

## Questions and Answers

### Question

### Response

#### A. Submittal Requirements

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| 1 | Please confirm the requirement for 10 printed copies remains for this RFQ, given the current events.  | Yes, the printed copies will be distributed to selection committee members.   |
| 2 | D. Description of Relevant Experience – Can more than three (3) projects be submitted for relevant experience in Section D?   | No, please select your three most relevant projects.  |
| 3 | If teams stay within the overall page limit (9 pgs) for relevant experience, do we submit 3 example projects per developer member of the Development Team, or is it 3 projects total for an entire joint development team, regardless of whether the team has multiple development partners?  | Please select the three projects most relevant projects for the entire development team.  |
| 4 | D. Description of Relevant Experience – The RFQ instructs respondents to describe three (3) relevant projects completed in the last 10 (ten) years, but Item 6 in the list of information requested for each project requests the current status of the project (i.e., construction status or if completed, year of completion.) May projects under construction be submitted for relevant experience in Section D? | Thank you for noting this inconsistency. Projects under construction are acceptable.  |
| 5 | With respect to section G.5. of the response (p34 of RFP), please clarify what is meant by “regarding a real estate venture,” as this phrase encompasses a potentially very broad universe of activities.   | A real estate venture means any partnership, joint venture, limited liability company, corporation, business trust or other entity, formed for the purpose of, directly or indirectly, investing primarily in real property or interests therein. |
| 6 | With respect to section G.5. of the response (p34 of RFP), please clarify the term “legal dispute” which is vague; what constitutes an event that qualifies as a legal dispute?   | In the context of Section VI.G.5 of the RFQ, a legal dispute means any regulatory proceedings, licensing actions, lawsuits, arbitrations, formal protests or other legal actions involving a real estate venture.                                 |
| 7 | May we use Team members projects from past employers to show relevant experience?   | Yes. However, keep in mind that experience from one's past employer only speaks to one's own abilities and not the abilities of the firm to, for example, get capitalized; these limitations may be considered in the evaluation.                 |
| 8 | Which components of the project qualify for small-business participation?   | The small business program covers both the design all the way through the construction phase - in other words, the whole project.   |

## Questions and Answers

### Question

- 9 What level of preliminary parking management plan is required as part of this RFQ response?
- 10 Can a team submit more than two concept schemes for consideration provided the minimum submittal requirements are met?
- 11 What is the composition of the selection committee?
- 12 Is there some way to identify attendees of the Pre-Submittal Conference by discipline?

### Response

A plan for managing BART patron parking is not required. In the Concept Statement, please provide a brief "explanation of your approach to parking for new residents/users, BART patrons, and library patrons (if applicable), and mitigating strategies to reduce parking and manage station access."

Not at this time. BART will welcome discussion of additional schemes with the Selected Developer.

It is made up of four BART staff and three City of El Cerrito staff.

No, because BART didn't ask in advance for that information as part of the registration process.

### B. Site Planning and Design

- 1 Can BART define the net acreage that is available for the TOD development (e.g., excluding essential BART service operations land area)? What is the approximate area of bus bays, passenger pick-up and drop-off, taxi parking, bicycle parking, and bikeway that is anticipated to be retained or reconfigured?
- 2 Can BART provide a site or ALTA survey for the parcels?
- 3 Can BART provide background drawings for the parcels with scaled dimensions?
- 4 What level of design plans are expected to be included in the RFQ submittal? Is BART expecting more than site plans? Any elevations or renderings?
- 5 How concrete should the developer concept drawing be given that City and BART are exploring access study and specific plan updates?

BART recommends that teams visit the site to observe the existing uses in order to evaluate which are best left in their existing locations and which might be relocated and/or configured more efficiently as part of the project.

Unfortunately, BART does not have a survey.

BART does not have drawings with scaled dimensions. The provided parking layout drawings and aerial images from Google Earth should be adequate to do the high-level conceptual level design that is requested. BART does not have a reliable base drawing of existing conditions, including property lines, since it would require site surveys. Figure 3 in the RFQ could likely be scaled in AutoCAD based on a single measurement corresponding to any curb-to-curb or other dimension at the site.

