




Office of the City Manager

ACTION CALENDAR
May 1, 2012

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, Interim City Manager
Submitted by: Wendy Cosin, Interim Director, Planning and Development
Subject: West Berkeley Project – Master Use Permit Process

RECOMMENDATION

Conduct a public hearing and upon conclusion, provide direction to staff, or continue to May 8, 2012, to provide direction to staff, regarding the following actions proposed to be taken at the May 15, 2012, Council Meeting:

1. Adopt a resolution certifying the Environmental Impact Report (EIR) and adopt CEQA findings and the Mitigation Monitoring Program;
2. Adopt a resolution approving amendments to the West Berkeley Plan, and by reference the General Plan; and
3. Adopt the first reading of the Ordinance to repeal and reenact BMC Chapter 23B.36. Master Use Permits.

SUMMARY

The purpose of the West Berkeley Project is to remove obstacles to economically viable reuse of existing buildings consistent with the primary goals and objectives of the West Berkeley Plan, to consider new uses, and to facilitate development of large land holdings through a revised Master Use Permit (MUP) process that would allow more flexibility in development. In March and June, 2011, the City Council approved the first and second portions of the West Berkeley Project, which included zoning amendments for reusing and expanding existing buildings and businesses and which allowed new uses into specified types of protected spaces. In July 2011, the Council asked staff to evaluate additional amendments to the third portion of the Project, amendments to the City's Master Use Permit zoning regulations.

This component of the West Berkeley Project involves repealing the existing and adopting a new zoning chapter, BMC Chapter 23B.36, to implement new rules for Master Use Permits. The proposed new Master Use Permit process would allow modifications to various development standards for large sites in exchange for specific benefits to the City of Berkeley. The MUP process, as amended, would primarily affect

the M, MM, and MU-LI zoning districts, but could also affect the C-W and MU-R districts.

FISCAL IMPACTS OF RECOMMENDATION

The proposed new MUP regulations are expected to have positive fiscal impacts for the City by providing flexibility in development standards and thereby encouraging development of large sites. In addition, specific benefits to the City will be provided such as retention or provision of affordable work space for artists, circulation improvements through provision of transportation demand management measures, and/or provision of jobs training programs. However, the specific fiscal impacts cannot be known until development projects are requested.

CURRENT SITUATION AND ITS EFFECTS

At its July 12, 2011, meeting, the Council directed staff to study additional changes to the Master Use Permit (MUP) regulations, including the potential for increased building heights to 100 feet under limited circumstances, increased residential density in the MU-R and C-W portions of MUP sites, and potential impacts on Aquatic Park habitat. Planning Commission action was requested on topics where major changes were proposed and it was not clear that the Commission had specifically considered the issues. Staff also prepared a Draft Supplemental Environmental Impact Report (SEIR) which analyzes the potential environmental impacts of these changes, and which also provides additional analysis on topics evaluated in the Draft and Final EIR that was certified in March 2011 (Certified EIR).

The Planning Commission took comment on the SEIR and held a public hearing on the proposed zoning amendments. At its meeting on March 21, 2012, the Commission took action as follows:

1. Approved recommendation to allow manufacturing buildings to exceed the 75 foot height limit, up to 100 feet, with certain restrictions. (6-3-0);
2. Rejected the option to increase residential density in Master Use Permit sites containing MU-R and/or C-W zoned land. (1-7-0);
3. Approved recommendation to amend to the West Berkeley Plan to allow intermingling of uses within MUP sites that straddle zoning district boundaries. (6-3-0)

Staff requests direction from Council after the public hearing on May 1st, or at the May 8th Special Meeting. If a first reading of the Ordinance amendments is adopted on May 15th, the second reading will be scheduled for May 29th.

BACKGROUND

As described above, the third portion of the West Berkeley Project includes proposed revisions to the MUP chapter of the Zoning Ordinance, related amendments to the West Berkeley Plan (and by reference, the General Plan), and certification of the related environmental documents. Each is addressed below.

A. Zoning Ordinance Revisions: Master Use Permit

The previously proposed revisions to Zoning Ordinance Chapter 23B.36 were included in the January 25, 2011, Council packet ("2011 Draft Ordinance" - Attachment 2). These revisions reflected Planning Commission recommendations made on October 13, 2010, as well as other clarifications suggested by staff. To compare the Proposed Ordinance (Attachment 1) to the version closest to what was previously reviewed by Council, please refer to the attachment to the March 21, 2012, Planning Commission staff report (see Attachment 6).

