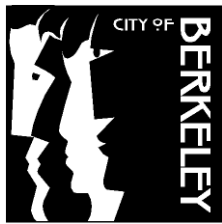


# Appendix A

---

Notice of Preparation (NOP) and NOP Comments



Planning and Development Department  
Land Use Planning Division

## NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE PROPOSED CITY OF BERKELEY HOUSING ELEMENT UPDATE

---

Notice is hereby given that the City of Berkeley is preparing a Draft Environmental Impact Report (EIR) for the City's Housing Element Update ("the project") and is requesting comments on the scope and content of the Draft EIR. The EIR is being prepared by the City of Berkeley, which is the Lead Agency for the project, in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and local CEQA guidelines.

In accordance with CEQA Guidelines section 15082, this Notice of Preparation (NOP) is being sent to the California State Clearinghouse, Alameda County Clerk, responsible agencies, trustee agencies, adjacent cities, and members of the public including individuals and organizations in order to solicit comments on the scope and content of the analysis in the EIR.

**WRITTEN COMMENTS:** Responses to this NOP and any questions or comments should be directed in writing to: *Grace Wu, Senior Planner, Land Use Planning Division, 1947 Center Street, 2nd Floor, Berkeley, CA 94704; or [GWu@cityofberkeley.info](mailto:GWu@cityofberkeley.info)*. Comments on the NOP must be received **on or before 5pm on Monday, February 21, 2022**. In addition, comments may be provided at the EIR Scoping Meeting (see details below). Comments should focus on significant environmental issues, reasonable alternatives, and mitigation measures.

**EIR PUBLIC SCOPING MEETING:** The City of Berkeley will conduct a public scoping session on **Wednesday, February 9, 2022** as part of a scheduled Planning Commission meeting to receive comments on the scope and contents of the EIR. The meeting will start at **7:00 PM** and be held via video and teleconference. Interested parties should check the Planning Commission website for information on how to join the meeting and to confirm the meeting date, time, and agenda: [https://www.cityofberkeley.info/Clerk/Commissions/Commissions\\_Planning\\_Commission\\_Homepage.aspx](https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Planning_Commission_Homepage.aspx) The agenda will be posted by 5pm on Friday, February 4, 2022.

**PROJECT TITLE:** City of Berkeley 2023-2031 Housing Element Update

**PROJECT LOCATION:** The project, which is an update to the Housing Element of the General Plan, is applicable to the entire City of Berkeley (citywide). The City of Berkeley is located in the East Bay of the San Francisco Bay Area in northern Alameda County. Berkeley is bordered by the cities of Oakland and Emeryville to the south and the city of Albany and the unincorporated community of Kensington to the north, the Berkeley Hills (Contra Costa County) to the east, and the San Francisco Bay to the west. The city

encompasses approximately 17.2 square miles (approximately 7.2 of which is underwater in the San Francisco Bay) with a population of approximately 122,580 residents and 51,500 housing units. The city contains a combination of residential, commercial, and industrial development.

Interstate 580/880, San Pablo Avenue (SR-123), Sacramento Street, Martin Luther King Jr. Way, and Shattuck Avenue provide the major north-south routes through the city, as does Bay Area Rapid Transit (BART). Major east-west routes include Marin Avenue, University Avenue, and Ashby Avenue.

The regional setting and existing city limits are depicted on Figure 1.

**PROJECT SPONSOR:** City of Berkeley

**PROPOSED PROJECT DESCRIPTION and BACKGROUND:** The proposed project consists of a comprehensive update to the Housing Element and related edits to the City's General Plan Land Use Element and Berkeley Municipal Code.

The Housing Element is one of the seven state-mandated elements of the local General Plan and is required to be updated every eight years. The City of Berkeley is preparing the 2023-2031 Housing Element Update to comply with the legal mandate that requires each local government to identify adequate sites for housing to meet the existing and projected housing needs for varying income-levels in the community. It is intended to provide the city with a comprehensive strategy for promoting the production of safe, decent and affordable housing, and affirmatively furthering fair housing during the housing cycle. The Housing Element Update establishes goals, policies, and actions to address the existing and projected housing needs in Berkeley.

