



Office of the City Manager

ACTION CALENDAR  
July 10, 2012

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Zach Cowan, City Attorney  
Subject: West Berkeley Project

RECOMMENDATION

- 1) Adopt a Resolution certifying the Final Environmental Impact Report (FEIR) for the Master Use Permit amendments to the West Berkeley Plan and Zoning Ordinance and adopting CEQA findings and the Mitigation Monitoring Program;
- 2) Adopt a Resolution placing the attached measure to adopt the Master Use Permit Amendments on the ballot at the November 6, 2012 General Municipal Election.
- 3) Determine whether to designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.
- 4) Adopt a Resolution referring the issues of Community Benefit Agreements, an Aquatic Park Protection Package and site aggregation to the Planning Commission.

FISCAL IMPACTS OF RECOMMENDATION

See May 1, 2012 staff report.

The cost to submit the measure to the voters at the November 2012 General Election is estimated to be approximately \$26,000.

CURRENT SITUATION AND ITS EFFECTS

The Council held public hearings on May 1, 8, 15, 22 and June 12, 2012. On June 12, 2012, the Council directed staff to prepare ballot language.

As described in detail in the May 1, 2012 packet, 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.

- **Zoning Ordinance Revisions: Master Use Permit**

Proposed changes to the MUP ordinance have been prepared as directed by Council motion at the June 12, 2012 hearing. The revisions are shown in tracking in Attachment 1.

- **Proposed West Berkeley Plan Amendment**

Two amendments are proposed. The first allows sites comprising a full city block under one ownership as of August 1, 2011 to be eligible to use the large site development review process. The second amendment removes the density standard of one unit per 1,250 square feet of site area from use in MU-R areas that are part of a large site development proposal. It does not change the density standard for MU-R zones throughout West Berkeley.

- **Environmental Review**

The Revisions and Response to Comments on the Supplemental Environmental Impact Report (SEIR) is attached and is available on line. The Final Environmental Impact Report (FEIR) for the MUP revisions consists of:

- ✓ The 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.

The attached resolution (Attachment 2) certifying the EIR means that the EIR was completed and considered in compliance with CEQA, and reflects the City's independent judgment and analysis. In brief, the CEQA Findings list all identified adverse environmental impacts which may result from adoption of the MUP amendments. The Findings provide a factual basis for the Council's conclusions regarding the significance of the impacts, as well as the Project Alternatives, and a "Statement of Overriding Consideration" that the benefits of the Project outweigh the unmitigated significant adverse environmental impacts and, therefore, warrant Project approval.

Attachment 3 is the resolution submitting all the various amendments to the voters; attachment 4 is a draft City Attorney analysis.

Also attached (Attachment 5) is a resolution referring to the Planning Commission various additional zoning amendments that would have to be adopted before MUPs could be approved.

The issues that would be referred to the Planning Commission are as follows.

The first would be an ordinance that requires any MUP to provide at least one of the following community benefits:

1. Retain and provide affordable work space for artists or funds for that purpose.
2. Provide transportation demand management measures consistent with the West Berkeley Circulation Master Plan Report or funds for that purpose.

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.
4. Provide affordable work force housing in West Berkeley or funds for that purpose.
5. Contribute to environmental improvements at Aquatic Park or other measures to improve environmental quality in West Berkeley.
6. Payment of prevailing wages for all construction work under the MUP.
7. Provision of privately owned but publicly accessible open space as part of the MUP.
8. Provision of space and or support to childcare providers so that affordable childcare can be provided to those who need and qualify for it.
9. Require local sourcing of building materials to the extent feasible.
10. Provide benefits or raise funds for programs and initiatives that further goals of the West Berkeley Plan.

The second part of this referral would be for the Planning Commission to develop:

1. a formula for determining the value of community benefits that will be required;
2. a process under which applicants for master use permits under Section 3 are required to demonstrate meaningful attempts to meet and consult with the affected community prior to filing an application; and
3. mechanisms for ensuring that the affected community is involved in evaluation of the adequacy of any proposed community benefits, that community benefits inure primarily to the benefit of West Berkeley, and for overseeing provision of promised community benefits.

The third part of the referral would be ordinance amendments adopting measures to protect and where possible improves the environmental, recreational and aesthetic qualities of Aquatic Park, including, but not limited to:

1. Height limitations;
2. Floor area ration (FAR) limitations;
3. Setbacks;
4. Controls on runoff and site drainage;
5. Mitigation measures to avoid or lessen shadowing of Aquatic Park; and
6. Protection of significant views of and from Aquatic Park.

Finally, with respect to who can author arguments about ballot measures, Elections Code Section 9282(b) provides that “the legislative body, or any member or members of the legislative body authorized by that body...may file a written argument for or against any city measure.” The City Council may authorize the Council as a whole, or members of the Council, to submit arguments in favor of any measure placed on the ballot by the Council.

#### BACKGROUND

See “Current Situation and its Effects”.

RATIONALE FOR RECOMMENDATION

See "Current Situation and its Effects".

ALTERNATIVE ACTIONS CONSIDERED

N/A

CONTACT PERSON

Zach Cowan, City Attorney, 981-6998

Attachments:

- 1: Draft MUP ordinance, with tracked changes
- 2: Resolution certifying the Environmental Impact Report (EIR) and adopting CEQA findings and the Mitigation Monitoring Program
  - Exhibit A – CEQA Findings
  - Exhibit B – Mitigation Monitoring Program
- 3: Resolution Submitting Measure to the Voters
  - Exhibit A – Text of Measure
- 4: City Attorney's Impartial Analysis
- 5: Resolution referring the issues of Community Benefit Agreements, an Aquatic Park Protection Package and site aggregation to the Planning Commission

Supplemental Materials:

Link to Certified and Supplemental EIR:

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

**Chapter 23B.36  
MASTER USE PERMITS**

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

**23B.36.010 Applicability**

This Chapter applies to sites that met and continue to meet the eligibility requirements set forth in this Section as of August 1, 2011, and is limited to the sites as they existed at that time.

- A. In order for a site to be eligible for a Master Use Permit (“MUP”), at least 50% of its land area must be:
  1. located in one or more of the MU-LI, MM, or M districts;
  2. the site must consist of either
    - a. at least 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 districts subject to the additional regulations in Section 23B.36.050.A.
- C. The City may not approve more than 6 MUPs during the 10 years immediately following the effective date of this Chapter.
- 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% 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
- K. Raise funds for programs and initiatives that further the goals and purposes of the West Berkeley Area Plan.

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

- A. Master Use Permit applications shall include:
  1. all materials required by Section 23B.24.030, except that they shall not be required to include architectural plans or drawings for phases subsequent to the first phase(s);
  2. a detailed phasing plan that shows the character, scale, general location and timing of all physical development, including on- and off-site infrastructure, and locations of proposed uses;
  3. a proposed benefits package that is consistent with 23B.36.090.B. The proposed benefits package must include benefits beyond what would otherwise be provided and must specify the types of benefits, the method of delivering and guaranteeing these benefits, and their net present value. 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. The City may require the applicant to pay for an independent consultant to provide technical assistance to the City in reviewing the information provided. Measures to mitigate the land use impacts of the proposed project shall not be considered benefits under this Chapter; and
  4. the applicant's commitment to enter into a binding Community Benefits Agreement that meets the City's requirements to guarantee provision of the proposed benefits if the application is approved.
- B. Applications for Master Use Permits shall be subject to the provisions under Chapter 23B.32, except that the public notice area required by 23B.32.020 shall be expanded to five hundred (500) feet of the subject property and notice of public hearing shall be posted and mailed 30 days in advance.

## 23B.36.040 Reserved

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

- A. An applicant for a Master Use Permit may request, and the Board may approve, the following alterations to the lot development standards and permissible uses set forth in the underlying applicable zoning district regulations:
1. Parking Requirements: ~~full or partial r~~Reduction of off-street parking requirements of up to 50%;
  2. Height Limitations: increases in permitted maximum height up to 75 feet, except as provided in paragraph 3 below, with a site-wide average height not to exceed of 50 feet, and except as further limited by the existing height limits in the areas of an MUP site zoned C-W (Chapter 23E.64) and MU-R (Chapter 23E.84) Districts. Development in a MUP site is limited by the following:
    - i. buildings shall be setback five (5) feet from any property line that abuts or confronts an MU-R zone not located within the MUP site;
    - ii. in a MU-R zone within a MUP site buildings shall be no higher than 35 feet at the property line or setback line, whichever applies, and may increase to a maximum height of 45 feet provided they do not intersect a plane starting at 35 feet high and sloping on a 30 degree angle from horizontal inward toward the lot; and
    - iii. in a MU-R zone within a MUP site any height granted using the density bonus provisions may not intersect the plane described in Section 23B.36.050.A.2.ii unless the applicant can demonstrate that adherence to this provision would be in violation of state law.
  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, industrial infrastructure may exceed 75 feet only if the applicant can demonstrate absolute necessity to permit the establishment of a discrete portion of a proposed production or manufacturing process, subject to the findings in Section 23B.36.090.H. In no case shall height exceed 100 feet;
  4. Floor Area Ratio (FAR) Restrictions: increases in permitted maximum FAR of up to 3.0 except in the MU-R District, where FAR is limited by the MU-R District regulations. For purposes of this section, above grade parking structures count for lot coverage calculations but not for FAR calculations;
  5. Setbacks: reduced setbacks from residential uses;
  6. Spacing Requirements: use separation standards may be reduced;
  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, except that:
    - i. residential uses shall not be allowed in the M, MM or MU-LI portions of an MUP site,

- ii. residential density in the MU-R portion of an MUP site shall be calculated using the standards applicable in the C-W district, although the height limits for MU-R residential uses shall conform with Section 23B.36.050(A)(2)(ii) , and flexibility regarding parking may be allowed pursuant to paragraph 1, above,
  - iii. the following MU-LI uses are prohibited in MU-R portions of an MUP site: construction products manufacturing, pharmaceutical manufacturing, testing and commercial biological research laboratories, and commercial excavation, and
  - iv. any research and development use that may be allowed in an MU-R portion of an MUP site is only allowed subject to the findings in Section 23B.36.090.E;
8. The replacement of Manufacturing, Warehouse, Wholesale, or Material-Recovery activities with Other Industrial uses permitted in any of the zoning districts in which the subject property is located.
9. The maximum lot coverage allowed for an MUP site is 75% and there must be a minimum of 10% publicly accessible open space, not including surface parking.
- B. The Gross Floor Area allocated for each use may vary from that set forth in the Master Use Permit by up to ten percent (10%) with a Zoning Certificate, as long as the new use allocations meet all requirements of the Zoning Ordinance. Variations of more than ten percent (10%) but less than twenty-five percent (25%) from the stated Gross Floor Area for any use may be authorized by the Zoning Officer; variations of more than twenty-five percent (25%) may be authorized by the Board. Any such change shall still be subject to the requirements set forth in the approved MUP, including the finding required by Section 23B.32.040.A.
- C. Notwithstanding the conversion requirements applicable in the underlying districts within an approved MUP, spaces within an MUP site may be divided, aggregated and/or converted in any manner, as a matter of right as long as such division, aggregation or conversion is consistent with the gross floor area limitations for uses and findings and requirements set forth in the MUP.

**23B.36.060 Master Use Permit excludes other alterations of development standards**

The flexibility provided under this Chapter to alter development standards is exclusive and supersedes all other provisions of this Title under which development standards may be altered, except as provided under Section 23B.44.050. In cases where this Chapter applies, Chapter 23B.48 shall not apply, and *vice versa*.

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

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

### **23B.36.080 Vesting**

- A. An MUP shall be deemed to have been exercised in its entirety upon the substantial completion of the first phase thereof. Thereafter, it shall be considered to be vested in its entirety.
- B. Failure to substantially comply with the detailed phasing plan contained in the MUP shall be a violation of the MUP and subject to revocation or modification per Chapter 23B.60.

### **23B.36.090 Findings**

- A. In order to approve a MUP, the Board must make both the finding required by Section 23B.32.040.A and the following additional findings:
  - 1. The proposed project will be consistent with the purposes of this Chapter;
  - 2. The proposed project includes the applicable requirements of the Mitigation Monitoring Program adopted concurrently with this Chapter; and
  - 3. All new building within the proposed project must 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. For alterations of development standards and permitted uses under Section 23B.36.050.A the Board must find that the proposed project would confer measurable community benefits that affirmatively advance the purposes of this Chapter or the West Berkeley Plan in accordance with the requirements adopted by the Council per Section 23B.36.040, and that the applicant has agreed to enter into a binding commitment to do so.
- C. For alterations of Permitted Uses under Section 23B.36.050.A.7, the Board must find that the proposed project will maintain the overall industrial nature of the West Berkeley Area and the MUP site.
- D. For variations in the gross floor area allocated for specific uses under subdivision C of Section 23B.36.050, the Zoning Officer or Board must find that any proposed variation is consistent with the purposes of this Chapter.
- E. 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 MUR 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.
- F. In order to approve a Master Use Permit that contains buildings within the MU-LI or within 100 feet of either MU-LI or MU-R districts, the Board must find that the project
  - 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.
- G. In order to approve a Master Use Permit adjacent to 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.

H. In order to allow any building over 75 feet in height, the Board must find that the additional height is absolutely 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, and only to the extent that is necessary for that purpose.

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

CERTIFYING THE ENVIRONMENTAL IMPACT REPORT AND ADOPTING CEQA FINDINGS FOR PLACEMENT OF THE THIRD PORTION OF THE WEST BERKELEY PROJECT (MASTER USE PERMITS) ON THE BALLOT FOR APPROVAL OF AMENDMENTS TO THE WEST BERKELEY PLAN, AND BY REFERENCE THE GENERAL PLAN, AND FOR APPROVAL OF AN ORDINANCE REPEALING AND REENACTING BERKELEY MUNICIPAL CODE CHAPTER 23B.36, MASTER USE PERMITS

WHEREAS, in 2006 the City of Berkeley (“City”) began consideration of various amendments to land use regulations in West Berkeley, including the West Berkeley Plan (the “West Berkeley Project”); and

WHEREAS, the City prepared an Environmental Impact Report (EIR) for the West Berkeley Project as required by the California Environmental Quality Act (CEQA); and

WHEREAS, on October 13, 2010, the Planning Commission found the Final EIR to be complete and adequate with respect to the Project as recommended by the Planning Commission, and recommended that it be certified by the City Council; and

WHEREAS, on March 22, 2011 the Council adopted Resolution No. 65,209-N.S. certifying the EIR and adopting findings regarding environmental impacts, mitigation measures, alternatives and overriding considerations, with respect to actions on the first portion of the West Berkeley Project, which consisted of:

- Various zoning amendments for reusing and expanding existing buildings and businesses, primarily by reducing levels of discretion and by simplifying the language in the Zoning Ordinance;
- Updating and expanding the list of uses allowed in industrial districts;
- New definitions, including a new definition of Research and Development; and
- Conforming amendments to the West Berkeley Plan; and

WHEREAS, on June 28, 2011, the Council adopted Resolution No. 65,372-N.S. certifying the EIR and adopting findings regarding environmental impacts, mitigation measures, alternatives and overriding considerations, with respect to actions on the second portion of the West Berkeley Project, which allowed new uses into specified types of protected spaces as summarized below:

- Arts and Crafts, Non-Store-Based Retail and Contractors would be allowed to occupy “protected space” in the M, MM, MU-LI and MU-R districts. The “protected space” that could be occupied by any of these three uses includes Warehousing, Wholesaling, Manufacturing and Material Recovery Enterprise.
- Research and Development (R&D) would be allowed to occupy only Warehousing and Wholesale “protected space”, and only in the MM and MU-LI districts.

WHEREAS, on May 31, 2011, the Council directed staff to provide ordinance language for the third portion of the Project, to amend the Master Use Permit regulations; and

WHEREAS, on September 20, 2011, the Council directed staff to study several additional issues related to potential zoning amendments for Master Use Permits including: increased building heights, increased residential density, and potential impacts on Aquatic Park habitat; and

WHEREAS, in response to Council direction, staff prepared a Draft Supplemental Environmental Impact Report (SEIR) which analyzed the potential environmental impacts of these issues, as well as providing additional analysis on topics in the Certified EIR; and

WHEREAS, a Notice of Preparation for the SEIR was duly delivered to the State Clearinghouse on October 4, 2011 and mailed to other interested agencies; and

WHEREAS, the Draft SEIR was released on February 14, 2012 for review and public comment, and the period for public comment was adequate and closed on March 30, 2012; and

WHEREAS, City received comments from interested individuals, organizations and agencies on the Draft SEIR, both in writing and at a duly noticed Public Hearing before the Planning Commission on March 7, 2012; and

WHEREAS, responses to comments on the Draft SEIR, as well as revisions to the Draft SEIR were prepared and released to the public as required by law; and

WHEREAS, the Final Environmental Impact Report ("FEIR") for the third portion of the West Berkeley Project regarding the Master Use Permit process, which is the only portion currently before the Council, consists 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; and

WHEREAS, the Final EIR identifies and clearly communicates various potentially significant adverse environmental impacts that would result from the third portion of the West Berkeley Project, as well as mitigation measures and alternatives that could eliminate or substantially reduce those potential impacts; and

WHEREAS, the Final EIR considers a reasonable range of alternatives; and

WHEREAS, the City Council has carefully reviewed the Final EIR, and in its independent judgment, finds it adequate and sufficient in all respects; and

WHEREAS, on July 10, 2012 the Council took action to place on the November, 2012 ballot a measure asking the voters to approve the Master Use Permit amendments and related West Berkeley Plan and General Plan amendments; and

WHEREAS, the ordinance to be placed before the voters provides that no Master Use Permit may be approved until the City Council adopts specific and concrete Community Benefits Agreement requirements to implement the benefits requirement of the amendments; and

WHEREAS, the ordinance to be placed before the voters also provides that no Master Use Permit for any site adjacent to Aquatic Park may be approved until the City Council adopts additional protections for Aquatic Park.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that it certifies as legally adequate the Final EIR prepared on the third portion of the West Berkeley Project regarding the Master Use Permit process.

BE IT FURTHER RESOLVED that the Council hereby adopts the Findings in EXHIBIT A and the Mitigation Monitoring Program in EXHIBIT B, recognizing that the Findings and Mitigation Monitoring Program (MMP) have been developed based on the third portion of the project as approved.

BE IT FURTHER RESOLVED that all documents constituting the record of this proceeding shall be retained by the City of Berkeley Planning and Development Department, Land Use Planning Division, at 2120 Milvia Street, Second Floor, Berkeley, California.

Exhibits

- A: Findings of Fact Regarding Environmental Impacts, Mitigation Measures, Alternatives and Overriding Considerations for the third portion of the West Berkeley Project regarding the Master Use Permit process.
- B: Mitigation Monitoring Program for Part 3 of the West Berkeley Project regarding the Master Use Permit process.

## EXHIBIT A

### FINDINGS OF FACT REGARDING ENVIRONMENTAL IMPACTS, MITIGATION MEASURES, ALTERNATIVES AND OVERRIDING CONSIDERATIONS FOR THE WEST BERKELEY PROJECT – PLACEMENT ON BALLOT

**PROJECT DESCRIPTION:** The West Berkeley Project, as analyzed by the Certified EIR, consists of various amendments to the zoning regulations in the existing Manufacturing (M), Mixed Manufacturing (MM), Mixed Use/Light Industrial (MU-LI), and Mixed-Use Residential (MU-R) zoning districts in order to: 1) remove obstacles to economically viable reuse of existing buildings consistent with the primary goals and objectives of the West Berkeley Plan; and 2) facilitate development of large land holdings through a revised Master Use Permit (MUP) process that would allow more flexibility in development. The Project also includes amendments to the West Berkeley Area Plan to ensure consistency between the zoning ordinance and that Plan. The amendments affect the zoning districts listed above for the area bordered by City boundaries to the north and south, Interstate 580/80 to the west, and San Pablo Avenue to the east.

For City Council (“Council”) action, the West Berkeley Project was divided into three parts.

On March 22, 2011 the Council adopted Resolution No. 65,209-N.S. certifying the EIR that had been prepared on the West Berkeley Project (the “Certified EIR”) and adopting findings regarding environmental impacts, mitigation measures, alternatives and overriding considerations with respect to actions on the *first* portion of the West Berkeley Project, which consisted of:

- Various zoning amendments for reusing and expanding existing buildings and businesses, primarily by reducing levels of discretion and by simplifying the language in the Zoning Ordinance;
- Updating and expanding the list of uses allowed in industrial districts;
- New definitions, including a new definition of Research and Development; and
- Amendments to the Implementation Section of the West Berkeley Area Plan, which is incorporated by reference into the City’s General Plan. One of these amendments had no effect because it referred to amendments to the MUP process in the Zoning Ordinance, which had yet to be adopted.

On June 28, 2011, the Council adopted Resolution No. 65,372-N.S. certifying the EIR and adopting findings regarding environmental impacts, mitigation measures, alternatives and overriding considerations, with respect to actions on the *second* portion of the West Berkeley Project, which allowed new uses into specified types of protected spaces as summarized below:

- *Arts and Crafts, Non-Store-Based Retail and Contractors* would be allowed to occupy “protected space” in the M, MM, MU-LI and MU-R districts. The “protected space” that could be occupied by any of these three uses includes Warehousing, Wholesaling, Manufacturing and Material Recovery Enterprise.

- *Research and Development (R&D)* would be allowed to occupy only Warehousing and Wholesale “protected space”, and only in the MM and MU-LI districts.

In July 2011, the Council asked staff to evaluate additional amendments to the *third* portion of the West Berkeley Project, amendments to the City’s Master Use Permit (MUP) zoning regulations. A Supplemental EIR (SEIR) was prepared to evaluate potential environmental impacts from increased housing density, building height up to 100 feet, placement of industrial uses in portions of MUP sites that would not otherwise allow such uses, and aesthetic and natural habitat impacts that may be associated with MUP-related development in the vicinity of Aquatic Park.

The SEIR modified and expanded the previously-certified Program EIR and included changes in mitigation measures to address the proposed revisions to the MUP ordinance. The Final SEIR responded to comments and included revisions to the SEIR. The Council subsequently discussed the proposed amendments to the MUP regulations and reduced potential environmental impacts by limiting height, requiring setbacks and building step backs, prohibiting residential uses in the MU-LI, MM, and M districts and only allowing increased residential density in the C-W district, prohibiting specific uses in the MU-LI district, and adding additional mitigation measures to the Mitigation Monitoring Program (MMP) to ensure effective implementation of the mitigations.

The following findings were prepared for the third portion of the West Berkeley Project, which consists of:

- Revisions to the Master Use Permit zoning regulations (repeal and reenactment of BMC Chapter 23B.36 Master Use Permits) and
- Additional amendments to the West Berkeley Plan, Section 1, Chapter VII, “Land Use Regulations of the West Berkeley Plan – For Adoption in Principal” regarding the Large Site Development Process and allowing increased residential density in the MU-R district when part of an MUP.

The following findings include the impacts as described in both the Certified EIR and the SEIR. Mitigation measures have been consolidated where appropriate. Impacts from the Certified EIR are titled as “Impact or Mitigation AES- #”; those from the SEIR are titled as “SEIR Impact or Mitigation AES- #”. Section I describes the impacts that can be avoided or mitigated to a less-than-significant level. Section II describes the impacts that are Significant and Unavoidable. The Evaluation of Alternatives and Statement of Overriding Consideration follow in Sections III and IV.

The West Berkeley Project as a whole, consisting of the three portions described above, shall be referred to as the “West Berkeley Project”. The third portion of the West Berkeley Project is the only portion currently before the Council. On July 10, 2012 the Council took action to place on the November, 2012 ballot a measure asking for voter approval of the proposed amendments, which shall be referred to below as the “Project”.

**THE FINAL EIR:** The Final Environmental Impact Report (“FEIR”) consists of:

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

## **FINDINGS AND STATEMENT OF FACTS SUPPORTING FINDINGS**

The Final Environmental Impact Report (“FEIR”) for the Project, prepared in compliance with the California Environmental Quality Act, evaluates the potentially significant and significant adverse environmental impacts that could result from the Project.

Pursuant to Title 14 of the California Code of Regulations (“CEQA Guidelines”) Section 15091, the City is required to make certain findings with respect to these impacts. The required findings appear in the following sections of this document. These Findings of Fact Regarding Environmental Impacts, Mitigation Measures, Alternatives and Overriding Considerations for the West Berkeley Project (“Findings”) list all identified potentially significant and significant impacts of the Project, as well as feasible mitigation measures for those impacts. All mitigation measures will be enforced through the Mitigation Monitoring Program (“MMP”), which will be adopted by the City prior to its adoption of the West Berkeley Project. Where an impact has been identified that cannot be mitigated to a less-than-significant level, the City of Berkeley (“City”) nevertheless finds this impact acceptable based on a determination that the benefits of the Project (listed in these Findings and in the Statement of Overriding Considerations) outweigh the risks of the potential significant environmental effects of the Project.

### **I. SIGNIFICANT OR POTENTIALLY SIGNIFICANT IMPACTS WHICH CAN BE AVOIDED OR MITIGATED TO A LESS THAN SIGNIFICANT LEVEL**

As authorized by Public Resources Code Section 21081 and CEQA Guidelines Sections 15091, 15092, and 15093, the City finds that mitigation measures will avoid or substantially lessen the significant environmental impacts listed below, as identified in the FEIR. The Project itself will not cause environmental impacts; rather the impacts that may flow from it and are analyzed in the EIR will be caused by land development that is allowed by the various changes to West Berkeley land use regulations. Thus, at the plan/legislative (*i.e.*, program) level, mitigation measures will be implemented by requiring certain measures to be taken or findings to be made at such time as specific land use development projects are approved. The Mitigation Monitoring Program (MMP) checklist will be used in conjunction with the development project review process to ensure compliance with the FEIR mitigations.

These findings are supported by substantial evidence in the record or proceedings before the City as stated below. Each significant impact that can be reduced to a less-than-significant level is discussed below, and the appropriate mitigation measure stated and adopted for implementation by approval of these Findings of Fact. Additional factual information supporting these Findings of Fact is set forth in the FEIR.

## **AESTHETICS**

**Impact AES-2: Change in Visual Character.** In portions of the MU-LI and edge areas, taller buildings could have a significant impact on visual character where the predominant building height is considerably lower, and a street wall of much taller buildings could lead to a significant change in the dominant lower-scale and eclectic character that is characteristic of West Berkeley. This would be a *potentially significant* impact.

**Mitigation AES-2: Project-Specific Visual Photo/Computer Simulations.** Buildings within MU-LI and buildings within 100 feet of either MU-LI or MU-R designated areas shall provide project-specific visual photo or computer simulations, or other comparable technology, demonstrating appropriate transition from the buildings that exceed 45 feet to surrounding properties. The project reviewing body (Zoning Adjustments Board or City Council on appeal) must find that the project will not substantially degrade either scenic views from adjacent properties or the existing visual character or quality of adjacent properties, especially on the scale and character of adjacent homes, and that the proposed project provides appropriate transition to minimize changes in scale from existing development to higher scale and more intense development.

**Finding:** The City Council hereby finds that the potential significant impact identified in the Final EIR that could occur as a result of the increased heights that may be approved as part of a Master Use Permit (MUP) application will be mitigated by inclusion of the foregoing requirement in the zoning regulations and incorporation into the development review process for projects within the MU-LI District and edge areas that are adjacent to or near MU-LI or MU-R Districts.

**Facts in Support of Finding:** Consistent with CEQA Guidelines for tiering, future development projects will be analyzed according to the MMP's checklist (which is a required finding in Section 23B.36.090.A.2) and the zoning regulations to ensure that future projects in the specified portions of the MU-LI and edge areas do not substantially degrade the existing visual character or quality of adjacent properties.

As indicated in the FEIR, the key visual change that would result from adoption of the new MUP regulations would be to allow the development of new structures which could be considerably taller than previously permitted. In particular, the Project amends Zoning Ordinance Chapter 23B.36, Master Use Permits, to allow alteration of development standards, including increased height and floor area ratio (FAR). The potentially significant impact identified by AES-2 is mitigated by inclusion of the following language in Section 23B.36.090.F:

In order to approve a Master Use Permit that contains buildings within the MU-LI or within 100 feet of either MU-LI or MU-R districts, the Board must find that the project will not substantially degrade the existing visual character or quality of adjacent properties, especially on the scale and character of adjacent homes; that the proposed project provides appropriate transition to minimize changes in scale from existing

development to higher scale and more intense development; and that the project will not cause an unreasonable shadow on any sensitive area.