The Proposed Ordinance reflects the height increase recommended by the Commission and other revisions suggested by staff to improve the ordinance. The Proposed Ordinance does not include the residential density increase referred by Council because it was not recommended by the Commission. However, this issue was addressed in the Supplemental Environmental Impact Report (SEIR) and is discussed below.

The basic concept for the Master Use Permit process remains the same. In brief, modifications to various development standards can be allowed for large sites within West Berkeley, in exchange for specific benefits to the City of Berkeley. To assist Council review, each ordinance section where there have been substantive changes as compared to the January 25, 2011, version is briefly discussed below.

A number of additional issues were discussed in subsequent Council staff reports and meetings, which are referenced as "Options" in the following sections.

23B.36.010 Applicability

The basic eligibility requirements for an MUP application remain the same: the property must be predominantly zoned MU-LI, MM, or M (the revised language more specifically requires at least 50 percent (50%) of the site within these districts) and must be four contiguous acres or a full City block under the same ownership (see discussion below).

No change is proposed to the section that limits the pace of development to a maximum of six MUP approvals during the 10 years immediately following the effective date of the ordinance. This restriction also provides time to evaluate the Ordinance and make improvements as necessary.

Controlling Site Assemblage

The 2011 Draft Ordinance did not provide controls on site assemblage. The Proposed Ordinance restricts an MUP site to properties that meet the ownership and size standards as of August 1, 2011, and thereby discourages speculation as follows:

“This Chapter only applies to sites that meet the eligibility requirements set forth in this Section as of August 1, 2011.”

Option: An option to limit the total amount of land in West Berkeley that could ever be developed into Master Use Permit sites was considered at previous Council meetings. This option would not prevent assembly of large sites, but would limit the overall percentage of land within MUP sites. Staff does not believe that this option is necessary, but the following language could be added to the MUP Applicability section if desired:

“The combined total of M, M, and MU-LI zoned land within all MUP sites shall not exceed 40 acres, excluding lands currently subject to a Master Use Permit or a Development Agreement.”

Definition of “Single Ownership”

The MUP Applicability section requires that a site be “under the same ownership,” however, this was not defined in the 2011 Draft Ordinance. Staff proposes the definition below, which is included in the Proposed Ordinance:

“23B.36.010.E. For purposes of this Chapter, parcels shall be considered to be in the “same ownership” if the same person or entity has a greater than 50 percent (50%) ownership of each of them.”

23B.36.030 MUP – Process

This section includes the same MUP application submittal requirements and public notice as the 2011 Draft Ordinance. The following new section was added in response to Council interest to increase assurance that the City will receive the benefits.

“23B.36.030.A.3. Applications for a Master Use Permit shall include a proposed benefits package that is consistent with 23B.36.090.B, addressing one or more of the three types of benefit categories specified therein. This proposal must specify the types of benefits, the method of delivering and guaranteeing these benefits, and the net present value of these benefits. In addition, the proposal must demonstrate how the proposed benefits are a reasonable exchange for the requested changes in development standards for the proposed project, recognizing that the zoning ordinance does not require the benefits to equal or exceed the full value to the developer of such modifications to development standards. In addition, these benefits do not include measures to mitigate the land use impacts of the proposed project since these are required of all projects.”

Findings were also similarly expanded in the following Section:

“23B.36.090.B. For alterations of development standards and permitted uses under Section 23B.36.050.A or B, the Board must find that the proposed project would confer measurable benefits that affirmatively advance one or more of three efforts to directly benefit residents and businesses in Berkeley:

1. Retain and provide affordable work space for artists;
2. Provide transportation demand management measures consistent with the West Berkeley Circulation Master Plan Report; or
3. Provide access to and participation in jobs training programs designed to advance employment prospects for Berkeley residents, especially those living near or below the poverty line.”

23B.36.050 Permissible Alterations of Development Standards and Permitted Uses

The key issues raised by the Council are addressed in this ordinance section, which describes how specific zoning requirements can be altered as part of an MUP application. In particular, increased height, increased residential density, and flexibility regarding the location of housing and other land uses are discussed below.

