



## EXECUTIVE DECISION DOCUMENT

<b>GENERAL MANAGER APPROVAL:</b> DocuSigned by: <i>Michael Jones</i> 47000790F2D7463...		<b>GENERAL MANAGER ACTION REQ'D:</b> Yes		
<b>DATE:</b> 8/26/2022      8/31/2022		<b>BOARD INITIATED ITEM:</b> No		
<b>Originator/Prepared by:</b> Abigail Thorne-Lyman <b>Dept:</b> Real Estate & Prop Development DocuSigned by: <i>Abigail Thorne-Lyman</i> EFBCE0EAF4353431... <b>Signature/Date:</b> 8/30/2022	<b>General Counsel</b> DocuSigned by: <i>Ariana Belan</i> F8FD7B3A73E74E8... 8/30/2022 [ ]	<b>Controller/Treasurer</b> DocuSigned by: <i>Chris Gan</i> EE11C8CEEEA04FD... 8/30/2022 [ ]	<b>District Secretary</b> DocuSigned by: <i>Carl Holmes</i> 2243E3B49EA349E... 8/30/2022 [ ]	<b>BARC</b> DocuSigned by: <i>Carl Holmes</i> 2243E3B49EA349E... 8/30/2022 [ ]

### Adoption of City of Oakland Lake Merritt BART Station TOD CEQA findings; approval of Lake Merritt BART Station TOD Project, authorization to enter into an Option Agreement, and authorization for extension to the Exclusive Negotiating Agreement

**PURPOSE:** To advance transit-oriented development (TOD) at the Lake Merritt station through several actions of the Board of Directors: (1) Certify that it reviewed and considered the 2014 Lake Merritt Station Area Plan EIR and the project specific Addendum and adopt the City of Oakland's CEQA Findings, Statement of Overriding Considerations, Standard Conditions of Approval and Mitigation Monitoring and Reporting Plan; (2) Approve the Lake Merritt Station TOD project (Blocks 1 and 2); (3) Authorize the General Manager or his designee to enter into a Lease Option Agreement and other agreements or documents as necessary to advance the Lake Merritt TOD, Block 1 development, and (4) Authorize the General Manager or his designee to enter into an Exclusive Negotiation Agreement ("ENA") extension for up to five years on Block 2 at 101 8<sup>th</sup> Street.

### DISCUSSION:

#### Background

Planning for neighborhood change around the Lake Merritt BART Station began in 2008 and the Lake Merritt Station Area Specific Plan (the Plan) was adopted by the Oakland City Council (City) in late 2014. The Plan lays out a community-based vision for the roughly one-half mile radius around the Lake Merritt BART Station in Downtown Oakland. BART's two development sites – 51 9<sup>th</sup> Street, or the Lake Merritt station parking lot (also known as



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Block 1), and 101 8<sup>th</sup> Street, or the Metro Center building (also known as Block 2) (collectively the Project) – are located in the center of the Plan Area and both blocks are identified as “Opportunity Sites” in the Plan. The City’s designated zoning for these blocks is D-LM-2 and D-LM-4, designations created specifically for the Plan, and the City General Plan designates these sites as part of the Central Business District (CBD), with desired character and uses including “a mix of large-scale offices, commercial, urban (high-rise) residential, institutional, open space, cultural, educational, arts, entertainment, service, community facilities and visitor uses.” The zoning allows for a height of up to 275 feet.

In the Spring of 2018, BART released a request for qualifications for a TOD for Blocks 1 and 2 (the Project). In May 2018, BART invited a short list of four teams to submit proposals and in September 2018, the BART Board authorized staff to enter into an Exclusive Negotiating Agreement (ENA) with a team including the East Bay Asian Local Development Corporation (EBALDC) and Strada Investment Group (Strada) to develop the Blocks. In January 2020 Strada’s rights were assigned to LMTOD, LLC, a limited partnership between Strada, the developer, and the California State Teachers Retirement System (or CalSTRS), the major investor in the project. In February 2020, BART and the developer team submitted a formal application to the City of Oakland for Preliminary Development Plan (PDP) approval and the City initiated CEQA review. The application was deemed complete by City Staff in November 2020.