The revised MUP regulations require setbacks and building step backs in the MU-R district. Furthermore, the following guidelines have been added to AES-2 to ensure that the massing of buildings is differentiated and buildings are articulated in order to prevent degradation of visual character:

In order to prevent degradation of existing visual character from architecture that does not adequately differentiate building mass and to promote buildings with a variety of heights that are properly articulated with interesting architecture to improve the visual character of the West Berkeley Plan area, the following guidelines will apply:

- 1) No more than 25% of the lot area can be at a single height as part of a contiguous mass at that height
- 2) Buildings shall be properly articulated using either physical and/or visual methods to reduce the appearance of a single, undifferentiated mass. Such techniques include, but are not limited to; vertical or horizontal articulation, vertical or horizontal banding, vertical or horizontal changes in materials or colors, and/or vertical or horizontal elements on the façade of the building.

These zoning revisions and mitigations ensure that, on a case-by-case basis, future projects will be analyzed and modified as necessary to avoid substantial degradation of the existing visual character of adjacent properties.

## **AIR QUALITY**

**Impact AIR-2: Possible Exposure of Sensitive Receptors to Toxic Air Contaminants (TACs) and Particulate Matter (PM<sub>2.5</sub>).** Development anticipated under the West Berkeley Project may expose sensitive receptors to TACs and PM<sub>2.5</sub> through development of new non-residential development that may be sources of TACs and PM<sub>2.5</sub> near existing residences or other sensitive receptors. Such exposure would represent a *potentially significant* impact.

**Impact SEIR AIR-2: Exposure of Sensitive Receptors to Increased Health Risks Related to Toxic Air Contaminants (TACs) and Particulate Matter (PM<sub>2.5</sub>).** Development anticipated under the West Berkeley Project and the SEIR Amendments may expose sensitive receptors to increased health risk through development of non-residential sources (including associated mobile sources such as loading dock activity, truck traffic, forklifts, etc., and temporary emissions related to construction) of TACs and PM<sub>2.5</sub> in proximity to existing residential uses and/or development of new residential uses in proximity to sources of TACs and PM<sub>2.5</sub>. Such exposure would represent a *potentially significant* impact. (See also Mitigation SEIR AIR-2B in Section II of this document, "Significant Unavoidable Impacts")

**Mitigation SEIR AIR-2A: Site-Specific Analysis/Mitigation of Health Risks for Development Projects Proposing New Sensitive Receptors** (replaces Mitigation AIR-2 from Certified EIR). The City shall require development projects that would locate

new sensitive receptors within the West Berkeley area to analyze site-specific health risk levels following procedures outlined by BAAQMD. If the site-specific analysis reveals significant exposures (based on BAAQMD guidance), the project shall include measures to reduce exposures, and provide analysis showing that resultant mitigated exposure has been reduced below significance levels. The measures could include, but are not limited to, the following:

- Utilize site planning to buffer new sensitive receptors from sources of emissions that contribute to health risk. Active site uses and building air intakes shall be situated away from emission sources.
- Install indoor air filtration systems, such as MERV filters, to reduce indoor TACs and particulate matter. Appropriately designed systems would have to be maintained (e.g., filters changed on a prescribed basis), and occupied space would have to be equipped with low-air infiltration windows and sealed doors to prevent outdoor air contamination. Opening of windows by occupants would reduce the effectiveness of this measure.
- Provide tiered plantings of vegetation along the project site boundaries closest to emission sources. Preliminary laboratory studies show that redwood and/or deodar cedar trees can remove some of the fine particulate matter emitted from traffic under low wind speeds. Low wind speeds typically result in the highest particulate matter concentrations.
- New occupants shall be informed of the health effects from exposure to TACs and PM<sub>2.5</sub> from the sources affecting those uses through rental agreements or real property disclosures statements. (Taken from AIR-2)

**Finding:** The City Council hereby finds that the potential significant impact identified in the Final EIR will be avoided or substantially lessened through the standard review process for any proposed development that includes new stationary sources of TACs, which would also be subject to BAAQMD rules and regulations.

**Facts in Support of Finding:** The West Berkeley Project does not encourage development that creates new stationary sources of TACs; however, such a project would be subject to BAAQMD rules and regulations and potential impacts from TACs and PM<sub>2.5</sub> would be mitigated as part of the development review process. New sensitive receptors would also be analyzed for conformance with BAAQMD CEQA Guidelines to ensure appropriate mitigations are provided on a case-by-case basis regarding Toxic Air Contaminants and Fine Particulate Matter.

Master Use Permit applications may include residential development in or near industrial-zoned areas and placement of industrial uses in the MU-R or C-W Districts. This could increase exposure of sensitive receptors to TACs and PM<sub>2.5</sub>. However, the revised regulations presented to Council for approval do not allow residential uses in the M, MM, or MU-LI districts as was originally proposed and specifically prohibit construction products manufacturing, pharmaceutical manufacturing, testing and commercial biological research laboratories, and commercial excavation within the MU-R portions of an MUP site. Proposed MUP Section 23B.36.090, Findings, further addresses this issue as follows:

23B.36.090.E: 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 MUR 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.

Although air quality is not specifically cited, it is one potential land use incompatibility factor. Consistent with CEQA Guidelines for tiering, future development projects will be analyzed according to the MMP's checklist (which is also a required finding in Section 23B.36.090.A.2) and zoning regulations to ensure that projects provide site-specific analysis to identify and incorporate appropriate mitigation measures to reduce impacts to a less-than-significant level.

**Impact AIR-4: Construction Period Air Quality Impacts.** Construction of development projects under the West Berkeley Project would result in temporary emissions of dust and diesel exhaust that may result in both nuisance and health impacts. Without appropriate measures to control these emissions, these impacts would be considered *significant*.

**Impact SEIR AIR-4: Construction Period Air Quality Impacts.** Construction of development projects under the West Berkeley Project and the SEIR Amendments would result in temporary emissions and fugitive dust that may result in both nuisance and health impacts. Without appropriate measures to control these emissions, these impacts would be considered *significant*.

**Mitigation SEIR AIR-4: Construction Management Practices** (Replaces Mitigation AIR-4). All MUP construction projects shall demonstrate proposed compliance with all applicable regulations and operating procedures prior to issuance of demolition, building or grading permits, including implementation of the following BAAQMD-recommended Construction Mitigation Measures.

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

- Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NO<sub>x</sub> reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.

**Finding:** The City Council hereby finds that the potential significant impact identified in the Final EIR will be avoided or substantially lessened through incorporation of the foregoing mitigation measure into standard conditions of approval for future development projects.

**Facts in Support of Finding:** The foregoing mitigation measure is based on the *BAAQMD CEQA Guidelines*. According to these guidelines, PM<sub>10</sub> is the pollutant of greatest concern with respect to construction activities. Construction emissions of PM<sub>10</sub> can vary greatly depending upon the level of activity, construction equipment, local soils, and weather conditions, among other factors. As a result, the *BAAQMD CEQA Guidelines* specify that "[t]he District's approach to CEQA analyses of construction impacts is to emphasize implementation of effective and comprehensive control measures rather than detailed quantification of emissions." Therefore, the determination of significance with respect to construction emissions is based on a consideration of the control measures to be implemented. If all the applicable control measures indicated in the *BAAQMD CEQA Guidelines* are implemented, then air pollutant emissions from construction activities would be considered less than significant. Consistent with CEQA Guidelines for tiering, future development projects will be analyzed according to the MMP's checklist (which is a required finding in Section 23B.36.090.A.2) to ensure that the project's environmental effects are mitigated to a less than significant level.

## **CULTURAL RESOURCES**

**Impact CUL-2: Possible Disturbance of Unidentified Subsurface Archaeological Resources.** Ground-disturbing activities associated with new construction and related underground utility installation could result in the destruction or disturbance of unidentified subsurface archaeological resources (particularly in the Shellmound area), which would represent a *potentially significant* impact.

**Mitigation CUL-2: Halt Work/Archaeological Evaluation/Site-Specific Mitigation.** If archaeological resources are uncovered during construction activities, all work within 50 feet of the discovery shall be redirected until a qualified archaeologist can be contacted to evaluate the situation, determine if the deposit qualifies as an archaeological resource, and provide recommendations. If the deposit does not qualify as an archaeological resource, then no further protection or study is necessary. If the deposit does qualify as an archaeological resource, then the impacts to the deposit shall be avoided by project activities. If the deposit cannot be avoided, adverse impacts to the deposit must be mitigated. Mitigation may include, but is not limited to, archaeological data recovery. Upon completion of the archaeologist's assessment, a report should be prepared documenting the methods, findings and recommendations. The report should be submitted to the City, the project proponent and the NWIC.

**Impact CUL-3: Possible Disturbance of Unidentified Subsurface Paleontological Resources.** Although no paleontological resources are currently known to exist in West Berkeley, ground-disturbing activities associated with new construction and related underground utility installation could result in the destruction of unidentified subsurface paleontological resources, which would represent a *potentially significant* impact.

**Mitigation CUL-3: Halt Work/Paleontological Evaluation/Site-Specific Mitigation.** Should paleontological resources be encountered during construction or site preparation activities, such works shall be halted in the vicinity of the find. A qualified paleontologist shall be contacted to evaluate the nature of the find and determine if mitigation is necessary. All feasible recommendations of the paleontologist shall be implemented. Mitigation may include, but is not limited to, in-field documentation and recovery of specimen(s), laboratory analysis, the preparation of a report detailing the methods and findings of the investigation, and curation at an appropriate paleontological collection facility.

**Impact CUL-4: Possible Disturbance of Unidentified Human Remains.** Ground-disturbing activities associated with new construction and related underground utility installation could result in the disturbance of unidentified subsurface human remains, which would represent a *potentially significant* impact.

**Mitigation CUL-4: Halt Work/Coroner's Evaluation/Native American Heritage Consultation/Compliance with Most Likely Descendent Recommendations.** If human remains are encountered during construction activities, all work within 50 feet of the remains should be redirected and the County Coroner notified immediately. At the same time, an archaeologist shall be contacted to assess the situation. If the human

remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and any associated grave goods. The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion of the archaeologist's assessment, a report should be prepared documenting methods and results, as well as recommendations regarding the treatment of the human remains and any associated archaeological materials. The report should be submitted to the City, the project proponent and the NWIC.

**for Potential Impacts CUL-2, CUL-3, and CUL-4:** The City Council hereby finds that the potential significant impacts CUL-2, CUL-3, and CUL-4 identified in the Final EIR will be avoided or substantially lessened through incorporation of the foregoing mitigation measures into standard conditions of approval for future development projects.

**Facts in Support of Finding:** The Shellmound is a designated State and local historic site, which may include archaeological or paleontological resources or human remains. These resources would only come to light during grading and construction. Such resources may also be discovered in other parts of West Berkeley, especially in the vicinity of the historic alignment of Codornices, Strawberry, and Potter Creeks. The City's practice is for mitigation measures as described above to be included as standard conditions of approval for development projects, which will reduce the potential impact to a level of insignificance. Consistent with CEQA Guidelines for tiering, future development projects will be analyzed according to the MMP's checklist (which is a required finding in Section 23B.36.090.A.2) and the Landmarks Ordinance to ensure that appropriate conditions of approval are required and that the project's environmental effects are mitigated to a less-than-significant level.

## **NOISE**

**Impact NOI-1: Exposure of Sensitive Receptors to Excessive Noise Levels.** New development could be exposed to excessive noise levels as a result of development enabled under the West Berkeley Project. This would represent a *potentially significant* impact.

**Mitigation NOI-1: Site-Specific Noise Studies.** In areas where residential development would be exposed to an  $L_{dn}$  of greater than 60 dBA, site-specific noise studies should be conducted to determine the area of impact and to present appropriate mitigation measures, which may include the following:

- Utilize site planning to minimize noise in shared residential outdoor activity areas by locating the areas behind the buildings, in courtyards, or orienting the terraces to alleyways rather than streets, whenever possible.
- The California Building Code and the City of Berkeley require project-specific acoustical analyses to achieve interior noise levels of 45 dBA  $L_{dn}$  or lower in residential units exposed to exterior noise levels greater than 60 dBA  $L_{dn}$ . Building sound insulation requirements would need to include the provision of

forced-air mechanical ventilation in noise environments exceeding 70 dBA  $L_{dn}$  so that windows could be kept closed at the occupant's discretion to control noise. Special building construction techniques (e.g., sound-rated windows and building facade treatments) may be required where exterior noise levels exceed 65 dBA  $L_{dn}$ . These treatments include, but are not limited to sound rated windows and doors, sound rated exterior wall assemblies, acoustical caulking, etc. The specific determination of what treatments are necessary will be conducted on a unit-by-unit basis during project design. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City, along with the building plans, and approved prior to issuance of a building permit. Feasible construction techniques such as these would adequately reduce interior noise levels to 45 dBA  $L_{dn}$  or lower.

**Finding:** The City Council hereby finds that the potential significant impacts identified in the Final EIR will be avoided or substantially lessened through incorporation of the foregoing mitigation measures into standard conditions of approval for future development projects.

**Facts in Support of Finding:** Impact NOI-1 will be mitigated by existing noise standards and procedures, and by zoning language that requires risk and compatibility analysis to identify mitigations for any proposed sensitive receptors. In particular, while residential development will be allowed as part of a Master Use Permit (MUP) application, which could result in noise impacts on sensitive receptors, the regulations as presented to the Council for approval do not allow residential uses to be located within the M, MM, or MU-LI portions of an MUP site as was previously proposed.

Consistent with CEQA Guidelines for tiering, future development projects will be analyzed according to the MMP's checklist (which is also a required finding in Section 23B.36.090.A.2) and zoning regulations to ensure that noise impacts for new sensitive receptors are mitigated to a less-than-significant level through construction techniques and appropriate siting.

**Impact NOI-4: Exposure to Excessive Vibration during Construction.** Residences, businesses, and historically-significant structures in West Berkeley could be exposed to construction-related vibration during excavation and foundation work. This would represent a *potentially significant* impact.

**Mitigation NOI-4: Measures to Reduce Vibration during Construction.** The following measures are recommended to reduce vibration from construction activities:

- Avoid impact pile driving where possible. Drilled piles causes lower vibration levels where geological conditions permit their use.
- Avoid using vibratory rollers and tampers near sensitive areas.
- In areas where project construction is anticipated to include vibration-generating activities, such as pile driving, in close proximity to existing structures, site-

specific vibration studies should be conducted to determine the area of impact and to present appropriate mitigation measures that may include the following:

- Identification of sites that would include vibration compaction activities such as pile driving and have the potential to generate groundborne vibration, and the sensitivity of nearby structures to groundborne vibration. Vibration limits should be applied to all vibration-sensitive structures located within 200 feet of the project. A qualified structural engineer should conduct this task.
- Development of a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions.
- Construction contingencies would be identified for when vibration levels approached the limits.
- At a minimum, vibration monitoring should be conducted during initial demolition activities and during pile driving activities. Monitoring results may indicate the need for more or less intensive measurements.
- When vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures.
- Conduct post-survey on structures where either monitoring has indicated high levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.

**Finding:** The City Council hereby finds that the potential significant impacts identified in the Final EIR will be avoided or substantially lessened through incorporation of the foregoing mitigation measures into standard conditions of approval for future development projects.

**Facts in Support of Finding:** Consistent with CEQA Guidelines for tiering, future development projects will be analyzed according to the MMP's checklist (which is a required finding in Section 23B.36.090.A.2). Impact NOI-4 will be mitigated through review of potential vibration impacts during the project review process. Mitigation Measure NOI-4 seeks to avoid vibration impacts through limiting use of pile-driving equipment and vibratory rollers and tampers where possible and through site-specific analysis of construction proposals. Although vibration levels may at times be perceptible, construction phases that have the highest potential of producing vibration (pile driving and use of jackhammers and other high power tools) would be intermittent, and would only occur for short periods of time for any individual project site. On a case-by-case basis, conditions of approval will provide administrative controls such as notifying neighbors of scheduled construction activities and scheduling construction activities with the highest potential to produce perceptible vibration to hours with least potential to affect nearby businesses. Mitigation Measure NOI-4 calls for site-specific vibration studies and additional mitigations if, for example, pile driving is proposed in

close proximity to existing structures. This ensures that site-specific mitigations will reduce construction vibration impacts to *less-than-significant* levels.

**Impact NOI-5: Exposure to Excessive Railroad-Related Vibration.** New uses facilitated by the West Berkeley Project may be exposed to railroad train vibration levels exceeding Federal Transit Administration criteria. This would represent a *potentially significant* impact.

**Mitigation NOI-5: Vibration Studies.** Prior to the active development of habitable buildings within 150 feet from the centerline of the nearest active rail track, a vibration study shall be required demonstrating that groundborne vibration issues associated with rail operations have been adequately addressed through the use of building setbacks, building construction methods, and/or the isolation of vibration sensitive uses within the proposed facility.

**Finding:** The City Council hereby finds that the potential significant impacts identified in the Final EIR will be avoided or substantially lessened through incorporation of the foregoing mitigation measures into standard conditions of approval for future development projects that are located near active rail lines.

**Facts in Support of Finding:** Consistent with CEQA Guidelines for tiering, future development projects will be analyzed according to the MMP's checklist (which is a required finding in Section 23B.36.090.A.2) and site-specific vibration studies provided to identify methods to reduce groundborne vibration. In particular, other projects in West Berkeley have been required to meet construction standards to comply with the Federal Transit Administration's (FTA) recommended groundborne vibration criteria which, for example call for maximum vibration levels of 72VdB for residential uses. Conformance with the mitigation measure will ensure that site-specific construction standards, designed by a structural engineer to minimize vibration amplification in accordance with an acoustical assessment prepared for the specific project, will reduce the impact to *less-than-significant*.

## **BIOLOGY**

**Impact SEIR BIO-1: Increased Potential for Birds Using Aquatic Park to Collide with Structures.** New construction of buildings in the vicinity of Aquatic Park, regardless of height, could have a *potentially significant* impact on bird populations within the area.

**Mitigation SEIR BIO-1: Develop and Implement Bird-Safe Building Guidelines.** To ensure that new MUP structures would not lead to a significant increase in the frequency of bird collisions in the area, new MUP structures shall adhere to the following design measures:

- Create visual markers and mute reflections in the glass features of buildings. Glass treatment (e.g., modifications in transparency, reflectivity, patterns and colors) shall be on at least the first 12 meters, or to the anticipated height of the majority of vegetation at maturity, whichever is higher. Applying these solutions to the entire building is preferred.

- Reduce light pollution which disorients migrating birds by choosing exterior light fixtures that project light downward rather than toward the sky, by turning off interior lights at night, especially during spring and fall migration periods, and by locating interior plantings away from glass areas that are lit at night.
- For buildings located inside of, or within a clear flight path of less than 300 feet from, suitable bird habitat, require bird-safe glass treatment on building facades such that the first 60 feet of the building is no more than 10 percent untreated glass. Treatments include fritting, netting, permanent stencils, frosted glass, grids, or UV patterns visible to birds. Vertical elements of patterns must be at least ¼ inch wide at a maximum spacing of 4 inches; or have horizontal elements at least 1/8 inch wide at a minimum spacing of 2 inches. Require minimal shielded lighting, and no up-lighting or event searchlights. Prohibit the construction of horizontal-axis windmills or vertical-axis windmills that do not appear solid.
- For structures such as greenhouses, skyways, free-standing glass walls and some balconies, require that 100 percent of glass be treated.

Implementation of these mitigation measures would reduce potential impacts associated with the collision of birds into structures developed in the West Berkeley area to a level considered *less than significant*.

**Finding:** The City Council hereby finds that the potential significant impacts identified in the Final EIR will be avoided or substantially lessened through incorporation of the foregoing mitigation measures into the zoning regulations for Master Use Permits and standard conditions of approval for future development projects.

**Facts in Support of Finding:** The following language, included in the proposed zoning requirements for Master Use Permits, ensures implementation of the required mitigation.

#### 23B.36.090 Findings

- A. In order to approve a MUP, the Board must make both the finding required by Section 23B.32.040.A and the following additional findings:
1. The proposed project will be consistent with the purposes of this chapter;
  2. The proposed project includes the applicable requirements of the Mitigation Monitoring Program adopted concurrently with this Chapter; and
  3. All new building within the proposed project must 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.

Consistent with CEQA Guidelines for tiering, future development projects will be analyzed according to the MMP's checklist and the zoning regulations, cited above, to ensure that the project's environmental effects to ensure that appropriate conditions of

approval are required to reduce potential impacts to a *less-than-significant* level. In particular, as described in the FEIR, application of the bird-safe standards reduce impacts to *less-than-significant* because they address the visual cues that result in collision. Furthermore, the required mitigation has been demonstrated to reduce potential collisions by up to 90%.

## **LAND USE**

**Impact SEIR LU-2: Potential Land Use Change from Industrial to Residential within the MU-LI Zoning District South of University Avenue.** Four potential MUP sites that qualify for MUP processing and have been evaluated for future increased residential density (e.g., the Peerless Greens, the Saul Zaentz Media Center, the OSH/H.J. Heinz Company Plant Building, and the Marchant Building.) Location of intense residential density within industrially-zoned land may affect the continued viability of industrial uses and trigger land uses changes. This would be a *potentially significant* impact.

**Mitigation SEIR LU-2A: Site-Specific Measures to “Buffer” Residential and Commercial Uses. (Duplicates Mitigation SEIR LU-1A)**

**Mitigation SEIR LU-2B: Required Findings for MUP Projects that Contain both MU-LI- and MU-R- and/or C-W-Zoned Land. (Duplicates Mitigation SEIR LU-1B)**

**Finding:** The City Council hereby finds that the potential significant impacts identified in the Final EIR has been avoided by prohibiting residential uses from the MU-LI, M, and MM districts as was originally proposed to be allowed.

**Facts in Support of Finding:** The regulations as presented to the Council for approval do not allow residential uses to be located within the M, MM, or MU-LI portions of an MUP site as was previously proposed. The mitigations are, therefore, not required.

**Impact SEIR LU-3: Conflicts with the Suggested Implementation Measures within the West Berkeley Plan.** The provision of the proposed Master Use Permit process, taken as a whole, would allow otherwise prohibited uses to be established within the MU-R and C-W portions of an MUP site. This outcome would conflict with the West Berkeley Plan and, therefore, would be considered a *potentially significant* impact.

**Mitigation SEIR LU-3: Amend the Implementation Measures within the West Berkeley Plan.** In order to mitigate this plan inconsistency, the City Council shall amend the implementation section of the West Berkeley Plan to allow this intermingling of uses, consistent with the proposed Master Use Permit process, within the boundaries of a Master Use Permit site.

Implementing **Mitigation SEIR LU-3** will maintain consistency with the implementation portion of the West Berkeley Plan, reducing the potential impact to a level that is *less than significant*.

**Finding:** The City Council hereby finds that the potential significant impacts identified in the Final EIR will be avoided or substantially lessened through amendment to the West Berkeley Plan.

**Facts in Support of Finding:** The City Council will approve the following amendment to the West Berkeley Plan, Section 1, Chapter VII, “Land Use Regulations of the West Berkeley Plan – For Adoption in Principal” prior to approving the proposed MUP zoning amendments:

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

- ~~On~~ Are located on sites of at least 4 (modified 201244) acres or one 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 second bullet above implements Mitigation SEIR LU-3.

## **TRANSPORTATION / TRAFFIC**

The SEIR addressed potential transportation impacts from the Project and concluded that they would not result in impacts not already evaluated in the Certified EIR, and that mitigation measures required in the Certified EIR are still valid for the SEIR and would result in the same level of significance after applying the same mitigation measures. No new mitigation measures were required for the Project. In the discussion of transportation/traffic impacts below, references to the “DEIR” and “FEIR” refer to the specific impacts and mitigations from the Certified EIR (which are part of the FEIR as defined herein).

The FEIR includes mitigations for all transportation impacts. Some impacts were classified as “Significant and Unavoidable” if:

- The project sponsor was an outside agency, such as Caltrans, and therefore, implementation of the mitigation was outside the control of the City, and/or
- Although the mitigation would improve conditions, the improvement would not be to an “acceptable” level based on either City or Caltrans’ standards.

In other cases, the FEIR states that effective implementation of mitigation measures would reduce the potentially significant impact to a level of less than significant. However, the City Council hereby finds that it is infeasible to implement all of the mitigations that would reduce traffic levels to less than significance because it cannot ensure that full funding will be available for implementation. Although the City will require compliance with FEIR mitigations as conditions of approval, the City cannot assure at this time that the improvements will be implemented prior to a potentially significant impact.

It should be noted that a significant portion of traffic does not result from new development. Much of this congestion is due to regional traffic which is largely outside the control of the City. As stated on page 5-5 of the Certified EIR, "the amount of traffic passing through West Berkeley that has neither an origin nor destination in that area is projected to increase by approximately 40 percent between 2007 and 2030, further worsening local traffic conditions." The Transportation/Traffic section of the Certified EIR presents a detailed analysis of traffic conditions under the "No Project" alternative, which indicates that development anticipated under the existing zoning regulations would generate traffic which would contribute to unsatisfactory arterial and intersection operations in a number of locations. As also documented in the West Berkeley Circulation Master Plan Report, existing traffic conditions within West Berkeley are already poor and are expected to further deteriorate unless effective mitigation can be implemented.

While projects with potentially significant impacts will be subject to fair-share provision of funding for mitigation, because a significant portion of West Berkeley traffic does not result from new development, a fair share contribution may not address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because the City cannot assure at this time that all mitigations will be implemented prior to a potentially significant impact, the City Council finds that the following transportation impacts, which the Certified EIR classified as less than significant with mitigations, are significant and unavoidable:

Impact TRANS-5: Unacceptable Delay at University Avenue and 6<sup>th</sup> Street

Impact TRANS-14 & TRANS-38: West Berkeley Shuttle Impacts

Impact TRANS-15 & TRANS-39: Bike Network Impacts

Impact TRANS-16 and TRANS-40: Pedestrian Network Impacts

Impact TRANS-21: Unacceptable Delay at University Avenue and 6<sup>th</sup> Street

Impact TRANS-22: Unacceptable Delay at Dwight Way and 7<sup>th</sup> Street/Dwight Crescent.

Impact TRANS-33: Unacceptable Delay at Gilman Street and 2<sup>nd</sup> Street

Impact TRANS-34: Unacceptable Delay at Allston Way and 4<sup>th</sup> Street

Impact TRANS-36: Extended Queues at Hearst Avenue At-Grade Rail Crossing and Spillback to Adjacent Intersections

Further discussion is found under "Significant and Unavoidable Impacts".

## **II. SIGNIFICANT UNAVOIDABLE IMPACTS**

The Council has determined that the Project would result in the following potentially significant unavoidable environmental impacts.

### **AESTHETICS**

**Impact AES-1: Obstruction of Significant Public View Corridors.** As noted in the West Berkeley Plan EIR (1993), obstruction of significant public view corridors was a potentially significant impact associated with implementation of the West Berkeley Plan,

and is also a potentially significant impact associated with implementation of the West Berkeley Project. Public view corridors were identified along streets, and specifically Hearst Avenue, Virginia Street and Cedar Street. This would represent a *potentially significant* impact.

**Impact SEIR AES-1: Obstruction of Significant Public View Corridors.** Views from public streets (or "view corridors") of hills and ridgelines could be diminished by 100-foot tall buildings at some potential MUP sites, which would represent a *potentially significant* view corridor impact.

**Mitigation SEIR AES-1: Project-Specific Visual Simulations** (replaces Mitigation AES-1 from Certified EIR). To ensure that new MUP structures do not significantly obscure significant views of the Bay or hills, Master Use Permit applicants and the Planning & Development Department shall adhere to the same steps and standards required by Mitigation Measure 1 of the West Berkeley Plan EIR<sup>1</sup>.

**Impact SEIR AES-2: Obstruction of Scenic Views from Aquatic Park and I-80/I-580.** Views of the Berkeley Hills and its ridgeline from Aquatic Park and I-80/I-580 could be noticeably diminished by future MUP buildings constructed up to the 100-foot maximum. Potentially significant view impacts could result from development south of University Avenue, as seen from the west side of Aquatic Park and I-80/I-580.

