buildout of up to 3,600 residential units under this alternative, HVAC noise from the Ashby BART station site would reach an estimated 56 dBA  $L_{eq}$  at sensitive receptors located 150 feet from the site and 54 dBA  $L_{eq}$  at a distance 200 feet. HVAC units at the North Berkeley BART station site would generate estimated noise levels of 51 dBA  $L_{eq}$  at a distance of 400 feet (Appendix G of the Draft EIR). These noise levels from HVAC equipment would be 1-2 dBA higher than from those generated by development facilitated by the proposed project, which is below the 3 dBA threshold at which the average healthy ear can barely detect a change in noise level (Crocker 2007). HVAC noise would also exceed the City's nighttime exterior noise standard of 45 dBA in the R-1 and R-2 zones. Mitigation Measure N-2 would apply to shield noise from HVAC equipment, so that noise levels do not exceed 45 dBA, which would reduce this impact to a less than significant level.

Similar to the proposed project, this alternative would facilitate the development of multi-story buildings served by delivery and garbage trucks. Noise from garbage trucks emptying metal

dumpsters could make noise exceeding City's exterior noise standards allow up to 85 dBA for any period of time in a daytime hour in commercial zones and up to 75 dBA for this time period in the R-1 and R-2 zones. Mitigation Measure N-3 would require designing loading areas to minimize exposure to this noise source, by locating dumpsters as far as possible from sensitive receptors, shielding loading areas, or other means, and would reduce this impact to a less than significant level.

As discussed in Section 4.8, *Noise*, of the Draft EIR, development under the proposed project would add vehicle trips to roadways near the station sites, but estimated traffic noise levels would not increase by more than 1 dBA  $L_{eq}$ . The provision of BART rider parking on the station sites would increase the number of vehicles traveling to and from the BART stations as compared to the proposed project. This would incrementally increase traffic noise along roadways near the station sites. However, similar to the proposed project, it is expected that the increase in traffic noise would not exceed FTA criteria because traffic noise levels for the project are well below criteria and an incremental increase would not result in an exceedance. The effect on traffic noise also would be minimized by locating new development at BART station sites, which would encourage transit use by residents in developments at the project sites. Therefore, traffic noise impacts would be remain less than significant, the same as the proposed project.

#### **i. Population and Housing**

Section 4.9 of the Draft EIR analyzes impacts associated with the proposed project related to population and housing. Alternative 3 would facilitate the development of up to 3,600 residential units on both station sites. Based on an average rate of 2.26 persons per household, it would generate an increase of approximately 8,136 residents, or 2,712 more than the proposed project as shown in Section 4.9 of the Draft EIR. This would represent about 44 percent of the projected 18,355-person increase in the citywide population between the years 2020 and 2040. It would also represent 5.8 percent of the total projected citywide population of 140,935 in 2040. Although the alternative would account for a substantial portion of the projected increase in Berkeley's population, it would still be within regional growth projections for Berkeley. New development on the station sites also would not involve displacement of existing residents or housing units that would necessitate the construction of replacement housing elsewhere. Therefore, impacts related to population and housing would remain less than significant, the same as the proposed project.

#### **j. Public Services and Recreation**

By facilitating the development of 1,200 more residences on the station sites compared to the proposed project as analyzed in Section 4.10, *Public Services and Recreation*, of the Draft EIR, this alternative would further increase demand for Berkeley fire protection, emergency medical services, and police services. Growth under this alternative could still contribute to the need for new fire or police stations. As discussed in Draft EIR Section 4.10, *Public Services and Recreation*, such stations, if built, would undergo separate, project-level CEQA analysis. Future development under this alternative would be required to comply with regulations for fire safety in the Berkeley Fire Code, the California Health and Safety Code, and the California Fire Plan. Therefore, impacts related to fire protection and police services would be less than significant as for the proposed project.

Based on the students per household generation rates used in the public services analysis for the proposed project (see Section 4.10, *Public Services and Recreation*), full buildout of the station sites under this alternative would generate up to an estimated 688 new students, or 228 more than the proposed project. This would result in more demand for school services. However, the payment of

State-mandated school impact fees would reduce impacts from future residential development to a less-than-significant level, the same as the proposed project.