Height

The 2011 Draft Ordinance allowed Master Use Permit projects a maximum height 75 feet. In its previous discussions, Council members expressed concern that the 75 foot height limit might make it difficult to build and operate certain manufacturing processes that require additional height to operate efficiently. Council directed staff to study this possibility in the SEIR, which analyzed the aesthetic impacts of increased heights for nine potential MUP sites.

The SEIR provided a visual analysis of a “worst case” where the entirety of each of the nine (9) sites was constructed with 100-foot buildings. The SEIR Aesthetic impacts and mitigations address the proposed increased height and are further discussed in the “Findings” section below. The actual degree of aesthetic impacts would depend on the proportion of a site’s building footprints that exceed 75 feet, the total height, separation between buildings, and the heights of surrounding buildings. Impacts on migratory birds are not likely to be significant, given the Bird-Safe Design Guidelines required as Mitigation Measure BIO-1 in the SEIR.

As recommended by the Planning Commission, Section 23B.36.050.A.2 & 3 has been amended as follows:

- “2. Height Limitations: increases in permitted maximum height up to 75 feet, except as provided in 3 below;
3. On those nine (9) sites identified in the Draft Supplemental Environmental Impact Report, “Additional Amendments to the Master Use Permit Process, West Berkeley Project,” February 2012, production buildings may exceed 75 feet, up to 100 feet, if necessary, and only to the extent necessary, to permit the establishment of a discrete portion of a proposed production or manufacturing process, subject to the findings in Section 23B.36.090.”

The applicant would be responsible for demonstrating the necessity for the additional height to the satisfaction of the Zoning Adjustments Board. The increased height would only be allowed on the nine (9) sites identified in the SEIR because these are the only sites where additional height was analyzed.

Use Flexibility – Density and Location

An MUP site can include land with several zoning designations, which can raise issues when uses allowed in one of these zoning districts are prohibited in one of the other districts. Both the 2011 Draft Ordinance and the Proposed Ordinance specify that any use could be located throughout the MUP site, without regard to zoning district boundaries, as follows:

23B.36.050.A.7. Uses: Land Uses permitted by the underlying zoning of the land that comprises a Master Use Permit site may be located within the site without regard to the zoning district boundaries, subject to the thresholds and permit requirements of the Master Use Permit.

This would include uses such as housing that are allowed in a C-W or MU-R portion of an MUP site but not otherwise allowed in the M, MM, or MU-LI portions of a site. The 2011 Draft Ordinance partially addressed potential land use conflicts by requiring findings to ensure that placement of residential uses within the manufacturing areas of an MUP site would not increase land use incompatibility (in other words, such placement would only be allowed if the specific circumstances did not locate residential uses inappropriately, given the surrounding land uses). The 2011 Draft Ordinance also limited the density of residential development to that allowed in the underlying zoning district.

1. Increased Residential Density: For a proposed MUP project, Section 23B.36.050.B of the 2011 Draft Ordinance restricts the floor area of uses allowed in the C-W or MU-R zoning districts that are prohibited in the M, MM, or MU-LI zoning district site (such as housing) to the maximum floor area allowed by the development standards of the underlying C-W or MU-R zoning, as applied to the amount of C-W or MU-R land area. In other words, MUP flexibility did not allow increased residential density.

The Council requested consideration of allowing an increase in density by no longer restricting development potential to the development standards of the underlying zoning district. In essence, the MUP flexible development standards – that is, allowing flexibility in density, height (up to 75 feet), and setbacks – could be applied to amount of C-W and MU-R land areas within the MUP site, for the purpose of calculating the maximum amount of dwelling units allowed.

At its March 21, 2012, meeting, the Planning Commission considered and rejected this approach to increasing the maximum amount of dwelling units, and thus, continued its previous recommendation, as shown below and included in the Proposed Ordinance:

“23B.36.050.B.2. To the extent that any MUP site includes property in the C-W or MU-R districts, uses permitted only in the C-W or MU-R districts but not within the other portions of the site:

1. May be located elsewhere on the MUP site, and
2. The building square feet devoted to those uses may not exceed the amounts that would have been permitted on the area within the C-W or MU-R districts, as calculated using the applicable C-W or MU-R development standards, except for parking requirements.”