Only high-level conceptual level site plans are expected, no elevations or renderings.

The specific plan updates are primarily the EIR, so the main variables are the access study and the library. The access study will ultimately drive how many replacement parking spaces are provided for BART patrons. BART has simplified that for this solicitation process by asking respondents to assume that 250 spaces will be replaced, which is a placeholder number that will change depending on the access study outcome. BART understands that any submitted site plan will be conceptual in nature; the selected team will not be strictly held to it

## Questions and Answers

### Question

6 What are BART's limitations on building around and/or over the train line?

### Response

An emergency vehicle access buffer of at least 30' must be maintained on either side of the elevated platforms and rail facilities. Construction on and over tracks will be subject to BART Facilities Standards (BFS):

[BART Facilities Standards](#)

(Note that the BFS is regularly updated and the developer team will be expected to design to the most current version of the BFS)

A short summary of relevant guidelines from the BFS may be found here:

[General Guidelines for Design and Construction Over or Adjacent to BART's At-Grade and Aerial Structures](#)

7 What is included in BART's basis of design that hasn't been shared in this RFQ?

The basis of design is BART's opportunity to compile and share information from across all of the disciplines within BART, including maintenance and engineering staff, operations, etc. Real estate staff collect the information from all those departments early on and meet with the developer after the ENA has been executed. When BART provides the basis of design, staff provide as much as we can, but further engagement will still need to be done with those departments. Because this is an above ground station, there should be fewer complexities than at an underground station

8 Does BART have other planned infrastructure improvements at the station that the team should be aware of?

BART plans to decommission the existing traction power substation and construct a new substation just north of the current location along the Ohlone Greenway north of Central Ave. The timeline for the project is still to be determined, but no sooner than 2026. Over the next year, BART will be making minor sidewalk repairs around the station. In 2013, BART prepared a station modernization plan for El Cerrito Plaza station, which is available on the project website at [www.bart.gov/todelcerritoplaza](http://www.bart.gov/todelcerritoplaza). Station modernization will be a longer-term effort as funding becomes available.

9 We are familiar with San Pablo Specific Plan and General Plan. Are there any other long range plans for adjacent El Cerrito Plaza commercial center that are available in the public record?

There aren't. The General Plan and the San Pablo Avenue Specific Plan are the land use documents currently in effect for this area. Bringing vitality to the Plaza area has long been a City goal. This is further articulated in the City's Economic Development Action Plans linked below.

[El Cerrito Economic Development Action Plans](#)

10 What views does the City/BART wish to retain from the station platform? Is there a particular direction or view corridor that BART & the City wish to maintain?

The San Pablo Avenue Specific Plan notes the importance of public views and identifies maintaining intermittent and partial views from places along the platform as a way to distinguish the El Cerrito Plaza BART station and maintain a sense of place. Section 2.05 "Supplemental General Development Standards" describes the view analysis that is required through the entitlement process. The intent in this section describes which natural and scenic views are to be considered and describes that design solutions might include adjustments in height, bulk, setbacks and orientations to frame or retain partial views.

Note that AB 2923 may have some impact on regulations around views, but it is BART's intent to work closely with the City of El Cerrito and the selected developer to come to resolution on any potential conflicts.

Questions and Answers

**Question**

**C. Zoning and Approvals**

- 1 Confirm maximum density for each parcel. We only saw minimum densities in the BART documents, but there’s a reference to the City’s allowable density of 75 d.u.s/acre for B,C,D and 65 d.u.s/acre for A. Can we exceed those densities?
  
- 2 Please describe the CEQA process and analysis that the project will be required to undergo. Is there enough room under the existing programmatic Environmental Impact Report (EIR) residential unit cap to accommodate this project?
  
- 3 Please clarify the zoning requirement and provide more guidance on how the BART zoning allowed under AB29323 will be coordinated with the SP specific plan. If there are conflicts between BART and city zoning, which one controls? For example, what are the height limits for Parcels B/C/D and for Parcel A, with and without the density bonus?