**Mitigation SEIR AES-2: Project-Specific Visual Simulations.** To ensure that new MUP structures do not significantly obscure significant Scenic Views from Aquatic Park and I-80/I-580, Master Use Permit applicants and the Planning & Development Department shall adhere to the same steps and standards required by Mitigation Measure 1 of the West Berkeley Plan EIR. Guidelines may be developed by the Department of Planning & Development to help evaluate and address potential cumulative view impacts.

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<sup>1</sup> **West Berkeley Plan Mitigation 1:** If a project exceeds two stories (30 feet) within an east-west public view corridor (such as University, Cedar, Dwight, or Hearst) and would exceed the height of adjacent buildings, then the City Planning Department shall undertake the following procedure at the outset of the site planning process to ensure that it does not obscure significant views toward the bay or hills:

Step A: Request that project sponsors show proposed building massing through use of wireframe or photo-simulation techniques during design review in order to reveal whether and how much new structures could obstruct significant views.

Step B: Require that the project incorporate stepped back building heights and/or broken rooflines in its designs. Box-like, unarticulated structures, particularly in commercial corridors, should be prohibited through design review procedures (discussed in Appendix A-3)

Step C: Require inclusion of outdoor signage (if any) in the plan review process and require that it be accurately depicted in the architectural drawings of the project. Signage would not be permitted above the roofline of any structure within view corridors or other areas characterized by prominent views, in accordance with the City's Sign Ordinance.

Step D: Where appropriate, require the inclusion of landscape plans to improve visual quality as part of the project's application packet in order to identify whether proposed vegetation could obscure significant public views, and prohibit any vegetation that would do so.

Step E: Require a project's design, including wireframes and signage, to be evaluated by the City's urban design staff and/or Zoning Adjustments Commission's Design Review Committee, to ensure the preservation of existing significant views prior to the issuance of building permits.

**Finding for AES-1, SEIR AES-1, and SEIR AES-2:** The City Council hereby finds that effective implementation of Mitigation Measures SEIR AES-1 and SEIR AES-2 would reduce the impacts to a level considered less than significant, however, as described in the “Facts in Support of Finding” Section below, since there is no way to ensure that such design options will *always* fully mitigate the impact in every case, the impact would remain potentially *significant and unavoidable* as was also determined in the 1993 West Berkeley Plan EIR. The City Council hereby finds that without specific development project applications, it is infeasible at this time to ensure in the Program EIR that these impacts are mitigated to a less-than-significant level.

**Facts in Support of Finding:** For Mitigation AES-1, the Certified EIR summarized the mitigation from the West Berkeley Plan EIR<sup>2</sup>, rather than including it verbatim. The Certified EIR concluded that impacts on view corridors would remain potentially *significant and unavoidable*. The SEIR further analyzed aesthetic impacts and included the more specific mitigation language from the West Berkeley Plan EIR (see footnote 1), rather than the generalized summary, and also added a mitigation for projects that are proposed up to the 100-foot maximum height.

Mitigation Measure SEIR AES-1 will ensure that construction of all new MUP buildings over 30 feet in height that are located on public view street corridors will be reviewed on a case-by-case basis to analyze whether they will obstruct the identified view corridors. SEIR AES-2 will ensure that construction of all MUP projects adjacent to Aquatic Park and those with proposed buildings over 75-feet in height will be reviewed on a case-by-case basis to analyze whether they will obstruct views from Aquatic Park and I-80/I-580 toward the Berkeley Hills and ridgeline. In either case, if views are significantly obstructed, the building design will be revised to reduce the resulting impact to the satisfaction of the City.

In particular, the proposed MUP regulations mitigate potential scenic view impacts from Aquatic Park, I-580/80, and along public view corridors as follows:

- a. The number of sites where buildings can exceed 75 feet is limited and heights up to 100 feet are only allowed to accommodate a discrete portion of a manufacturing process.

Section 23B.36.050.A.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, industrial infrastructure may exceed 75 feet only if the applicant can demonstrate absolute necessity to permit the establishment of a discrete portion of a proposed

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<sup>2</sup> **Certified EIR Mitigation Measure AES-1:** Project-Specific Visual Simulations (Superseded by SEIR AES-1): If a proposed project exceeds two stories (30 feet) within an east-west public view street corridor (such as University Avenue, Cedar Street, Dwight Way, or Hearst Avenue), and would exceed the height of adjacent buildings, then the Planning and Development Department shall undertake the following procedure to ensure that it does not significantly obscure significant views toward the Bay or hills:

Project applicants shall provide as part of a complete application package, computer simulations or other simulations to visually demonstrate the impact of a proposed project (including building massing, signage and landscaping) on public view corridors. If a proposed project would significantly obscure a public view corridor to the Bay or hills, modifications to the project shall be required, such as stepping back building mass or modifying rooflines, signage or proposed landscaping to reduce the impact to a less than significant level.

production or manufacturing process, subject to the findings in Section 23B.36.090.H. In no case shall height exceed 100 feet.”

- b. View impacts of *all proposed buildings* on sites adjacent to must be analyzed.

Section 23B.36.090.H: “In order to approve a Master Use Permit adjacent to 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.”

- c. MUP projects will be analyzed according to the MMP’s checklist (which is a required finding in Section 23B.36.090.A.2) to ensure that the analysis required by SEIR AES-1 is provided for projects along view corridors.

The following requirements have also been included in the MMP to ensure effective implementation of the mitigation:

All buildings on an MUP site adjacent to Aquatic Park shall be set back an average of 100 feet from the water’s edge.

Building height at the setback shall be no taller than 45 feet and will step back away from Aquatic Park such that no part of a building may intersect a plane drawn at a 45 degree angle from horizontal to a maximum of 75 feet.

No MUP site adjacent to Aquatic Park may have buildings that exceed 75 feet in height.

In addition, the MUP Ordinance provides that no Master Use Permit may be approved for any site adjacent to Aquatic Park until the Council adopts additional measures to protect its environmental, recreational and aesthetic qualities.

While effective implementation of **Mitigations SEIR AES-1 and SEIR AES-2** would reduce this potentially significant impact to a level considered *less than significant*, there may be site-specific conditions when the mitigations would not be sufficiently effective due to the physical characteristics of the property and the surrounding properties and/or specific views and view corridors. Without the details of future development projects, there is no way to ensure than such design options will fully mitigate the impact in every case. In addition, to require complete mitigation in all cases would be inconsistent with project objectives of facilitating development in the area. As was determined regarding Aesthetic impacts when the 1993 West Berkeley Plan EIR was certified, the impact would, therefore, remain potentially *significant and unavoidable*.

**Impact AES-3: Project-Specific Shadows Falling onto Public Open Space or Recreational Areas.** Individual structures that may be proposed under the revised zoning regulations in the West Berkeley Project could add new shadows that would fall on existing public open space (not including streets and sidewalks) or recreational areas within West Berkeley. This would represent a *potentially significant impact*.

**Impact SEIR AES-3: Project-Specific Shadows Falling onto Public Parks, Recreational Trails, Schoolyards or Residential Uses.** As demonstrated in the SEIR, new MUP structures could create new shadows on existing public parks, open space, recreational trails, schoolyards or residential areas in and near West Berkeley. This impact would be considered *potentially significant*.

**Mitigation SEIR AES-3: Evaluate Shadow Effects for Proposed MUP Structures** (replaces Mitigation Measure AES-3 from Certified EIR). Applicants proposing structures within 200 feet of sensitive areas (i.e. open space, public parks, recreational trails, schoolyards and residential uses) shall modify the design of said buildings so that they will not cast a significant shadow on any sensitive areas. A significant shadow is defined as one that blocks direct sunlight for more than four hours a day for more than four months of the year on any area of an affected building or property that people would typically occupy.

These required design changes (to building placement, height and bulk) are expected to reduce shadow impacts to a level that is *less than significant*. However, since there is no way to ensure that they would be sufficiently effective in all cases, the impact would remain potentially *significant and unavoidable*.

**Finding:** The City Council hereby finds that effective implementation of Mitigation Measure SEIR AES-3 through the project approval process would likely reduce the impacts to a level considered *less than significant*, however, because the specific details of future development projects are not currently known and could create shadowing and since there is no way to ensure that design options will always fully mitigate the impact (as described in the “Facts in Support of Finding” Section below),, the impact would remain potentially *significant and unavoidable*. The City Council hereby finds that without specific development project applications, it infeasible at this time to ensure in the Program EIR that these impacts are mitigated to a less-than-significant level.

**Facts in Support of Finding:** Shadowing impacts may be significant; however, without having details of specific development proposals, it is not possible to determine with certainty the level of impact. Mitigation Measure AES-3 required analysis of all projects with proposed heights of 45 feet or more to determine the extent to which such buildings may cast increased and unreasonable shadows on public open space, and required modifications be considered to reduce such shadowing. Buildings can only be constructed over 45 feet in height as part of a Master Use Permit. Mitigation Measure SEIR AES-3 requires analysis and modification to avoid casting a significant shadow on any sensitive areas. The following Proposed Ordinance section more strictly requires analysis for any buildings within 100 feet of Aquatic Park:

23B.36.090.G.In order to approve a Master Use Permit adjacent to 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.”

In addition, the MUP Ordinance provides that no Master Use Permit may be approved for any site adjacent to Aquatic Park until the Council adopts additional measures to protect its environmental, recreational and aesthetic qualities.

The EIR concludes that if locations, heights and bulk of new structures are modified to effectively reduce shadowing on public open space and recreational areas, the impact would be reduced to a level of *less than significant*. However, there may be site-specific conditions when the mitigation would not be sufficiently effective due to the physical characteristics of the property and the surrounding properties. Without the details of future development projects, there is no way to ensure that such design options will fully mitigate the impact in every case. In addition, to require complete mitigation in all cases could be inconsistent with project objectives of facilitating development in the area. Therefore, the impact would remain potentially *significant and unavoidable*.

**Impact AIR-1: Conflict with Clean Air Plan (CAP).** Development anticipated as a result of the West Berkeley Project would increase employment at a greater rate than was assumed when the BAAQMD prepared the latest update to the CAP. This could lead to greater regional emissions of nonattainment air pollutants (or their precursors) than assumed in the CAP. This would be a *significant and unavoidable* impact.

**Impact SEIR AIR-1: Conflict with the Clean Air Plan.** Development anticipated as a result of implementation of the Project would increase vehicle trips and miles traveled proportionally higher than what would normally be associated with the anticipated population increase, which is considered a conflict with the Clean Air Plan and criteria air pollutants reduction measures. This would be a *significant and unavoidable* impact.

**Finding:** No mitigations were included in the FEIR. The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Until the current Clean Air Plan (CAP) is modified to reflect changed assumptions regarding future growth within West Berkeley and the City of Berkeley generally, adoption and implementation of the West Berkeley Project will remain technically inconsistent with the Bay Area Air Quality Management District's (BAAQMD) current CAP. This inconsistency results from BAAQMD's methodology for making assumptions for local growth and air pollutant estimates within a region-wide context. BAAQMD projections are based on land use designations developed by cities and counties through each local General Plan process; the Berkeley General Plan was updated in 2001 and was the basis for BAAQMD's growth assumptions and CAP (updated in its Bay Area 2005 Ozone Strategy).

The BAAQMD methodology is not dynamic with regard to local growth and air pollution estimates. The methodology is poorly suited for factoring additional growth in one location (such as West Berkeley) while also factoring a reduction in growth elsewhere in the region.

The City expects that West Berkeley Project growth estimates will be incorporated into the next round of CAP revisions, which will eliminate the technical disparity between air pollution generated by West Berkeley growth and the outdated estimates embedded in the CAP. It is not the City's responsibility to amend the CAP; therefore, it is not feasible for this technical inconsistency to be resolved while also meeting the West Berkeley Project goals for timely economic development. Delaying the project until the BAAQMD updates the CAP would be contrary to project objectives.

**Impact SEIR AIR-2: Exposure of Sensitive Receptors to Increased Health Risks Related to Toxic Air Contaminants (TACs) and Particulate Matter (PM<sub>2.5</sub>).** Development anticipated under the Project may expose sensitive receptors to increased health risk through development of non-residential sources (including associated mobile sources such as loading dock activity, truck traffic, forklifts, etc., and temporary emissions related to construction) of TACs and PM<sub>2.5</sub> in proximity to existing residential uses and/or development of new residential uses in proximity to sources of TACs and PM<sub>2.5</sub>. Such exposure would represent a *potentially significant* impact.

**Mitigation SEIR AIR-2B: Project-Specific Analysis/Mitigation of Potential TAC and PM<sub>2.5</sub> Emissions Associated with Proposed Development Projects Considered New Sources of TAC.** The City shall require Master Use Permit development projects that would be considered potentially significant sources of increased health risk to existing or planned sensitive receptors to assess project-specific health risk levels following procedures outlined by BAAQMD. Sources contributing to health risk could include emissions from on-site operations, mobile emissions during operations, and/or construction-period emissions. If the project-specific analysis reveals significant increased health risk (based on BAAQMD guidance for individual sources), the project shall include measures to reduce emissions and shall provide analysis demonstrating that resultant mitigated levels have been reduced below project-specific significance levels for individual sources. The measures could include, but are not limited to, the following:

- Minimize idling time of on-site trucks through posted rules and availability of alternate power sources when docked.
- Utilize site planning to locate loading docks, generators, and other emissions sources away from sensitive receptors and provide buffers where appropriate.
- Reduce the emissions rate of vehicles and equipment through the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters and/or other control technologies as they become available.

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** The Project encourages new industrial development and allows residential development as part of a Master Use Permit. While implementation of Mitigation SEIR AIR-2B would require each project including new sources of emissions contributing to health risk to demonstrate that mitigated health risk levels are below significance levels for individual sources, or that background health risk

level already exceeds cumulative thresholds. BAAQMD considers any amount of increased health risk in areas already exceeding the cumulative thresholds to be a significant impact. Thus the only means to mitigate this impact to a level of insignificance would be to not go forward with the Project, which would be inconsistent with the Project objectives. Therefore, the impact of projects representing new sources of TACs and PM<sub>2.5</sub> in the West Berkeley area would be considered *significant and unavoidable* despite feasible reduction of project-specific impacts.

**Impact AIR-3: Possible Exposure of Sensitive Receptors to Odors.** Development anticipated as a result of adoption and implementation of the Project may expose sensitive receptors to odors due to the development of new non-residential development that may be sources of odors near sensitive receptors. In addition, new odor complaints may occur as a result of new sensitive uses that would be exposed to existing sources of odors in the West Berkeley area. Such exposures would represent a *potentially significant* impact.

**Impact SEIR AIR-3: Possible Exposure of Sensitive Receptors to Odors.** Development anticipated as a result of adoption and implementation of the proposed West Berkeley Project and the SEIR Amendments may expose sensitive receptors to odors due to the development of new non-residential development that may be sources of odors near sensitive receptors. In addition, new odor complaints may occur as a result of new sensitive uses (e.g., new residential development at four potential MUP sites) that would be exposed to existing sources of odors in the West Berkeley area. Such exposure would represent a *potentially significant* impact.

**Mitigation AIR-3 & SEIR AIR-3: Site-Specific Review/ Mitigation for Development Projects Expected to Result in Odor Complaints.** The following measures shall be implemented to reduce odor complaints associated with new development in the West Berkeley area:

- The City shall review plans for new sources that may produce odors (e.g., restaurants) to ensure that these uses install appropriate equipment in accordance with accepted engineering practice, which may include exhaust filtration systems or other accepted methods of odor reduction.
- The City shall consider the potential for odor complaints when reviewing proposals for new sensitive developments that include outdoor uses (e.g., day care centers or residences with outdoor activity areas). Proposed projects shall include measures to reduce the potential for odor complaints; however, the City will have to recognize that it is not possible to completely reduce the potential for odors in outdoor settings in the West Berkeley area.

**Finding:** The City Council hereby finds that it is infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** The Project encourages new industrial development and allows residential development as part of a Master Use Permit. As described in the

EIR, odors could be a problem, either because a development project would create objectionable odors near sensitive receptors or because a development project would place people near sources of objectionable odors. With adequate odor controls and operational features in place, objectionable odors from new uses developed in the West Berkeley area should not generate objectionable odors, which would reduce the potential impact to a level of *less-than-significant*. This will be analyzed on a case-by-case basis as part of the normal environmental and zoning review process.

Regarding the potential impact on residential uses, the regulations as presented to the Council for approval do not allow residential uses to be located within the M, MM, or MU-LI portions of an MUP site as was previously proposed. Proposed zoning language addresses potential impacts on residential uses that may be included in the MU-R or C-W portion of an MUP site as follows.

23B.36.090.E. In order to approve a Master Use Permit that allows uses permissible in the M, MM, or MULI districts that are specifically prohibited in C-W or MUR 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.

Consistent with CEQA Guidelines for tiering, future development projects will be analyzed according to the MMP's checklist (which is also a required finding in Section 23B.36.090.A.2) and zoning regulations to ensure that the project's environmental effects are mitigated to a less-than-significant level.

However, existing industrial development *already* results in periodic complaints, and existing odor sources would likely continue to produce periodic objectionable odors. If such odors actually generate formal complaints from employees or owners of new businesses in the area, this would be considered a *significant and unavoidable* impact, which could not be lessened to a level of insignificance because the City has limited control over existing businesses. The only means to mitigate this impact to a level of insignificance would be to not go forward with the Project, which would be inconsistent with the Project objectives.

**Impact CUL-1: Demolition of Historic Resources.** Despite the substantial protections in place in City policy, it is possible that development anticipated under the West Berkeley Project could result in the demolition of historic resources located within West Berkeley. Were demolition of historic resources to occur, this would represent a *significant and unavoidable* impact associated with West Berkeley Project implementation. No mitigations are proposed in the FEIR.

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Although the City has strong policy language and procedures for historic preservation in the General Plan's Urban Design and Preservation Element and the West Berkeley Plan's Historic Preservation Goals and Policies, the West Berkeley Project cannot guarantee that designated historic resources

will not be demolished, as permitted by existing law. Feasible mitigations for reducing the potential for demolitions do not appear to exist, because reducing new development in West Berkeley would be contrary to Project objectives to encourage development consistent with the West Berkeley Plan.

## **NOISE**

**Impact NOI-2: Potential Increases in Noise Levels Resulting from Incompatible Land Uses.** Development enabled under the West Berkeley Project could introduce manufacturing and industrial uses near residential land uses. Such development could generate unacceptable levels of operational noise which would be incompatible with existing noise-sensitive residential uses nearby. This would be a represent a *potentially significant* impact.

**Impact SEIR NOI-2: Potential Increases in Noise Levels Resulting from Incompatible Land Uses.** Development enabled under the Project could introduce manufacturing and industrial uses near residential land uses, and residential land uses near manufacturing and industrial uses. Such development could generate unacceptable levels of operational noise which would be incompatible with existing noise sensitive residential uses, or could place new sensitive residential uses in areas where manufacturing and industrial operational noise would be incompatible with the new uses. This would represent a *potentially significant* impact.

**Mitigation SEIR NOI-2: Site-Specific Noise Studies.** (Replaces Mitigation NOI-2) Noise levels at residential property lines from new development shall be maintained not in excess of the Berkeley Municipal Code Limits. The approvals of the development should require a noise study demonstrating how the use would meet these standards and how it would be consistent with the City's noise standards. Where residential development may be proposed at any of the four sites where such development might be anticipated under the Project (e.g., the Peerless Greens parcel, the Saul Zaentz Media Center parcel, the OSH/H.J. Heinz Company Plant Building parcel and the Marchant Building parcel), the developer must demonstrate to the City's satisfaction through the use of site-specific noise analysis that those who would be living in proposed residential units at those sites would not be exposed to noise levels in excess of the Berkeley Municipal Code Limits prior to project approval.

**Finding:** The City Council hereby finds that the implementation of the above measures could reduce the impact to a level of *less than significant* in some instances. However, in some instances the implementation of feasible noise-attenuating mitigation may not be sufficient to reduce noise levels enough to meet current standards for interior and exterior noise exposure in residences, and in these instances the impact would remain *significant and unavoidable*.

**Facts in Support of Finding:** Noise impacts will be mitigated by existing regulations and procedures, including required compliance with the FEIR mitigations and the MMP (a required finding in Section 23B.36.090.A.2), which will be ensured through enforcement of the BMC and review of potential noise impacts during the project review process. In particular, the project approval process will require site-specific analysis of

potential noise issues including, but not limited to the locations of industrial operations, loading docks, and ventilation systems. Project revisions will be required as necessary to ensure that future development projects comply with BMC requirements and do not create any significant noise impacts. However, the introduction of new industrial operations near existing residences may result in impacts that cannot be mitigated to a level of insignificance (for example, it may not be feasible to implement noise-attenuating mitigation in existing residences) The only remaining means to mitigate this impact to a level of insignificance would be to require noise-attenuating measures that may not be economically feasible or not go forward with the Project, which would be inconsistent with the Project objectives. Accordingly, the City Council finds that the impacts are *significant and unavoidable*.

**Impact NOI-3: Construction Noise.** Businesses and residences throughout West Berkeley would be intermittently exposed to high levels of construction noise throughout the plan horizon. Construction could temporarily elevate noise levels at adjacent businesses and residences by 15 to 20 dBA or more. This represents a *potentially significant* impact.

**Mitigation NOI-3: Construction Noise Abatement.** Construction equipment should be well maintained and used judiciously to be as quiet as practical. The following measures, when applicable, are recommended to reduce noise from construction activities:

- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- Utilize “quiet” models of air compressors and other stationary noise sources where technology exists.
- Locate stationary noise-generating equipment as far as feasible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.
- Prohibit unnecessary idling of internal combustion engines.
- Pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
- Construct solid plywood fences around construction sites adjacent to operational business, residences or noise-sensitive land uses.
- A temporary noise control blanket barrier could be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- Route construction-related traffic along major roadways and as far as feasible from sensitive receptors.
- Ensure that construction activities (including the loading and unloading of materials and truck movements) are limited to the hours of 7:00 AM to 7:00 PM on weekdays and between the hours of 9:00 AM and 8:00 PM on weekends or holidays.
- Ensure that excavating, grading and filling activities (including warming of equipment motors) are limited to between the hours of 7:00 AM to 7:00 PM on weekdays and between the hours of 9:00 AM and 8:00 PM on weekends or holidays.

- Businesses, residences or noise-sensitive land uses adjacent to construction sites should be notified of the construction schedule in writing. Designate a “construction liaison” that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the liaison at the construction site.

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Mitigation measures, City policies and conditions of approval will significantly lower the impacts of construction noise. The West Berkeley Project primarily affects commercial and industrial districts; therefore, impacts to residents will be minimized. However any construction noise in a largely-developed city will likely affect existing businesses and residents. As a result of the extended period of time that noise would be generated by large construction projects, it is not possible to ensure that construction noise can be mitigated to a level of insignificance in all cases. Thus the only remaining means to mitigate this impact to a level of insignificance would be to not go forward with the Project, which would be inconsistent with the Project objectives. Accordingly, the City Council finds that the impacts are *significant and unavoidable*.

## **LAND USE**

**Impact SEIR LU-1: Potential Use Conflicts Created by Establishing Certain MU-LI Uses within the MU-R or C-W Portions of an MUP Site.** When a potential MUP site contains MU-R- and/or C-W-zoned land, allowing MU-LI uses into these areas may cause use conflicts. The conflicts would primarily result from placing new industrial uses in close proximity to residential or commercial uses, and could result in *potentially significant* impacts.

**Mitigation SEIR LU-1A: Site-Specific Measures to “Buffer” Residential and Commercial Uses.** When an applicant proposes locating industrial land uses adjacent to residential and commercial uses, whether within the MUP site or adjacent to it, the applicant shall prepare an analysis of the uses proposed at the MUP site and the current and permissible future uses in the surrounding properties. This analysis shall identify:

1. Conflicts that might arise due to “worst case” operation of the MUP facilities,
2. Potential measures to mitigate those impacts,
3. The likely effectiveness of these mitigation measures over time to ameliorate the problem,
4. Performance measures that would indicate successful mitigation of the potential conflict,
5. Mitigation measures may include but are not limited to:
  - building setbacks,
  - buffers between uses,

- noise controls,
  - changes in building design, and
  - use of best management practices.
6. This analysis shall be a required submittal for all Master Use Permit applications, and
  7. Incorporate mitigation measures, as applicable, into the Master Use Permit Conditions of Approval.

**Mitigation SEIR LU-1B: Required Findings for MUP Projects that Contain both MU-LI- and MU-R- and/or C-W-Zoned Land.** In order to approve a Master Use Permit that would allow new MU-LI uses that were otherwise prohibited in a C-W or MU-R zoning district, 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 areas.

**Finding for SEIR LU-1:** The City Council hereby finds that it infeasible to mitigate these impacts to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Implementation the mitigations are likely to reduce potential land use conflicts created by the introduction of MU-LI uses otherwise prohibited in the C-W and MU-R districts onto those districts. In addition, the revised regulations as presented to Council for approval reduce potential impacts by prohibiting construction products manufacturing, pharmaceutical manufacturing, testing and commercial biological research laboratories, and commercial excavation within the MU-R portions of an MUP site. Although MUP Finding 23B.36.090.E specifically requires that the proposed location of an “M” use in the C-W or MU-R portion of a site only be allowed if such location would not increase the incompatibility of uses within the site or between the site and surrounding area, it is conceivable that there might be extraordinary circumstances in a specific case that would not result in mitigation to a level of insignificance. Thus the only remaining means to mitigate this impact to a level of insignificance would be to not go forward with the Project, which would be inconsistent with the Project objectives. Therefore, it is impossible to guarantee that the mitigations will be effective in all situations, and the Council finds that the land use compatibility impacts are considered *significant and unavoidable*.

## **TRANSPORTATION/TRAFFIC**

The SEIR addressed potential transportation impacts from the Project and concluded that they would not result in impacts not already evaluated in the Certified EIR, and that mitigation measures required in the Certified EIR are still valid for the SEIR and would result in the same level of significance after applying the same mitigation measures. No new mitigation measures were required for the Project. In the discussion of transportation/traffic impacts below, references to the DEIR and FEIR refer to the specific impacts and mitigations from the Certified EIR (which are part of the FEIR as defined herein).

The FEIR addresses impacts from the West Berkeley Project and cumulative impacts. Although the FEIR states that effective implementation of mitigation measures would reduce some of the potentially significant transportation and traffic impacts to a level of less-than-significant, the City Council finds that all transportation impacts are “Significant and Unavoidable”. In some cases, the project sponsor is an outside agency, such as Caltrans, and therefore, implementation of the mitigation is outside the control of the City. In other cases, although the mitigation would improve conditions, the improvement would not be to an “acceptable” level based on either City or Caltrans’ standards. In general, while effective implementation of mitigation measures would reduce the some potentially significant impacts to a level of less than significant, the City cannot ensure that funding will be available for implementation of these mitigations and, therefore, as discussed further below, the impacts remain Significant and Unavoidable.

Reduced development would lessen the transportation impacts, but would not meet the Project objectives, as discussed further in the Alternatives Section of this document. In addition, a significant portion of traffic does not result from new development and is created by regional traffic which is largely outside the control of the City. As stated on page 5-5 of the Certified EIR, “the amount of traffic passing through West Berkeley that has neither an origin nor destination in that area is projected to increase by approximately 40 percent between 2007 and 2030, further worsening local traffic conditions.” The Transportation/Traffic section of the Certified EIR presents a detailed analysis of traffic conditions under the “No Project” alternative, which indicates that development anticipated under the existing zoning regulations would generate traffic which would contribute to unsatisfactory arterial and intersection operations in a number of locations. As also documented in the West Berkeley Circulation Master Plan Report, existing traffic conditions within West Berkeley are already poor and are expected to further deteriorate unless effective mitigation can be implemented.

**Impact TRANS-1: 2015 Freeway Operations Impacts.** The additional trips generated by the Project would continue to degrade freeway operations on the segments of I-80/I-580 adjacent to West Berkeley, creating a significant impact. While the majority of these segments are already operating at failing conditions, new trips generated by the Project continue to worsen operation which triggers a *significant and unavoidable* impact.