As discussed in Draft EIR Section 4.10, the City currently provides a ratio of 2.1 acres of parkland per 1,000 residents. By increasing the citywide population by an estimated 8,136 new residents, the project would result in a ratio of approximately 1.9 acres per 1,000 residents, which is below the City's goal of 2 acres per 1,000 residents. However, when considering parkland adjacent to the City, the ratio of parkland per resident would be substantially higher, approximately ten acres per 1,000 residents. Furthermore, the station sites are in areas served by parks and recreational opportunities, are near planned improvements and expansions of such opportunities, and the proposed future development would involve the provision of on-site public and private open space consistent with City standards. Therefore, this alternative would not result in substantial overuse of existing parks which may cause physical deterioration of these facilities. Impacts related to park and recreational facilities would increase but would remain less than significant.

### **k. Transportation**

Alternative 3 would facilitate increased residential development within the project sites compared to the proposed project. Similar to the proposed project as analyzed in Section 4.11, *Transportation*, of the Draft EIR, future development under Alternative 3 would be required to comply with existing regulations, including General Plan policies related to roadway, pedestrian, and bicycle facilities, and access to modes of transportation other than single-occupancy vehicles. Such development would be reviewed in accordance with the City's Public Works Department Transportation Program standards and guidelines, and the department would provide oversight engineering review to ensure that the project is constructed according to City specifications regarding access and safety. Future development under Alternative 3 would meet the Zoning Ordinance requirements for vehicle and bicycle parking and implement TDM measures in an effort to reduce project-generated vehicle trips and encourage travel by other modes. For these reasons, as with the proposed project, Alternative 3 would have a less than significant impact related to applicable plans and policies.

As with the proposed project, in accordance with AB 2923, development under Alternative 3 would be required to have a FAR of 4.2 or higher, and this alternative would be located in transit priority areas within a ½-mile walkshed around major transit stops. As with the proposed project, the supply of vehicle parking spaces included in Alternative 3 would not exceed the proposed project's estimated rate of demand, as explained in Draft EIR Section 4.11, *Transportation*, and shown in Table 1 in Section 3(a), Air Quality. Therefore, as with the proposed project, Alternative 3 would meet the City's other screening criteria for VMT and the impact related to VMT would remain less than significant.

As with the proposed project, to reduce the potential for impacts related to vehicle travel and parking shortfalls and encourage use of sustainable modes, future development would implement TDM strategies. While the specific TDM measures have not been selected and the effects of the TDM plan cannot be quantified at this time, the absence of a ready supply of parking spaces, combined with available alternatives to vehicle travel, such as riding transit, biking, and walking, would induce people to shift travel modes.

Similar to the proposed project, new development at the station sites under this alternative would include physical modifications to the circulation system to accommodate pedestrian and bicycle access in accordance with the proposed R-BMU requirements and Joint Vision and Priorities document. Future development under this alternative would undergo City review to ensure that on-



site pedestrian and bicycle access follow appropriate and applicable design standards and guidelines. Therefore, the alternative would not substantially increase hazards due to design features or incompatible use. This impact would remain less than significant.

As with the proposed project, future development under this alternative would not involve changes to the roadway network or include any design features that would interfere with accessibility of people walking or bicycling to and from the project site, and adjoining areas, or result in inadequate emergency access. Therefore, impacts on emergency access would remain less than significant.

## I. Utilities and Service Systems

This alternative would facilitate new development that generates increased sanitary sewage flows through the wastewater conveyance system to the EBMUD MWWTP. As discussed in Section 4.12, *Utilities and Service Systems*, of the Draft EIR, the MWWTP has a remaining capacity of 105 million gallons per day (mgd) beyond existing inflow. It is estimated that development under the proposed project would generate up to an additional 0.35 mgd, which accounts for 0.3 percent of the MWWTP's remaining secondary treatment capacity. This alternative would generate more wastewater because it would allow for 50 percent more residential units on the station sites compared to the proposed project before any applicable density bonus. Although this alternative would increase wastewater flow to the plant, the plant's existing wastewater treatment capacity would still be sufficient to accommodate flow under this alternative.