Option: Although the Planning Commission does not recommend this option, if Council would like to allow an increase in residential density, the following language does not restrict the amount of housing (floor area or dwelling units) by the underlying development standards, but rather would allow flexibility in these underlying development standards, just as allowed elsewhere in the MUP site. Density would be restricted by the amount of land zoned MU-R and C-W, as it would be increased by the flexibility provided in MUPs (i.e. 75-foot maximum height). Housing could be exempted from the restriction in 23B.36.050.B.2 above, with the following language:

“23B.36.050.B.3. However, the maximum building square feet devoted to dwelling units may exceed these amounts and may be calculated using the flexible development standards allowed for Master Use Permit projects in Chapter 23B.36.050.A above.”

2. Location of Residential Uses: Given that proposed Section 23B.36.050 allows flexible placement of residential uses, both the 2011 Draft Ordinance and the Proposed Ordinance include the Findings to ensure that such placement would not adversely affect existing or future manufacturing:

“23B.36.090.E. In order to approve a Master Use Permit that allows uses permissible in either the C-W or MU-R districts that are specifically prohibited in M, MM, and MU-LI districts to be located in the M, MM, or MU-LI portions of the site, the Board must find that the proposed location(s) of those uses would not increase the incompatibility of uses, either within the site itself or between the site and surrounding area. For the purpose of making this finding, “residential use” shall be considered incompatible with industrial uses, unless exceptional site-specific circumstances demonstrate otherwise.”

This language addresses the concern that allowing housing units into the “industrial districts” portions of an MUP site could encourage or accelerate the conversion of these areas from industrial to residential uses. The West Berkeley Plan discourages conversion of industrial land to residential or fully-commercial uses.

Options: Should the Council want more assurance than provided by the required finding above, the following two alternatives could be considered. The first, previously considered by the Council, would prevent locating any housing in the M, MM, or MU-LI portions of an MUP site. The second would not allow an MUP site to contain MU-R or C-W zoned land. These options are not recommended, but are provided because the issues were previously discussed.

Specify no housing allowed:

“23B.36.050.B. To the extent that any MUP site includes property in the C-W or MU-R districts, with the exception of dwelling units, uses permitted only in the C-W or MU-R districts may be located elsewhere on the MUP site. Dwelling units may not be located in the M, MM, or MU-LI portions of a MUP site.”

Do not allow MU-R or C-W lands to be included within an MUP site:

“23B.36.010.B. An MUP site may not include property located in the C-W or M-UR district.”

3. Location of Manufacturing Uses: As described above, both the 2011 Draft Ordinance and the Proposed Ordinance include findings to ensure that the flexible location of C-W or MU-R uses would not increase incompatibility in West Berkeley (see 23B.36.090 E). However, the 2011 Draft Ordinance did not include findings to protect MU-R and C-W areas of a site from potentially incompatible industrial uses. The Supplemental EIR includes a new Land Use Impact, LU-1, regarding these potential impacts due to incompatible uses. Mitigation Measure LU-1B requires an additional finding to protect non-industrial areas from incompatible industrial uses. The Proposed Ordinance includes Finding F to implement this mitigation measure:

“23B.36.090.F. In order to approve a Master Use Permit that allows uses permissible in the M, MM, or MU-LI districts that are specifically prohibited in C-W or MU-R districts to be located in the C-W or MU-R portions of the site, the Board must find that the proposed locations of those uses would not increase the incompatibility of uses, either within the site itself or between the site and surrounding area.”

23B.36.90 Findings

Findings are also expanded in the Proposed Ordinance to ensure conformance with the Mitigation Monitoring Program and to address the following environmental issues.

Additional Protections for Aquatic Park

The 2011 Draft Ordinance did not include any findings specific to protecting Aquatic Park; in its previous meetings, the Council expressed concern that more explicit protection should be considered. The SEIR included additional analysis about potential impacts on Aquatic Park. Revised mitigation measures were including regarding shadowing and obstruction of views - AES-1, 2, and 3. In particular, the following mitigations were proposed in the SEIR and have been included in the Proposed Ordinance in the following findings:

“23B.36.090.H. In order to approve a Master Use Permit that contains buildings within 100 feet of the boundary of Aquatic Park, the Board must find that the project will not unreasonably create shadows upon, degrade the existing visual quality or character of, or pedestrian access to, Aquatic Park.”