#### Project Entitlements and Findings Under the California Environmental Quality Act (CEQA)

On May 19, 2021, the City of Oakland Planning Commission approved the PDP for development of BART property at the Lake Merritt Station. The approved Planned Unit Development (PUD) includes the Project as shown in Attachment A, totaling 557 residential units, 40% of which are affordable, 497,000 square feet of office space, 18,500 square feet of retail and other commercial space, a day care, and 408 parking spaces. This Project entails four buildings, the 360-unit residential high-rise building (Building A), a 97-unit mid-rise residential senior affordable building (Building B) and a publicly accessible Paseo on Block 1. Block 2 is proposed to include a 500,000-sf office high-rise (Building C) and an approximately 100-unit affordable multifamily residential mid-rise building (Building D). No BART patron parking spaces would be provided in the development, consistent with community direction as stated in the City’s adopted Plan. BART’s Station Access Typology classifies this station as 'Urban with Parking' and the TOD Policy states that BART should strive for limited to no parking replacement for this station type. As a result, there would be a net loss of 210 BART parking spaces to accommodate development of both Blocks.

As part of the May 19, 2021 Planning Commission Meeting, City staff presented its CEQA findings for the PUD, primarily utilizing the EIR for the Plan (2014 Plan EIR - link in Attachment B), which was certified by the City of Oakland on July 28, 2014. City staff found that “the Lake Merritt BART Station Redevelopment Project qualifies for an addendum as well as an exemption from additional environmental review.” (CEQA Findings -

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Attachment C). The City's Addendum to the 2014 Plan EIR (Lake Merritt BART TOD CEQA Analysis Addendum - Attachment D) indicates that the project meets all requirements under CEQA Guidelines Sections 15164, 15183, and 15168 and that no supplemental environmental review was required in accordance with Public Resources Code Sections 21083.3 (community plan exemption) and 21166 and CEQA Guidelines Sections 15162 through 15164, 15168, and 15183. The City further concluded: "overall, based on the analysis, findings, and conclusions of the [2014 Plan EIR], as well as those of the 1998 LUTE EIR, the 2011 Redevelopment Plan Amendments EIR, ...and for the housing components of the Project, the 2010 General Plan Housing Element Update EIR and its 2014 Addendum – all of which are summarized in the Addendum – the potential environmental impacts associated with the Lake Merritt BART Station Redevelopment Project have been adequately analyzed and covered in the [2014 Plan EIR] and other previous CEQA Documents. Therefore, no further review or analysis under CEQA is required." (Attachment C).

### Project Current Status

For Block 1, developers must submit a complete horizontal Final Development Plan (FDP) application two years from preliminary approval, or May 2023. For Block 2, developers must submit a complete FDP application four years from PUD/PDP approval or May 2025. EBALDC expedited its FDP application for its Senior Affordable Housing building on Block 1 ("Building B") to advance its funding applications, and the City of Oakland approved EBALDC's Final Development Plan on July 20, 2022. EBALDC has secured a \$24.4 million Affordable Housing & Sustainable Communities (AHSC) grant, and BART secured a Transit and Intercity Rail Capital Program (TIRCP) Grant for \$49 Million, of which \$19.5 Million will modernize BART infrastructure to enable the Lake Merritt TOD. LMTOD LLC is still working through design development for its high rise residential building ("Building A") and expects to submit an FDP application early in 2023.

The development team has completed the milestones stated in the ENA Extension and BART staff and the Development Team staff have negotiated a non-binding Lease Option Term Sheet for Block 1.