The goals, policies, and actions in the Housing Element are required to meet Berkeley's Regional Housing Needs Assessment (RHNA) allocation. Berkeley's latest RHNA allocation calls for 8,934 new housing units, including 3,854 new units for residents in the low- and very low-income categories. The City must demonstrate to the State Department of Housing and Community Development (HCD) that the City's Housing Element has adequate land capacity and implementing policies to accommodate its RHNA allocation. In addition, HCD recommends that cities identify a "buffer" of 15% to 30% above RHNA for lower- and moderate-income categories. Thus, overall, the City's zoning and other land use regulations must accommodate between approximately 9,750 and 10,500 new units.

To identify the housing sites to be included in the Housing Element, the City will identify suitable and available housing sites and their capacity, screen for vacant and underutilized parcels, evaluate and analyze sites, and calculate potential buildout.

In conjunction with the Housing Element Update, the City anticipates amendments to the General Plan including revising the Land Use Element to maintain consistency with the updated Housing Element. The Land Use Element revisions are to ensure consistency among all General Plan Elements upon implementation of the updated Housing Element.

More information about the proposed project can be found on the City's website:

<https://www.cityofberkeley.info/housingelement/>

**PROBABLE ENVIRONMENTAL EFFECTS:** Approval of the proposed Housing Element Update would not approve any physical development (e.g., construction of housing or infrastructure). However, the EIR will assume that such actions are reasonably foreseeable future outcomes of the Housing Element Update. As such, the EIR will evaluate the potential physical environmental impacts that could result from future actions for implementing the policies proposed under the Housing Element Update at a programmatic level, in accordance with CEQA Guidelines Section 15168.

The topical areas that will be addressed in the EIR are: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Energy, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, Land Use and Planning, Population and Housing, Public Services and Recreation, Transportation, Tribal Cultural Resources, Utilities and Service Systems, and Wildfire.

The Draft EIR will also examine a reasonable range of alternatives to the proposed project, including the CEQA-mandated No Project Alternative and other potential alternatives that may be capable of reducing or avoiding potential environmental effects while meeting most of the basic objectives of the project. In addition, the EIR will address cumulative impacts, growth inducing impacts, and other issues required by CEQA.



---

Grace Wu, Senior Planner

Date of Distribution: January 21, 2022

Attachments: Figure 1: City of Berkeley Location Map

**Figure 1 City of Berkeley Location Map**



Imagery provided by Esri and its licensors © 2021.

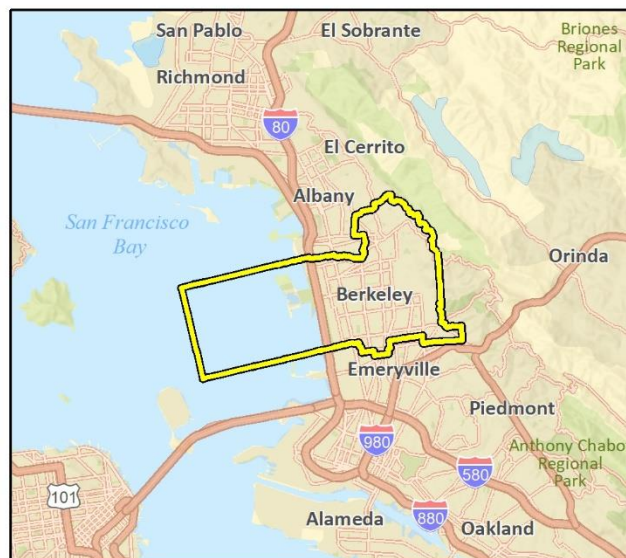


Fig. 3 Regional Location



February 7, 2022

Grace Wu, Senior Planner  
Land Use Planning Division  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Re: Notice of Preparation of a Draft Environmental Impact Report for the Proposed  
City of Berkeley Housing Element Update, Berkeley

Dear Ms. Wu:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report for the Proposed City of Berkeley Housing Element Update, which encompasses the entirety of the City of Berkeley (City). EBMUD has the following comments.