**Response**

Density can definitely exceed 75 units to the acre. The City of El Cerrito does not have density requirements, but instead has height as its governing parameter, and other parameters such as shadow requirements. The City expects the project design to consider the view from the BART platform; an adequate view from the platform would be seen as an enhancing feature. The City also regards open space as a key feature of this project.

Please also note the AB 2923 clarification in R 10. For projects in the San Pablo Avenue Specific Plan area, the City will coordinate the preparation of an Initial Study Checklist to determine the project's consistency with the program EIR for the Specific Plan. This checklist will be informed by special studies which are prepared by the applicant and submitted to the City (e.g. geotechnical investigation, Phase I and Phase II environmental site assessments, project-specific transportation analysis, stormwater control plan, etc.). Typically, projects in the Specific Plan area are consistent with the program EIR, with the inclusion of project-specific conditions of approval to address certain topic areas. These conditions are informed by the analysis in the special studies. If the Initial Study determines that the project is consistent with the analysis in the program EIR, then the Initial Study is provided to decision makers as an information item during the decision making process. Please see [www.el-cerrito.org/MajorProjects](http://www.el-cerrito.org/MajorProjects) for examples of Initial Studies that were completed for other projects. With respect to the second question, the City will soon be initiating its process to update the Program EIR and add development capacity.

AB 2923 establishes baseline zoning standards by referencing BART’s 2017 Transit-Oriented Development Guidelines, linked below. AB 2923 dictates that Figure 1 and Table 1 from the 2017 TOD Guidelines serve as the baseline zoning standards (assuming BART takes no action to set standards at a station; BART has not taken such action as of the July 1, 2020 deadline). AB 2923 states that by July 1, 2022, local jurisdictions must rezone eligible BART-owned parcels if needed to meet these standards. If a jurisdiction chooses not to set its own zoning standards, the baseline standards will become local zoning on July 1, 2022 for those portions of a jurisdiction’s zoning code that are nonconforming. As the current San Pablo Avenue Specific Plan zoning (TOHIMU) is nearly consistent with AB2923, the City does not anticipate major changes to the TOHIMU development standards as part of the San Pablo Avenue Specific Plan update.

AB 2923 includes Section 29010.6(f) of the Public Utilities Code, which states: "In the event that the TOD zoning standards, objective planning standards, general plan, or design review standards are mutually inconsistent, the TOD zoning standards shall be the controlling standards. To the extent that the zoning standards do not resolve inconsistencies, the general plan shall be the controlling standard."

[BART TOD Guidelines \(2017\)](#)



Questions and Answers

Question

4 If the whole development achieves 35% affordable units across the entire site, does the project qualify for the height increase for all parcels?

Response

Under current City regulations, the following response applies regarding the density bonus: If a project qualified for a density bonus, the effect on building height would depend on a number of factors. Among those factors is that the BART property is currently four separate parcels separated by BART tracks and a public road. Three of the parcels are within the San Pablo Specific Plan Area, but one isn't. The one outside of the Specific Plan Area has different zoning with different density and height regulations. The number of development applications submitted, the number of concessions and incentives obtained and the number used on aspects of the project other than building height would also be relevant. The state density bonus is additive to the zoning standards that will be applied by AB 2923 as of July 1, 2022.

5 With respect to AB2923, what is the fate of Parcel A which is not within the specific plan and has a different zoning category. Will it be updated to align with AB2923?

Parcel A - as with all parcels in this offering - is subject to AB2923. The city's form-based code may come within the 10% of height required to be exempted from the re-zoning requirements of AB2923, but Parcel A may not. It may be re-zoned come July 2022.

6 Will the proposed development be allowed to use the state density bonus to increase height and density?

The City will comply with state density bonus laws, which apply under AB 2923 as well. Note that El Cerrito is one of the few cities exempt from SB35.