### Extension of Exclusive Negotiating Agreement (ENA) for 101 8<sup>th</sup> Street

While Buildings C and D on Block 2 at 101 8<sup>th</sup> Street have received preliminary entitlements from the City of Oakland, development of these sites will take additional time to advance. The Metro Center building currently on the site accommodates several BART facilities including the BART Police Department Headquarters (BPD HQ) and other BART infrastructure. Staff are currently actively advancing efforts to relocate specialized operations from this site, with a goal of relocating all special facilities by the end of calendar year 2025. Relocating these uses by a certain date is key to attracting a future office tenant to the site, as these relocations will take several years, and the developer must be ready to begin

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construction within 12 to 18 months of securing the tenant in order to have success at moving the project forward. However, if the relocation is complete before the office development is ready to begin, the building could be occupied with interim office tenants who could more readily be relocated.

Prior to advancing development of Block 2, time is needed for the office market in Oakland to recover from the COVID-19 pandemic and allow remote work trends in the Bay Area to settle. For this reason, staff is recommending a three-year extension of the ENA, with two, one-year options to extend, contingent on LMTOD, LLC making concerted efforts to attract an anchor office tenant. Staff and the developer will return to the Board annually with a status update on the office market in Oakland, efforts to attract a tenant and relocate BART infrastructure, and an updated schedule for development.

The office of General Counsel will approve as to form any agreements and documents that may result from implementation of the motions presented below for approval.

**FISCAL IMPACT:** There is no fiscal impact to adopt the City's CEQA findings, adopt the Project, or to extend the ENA for Block 2. The fiscal impact of authorizing the Agreements for Block 1 will be net revenue positive to the District.

**ALTERNATIVES:** Do not adopt the City of Oakland's CEQA findings, do not approve the Project, do not authorize the General Manager or his designee to enter into a Lease Option Agreement and other agreements and documents as necessary needed to advance the Lake Merritt TOD, Block 1 development and do not authorize staff to extend the ENA for Block 2. This would effectively terminate the Lake Merritt station TOD at this time.

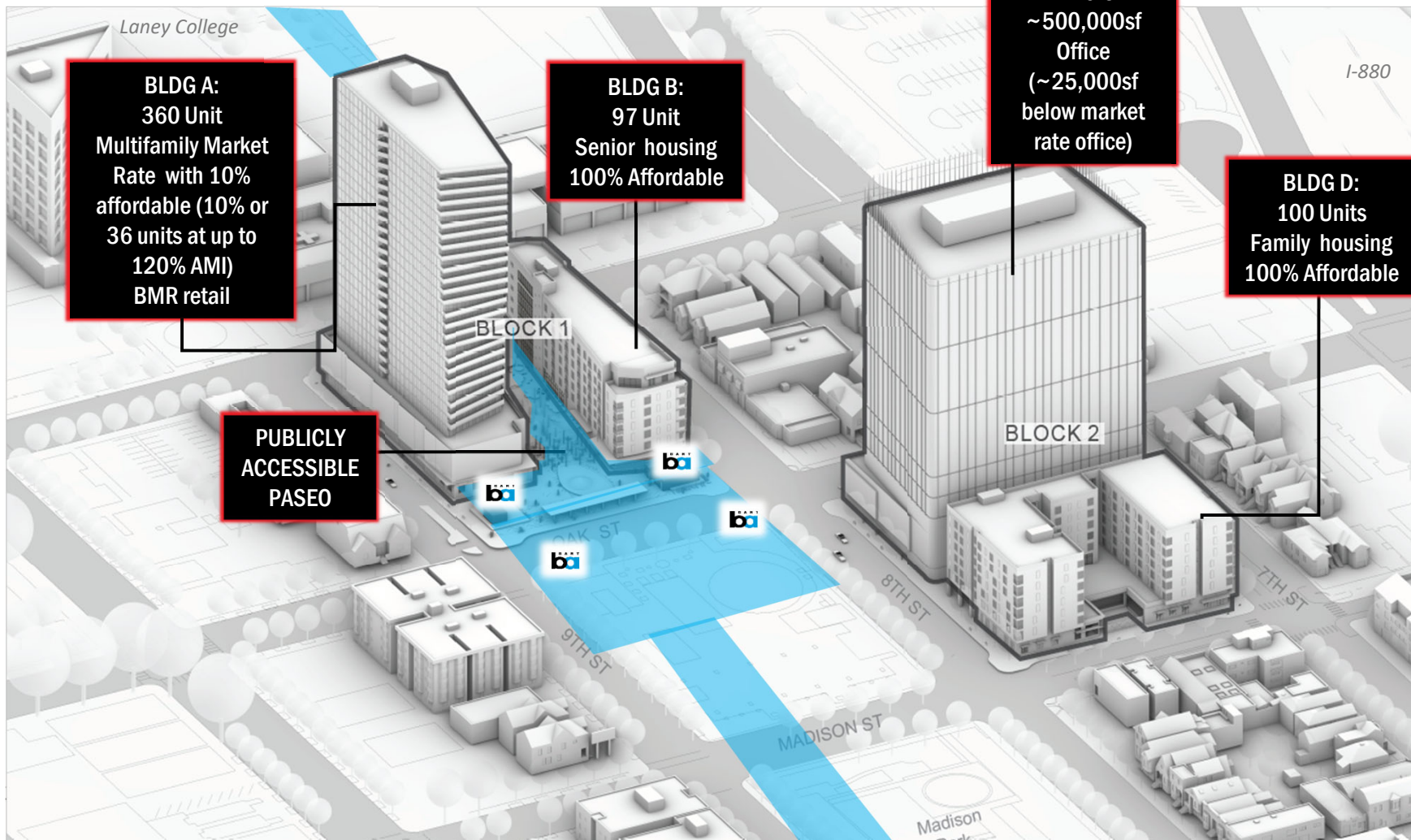
**RECOMMENDATION:** Adopt the following motions.