#### **WATER SERVICE**

Effective January 1, 2018, water service for new multi-unit structures shall be individually metered or sub-metered in compliance with California State Senate Bill 7 (SB-7). SB-7 encourages conservation of water in multi-family residential, mixed-use multi-family and commercial buildings through metering infrastructure for each dwelling unit, including appropriate water billing safeguards for both tenants and landlords. EBMUD water services shall be conditioned for all development projects within the Housing Element Update that are subject to SB-7 requirements and will be released only after the project sponsor has satisfied all requirements and provided evidence of conformance with SB-7.

Main extensions that may be required to serve any specific developments within the Housing Element Update to provide adequate domestic water supply, fire flows, and system redundancy will be at the project sponsor's expense. Pipeline and fire hydrant relocations and replacements due to modifications of existing streets, and off-site pipeline improvements, also at the project sponsor's expense, may be required depending on EBMUD metering requirements and fire flow requirements set by the local fire department. When the development plans are finalized for individual projects within the Housing Element Update, project sponsors for individual projects should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions of providing water service to the development. Engineering and installation of new and relocated pipelines and services require substantial lead time, which should be provided for in the project sponsor's development schedule.

Project sponsors for individual projects within the Housing Element Update should be aware that EBMUD will not install piping or services in contaminated soil or groundwater

(if groundwater is present at any time during the year at the depth piping is to be installed) that must be handled as a hazardous waste or that may be hazardous to the health and safety of construction and maintenance personnel wearing Level D personal protective equipment. Nor will EBMUD install piping or services in areas where groundwater contaminant concentrations exceed specified limits for discharge to the sanitary sewer system and sewage treatment plants. The project sponsor must submit copies to EBMUD of all known information regarding soil and groundwater quality within or adjacent to the project boundary and a legally sufficient, complete, and specific written remediation plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of contaminated soil and groundwater.

EBMUD will not design piping or services until soil and groundwater quality data and remediation plans have been received and reviewed and will not start underground work until remediation has been carried out and documentation of the effectiveness of the remediation has been received and reviewed. If no soil or groundwater quality data exists, or the information supplied by the project sponsor is insufficient, EBMUD may require the project sponsor to perform sampling and analysis to characterize the soil and groundwater that may be encountered during excavation, or EBMUD may perform such sampling and analysis at the project sponsor's expense. If evidence of contamination is discovered during EBMUD work on the project site, work may be suspended until such contamination is adequately characterized and remediated to EBMUD standards.

## **WASTEWATER SERVICE**

EBMUD's Main Wastewater Treatment Plant (MWWTP) and interceptor system are anticipated to have adequate dry weather capacity to accommodate the proposed wastewater flows for individual projects within the Housing Element Update and to treat such flows provided that the wastewater generated by the project meets the requirements of the EBMUD Wastewater Control Ordinance. However, wet weather flows are a concern. The East Bay regional wastewater collection system experiences exceptionally high peak flows during storms due to excessive infiltration and inflow (I/I) that enters the system through cracks and misconnections in both public and private sewer lines. EBMUD has historically operated three Wet Weather Facilities (WWFs) to provide primary treatment and disinfection for peak wet weather flows that exceed the treatment capacity of the MWWTP. Due to reinterpretation of applicable law, EBMUD's National Pollutant Discharge Elimination System (NPDES) permit now prohibits discharges from EBMUD's WWFs. Additionally, the seven wastewater collection system agencies that discharge to the EBMUD wastewater interceptor system ("Satellite Agencies") hold NPDES permits that prohibit them from causing or contributing to WWF discharges. These NPDES permits have removed the regulatory coverage the East Bay wastewater agencies once relied upon to manage peak wet weather flows.

