



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <div>DocuSigned by: <i>Michael Jones</i> 47000790F2D7463...</div>		GENERAL MANAGER ACTION REQ'D: N/A		
DATE: 6/25/2025 7/2/2025		BOARD INITIATED ITEM: No		
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Authorization to enter into an ENA with the Adeline Alliance Partners Team for transit-oriented development at the Ashby BART Station and adoption of a resolution declaring the property “exempt surplus land” pursuant to the SLA

PURPOSE:

To authorize the General Manager or his designee to enter into an Exclusive Negotiating Agreement (ENA) with the Adeline Alliance Partners Team for Transit-Oriented Development (TOD) at the Ashby BART Station, and to adopt a resolution declaring the site of the proposed TOD as “exempt surplus land” to comply with the Surplus Land Act.

DISCUSSION:

BART owns two contiguous parcels, constituting approximately 4.4 acres, on the west side of the Ashby BART Station (the “Station”) in the City of Berkeley (“City”). These parcels (“Ashby West”) are located between Adeline Street, Ashby Avenue, and Martin Luther King, Jr., Way and are primarily occupied by patron surface parking lots. In mid-2018, BART and the City began conversations around advancing development of the properties at the Ashby and North Berkeley BART Stations (the “Stations”).

On March 6, 2020, BART and the City executed a Memorandum of Understanding (“MOU”) to plan for Transit Oriented Development (“TOD”) at the Stations. BART and the City then conducted an extensive community engagement process over an 18-month period ending in December 2021. The City-BART Joint Vision and Priorities for TOD for Ashby and North Berkeley BART Stations (“Joint Vision and Priorities”) was the key outcome of this process. The Joint Vision and Priorities envisions a mixed-use development that adds at least 500 new homes at each station, with a minimum of 35% being restricted affordable housing.



As an outcome of this process, on June 9, 2022 the BART Board: (1) approved the Joint Vision and Priorities, (2) authorized staff to enter into a new Memorandum of Agreement re North Berkeley and Ashby Transit-Oriented Developments (“MOA”), and (3) approved BART rider parking maximums of 85 spaces at Ashby and 200 spaces at North Berkeley. On June 30, 2022, BART and the City executed the MOA.

On December 8, 2020, the City adopted the Adeline Corridor Specific Plan and certified a corresponding environmental impact report, which set forth a comprehensive plan for development, including new affordable and market rate housing, in the area of the City including the Ashby BART Station. On April 27, 2021, the Berkeley City Council reserved \$53 million of City-controlled funds toward affordable housing to be divided equally between the Ashby and North Berkeley BART sites. Finally, the City adopted new zoning for BART’s property at the Stations on June 28, 2022. The new zoning conforms to State law and allows for development up to seven stories.

At Ashby, the City holds an option to purchase the air rights (“Air Rights Option”) 10 feet above most of Ashby West. BART and the City determined that the Air Rights Option is an impediment to development. BART and the City negotiated an Exchange Agreement, pursuant to which the City agreed to relinquish its Air Rights Option in exchange for fee simple title in BART’s Ashby east parking lot and certain community benefits. The Exchange Agreement was executed on December 20, 2024. Final disposition of the Air Rights Option exchange transaction is subject to certain conditions which include BART entering into an Exclusive Negotiating Agreement (“ENA”) with a master developer for development of Ashby West, and both parties executing specified covenants that will run with the land.

Developer Solicitation and Evaluation

Consistent with the MOA, on December 3, 2024, staff issued a Request for Proposals for developer teams for TOD at Ashby West. An in-person pre-submittal conference and small business networking session was held for interested developers and possible consultants on December 17, 2024. On March 3, 2025, BART received two proposals, both of which were eligible and responsive.

A seven-member evaluation panel consisting of four BART staff, two City staff, and one community representative appointed by the City, reviewed the proposals. The panel conducted interviews with both teams. These teams were:

- A joint venture between Affirmed Housing, Inc. and Community Housing Development Corporation (the “Ashby BART Strategic Alliance Team”)
- A joint venture between The Pacific Companies and Strategic Urban Development Alliance with The Pacific Companies holding the majority interest in the joint venture, and Resources for Community Development (the “Adeline Alliance Partners Team”).

