

INTRODUCTION AND OVERVIEW

This is an application for a development permit pursuant to Government Code 65913.4, otherwise known as Senate Bill 35 (SB 35). This Applicant Statement is submitted on behalf of BRIDGE Housing and Development Corporation (BRIDGE) and Berkeley Food and Housing Project (BFHP) for a proposed residential mixed-use project with permanently affordable housing, transitional housing, temporary housing, community spaces, and supportive services. The project site, at 2012 Berkeley Way, is currently used as a commercial parking lot. The project proposes 142 dwelling units affordable to households as shown in Table 1.

Table 1: Levels of Housing Affordability

Unit Type	Area Median Income Affordability			Mgmt Unit	Total
	15%	50%	60%		
Studio	53	18	17		88
1 Bedroom		17	17		34
2 Bedroom		19		1	20
% of total units	37%	38%	24%	<1%	100%
Total	53	54	34	1	142

In addition, there will be 44 beds in temporary sleeping rooms and transitional dorm rooms for homeless individuals and veterans, as well as public and private open space. As shown, more than 99% of the proposed project’s units will be affordable to households earning less than 60% AMI. As discussed in greater detail below, the proposed affordability program satisfies the affordability criterion under SB 35, which for Berkeley (according to the State Department of Housing and Community Development [HCD]) requires that 50% of the proposed units be affordable at less than 80% AMI.

The project also includes a density bonus pursuant to State Density Bonus Law, Government Code Section 65915 (SDBL), with waivers/modifications to support the proposed density bonus and base project, and concessions/incentives that are necessary to reduce the costs of the proposed below market rate units, as allowed per the statute. The project qualifies for the full 35% density bonus and three concessions/incentives because it proposes more than 5 dwelling units, and more than 99% of the units will be affordable to households earning 60% AMI or less.

The project’s consistency with each of these provisions of State law is discussed in detail below. Each of these Government Code sections are State legislative efforts that recognize the severity of California’s housing crisis and the difficulties associated with developing new housing at appropriately zoned, transit-oriented locations. They apply to Charter Cities, of which Berkeley is one.

With those laws and policies in mind, the following sets forth the Applicant Statement. This Statement also includes the following attachments:

1. 2012 Berkeley Way Compliance with Objective Planning Standards

2. Environmental Mapping (see Table 2 below)
3. Letter Certifying Compliance with Prevailing Wage/Skilled Labor Requirements (see Table 2 below)

SB 35/GOVERNMENT CODE SECTION 65913.4

The legislature enacted SB 35 in 2017 as a response to California's housing crisis and, specifically, the negative impact that the lack of housing production is having on the State's economic vitality, environmental goals and socio-economic diversity.

Pursuant to SB 35, cities that are not on track to meet their RHNA housing production obligations will be required to follow a streamlined, ministerial approval process for qualified housing projects. On January 31, 2018, HCD confirmed that Berkeley has produced insufficient below moderate-income housing and is subject to SB 35. The SB 35 approval process requires cities to approve projects that propose 150 units or less within 90 days of submittal of an application and such approval must be based only on whether an eligible project complies with "objective planning standards." To qualify, the project must meet several criteria, including providing certain percentages of the units affordable to households with incomes below 80% area median income; paying prevailing wage for construction labor; and meeting all objective zoning and design review standards.

The terms "objective zoning standards" and "objective design review standards" are narrowly defined to mean "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal." A comprehensive checklist of SB 35 requirements is found below. Because the statute mandates that the process is ministerial and that projects are judged purely on objective standards that do not involve the exercise of discretion, CEQA does not apply to the SB 35 process. *See* 14 Cal. Code Regs. 15268(a) ("Ministerial projects are exempt from the requirements of CEQA"); *see also* Pub. Res. Code 21080(b)(1).

For purposes of SB 35, the project's proposed "additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915" are not considered when assessing the project's compliance with the City's objective standards (Gov. Code § 65913.4(a)(5)). That means that if the base project and its "otherwise allowable gross maximum residential density", is consistent with the objective standards, then the proposed SB35 application and its density bonus, waivers/modifications, and/or concessions/incentives must also be approved consistent with the statutes. As noted above, the project's proposed 99% of units affordable at 60% AMI or less entitle it to the density bonus. The benefits afforded under the State Density Bonus Law include waivers/modifications of development standards that would otherwise "physically preclude" the density bonus project and three allowed concessions/incentives, as discussed further below.