A federal consent decree, negotiated among EBMUD, the Satellite Agencies, the Environmental Protection Agency (EPA), the State Water Resources Control Board (SWRCB), and the Regional Water Quality Control Board (RWQCB), requires EBMUD



and the Satellite Agencies to eliminate WWF discharges by 2036. To meet this requirement, actions will need to be taken over time to reduce I/I in the system. The consent decree requires EBMUD to continue implementation of its Regional Private Sewer Lateral Ordinance ([www.eastbaypsl.com](http://www.eastbaypsl.com)), construct various improvements to its interceptor system, and identify key areas of inflow and rapid infiltration over a 22-year period. Over the same time period, the consent decree requires the Satellite Agencies to perform I/I reduction work including sewer main rehabilitation and elimination of inflow sources. EBMUD and the Satellite Agencies must jointly demonstrate at specified intervals that this work has resulted in a sufficient, pre-determined level of reduction in WWF discharges. If sufficient I/I reductions are not achieved, additional investment into the region's wastewater infrastructure would be required, which may result in significant financial implications for East Bay residents.

To ensure that individual projects within the Housing Element Update contributes to these legally required I/I reductions, the lead agency should require the project sponsors comply with EBMUD's Regional Private Sewer Lateral Ordinance. Additionally, it would be prudent for the lead agency to require the following mitigation measures for individual projects within the Housing Element Update: (1) replace or rehabilitate any existing sanitary sewer collection systems, including sewer lateral lines to ensure that such systems and lines are free from defects or, alternatively, disconnected from the sanitary sewer system, and (2) ensure any new wastewater collection systems, including sewer lateral lines, for the project are constructed to prevent I/I to the maximum extent feasible while meeting all requirements contained in the Regional Private Sewer Lateral Ordinance and applicable municipal codes or Satellite Agency ordinances.

## **WATER RECYCLING**

EBMUD's Policy 9.05 requires that customers use non-potable water, including recycled water, for non-domestic purposes when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health, and not injurious to plant, fish, and wildlife to offset demand on EBMUD's limited potable water supply. Appropriate recycled water uses include landscape irrigation, commercial and industrial process uses, toilet and urinal flushing in non-residential buildings, and other applications.

EBMUD's current recycled water infrastructure and services do not extend through the City limits, however, the City is located within the designated service boundaries of EBMUD's East Bayshore Recycled Water Project. As part of EBMUD's long term water supply planning, future expansion plans will extend recycled water to various locations within Berkeley and could potentially serve projects within the Housing Element Update. As EBMUD plans and implements its recycled water supply expansion to the City, EBMUD recommends that the City and project sponsors continue to coordinate closely with EBMUD. The project sponsors are required to provide an estimate of expected water demand for potential recycled water uses for each project in the Housing Element Update



to further explore the options and requirements relating to recycled water use. Accordingly, EBMUD will assess and consider the feasibility of providing recycled water to projects within the Housing Element Update for appropriate uses.

## **WATER CONSERVATION**

Individual projects within the Housing Element Update presents an opportunity to incorporate water conservation measures. EBMUD requests that the City include in its conditions of approval a requirement that the project sponsor comply with Assembly Bill 325, "Model Water Efficient Landscape Ordinance," (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). The project sponsors should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.

If you have any questions concerning this response, please contact Timothy R. McGowan, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-1981.

Sincerely,



David J. Rehnstrom  
Manager of Water Distribution Planning

DJR:KTL:grd

sb22\_032 City of Berkeley Housing Element Update Response

cc: City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704



## NATIVE AMERICAN HERITAGE COMMISSION

Received

FEB 09 2021

Land Use Planning

January 26, 2022

Grace Wu  
City of Berkeley  
1947 Center Street, 2nd Floor  
Berkeley, CA 94704

**Re: 2022010331, City of Berkeley Housing Element Update Project, Alameda County**

Dear Ms. Wu:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit. 14, § 15064.5 (b) (CEQA Guidelines § 15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines § 15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

**Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**

CHAIRPERSON  
**Laura Miranda**  
Luiseño

VICE CHAIRPERSON  
**Reginald Pagaling**  
Chumash

PARLIAMENTARIAN  
**Russell Attebery**  
Karuk

COMMISSIONER  
**William Mungary**  
Paiute/White Mountain  
Apache

COMMISSIONER  
**Isaac Bojorquez**  
Ohlone-Costanoan

COMMISSIONER  
**Sara Dutschke**  
Miwok

COMMISSIONER  
**Buffy McQuillen**  
Yokayo Pomo, Yuki,  
Nomlaki

COMMISSIONER  
**Wayne Nelson**  
Luiseño

COMMISSIONER  
**Stanley Rodriguez**  
Kumeyaay

EXECUTIVE SECRETARY  
**Christina Snider**  
Pomo

**NAHC HEADQUARTERS**  
1550 Harbor Boulevard  
Suite 100  
West Sacramento,  
California 95691  
(916) 373-3710  
[nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)  
[NAHC.ca.gov](http://NAHC.ca.gov)



AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

  - a. A brief description of the project.
  - b. The lead agency contact information.
  - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
  - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

  - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

  - a. Alternatives to the project.
  - b. Recommended mitigation measures.
  - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:

  - a. Type of environmental review necessary.
  - b. Significance of the tribal cultural resources.
  - c. Significance of the project's impacts on tribal cultural resources.
  - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

  - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
  - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
  - A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- Avoidance and preservation of the resources in place, including, but not limited to:
    - Planning and construction to avoid the resources and protect the cultural and natural context.
    - Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
  - Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
    - Protecting the cultural character and integrity of the resource.
    - Protecting the traditional use of the resource.
    - Protecting the confidentiality of the resource.
  - Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - Protecting the resource. (Pub. Resource Code §21084.3 (b)).
  - Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
  - Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
  - The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
  - The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)



## SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf).

Some of SB 18's provisions include:

1. Tribal Consultation: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. No Statutory Time Limit on SB 18 Tribal Consultation. There is no statutory time limit on SB 18 tribal consultation.
3. Confidentiality: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. Conclusion of SB 18 Tribal Consultation: Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

## NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
  - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
  - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
  - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
  - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
  - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
  - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:  
[Andrew.Green@nahc.ca.gov](mailto:Andrew.Green@nahc.ca.gov).

Sincerely,



Andrew Green  
Cultural Resources Analyst

cc: State Clearinghouse



February 9, 2022

Grace Wu, Senior Planner  
City of Berkeley, Land Use Planning Division  
1947 Center St, 2<sup>nd</sup> Floor  
Berkeley, CA, 94704

SUBJECT: Response to the Notice of Preparation (NOP) of a Draft Environmental Impact Report for the City of Berkeley Housing Element Update

Dear Grace Wu,

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of the Draft Environmental Impact Report (DEIR) for the City of Berkeley Housing Element Update. The project would include all 17.2 square miles of the City of Berkeley, located in northern Alameda County. The proposed comprehensive Housing Element Update will be based on the City's latest Regional Housing Needs Allocation which requires the City of Berkeley's zoning and other land use regulations to accommodate between approximately 9,750 and 10,500 new units. The Housing Element Update will identify suitable and available housing sites by screening for vacant and underutilized parcels, evaluating sites and calculating the capacity of potential buildouts. The Land Use Element of the General Plan will be updated as needed to maintain consistency with the updated Housing Element.

The Alameda County Transportation Commission (Alameda CTC) respectfully submits the following comments:

Basis for Congestion Management Program (CMP) Review

- It appears that the proposed project will generate at least 100 p.m. peak hour trips over existing conditions, and therefore the CMP Land Use Analysis Program requires the City to conduct a transportation impact analysis of the project. For information on the CMP, please visit: <https://www.alamedactc.org/planning/congestion-management-program/>.

Use of Countywide Travel Demand Model

- The Alameda Countywide Travel Demand Model should be used for CMP Land Use Analysis purposes. The CMP requires local jurisdictions to conduct travel model runs themselves or through a consultant. The City of Berkeley and the Alameda CTC signed a Countywide Model Agreement on September 15, 2010. Before the model can be used for this project, a letter must be submitted to the Alameda CTC requesting use of the model and describing the project. A copy of a sample letter agreement is available upon request. The most current version of the Alameda CTC Countywide Travel Demand Model was updated in May 2019 to be consistent with the assumptions of Plan Bay Area 2040.