7 Should the height of the development align with the surrounding El Cerrito Plaza area?

The Goals and Objectives on page 9 of the RFQ state that the development should "Create visual and physical connection between the BART station, adjacent neighborhoods, and shopping/services in El Cerrito Plaza, and along San Pablo Avenue and Fairmount Avenue." Further, on August 27 the BART Board will consider adoption of AB 2923 development principles which include the following language for project design generally on BART property:

*AB 2923 may, in some cases, diminish the requirement for developers to adhere to certain local design requirements. If a jurisdiction shares BART's commitment to regional climate, housing, and equity goals - as evidenced by zoning BART property for the highest feasible density, use and height - BART commits to encouraging consistency with that jurisdiction's objective design standards in its development agreements, to deliver feasible, high quality, context-appropriate design.*

In sum, BART is not specifically expecting the height of development to align with the surrounding area, but does expect the selected developer to utilize best practices in architecture and urban design to show respect for community context. It is up to the developer team to determine how this can best be achieved.

D. Affordability

1 Can the affordable units be in a separate building from the market rate units, with the affordable units constructed as a second phase at such time as public affordable housing subsidy funds are secured?

Affordable housing units may be provided in a separate building, but are expected to be delivered in a timely manner and may not be delayed to an indefinite future time. The phasing of the development is to be negotiated with the Selected Developer.



Questions and Answers

**Question**

**Response**

- 2 With the understanding, BART Policy requires at least 20% of all units on BART property at any given station to be affordable and the goal of 35% of all housing built on BART properties to be affordable - can BART expand on the desired affordability percentage for the El Cerrito TOD Development?
- 3 For the affordable housing component, does the City have strong preference for unit types (i.e. family versus senior) or income levels? Are there specific goals related to the Regional Housing Needs Allocation (RHNA) we should be aware of?
- 4 Is there a preference for affordable or mixed-income buildings?
- 5 How do you definite affordable housing, in regards to income and rent?
- 6 Will the affordable housing be intended for single people, duets, or families? How long will be they be committed to affordable housing?

BART does not have a specific affordability percentage in mind aside from its 20% minimum requirement. The submitted concepts will be evaluated in part based on the quantity and depth of affordable housing proposed, which should be realistic in the current funding environment.

The City supports affordable housing at all income levels, and its goals are laid out in the 2017 Affordable Housing Strategy linked below. Currently, the City does not have a local funding source to support the project and Contra Costa County does not have a housing bond to leverage. However, El Cerrito is on pace to meet its current RHNA numbers with the exception of 81-120% AMI; the latter units may be generated through the City's Inclusionary Zoning Ordinance, adopted June 2018. Preferred unit types and income levels could be a great topic to further discuss during the community outreach process.

[El Cerrito Affordable Housing Strategy \(2017\)](#)

No; however BART does have a preference for maximizing affordable housing towards the goal of 35% portfolio-wide, per its Affordable Housing Policy, which states that BART will "consider a proposal's quantity and depth of affordability, as well as the proposal's validity and feasibility with respect to this policy."

[BART Affordable Housing Policy \(2016\)](#)

BART's policy is to prioritize affordable housing that is deed restricted to households with low- and very-low incomes, below 80% AMI (Area Median Income) and below 50% AMI respectively. Those dollar figures can be found by searching for Contra Costa County AMI, 2020; BART uses those generally recognized standards, and is open to accommodating moderate income households at this property as well.

The residential household composition will be determined by the Selected Developer. Affordable housing units will have long-term affordability restrictions as required by the applicable funding programs, such as the Low Income Housing Tax Credit, which requires a 55 year affordability term.

**E. Library**

- 1 At what point in the process will the City decide, with BART, to move forward with a library?
- 2 Does the City have any specifications for the library building, aside from 21,000 sf and 63 parking spaces, that we need to know about at this time?
- 3 How does BART envision the library development to occur with respect to agreements with the City or County?

BART recognizes that carrying two design alternatives is burdensome, and recommend that respondents specify in the project timeline a date by which the City should decide as to inclusion of the library.

The City does not have additional specifications and looks forward to the responses regarding how a library could complement and be integrated into a TOD at the Plaza. The City's webpages provide additional background on the library, including a 2014 Needs Assessment, at the following links.

[Library Service Priorities](#)

[2014 Library Needs Assessment](#)

The library would be a lessee and would be responsible for all costs customarily borne by a commercial lessee.