PROJECT DESCRIPTION

Project Location

The project site is located at the north end of Downtown, providing convenient access to the Downtown commercial and business district, as well as the Downtown BART station and multiple AC Transit bus lines on Shattuck and University Avenues. It is also located within walking distance of stores and services in North Shattuck. The project site is surrounded primarily by one to five story buildings, a proposal for a future 7 story mixed-use building has been submitted to the city for one neighbor directly to the south. Adjacent uses include commercial retail uses to the east and south, single- and multi-family residential uses to the north and west, as well as Fire Station No. 2 to the north.

Project Uses

The gross building area is approximately 138,945 sq. ft. The project proposes to include the following uses:

- 44 beds (BFHP) including 32 temporary shelter beds for homeless individuals and 12 transitional housing beds for veterans
- 53 dwelling units (BFHP), all studios
- 89 dwelling units (BRIDGE) with a mix of studio, one-, and two-bedroom units
- Supportive services for residents
- 9,240 sq. ft. of private open space for residents
- 630 sq. ft. of Privately Owned Public Open Space (POPOS) for public use, that equates to 1,260 sq. ft. (630 x 2) of useable open space for the project.
- 32 long-term and 12 short-term bike parking spaces

Project Residential Affordability

Proposed affordability levels are shown in Table 1, above. The proposed project is subject to three different affordable unit criteria. SB 35 requires 50% of units to be dedicated affordable units, *see* Gov. Code § 65913.4(a)(4)(B)(ii), and the project's compliance with that criterion insures that it also meets the State Density Bonus Law affordability threshold, *See* Gov. Code § 65915(d)(2)(B); BMC § 22.20.065.C.2. Finally, the project's provision of 54% of its units affordable to households earning 50% AMI or less exceeds the requirements of the City of Berkeley Affordable Housing Mitigation Fee, which requires 10% of a project's total units to be affordable at 80% AMI and 10% of the units to be affordable at 50% AMI. By providing more than 10% of its units for Low (80% AMI) and more than 10% of its units for Very Low-Income (50% AMI) households, the Project exceeds the City of Berkeley's affordable housing mitigation fee. *See* BMC § 22.20.065.C.2.

Project Design

The BRIDGE and BFHP programs will be located on one parcel and in one shared building divided by a demising wall. There will be separate vertical circulation systems (exit stairs and elevators) for the program on each side of the demising wall. On the BFHP side, the program includes emergency homeless shelter rooms, transitional housing rooms, and studio apartments for permanently supportive affordable housing, together with space for supportive services, including reception area, conference rooms,

community/multipurpose space, kitchen, storage, laundry, flexible rooms, and utilities. On the BRIDGE side, the unit mix of permanently affordable housing includes studios, one, and two-bedroom apartments.

The ground floor will have community amenities at each portion of the building such as a community rooms, community bathrooms and courtyards, as well as management and services offices and utilities. Private open space will be provided at grade in the rear yard of the building and is placed there because it is required to be accessible to parents and caregivers who are availing themselves of ground floor program or amenities. There is additional publicly-accessibly open space in the front of the building adjacent to the sidewalk. Bike parking will be provided at the ground level at the interior and exterior. No vehicle parking is required or proposed, as allowed by SB 35 because of the project's site's accessibility to transit, and because of the concession that has been requested pursuant to SDBL.

The architectural form is contextually contemporary, and the massing is articulated by setting the center of building back, this setback is opposite the Henry Street and creates a warm, inviting, green landscape at the building entries and at the termination of Henry Street. The building is punctuated by recesses, projections, and sunshades that provide variety of depths, light and shadow, bringing movement to the façade. Materials include painted lapped siding and wood veneer composite panels that relate to the traditional Berkeley wood shingles. Other materials include painted metal panels, painted fiber cement panels, and aluminum windows. A differentiated base level provides definition at the ground level with awnings to enhance the experience for pedestrians on the sidewalk, while vertical elements of aluminum storefronts and prominent horizontal canopies with wood soffit emphasize the main entries to the BHFP and BRIDGE components of the project. The project will utilize the GreenPoint Rating System as authored by Build-It Green to pursue the goal of GreenPoint equivalent of LEED Gold, as is required by the C-DMU zone development standards of the Berkeley Municipal Code. The landscape design will comply with all CalGreen, East Bay Municipal Utility District requirements and Bay Friendly Requirements.