Bird-Safety Design

Concerns have been raised about the potential impacts tall buildings might have upon migratory and other birds that use the Aquatic Park lagoon. The SEIR evaluated biologic impacts on Aquatic Park and concluded that the height of buildings did not pose a threat to migratory or other birds, although the finish materials could. Mitigation Measure Bio-1 would mitigate potential significant impacts on birds to a level of less-than-significant. This is addressed by adding the following language to Section 23B.36.090.A:

“All new building within the proposed project comply with the Bird-Safe Building Design Guidelines, as specified in SEIR Mitigation Measure BIO-1, to reduce the frequency of bird collisions in the area.”

B. Proposed West Berkeley Plan Amendment

The Council adopted revisions to the West Berkeley Plan on March 22, 2011, prior to approving the first portion of the West Berkeley Project zoning amendments. In particular, there were numerous revisions to West Berkeley Plan, Section 1, Chapter VII, “Land Use Regulations of the West Berkeley Plan – For Adoption in Principal,” page

43, which lists permitted and prohibited uses for each of the West Berkeley Zoning Districts. In addition, the Large Site Development Process was amended to generally reference 2011 adoption of a new MUP ordinance and to reduce the size of projects eligible for an MUP process from 5 to 4 acres. The currently proposed changes are shown below, and in Attachment 3.

Regulation: Projects which are eligible for the Large Site Development Process are those which:

- ~~On~~ Are located on sites of at least four (4) (modified 201244) acres or one (1) full City block under the same ownership; and
- ~~Proposing to incorporate~~ Incorporate uses which would not otherwise be permitted in the district, but would be permitted in other zoned land within the Master Use Permit site; or
- Requesting an “alternative” land use entitlement, such as a Development Agreement. Another possibility is a Master Plan Permit, whereby a single permit would be issued for the development of a number of buildings and/or uses within a given range.

The proposed amendments are consistent with the Plan’s general description of the Large-Site Development Process, which states in several places that developing large sites may include uses not otherwise allowed in the zoning district. The proposed language clarifies that this intermingling of uses is consistent with the Plan, and implements CEQA Mitigation Measure LU-3.

C. Environmental Review

As described above, staff prepared a Draft Supplemental Environmental Impact Report (SEIR) to analyze the potential for certain changes to the MUP regulations that were suggested by Council. Each Council Member received a copy of the SEIR on January 15, 2012. A Response to Comments on the SEIR will be distributed prior to Council action.

The SEIR addresses the three new items under consideration (increased height, increased residential density, and inter-mingling of uses), as well as potential impacts on habitat, aesthetics, land use, and traffic. For the purpose of addressing potential impacts from the proposed MUP amendments, the SEIR modified and expanded the previously-certified EIR and revises mitigation measures to address the proposed revisions to the MUP ordinance. Some of these mitigations also further address impacts identified in the original Certified EIR.

The Final Environmental Impact Report (“FEIR”) for the MUP revisions will consist of:

- The Previously Certified EIR, including the Draft EIR (January 2010), DEIR Revisions and Comments & Responses (October 2010), and Appendices;
- The Draft Supplemental EIR (SEIR), February 2012, DSEIR Revisions and Comments & Responses, and Appendices.

Staff will prepare a resolution to certify the Final EIR, which will include all required CEQA findings and a Mitigation Monitoring Program (MMP). The MMP will reflect mitigations from both the previously Certified EIR and the Supplemental EIR as appropriate to address impacts from the Proposed Ordinance.

RATIONALE FOR RECOMMENDATION

The City Council initially directed that staff consider increasing zoning flexibility in West Berkeley, especially for larger underutilized sites. The Planning Commission subsequently recommended modifications to the MUP section as an appropriate tool to achieve that goal. The proposed language offers flexibility in physical development standards and use standards. In addition, it describes the specific benefits which should be provided to the City in exchange for the increased development value that would arise from increased flexibility. The range of flexibility is significantly different from that under current MUP standards and the benefits are a new concept, not previously included in MUP language.

ALTERNATIVE ACTIONS CONSIDERED

A wide range of zoning changes have been discussed throughout the West Berkeley Project, and have been systematically winnowed down as part of the public process.