Questions and Answers

**Question**

**Response**

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| 4 | Is the Library required to be a single story? Can you confirm a Library can be used on the ground floor of another use?            | The library is not required to be a single story and may be located below other uses.   |
| 5 | Will there be any bond or other source of funding available for the library?   | At this time, funding has not been identified for the library.  |
| 6 | What's the projected lease cost to the City for the library's 21,000 SF? Will the City pay for pro rata land cost for the library? | The library would be expected to pay market rate rent for its interior space and dedicated parking. As a lessee, the library would not be expected to pay a pro rata land cost.   |
| 7 | Would the library qualify as commercial frontage?  | The City's frontage types in the San Pablo Avenue Specific Plan are more by form than by use, requiring a high degree of transparency and a commercial feel. Please review these plan requirements; if the library can meet them, then it can qualify as commercial frontage. |
| 8 | Are the library's 63 parking spaces part of the 250 total?   | The 250 parking spaces are for BART patron replacement parking which have high occupancy during the daytime, so they cannot be shared with library parking which also would see high occupancy during the daytime.  |

**F. Outreach**

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| 1 | Which non-English speaking populations should we plan to engage with during the outreach period, if any?                                     | Spanish, Chinese, Korean, Filipino, and Vietnamese.  |
| 2 | What resources would BART and/or the City offer to the development team during the community engagement process?                             | The Selected Developer will lead community engagement for the development. BART can provide staff support and resources from past engagement including sharing information via our email list of community members. BART will also be conducting community engagement related to our station access analysis funded via grants from CalTrans and the Federal Transit Administration, and would like to coordinate with the project outreach provided the timelines are consistent. The City also will support the community engagement effort through staffing tables and providing materials about the City's overall housing, economic development and sustainable transportation goals, the SPASP, the library etc. The City can help with outreach via its various listservs, e-newsletters etc. For in-person events, the City can provide a venue, and BART can provide expressive activity permits for engagement occurring at the station. |
| 3 | Is there a community advisory group or a specific neighborhood group that will be involved in the planning for the station area?             | Not at this time, but a community advisory group may be formed in the future. For past development projects, developers have chosen to form one.   |
| 4 | What are the community engagement framework/guidelines anticipated by the City & BART given the current COVID / social distancing situation? | Should public health restrictions continue after selection of a developer (est. November 2020), community engagement may need to be conducted in virtual settings, or in a combination of virtual and in person settings. Cities and agencies are becoming accustomed to doing engagement despite the pandemic, and there are some upsides to participation virtually. So hopefully this crisis wraps up sooner and we can. Regardless of whether the pandemic is ongoing or not, the developer will need to utilize a variety of community engagement methods   |



Questions and Answers

**Question**

**Response**

**G. Parking and Access**

1 Who is conducting the access study and what is the timeline?

Per the RFQ, the access study will be completed in several phases. Initial access analysis is already underway by BART and Arup, its consultant, through funding from CalTrans and will be completed around the end of 2020; additional funding for access analysis along the BART's Richmond line, which includes El Cerrito Plaza, was recently awarded by CalTrans and the Federal Transit Administration and will begin around the beginning of 2021. Following this work, a two-phase access study will be funded by the developer, conducted by one of BART's on-call consultants, and managed by BART, as described in the RFQ.

2 How will the final amount of parking stalls be determined?

BART is putting significant effort into determining the right amount of parking, since it's imperative to maintain access for BART patrons. In addition to the access study, a critical issue is the source of funding or financing for BART parking. In the past, the developer would construct a garage and BART would essentially pay for it through lease credits, as well as receiving state grants and Redevelopment funds. At present there is little outside funding available for parking replacement, aside from the state Infill Infrastructure Grant program, which lacks a consistent source of funds.