PROJECT COMPLIANCE AND APPLICABILITY OF STANDARDS

Compliance with City of Berkeley Zoning and Design Review Standards

A comprehensive table analyzing the project's consistency with all applicable/objective zoning and design review standards is included as Attachment 1 of this Applicant Statement.

Compliance with City of Berkeley General Plan and Downtown Area Plan

The project site is located within the Downtown Area Plan boundaries of the Berkeley General Plan. The project's General Plan land use designation is "Medium Density Residential" while the Downtown Area Plan identifies the site as a Buffer area to provide a transition between the more intense development Downtown and the residential neighborhood to the north of the site. Both the Downtown Area Plan and the General Plan land use designation support medium to large sized multi-family structures at this location. The site is in the C-DMU (Commercial-Downtown Mixed-Use, Buffer Area), which grew out of the Downtown Area Plan policy process.

Environmental Review

SB 35 specifies that the approval process is “ministerial”, and approval will be granted if the project complies with “objective standards,” meaning standards for which no subjective judgment is exercised. Because CEQA does not apply to ministerial approvals such as this, environmental review is not required for the project.

PROJECT COMPLIANCE WITH ALL APPLICABLE LAWS

1. SB 35: Government Code Section 65913.4 (SB 35) Review and Approval Criteria

As shown in Table 2 below, the proposed submittal complies with the SB 35 eligibility requirements. The following table lists the criteria for a project’s consideration per the Government Code and confirms that the project complies.

Table 2: SB 35 Eligibility Checklist

<i>Eligibility Requirement</i>	<i>Requirement Satisfied?</i>
<p>1. Has the Department of Housing and Community Development (HCD) determined that the local jurisdiction is subject to SB 35? Gov’t Code Sec. 65913.4(a)(4)(A).</p> <p>RESPONSE: On February 2, 2018, HCD made its determination regarding which jurisdictions throughout the state are subject to streamlined housing development under SB 35. The City of Berkeley is subject to SB 35 because although it is on course to meet its pro rata share of above-moderate housing for this RHNA reporting period, it has not done so for below-market rate housing. See also: http://www.hcd.ca.gov/community-development/housing-element/docs/bay-area-with-insets.pdf</p>	Yes
<p>2. Is the project a multifamily housing development with 2 or more units? Subd. (a)(1).</p> <p>RESPONSE: The project is a multifamily housing development with 142 units of permanently affordable housing, 32 temporary shelter beds for homeless individuals, and 12 transitional housing beds for Veterans.</p>	Yes
<p>3. Will the project include the required percentage of below market rate housing units? Subd. (a)(3) and (a)(4)(B)</p> <p>RESPONSE: The project exceeds the required percentage of below-market rate housing units since, except for the manager’s unit, all of the housing provided by the project would be below 80% AMI. The project includes 53 units at 30% of AMI, 54 units at 50% of AMI, and 34 units at 60% of AMI.</p>	Yes

<i>Eligibility Requirement</i>	<i>Requirement Satisfied?</i>
<p>4. Is the project located in an area designated by the U.S. Census Bureau as an urbanized area? Subd. (a)(2)(A).</p> <p>RESPONSE: The project is in the City of Berkeley, which is entirely within a U.S. Census urbanized area boundary. <i>See also:</i> https://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua78904_san_francisco--oakland_ca/DC10UA78904.pdf</p>	Yes
<p>5. Is more than 75% of the project site’s perimeter developed with urban uses? Subds. (a)(2)(B), (h)(8).</p> <p>RESPONSE: SB 35 defines “urban uses” as “any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.” Based on these standards, the entirety of the project site’s perimeter is developed with urban uses.</p>	Yes
<p>6. Does the site have either zoning or a general plan designation that allows for residential use or residential mixed-use development, with at least two-thirds of the square footage designated for residential use? Subd. (a)(2)(C).</p> <p>RESPONSE: The project is located in the Downtown Mixed-Use District zoning district (C-DMU, Buffer) which allows for residential uses. The General Plan land use designation for the site is “Medium Density Residential” which is characterized by a “mix of single-family homes and small to medium sized multi-family structures.”</p> <p>The gross building area is approximately 138,945 sq. ft., all of which is designated for residential use (including community spaces and supportive services).</p>	Yes
<p>7. Is the project consistent with “objective zoning standards” and “objective design review standards?” Subd. (a)(5)</p> <p>RESPONSE: The Project will comply with all applicable objective standards, except where waivers and/or concessions are requested pursuant to State Density Bonus Law requirements, as permitted by SB 35. SB 35 defines “objective planning standards” narrowly: “standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.”</p> <p>See Attachment 1 for a complete list of objective zoning, design review, and General Plan standards associated with this project.</p>	Yes