## Impacts

- The DEIR should address all potential impacts of the plan on the Metropolitan Transportation System (MTS) roadway network.
  - MTS roadway facilities in the plan area include:
    - I-80/I-580 in Berkeley, Emeryville, and Albany
    - SR-24 in Berkeley and Oakland
    - SR 123/San Pablo Avenue in Berkeley, Emeryville, Albany, and Oakland
    - SR 13/Ashby Avenue in Berkeley and Oakland
    - University Avenue in Berkeley, and Shattuck Avenue, Telegraph Avenue, and Martin Luther King Jr. Boulevard in Berkeley and Oakland
  - For the purposes of CMP Land Use Analysis, the Highway Capacity Manual 2010 freeway and urban streets methodologies are the preferred methodologies to study vehicle delay impacts.
  - The Alameda CTC has *not* adopted any policy for determining a threshold of significance for Level of Service for the Land Use Analysis Program of the CMP.
- The DEIR should address potential impacts of the project on Metropolitan Transportation System (MTS) transit operators.
  - MTS transit operators potentially affected by the plan include: AC Transit, BART, and Capital Corridor
  - Transit impacts for consideration include the effects of project vehicle traffic on mixed flow transit operations, transit capacity, transit access/egress, need for future transit service, and consistency with adopted plans.
- The DEIR should address potential impacts of the plan to people biking and walking in and near the plan area, especially nearby roads included in the Countywide High-injury Network and major barriers identified in the Countywide Active Transportation Plan.
  - Impacts to consider on conditions for cyclists include effects of vehicle traffic on cyclist safety and performance, site development and roadway improvements, and consistency with adopted plans.

## Mitigation Measures

- Alameda CTC's policy regarding mitigation measures is that to be considered adequate they must:
  - Adequately sustain CMP roadway and transit service standards;
  - Be fully funded; and
  - Be consistent with project funding priorities established in the Capital Improvement Program of the CMP, the Countywide Transportation Plan (CTP), and the Regional Transportation Plan (RTP) or the Federal Transportation Improvement Program, if the agency relies on state or federal funds programmed by Alameda CTC.
- The DEIR should discuss the adequacy of proposed mitigation measure according to the criteria above. In particular, the DEIR should detail when proposed roadway or transit route improvements are expected to be completed, how they will be funded, and the effect on service standards if only the funded portions of these mitigation measures are built prior to Project completion. The DEIR should also address the issue of transit funding as a mitigation measure in the context of the Alameda CTC mitigation measure criteria discussed above.



- Jurisdictions are encouraged to discuss multimodal tradeoffs associated with mitigation measures that involve changes in roadway geometry, intersection control, or other changes to the transportation network. This analysis should identify impacts to automobiles, transit, bicyclists, and pedestrians. The HCM 2010 MMLOS methodology is encouraged as a tool to evaluate these tradeoffs, but project sponsors may use other methodologies as appropriate for particular contexts or types of mitigations.
- The DEIR should consider the use of TDM measures, in conjunction with roadway and transit improvements, as a means of attaining acceptable levels of service. Whenever possible, mechanisms that encourage ridesharing, flextime, transit, bicycling, telecommuting and other means of reducing peak hour traffic trips should be considered.

Thank you for the opportunity to comment on this NOP. Please contact me at (510) 208 7484 or Chris G. Marks, Associate Transportation Planner at (510) 208-7453, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cathleen', followed by a long horizontal flourish.

Cathleen Sullivan  
Director of Planning

cc: Chris G. Marks, Associate Transportation Planner  
Shannon McCarthy, Associate Transportation Planner

**From:** [Alfred Twu](#)  
**To:** [Wu, Grace](#)  
**Subject:** Housing Element scoping comments  
**Date:** Friday, February 11, 2022 7:59:08 PM

---

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Grace,

Here are my comments on the Housing Element scoping.

**More capacity needed to meet the RHNA goals**

In the last cycle, the current zoning led to about 2,943 units being built.

For this cycle, 4,370 units are expected to come from the "Additional Sites" not including BART, ADUs, and entitled projects. These additional sites have a capacity of 8,574 units. To have a better chance at meeting housing goals, especially since there is less remaining zoned capacity today than there was in the last cycle, more Potential Additional Sites should be identified.