3 Will the access study govern transportation demand management (TDM) and parking related to housing?

BART and the city's zoning will regulate the parking requirements for the housing. BART is bringing a TDM requirement to its board on August 27th, which is a requirement of AB 2923. The Board meeting agenda and draft TDM Program are linked below:

[BART Board Meeting Agendas](#)

[Draft Transportation Demand Management Program](#)

4 Is there a previous station access plan for El Cerrito Plaza that respondents should be aware of?

Initial station access work is in progress. Survey results and community outreach event information can be found on the project website, [www.bart.gov/todelcerritoplaza](http://www.bart.gov/todelcerritoplaza). BART also conducted a station access study for El Cerrito Plaza in 2002; that analysis is now largely outdated.

5 How long does BART anticipate the access study to take?

The access study funded by the developer is expected to take 1-2 years. It includes an initial needs assessment, followed by an evaluation of the developer's proposed concept.

6 How much public improvements extending beyond the immediate frontage of the parcels does BART anticipate including in this development?

The access study will identify a menu of public improvements on and off BART property to address a reduction in BART patron parking. Negotiation between BART, the City and the Selected Developer will determine which party or parties will be responsible for short term improvement, as well as a funding and financing strategy for projects to be addressed over the longer term.

7 Are teams encouraged to explore station access alternatives in the concept studies - for instance, options that concentrate station access either on the east or west of the station? Are there are cautions about exploring these options at the qualifications stage?

Teams are encouraged to explore station access alternatives in the concept studies, taking into consideration the access information provided in the RFQ. BART is open to the reconfiguration of the access on a single side if all access needs were met, consistent with BART's station access policy ([www.bart.gov/accesspolicy](http://www.bart.gov/accesspolicy)), as well as BART's Multimodal Design Guidelines which can be accessed at the link below. Input from AC Transit on the access configuration will also be critical.

[Multimodal Access Design Guidelines](#)



## Questions and Answers

### Question

- 8 Given that BART is conducting an access study, what are the geographic boundaries of the proposal's focus? For instance, does the proposal need to address how the broader community (e.g. El Cerrito hills communities) will access the station? Or should it only focus on how the project area is designed to enhance connectivity?
- 9 Please provide additional detail on the potential parking management district. Would a District include management of residential and commuter parking at the station? Could a Parking District include management of additional commercial or on-street parking in the neighborhood?
- 10 Will BART reimburse the developer for the cost of the BART parking? Is BART ok with a shared garage for both residential and BART patrons?
- 11 Can BART and/or residential parking on Parcel B and C enter/exit off the drive lane (bus lane, EVA) that is parallel to the track?
- 12 Will there be any bond or other source of funding available to finance BART parking?
- 13 Will BART parking be owned and operated by BART?
- 14 Will there be a parking space for each housing unit or a provision in leases that residents may not own a car?

### Response

The concepts for the site in the responses should address both site circulation and multimodal access, focusing on the properties in question. If the developer's concept requires explanatory graphics expanding beyond the site boundaries, such graphics are permitted. Broader access improvements will be addressed through the access study following developer selection.

The initial thinking is that a City-led (with BART support) parking management district would make use of available on-street parking capacity within the 1/4 to 1/2 mile radius of the station. It could potentially include off-street parking facilities. On-street residential parking would have to be contemplated within the solution. It would not include management of the parking on BART property. Parking could be managed for use by BART patrons as well as residents and visitors.

Historically the cost of BART customer parking has not been the direct responsibility of the developer, but in some cases the developer has constructed the parking as consideration for the land value. BART is open to creative approaches to providing necessary parking for BART patrons, including shared parking. BART has one garage that is shared between residents and BART patrons, and is very open to negotiating such an arrangement at El Cerrito Plaza.

Yes, as long as access needs are met in accordance with BART's access policy found at [www.bart.gov/accesspolicy](http://www.bart.gov/accesspolicy), and conflicts do not arise in future conversations with AC Transit and BART's customer access department.

BART's developer partners have been successful in the past in obtaining partial funding for replacement BART parking through state of California programs such as Infill Infrastructure Grants, tied to new affordable housing. BART is open to creative approaches to funding or financing BART parking.

BART is open to negotiating the ownership and operation of BART parking, but prefers to own and operate that parking itself, as that allows BART to be dynamic with its parking management in changing situations (such as COVID-19). BART assumes that any patron parking provided off-site, such as on city streets, will not be owned and operated by BART.