**Impact TRANS-17: 2030 Freeway Operations Impacts.** The additional trips generated by the Project would continue to degrade freeway operations on the segments of I-80/I-580 adjacent to West Berkeley, creating a significant impact. While the majority of these segments are already operating at failing conditions any new trips generated by the Project will trigger a *significant and unavoidable* impact.

**Mitigation TRANS-1A: Transportation Demand Management (TDM) Measures.** The City should support the development and implementation of West Berkeley TDM and parking strategies as described in the earlier discussion on Trip Generation in this DEIR and in the TDM Section of the West Berkeley Circulation Master Plan. This mitigation will reduce overall trip making and lessen all impacts of the Project on the traffic

network. TDM Measures can be implemented through project-specific conditions of approval and/or through adoption of a comprehensive TDM Plan that includes on-street parking restrictions.

**Mitigation TRANS-1B: Integrated Corridor Mobility Project.** The City should continue coordination with Caltrans and the ACCMA to implement the Integrated Corridor Mobility (ICM) Project along I-80 and other strategies to improve operational performance and/or reduce demand. Improvements to these segments of the I-80/I-580 corridor would reduce spillover traffic on West Berkeley's arterial facilities, namely San Pablo Avenue. This project may improve no Project operations above failing conditions, which would reduce the significant impacts caused by the small incremental increase in density contributed by the Project. However, sufficient information is not available at this time to conclude with certainty that mitigation would reduce this impact to a less-than-significant impact in all circumstances.

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** While compliance with the Final EIR mitigations and the MMP may lessen the impact, full mitigation in all areas cannot not be ensured, especially given the regional nature of transportation impacts. As documented in the Final EIR, Transportation Demand Management (TDM) would reduce the significant impacts caused by the small incremental increase in density contributed by the Project; however, sufficient information is not available at this time to conclude with certainty that mitigation would reduce this impact to a less-than-significant impact in all circumstances. The City strongly supports TDM, and there are numerous General Plan and West Berkeley Plan policies that discourage single-occupant vehicle use and encourage implementation of transportation demand management tools. The proposed West Berkeley Transportation Services Fee (TSF) includes funding for TDM measures (such as development and implementation of a parking program, expansion and coordination of shuttles, increased bike parking, and development of incentives for development to include TDM measures); however, there is no guarantee that the TSF will be adopted. In addition, one of the purposes of the West Berkeley Project's Master Use Permit (MUP) process is to reduce vehicle use by employees, and one of the benefits that may be proposed by developers as part of an MUP project is TDM improvements; therefore, this may also assist with lessening traffic impacts on the freeways. However, TDM measures could not fully mitigate the impact of all new traffic on I-80, especially given existing failing conditions and the regional nature of traffic impacts in West Berkeley.

Regarding the Integrated Corridor Mobility Project, which is estimated to be implemented by 2013, the ACCMA has been working with Caltrans and local jurisdictions including the City of Berkeley to evaluate corridor management elements such as ramp metering, changeable message signage and variable speed limits to improve traffic flow and reduce congestion on I-80. The I-80 ICM project is progressing with initial phases under construction now. Upgraded traffic signal control systems are

planned to be installed at some Berkeley intersections. Although they will not impact day-to-day operations, they should facilitate clearance of traffic diverting from the freeway onto City streets during freeway incidents. The changes are not anticipated to change routine traffic operations nor reduce this impact to a less-than-significant impact in all circumstances.

The project remains under the control of Caltrans and the Alameda County Transportation Commission. The City does not have responsibility or jurisdiction for the ICM Project and sufficient information is not available at this time to conclude with certainty that the ICM Project would reduce this impact to a less-than-significant impact in all circumstances.

Regarding the 2030 impacts, implementation of Mitigation TRANS-1A (TDM), above, would reduce the degree of impact by reducing Project-generated trips on the freeway network. Support of the 2030 TDM package would reduce three segments to less than significant impacts including eastbound University Avenue to Gilman Street (AM), westbound Ashby Avenue to Powell Street (AM) and eastbound Powell Street to Ashby Avenue (PM). Implementation of Mitigation TRANS-1B (Integrated Corridor Mobility Project), above, in coordination with Caltrans and the ACCMA may also identify operational solutions for these segments of I-80/I-580. Although these measures would reduce this impact to a less than significant level at some locations, it would not be reduced to a level of less than significant at others, thus the impact would remain *significant and unavoidable*.

**Impact TRANS-2: Westbound Gilman Street Freeway Ramp Impacts.** The additional trips generated by the Project would continue to impact the westbound Gilman Street off ramp during the AM and PM peak hours. This represents a *potentially significant impact*.

**Impact TRANS-8: Unacceptable Delay at Gilman Street and I-80 WB On/Off Ramp.** Vehicle trips added to this intersection as a result of the Plus Project condition continue to worsen delay at the off ramp stop control. This would be a *potentially significant impact*.

**Impact TRANS-9: Unacceptable Delay at Gilman Street and I-80 EB On/Off Ramp.** Vehicle trips added to this intersection as a result of the Plus Project condition continue to worsen delay at the off ramp stop control. This would be a *potentially significant impact*.

**Impact TRANS-11: Unacceptable Delay at Gilman Street and Eastshore Highway.** Vehicle trips added to this intersection as a result of the Plus Project condition continue to worsen delay along Eastshore Highway for the stop controlled movements. This would be a *potentially significant impact*.

**Impact TRANS-29: Unacceptable Delay at Gilman Street and I-80 WB On/Off Ramp.** Increased vehicle trips added to this intersection as a result of the plus Project condition

continue to worsen delay at the off ramp stop control. This would be a *potentially significant* impact.

**Impact TRANS-30: Unacceptable Delay at Gilman Street and I-80 EB On/Off Ramp.**

Increased vehicle trips added to this intersection as a result of the plus Project condition continue to worsen delay at the off ramp stop control. This would be a *potentially significant* impact.

**Impact TRANS-32: Unacceptable Delay at Gilman Street and Eastshore Highway.**

Increased vehicle trips added to this intersection as a result of the plus Project condition continue to worsen delay along Eastshore Highway for the stop controlled movements. This would be a *potentially significant* impact.

**Mitigation TRANS-2, TRANS-8, TRANS-9, TRANS-11, TRANS-29, TRANS-30 & TRANS-32: Gilman Street/I-80 Roundabout.**

The City should continue to work with Caltrans to develop the proposed dual roundabout project at the Gilman Street/I-80 Interchange. This project would reduce queue lengths well below the available storage and mitigate the impact to a less than significant level. This mitigation measure would reduce the potentially significant impact to a less-than-significant level, however, uncertainties associated with its possible implementation require this impact to be considered *significant and unavoidable* at this time.

**Finding:** The City Council hereby finds that it infeasible to mitigate these impacts to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** The mitigation measures described above would reduce the potentially significant impact to a less-than-significant level. While the City is currently working with Caltrans on development of the Gilman Street/I-80 Roundabout and will continue to do so in compliance with the Final EIR mitigations and the MMP, mitigation to a level of less than significance cannot be ensured. In particular, the City does not have responsibility or jurisdiction over the Gilman Street/I-80 Roundabout project. Furthermore, the Gilman Street/I-80 Roundabout project is still in preliminary design, has not been approved, does not have funding and would need to be implemented jointly with Caltrans. Although funding to support the project has included in the proposed West Berkeley Transportation Services Fee (TSF), such funding is a very small percent of the total amount needed and, furthermore, there is no guarantee that the TSF will be adopted. Because the City cannot assure at this time that the improvements can be implemented prior to a potentially significant impact, the City Council finds that the impacts are *significant and unavoidable*.

The City Council notes that the FEIR categorizes Impacts 29, 30 and 32 as “less than significant” with mitigation because it is “highly probable” that the Roundabout will be constructed by 2030. However, the City Council finds that Impacts 29, 30 and 32 remain *significant and unavoidable* because the project is still in preliminary design, has not been approved, does not have funding and would need to be implemented jointly with Caltrans and; therefore, it is unknown whether the Roundabout will be in place by 2030.

**Impact TRANS-3: Westbound University Avenue Freeway Ramp Impacts.** The additional trips generated by the Project would result in a 95<sup>th</sup> percentile queue length which would exceed storage capacity of this ramp. This is created by westbound vehicles exiting I-80/I-580 and turning left on University Avenue to go west toward the Marina/Proposed Ferry Terminal and West Frontage Road. Increases in volumes along University Avenue create few gaps for a safe turning movement to be complete, resulting in spillback into the free right turn channelized lane and into the freeway mainline. This would represent a *potentially significant* impact.

**Impact TRANS-10: Unacceptable Delay at University Avenue and I-80 WB On/Off Ramp.** Vehicle trips added to this intersection as a result of the Plus Project condition continue to worsen delay at the off ramp stop control. This would be a *potentially significant* impact.

**Impact TRANS-19: Westbound University Avenue Freeway Ramp Impacts.** Similar to the 2015 impact, the additional trips generated by the Project in 2030 would result in a 95<sup>th</sup> percentile queue length which would exceed storage capacity of the ramp. This would be a *potentially significant* impact.

**Impact TRANS-31: Unacceptable Delay at University Avenue and I-80 WB On/Off Ramp.** Increased vehicle trips added to this intersection as a result of the plus Project condition continue to worsen delay at the off ramp stop control. This would be a *potentially significant* impact.

**Mitigation TRANS-3, TRANS-10, TRANS-19 and TRANS-31:** University Avenue/West Frontage Road Interchange Redesign. Further investigation of an interchange redesign for the westbound on/off ramp and West Frontage Road at University Avenue would reduce queuing and spillback. A proposed roundabout design has been identified which would eliminate the queuing impact.

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Continued investigation and eventual construction of improvements to the University Avenue Interchange would lessen impact to a less-than-significant level; however, mitigation cannot be ensured, especially given the lack of City responsibility and jurisdiction over the Interchange Redesign project and uncertain funding. In particular, the Interchange Redesign project has not entered preliminary design, has not been approved, does not have funding and would need to be implemented jointly with Caltrans. Because the City cannot assure at this time that the improvements can be implemented prior to a potentially significant impact, the City Council finds that the impacts are *significant and unavoidable*.

**Impact TRANS-4: 2015 Arterial Impacts.** The additional trips generated by the Project would continue to impact segments of San Pablo Avenue, University Avenue and Ashby

Avenue during the weekday peak hours. These impacted facilities would limit operations for autos and emergency service vehicles during the peak hour conditions. This would represent a *potentially significant* impact.

**Mitigation TRANS-4A: SMART Corridors Program.** The City should continue to work with the ACCMA and Caltrans on the SMART corridors program and explore innovative signalization systems such as adaptive signalization to optimize capacity on arterial segments in West Berkeley. This and TDM implementation would reduce the degree of impact by reducing Project-generated trips but not to a less-than-significant level. As a result, this impact would be considered *significant and unavoidable*.

**Mitigation TRANS-4B: Ashby Avenue Deficiency Plan.** The City should work with the ACCMA to develop a deficiency plan for Ashby Avenue to conform with CMP requirements.

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** While compliance with the Final EIR mitigations and the MMP would lessen the impact, full mitigation of impacts on segments of San Pablo Avenue, University Avenue and Ashby Avenue during the weekday peak hours is not possible. The mitigation measures would reduce the potentially significant impact to a less-than-significant level by bringing three of the five PM peak hour impacts (northbound San Pablo Avenue, westbound Gilman Street and westbound Ashby Avenue) to a less-than-significant level. However, full mitigation of these impacts would require additional physical capacity or roadway expansion which is not feasible along these arterial segments. Furthermore, the mitigations require actions by Caltrans and ACCMA, which the City cannot control and; therefore, the City Council finds that the impact is significant and unavoidable.

**Impact TRANS-5: Unacceptable Delay at University Avenue and 6th Street.** High vehicular demand at this intersection during the weekday PM and weekend MD peak hours results in unacceptable delay at this intersection. This would be a potentially significant impact.

**Mitigation TRANS-5A: Install Traffic Signal.** The City should install a traffic signal at the intersection of University Avenue and southbound 5<sup>th</sup> Street; operate it as a group control with the traffic signal located at the intersection of University Avenue and 6<sup>th</sup> Street. The proposed geometric improvements are shown in the **Technical Appendix – Traffic Analysis**.

**Mitigation TRANS-5B: Restripe Southbound 5th Street.** The City should restripe the southbound 5th Street to allow vehicles to make a right turn onto Frontage Road and University Avenue, both.

**Finding:** Although the EIR states that effective implementation of these mitigation measures would reduce the potentially significant impact to a level of *less than*

*significant*, the City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Potential impacts will be analyzed for individual projects during the environmental review and discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact on the University and 6<sup>th</sup> intersection, a traffic study is required and mitigations are required to address any significant impacts identified. Projects having a significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation. However, because a significant portion of traffic in West Berkeley does not result from new development, a fair share contribution may not address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because the City cannot assure at this time that the improvements can be implemented prior to a potentially significant impact, the City Council finds that the impact is *significant and unavoidable*.

**Impact TRANS-6: Unacceptable Delay at Ashby Avenue and 7<sup>th</sup> Street.** High vehicular demand at this intersection during the weekday PM peak hour results in unacceptable delay at this intersection. This would be a *potentially significant* impact.

**Impact TRANS-23: Unacceptable Delay at Ashby Avenue and 7<sup>th</sup> Street.** Increased vehicular demand at this intersection during the weekday PM peak hour results in unacceptable incremental delay at this intersection. This would be a *potentially significant* impact.

**Mitigation TRANS-6A and TRANS-23A: Remove/Replace Traffic Signal.** The City should remove the traffic signal located at the intersection of 7<sup>th</sup> Street and Potter Street; install stop signs along east/west approaches of Potter Street; and convert the Potter Street approaches to right-in/right-out movements.

**Mitigation TRANS-6B and TRANS-23B: Install Traffic Signal.** The City should install a traffic signal at the intersection of 7<sup>th</sup> Street and Anthony Street; restripe the southbound approach as shared left-through lane and one right-turn lane; construct a left-turn pocket along eastbound approach and convert the existing shared left-through-right lane to a shared through-right lane.

**Mitigation TRANS-6C and TRANS-23C: Extend 5th Street.** The City should extend 5<sup>th</sup> Street to Ashby Avenue; operate the southbound approach at the intersection of Ashby Avenue and 5<sup>th</sup> Street as a yield-controlled right-in/right-out movement and other approaches as free movements, as shown in the Technical Appendix- Traffic Analysis.

**Mitigation TRANS-6D and TRANS-23B: Convert Turning Movements.** The City should convert the northbound and southbound left turning movements at the intersection of Ashby Avenue and 7<sup>th</sup> Street from split to protected movements.

**Mitigation TRANS-23A: Implement Mitigation TRANS-1A (TDM).** This would reduce future auto demand at this intersection.

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Compliance with the Final EIR mitigations and the MMP would lessen the impact, however, full mitigation of impacts on the intersection of Ashby Avenue and 7<sup>th</sup> Street is not possible. In particular, while the mitigation measures would reduce the potentially significant impact to a less-than-significant level under City of Berkeley standards, but the impact would remain *significant and unavoidable* according to Caltrans standards.

All new buildings require discretionary approval and environmental review. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact, a traffic study is required and mitigations are required to address any significant impacts identified. Projects having a significant impact on the Ashby and 7<sup>th</sup> intersection shall be required to provide a fair-share contribution toward implementation of the mitigation. While this mitigation requires a fair share contribution, because a significant portion of traffic in West Berkeley does not result from new development, a fair share contribution may not address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur.

Furthermore, although funding toward or implementation of specific improvements such as traffic signals and striping will be required through project-specific conditions of approval, through the Master Use Permit process, or adoption of a Transportation Services Fee, the City does not have full control of implementation of Mitigation TRANS-6C, which calls for extension of 5th Street through private property. Because the City cannot assure at this time that the improvements can be implemented prior to a potentially significant impact, and because the potential significant impact cannot be mitigated to a level of insignificance according to Caltrans standards, the City Council finds that the impact is significant and unavoidable.

**Impact TRANS-7: Unacceptable Delay at University Avenue and San Pablo Avenue.** High vehicular demand at this intersection during the weekday PM and weekend MD peak hours results in unacceptable delay at this intersection. This would be a *significant and unavoidable* impact.

**Mitigation TRANS-1A: Transportation Demand Management (TDM) Measures.** The City should support the development and implementation of West Berkeley TDM and parking strategies as described in the earlier discussion on Trip Generation in this DEIR and in the TDM Section of the West Berkeley Circulation Master Plan. This mitigation

will reduce overall trip making and lessen all impacts of the Project on the traffic network. TDM Measures can be implemented through project-specific conditions of approval and/or through adoption of a comprehensive TDM Plan that includes on-street parking restrictions.

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Full mitigation of this impact is not feasible due to limited opportunities for roadway expansion at this location and the need to protect the pedestrian network. Implementation of Mitigation TRANS-1A (TDM) would slightly reduce the degree of impact by reducing Project-generated trips at this intersection. However, implementation of TDM measures would only slightly reduce the degree of impact by reducing Project-generated trips and the impact would not be reduced to a level of insignificance. See Findings for **Mitigation**

**TRANS-1A: Transportation Demand Management (TDM) Measures.**

**Impact TRANS-12: Increased Queues at Gilman Street At-Grade Rail Crossing.** Vehicle trips are added to this crossing where No Project queues back up into the nearest adjacent intersection in both the eastbound and westbound directions. This would be a *potentially significant* impact.

**Impact TRANS-35: Extended Queues at Gilman Street At-Grade Rail Crossing.** Similar to 2015, vehicle trips are added to this crossing where No Project queues back up into the nearest adjacent intersection in both the eastbound and westbound directions. This would be a *potentially significant* impact.

**Mitigation TRANS-12 and TRANS-35: Construct a Grade-Separated Rail Crossing at Gilman Street.** The City should construct a grade separation at Gilman Street. This would eliminate concerns for queuing to and from adjacent intersections, improving safety and operations as shown in the conceptual diagram of this mitigation in the Technical Appendix – Traffic Analysis.

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** While compliance with the FEIR mitigations and the MMRP would lessen the impact, full mitigation of impacts on the Gilman Street rail crossing cannot be ensured, given the complexity of constructing a grade-separated rail crossing. In particular, implementation cannot be guaranteed because the construction of a grade-separated rail crossing at Gilman is still in preliminary design, has not been approved, does not have funding, and would need to be coordinated with the Union Pacific and the California Public Utilities Commission.

**Impact TRANS-13: 2015 AC Transit Impacts.** The Plus Project condition would generate marginal new transit trips which could result in a *potentially significant* impact.

**Impact TRANS-37: 2030 AC Transit Impacts.** The Plus Project condition would generate marginal new transit trips which could potentially result in a significant impact if future capacity is reduced or service is reduced. This would be a *potentially significant* impact.

**Mitigation TRANS-13A & TRANS-37: On-Going Coordination with AC Transit.** The City of Berkeley should continue coordination with AC Transit to best accommodate the needs of AC Transit riders in West Berkeley with available funding; work to identify new funding sources, grants, and programs that may become available and apply these funds toward maintaining adequate service on the core AC Transit routes serving West Berkeley.

**Mitigation TRANS-13B & TRANS-37: Funding for Transit Improvements.** The City should require as a condition of approval for new development projects and/or contribution to a transportation services fee that would provide fair-share funding for transit improvement projects identified in the West Berkeley Circulation Master Plan Report.

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** While effective implementation of the above-described mitigation measures would reduce the potentially significant impact to a level of *less than significant*, uncertainties associated with its implementation would require this impact to be considered potentially *significant and unavoidable*. Potential transit impacts will be analyzed for individual projects during the discretionary approval and environmental review process for new development. Funding fair-share contribution toward implementation of transit improvements will be required through project-specific conditions of approval, through the Master Use Permit process, or through adoption of a Transportation Services Fee; however, accumulation of full funding cannot be guaranteed, nor does the City have responsibility or jurisdiction for AC Transit operations or projects.

In regard to impacts on AC Transit in 2030, although the FEIR states that effective implementation of the mitigation measures would reduce this potentially significant impact to a level of less than significant, for the purpose of CEQA findings, the City Council finds that both the 2015 and 2030 impacts are Significant and Unavoidable for the reasons stated above.

**Impact TRANS-14: 2015 West Berkeley Shuttle Impacts.** Since many of the existing shuttle trips are already at capacity, any new trips added by the Project could result in a *potentially significant* impact.

**Impact TRANS-38: 2030 West Berkeley Shuttle Impacts.** Shuttle ridership is anticipated to grow beyond levels experienced in 2015. Given that the West Berkeley Project would allow intensified commercial/light industrial uses in a number of locations

along the existing WBS route, demand for the WBS would likely increase as a result of the West Berkeley Project. This potential for ridership growth, coupled with other latent increases in demand, could potentially outmatch Shuttle capacity. The magnitude of new WBS riders resulting from new development would vary depending on the specifics of the development. WBS analyses would thus need to be refined at the project-specific level of analysis. As a full understanding of WBS-related impacts cannot be gained at this time, a *potentially significant* impact on the West Berkeley Shuttle could occur as a result of the West Berkeley Project.

**Mitigation TRANS-14 and TRANS-38: On-Going Coordination with Shuttle Service Managers.** The City of Berkeley should continue coordination with the shuttle service managers and other West Berkeley Shuttle (WBS) funding partners (including several large employers in West Berkeley) to assure continued effective operation of the WBS; recruit new West Berkeley employers as funding partners for the WBS through conditions of approval or incentives; and work with shuttle service managers to encourage expansion of or adjustment to WBS service to meet the demands of new West Berkeley employers.

**Finding:** Although the EIR states that effective implementation of these mitigation measures would reduce the potentially significant impact to a level of *less than significant*, the City Council hereby finds that it infeasible to mitigate these impacts to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** On-going coordination with shuttle service managers will be provided to the greatest extent feasible. Master Use Permit (MUP) projects would have the largest impact on shuttle services and may provide an opportunity to mitigate the impact. In particular, the MUP ordinance language specifically states that if alterations of development standards and permitted uses are requested, that benefits must be provided. One of the benefits is provision of transportation demand management measures consistent with the West Berkeley Circulation Master Plan Report. However, the City does not have authority for the shuttle system and cannot ensure that the service will be expanded.

The proposed West Berkeley Transportation Services Fee (TSF) includes funding for TDM measures, including expansion and coordination of shuttles, however, adoption of the TSF cannot be guaranteed.

For these reasons, the City Council cannot assure at this time that the mitigation will be fully implemented prior to a potentially significant impact and, therefore, the City Council finds that the impact is *significant and unavoidable*.

**Impact TRANS-15: 2015 Bike Network Impacts.** Because the West Berkeley Project would introduce new bicycle trips into areas of limited bicycle infrastructure, and because auto traffic resulting from the West Berkeley Project would likely have adverse effects on the safety of bicycle travel in the study area, the Project would result in a *potentially significant* impact on bicycle operations.

**Impact TRANS-39: 2030 Bike Network Impacts.** Because the West Berkeley Project would introduce new bicycle trips into areas of limited bicycle infrastructure, and because auto traffic resulting from the West Berkeley Project would likely have adverse effects on the safety of bicycle travel in the study area, the Project would result in a *potentially significant* impact on bicycle operations.

**Mitigation TRANS-15 and TRANS-39: Require Funds for Bicycle Improvements.** The City should require a condition of approval for new development projects and/or contribution to a transportation services fee that would provide fair-share funding for relevant bicycle improvement projects identified in the West Berkeley Circulation Master Plan Report.

**Finding:** Although the EIR states that effective implementation of these mitigation measures would reduce the potentially significant impact to a level of *less than significant*, the City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Potential impacts will be analyzed for individual projects during the environmental review and discretionary approval process. Potential impacts of traffic on bicycle conditions will be analyzed for individual projects during this process. Although the mitigation will be implemented either through a condition of approval for future development projects, the Master Use Permit process or adoption of a Transportation Services Fee (which includes funding for West Berkeley bicycle improvements), funding for all relevant bicycle improvements included in the West Berkeley Circulation Master Plan Report cannot be guaranteed and the City cannot assure at this time that the improvements can be implemented prior to a potentially significant impact. Therefore, the City Council finds that the impact is *significant and unavoidable*.

**Impact TRANS-16: 2015 Pedestrian Network Impacts.** In many cases, the West Berkeley Project would situate development in areas that possess weaknesses in the pedestrian network. Because the Project's proposed development would intensify issues such as incomplete sidewalk networks and potentially unsafe pedestrian crossings of arterials and railroad tracks, the West Berkeley Project would generate *potentially significant* impacts for pedestrians.

**Impact TRANS-40: Pedestrian Network Impacts.** In many cases, the West Berkeley Project would situate development in areas that possess weaknesses in the pedestrian network. Because the Project's proposed development would intensify issues such as incomplete sidewalk networks and potentially unsafe pedestrian crossings of arterials and railroad tracks, the West Berkeley Project would generate *potentially significant* impacts for pedestrians.

**Mitigation TRANS-16 and TRANS-40: Require Funds for Pedestrian Improvements.** The City of Berkeley should require a condition of approval for new development projects and/or contribution to a transportation services fee that would provide fair-share funding for implementation of relevant pedestrian improvement projects identified in the West Berkeley Circulation Master Plan Report.

**Finding:** Although the EIR states that effective implementation of these mitigation measures would reduce the potentially significant impact to a level of *less than significant*, the City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Potential impacts will be analyzed for individual projects during the environmental review and discretionary approval process. Potential impacts of traffic on pedestrian conditions will be analyzed for individual projects during this process. Although the mitigation will be implemented either through a condition of approval for future development projects, the Master Use Permit process or adoption of a Transportation Services Fee (which includes funding for West Berkeley pedestrian improvements), funding for all relevant pedestrian improvements included in the West Berkeley Circulation Master Plan Report cannot be guaranteed and the City cannot assure at this time that the improvements can be implemented prior to a potentially significant impact. Therefore, the City Council finds that the impact is significant and unavoidable.

**Impact TRANS-20: 2030 Arterial Impacts.** The additional trips generated by the Project would continue to impact segments of San Pablo Avenue, Gilman Street University Avenue an Ashby Avenue during the weekday peak hours. These impacted facilities would limit operations for autos and emergency service vehicles during the peak hour conditions.

**Mitigations:** See Mitigation TRANS-1A (TDM), above and Mitigation TRANS-4 (Smart Corridors Program).

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below. While implementation of Mitigation TRANS-1A (TDM) and Mitigation TRANS-4 (Smart Corridors Program) would reduce this impact to a less-than-significant level at some locations, others would not be reduced to a level of less than significant. Thus the impact would remain *significant and unavoidable*.

**Facts in Support of Finding:** Mitigation TRANS-1A (TDM), above, would reduce the degree of impact by reducing Project-generated trips and bring six of the thirteen peak hour impacts (northbound San Pablo Avenue (AM), southbound San Pablo Avenue (PM), eastbound Gilman Street (PM), westbound Gilman Street (PM), eastbound Ashby Avenue (AM) and westbound Ashby Avenue (AM)) to a less than significant level. Implementation of Mitigation TRANS-4 (Smart Corridors Program), above, in coordination with Caltrans and the ACCMA may also identify operational solutions such as adaptive signalization to optimize capacity on arterial segments in West Berkeley. However, these measures would only reduce this impact to a less than significant level at some locations and others would not be reduced to a level of less than significant. Full mitigation of these impacts is not feasible due to limited opportunities for roadway expansion along these arterial segments, and the impact would remain *significant and unavoidable*. See the Facts in Support of Findings for Mitigation TRANS-1A (TDM) and

Mitigation TRANS-4 (Smart Corridors Program), above for additional reasons the mitigations cannot reduce the impacts to a less-than-significant level.

**Impact TRANS-21: Unacceptable Delay at University Avenue and 6th Street** High vehicular demand at this intersection during the weekday AM and PM peak hours results in unacceptable incremental delay at this intersection. This would be a *potentially significant* impact.

**Mitigation TRANS-21A: Implement Mitigation TRANS-5A (Install Traffic Signal) and Mitigation TRANS-5B (Restripe Southbound 5<sup>th</sup> Street).**

**Mitigation TRANS-21B: Protect Left Turn Movement on Southbound Approach.** The City should convert left-turning movements from permissive to protected movement.