<i>Eligibility Requirement</i>	<i>Requirement Satisfied?</i>
<p>8. Is the project located outside of all types of areas exempted from SB 35? Subd. (a)(6-7).</p> <p>RESPONSE: The project site is not located within any of the below exempt areas.</p> <p><u>Subd.(a)(6) exempt areas:</u></p> <ul style="list-style-type: none"> - Coastal zone - Prime farmland or farmland of statewide importance - Wetlands - High or very high fire hazard severity zones - Hazardous waste sites - Earthquake fault zone (unless the development complies with applicable seismic protection building code standards) - Floodplain or floodway designated by FEMA - Lands identified for conservation in an adopted natural community conservation plan or habitat conservation plan - Habitat for a state or federally protected species - Land under a conservation easement <p>RESPONSE: The project site is not located on any of the above areas. See Attachment 2 for detailed mapping.</p> <p><u>Subd. (a)(7) exempt areas:</u></p> <ul style="list-style-type: none"> - A development that would require the demolition of housing that: <ul style="list-style-type: none"> - Is subject to recorded rent restrictions - Is subject to rent or price control - Was occupied by tenants within the last 10 years - A site that previously contained housing occupied by tenants within past 10 years - A development that would require the demolition of a historic structure on a national, state, or local register - The property contains housing units that are occupied by tenants, and units at the property are/were offered for sale to the general public by the subdivider or subsequent owner of the property. <p>RESPONSE: There have been no dwelling units on the property at any point during the last ten years, and the project would not require the demolition of any residential or historic structures.</p> <p><u>Subd. (a)(10) exempt areas:</u></p>	<p>Yes</p>

<i>Eligibility Requirement</i>	<i>Requirement Satisfied?</i>
<ul style="list-style-type: none"> - Land governed under the Mobilehome Residency Law - Land governed by the Recreational Vehicle Park Occupancy Law - Land governed by the Mobilehome Parks Act - Land governed by the Special Occupancy Parks Act <p>RESPONSE: The project site is not located on land governed by any of the above laws.</p>	
<p>9. Will all construction workers employed in the development project be paid at least the general prevailing wage as required by State law? Subd. (a)(8)(A).</p> <p>RESPONSE: The applicant certifies that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages. See commitment letter in Attachment 3.</p>	Yes
<p>10. If applicable, will all construction workers employed in the development project be certified as a “skilled and trained workforce”? Subd. (a)(8)(B).</p> <p>RESPONSE: Since the project is composed of 100% below-market rate units (except for the manager’s unit), Subsection (a)(8)(B)(I) through (V) are not applicable, and the project is not required to be certify construction workers as a “skilled and trained workforce.”</p>	Yes
<p>11. The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act. Subd. (a)(9)</p> <p>The project does not involve subdivision of a parcel.</p>	Yes

2. Density Bonus: Government Code Section 65915, Affordable Housing Compliance and Density Bonus Entitlement

Pursuant to Government Code section 65915, because more than 20% (99% proposed) of the “base” density units will be affordable to low income households (80% AMI, where the project proposes 24% of units at 80% AMI and 75% of units at 60% AMI or lower), the project is entitled to a 35% density bonus over the otherwise allowable maximum residential density (“base project”) plus three concessions or incentives. The City must also waive or modify development standards (without additional legislative or discretionary requirements) that if applied would “physically preclude” the density bonus project. Finally, the project is entitled to up to three (3) concessions or incentives that provide actual and identifiable cost reductions for the affordable units.

Density Standard and Bonus

The C-DMU Buffer zoning district does not establish an otherwise allowable maximum residential density, so the General Plan standard is applicable pursuant to Government Code section 65915. The Berkeley General Plan also does not apply with respect to a parcel-based density standard because it provides for densities over broader areas.