AB 2923 sets maximum residential parking for El Cerrito Plaza at 0.5 spaces per unit, and BART encourages unbundling and pricing of resident parking. Lease provisions have not yet been determined.

## Questions and Answers

### Question

#### H. Program

- 1 Beyond the ground floor on Fairmont Avenue, what are BART's requirements for commercial development within the project? Can BART expand on any desire to have office as a use at the El Cerrito station?
- 2 With other planned TOD Developments on BART properties, where does BART stand in meeting its goal of 35% of all housing built on BART properties to be affordable?
- 3 Are there other community serving facilities besides the library that might be incorporated into the development, potentially in lieu of the library if that is not feasible?
- 4 Will BART place requirements on the type of retail tenant to be incorporated?
- 5 Will BART keep its options open to change the type and scale of development at EC Plaza if the COVID pandemic and a COVID recession redefine our economy and housing needs?

### Response

BART has no requirements for commercial development. The goals and objectives for the project aim to create an active ground floor on Fairmount Ave., and offices could be integrated as well - for example, 2nd floor offices above retail and below housing. The City requires that 50% of the frontage on Fairmount is commercial and sees that as a key component of its plan for this project, but does not have a square footage requirement. The City Council has expressed a desire for more office to support jobs, increase the daytime population to support local businesses, and support reverse commute goals. Office space at the Plaza is limited and has high occupancy rates. The City's SPASP supports office as a use.

BART is currently falling short of that goal. BART has built over 6,200 housing units on its property. To meet its 2025 goal, BART will need to add nearly 775 additional residential units to its portfolio, and most of those units will need to be affordable housing. BART will need to build 500-800 units a year after 2025 to meet its goal of 20,000 units by 2040, which requires an acceleration of the program. For more information, please refer to the draft Transit-Oriented Development Program Work Plan linked below, page 16-17.

#### [Transit-Oriented Development Program Work Plan](#)

The City looks forward to proposals regarding this, and to what might come out of the public outreach, but has not identified other community serving facilities at this time.

Past projects on BART property generally have not restricted the type of retail.

Yes, BART and the Selected Developer will continually assess market conditions throughout the predevelopment process. Alternative development strategies in light of economic changes can also be negotiated as part of the lease option. However, BART may place limitations in particular on the scale or use of BART land to ensure BART experiences a net gain in ridership and revenue as a result of development.

#### I. Terms

- 1 Can BART provide any guidance on its expectations for its annual ground lease payment and potential lease structures? We are running numbers based on our projected costs and want to make sure the project supports a GL that would be in the acceptable range for BART

BART's expectations on ground lease payments, including factors considered in establishing fair market value, are provided in BART's TOD Policy and its Framework for Determining Financial Return from Affordable Housing, which are linked below. For market rate development BART favors ground leases of not more than 66 years; for affordable housing, 75 years. BART is open to negotiation on lease structures.

#### [Transit-Oriented Development Policy](#)

#### [Framework for Determining Financial Return from Affordable Housing](#)

## Questions and Answers

### Question

- 2 Can the ground lease be structured to comply with Fannie Mae underwriting requirements (attached)? If not, please specify which items the groundlease cannot comply with.

### Response

BART considers lender requests relating to its ground leases on a case-by-case basis based on the particulars of the project and the structure of the lease agreements. Therefore, it is premature to commit to lender requirements. The following response is not intended to, and should not be understood to be, binding upon BART in the negotiation of any potential lease agreement(s). That being said, BART has the following comments regarding the proposed requirements (which comments should not be interpreted to apply to similar terms which may be proposed by HCD or other California State Agencies):