**Finding:** Although the EIR states that effective implementation of these mitigation measures would reduce the potentially significant impact to a level of *less than significant*, the City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Potential impacts will be analyzed for individual projects during the environmental review and discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact on the University and Sixth intersection, a traffic study is required and mitigations are required to address any significant impacts identified. Projects having a significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation. However, because a significant portion of traffic in West Berkeley does not result from new development, a fair share contribution may not address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because the City cannot assure at this time that the improvements can be implemented prior to a potentially significant impact, the City Council finds that the impact is significant and unavoidable.

**Impact TRANS-22: Unacceptable Delay at Dwight Way and 7th Street/Dwight Crescent.** Increased vehicular demand at this intersection during the weekday PM peak hour results in unacceptable incremental delay at this intersection. This would be a *potentially significant* impact.

**Mitigation TRANS-22A: Add protected left turn arrows to signal heads on eastbound and westbound approaches.**

**Mitigation TRANS-22B: Optimize Cycle Length of the Traffic Signal.**

**Finding:** Although the EIR states that effective implementation of these mitigation measures would reduce the potentially significant impact to a level of *less than*

*significant*, the City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Potential impacts will be analyzed for individual projects during the environmental review and discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact on the Dwight and 7<sup>th</sup> intersection, a traffic study is required and mitigations are required to address any significant impacts identified. Projects having a significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation. However, because a significant portion of traffic in West Berkeley does not result from new development, a fair share contribution may not address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because the City cannot assure at this time that the improvements can be implemented prior to a potentially significant impact, the City Council finds that the impact is *significant and unavoidable*.

**Impact TRANS-24: Unacceptable Delay at Gilman Street and San Pablo Avenue.** Increased vehicular demand at this intersection during the weekday PM peak hour and both MD and PM weekend peak hours results in unacceptable incremental delay at this intersection. This would be a *potentially significant* impact.

**Mitigation TRANS-24: Implement Mitigation TRANS-1A (TDM).**

**Finding:** The EIR states that implementation of the mitigation measure would reduce the potentially significant impact to a level of less than significant under City of Berkeley standards, but this impact would remain significant under Caltrans standards. However, the City Council also finds that it infeasible to mitigate this impact to a less-than-significant level under City standards based on the Facts in Support of Findings for **Mitigation TRANS-1A (TDM)**. For these reasons, this impact would be considered *significant and unavoidable*.

**Facts in Support of Finding:** See the Facts in Support of Findings for **Mitigation TRANS-1A (TDM)**.

**Impact TRANS-25: Unacceptable Delay at Cedar Street and San Pablo Avenue.** Increased vehicular demand at this intersection during the weekday PM peak hour and weekend peak periods would result in unacceptable incremental delay at this intersection. This would be a *potentially significant* impact.

**Mitigation TRANS-25A: Implement Mitigation TRANS-1A (TDM).**

**Mitigation TRANS-25B: Protect Northbound and Southbound Left-Turn Movements.** The City should convert northbound and southbound left-turning movements from permissive to protected movements.

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level. The EIR states that implementation of the mitigation measure described above would reduce the potentially significant impact to a level of less than significant under City of Berkeley standards, but this impact would remain significant under Caltrans standards. However, the City Council also finds that it infeasible to mitigate this impact to a less-than-significant level under City standards based on the Facts in Support of Findings for **Mitigation TRANS-1A (TDM)** and the facts below. For these reasons, this impact would be considered *significant and unavoidable*.

**Facts in Support of Finding:** Potential impacts will be analyzed for individual projects during the environmental review and discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact, a traffic study is required and mitigations are required to address any significant impacts identified. Projects having a significant impact on the Cedar and San Pablo intersection shall be required to provide the improvements or a fair-share contribution toward implementation of the mitigation. The improvements are also included in the capital projects to be funded by the proposed Transportation Services Fee. While converting the left-turning movements per the mitigation would reduce the level of impact to a level of less than significant under City standards, the impact will remain significant under Caltrans standards.

In addition, regarding reduction of the impact to a less-than-significant level under City of Berkeley standards, because a significant portion of traffic in West Berkeley does not result from new development, a fair share contribution may not address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because the City cannot assure at this time that the improvements can be implemented prior to a potentially significant impact, the City Council finds that the impact is *significant and unavoidable*.

**Impact TRANS-26: Unacceptable Delay at University Avenue and San Pablo Avenue.** Increased vehicular demand at this intersection during all weekday and weekend peak hour conditions would result in unacceptable incremental delay at this intersection. This would be a *potentially significant* impact.

**Mitigation TRANS-26: Implement Mitigation TRANS-1A (TDM).**

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level. Implementation of the mitigation measure described above would reduce the potentially significant impact to some extent, but not to a level of less than significant. As a result, this impact would be *significant and unavoidable* under both City of Berkeley and Caltrans standards.

**Facts in Support of Finding:** See the Facts in Support of Findings for **Mitigation TRANS-1A (TDM)**.

**Impact TRANS-27: Unacceptable Delay at Dwight Way and San Pablo Avenue.** Increased vehicular demand at this intersection during the weekday PM peak hour would result in unacceptable incremental delay at this intersection. This would be a *potentially significant impact*.

**Mitigation TRANS-27A: Implement Mitigation TRANS-1A (TDM).**

**Mitigation TRANS-27B: Construct Additional Lane on Eastbound Approach.** The City should construct an additional lane, and convert the existing left-turning lane to a shared left-through lane.

**Mitigation TRANS-27C: Construct Additional Lane on Westbound Approach.** The City should construct an additional lane, and convert the existing left-turning lane to a shared left-through lane.

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level. Implementation of the mitigation measures described above would reduce the potentially significant impact to a level of less than significant under City of Berkeley standards, but this impact would remain significant under Caltrans standards. However, the City Council also finds that it infeasible to mitigate this impact to a less-than-significant level under City standards based on the Facts in Support of Findings for **Mitigation TRANS-1A (TDM)** and the facts below. For these reasons, this impact would be considered *significant and unavoidable*.

**Facts in Support of Finding:** See the Facts in Support of Findings for **Mitigation TRANS-1A (TDM)**. In regard to the Dwight Way land changes, when, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact, a traffic study is required and mitigations are required to address any significant impacts identified. Projects having a significant impact on the Dwight and San Pablo intersection shall be required to provide the improvements or a fair-share contribution toward implementation of the mitigation. The improvements are also included in the capital projects to be funded by the proposed Transportation Services Fee. While constructing an additional lane and converting turn-lanes per the mitigation would reduce the level of impact to a level of less than significant under City standards, the impact will remain significant under Caltrans standards.

In addition, regarding reduction of the impact to a less-than-significant level under City of Berkeley standards, because a significant portion of traffic does not result from new development, a fair share contribution may not address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because the City cannot assure at this time that the improvements can be implemented prior to a

potentially significant impact, the City Council finds that the impact is *significant and unavoidable*.

**Impact TRANS-28: Unacceptable Delay at Ashby Avenue and San Pablo Avenue.**

Increased vehicular demand at this intersection during all weekday and weekend peak hour conditions would result in unacceptable incremental delay at this intersection. This would be a *potentially significant* impact.

**Mitigation TRANS-28: Implement Mitigation TRANS-1A (TDM).**

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level. Implementation of the mitigation measures described above would reduce the potentially significant impact to a level of less than significant under City of Berkeley standards, but this impact would remain significant under Caltrans standards. As a result, this impact would be considered *significant and unavoidable*.

**Facts in Support of Finding:** See the Facts in Support of Findings for **Mitigation TRANS-1A (TDM)**.

**Impact TRANS-33: Unacceptable Delay at Gilman Street and 2nd Street.** Increased vehicular demand at this intersection during the weekday PM peak hour results in unacceptable incremental delay at this intersection for northbound and southbound traffic. This would be a *potentially significant* impact.

**Mitigation TRANS-33: Convert Northbound Approach to Right-In/Right-Out Movement.**

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** While compliance with the Final EIR mitigations and the MMP may lessen the impact, full mitigation cannot be ensured. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact on the Gilman and 2<sup>nd</sup> intersection, a traffic study is required and mitigations are required to address any significant impacts identified. Projects having a significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation. However, because a significant portion of traffic in West Berkeley does not result from new development, a fair share contribution may not address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because the City cannot assure at this time that the improvements can be implemented prior to a potentially significant impact, the City Council finds that the impact is *significant and unavoidable*.

**Impact TRANS-34: Unacceptable Delay at Allston Way and 4th Street.** Increased vehicular demand at this intersection during the weekday PM peak hour results in

unacceptable incremental delay at this intersection. This would be a ***potentially significant*** impact.

**Mitigation TRANS-34: Convert to All-Way Stop Control.**

**Finding:** The City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** While compliance with the Final EIR mitigations and the MMP may lessen the impact, full mitigation cannot be ensured. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact, a traffic study is required and mitigations are required to address any significant impacts identified. Projects having a significant impact on the Allston Way and 4<sup>th</sup> intersection shall be required to provide a fair-share contribution toward implementation of the mitigation. However, because a significant portion of traffic in West Berkeley does not result from new development, a fair share contribution may not address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because the City cannot assure at this time that the improvements can be implemented prior to a potentially significant impact, the City Council finds that the impact is *significant and unavoidable*.

**Impact TRANS-36: Extended Queues at Hearst Avenue At-Grade Rail Crossing and Spillback to Adjacent Intersections.** Vehicle trips are added to the Hearst Avenue and 4<sup>th</sup> Street intersection, adjacent to the at-grade crossing would create 95<sup>th</sup> percentile queue lengths for eastbound traffic which would back into the railroad tracks during the PM peak hour. This would be a ***potentially significant*** impact.

**Mitigation TRANS-36A: Install a Traffic Signal at 4th Street and Hearst Avenue.**

**Mitigation TRANS-36B: Create 100-foot Right Turn Pocket on Eastbound Approach.**

**Mitigation TRANS-36C: Create a 50-foot Right Turn Pocket on Northbound Approach.**

**Finding:** Although the EIR states that effective implementation of these mitigation measures would reduce the potentially significant impact to a level of *less than significant*, the City Council hereby finds that it infeasible to mitigate this impact to a less-than-significant level based on the facts described below.

**Facts in Support of Finding:** Potential impacts will be analyzed for individual projects during the environmental review and discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact on the Hearst and 4th intersection, a traffic study is required and mitigations are required to address any significant impacts identified. Projects having a

significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation. However, because a significant portion of traffic in West Berkeley does not result from new development, a fair share contribution may not address the full cost of the improvements. Providing full funding for the improvement is subject to an evaluation of all City transportation improvement priorities and allocation of limited financial resources for such improvements. Accordingly, funding may not be available to implement the identified improvement prior to the time when a significant impact may occur. Because the City cannot assure at this time that the improvements can be implemented prior to a potentially significant impact, the City Council finds that the impact is *significant and unavoidable*.

### **III. EVALUATION OF ALTERNATIVES**

Pursuant to CEQA Guidelines Section 15091(a)(3), regarding alternatives to the project that would reduce or avoid significant effects identified in the EIR, the City Council finds as follows.

The Certified EIR evaluated three Alternatives in addition to the West Berkeley Project. These Alternatives are: a “No Project” Alternative, a “Limited Height” Alternative, and a “Reduced Development” Alternative. The “No Project” Alternative assumed that future development would be regulated by the standards of the existing zoning ordinance.

Potential environmental impacts are primarily created by the proposed Master Use Permit (MUP) revisions, which allow increased height and FAR as well as flexibility in placement of uses. Therefore, the alternatives in the Certified EIR focused on the proposed MUP regulations, which were not part of the first two portions of the previously approved West Berkeley Project.

The Certified EIR Alternatives are sufficient with respect to the Project analyzed in the SEIR because while the Project expands flexibility for MUP development by potentially allowing increased height (up to 100 feet, rather than 75 feet as described in the Certified EIR), increased housing density, and flexible placement of uses within an MUP site, the Project does not fundamentally change the objectives or character of the MUP amendments as described in the Certified EIR or the ways in which they affect the environment. As a result, the Certified EIR Alternatives address the same array of impacts identified in the SEIR. Although some impact classifications change from “less-than-significant” to “significant and unavoidable”, mitigation measures are provided which will lessen the impact and the proposed MUP regulations further lessen impacts as described in the Impacts Sections above.

The “Reduced Development” Alternative assumed that the City would limit development and only allow two of the potential MUP-eligible sites to be developed during the planning period. All zoning modifications proposed as part of the Project described in the Certified EIR would be carried over to this alternative. For the two MUP projects that would be allowed, the maximum building height would be 75 feet, rather than the current 45 feet or the 100 feet allowed by the Project, and a Floor Area Ratio (FAR) of 3 would be allowed, rather than the current FAR of 2.

Under the “Limited Height” Alternative, MUP projects would be limited to a maximum height of 45 feet, consistent with current zoning requirements. The Floor Area Ratio (FAR) limit on parcels potentially eligible for MUP consideration would be 3, the same as under the Project.

A comparison of the relative impacts of each of the Alternatives with those associated with the Project is shown in Table 1, below.

**TABLE 1: COMPARISON OF RELATIVE ENVIRONMENTAL IMPACTS OF ALTERNATIVES WITH PROJECT**

<b>IMPACT CATEGORY</b>	<b>NO PROJECT</b>	<b>REDUCED DEVELOPMENT</b>	<b>LIMITED HEIGHT</b>
Aesthetics	Less than Project	Less than Project	Less than Project
Air Quality	Less than Project	Less than Project	Similar to Project
Cultural Resources	Similar to Project	Similar to Project	Similar to Project
Land Use	Less than Project	Similar to Project	Similar to Project
Noise/Vibration	Less than Project	Less than Project	Greater than Project
Transportation/Traffic	Less than Project	Less than Project	Similar to Project

The “No Project” Alternative, which assumed that further development would occur under existing rules, was identified as the environmentally superior alternative in the Certified EIR. CEQA Guidelines require that, where the “no project” alternative is the “environmentally superior” alternative, another alternative which would be “environmentally superior” in the absence of the “no project” alternative must be identified. The Project as analyzed in the SEIR does not change this conclusion.

The “Reduced Development” Alternative, which would only allow two of the potential MUP-eligible sites to be developed during the planning period, would have fewer impacts than the Project as analyzed in the Certified EIR, and was identified as the “environmentally superior” alternative in the absence of the “no project” alternative. The Reduced Development Alternative reduces the potential maximum amount of development by limiting the number of sites that could utilize the maximum height of 75 feet (rather than 45 feet) and an FAR of 3 (rather than 2). In particular, this reduces the transportation and air quality impacts as compared to the Project. The Project as analyzed in the SEIR does not change this conclusion.

**Feasibility of Alternatives**

Because the No Project Alternative is the environmentally superior alternative, the Council is required to consider whether it is feasible, as set forth in CEQA Guidelines. The Council determines that the No Project Alternative is not feasible, because it would not meet the fundamental purposes of the West Berkeley Project, which are described below. Similarly, the Reduced Development Alternative, which is the “environmentally superior” alternative in the absence of the “no project” alternative, would also not be

feasible, because limiting potential MUP development to only two sites in the 20-year planning period would not meet the goals of the West Berkeley Project.

The West Berkeley Project was initiated specifically to encourage economic development. The goals, as stated in the Certified EIR, follow.

- 1) to remove obstacles to economically viable reuse of existing buildings consistent with the primary goals and objectives of the West Berkeley Plan; and
- 2) to facilitate development of large land holdings through a revised Master Use Permit process.

The proposed changes to the zoning requirements are intended to encourage the development of under-utilized properties in the affected zoning districts in an effort to better implement the vision of the West Berkeley Plan while also protecting the industrially-zoned neighborhoods. Allowing no more than two MUP projects would not meet these goals as described further below.

The Council determination that neither the “No Project” nor the “Reduced Development” alternative is feasible is based on the following facts and considerations:

1. The West Berkeley Project was initiated because obstacles to development have been brought to the City’s attention for several years and the amount of development that has occurred has not met the growth estimates in the 1993 West Berkeley Plan. In particular, the City’s Office of Economic Development (OED) prepared a document entitled “Business, Employment and Labor Force Trends: A Context for Policy Development for the West Berkeley Project”, which documents that while the West Berkeley Area Plan projected that 3,100 new jobs would be added by 2005, employment has *decreased*, as has the number of small manufacturers. Furthermore, the OED data shows that despite the advantage of proximity to the University campus and LBNL and the availability of a highly-educated workforce, relatively few start-up technology firms emerging from local research facilities have chosen to locate in Berkeley. The proposed zoning ordinance amendments are needed to reverse these trends.
2. Although the West Berkeley Area Plan calls for development of a master use permit (MUP) process and the Zoning Ordinance was amended in 1999 to add Chapter 23B.36, Master Use Permits, and Chapter 23B.48 , Modification of Development Standards, *no* applications were submitted under these regulations. The proposed MUP revisions were developed to provide the flexibility needed to encourage development of large under-utilized sites, while also providing community benefits, as contemplated by the West Berkeley Plan.
3. It is estimated that there are more than a dozen potential MUP sites, each at least four acres in area or an entire block in single ownership. Development of only two of these sites over a 20 year period would not advance the goals of the Project.
4. The MUP process has been developed to provide community benefits including:
  - Retain and provide affordable work space for artists or funds for that purpose.

- Provide transportation demand management measures consistent with the West Berkeley Circulation Master Plan Report or funds for that purpose.
  - 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.
5. In addition, effectiveness of the MUP provisions is conditioned on development and adoption of mechanism to obtain the following additional community benefits as part of the MUP process:
- Provide affordable work force housing in West Berkeley or funds for that purpose.
  - Contribute to environmental improvements at Aquatic Park or other measures to improve environmental quality in West Berkeley.
  - Payment of prevailing wages for all construction work under the MUP.
  - Provision of privately owned but publicly accessible open space as part of the MUP.
  - Provision of space and or support to childcare providers so that affordable childcare can be provided to those who need and qualify for it.
  - Require local sourcing of building materials to the extent feasible.
  - Provide benefits or raise funds for programs and initiatives that further goals of the West Berkeley Plan.

Limiting the number of MUP sites would limit the possible benefits.

#### **IV. Statement of Overriding Considerations**

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines sections 15091 *et. seq.* the City Council of the City of Berkeley adopts and makes the following statement of overriding considerations regarding the remaining unavoidable impacts of the Project and the anticipated economic, social, and other benefits of the Project.

After extensive review of the entire administrative record, including the Draft and Final Certified EIR, the Draft and Final Supplemental EIR, the staff reports, and the oral and written testimony, and the evidence provided, the Council concludes that the potential environmental impacts of the Project have been avoided or substantially lessened to the extent feasible, and the remaining unavoidable impacts are acceptable in light of the following benefits of the Project.

Based on the evidence before it, the City Council finds that the benefits of the Project, as set forth below, outweigh the Project's significant adverse environmental impacts and constitute an overriding consideration warranting approval of the Project. The Council further finds that each of the overriding considerations set forth below constitutes a separate and independent ground for this finding. The overriding benefits of the Project are as follows:

**Community Benefits Associated with Development and Growth.** Higher levels of development in West Berkeley would result in the following direct and indirect benefits:

- Increased economic development will create jobs, contribute to the green economy, and provide increased tax revenues.
- Development of vacant or under-utilized properties such as the former American Soils site near Aquatic Park; the Marchant building and associated parcels; and Flint Ink, as well as the expansion of existing facilities such as the Zaentz Media Center could allow the expansion of employment opportunities for Berkeley residents and others in the East Bay.
- Increased business activity will increase transit patronage and transit service (transit funding is generally dependent upon development opportunities that will leverage public investments and reduce the need for transit subsidies);
- Increased public revenues for public improvement (through development fees and greater economic activity);
- Increased opportunities for business and intellectual synergies (by increasing businesses in proximity to the University of California Berkeley);
- Reductions in the length of commuting to jobs within and outside of Berkeley and associated traffic congestion (by creating more jobs that complement the job skills of Berkeley residents);

In addition, the MUP process provides the opportunity for the following community benefits:

- Retain and provide affordable work space for artists or funds for that purpose.
- Provide transportation demand management measures consistent with the West Berkeley Circulation Master Plan Report or funds for that purpose.
- 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.
- Provide affordable work force housing in West Berkeley or funds for that purpose.
- Contribute to environmental improvements at Aquatic Park or other measures to improve environmental quality in West Berkeley.
- Payment of prevailing wages for all construction work under the MUP.
- Provision of privately owned but publicly accessible open space as part of the MUP.
- Provision of space and or support to childcare providers so that affordable childcare can be provided to those who need and qualify for it.
- Require local sourcing of building materials to the extent feasible.
- Provide benefits or raise funds for programs and initiatives that further goals of the West Berkeley Plan.

Although all of the details of community benefits have not been determined, the Proposed Ordinance provides that no Master Use Permit may be approved until the

City Council adopts specific and concrete Community Benefits Agreement requirements to implement the benefits requirement of the amendments

**Overriding Considerations.** Increased economic development is critical to attaining a wide variety of community benefits (as noted above), and the zoning revisions allowed by the West Berkeley Project are essential to attract increased development. Therefore, the City Council finds that, based on the overriding considerations described above, the benefits of the revised Master Use Permit section of the West Berkeley Project outweigh the environmental impacts identified in the FEIR.

**MASTER USE PERMIT MITIGATION MONITORING PROGRAM – 7/10/12**

This Mitigation Monitoring Program (MMP) is for the third group of West Berkeley Project amendments, revisions to the Master Use Permit (MUP) Process. To link future MUP projects with the Mitigation Monitoring Program (MMP), the following language is included in Berkeley Municipal Code Section 23B.36.090.A Findings: "In order to approve an MUP, the Board must make.....the following additional findings:.....<sup>2</sup>. The proposed project includes the applicable requirements of the Mitigation Monitoring Program adopted concurrently with this Chapter".

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Aesthetics</b></p> <p><b>Impact AES-1: Obstruction of Significant Public View Corridors.</b> As noted in the West Berkeley Plan DEIR, obstruction of significant public view corridors was a potentially significant impact associated with implementation of the West Berkeley Plan, and is also a potentially significant impact associated with implementation of the West Berkeley Project. Public view corridors were identified along streets, and specifically Hearst Avenue, Virginia Street and Cedar Street. This would represent a <i>potentially significant</i> impact.</p> <p><b>Impact SEIR AES-1: Obstruction of Significant Public View Corridors.</b> Views from public streets (or "view corridors") of hills and ridgelines could be diminished by 100-foot tall buildings at some potential MUP sites, which would represent a <i>potentially significant</i> view corridor impact.</p>	<p><b>Mitigation SEIR AES-1: Project-Specific Visual Simulations (replaces Mitigation AES-1 from Certified EIR).</b> To ensure that new MUP structures do not significantly obscure significant views of the Bay or hills, Master Use Permit applicants and the Planning &amp; Development Department shall adhere to the same steps and standards required by Mitigation Measure 1 of the West Berkeley Plan EIR<sup>1</sup>.</p> <p>(Significant and Unavoidable<sup>2</sup>)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process.</p> <p>If a proposed MUP application exceeds two stories (30 feet) and would exceed the height of adjacent buildings within an east-west public view street corridor (such as University Avenue, Cedar Street, Dwight Way, or Hearst Avenue), a Site-Specific Visual Analysis will be required as part of the development review process. If views are significantly obstructed, the building design will be revised to reduce the resulting impact to the satisfaction of the City.</p>

<sup>1</sup> See last page of MMP

<sup>2</sup> When the MMP indicates that Significant and Unavoidable Impacts shall be reduced or appropriately mitigated to the satisfaction of the City, it is recognized that while the impact may still be Significant and Unavoidable, the project meets the standards of the zoning ordinance and is otherwise acceptable.

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Impact AES-2: Change in Visual Character.</b> In portions of the MU-LI and edge areas, taller buildings could have a significant impact on visual character where the predominant building height is considerably lower, and a street wall of much taller buildings could lead to a significant change in the dominant lower-scale and eclectic character that is characteristic of West Berkeley. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation AES-2: Project-Specific Visual Photo/Computer Simulations.</b> Buildings within MU-LI and buildings within 100 feet of either MU-LI or MU-R designated areas shall provide project-specific visual photo or computer simulations, or other comparable technology, demonstrating appropriate transition from the buildings that exceed 45 feet to surrounding properties. The project reviewing body (Zoning Adjustments Board or City Council on appeal) must find that the project will not substantially degrade either scenic views from adjacent properties or the existing visual character or quality of adjacent properties, especially on the scale and character of adjacent homes, and that the proposed project provides appropriate transition to minimize changes in scale from existing development to higher scale and more intense development.</p> <p>(Less than Significant)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. In particular, the following finding is required for project approval:</p> <p>Section 23B.36.090.F: "In order to approve a Master Use Permit that contains buildings within the MU-LI or within 100 feet of either MU-LI or MU-R districts, the Board must find that the project will not substantially degrade the existing visual character or quality of adjacent properties, especially on the scale and character of adjacent homes; that the proposed project provides appropriate transition to minimize changes in scale from existing development to higher scale and more intense development; and that the project will not cause an unreasonable shadow on any sensitive area."</p> <p>In order to prevent degradation of existing visual character from architecture that does not adequately differentiate building mass and to promote buildings with a variety of heights that are properly articulated with interesting architecture to improve the visual character of the West Berkeley Plan area, the following guidelines will apply:</p> <ol style="list-style-type: none"> <li>1) No more than 25% of the lot area can be at a single height as part of a contiguous mass at that height</li> <li>2) Buildings shall be properly articulated using either physical and/or visual methods to reduce the appearance of a single, undifferentiated mass. Such techniques include, but are not limited to: vertical or horizontal articulation, vertical or horizontal banding, vertical or horizontal changes in materials or colors, and/or vertical or horizontal elements on the facade of the building.</li> </ol>

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Impact SEIR AES-2: Obstruction of Scenic Views from Aquatic Park and I-80/I-580.</b> Views of the Berkeley Hills and its ridgeline from Aquatic Park and I-80/I-580 could be noticeably diminished by future MUP buildings constructed up to the 100-foot maximum. Potentially significant view impacts could result from development south of University Avenue, as seen from the west side of Aquatic Park and I-80/I-580.</p>	<p><b>Mitigation SEIR AES-2: Project-Specific Visual Simulations.</b> To ensure that new MUP structures do not significantly obscure significant Scenic Views from Aquatic Park and I-80/I-580, Master Use Permit applicants and the Planning &amp; Development Department shall adhere to the same steps and standards required by Mitigation Measure 1 of the West Berkeley Plan EIR. Guidelines may be developed by the Department of Planning &amp; Development to help evaluate and address potential cumulative view impacts.</p> <p>(Significant and Unavoidable)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process.</p> <p>Any project that could obscure significant Scenic Views from Aquatic Park and I-80/I-580 shall be required to provide a Site-Specific Visual Analysis as described in West Berkeley Plan Mitigation I (see footnote 1).</p> <p>Any MUP building on a site adjacent to Aquatic Park and any building over 75-feet in height will be reviewed on a case-by-case basis to analyze whether they will obstruct views from Aquatic Park and I-80/I-580 toward the Berkeley Hills and ridgeline. If views are significantly obstructed, the building design will be revised to reduce the resulting impact to the satisfaction of the City.</p> <p>All buildings on an MUP site adjacent to Aquatic Park shall be set back an average of 100 feet from the water's edge.</p> <p>Building height at the setback shall be no taller than 45 feet and will step back away from Aquatic Park such that no part of a building may intersect a plane drawn at a 45 degree angle from horizontal to a maximum of 75 feet.</p> <p>No MUP site adjacent to Aquatic Park may have buildings that exceed 75 feet in height.</p>