CONTACT PERSON

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Attachments:

1. Master Use Permit Ordinance, repealing and reenacting BMC Chapter 23B.36
2. 2011 Draft Ordinance
3. Proposed Amendments to the West Berkeley Plan, in track changes
4. Public Hearing Notice
- 5A. Planning Commission Staff Report from March 7, 2012
- 5B. Planning Commission Communications from March 7, 2012
- 6A. Planning Commission Staff Report from March 21, 2012
- 6B. Planning Commission Communications from March 21, 2012

Supplemental Materials:

Link to Certified and Supplemental EIR:

<http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=10764>

ORDINANCE NO. –NS

REPEALING AND REENACTING CHAPTER 23B.36 OF THE BERKELEY MUNICIPAL CODE

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

Section 1. That Chapter 23B.36 of the Berkeley Municipal Code is hereby repealed and reenacted to read as follows:

Chapter 23B.36

MASTER USE PERMITS

- 23B.36.010 Applicability
- 23B.36.020 Purposes
- 23B.36.030 Master Use Permit Application—Process
- 23B.36.040 Reserved
- 23B.36.050 Permissible Alterations of Development Standards and Permitted Uses
- 23B.36.060 Master Use Permit excludes other alterations of development standards
- 23B.36.070 Contents of Master use Permit
- 23B.36.080 Vesting
- 23B.36.090 Findings

23B.36.010 Applicability

This Chapter applies to sites that meet the eligibility requirements set forth in this Section as of August 1, 2011.

- A. In order for a site to be eligible for a Master Use Permit (“MUP”), at least 50 percent of its land area must be:
 - 1. Located in one or more of the MU-LI, MM, or M districts; and
 - 2. The site must consist of either:
 - a. At least four (4) contiguous acres in area under the same ownership (whether or not in a single parcel); or
 - b. A full city block under the same ownership (whether or not in a single parcel).
- B. An MUP site may include property located in the C-W or M-UR district subject to the additional regulations in Section 23B.36.050.B.
- C. The City may not approve more than six (6) MUPs during the 10 years immediately following the effective date of this Chapter.

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D. Notwithstanding Section 23B.56.100, an MUP project shall secure a building permit within 24 months of the project's approval. Failure to do so may result in the lapse of the MUP, pursuant to Chapter 23B.56. Once lapsed, that MUP shall not be counted for purposes of this Section.

E. For purposes of this Chapter, parcels shall be considered to be in the "same ownership" if the same person or entity has a greater than 50 percent ownership of each parcel.

23B.36.020 Purposes

The purposes of this Chapter are to provide flexibility in zoning requirements for projects in West Berkeley that are located on large sites in order to:

- A. Facilitate the implementation of the West Berkeley Plan;
- B. Facilitate the reuse of large and multi-user sites which might otherwise prove difficult to reuse;
- C. Facilitate the development and reuse of large, multi-user sites as integrated units, designed to produce an environment of stable and desirable character that will benefit the occupants, the neighborhood, and the city as a whole;
- D. Consolidate the review of the impacts of the development and reuse of large and multi-user projects;
- E. Improve Berkeley's competitiveness in attracting, incubating, retaining and growing businesses by allowing businesses to develop and commence operation on a site quickly once overall development requirements have been established;
- F. Attract and retain businesses, especially those engaged in diverse, comparatively clean, and environmentally beneficial industrial activities;
- G. Attract businesses in emerging sectors of the economy;
- H. Retain and provide space for artists;
- I. Reduce or mitigate circulation, access, and parking problems by improving transportation infrastructure, reducing vehicle use by employees, and providing adequate parking;
- J. Expand the availability of and access to jobs and job training programs; and

- 89 K. Raise funds for programs and initiatives that further the goals and purposes of the
90 West Berkeley Area Plan.