**MOTION:** After review and consideration of the environmental effects of the Lake Merritt TOD Project as shown in the 2014 Lake Merritt Station Area Plan EIR, certified on July 28, 2014, and the project specific Lake Merritt BART TOD CEQA Analysis Addendum adopted by the City of Oakland on May 19, 2021, the Board:

1. Adopts the City's CEQA Findings, Statement of Overriding Considerations, Standard Conditions of Approval and Mitigation Monitoring and Reporting Program;
2. Approves the Lake Merritt BART Station TOD Project;
3. Authorizes the General Manager or his designee to enter into a Lease Option Agreement and other agreements and documents as needed to advance the Lake Merritt BART Station TOD, Block 1 development;
4. Authorizes the General Manager or his designee to extend the Exclusive Negotiating Agreement with the East Bay Asian Local Development Corporation (EBALDC) and LMTOD, LLC for Block 2, for a period of three years, with two additional one-year options to extend.

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# Lake Merritt TOD Project



STRADA

EAST BAY ASIAN LOCAL  
DEVELOPMENT CORPORATION  
BUILDING HEALTHY, VIBRANT AND SAFE NEIGHBORHOODS

BART 50 YEARS  
1972-2022

**Attachment B:**

The Lake Merritt Station Area Plan Environmental Impact Report (2014) can be accessed at the following link:

<https://www.oaklandca.gov/topics/lake-merritt-station-area-plan-environmental-impact-report>

**California Environmental Quality Act**

An evaluation of the Project is provided in the CEQA Checklist in Section 7 that follows. This evaluation concludes that the Lake Merritt BART Station Redevelopment Project qualifies for an addendum as well as an exemption from additional environmental review. It is consistent with the development density and land use characteristics established by the City of Oakland General Plan, and any potential environmental impacts associated with its development were adequately analyzed and covered by the analysis in the 2014 LMSAP EIR, and in the applicable Prior EIRs: the 1998 LUTE EIR, the 2011 Redevelopment Plan Amendments EIR, and the 2010 General Plan Housing Element Update EIR and its 2014 Addendum.