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Impact AES-3: Project-Specific Shadows Falling onto Public Open Space or Recreational Areas.</b> Individual structures that may be proposed under the revised zoning regulations in the West Berkeley Project could add new shadows that would fall on existing public open space (not including streets and sidewalks) or recreational areas within West Berkeley. This would represent a <i>potentially significant impact</i>.</p> <p><b>Impact SEIR AES-3: Project-Specific Shadows Falling onto Public Parks, Recreational Trails, Schoolyards or Residential Uses.</b> As demonstrated in the SEIR, new MUP structures could create new shadows on existing public parks, recreational trails, schoolyards or residential areas in and near West Berkeley. This impact would be considered <i>potentially significant</i>.</p>	<p><b>Mitigation SEIR AES-3: Evaluate Shadow Effects for Proposed MUP Structures (replaces Mitigation Measure AES-3 from Certified EIR).</b> Applicants proposing structures within 200 feet of sensitive areas (i.e. public parks, open space, recreational trails, schoolyards and residential uses) shall modify the design of said buildings so that they will not cast a significant shadow on any sensitive areas. A significant shadow is defined as one that blocks direct sunlight for more than four hours a day for more than four months of the year on any area of an affected building or property that people would typically occupy.</p> <p>These required design changes (to building placement, height and bulk) are expected to reduce shadow impacts to a level that is <i>less than significant</i>. However, since there is no way to ensure that they would be sufficiently effective in all cases, the impact would remain potentially <i>significant and unavoidable</i>.</p> <p>(Significant and Unavoidable)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. Although the mitigation measure only cites specific potential MUP sites, the following finding for project approval will ensure that all MUP projects shall be analyzed to determine the extent to which such buildings may cast increased and unreasonable shadows on public open space, and required modifications shall be considered to avoid casting an unreasonable shadow on any sensitive areas.</p> <p>23B.36.090.G: In order to approve a Master Use Permit adjacent to 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.</p> <p>MUP projects may also not cast shadows that substantially impairs the function of a building using passive solar heat collection, solar collectors for hot water heating, or photovoltaic solar collectors</p>
<p><b>Air Quality</b></p>	<p>None  (Significant and Unavoidable)</p>	<p>No action required.</p>
<p><b>Impact AIR-1: Conflict with Clean Air Plan (CAP) Assumptions.</b> Development anticipated as a result of the West Berkeley Project would increase employment at a greater rate than was assumed when the BAAQMD prepared the latest update to the CAP. This could lead to greater regional emissions of nonattainment air pollutants (or their precursors) than assumed in the CAP. This would be a <i>significant and unavoidable impact</i>.</p> <p><b>Impact SEIR AIR-1: Conflict with the Clean Air Plan.</b> Development anticipated as a result of implementation of the Project would increase vehicle</p>		

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p>trips and miles traveled proportionally higher than what would normally be associated with the anticipated population increase, which is considered a conflict with the Clean Air Plan and criteria air pollutants reduction measures. This would be a <i>significant and unavoidable</i> impact.</p>	<p><b>Mitigation SEIR AIR-2A: Site-Specific Analysis/Mitigation of Health Risks for Development Projects Proposing New Sensitive Receptors (replaces Mitigation AIR-2 from Certified EIR).</b> The City shall require development projects that would locate new sensitive receptors within the West Berkeley area to analyze site-specific health risk levels following procedures outlined by BAAQMD. If the site-specific analysis reveals significant exposures (based on BAAQMD guidance), the project shall include measures to reduce exposures and provide analysis showing that resultant mitigated levels have been reduced below significance levels. The measures could include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>- Utilize site planning to buffer new sensitive receptors from sources of emissions that contribute to health risk.</li> <li>Active site uses and building air intakes shall be situated away from emission sources.</li> <li>- Install indoor air filtration systems, such as MERV filters, to reduce indoor TACs and particulate matter. Appropriately designed systems would have to be maintained (e.g., filters changed on a prescribed basis), and occupied space would have to be equipped with low-air infiltration windows and sealed doors to prevent outdoor air contamination. Opening of windows by occupants would reduce the effectiveness of this measure.</li> <li>- Provide tiered plantings of vegetation along the project site boundaries closest to emission sources. Preliminary laboratory studies show that redwood and/or deodar cedar trees can remove some of the fine particulate matter</li> </ul>	<p>SEIR AIR-2A</p> <p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process and require mitigations as listed. New sensitive receptors will be required to meet Air Quality District requirements. In addition, MUP findings for approval require a determination that the proposed location(s) of housing would not increase the incompatibility of uses, either within the site itself or between the site and surrounding area (MUP Section 23B.36.090E &amp; F).</p>
<p><b>Impact AIR-2: Possible Exposure of Sensitive Receptors to Toxic Air Contaminants (TACs) and Particulate Matter (PM<sub>2.5</sub>).</b> Development anticipated under the West Berkeley Project may expose sensitive receptors to TACs and PM<sub>2.5</sub> through development of new non-residential development that may be sources of TACs and PM<sub>2.5</sub> near existing residences or other sensitive receptors. Such exposure would represent a <i>potentially significant</i> impact.</p>	<p><b>Impact SEIR AIR-2: Exposure of Sensitive Receptors to Increased Health Risks Related to Toxic Air Contaminants (TACs) and Particulate Matter (PM<sub>2.5</sub>).</b> Development anticipated under the West Berkeley Project and the SEIR Amendments may expose sensitive receptors to increased health risk through development of non-residential sources (including associated mobile sources such as loading dock activity, truck traffic, forklifts, etc., and temporary emissions related to construction) of TACs and PM<sub>2.5</sub> in proximity to existing residential uses and/or development of new residential uses in proximity to sources of TACs and PM<sub>2.5</sub>. Such exposure would represent a <i>potentially significant</i> impact. (See also Mitigation SEIR AIR-2B in Section II of this document, “Significant Unavoidable Impacts”)</p>	

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
	<p>emitted from traffic under low wind speeds. Low wind speeds typically result in the highest particulate matter concentrations.</p> <ul style="list-style-type: none"> <li>- New occupants shall be informed of the health effects from exposure to TACs and PM<sub>2.5</sub> from the sources affecting those uses through rental agreements or real property disclosures statements. <i>(Taken from AIR-2)</i></li> </ul> <p>(Less than significant with mitigations)</p> <p><b>Mitigation SEIR AIR-2B: Project-Specific Analysis/Mitigation of Potential TAC and PM<sub>2.5</sub> Emissions Associated with Proposed Development Projects Considered New Sources of TAC.</b> The City shall require Master Use Permit development projects that would be considered potentially significant sources of increased health risk to existing or planned sensitive receptors to assess project-specific health risk levels following procedures outlined by BAAQMD. Sources contributing to health risk could include emissions from on-site operations, mobile emissions during operations, and/or construction-period emissions. If the project-specific analysis reveals significant increased health risk (based on BAAQMD guidance for individual sources), the project shall include measures to reduce emissions and shall provide analysis demonstrating that resultant mitigated levels have been reduced below project-specific significance levels for individual sources. The measures could include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>- Minimize idling time of on-site trucks through posted rules and availability of alternate power sources when docked.</li> <li>- Utilize site planning to locate loading docks, generators, and other emissions sources away from sensitive receptors and provide buffers where appropriate.</li> <li>- Reduce the emissions rate of vehicles and equipment through the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology.</li> </ul>	<p>SEIR AIR-2B</p> <p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. Any MUP project that includes new sources of emissions contributing to health risk will be required to include the mitigations as conditions of approval.</p>

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Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Impact AIR-3: Possible Exposure of Sensitive Receptors to Odors.</b> Development anticipated as a result of adoption and implementation of the West Berkeley Project may expose sensitive receptors to odors due to the development of new non-residential development that may be sources of odors near sensitive receptors. In addition, new odor complaints may occur as a result of new sensitive uses that would be exposed to existing sources of odors in the West Berkeley area. Such exposures would represent a <i>potentially significant</i> impact.</p>	<p>after-treatment products, add-on devices such as particulate filters and/or other control technologies as they become available.  (Significant and Unavoidable)</p> <p><b>Mitigation AIR-3 &amp; SEIR AIR-3: Site-Specific Review and Mitigation for Development Projects Expected to Result in Odor Complaints.</b> The following measures shall be implemented to reduce odor complaints associated with new development in the West Berkeley area:</p> <ul style="list-style-type: none"> <li>- The City shall review plans for new sources that may produce odors (e.g., restaurants) to ensure that these uses install appropriate equipment in accordance with accepted engineering practice, which may include exhaust filtration systems or other accepted methods of odor reduction.</li> <li>- The City shall consider the potential for odor complaints when reviewing proposals for new sensitive developments that include outdoor uses (e.g., day care centers or residences with outdoor activity areas). Proposed projects shall include measures to reduce the potential for odor complaints; however, the City will have to recognize that it is not possible to completely reduce the potential for odors in outdoor settings in the West Berkeley area.</li> </ul> <p>(Significant &amp; Unavoidable)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. The normal environmental and zoning review process will consider whether new uses would produce odors and, if so, would require mitigations. In particular, the MUP finding requirement that the flexible placement of uses within an MUP site not increase the incompatibility of uses, either within the site itself or between the site and surrounding area (MUP Section 23B.36.090.E &amp; F) will reinforce the required mitigations. Similarly, new sensitive receptors will be protected by the required mitigations and findings.</p>
<p><b>Impact SEIR AIR-3: Possible Exposure of Sensitive Receptors to Odors.</b> Development anticipated as a result of adoption and implementation of the proposed West Berkeley Project and the SEIR Amendments may expose sensitive receptors to odors due to the development of new non-residential development that may be sources of odors near sensitive receptors. In addition, new odor complaints may occur as a result of new sensitive uses (e.g., new residential development at four potential MUP sites) that would be exposed to existing sources of odors in the West Berkeley area. Such exposure would represent a <i>potentially significant</i> impact.</p>	<p><b>Mitigation SEIR AIR-4: Construction Management Practices (Replaces Mitigation AIR-4).</b> All MUP construction projects shall demonstrate proposed compliance with all applicable regulations and operating procedures prior to issuance of demolition, building or grading permits, including implementation of the following BAAQMD-recommended Construction</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process to ensure that the BAAQMD measures are included as conditions of approval, reflected on construction drawings and enforced during the construction process.</p>
<p><b>Impact AIR-4: Construction Period Air Quality Impacts.</b> Construction of development projects under the West Berkeley Project would result in temporary emissions of dust and diesel exhaust that may result in both nuisance and health impacts. Without appropriate measures to control these emissions, these impacts would be considered <i>significant</i>.</p>		

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Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Impact SEIR AIR-4: Construction Period Air Quality Impacts.</b> Construction of development projects under the West Berkeley Project and the SEIR Amendments would result in temporary emissions and fugitive dust that may result in both nuisance and health impacts. Without appropriate measures to control these emissions, these impacts would be considered <i>significant</i>.</p>	<p>Mitigation Measures.</p> <ul style="list-style-type: none"> <li>-All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.</li> <li>-All haul trucks transporting soil, sand, or other loose material off-site shall be covered.</li> <li>-All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.</li> <li>-All vehicle speeds on unpaved roads shall be limited to 15 mph.</li> <li>-All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.</li> <li>-Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.</li> <li>-Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.</li> <li>-All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.</li> </ul>	

MASTER USE PERMIT MITIGATION MONITORING PROGRAM (EXHIBIT B)

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Cultural Resources</b></p>	<p>Less than Significant with Mitigations</p>	<p>No action required</p>
<p><b>Impact CUL-1: Demolition of Historic Resources.</b> Despite the substantial protections in place in City policy, it is possible that development anticipated under the West Berkeley Project could result in the demolition of historic resources located within West Berkeley. Were demolition of historic resources to occur, this would represent a <i>significant and unavoidable</i> impact associated with West Berkeley Project implementation.</p>	<p>None (Significant and Unavoidable)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process to ensure that the Landmarks Ordinance regulations are complied with and that these mitigations are included as a condition of approval and noted on the construction plans.</p>
<p><b>Impact CUL-2: Possible Disturbance of Unidentified Subsurface Archaeological Resources.</b> Ground-disturbing activities associated with new construction and related underground utility installation could result in the destruction or disturbance of unidentified subsurface archaeological resources (particularly in the Shellmound area), which would represent a <i>potentially significant</i> impact.</p>	<p><b>Mitigation CUL-2: Halt Work/Archaeological Evaluation/Site-Specific Mitigation.</b> If archaeological resources are uncovered during construction activities, all work within 50 feet of the discovery shall be redirected until a qualified archaeologist can be contacted to evaluate the situation, determine if the deposit qualifies as an archaeological resource, and provide recommendations. If the deposit does not qualify as an archaeological resource, then no further protection or study is necessary. If the deposit does qualify as an archaeological resource, then the impacts to the deposit shall be avoided by project activities. If the deposit cannot be avoided, adverse impacts to the deposit must be mitigated. Mitigation may include, but is not limited to, archaeological data recovery.</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process to ensure that the Landmarks Ordinance regulations are complied with and that these mitigations are included as a condition of approval and noted on the construction plans.</p>

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Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Impact CUL-3: Possible Disturbance of Unidentified Subsurface Paleontological Resources.</b> Although no paleontological resources are currently known to exist in West Berkeley, ground-disturbing activities associated with new construction and related underground utility installation could result in the destruction of unidentified subsurface paleontological resources, which would represent a <i>potentially significant</i> impact.</p>	<p>Upon completion of the archaeologist's assessment, a report should be prepared documenting the methods, findings and recommendations. The report should be submitted to the City, the project proponent and the NWIC.</p> <p>(Less than Significant with Mitigations)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process to ensure that the Landmarks Ordinance regulations are complied with and that these mitigations are included as a condition of approval and noted on the construction plans.</p>
<p><b>Impact CUL-4: Possible Disturbance of Unidentified Human Remains.</b> Ground-disturbing activities associated with new construction and related underground utility installation could result in the disturbance of unidentified subsurface human remains, which would represent a <i>potentially significant</i> impact.</p>	<p><b>Mitigation CUL-3: Halt Work/Paleontological Evaluation/Site-Specific Mitigation.</b> Should paleontological resources be encountered during construction or site preparation activities, such works shall be halted in the vicinity of the find. A qualified paleontologist shall be contacted to evaluate the nature of the find and determine if mitigation is necessary. All feasible recommendations of the paleontologist shall be implemented. Mitigation may include, but is not limited to, in-field documentation and recovery of specimen(s), laboratory analysis, the preparation of a report detailing the methods and findings of the investigation, and curation at an appropriate paleontological collection facility.</p> <p>(Less than significant with mitigations)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process to ensure that the Landmarks Ordinance regulations are complied with and that these mitigations are included as a condition of approval and noted on the construction plans.</p>
<p><b>Impact CUL-4: Possible Disturbance of Unidentified Human Remains.</b> Ground-disturbing activities associated with new construction and related underground utility installation could result in the disturbance of unidentified subsurface human remains, which would represent a <i>potentially significant</i> impact.</p>	<p><b>Mitigation CUL-4: Halt Work/Coroner's Evaluation/Native American Heritage Consultation/Compliance with Most Likely Descendant Recommendations.</b> If human remains are encountered during construction activities, all work within 50 feet of the remains should be redirected and the County Coroner notified immediately. At the same time, an archaeologist shall be contacted to assess the situation. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and any associated grave goods. The archaeologist shall recover scientifically-valuable information, as</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process to ensure that the Landmarks Ordinance regulations are complied with and that these mitigations are included as a condition of approval and noted on the construction plans.</p>

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
	<p>appropriate and in accordance with the recommendations of the MLD. Upon completion of the archaeologist's assessment, a report should be prepared documenting methods and results, as well as recommendations regarding the treatment of the human remains and any associated archaeological materials. The report should be submitted to the City, the project proponent and the NWIC.</p> <p>(Less than Significant with Mitigations)</p>	
<p><b>Land Use</b></p> <p><b>Impact SEIR LU-1: Potential Use Conflicts Created by Establishing Certain MU-LI Uses within the MU-R or C-W Portions of an MUP Site.</b> When a potential MUP site contains MU-R- and/or C-W-zoned land, allowing MU-LI uses into these areas may cause use conflicts. The conflicts would primarily result from placing new industrial uses in close proximity to residential or commercial uses, and could result in <i>potentially significant</i> impacts.</p>	<p><b>Mitigation SEIR LU-1A: Site-Specific Measures to "Buffer" Residential and Commercial Uses.</b> When an applicant proposes locating industrial land uses adjacent to residential and commercial uses, whether within the MUP site or adjacent to it, the applicant shall prepare an analysis of the uses proposed at the MUP site and the current and permissible future uses in the surrounding properties. This analysis shall identify:</p> <ol style="list-style-type: none"> <li>1. Conflicts that might arise due to "worst case" operation of the MUP facilities,</li> <li>2. Potential measures to mitigate those impacts,</li> <li>3. The likely effectiveness of these mitigation measures over time to ameliorate the problem,</li> <li>4. Performance measures that would indicate successful mitigation of the potential conflict,</li> <li>5. Mitigation measures may include but are not limited to: <ul style="list-style-type: none"> <li>• building setbacks,</li> <li>• buffers between uses,</li> <li>• noise controls,</li> <li>• changes in building design, and</li> <li>• use of best management practices.</li> </ul> </li> <li>6. This analysis shall be a required submittal for all Master Use Permit applications, and</li> <li>7. Incorporate mitigation measures, as applicable, into the Master Use Permit Conditions of Approval.</li> </ol> <p><b>Mitigation SEIR LU-1B: Required Findings for MUP</b></p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. Mitigation SEIR LU-1B has been included in BMC Section 23B.36.090.F, which specifically requires that the proposed location of an "M" use in the C-W or MU-R portion of a site only be allowed if such location would not increase the incompatibility of uses within the site or between the site and surrounding area.</p>

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Impact SEIR LU-2: Potential Land Use Change from Industrial to Residential within the MU-LI Zoning District South of University Avenue.</b> Four potential MUP sites that qualify for MUP processing and have been evaluated for future increased residential density (e.g., the Peerless Greens, the Saul Zaentz Media Center, the OSH/H.J. Heinz Company Plant Building, and the Marchant Building.) Location of intense residential density within industrially-zoned land may affect the continued viability of industrial uses and trigger land uses changes. This would be a <i>potentially significant</i> impact.</p>	<p><b>Projects that Contain both MU-LI- and MU-R- and/or C-W-Zoned Land.</b> In order to approve a Master Use Permit that would allow new MU-LI uses that were otherwise prohibited in a C-W or MU-R zoning district, 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 areas.  (Significant and Unavoidable)</p>	<p>No mitigation required: the regulations as presented to the Council for approval do not allow residential uses to be located within the M, MM, or MU-LI portions of an MUP site as was previously proposed.</p>
<p><b>Impact SEIR LU-3: Conflicts with the Suggested Implementation Measures within the West Berkeley Plan.</b> The provision of the proposed Master Use Permit process, taken as a whole, would allow otherwise prohibited uses to be established within the MU-R and C-W portions of an MUP site. This outcome would conflict with the West Berkeley Plan and, therefore, would be considered a <i>potentially significant</i> impact.</p>	<p><b>Mitigation SEIR LU-3: Amend the Implementation Measures within the West Berkeley Plan.</b> In order to mitigate this plan inconsistency, the City Council shall amend the implementation section of the West Berkeley Plan to allow this intermingling of uses, consistent with the proposed Master Use Permit process, within the boundaries of a Master Use Permit site.  (Less than Significant with Mitigations)</p>	<p>The following amendment to West Berkeley Plan, Section 1, Chapter VII, "Land Use Regulations of the West Berkeley Plan – For Adoption in Principal" was adopted prior to approval of the MUP amendments:  <u>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</u></p>
<p><b>Noise and Vibration</b></p>		
<p><b>Impact NOI-1: Exposure of Sensitive Receptors to</b></p>	<p><b>Mitigation NOI-1: Site-Specific Noise Studies.</b> In areas</p>	<p>Land Use Planning staff will review the MMP and</p>

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Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Excessive Noise Levels.</b> New development, particularly childcare uses, could be exposed to excessive noise levels as a result of development enabled under the West Berkeley Project. This would represent a <i>potentially significant</i> impact.</p>	<p>where residential development would be exposed to an <math>L_{dn}</math> of greater than 60 dBA, site-specific noise studies should be conducted to determine the area of impact and to present appropriate mitigation measures, which may include the following:</p> <ul style="list-style-type: none"> <li>- Utilize site planning to minimize noise in shared residential outdoor activity areas by locating the areas behind the buildings, in courtyards, or orienting the terraces to alleyways rather than streets, whenever possible.</li> <li>- The California Building Code and the City of Berkeley require project-specific acoustical analyses to achieve interior noise levels of 45 dBA <math>L_{dn}</math> or lower in residential units exposed to exterior noise levels greater than 60 dBA <math>L_{dn}</math>. Building sound insulation requirements would need to include the provision of forced-air mechanical ventilation in noise environments exceeding 70 dBA <math>L_{dn}</math> so that windows could be kept closed at the occupant's discretion to control noise. Special building construction techniques (e.g., sound-rated windows and building facade treatments) may be required where exterior noise levels exceed 65 dBA <math>L_{dn}</math>. These treatments include, but are not limited to sound rated windows and doors, sound rated exterior wall assemblies, acoustical caulking, etc. The specific determination of what treatments are necessary will be conducted on a unit-by-unit basis during project design. Results of the analysis, including the description of the necessary noise control treatments, will be submitted to the City, along with the building plans, and approved prior to issuance of a building permit. Feasible construction techniques such as these would adequately reduce interior noise levels to 45 dBA <math>L_{dn}</math> or lower.</li> </ul> <p>(Less than Significant with Mitigations)</p>	<p>analyze potential impacts for individual projects during the discretionary approval process to ensure that in areas where sensitive receptors would be exposed to <math>L_{dn}</math> exceeding 60 dBA, site-specific noise studies were conducted to determine the area of impact and that appropriate mitigation measures were incorporated into the proposed project.</p>
<p><b>Impact NOI-2: Potential Increases in Noise Levels Resulting from Incompatible Land Uses.</b> Development enabled under the West Berkeley Project could introduce manufacturing and industrial uses near residential land uses. Such development could generate</p>	<p><b>Mitigation NOI-2: Site-Specific Noise Studies.</b> Noise levels at residential property lines from new development shall be maintained not in excess of the Berkeley Municipal Code Limits. The approvals of the development should require a noise study demonstrating how the use</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process to ensure that when new manufacturing and industrial development is proposed near residential development or other sensitive</p>

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p>unacceptable levels of operational noise which would be incompatible with existing noise-sensitive residential uses nearby. This would be a represent a <b><i>potentially significant</i></b> impact.</p> <p><b>Impact NOI-3: Construction Noise.</b> Businesses and residences throughout West Berkeley would be intermittently exposed to high levels of construction noise throughout the plan horizon. Construction could temporarily elevate noise levels at adjacent businesses and residences by 15 to 20 dBA or more. This represents a <b><i>potentially significant</i></b> impact.</p>	<p>would meet these standards and how it would be consistent with the City's noise standards. (Significant and Unavoidable)</p> <p><b>Mitigation NOI-3: Construction Noise Abatement.</b> Construction equipment should be well maintained and used judiciously to be as quiet as practical. The following measures, when applicable, are recommended to reduce noise from construction activities:</p> <ul style="list-style-type: none"> <li>- Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.</li> <li>- Utilize "quiet" models of air compressors and other stationary noise sources where technology exists.</li> <li>- Locate stationary noise-generating equipment as far as feasible from sensitive receptors when sensitive receptors adjoin or are near a construction project area.</li> <li>- Prohibit unnecessary idling of internal combustion engines.</li> <li>- Pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.</li> <li>- Construct solid plywood fences around construction sites adjacent to operational business, residences or noise-sensitive land uses.</li> <li>- A temporary noise control blanket barrier could be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.</li> <li>- Route construction-related traffic along major roadways and as far as feasible from sensitive receptors.</li> <li>- Ensure that construction activities (including the loading and unloading of materials and truck movements) are</li> </ul>	<p>receptors, studies have been provided that demonstrate that noise levels at residential property lines will be maintained so as not to exceed Berkeley Municipal Code limits to the maximum extent feasible.</p> <p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process to ensure construction noise mitigations are included as conditions of approval and on the construction plans.</p>

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Impact NOI-4: Exposure to Excessive Vibration during Construction.</b> Residences, businesses, and historically-significant structures in West Berkeley could be exposed to construction-related vibration during excavation and foundation work. This would represent a <i>potentially significant</i> impact.</p>	<p>limited to the hours of 7:00 AM to 7:00 PM on weekdays and between the hours of 9:00 AM and 8:00 PM on weekends or holidays.</p> <ul style="list-style-type: none"> <li>- Ensure that excavating, grading and filling activities (including warning of equipment motors) are limited to between the hours of 7:00 AM to 7:00 PM on weekdays and between the hours of 9:00 AM and 8:00 PM on weekends or holidays.</li> <li>- Businesses, residences or noise-sensitive land uses adjacent to construction sites should be notified of the construction schedule in writing. Designate a “construction liaison” that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the liaison at the construction site.</li> </ul> <p>(Significant and Unavoidable)</p> <p><b>Mitigation NOI-4: Measures to Reduce Vibration during Construction.</b> The following measures are recommended to reduce vibration from construction activities:</p> <ul style="list-style-type: none"> <li>- Avoid impact pile driving where possible. Drilled piles causes lower vibration levels where geological conditions permit their use.</li> <li>- Avoid using vibratory rollers and tampers near sensitive areas.</li> <li>- In areas where project construction is anticipated to include vibration-generating activities, such as pile driving, in close proximity to existing structures, site-specific vibration studies should be conducted to determine the area of impact and to present appropriate mitigation measures that may include the following:                     <ul style="list-style-type: none"> <li>--- Identification of sites that would include vibration compaction activities such as pile driving and have the potential to generate groundborne vibration, and the sensitivity of nearby structures to groundborne vibration. Vibration limits should be applied to all vibration-sensitive</li> </ul> </li> </ul>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process to ensure that the project avoids the use of pile driving and use of vibratory rollers and tampers near sensitive areas to the maximum extent feasible, and in areas where vibration inducing activities cannot be avoided and are proposed in close proximity to existing structures, a site-specific vibration study has been conducted to provide appropriate mitigation measures that are then included in conditions of approval and on construction drawings.</p>

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Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Impact NOI-5: Exposure to Excessive Railroad-Related Vibration.</b> New uses facilitated by the West Berkeley Project may be exposed to railroad train vibration levels exceeding Federal Transit Administration criteria. This would represent a <i>potentially significant</i> impact.</p>	<p>structures located within 200 feet of the project. A qualified structural engineer should conduct this task.</p> <p>--- Development of a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions.</p> <p>--- Construction contingencies would be identified for when vibration levels approached the limits.</p> <p>--- At a minimum, vibration monitoring should be conducted during initial demolition activities and during pile driving activities. Monitoring results may indicate the need for more or less intensive measurements.</p> <p>--- When vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures.</p> <p>--- Conduct post-survey on structures where either monitoring has indicated high levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.</p> <p>(Less than Significant with Mitigations)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process to ensure that a vibration study has been conducted for any project with habitable buildings within 150 feet of the rail track centerline and, if so, that building setbacks, building construction methods, and/or the vibration isolation of vibration sensitive uses within the proposed facility have adequately addressed the vibration issues.</p>
<p><b>Biology</b></p> <p><b>Impact SEIR BIO-1: Increased Potential for Birds Using Aquatic Park to Collide with Structures.</b> New</p>	<p><b>Mitigation NOI-5: Vibration Studies.</b> Prior to the active development of habitable buildings within 150 feet from the centerline of the nearest active rail track, a vibration study shall be required demonstrating that groundborne vibration issues associated with rail operations have been adequately addressed through the use of building setbacks, building construction methods, and/or the vibration isolation of vibration sensitive uses within the proposed facility.</p> <p>(Less than Significant with Mitigations)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. This will be</p>