The panelists scored the proposals using criteria in the following categories:

- *Quality of Team's Experience with Directly Relevant Projects:* includes master-planned and transit-oriented development; public agency partnerships and complex land transactions; design; ground floor activation; community engagement.
- *Preliminary Development Concept:* addresses BART, City, and community goals for site; quantity and depth of affordable housing; feasibility; demonstration of overall innovation and creativity.
- *Financial Capability:* Resources available to complete pre-development activities; demonstrated ability to secure funding and financing for complex projects; references from public agencies and lenders.
- *Team Member Roles and Responsibilities:* Capacity and skills of team to complete pre-development activities; percentage commitment to small business participation.
- *Financial Offer:* Financial pro forma; financial offer including alignment with BART's Framework for Financial Return from Affordable Housing; performance guarantees.

Based on the committee scoring on these criteria, as well as the scored performance of the teams in the oral interview, both teams were invited to make a public presentation on May 22, 2025. The quality of this presentation, considering both the observations of the panelists and a survey of attendees, was the final element considered by the evaluation panel.

While both finalist teams appear capable of delivering this project, on balance, the committee recommended the Adeline Alliance Partners Team as the stronger performer. Factors impacting this determination included:

- **Experience.** Significant experience with comparable market rate and affordable residential projects, including master planned projects, mixed use projects, and TOD.
- **Credentials.** Directly relevant credentials of the developer entities and their day-to-day staff in working with public agencies, including BART and the City of Berkeley.
- **Engagement.** Successful community engagement strategies with prior relevant projects, and deep knowledge of the South Berkeley community.
- **Vision Alignment.** A preliminary development concept aligned with the Joint Vision and Priorities, including BART's station access needs and circulation framework provided in the RFP.
- **Revenue Approach.** Balancing the provision of affordable housing with a clear approach to generation of revenue for BART.

The second ranked Ashby BART Strategic Alliance Team provided a very strong proposal which reflected excellent TOD and affordable housing project experience. However, the team ranked lower in the interview and public presentations and has less familiarity with the South Berkeley community. Nonetheless, BART staff believe that the Ashby BART Strategic Alliance team could deliver a TOD successfully at Ashby West.

Exclusive Negotiating Agreement

Given these rankings, staff requests authorization to enter into an Exclusive Negotiating Agreement (“ENA”) to advance a TOD project at Ashby BART Station with the Adeline Alliance Partners Team, provided that, if BART and the Adeline Alliance Partners Team cannot agree upon terms for the ENA, or if the ENA process does not result in satisfactory progress toward a TOD project pursuant to the ENA, or if the ENA terminates without an agreement on terms, staff may seek to enter into an ENA with the Ashby BART Strategic Alliance Team. This provision will protect BART from a situation where a developer withdraws, and, as a result, the potential TOD is delayed. This is particularly important given the uncertainty associated with the current economic climate.

During the term of the proposed ENA with BART, the developer would be required to achieve, in a timely manner, performance milestones, which typically include, but are not limited to, the following:

- Conduct robust community engagement
- Prepare master plan including housing, transit infrastructure, and other amenities
- Advance project design
- Submit to BART a financing plan that demonstrates feasibility
- Apply for funds for affordable housing and infrastructure
- Secure land use entitlements (planning approvals) from the locality
- Negotiate term sheet and lease option with BART

If, at the end of the 24-month ENA period, staff determines that the Adeline Alliance Partners Team has substantially met the terms of the ENA, but that it is premature to return to the Board for approval of deal terms, the ENA would allow BART and the Adeline Alliance Partners Team to agree to an extension of the ENA for up to 18 more months. Any further extension of the ENA would require Board authorization.

Surplus Land Act

The Surplus Land Act (SLA) is intended to increase the supply of land that is available for development of affordable housing by imposing a process on public agencies, including transit, for the disposition of public land that is no longer necessary for agency use.