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92 **23B.36.030 Master Use Permit Application — Process**

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- 94 A. Master Use Permit applications shall include:

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- 96 1. All materials required by Section 23B.24.030, except that they shall not be
97 required to include architectural plans or drawings for phases subsequent to the
98 first phase(s);

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- 100 2. A detailed phasing plan that shows the character, scale, general location, and
101 timing of all physical development, including on-site and off-site infrastructure,
102 and locations of proposed uses; and

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- 104 3. A proposed benefits package that is consistent with 23B.36.090.B, and
105 addresses one or more of the three types of benefit categories specified therein.
106 The proposed benefits package must include benefits beyond what would
107 otherwise be provided and must specify the types of benefits, the method of
108 delivering and guaranteeing these benefits, and their net present value. In
109 addition, the proposal must demonstrate how the proposed benefits are a
110 reasonable exchange for the requested changes in development standards for
111 the proposed project, recognizing that the Zoning Ordinance does not require the
112 benefits to equal or exceed the full value to the developer of such modifications
113 to development standards. Measures to mitigate the land use impacts of the
114 proposed project shall not be considered benefits under this Chapter.

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- 116 B. Applications for Master Use Permits shall be subject to the provisions under Chapter
117 23B.32, except that the public notice area required by 23B.32.020 shall be expanded
118 to five hundred (500) feet of the subject property and notice of public hearing shall
119 be posted and mailed 30 days in advance.

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121 **23B.36.040 Reserved**

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123 **23B.36.050 Permissible Alterations of Development Standards and Permitted
124 Uses**

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- 126 A. An applicant for a Master Use Permit may request, and the Board may approve, the
127 following alterations to the lot development standards and permissible uses set forth
128 in the underlying applicable zoning district regulations:

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- 130 1. Parking Requirements: Full or partial reduction of off-street parking
131 requirements;

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- 133 2. Height Limitations: Increases in permitted maximum height up to 75 feet, except
134 as provided in 3 below;
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- 136 3. On those nine (9) sites identified in the Draft Supplemental Environmental Impact
137 Report, "Additional Amendments to the Master Use Permit Process, West
138 Berkeley Project," February 2012, production buildings may exceed 75 feet, up to
139 100 feet, if necessary, and only to the extent necessary, to permit the
140 establishment of a discrete portion of a proposed production or manufacturing
141 process, subject to the findings in Section 23B.36.090;
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- 143 4. Floor Area Ratio (FAR) Restrictions: Increases in permitted maximum FAR of up
144 to 3.0;
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- 146 5. Setbacks: Reduced setbacks from residential uses;
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- 148 6. Spacing Requirements: Use separation standards may be reduced;
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- 150 7. Uses: Land Uses permitted by the underlying zoning of the land that comprises
151 a Master Use Permit site may be located within the site without regard to the
152 zoning district boundaries, subject to the thresholds and permit requirements of
153 the Master Use Permit;
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- 155 8. The replacement of Manufacturing, Warehouse, Wholesale, or Material-Recovery
156 activities with Other Industrial uses permitted in any of the zoning districts in
157 which the subject property is located.
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- 159 B. To the extent that any MUP site includes property in the C-W or MU-R districts, uses
160 permitted only in the C-W or MU-R districts but not within the other portions of the
161 site:
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- 163 1. May be located elsewhere on the MUP site; and
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- 165 2. The building square feet devoted to those uses may not exceed the amounts that
166 would have been permitted on the area within the C-W or MU-R districts, as
167 calculated, using the applicable C-W or MU-R development standards, except for
168 parking requirements.
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- 170 C. The Gross Floor Area allocated for each use may vary from that set forth in the
171 Master Use Permit by up to ten percent (10%) with a Zoning Certificate, as long as
172 the new use allocations meet all requirements of the Zoning Ordinance. Variations of
173 more than ten percent (10%) but less than twenty-five percent (25%) from the stated
174 Gross Floor Area for any use may be authorized by the Zoning Officer; variations of
175 more than twenty-five percent (25%) may be authorized by the Board. Any such

176 change shall still be subject to the requirements set forth in the approved MUP,
177 including the finding required by Section 23B.32.040.A.

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179 D. Notwithstanding the conversion requirements applicable in the underlying districts
180 within an approved MUP, spaces within an MUP site may be divided, aggregated
181 and/or converted in any manner, as a matter of right as long as such division,
182 aggregation or conversion is consistent with the gross floor area limitations for uses
183 and findings and requirements set forth in the MUP.

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185 **23B.36.060 Master Use Permit Excludes Other Alterations of Development**
186 **Standards**

187 The flexibility provided under this Chapter to alter development standards is
188 exclusive and supersedes all other provisions of this Title under which development
189 standards may be altered, except as provided under Section 23B.44.050.