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Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p>construction of buildings in the vicinity of Aquatic Park, regardless of height, could have a <i>potentially significant</i> impact on bird populations within the area.</p>	<p>structures would not lead to a significant increase in the frequency of bird collisions in the area, new MUP structures shall adhere to the following design measures:</p> <ul style="list-style-type: none"> <li>- Create visual markers and mute reflections in the glass features of buildings. Glass treatment (e.g., modifications in transparency, reflectivity, patterns and colors) shall be on at least the first 12 meters, or to the anticipated height of the majority of vegetation at maturity, whichever is higher. Applying these solutions to the entire building is preferred.</li> <li>- Reduce light pollution which disorients migrating birds by choosing exterior light fixtures that project light downward rather than toward the sky, by turning off interior lights at night, especially during spring and fall migration periods, and by locating interior plantings away from glass areas that are lit at night.</li> <li>- For buildings located inside of, or within a clear flight path of less than 300 feet from, suitable bird habitat, require bird-safe glass treatment on building facades such that the first 60 feet of the building is no more than 10 percent untreated glass. Treatments include fritting, netting, permanent stencils, frosted glass, grids, or UV patterns visible to birds. Vertical elements of patterns must be at least ¼ inch wide at a maximum spacing of 4 inches; or have horizontal elements at least 1/8 inch wide at a minimum spacing of 2 inches. Require minimal shielded lighting, and no up-lighting or event searchlights. Prohibit the construction of horizontal-axis windmills or vertical-axis windmills that do not appear solid.</li> <li>- For structures such as greenhouses, skyways, free-standing glass walls and some balconies, require that 100 percent of glass be treated.</li> <li>- Implementation of these mitigation measures would reduce potential impacts associated with the collision of birds into structures developed in the West Berkeley area</li> </ul>	<p>reinforced by the BMC requirement for all MUP projects to comply with the Bird-Safe Building Guidelines (Section 23.B.36.090.A.3):</p> <p>All new buildings within the proposed project must 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</p> <p>In addition to the Bird-Safe Design Guidelines, landscaping in MUP sites adjacent to Aquatic Park shall be habitat friendly along the site edges directly bordering Aquatic Park.</p>

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Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Transportation/Traffic</b></p>	<p>to a level considered <i>less than significant</i>. (Less than Significant with Mitigations)</p>	
<p><b>Impact TRANS-1: 2015 Freeway Operations Impacts.</b> The additional trips generated by the Project would continue to degrade freeway operations on the segments of I-80/I-580 adjacent to West Berkeley, creating a significant impact. While the majority of these segments are already operating at failing conditions, new trips generated by the Project continue to worsen operation which triggers a <i>significant and unavoidable</i> impact.</p>	<p><b>Mitigation TRANS-1A: Transportation Demand Management (TDM) Measures.</b> The City should support the development and implementation of West Berkeley TDM and parking strategies as described in the earlier discussion on Trip Generation in this DEIR and in the TDM Section of the West Berkeley Circulation Master Plan. This mitigation will reduce overall trip making and lessen all impacts of the Project on the traffic network. TDM Measures can be implemented through project-specific conditions of approval and/or through adoption of a comprehensive TDM Plan that includes on-street parking restrictions.</p> <p><b>Mitigation TRANS-1B: Integrated Corridor Mobility Project.</b> The City should continue coordination with Caltrans and the ACCMA to implement the Integrated Corridor Mobility Project along I-80 and other strategies to improve operational performance and/or reduce demand. Improvements to these segments of the I-80/I-580 corridor would reduce spillover traffic on West Berkeley's arterial facilities, namely San Pablo Avenue.</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process to incorporate TDM measures into the project to the maximum extent feasible through conditions of approval.</p> <p>The City's Transportation Division shall work with Caltrans and the ACCMA on the Integrated Corridor Mobility Project on an on-going basis.</p>
	<p>The ACCMA is currently working with Caltrans and local jurisdictions including the City of Berkeley to address the traffic congestion along the I-80 corridor. The Integrated Corridor Mobility Project is evaluating corridor management elements such as ramp metering, changeable message signage and variable speed limits to improve traffic flow and reduce congestion on this facility. This project is estimated to be completed and implemented by 2013.</p> <p>(Significant and Unavoidable)</p>	
<p><b>Impact TRANS-2: Westbound Gilman Street</b></p>	<p><b>Mitigation TRANS-2: Gilman Street/I-80 Roundabout.</b></p>	<p>The City's Transportation Division shall work with</p>

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Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Freeway Ramp Impacts.</b> The additional trips generated by the Project would continue to impact the westbound Gilman Street off ramp during the AM and PM peak hours. This represents a <i>potentially significant</i> impact.</p>	<p>The City should continue to work with Caltrans to develop the proposed dual roundabout project at the Gilman Street/I-80 Interchange. This project would reduce queue lengths well below the available storage and mitigate the impact to a less than significant level. The conceptual design for this improvement is shown in the Technical Appendix – Traffic Analysis.</p> <p>(Significant and Unavoidable)</p>	<p>Caltrans on the Gilman Street/I-80 Interchange Project on an on-going basis.</p>
<p><b>Impact TRANS-3: Westbound University Avenue Freeway Ramp Impacts.</b> The additional trips generated by the Project would result in a 95<sup>th</sup> percentile queue length which would exceed storage capacity of this ramp. This is created by westbound vehicles exiting I-80/I-580 and turning left on University Avenue to go west toward the Marina/Proposed Ferry Terminal and West Frontage Road. Increases in volumes along University Avenue create few gaps for a safe turning movement to be complete, resulting in spillback into the free right turn channelized lane and into the freeway mainline. This would represent a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-3: University Avenue/West Frontage Road Interchange Redesign.</b> Further investigation of an interchange redesign for the westbound on/off ramp and West Frontage Road at University Avenue would reduce queuing and spillback. A proposed roundabout design has been identified which would eliminate the queuing impact. The conceptual design for this improvement is shown in the Technical Appendix – Traffic Analysis.</p> <p>(Significant and Unavoidable)</p>	<p>The City's Transportation Division shall work with Caltrans on the University Avenue/West Frontage Road Interchange Project on an on-going basis.</p>
<p><b>Impact TRANS-4: 2015 Arterial Impacts.</b> The additional trips generated by the Project would continue to impact segments of San Pablo Avenue, University Avenue and Ashby Avenue during the weekday peak hours. These impacted facilities would limit operations for autos and emergency service vehicles during the peak hour conditions. This would represent a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-4A: SMART Corridors Program.</b> The City should continue to work with the ACCMA and Caltrans on the SMART corridors program and explore innovative signalization systems such as adaptive signalization to optimize capacity on arterial segments in West Berkeley.</p> <p><b>Mitigation TRANS-4B: Ashby Avenue Deficiency Plan.</b> The City should work with the ACCMA to develop a deficiency plan for Ashby Avenue to conform with CMP requirements.</p> <p>(Significant and Unavoidable)</p>	<p>The City's Transportation Division shall work with ACCMA to develop a deficiency plan for Ashby Avenue to conform with CMP requirements, and with ACCMA and Caltrans on the SMART corridors program and explore innovative signalization systems such as adaptive signalization to optimize capacity on arterial segments on an on-going basis.</p>
<p><b>Impact TRANS-5: Unacceptable Delay at University Avenue and 6<sup>th</sup> Street.</b> High vehicular demand at this</p>	<p><b>Mitigation TRANS-5A: Install Traffic Signal.</b> The City should install a traffic signal at the intersection of</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during</p>

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Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p>intersection during the weekday PM and weekend MD peak hours results in unacceptable delay at this intersection. This would be a <i>potentially significant</i> impact.</p>	<p>University Avenue and southbound 5<sup>th</sup> Street; operate it as a group control with the traffic signal located at the intersection of University Avenue and 6<sup>th</sup> Street. The proposed geometric improvements are shown in the Technical Appendix – Traffic Analysis.</p> <p><b>Mitigation TRANS-5B: Restripe Southbound 5th Street.</b> The City should restripe the southbound 5th Street to allow vehicles to make a right turn onto Frontage Road and University Avenue, both.</p> <p>(Significant and Unavoidable)</p>	<p>the discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact on the University and 6<sup>th</sup> intersection, a traffic study is required and mitigations will be required to address any significant impacts identified. Projects having a significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation.</p> <p>The City's Transportation Division shall determine the need for these improvements in the context of other priorities and resource availability and implement the improvements as soon as feasible.</p>
<p><b>Impact TRANS-6: Unacceptable Delay at Ashby Avenue and 7<sup>th</sup> Street.</b> High vehicular demand at this intersection during the weekday PM peak hour results in unacceptable delay at this intersection. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-6A: Remove/Replace Traffic Signal.</b> The City should remove the traffic signal located at the intersection of 7<sup>th</sup> Street and Potter Street; install stop signs along east/west approaches of Potter Street; convert the Potter Street approaches to right-in/right-out movements.</p> <p><b>Mitigation TRANS-6B: Install Traffic Signal.</b> The City should install a traffic signal at the intersection of 7<sup>th</sup> Street and Anthony Street; restripe the southbound approach as shared left-through lane and one right-turn lane; construct a left-turn pocket along eastbound approach and convert the existing shared left-through-right lane to a shared through-right lane.</p> <p><b>Mitigation TRANS-6C: Extend 5th Street.</b> The City should extend 5<sup>th</sup> Street to Ashby Avenue; operate the southbound approach at the intersection of Ashby Avenue and 5<sup>th</sup> Street as a yield-controlled right-in/right-out movement and other approaches as free movements. This configuration is shown in the Technical Appendix- Traffic Analysis.</p> <p><b>Mitigation TRANS-6D: Convert Turning Movements.</b> The City should convert the northbound and southbound left turning movements at the intersection of Ashby</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact on the Potter, Anthony, and 7<sup>th</sup> area, a traffic study is required and mitigations will be required to address any significant impacts identified. Projects having a significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation.</p> <p>The City's Transportation Division shall determine the need for these improvements in the context of other priorities and resource availability and implement the improvements as soon as feasible.</p>

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Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Impact TRANS-7: Unacceptable Delay at University Avenue and San Pablo Avenue.</b> High vehicular demand at this intersection during the weekday PM and weekend MD peak hours results in unacceptable delay at this intersection. This would be a <i>significant and unavoidable</i> impact.</p>	<p><b>Mitigation TRANS-1A: Transportation Demand Management (TDM) Measures.</b> (Significant and Unavoidable)</p>	<p>See Mitigation TRANS-1A: Transportation Demand Management (TDM) Measures.</p>
<p><b>Impact TRANS-8: Unacceptable Delay at Gilman Street and I-80 WB On/Off Ramp.</b> Vehicle trips added to this intersection as a result of the Plus Project condition continue to worsen delay at the off ramp stop control. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-8: Implement Mitigation TRANS-2 (Gilman Street/I-80 Roundabout).</b> (Significant and Unavoidable)</p>	<p>See Mitigation TRANS-2 (Gilman Street &amp; I-80 Roundabout).</p>
<p><b>Impact TRANS-9: Unacceptable Delay at Gilman Street and I-80 EB On/Off Ramp.</b> Vehicle trips added to this intersection as a result of the Plus Project condition continue to worsen delay at the off ramp stop control. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-9: Implement Mitigation TRANS-2 (Gilman Street/I-80 Roundabout).</b> (Significant and Unavoidable)</p>	<p>See Mitigation TRANS-2 (Gilman Street &amp; I-80 Roundabout).</p>
<p><b>Impact TRANS-10: Unacceptable Delay at University Avenue and I-80 WB On/Off Ramp.</b> Vehicle trips added to this intersection as a result of the Plus Project condition continue to worsen delay at the off ramp stop control. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-10: Implement Mitigation TRANS-3 (University Avenue/ West Frontage Road Interchange Redesign).</b> (Significant and Unavoidable)</p>	<p>See Mitigation TRANS-3 (University Avenue/ West Frontage Road Interchange Redesign).</p>
<p><b>Impact TRANS-11: Unacceptable Delay at Gilman Street and Eastshore Highway.</b> Vehicle trips added to this intersection as a result of the Plus Project condition continue to worsen delay along Eastshore Highway for the stop controlled movements. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-11: Implement Mitigation TRANS-2 (Gilman Street/I-80 Roundabout).</b> (Significant and Unavoidable)</p>	<p>See Mitigation TRANS-2 (Gilman Street/I-80 Roundabout).</p>
<p><b>Impact TRANS-12: Increased Queues at Gilman Street At-Grade Rail Crossing.</b> Vehicle trips are added to this crossing where No Project queues back up into</p>	<p><b>Mitigation TRANS-12: Construct a Grade-Separated Rail Crossing at Gilman Street.</b> The City should construct a grade separation at Gilman Street. This would</p>	<p>The City's Transportation Division shall work with other agencies as needed to construct a grade-separated rail crossing at Gilman Street on an on-going basis. The</p>

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Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p>the nearest adjacent intersection in both the eastbound and westbound directions. This would be a <i>potentially significant</i> impact.</p>	<p>eliminate concerns for queuing to and from adjacent intersections, improving safety and operations. A conceptual diagram of this mitigation is shown in the Technical Appendix – Traffic Analysis.  (Significant and Unavoidable)</p>	<p>City's Transportation Division shall determine the need for these improvements in the context of other priorities and resource availability and implement the improvements as soon as feasible.</p>
<p><b>Impact TRANS-13: 2015 AC Transit Impacts.</b> The Plus Project condition would generate marginal new transit trips which could result in a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-13A: On-Going Coordination with AC Transit.</b> The City of Berkeley should continued coordination with AC Transit to best accommodate the needs of AC Transit riders in West Berkeley with available funding; work to identify new funding sources, grants, and programs that may become available and apply these funds toward maintaining adequate service on the core AC Transit routes serving West Berkeley.</p> <p><b>Mitigation TRANS-13B: Funding for Transit Improvements.</b> The City should require as a condition of approval for new development projects and/or contribution to a transportation services fee that would provide fair-share funding for transit improvement projects identified in the West Berkeley Circulation Master Plan Report.  (Significant and Unavoidable)</p>	<p>The City's Transportation Division shall continue coordination with AC Transit to best accommodate the needs of AC Transit riders in West Berkeley with available funding; work to identify new funding sources, grants, and programs that may become available and apply these funds toward maintaining adequate service on the core AC Transit routes serving West Berkeley to the maximum extent feasible.</p> <p>All new buildings require discretionary approval and environmental review. The Planning Department shall require as a condition of approval for new development projects and/or contribution to a transportation services fee that would provide fair-share funding for transit improvement projects identified in the West Berkeley Circulation Master Plan Report.</p>
<p><b>Impact TRANS-14: 2015 West Berkeley Shuttle Impacts.</b> Since many of the existing shuttle trips are already at capacity, any new trips added by the Project could result in a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-14: On-Going Coordination with Shuttle Service Managers.</b> The City of Berkeley should continue coordination with the shuttle service managers and other WBS funding partners (including several large employers in West Berkeley) to assure continued effective operation of the WBS; recruit new West Berkeley employers as funding partners for the WBS through conditions of approval or incentives; and work with shuttle service managers to encourage expansion of or adjustment to WBS service to meet the demands of new West Berkeley employers.  (Significant and Unavoidable)</p>	<p>The City's Transportation Division shall continue coordination with shuttle service managers to the maximum extent feasible.</p>
<p><b>Impact TRANS-15: 2015 Bike Network Impacts.</b></p>	<p><b>Mitigation TRANS-15: Require Funds for Bicycle</b></p>	<p>Land Use Planning staff will review the MMP and</p>

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Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p>Because the West Berkeley Project would introduce new bicycle trips into areas of limited bicycle infrastructure, and because auto traffic resulting from the West Berkeley Project would likely have adverse effects on the safety of bicycle travel in the study area, the Project would result in a <i>potentially significant</i> impact on bicycle operations.</p>	<p><b>Improvements.</b> The City should require a condition of approval for new development projects and/or contribution to a transportation services fee that would provide fair-share funding for relevant bicycle improvement projects identified in the West Berkeley Circulation Master Plan Report.</p> <p>(Significant and Unavoidable)</p>	<p>analyze potential impacts for individual projects during the discretionary approval process. Land Use Planning staff shall require as a condition of approval for new development projects and/or contribution to a transportation services fee that would provide fair-share funding for bicycle improvement projects identified in the West Berkeley Circulation Master Plan Report.</p>
<p><b>Impact TRANS-16: 2015 Pedestrian Network Impacts.</b> In many cases, the West Berkeley Project would situate development in areas that possess weaknesses in the pedestrian network. Because the Project's proposed development would intensify issues such as incomplete sidewalk networks and potentially unsafe pedestrian crossings of arterials and railroad tracks, the West Berkeley Project would generate <i>potentially significant</i> impacts for pedestrians.</p>	<p><b>Mitigation TRANS-16: Require Funds for Pedestrian Improvements.</b> The City of Berkeley should require a condition of approval for new development projects and/or contribution to a transportation services fee that would provide fair-share funding for implementation of relevant pedestrian improvement projects identified in the West Berkeley Circulation Master Plan Report.</p> <p>(Significant and Unavoidable)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. Land Use Planning staff shall require as a condition of approval for new development projects and/or contribution to a transportation services fee that would provide fair-share funding for pedestrian improvement projects identified in the West Berkeley Circulation Master Plan Report.</p>
<p><b>Impact TRANS-17: 2030 Freeway Operations Impacts.</b> The additional trips generated by the Project would continue to degrade freeway operations on the segments of I-80/I-580 adjacent to West Berkeley, creating a significant impact. While the majority of these segments are already operating at failing conditions, any new trips generated by the Project will trigger a <i>significant and unavoidable</i> impact.</p>	<p><b>Mitigation TRANS-1A: Transportation Demand Management (TDM) Measures.</b></p> <p><b>Mitigation TRANS-1B: Integrated Corridor Mobility Project.</b></p> <p>(Significant and Unavoidable)</p>	<p>See Mitigation TRANS-1A: Transportation Demand Management (TDM) Measures and Mitigation TRANS-1B: Integrated Corridor Mobility Project.</p>
<p><b>Impact TRANS-18: Westbound Gilman Street Freeway Ramp Impacts.</b> Under the 2030 No Project condition, the Gilman Street westbound off ramp would fail under AM and PM peak hour conditions. Since the Plus Project condition would continue to add volumes at these ramp locations and 95<sup>th</sup> percentile queue lengths would continue to exceed available storage, significant impacts would occur at these locations during their respective time periods. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-18: Implement Mitigation TRANS-2 (Gilman Street/I-80 Roundabout).</b> As shown in Table 4-67, below, this project would reduce queue lengths well below the available storage and mitigate the impact to a less than significant level.</p> <p>(Significant and Unavoidable)</p>	<p>See Mitigation TRANS-2 (Gilman Street &amp; I-80 Roundabout).</p>
<p><b>Impact TRANS-19: Westbound University Avenue</b></p>	<p><b>Mitigation TRANS-19: Implement Mitigation TRANS-</b></p>	<p>See Mitigation TRANS-3 (University Avenue/ West</p>

MASTER USE PERMIT MITIGATION MONITORING PROGRAM (EXHIBIT B)

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Freeway Ramp Impacts.</b> Similar to the 2015 impact, the additional trips generated by the Project in 2030 would result in a 95<sup>th</sup> percentile queue length which would exceed storage capacity of the ramp. This would be a <i>potentially significant</i> impact.</p>	<p><b>3 (University Avenue/West Frontage Road Interchange Redesign).</b> Impacts would be reduced to less than significant, as shown in Table 4-67.  (Significant and Unavoidable)</p>	<p><b>Frontage Road Interchange Redesign).</b></p>
<p><b>Impact TRANS-20: 2030 Arterial Impacts.</b> The additional trips generated by the Project would continue to impact segments of San Pablo Avenue, Gilman Street University Avenue and Ashby Avenue during the weekday peak hours. These impacted facilities would limit operations for autos and emergency service vehicles during the peak hour conditions. Full mitigation of these impacts is not feasible due to limited opportunities for roadway expansion along these arterial segments, and the impact would remain <i>significant and unavoidable</i>.</p>	<p><b>Mitigation TRANS-1A: Transportation Demand Management (TDM) Measures.</b>  <b>Mitigation TRANS-4: SMART Corridors Program.</b>  (Significant and Unavoidable)</p>	<p>See Mitigation TRANS-1A: Transportation Demand Management (TDM) Measures and Mitigation TRANS-4: SMART Corridors Program.</p>
<p><b>Impact TRANS-21: Unacceptable Delay at University Avenue and 6<sup>th</sup> Street</b> High vehicular demand at this intersection during the weekday AM and PM peak hours results in unacceptable incremental delay at this intersection. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-21A: Implement Mitigation TRANS-5A (Install Traffic Signal) and Mitigation TRANS-5B (Restripe Southbound 5<sup>th</sup> Street).</b>  <b>Mitigation TRANS-21B: Protect Left Turn Movement on Southbound Approach.</b> The City should convert left-turning movements from permissive to protected movement.  (Significant and Unavoidable)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact on the University and 6<sup>th</sup> intersection, a traffic study is required and mitigations will be required to address any significant impacts identified. Projects having a significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation.</p> <p>The City's Transportation Division shall determine the need for these improvements in the context of other priorities and resource availability and implement the improvements as soon as feasible.</p>
<p><b>Impact TRANS-22: Unacceptable Delay at Dwight Way and 7<sup>th</sup> Street/Dwight Crescent.</b> Increased vehicular demand at this intersection during the weekday PM peak hour results in unacceptable incremental delay at this intersection. This would be a</p>	<p><b>Mitigation TRANS-22A: Add protected left turn arrows to signal heads on eastbound and westbound approaches.</b>  <b>Mitigation TRANS-22B: Optimize Cycle Length of the</b></p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact on the Dwight Way and 7<sup>th</sup> Street/ Dwight Crescent area, a traffic study is</p>

MASTER USE PERMIT MITIGATION MONITORING PROGRAM

(EXHIBIT B)

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><i>potentially significant</i> impact.</p>	<p><b>Traffic Signal.</b> (Significant and Unavoidable)</p>	<p>required and mitigations will be required to address any significant impacts identified. Projects having a significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation.  The City's Transportation Division shall determine the need for these improvements in the context of other priorities and resource availability and implement the improvements as soon as feasible.</p>
<p><b>Impact TRANS-23: Unacceptable Delay at Ashby Avenue and 7<sup>th</sup> Street.</b> Increased vehicular demand at this intersection during the weekday PM peak hour results in unacceptable incremental delay at this intersection. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-23A: Implement Mitigation TRANS-1A (TDM).</b> This would reduce future auto demand at this intersection.  <b>Mitigation TRANS-23B: Implement Mitigation TRANS-6A (Remove/Replace Traffic Signal), Mitigation TRANS-6B (Install Traffic Signal), Mitigation TRANS-6C (Extend 5th Street.), and Mitigation TRANS-6D (Convert Turning Movements).</b> This would open access of 5<sup>th</sup> Street to Ashby Avenue north of Ashby Avenue to relieve the congestion experienced at this intersection.  (Significant and Unavoidable)</p>	<p>See <b>Mitigation TRANS-1A (TDM), Mitigation TRANS-6A (Remove/Replace Traffic Signal), Mitigation TRANS-6B (Install Traffic Signal), Mitigation TRANS-6C (Extend 5th Street.), and Mitigation TRANS-6D (Convert Turning Movements).</b></p>
<p><b>Impact TRANS-24: Unacceptable Delay at Gilman Street and San Pablo Avenue.</b> Increased vehicular demand at this intersection during the weekday PM peak hour and both MD and PM weekend peak hours results in unacceptable incremental delay at this intersection. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-24: Implement Mitigation TRANS-1A (TDM).</b>  (Significant and Unavoidable)</p>	<p>See <b>Mitigation TRANS-1A (TDM).</b></p>
<p><b>Impact TRANS-25: Unacceptable Delay at Cedar Street and San Pablo Avenue.</b> Increased vehicular demand at this intersection during the weekday PM peak hour and weekend peak periods would result in unacceptable incremental delay at this intersection. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-25A: Implement Mitigation TRANS-1A (TDM).</b>  <b>Mitigation TRANS-25B: Protect Northbound and Southbound Left-Turn Movements.</b> The City should convert northbound and southbound left-turning</p>	<p>See <b>Mitigation TRANS-1A (TDM).</b>  Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact the Cedar and San</p>

MASTER USE PERMIT MITIGATION MONITORING PROGRAM

(EXHIBIT B)

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Impact TRANS-26: Unacceptable Delay at University Avenue and San Pablo Avenue.</b> Increased vehicular demand at this intersection during all weekday and weekend peak hour conditions would result in unacceptable incremental delay at this intersection. This would be a <i>potentially significant</i> impact.</p>	<p>movements from permissive to protected movements.  (Significant and Unavoidable)</p>	<p>Pablo intersection, a traffic study is required and mitigations will be required to address any significant impacts identified. Projects having a significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation.  The City's Transportation Division shall determine the need for these improvements in the context of other priorities and resource availability and implement the improvements as soon as feasible.</p>
<p><b>Impact TRANS-27: Unacceptable Delay at Dwight Way and San Pablo Avenue.</b> Increased vehicular demand at this intersection during the weekday PM peak hour would result in unacceptable incremental delay at this intersection. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-26: Implement Mitigation TRANS-1A (TDM).</b>  (Significant and Unavoidable)</p>	<p>See <b>Mitigation TRANS-1A (TDM).</b></p>
<p><b>Impact TRANS-28: Unacceptable Delay at Ashby Avenue and San Pablo Avenue.</b> Increased vehicular</p>	<p><b>Mitigation TRANS-27A: Implement Mitigation TRANS-1A (TDM).</b>  <b>Mitigation TRANS-27B: Construct Additional Lane on Eastbound Approach.</b> The City should construct an additional lane, and convert the existing left-turning lane to a shared left-through lane.  <b>Mitigation TRANS-27C: Construct Additional Lane on Westbound Approach.</b> The City should construct an additional lane, and convert the existing left-turning lane to a shared left-through lane.  (Significant and Unavoidable)</p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact the Dwight and San Pablo intersection, a traffic study is required and mitigations will be required to address any significant impacts identified. Projects having a significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation.  The City's Transportation Division shall determine the need for these improvements in the context of other priorities and resource availability and implement the improvements as soon as feasible.</p>
<p><b>Impact TRANS-28: Unacceptable Delay at Ashby Avenue and San Pablo Avenue.</b> Increased vehicular</p>	<p><b>Mitigation TRANS-28: Implement Mitigation TRANS-</b></p>	<p>See <b>Mitigation TRANS-1A (TDM).</b></p>

MASTER USE PERMIT MITIGATION MONITORING PROGRAM

(EXHIBIT B)

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
demand at this intersection during all weekday and weekend peak hour conditions would result in unacceptable incremental delay at this intersection. This would be a <i>potentially significant</i> impact.	<b>1A (TDM).</b> (Significant and Unavoidable)	
<b>Impact TRANS-29: Unacceptable Delay at Gilman Street and I-80 WB On/Off Ramp.</b> Increased vehicle trips added to this intersection as a result of the plus Project condition continue to worsen delay at the off ramp stop control. This would be a <i>potentially significant</i> impact.	<b>Mitigation TRANS-29: Implement Mitigation TRANS-2 (Gilman Street/I-80 Roundabout).</b> (Significant and Unavoidable)	See Mitigation TRANS-2 (Gilman Street/I-80 Roundabout).
<b>Impact TRANS-30: Unacceptable Delay at Gilman Street and I-80 EB On/Off Ramp.</b> Increased vehicle trips added to this intersection as a result of the plus Project condition continue to worsen delay at the off ramp stop control. This would be a <i>potentially significant</i> impact.	<b>Mitigation TRANS-30: Implement Mitigation TRANS-2 (Gilman Street/I-80 Roundabout).</b> (Significant and Unavoidable)	See Mitigation TRANS-2 (Gilman Street/I-80 Roundabout).
<b>Impact TRANS-31: Unacceptable Delay at University Avenue and I-80 WB On/Off Ramp.</b> Increased vehicle trips added to this intersection as a result of the plus Project condition continue to worsen delay at the off ramp stop control. This would be a <i>potentially significant</i> impact.	<b>Mitigation TRANS-31: Implement Mitigation TRANS-3 (University Avenue/West Frontage Road Interchange Redesign).</b> (Significant and Unavoidable)	See Mitigation TRANS-3 (University Avenue/West Frontage Road Interchange Redesign).
<b>Impact TRANS-32: Unacceptable Delay at Gilman Street and Eastshore Highway.</b> Increased vehicle trips added to this intersection as a result of the plus Project condition continue to worsen delay along Eastshore Highway for the stop controlled movements. This would be a <i>potentially significant</i> impact.	<b>Mitigation TRANS-32: Implement Mitigation TRANS-2 (Gilman Street/I-80 Roundabout).</b> (Significant and Unavoidable)	See Mitigation TRANS-2 (Gilman Street/I-80 Roundabout).
<b>Impact TRANS-33: Unacceptable Delay at Gilman Street and 2<sup>nd</sup> Street.</b> Increased vehicular demand at this intersection during the weekday PM peak hour results in unacceptable incremental delay at this intersection for northbound and southbound traffic. This would be a <i>potentially significant</i> impact.	<b>Mitigation TRANS-33: Convert Northbound Approach to Right-In/Right-Out Movement.</b> (Significant and Unavoidable)	Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact the Gilman and 2nd intersection, a traffic study is required and mitigations will be required to address any significant impacts