Under the SLA, if a local agency intends to “dispose” of real property, either by sale or by a lease with a term of fifteen or more years, then the agency must declare the land to be either “surplus land” or “exempt surplus land” prior to taking action to lease or sell the land. The disposition of “surplus land” triggers a number of potentially burdensome requirements, including issuing a detailed “notice of availability,” engaging in good faith negotiations with any housing sponsors interested in the land, and obtaining approval from HCD. By contrast, disposal of “exempt surplus land” is exempt from the foregoing requirements.

The SLA establishes numerous bases an agency can rely upon to declare property “exempt

surplus land.” With respect to the West Lot, the applicable provision is Government Code Section 54221(f)(1)(G), which defines “exempt surplus land” to include surplus land that is:

- 1) subject to an agency’s open, competitive solicitation, provided that all entities identified in subdivision (a) of Government Code Section 54222 are invited to participate in the open, competitive solicitation process;
- 2) for a mixed-use development that is more than one acre in area, the development on the land includes not less than 300 residential units;
- 3) The development on the land will restrict at least 25 percent of the residential units in the development to lower income households, as defined in Section 50079.5 of the Health and Safety Code, with an affordable sales price or an affordable rent, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, for a minimum of 55 years for rental housing; and
- 4) The requirements in item 3 above are contained in a covenant or restriction against the land at the time of its disposition.

Staff expects that the eventual developers of BART’s parking lots at the Station will apply for funding from California’s Department of Housing and Community Development (HCD) in the future. The funding applications will receive additional consideration if the property has been leased in compliance with the Surplus Land Act (SLA).

To support these applications, staff recommends that the BART Board adopt a Resolution finding that the West Lot is “exempt surplus land” within the meaning of the SLA.

The attached resolution declaring the property intended to be utilized for TOD at the Ashby station as “exempt surplus land” states that all of the applicable requirements under Government Code section 54221(f)(1)(G) either have been satisfied or will be satisfied prior to executing a binding ground lease option agreement for the project.

FISCAL IMPACT:

If approved, BART staff in the Transit Oriented Development and Station Area Planning groups will work with the Adeline Alliance Partners Team to execute an Exclusive Negotiating Agreement and initiate development scoping. BART staff time is programmed into the operating budget and the current fiscal year work plan already. Pursuant to the ENA, the selected developer would be required to submit a \$100,000 ENA deposit to compensate the District for BART staff time, consultants, and outside legal fees; the ENA will also require the selected developer to deposit additional amounts in the event that BART’s expenses exceed \$100,000. This action will not have any impact on unprogrammed District reserves.

The initial, non-binding proposal from each developer team offers ground lease revenue that is favorable to BART, and ridership increases can also be anticipated although they have not been estimated. The ground lease terms are yet to be negotiated, but staff will ensure that the combination of the ground lease and ridership revenues result in a net positive fiscal impact to BART. The BART Board will review the terms of the deal at key milestones to monitor its fiscal impact and will be asked to approve the deal terms of any lease option agreement resulting from negotiations under the ENA.

If the declaration of the land associated with TOD as “exempt surplus” is approved, there would be no fiscal impact.

ALTERNATIVES:

1. Do not authorize staff to proceed with an Exclusive Negotiating Agreement. Staff will not pursue the Ashby West TOD further without direction from the Board.
2. Authorize staff to proceed with an Exclusive Negotiating Agreement with a different team.
3. Do not declare the land associated with TOD at the Ashby station “exempt surplus land.” Sale or lease of property that is not in compliance with the SLA will give rise to financial penalty to the agency acting as lessor or grantor.

RECOMMENDATION:

Adopt the following Motions.

MOTION:

1. Authorize the General Manager or his designee to enter into an Exclusive Negotiating Agreement (ENA) with the Adeline Alliance Partners team, for a term of 24 months, with an optional extension of up to 18 months at BART’s sole discretion.
2. If BART and the Adeline Alliance Partners team cannot in good faith negotiate an ENA, or if the ENA terminates without reaching terms for development of a project, the Board authorizes the General Manager or his designee to enter into an ENA with the Ashby BART Strategic Alliance team for a term of 24 months, with an optional extension of up to 18 months at BART’s sole discretion.
3. Adopt a Resolution declaring land owned by the San Francisco Bay Area Rapid Transit District to be exempt surplus land pursuant to Government Code section 54221(f)(1)(G).