To create a proxy for residential density, given Berkeley's lack of density standards, the City of Berkeley has created a density bonus methodology (City of Berkeley Procedures for Implementation of State Density Bonus Law, September 15, 2014) that measures the residential floor area of a given project site based on the objective zoning standards (i.e., height and setbacks and other standards that limit allowable floor area), divides the floor area by the applicant's proposed unit count, and derives a unit density based on those factors. A 35% bonus is then applied to that density and the floor area that supports it.

The base project for this site provides 95,960 sq. ft. of residential floor and 112 dwelling units (total units of floors 1 to 4), as shown on page A0.DB4 of the plan set, with an average unit size of 112 square feet. As a result, the project is entitled to a bonus of 34,280 sq. ft. of building program to accommodate an additional 40 bonus dwelling units (total units on floor 6).

A fifth floor contains base project area that is reconfigured from the base project potential density. In the case of the proposed project the open space, which could otherwise be provided on the roof top, must be located at ground level for programmatic reasons. These include:

1. The children's play area must be located at the ground level in the rear of the project because the resident services, such as the laundry room, are in centralized ground floor locations. The physical separation of children playing on the roof while the caregiver is using the ground floor is not conducive to the project.
2. Provides visual connectivity front to back at the ground level for employees and service providers in the common areas. A rooftop open space would always have to be monitored, require a high amount of security and elevator control, and necessitate hiring extra staff. A ground floor courtyard presents an area that is more easily monitored by many sets of staff eyes.

Therefore, the project proposes to place the otherwise maximum allowable gross residential density that cannot fit at ground level and above in the rear of the building, as a fifth floor. A small amount of the area will also be used in the front setback area on the west side of the façade across from the R-2A zone.

The sixth floor is the proposed density bonus floor.

Please see the density bonus plan set pages in the attached architectural package for details.

Waivers and Modifications

The City must waive any development standards that would have the effect of "physically precluding" the density bonus project. The following standards, if applied, would physically preclude the project and thus

must be waived. Further, if there are other development standards that would physically preclude the project with the density bonus units and incentives/concessions, those must also be waived.

The proposed project requires the following waivers and modifications of the C-DMU Buffer zoning development standards:

- Waiver: Increase in height and stories beyond the 50' maximum height standard and four allowed stories for the density bonus floor area, including for the rooftop mechanical equipment, as otherwise required pursuant to Zoning Ordinance Section 23E.64.070. To accommodate the additional massing and floor area for the density bonus units and potential base density, the project must increase in height to 70'-8" and six stories where the application of the 50' height and four-story base height limits would otherwise physically preclude the density bonus project.
- Waiver: Fill in front yard setback, across a public street from R-2A zone.
- Waiver: Fill in side yard setback adjacent to an existing residential use.

Concessions and Incentives

In addition to granting the density bonus, the City must also grant the Project up to three incentives or concessions pursuant to GC Sec. 65915(d)(1) because more than 30% of the "base density" units (more than 99%) will be affordable to low income households. The City is required to grant the concessions/incentives in so far as the request results in identifiable and actual cost reductions to provide for affordable housing costs and do not result in any adverse public health or safety impacts. Although the Project qualifies for three incentives or concessions, the project only requires two, as described below:

1. Eliminate parking associated with zoning ordinance requirements. The zoning ordinance otherwise requires 49 parking spaces for the proposed project.
2. Reduction in open space of 1,140 square feet.

The concessions are necessary per GC Sec. 65915(k)(3) to reduce the costs of building the affordable units. The proposed project is heavily subsidized to provide 99% of its units at 60% AMI or less. In addition, the BFHP portion of the project provides homeless services and shelter beds. The requirement for parking would mean the construction of a subgrade parking garage and additional foundation engineering. At current construction process, that would increase the cost of providing the affordable units by approximately \$10,500,000, or an additional \$74,000 per proposed unit. No funding is available to cover these costs; therefore, the parking requirement would render the project infeasible.

Similarly, roof top open space requires that the rooftop be constructed of far stronger materials and methods, including waterproofing and structural support. In addition, the rooftop open space would require staffing, security, and programmatic support that the project cannot feasibly provide. As stated above, no funding is available to cover the additional structural and ongoing programmatic costs associated with a rooftop open space. As such, any requirement to place the open space on the roof would render the project infeasible.