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p><b>Impact TRANS-34: Unacceptable Delay at Allston Way and 4<sup>th</sup> Street.</b> Increased vehicular demand at this intersection during the weekday PM peak hour results in unacceptable incremental delay at this intersection. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-34: Convert to All-Way Stop Control.</b>  (Significant and Unavoidable)</p>	<p>identified. Projects having a significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation.</p> <p>The City's Transportation Division shall determine the need for these improvements in the context of other priorities and resource availability and implement the improvements as soon as feasible.</p>
<p><b>Impact TRANS-35: Extended Queues at Gilman Street At-Grade Rail Crossing.</b> Similar to 2015, vehicle trips are added to this crossing where No Project queues back up into the nearest adjacent intersection in both the eastbound and westbound directions. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-35: Implement Mitigation TRANS-12 (Construct a Grade-Separated Rail Crossing at Gilman Street).</b> This would eliminate concerns of queuing on and from adjacent intersections, improving safety and operations.  (Significant and Unavoidable)</p>	<p>The City's Transportation Division shall determine the need for these improvements in the context of other priorities and resource availability and implement the improvements as soon as feasible.</p> <p>See <b>Mitigation TRANS-12 (Construct a Grade-Separated Rail Crossing at Gilman Street).</b></p>
<p><b>Impact TRANS-36: Extended Queues at Hearst Avenue At-Grade Rail Crossing and Spillback to Adjacent Intersections.</b> Vehicle trips are added to the Hearst Avenue and 4<sup>th</sup> Street intersection, adjacent to the at-grade crossing would create 95<sup>th</sup> percentile queue lengths for eastbound traffic which would back into the railroad tracks during the PM peak hour. This would be</p>	<p><b>Mitigation TRANS-36A: Install a Traffic Signal at 4th Street and Hearst Avenue.</b>  <b>Mitigation TRANS-36B: Create 100-foot Right Turn Pocket on Eastbound Approach.</b>  <b>Mitigation TRANS-36C: Create a 50-foot Right Turn</b></p>	<p>Land Use Planning staff will review the MMP and analyze potential impacts for individual projects during the discretionary approval process. When, in the opinion of the City's Traffic Engineer, a project has the potential to have a significant traffic impact the Hearst &amp; 4th intersection, a traffic study is required and mitigations will be required to address any significant impacts</p>

MASTER USE PERMIT MITIGATION MONITORING PROGRAM

(EXHIBIT B)

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p>a <i>potentially significant</i> impact.</p>	<p><b>Pocket on Northbound Approach.</b>  (Significant and Unavoidable)</p>	<p>identified. Projects having a significant impact on the intersection shall be required to provide a fair-share contribution toward implementation of the mitigation.  The City's Transportation Division shall determine the need for these improvements in the context of other priorities and resource availability and implement the improvements as soon as feasible.</p>
<p><b>Impact TRANS-37: 2030 AC Transit Impacts.</b> The Plus Project condition would generate marginal new transit trips which could potentially result in a significant impact if future capacity is reduced or service is reduced. This would be a <i>potentially significant</i> impact.</p>	<p><b>Mitigation TRANS-37: Implement Mitigation TRANS-13A (On-Going Coordination with AC Transit) and Mitigation TRANS-13B (Funding for Transit Improvements).</b>  (Significant and Unavoidable)</p>	<p>See Mitigation TRANS-13A (On-Going Coordination with AC Transit) and Mitigation TRANS-13B (Funding for Transit Improvements).</p>
<p><b>Impact TRANS-38: 2030 West Berkeley Shuttle Impacts.</b> Shuttle ridership is anticipated to grow beyond levels experienced in 2015. Given that the West Berkeley Project would allow intensified commercial/light industrial uses in a number of locations along the existing WBS route, demand for the WBS would likely increase as a result of the West Berkeley Project. This potential for ridership growth, coupled with other latent increases in demand, could potentially outmatch Shuttle capacity. The magnitude of new WBS riders resulting from new development would vary depending on the specifics of the development. WBS analyses would thus need to be refined at the project-specific level of analysis. As a full understanding of WBS-related impacts cannot be gained at this time, a <i>potentially significant</i> impact on the West Berkeley Shuttle could occur as a result of the West Berkeley Project.</p>	<p><b>Mitigation TRANS-38: Implement Mitigation TRANS-14 (On-Going Coordination with Shuttle Service Managers).</b>  (Significant and Unavoidable)</p>	<p>See Mitigation TRANS-14 (On-Going Coordination with Shuttle Service Managers).</p>
<p><b>Impact TRANS-39: 2030 Bike Network Impacts.</b> Because the West Berkeley Project would introduce new bicycle trips into areas of limited bicycle infrastructure, and because auto traffic resulting from the West Berkeley Project would likely have adverse effects on</p>	<p><b>Mitigation TRANS-39: Implement Mitigation TRANS-15 (Require Funds for Bicycle Improvements).</b>  (Significant and Unavoidable)</p>	<p>See Mitigation TRANS-15 (Require Funds for Bicycle Improvements).</p>

Potential Environmental Impacts	Recommended Mitigation Measures	Who/When/How
<p>the safety of bicycle travel in the study area, the Project would result in a <i>potentially significant</i> impact on bicycle operations.</p> <p><b>Impact TRANS-40: Pedestrian Network Impacts.</b> In many cases, the West Berkeley Project would situate development in areas that possess weaknesses in the pedestrian network. Because the Project's proposed development would intensify issues such as incomplete sidewalk networks and potentially unsafe pedestrian crossings of arterials and railroad tracks, the West Berkeley Project would generate <i>potentially significant</i> impacts for pedestrians.</p>	<p><b>Mitigation TRANS-40: Implement Mitigation TRANS-16 (Require Funds for Pedestrian Improvements).</b> (Significant and Unavoidable)</p>	<p>See Mitigation TRANS-16 (Require Funds for Pedestrian Improvements).</p>

**FOOT NOTE 1: West Berkeley Plan Mitigation 1:** If a project exceeds two stories (30 feet) within an east-west public view corridor (such as University, Cedar, Dwight, or Hearst) and would exceed the height of adjacent buildings, then the City Planning Department shall undertake the following procedure at the outset of the site planning process to ensure that it does not obscure significant views toward the bay or hills:

Step A: Request that project sponsors show proposed building massing through use of wireframe or photo-simulation techniques during design review in order to reveal whether and how much new structures could obstruct significant views.

Step B: Require that the project incorporate stepped back building heights and/or broken rooflines in its designs. Box-like, unarticulated structures, particularly in commercial corridors, should be prohibited through design review procedures (discussed in Appendix A-3)

Step C: Require inclusion of outdoor signage (if any) in the plan review process and require that it be accurately depicted in the architectural drawings of the project. Signage would not be permitted above the roofline of any structure within view corridors or other areas characterized by prominent views, in accordance with the City's Sign Ordinance.

Step D: Where appropriate, require the inclusion of landscape plans to improve visual quality as part of the project's application packet in order to identify whether proposed vegetation could obscure significant public views, and prohibit any vegetation that would do so.

Step E: Require a project's design, including wireframes and signage, to be evaluated by the City's urban design staff and/or Zoning Adjustments Commission's Design Review Committee, to ensure the preservation of existing significant views prior to the issuance of building permits.

RESOLUTION NO. ##,### –N.S.

SUBMITTING TO THE BERKELEY ELECTORATE A MEASURE TO ADOPT AMENDMENTS TO THE WEST BERKELEY PLAN AND THE ZONING ORDINANCE TO ALLOW ADDITIONAL DEVELOPMENT FLEXIBILITY AND HEIGHT ON A LIMITED NUMBER OF LARGE SITES IN WEST BERKELEY

WHEREAS, the City Council has ordered that a measure adopting amendments to the West Berkeley Plan and the Zoning Ordinance to allow additional development flexibility and height on a limited number of large sites in West Berkeley be placed on the ballot; and

WHEREAS, the Council has requested that the Alameda County Board of Supervisors consolidate the General Municipal Election with the Presidential General Election; and

WHEREAS, the Council desires to submit all measures to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED, that full text of the measure and the City Attorney's analysis shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED, that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED, that the Registrar of Voters of Alameda County is required to perform necessary services in connection with said election.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED, that the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Berkeley.

BE IT FURTHER RESOLVED, that said proposed measure shall appear and be printed upon the ballots to be used at said election as follows:

<b>CITY OF BERKELEY BALLOT MEASURE</b>	
Shall an ordinance adopting amendments to the West Berkeley Plan and the Zoning Ordinance to allow additional development flexibility and heights up to 75' in some areas on a limited number of large sites in West Berkeley, conditioned on community benefits for West Berkeley such as Aquatic Park improvements, open space, affordable artist work space and employment programs and providing for further protections with respect to development adjacent to Aquatic Park, be adopted?	YES
	NO

BE IT FURTHER RESOLVED, that the text of the measure be as shown on Exhibit A and attached hereto and made a part hereof.

**TEXT OF MEASURE**

**ORDINANCE NO. #,### - N.S.**

THE PEOPLE OF THE CITY OF BERKELEY ORDAIN AS FOLLOWS:

**Section 1. Findings.**

The People of the City of Berkeley find as follows:

A. The City of Berkeley (“City”) adopted the West Berkeley Plan in 1993; and adopted Zoning Ordinance amendments to implement that Plan in 1999.

B. Beginning in 2006, the City Council requested that staff revise land use regulations in West Berkeley to allow flexibility to facilitate development of large multi-parcel sites and to encourage building reuse and expansion.

C. In addition to various Zoning Ordinance revisions, the revised regulations include revisions to the Land Use Chapter of the West Berkeley Plan, Section VII. *Land Use Regulations of the West Berkeley Plan – For Adoption in Principle* to reflect the proposed changes to zoning regulations.

D. The West Berkeley Plan is incorporated by reference into the General Plan, and therefore such revisions are also amendments to the General Plan.

E. The City has prepared an Environmental Impact Report (EIR) and a Supplemental Environmental Impact Report (SEIR) on the revised regulations and the City Council has certified those documents.

F. On June 12, 2012, the Council adopted Resolution No. 65,782-N.S. certifying the EIR as supplemented by the SEIR with respect to the plan and zoning amendments set forth in this measure.

G. The proposed amendments to the West Berkeley Plan Land Use Chapter, Section VII. *Land Use Regulations of the West Berkeley Plan – For Adoption in Principle* are consistent with the Purposes of the West Berkeley Plan, including maintaining the full range of land uses and economic activities, maintaining the ethnic and economic diversity, and maintaining and improving the quality of life.

H. The proposed amendments are also consistent with West Berkeley Plan goals and policies, including, but not limited to allowing modification to zoning regulations to

improve the West Berkeley industrial business climate, to attract emerging business sectors, and to retain, to the degree feasible, the economic diversity of West Berkeley businesses, and especially space for artists and crafts-people and jobs for residents of Berkeley who may be underemployed or unemployed.

## **Section 2. Amendment of West Berkeley Plan and General Plan.**

The West Berkeley Plan is hereby amended as follows, and the General Plan, of which the West Berkeley is a part, is hereby also amended by reference in the same manner.

A. Revision to Table 1-5, “Recommended Development Standards by Zone”, page 53. The Residential Density standard for the Mixed-Use Residential zone is amended as follows:

Residential Density: max. 1 unit/1,250 sq. ft. land, except for Master Use Permit sites.

B. The “Large Site Development Process”, page 56 is amended to read:

Rationale:

West Berkeley has a few large sites—sites of 5 acres or more under a single ownership—which present special challenges and opportunities for planning and development in West Berkeley. These large sites—such as the Miles or (ex)Colgate property—are of a scale where they have a major impact on the area around them, and noticeable impacts on West Berkeley as a whole. They also may require modification of the uses and development standards in a district to facilitate a feasible large scale project.

For these reasons, the West Berkeley Plan incorporates a concept of a Large Site Development Process. While the process remains to be defined, the concept is that a special approval process would be used for certain projects. Because of the importance of these projects, the Planning Commission would be involved in the process. The process would also provide a formal mechanism for early citizen input. The rezoning will propose a Zoning Ordinance amendment to provide for a Master Plan Permit. It would be a middle ground alternative between the Use Permit and the Development Agreement. While a master permit could be issued for a multi-building project, there would be a procedure for review of individual buildings at their time of construction. This alternative could incorporate many of the master planning features of a Development Agreement, but would be acted upon under the procedures of the Zoning Ordinance, rather than as a separate contract.

It is important to note that no special process would be required of large scale projects which conform in all substantive respects to the uses and

development standard of their district. Such a project, however large, would require simply the normal Use Permit(s) and environmental review (an Environmental Impact Report or other appropriate documentation).

**201244 Update:** The Master Use Permit (MUP) section of the Zoning Ordinance (Chapter 23B.36) is modified. The Regulations noted in the Plan are no longer accurate. Please reference the proposed revisions to Chapter 23B.36 for the updated Master Use Permit regulations.

Regulation:

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

- ~~On~~ Are located on sites of at least 4 (modified 2011) acres or one 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.

### **Section 3. Amendment of Zoning Ordinance.**

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

#### **Chapter 23B.36 MASTER USE PERMITS**

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

### **23B.36.010 Applicability**

This Chapter applies to sites that met and continue to meet the eligibility requirements set forth in this Section as of August 1, 2011, and is limited to the sites as they existed at that time.

- A. In order for a site to be eligible for a Master Use Permit (“MUP”), at least 50% of its land area must be:
  - 1. located in one or more of the MU-LI, MM, or M districts;
  - 2. the site must consist of either
    - a. at least 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 districts subject to the additional regulations in Section 23B.36.050.A.
- C. The City may not approve more than 6 MUPs during the 10 years immediately following the effective date of this Chapter.
- 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% 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

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

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

- A. Master Use Permit applications shall include:
  - 1. all materials required by Section 23B.24.030, except that they shall not be required to include architectural plans or drawings for phases subsequent to the first phase(s);
  - 2. a detailed phasing plan that shows the character, scale, general location and timing of all physical development, including on- and off-site infrastructure, and locations of proposed uses;
  - 3. a proposed benefits package that is consistent with 23B.36.090.B. The proposed benefits package must include benefits beyond what would otherwise be provided and must specify the types of benefits, the method of delivering and guaranteeing these benefits, and their net present value. 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. The City may require the applicant to pay for an independent consultant to provide technical assistance to the City in reviewing the information provided. Measures to mitigate the land use impacts of the proposed project shall not be considered benefits under this Chapter; and
  - 4. the applicant's commitment to enter into a binding Community Benefits Agreement that meets the City's requirements to guarantee provision of the proposed benefits if the application is approved.
- B. Applications for Master Use Permits shall be subject to the provisions under Chapter 23B.32, except that the public notice area required by 23B.32.020 shall be expanded to five hundred (500) feet of the subject property and notice of public hearing shall be posted and mailed 30 days in advance.

### **23B.36.040 Reserved**

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

- A. An applicant for a Master Use Permit may request, and the Board may approve, the following alterations to the lot development standards and permissible uses set forth in the underlying applicable zoning district regulations:
  - 1. Parking Requirements: Reduction of off-street parking requirements of up to 50%;
  - 2. Height Limitations: increases in permitted maximum height up to 75 feet, except as provided in paragraph 3 below, with a site-wide average height not to exceed 50 feet, and except as further limited by the existing height limits in areas of an MUP site zoned C-W (Chapter 23E.64) and MU-R (Chapter 23E.84). Development in a MUP site is limited by the following:

- i. buildings shall be setback five (5) feet from any property line that abuts or confronts an MU-R zone not located within the MUP site;
  - ii. in a MU-R zone within a MUP site buildings shall be no higher than 35 feet at the property line or setback line, whichever applies, and may increase to a maximum height of 45 feet provided they do not intersect a plane starting at 35 feet high and sloping on a 30 degree angle from horizontal inward toward the lot; and
  - iii. in a MU-R zone within a MUP site any height granted using the density bonus provisions may not intersect the plane described in Section 23B.36.050.A.2.ii unless the applicant can demonstrate that adherence to this provision would be in violation of state law.
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, industrial infrastructure may exceed 75 feet only if the applicant can demonstrate absolute necessity to permit the establishment of a discrete portion of a proposed production or manufacturing process, subject to the findings in Section 23B.36.090.H. In no case shall height exceed 100 feet;
4. Floor Area Ratio (FAR) Restrictions: increases in permitted maximum FAR of up to 3.0 except in the MU-R District, where FAR is limited by the MU-R District regulations. For purposes of this section, above grade parking structures count for lot coverage calculations but not for FAR calculations;
5. Setbacks: reduced setbacks from residential uses;
6. Spacing Requirements: use separation standards may be reduced;
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, except that:
  - i. residential uses shall not be allowed in the M, MM or MU-LI portions of an MUP site,
  - ii. residential density in the MU-R portion of an MUP site shall be calculated using the standards applicable in the C-W district, although the height limits for MU-R residential uses shall conform with Section 23B.36.050(A)(2)(ii) , and flexibility regarding parking may be allowed pursuant to paragraph 1, above,
  - iii. the following MU-LI uses are prohibited in MU-R portions of an MUP site: construction products manufacturing, pharmaceutical manufacturing, testing and commercial biological research laboratories, and commercial excavation, and
  - iv. any research and development use that may be allowed in an MU-R portion of an MUP site is only allowed subject to the findings in Section 23B.36.090.E;
8. The replacement of Manufacturing, Warehouse, Wholesale, or Material-Recovery activities with Other Industrial uses permitted in any of the zoning districts in which the subject property is located.

9. The maximum lot coverage allowed for an MUP site is 75% and there must be a minimum of 10% publicly accessible open space, not including surface parking.
- B. The Gross Floor Area allocated for each use may vary from that set forth in the Master Use Permit by up to ten percent (10%) with a Zoning Certificate, as long as the new use allocations meet all requirements of the Zoning Ordinance. Variations of more than ten percent (10%) but less than twenty-five percent (25%) from the stated Gross Floor Area for any use may be authorized by the Zoning Officer; variations of more than twenty-five percent (25%) may be authorized by the Board. Any such change shall still be subject to the requirements set forth in the approved MUP, including the finding required by Section 23B.32.040.A.
- C. Notwithstanding the conversion requirements applicable in the underlying districts within an approved MUP, spaces within an MUP site may be divided, aggregated and/or converted in any manner, as a matter of right as long as such division, aggregation or conversion is consistent with the gross floor area limitations for uses and findings and requirements set forth in the MUP.

**23B.36.060 Master Use Permit excludes other alterations of development standards**

The flexibility provided under this Chapter to alter development standards is exclusive and supersedes all other provisions of this Title under which development standards may be altered, except as provided under Section 23B.44.050. In cases where this Chapter applies, Chapter 23B.48 shall not apply, and *vice versa*.

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

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

**23B.36.080 Vesting**

- A. An MUP shall be deemed to have been exercised in its entirety upon the substantial completion of the first phase thereof. Thereafter, it shall be considered to be vested in its entirety.
- B. Failure to substantially comply with the detailed phasing plan contained in the MUP shall be a violation of the MUP and subject to revocation or modification per Chapter 23B.60.

**23B.36.090 Findings**

- A. In order to approve a MUP, the Board must make both the finding required by Section 23B.32.040.A and the following additional findings:
1. The proposed project will be consistent with the purposes of this Chapter;
  2. The proposed project includes the applicable requirements of the Mitigation Monitoring Program adopted concurrently with this Chapter; and

3. All new building within the proposed project must 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. For alterations of development standards and permitted uses under Section 23B.36.050.A the Board must find that the proposed project would confer measurable community benefits that affirmatively advance the purposes of this Chapter or the West Berkeley Plan in accordance with the requirements adopted by the Council per Section 23B.36.040, and that the applicant has agreed to enter into a binding commitment to do so.
- C. For alterations of Permitted Uses under Section 23B.36.050.A.7, the Board must find that the proposed project will maintain the overall industrial nature of the West Berkeley Area and the MUP site.
- D. For variations in the gross floor area allocated for specific uses under subdivision C of Section 23B.36.050, the Zoning Officer or Board must find that any proposed variation is consistent with the purposes of this Chapter.
- E. 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 MUR 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.
- F. In order to approve a Master Use Permit that contains buildings within the MU-LI or within 100 feet of either MU-LI or MU-R districts, the Board must find that the project
  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.
- G. In order to approve a Master Use Permit adjacent to 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.
- H. In order to allow any building over 75 feet in height, the Board must find that the additional height is absolutely 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, and only to the extent that is necessary for that purpose.

#### **Section 4. Amendment of Measure**

The amendments adopted by the voters in this measure may be repealed or amended by the City Council without a vote of the people as long as any such amendments do not increase the aggregate amount of development allowed by this measure.

#### **Section 5. Effectiveness**

A. Sections 2 and 3 of this measure shall not take effect until the Council adopts an ordinance that requires any development under Section 3 to provide

community benefits to be recommended by the Planning Commission and adopted by the Council, such as:

1. Retain and provide affordable work space for artists or funds for that purpose.
2. Provide transportation demand management measures consistent with the West Berkeley Circulation Master Plan Report or funds for that purpose.
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.
4. Provide affordable work force housing in West Berkeley or funds for that purpose.
5. Contribute to environmental improvements at Aquatic Park or other measures to improve environmental quality in West Berkeley.
6. Payment of prevailing wages for all construction work under the MUP.
7. Provision of privately owned but publicly accessible open space as part of the MUP.
8. Provision of space and or support to childcare providers so that affordable childcare can be provided to those who need and qualify for it.
9. Require local sourcing of building materials to the extent feasible.
10. Provide benefits or raise funds for programs and initiatives that further goals of the West Berkeley Plan.

B. Sections 2 and 3 of this measure shall not take effect until the Council adopts an ordinance that establishes:

1. a formula for determining the value of community benefits that will be required;
2. a process under which applicants for master use permits under Section 3 are required to demonstrate meaningful attempts to meet and consult with the affected community prior to filing an application; and
3. mechanisms for ensuring that the affected community is involved in evaluation of the adequacy of any proposed community benefits, that community benefits inure primarily to the benefit of West Berkeley, and for overseeing provision of promised community benefits.

C. No MUP may be approved for any site abutting, confronting or adjacent to Aquatic Park until the Council adopts an ordinance adopting measures to protect and where possible improves the environmental, recreational and aesthetic qualities of Aquatic Park. Such measures shall include, but are not limited to the following elements:

1. Height limitations;
2. Floor area ration (FAR) limitations;
3. Setbacks;
4. Controls on runoff and site drainage;
5. Mitigation measures to avoid or lessen shadowing of Aquatic Park; and
6. Protection of significant views of and from Aquatic Park.

**Section 6. Severability.**

If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this ordinance shall nonetheless remain in full force and effect. The people of the City of Berkeley hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

### **City Attorney's Impartial Analysis**

This measure would amend the West Berkeley Plan ("Plan") and Zoning Ordinance provisions that control development of large parcels in West Berkeley. The Plan and Zoning Ordinance allow more flexibility in development of large parcels if they are approved through the Master Use Permit ("MUP") process.

Currently, only sites that are at least four acres in a single ownership are eligible for the MUP process. This measure would amend the Plan and Zoning Ordinance to make sites under 4 acres in a single ownership and comprise a full city block eligible, and would limit the MUP process to parcels eligible on August 1, 2011.

Material amendments are as follows.

Increased residential density in Mixed Use-Residential ("MU-R") areas included in MUP sites. Currently, the density in MU-R areas is one unit for every 1,250 square feet of land area. The amendments would remove that limitation for MU-R areas that are part of a MUP site.

Revision of MUP process; additional flexibility. The MUP process and standards would be revised to allow potential alteration of nine lot development standards in MUP sites. The main development standards that could be altered are:

- Height could be increased in areas of MUP sites zoned for manufacturing from 45 feet to 75 feet, and not to exceed 100 feet when necessary for a manufacturing process. Height limits in areas of MUP sites zoned for commercial uses would be unchanged at a maximum of 50 feet for a mixed use building. Heights limits in areas of MUP sites in the MU-R district would be increased to a maximum of 45 feet, with additional limitations on height at the property line for areas adjacent to MU-R areas that are not part of the MUP site.
- Required parking could be reduced by up to 50%.
- The floor area ratio ("FAR") of an MUP site would be increased from 2.0 to a maximum of 3.0, except in MU-R portions where the maximum FAR would be 1.5.
- Certain uses allowed in Mixed Use – Light Industrial ("MU-LI") zones that are not allowed in MU-R zones could be placed anywhere within a MUP site, subject to findings and limitations. Four uses would be excluded from MU-R areas: construction products manufacturing; pharmaceutical manufacturing; testing and commercial biological research laboratories; and commercial excavation. No Research and Development use allowed in a MU-LI district could be located in a MU-R district without specific findings of compatibility.

Community benefits. MUPs could be approved only in return for community benefits that could not otherwise be required. The specific community benefits have not been defined, but have been referred to the Planning Commission. No MUP could be approved until the City Council has adopted specific procedures and criteria for community benefits.

Aquatic Park protections. No MUP may be approved adjacent to Aquatic Park until the City Council has adopted specific protection measures for Aquatic Park. This issue has also been referred to the Planning Commission.

*/s/*  
ZACH COWAN  
Berkeley City Attorney

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

REFERRING TO THE PLANNING COMMISSION CONSIDERATION OF COMMUNITY BENEFITS REQUIREMENTS FOR MASTER USE PERMITS UNDER BERKELEY MUNICIPAL CODE CHAPTER 23B.36

WHEREAS, the City Council adopted new requirements for Master Use Permits (the "MUPs") on May 15, 2012; and

WHEREAS, the MUP amendments as adopted prohibit the approval of any MUPs until the Council adopts specific and concrete community benefits applicable to MUPs; and

WHEREAS, sufficiently specific and concrete community benefits requirements have not been fully considered by the Planning Commission as part of its public hearings on the MUP amendments.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the following potential community benefits are hereby referred to the Planning Commission, which shall make its recommendations to the Council as soon as possible, so that the Council can adopt a set of community benefits applicable to MUPs no later than the end of 2012:

1. Retain and provide affordable work space for artists or funds for that purpose.
2. Provide transportation demand management measures consistent with the West Berkeley Circulation Master Plan Report or funds for that purpose.
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.
4. Provide affordable work force housing in West Berkeley or funds for that purpose.
5. Contribute to environmental improvements at Aquatic Park or other measures to improve environmental quality in West Berkeley.
6. Payment of prevailing wages for all construction work under the MUP.
7. Provision of privately owned but publicly accessible open space as part of the MUP.
8. Provision of space and or support to childcare providers so that affordable childcare can be provided to those who need and qualify for it.
9. Require local sourcing of building materials to the extent feasible.
10. Provide benefits or raise funds for programs and initiatives that further goals of the West Berkeley Plan.

BE IT FURTHER RESOLVED that the Planning Commission shall consider and make recommendations to the City Council as to:

1. an appropriate formula for determining the value of community benefits that will be required;

2. a process under which applicants for MUPs shall be required to demonstrate meaningful attempts to meet and consult with the affected community prior to filing an application;
3. mechanisms for ensuring that the affected community is involved in evaluation of the adequacy of any proposed community benefits, that community benefits from MUPs inure primarily to the benefit of West Berkeley, and for overseeing provision of promised community benefits; and
4. whether sites that were eligible to be MUPs as of August 1, 2011 should be allowed to increase in size, and if so to what extent and under what conditions.

BE IT FURTHER RESOLVED that the Planning Commission shall consider and make recommendations to the City Council as to an Aquatic Park protection package, that includes measures to protect and where possible improves the environmental, recreational and aesthetic qualities of Aquatic Park, including, but not limited to:

1. Height limitations;
2. Floor area ration (FAR) limitations;
3. Setbacks;
4. Controls on runoff and site drainage;
5. Mitigation measures to avoid or lessen shadowing of Aquatic Park; and
6. Protection of significant views of and from Aquatic Park.

BE IT FURTHER RESOLVED that no later than the date on which the Council considers the Planning Commission's recommendations concerning community benefits, the City Manager shall provide to the Council a template for a community benefits agreement that could be used for securing community benefits under Chapter 23B.36.