Similar to the proposed project, during wet-weather conditions, wastewater flow generated by this alternative could potentially contribute to overflow conditions on sewer mains under and adjacent to streets near the station sites. The construction of new or expanded sewer mains may be necessary to accommodate additional wastewater flow. Policy EM-24 in the Berkeley General Plan and Chapter 17.05 of the BMC requires that new development pay its fair share of improvements to storm sewer system that would be necessary to accommodate increased flows. The impacts of individual new sewer main construction projects would be less than significant due to their temporary nature and the already developed nature of wastewater conveyance corridors. Therefore, impacts related to wastewater would be increased but would remain less than significant.

According to the Water Supply Analysis (WSA) prepared by EBMUD for the proposed rezoning and discussed in Draft EIR Section 4.12, *Utilities and Service Systems*, of the Draft EIR, it is projected that buildout of the proposed rezoning would generate a water demand of 440,000 gallons per day (gpd) (Appendix I of the Draft EIR). Based on the generation factors provided by EBMUD, this alternative would generate approximately 500,000 gpd because it would allow for buildout of up to 50 percent more residential units. Therefore, this alternative could result in increased demand for water supply but would not result in a new significant impact. That is because EBMUD anticipates having an adequate water supply to meet demand in its service area accounting for regional population growth, including anticipated growth under the proposed project and Alternative 3, except during the third year of a multi-year drought starting around 2025 or later. In that event, people on the project sites and other EBMUD customers, would be subject to a Demand Management Plan and other water conservation requirements that will address any shortage in supply. Therefore, water supply demand would increase but impacts related to water supply would remain less than significant.

As shown in Table 8, buildout of this alternative would generate an additional 3.1 tons per day of solid waste for disposal at landfills, or 29 percent more than the proposed project. The Altamont Landfill and the Vasco Road Sanitary Landfill, which solid waste from Berkeley, have a combined

remaining capacity of approximately 65.4 million cubic yards. Solid waste from the station sites would equate to approximately 840 cubic yards per year. This represents 0.002 percent of the current total remaining landfill capacity. Therefore, impacts related to solid waste disposal would increase but would remain less than significant.

**Table 8 Alternative 3: Estimated Solid Waste Generation**

| Use                                      | Buildout |                | Generation Rate              | Solid Waste (pounds per day) | Solid Waste (tons per day) | Solid Waste (cubic yards per day) <sup>2</sup> |
|------------------------------------------|----------|----------------|------------------------------|------------------------------|----------------------------|------------------------------------------------|
|                                          | Quantity | Units          |                              |                              |                            |                                                |
| Multi-family Apartment                   | 3,600    | dwelling units | 4.0 pounds/unit/day          | 14,400                       | 7.2                        | 14.4                                           |
| Retail commercial <sup>1</sup>           | 125,000  | square feet    | 0.046 pounds/square foot/day | 5,750                        | 2.9                        | 5.8                                            |
| <b>Total Before Diversion</b>            |          |                |                              | <b>20,150</b>                | <b>10.1</b>                | <b>20.2</b>                                    |
| <b>Total Assuming 69% Diversion Rate</b> |          |                |                              | <b>6,246.5</b>               | <b>3.1</b>                 | <b>6.3</b>                                     |

<sup>1</sup>This analysis makes the conservative assumption that all commercial development consists of retail commercial space, which generates more solid waste per square foot than typical generation rates for commercial offices.

<sup>2</sup>Based on the conversion factor described under Table 4.13-1, County-Service Landfill Capacity for "landfill density" Municipal Solid Waste, of approximately 750 to 1,250 pounds per cubic yard, or an average of 1,000 pounds per cubic yard.

Source: CalRecycle 2019b

## 4. Draft EIR Recirculation Not Required

CEQA Guidelines Section 15088.5(a) requires recirculation of a Draft EIR when information that is added to the EIR constitutes "significant new information." Significant new information is defined in CEQA Guidelines Section 15088.5(a)(1)-(4) as including:

1. A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
2. A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
3. A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
4. The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

The clarifications presented in this document do not constitute "significant new information;" instead, they clarify, amplify, or make insignificant modifications to the Draft EIR and recirculation of the Draft EIR is not required. (CEQA Guidelines Section 15088.5(b).) That is because none of the supplemental information discloses new or substantially more severe significant environmental effects of the proposed project, or new feasible mitigation measures or alternatives considerably different than those analyzed in the Draft EIR that would clearly lessen the proposed project's significant effects.