**Consider a larger-number-of-units alternative**

The BART rezone draft EIR had an alternative with taller buildings that was found to be the environmentally superior alternative. Please also add a larger-number-of-units alternative to be studied.

**Include Councilmember Taplin's proposed Affordable Housing Overlay**

The RHNA process classifies all large high-density sites as Low Income, however, in practice in Berkeley these types of sites are used both for low income and high income housing. Adding an Affordable Housing Overlay to large low-density sites to allow high density affordable housing could provide more places for low income housing to go.

**Consider rezoning R-1, R-1A, R-2 zones next to commercial zones and the North Berkeley BART to R-3 or R-4**

The blocks next to the commercial zones areas have similarly excellent transit access, and have the added benefit of being quieter places to live than the commercial corridor itself.

**Allow limited retail in residential zones**

Retail in residential areas with limited operating hours (for example, 8 or 9pm close times) can reduce the need for driving to go shopping.

**Gilman, Claremont, and North Shattuck should have additional capacity added**

These are some of the highest income and opportunity areas in the city, and to affirmatively further fair housing, more capacity should be added here.

Thanks  
Alfred

**From:** [Kevin Burke](#)  
**To:** [Wu, Grace](#)  
**Subject:** Housing element comment  
**Date:** Friday, February 11, 2022 10:56:21 PM

---

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

I am a life long Bay Area resident and I am interested in moving to Berkeley.

I would appreciate if it was possible for Berkeley to add more housing so people can move in without people needing to move out or move into their cars. More housing will also mean more impact fees that can be used to add BMR housing, student housing, better quality roads, etc.

I support increasing density throughout Berkeley, especially in the wealthy areas, and making it legal to build fourplexes throughout the city with ministerial approval.

Kevin

--

Kevin Burke  
phone: 925-271-7005 | [kevin.burke.dev](http://kevin.burke.dev)

**From:** [Markus Feyh](#)  
**To:** [Wu, Grace](#)  
**Subject:** Comments on Berkeley's Housing Element  
**Date:** Sunday, February 13, 2022 10:50:26 PM

---

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hello,

Please study increasing the density in the C-SA - South Area Commercial District, which would bring it in line with the most recently updated C-AC Adeline Corridor Commercial District zoning.

In addition, please study:

1. Removing the height restrictions between sub-areas (see Table 23.204-28. C-SA MAXIMUM BUILDING HEIGHT)
2. Increasing the lot coverage percentages (see Table 23.204-30. C-SA LOT COVERAGE STANDARDS FOR MIXED USE AND RESIDENTIAL-ONLY USES)
3. Reducing setbacks when abutting or confronting residential lots (see 23.204.150(E)(5))

Please also study merging C-SA into the C-AC Adeline Corridor Commercial District

Sincerely,  
Markus Feyh





Feb 21, 2022

Jordan Klein  
Department of Planning and Development  
1947 Center Street, 3rd Floor  
Berkeley, CA 94704

Director Klein,

East Bay for Everyone is a membership organization committed to building just cities through land use, transit and housing policy. We write to provide the following principles and policy suggestions as Berkeley prepares an update to its 6th Cycle Housing Element.

We also request that the Draft EIR (DEIR) explore the environmental consequences of the policies below where applicable, so that the scope of the EIR is broad enough to include any of these policies should Council choose to include them in the final Housing Element.

### **High Level Goals**

1. Encourage new housing in affluent, high-resource neighborhoods and areas well-served by transit and bicycle infrastructure.
2. Development without displacement
  - a. Ensure that any redevelopment of existing rent controlled housing includes robust protections for tenants, including compliance with right to return and no net loss provisions of SB 330.
3. Provide opportunities for longtime and multi-generational Berkeleyans to realize the increased value of their property without selling their property and leaving the city.
4. Create more ADA-accessible, family-sized and deed-restricted affordable units.
5. Create substantial quantities of lower-cost “missing middle” housing throughout Berkeley’s lower-density neighborhoods.
  - a. Small unit development permitted by-right makes providing ADU-like units more flexible and accessible to people with disabilities. Simple construction and permitting for multi-family housing opens urban home-building to smaller, local contractors, property owners, and land trusts.
  - b. This “missing middle” housing type can satisfy moderate-income housing needs, allowing the city to concentrate affordable housing funds on the most needy.