- 1) As noted in the RFQ, it is paramount that TOD developments do not negatively impact BART's transit facilities and operations. With that in mind, BART's ground leases are strictly protective of BART's transit operations and facilities. To the extent that a lender's requirements are inconsistent with ensuring that BART has the necessary rights to prevent or cause the prompt cessation of any such negative impacts, those requirements would not be acceptable.
- 2) BART does not favor recordation of full Ground Leases. Instead, the ground leases provide for recordation of a memorandum of lease, which has typically been satisfactory to lenders.
- 3) BART's ground leases typically impose restrictions on lessees' assignment of their leasehold estate. However, these restrictions do not apply with respect to a transfer to a qualified mortgagee via foreclosure or to a bona fide purchase of a ground lease's leasehold estate at a foreclosure sale. However, all assignments following such acquisition (whether by a lender or a third party) would be subject to standard limitations on assignment.
- 4) In the interest of clarity, BART does not permit mortgage loans to be secured by liens on BART's fee interest in its property. Rather, any such liens may only be on the leasehold interest created by the ground lease.

## Questions and Answers

### Question

### Response

- 5) While BART's leases do provide for a new lease in the event of termination of the lease due to a default that is not curable by the leasehold mortgagee, any new lease would be subject to cure of any and all preexisting defaults that are susceptible to cure.
- 6) BART's requirements regarding condemnation proceeds and, in the event of a "casualty" as defined in the leases, insurance proceeds from a casualty, do not necessarily meet the requirements set forth in paragraphs 15 and 25 of the "Ground Lease Requirements" document. Again, these matters are negotiated on a case-by-case basis, but typically condemnation proceeds are made available for restoration in the event of a partial taking, and the tenant is entitled to a portion of the proceeds after BART receives the fair market value of its land (excluding any improvements owned by the tenant).
- 7) Depending on the structure of the negotiated deals, ground leases may contain rent escalation provision based on changes in the cost of living.
- 8) BART's ground leases typically provide that they cannot be amended without the consent of a qualified senior mortgagee, but do not necessarily require the consent of all leasehold mortgagees.
- 9) BART's ground leases provide for specified uses on the leased property, and prohibit uses not so specified.
- 3 AB2923 provides that "when the district enters into an exclusive negotiating agreement with a developer for the development of an eligible TOD project, that agreement shall confer a vested right to proceed with development[...]" Please explain how this affects the entitlement process for the project. If the selected developer and the City of El Cerrito reach an impasse and local entitlement can't be achieved, what right does the developer have to proceed?
- 4 Fee Simple: Is BART willing to negotiate a land sale for particular housing types (e.g. homeownership or market-rate rental)?
- 5 Ground Lease: Is BART willing to negotiate a ground lease structure with extension options beyond 66 years?
- 6 Can we get a copy of standard ENA form?
- 7 Will BART consider deferred payment or residual payment for lease arrangement?
- It is up to the developer and their associated legal counsel to determine what is possible with California laws pertaining to state development streamlining. Note that El Cerrito is one of the few cities that is presently exempt from SB 35.
- No, BART no longer sells its property.
- For market rate development BART favors ground leases of not more than 66 years; for affordable housing, 75 years. With recent projects BART has been willing to allow for an extension beyond 66 years. BART is open to negotiation on lease structures.  
BART does not use a standard ENA form.
- BART is open to considering these options if there were a compelling reason.

## Questions and Answers

### Question

- 8 Can someone from the city speak to the competitiveness of the site and its properties, in El Cerrito for the TOD or IIG state subsidies, for example housing element compliance, proximity to amenities (like a retail center), transit priority area, and whether the site allows for residential development?
- 9 Will developers need to demonstrate that they have their own financing?
- 10 Does BART have a form ground lease that is public information available for review?

### Response

The site is close to many amenities and is well situated for many grants. It is not in an Opportunity Zone nor a lower income demographic Census tract. The project will include at least 20% affordable income housing. Its adjacency to transit makes it competitive for certain funding sources, and the City has completed many street and bike plans. El Cerrito's housing element is in compliance with state laws. With respect to the State's TOD program, smaller affordable housing projects fit that program best. It will be up to the development team to portion this site out. TOD projects at BART have a strong track record competing for state funds such as IIG and AHSC that are tied to new affordable housing.

Yes, and financial references are required as part of the submittal package.

BART does not currently have a form ground lease. Each lease is negotiated on a case by case basis.