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191 **23B.36.070 Contents of Master Use Permit**

192 In addition to the information and requirements that are normally contained in a Use
193 Permit, as well as any specific additional conditions or requirements the Board may
194 impose, a Master Use Permit shall include the number of square feet of buildings and
195 land to be used for Industrial (Manufacturing, Wholesaling and Warehousing), Office
196 (exclusive of offices ancillary to other uses), Commercial (Retail and Personal service),
197 Live/Work Units and Residential Uses, and a detailed phasing plan as described in
198 Section 23B.36.030.A.

199

200 **23B.36.080 Vesting**

201

202 A. An MUP shall be deemed to have been exercised in its entirety upon the substantial
203 completion of the first phase thereof. Thereafter, it shall be considered to be vested
204 in its entirety.

205

206 B. Failure to substantially comply with the detailed phasing plan contained in the MUP
207 shall be a violation of the MUP and subject to revocation or modification per Chapter
208 23B.60.

209

210 **23B.36.090 Findings**

211

212 A. In order to approve a MUP, the Board must make both the finding required by
213 Section 23B.32.040.A and the following additional findings:

214

215 1. The proposed project will be consistent with the purposes of this chapter;

216

217 2. The proposed project includes the applicable requirements of the Mitigation
218 Monitoring Program adopted concurrently with this Chapter; and

- 219
220 3. All new building within the proposed project must comply with the Bird-Safe
221 Building Design Guidelines, as specified in SEIR Mitigation Measure BIO-1, to
222 reduce the frequency of bird collisions in the area.
223
- 224 B. For alterations of development standards and permitted uses under Section
225 23B.36.050.A or B, the Board must find that the proposed project would confer
226 measurable benefits that affirmatively advance one or more of three efforts to
227 directly benefit residents and businesses in Berkeley:
228
- 229 1. Retain and provide affordable work space for artists;
230
- 231 2. Provide transportation demand management measures consistent with the West
232 Berkeley Circulation Master Plan Report; or
233
- 234 3. Provide access to and participation in jobs training programs designed to
235 advance employment prospects for Berkeley residents, especially those living
236 near or below the poverty line.
237
- 238 C. For alterations of Permitted Uses under Section 23B.36.050.A.7, the Board must find
239 that the proposed project will maintain the overall industrial nature of the West
240 Berkeley Area and the MUP site.
241
- 242 D. For variations in the gross floor area allocated for specific uses under subdivision C
243 of Section 23B.36.050, the Zoning Officer or Board must find that any proposed
244 variation is consistent with the purposes of this Chapter.
245
- 246 E. In order to approve a Master Use Permit that allows uses permissible in either the
247 CW or MU-R districts that are specifically prohibited in M, MM, and MU-LI districts to
248 be located in the M, MM, or MU-LI portions of the site, the Board must find that the
249 proposed location(s) of those uses would not increase the incompatibility of uses,
250 either within the site itself or between the site and surrounding area. For the
251 purpose of making this finding, "residential use" shall be considered incompatible
252 with industrial uses, unless exceptional site-specific circumstances demonstrate
253 otherwise.
254
- 255 F. In order to approve a Master Use Permit that allows uses permissible in the M, MM,
256 or MULI districts that are specifically prohibited in C-W or MUR districts to be located
257 in the CW or MUR portions of the site, the Board must find that the proposed
258 locations of those uses would not increase the incompatibility of uses, either within
259 the site itself or between the site and surrounding area.
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- 261 G. In order to approve a Master Use Permit that contains buildings within the MU-LI, or
262 within 100 feet of either MU-LI or MU-R districts, the Board must find that the project:

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1. Would not substantially degrade the existing visual character or quality of adjacent properties, especially on the scale and character of adjacent homes;
 2. Would provide appropriate transition to minimize changes in scale from existing development to higher scale and more intense development; and
 3. Would not cause an unreasonable shadow on any sensitive area.
- H. In order to approve a Master Use Permit that contains buildings within 100 feet of the boundary of Aquatic Park, the Board must find that the project will not unreasonably create shadows upon, degrade the existing visual quality or character of, or pedestrian access to Aquatic Park.
- I. In order to allow any building over 75 feet in height, the Board must find that the additional height is necessary to permit the establishment of a discrete portion of a proposed production or manufacturing process, and that the building is no higher than necessary for that purpose.