6. Enable and encourage larger multifamily buildings on commercial and transit corridors.
7. Allow for a variety of housing types and sizes, including townhomes, small apartment buildings, and bungalow courts.

With these goals in mind, we suggest the following the policies for consideration within the draft housing element:

Increased density along transit corridors, up to 8-12 stories

- For commercial parcels near BART and along major bus corridors (lines 51, 6, 18, and 12), rezone for 6-8 stories of mixed-use housing.
- With the potential of cross-laminated timber construction, it may also be worth exploring 12-story buildings, particularly in Downtown and Southside. We expect local area plans to evaluate buildings taller than 12 stories.
- For single-family and duplex parcels within 0.5 miles of BART stations, consider midrise, mixed-use zoning for 4 to 5 stories rather than just missing middle.

Increased “missing middle” housing throughout Berkeley neighborhoods

- These revisions should apply in R-1, R-1A, R-2, R-2A, and MU-R zones citywide.
- Four (4) units on any lot that allows ADUs. A base zoning of 8 units if near transit, and up to 12 units near transit if the project includes 2 affordable units (50% density bonus). All approvals should be ministerial.
  - Due to fire and building codes, the maximum of 12 units would likely only be feasible on certain larger lots.
  - Four units trigger the ADA's requirement of at least one accessible unit.
  - Allow flexibility for the subdivision of existing non-conforming structures
  - No public hearings if the appearance from the street is unchanged.
  - One public hearing for input if appearance from the street changes significantly.
- Rules should be crafted with multiple housing types in mind: small apartment buildings, bungalow courts, and townhouses. Modular or pre-fabricated construction should be encouraged. Planning staff should consult with architects, engineers and contractors to conform policy design with current and expected building industry standards.
- As part of the code update, Planning could develop a pre-approved plan for a four-unit dwelling that would work on the vast majority of residential lots. Architectural ornamentation and exterior finishes can accommodate neighborhood and owner preference.
- Loosen development standards to be at least as permissive as ADU standards. Ensure that setback requirements and FAR do not interfere with the ability to build 4-12 units where allowed.
- Allow ministerial lot splits/condo mapping for newly-built units (not house conversions).
- Enforce Berkeley's demolition protections and SB 330 where applicable.

### Citywide Affordable Housing Overlay

Berkeley City Council referred adoption of an Affordable Housing Overlay to the Housing Element process. The proposed overlay would allow for additional height and density of affordable housing developments anywhere in Berkeley, including lower-density neighborhoods, outside of the Very High Fire Hazard Severity Zone (VHFHSZ). This proposed AHO must be included for analysis in the DEIR.

### Ministerial Approval Process

- Adopt an ordinance for fully ministerial approval of qualifying housing developments, modeled on the one recently adopted in Sacramento. This would facilitate faster and more cost effective construction of needed homes, while reducing the discretionary review burden on planning staff and planning commissions.
  - Qualifying developments should be zoning compliant. Berkeley may also consider as requirements a maximum development size (in Sacramento this is 200 units; square footage may make sense as an alternative) and electing for on-site Affordable Housing rather than an in-lieu fee.
- Include a menu of commonly chosen density bonus concessions that could be used in this ministerial process for qualifying developments.

### Tenant Protections

- Audit enforcement of demolition protections, no net loss and right to return required by SB330 within the planning process. Incorporate these standards directly into Berkeley law, as well as permit application forms.
- Coordinate with Berkeley's Rent Board to provide clear processes for tenant right to return required by SB330.
- Create a local rental registry in order to capture rental data and enforce tenant protections, including demolition protections.

We look forward to continuing to engage with the City of Berkeley in the 6th Cycle Housing Element Update.

Sincerely,

Greg Magofña  
Co-Executive  
East Bay for Everyone

Sid Kapur  
Chapter Lead  
East Bay YIMBY