The Project would be required to comply with the applicable mitigation measures and City of Oakland SCAs identified in the 2014 LMSAP EIR. With implementation of the applicable mitigation measures and SCAs, the Project would not result in a substantial increase in the severity of previously identified significant impacts in the 2014 LMSAP EIR, the applicable Prior EIRs, or in any new significant impacts that were not previously identified in any of those Prior EIRs.

In accordance with California Public Resources Code Sections 21083.3, 21094.5, and 21166; and CEQA Guidelines Sections 15183, 15183.3, 15162, 15164, 15168, and 15180, and as set forth in the CEQA Checklist below, the Project qualifies for an addendum and one or more exemptions because the following findings can be made:

- **Addendum.** The 2014 LMSAP EIR analyzed the impacts of development within the LMSAP. The Project would not result in substantial changes or involve new information not already analyzed in the 2014 LMSAP EIR because the level of development now proposed for the site is within the broader development assumptions analyzed in the 2014 LMSAP EIR. The Project would not cause new significant impacts not previously identified in the 2014 LMSAP EIR, or result in a substantial increase in the severity of previously identified significant impacts. No new mitigation measures would be necessary to reduce significant impacts. No changes have occurred with respect to circumstances surrounding the LMSAP that would cause significant environmental impacts to which the Project would contribute considerably, and no new information has been put forward that shows that the Project would cause significant environmental impacts. Therefore, no supplemental environmental review is required in accordance with Public Resources Code Section 21166, and CEQA Guidelines Sections 15162 through 15164.
- **Community Plan Exemption.** The Project would not result in significant impacts that (1) are peculiar to the project or project site; (2) were not previously identified as significant project-level, cumulative, or offsite effects in the 2014 LMSAP EIR, or in the applicable Previous CEQA Documents: 1998 LUTE EIR, the 2011 Redevelopment Plan Amendments EIR, and for the housing components of the Project, the 2010 General Plan Housing Element Update EIR and its 2014 Addendum; or (3) were previously identified as significant effects, but—as a result of substantial new information not known at the time the 2014 LMSAP EIR was prepared, or when the Prior EIRs were certified—would increase in severity beyond that described in those EIRs. Therefore, the Project would meet the criteria to be exempt from further environmental review in accordance with Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183.
- **Other Applicable Previous CEQA Documents - Prior EIRs and Redevelopment Projects.** The analysis in the 2011 Redevelopment Plan Amendments EIR, the 2010 General Plan



Housing Element Update EIR and its 2014 Addendum, and in this CEQA Analysis demonstrates that the Project would not result in substantial changes or involve new information that would warrant preparation of a subsequent EIR, per CEQA Guidelines Section 15162, because the level of development now proposed for the site is within the broader development assumptions analyzed in the EIR. The effects of the Project have been addressed in that EIR and no further environmental documents are required in accordance with CEQA Guidelines Sections CEQA Guidelines Sections 15168 and 15180.

Overall, based on an examination of the analysis, findings, and conclusions of the 2014 LMSAP EIR, as well as those of the 1998 LUTE EIR, the 2011 Redevelopment Plan Amendments EIR (or “Redevelopment Plan Amendments EIR”), and for the housing components of the Project, the 2010 General Plan Housing Element Update EIR and its 2014 Addendum—all of which are summarized in the CEQA Checklist in Section 7 of this document—the potential environmental impacts associated with the Lake Merritt BART Station Redevelopment Project have been adequately analyzed and covered in the 2014 LMSAP EIR and other Previous CEQA Documents. Therefore, no further review or analysis under CEQA is required.

Each of the above findings provides a separate and independent basis for CEQA compliance.

**Attachment D:**

Lake Merritt BART TOD CEQA Analysis Addendum can be accessed at:

[https://cao-94612.s3.amazonaws.com/documents/LMBART-CEQA-Checklist-Addendum\\_Final\\_signed-1.pdf](https://cao-94612.s3.amazonaws.com/documents/LMBART-CEQA-Checklist-Addendum_Final_signed-1.pdf)