



**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE
REGULAR MEETING**

**Monday, July 15, 2024
10:30 AM**

2180 Milvia Street, 6th Floor, Berkeley, CA 94704 – Redwood Room

Committee Members:

Councilmembers Terry Taplin, Ben Bartlett, and Igor Tregub
Alternate: Councilmember Mark Humbert

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. If you are feeling sick, please do not attend the meeting in person.

Remote participation by the public is available through Zoom. To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://cityofberkeley-info.zoomgov.com/j/1608671032>. To request to speak, use the “raise hand” icon on the screen. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and Enter Meeting ID: **160 867 1032**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair. Please be mindful that the meeting will be recorded.

To submit a written communication for the Committee’s consideration and inclusion in the public record, email policycommittee@berkeleyca.gov.

Written communications submitted by mail or e-mail to the Public Safety Policy Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Election of Chairperson

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - September 18, 2023

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. First Draft 2024 Local Hazard Mitigation Plan

From: Office of Emergency Services

Recommendation: Discussion on the first draft 2024 Local Hazard Mitigation Plan.

Financial Implications: See report

Contact: Jamie Albrecht, Emergency Services Coordinator, (510) 981-5514

3a. Recommendation Regarding Panoramic Hill Secondary Evacuation

From: Disaster and Fire Safety Commission

Referred: April 25, 2024

Due: October 8, 2024

Recommendation: Adopt a Resolution approving the development of a plan that includes a feasibility study and identification of funding sources for the construction of an emergency secondary egress road on Panoramic Hill. Such a plan could include discussions between the City of Berkeley, the City of Oakland, UC Berkeley, East Bay Regional Parks District and Alameda County and should also provide for continued contact with the Disaster and Fire Safety Commission (DFSC) as well as other related Berkeley Commissions as the Council determines.

Financial Implications: See report

Contact: Keith May, Commission Secretary, (510) 981-3473

Committee Action Items

3b. Companion Report: Recommendation Regarding Panoramic Hill Secondary Evacuation

From: Fire and Emergency Services

Referred: April 25, 2024

Due: October 8, 2024

Recommendation: Adopt a Resolution directing the Fire Department to reach out to other impacted landowners to determine interest in pursuing, and coordinate costs sharing to conduct a feasibility study to identify a safe secondary evacuation and access route for the access impaired Panoramic neighborhood. The results of the study should then be shared with the Public Safety Policy Committee.

Financial Implications: See report

Contact: David Sprague, Fire, (510) 981-3473

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

4. Resolution: Opposition to Police Brutality and Use of Force on Nonviolent Protesters

From: Councilmember Harrison (Author)

Referred: November 20, 2023

Due: September 12, 2024

Recommendation: Adopt a Resolution reaffirming the City of Berkeley's opposition to and condemning police brutality towards nonviolent protesters and discouraging use of "less-lethal" weapons for crowd control.

Financial Implications: See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Items for Future Agendas

- Requests by Committee Members to add items to the next agenda

Adjournment

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*Written communications addressed to the Public Safety Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900.*



#### COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please

contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on Thursday, July 11, 2024.



Mark Numainville, City Clerk

### **Communications**

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or [policycommittee@berkeleyca.gov](mailto:policycommittee@berkeleyca.gov).*

**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE  
REGULAR MEETING MINUTES**

**Monday, September 18, 2023  
10:30 AM**

2180 Milvia Street, 6<sup>th</sup> Floor, Berkeley, CA 94704 – Redwood Room  
1404 Le Roy Ave, Berkeley, CA 94708 – Teleconference Location  
1619 Edith Street, Berkeley, CA 94703 – Teleconference Location

**Committee Members:**

Councilmembers Rashi Kesarwani, Terry Taplin, and Susan Wengraf  
Alternate: Councilmember Rigel Robinson

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. For in-person attendees, face coverings or masks that cover both the nose and the mouth are encouraged. If you are feeling sick, please do not attend the meeting in person.

Remote participation by the public is available through Zoom. To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://cityofberkeley-info.zoomgov.com/j/1604354226>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter Meeting ID: **160 435 4226**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

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## MINUTES

**Roll Call:** 10:33 a.m.

**Present:** Kesarwani, Taplin

**Absent:** Wengraf

Councilmember Wengraf present at 10:37 a.m.

**Public Comment on Non-Agenda Matters** – 2 speakers.

### Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

**1. Minutes - June 20, 2023**

**Action:** M/S/C (Taplin/Wengraf) to approve the June 20, 2023 minutes.

**Vote:** All Ayes.

### Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

**2. Audit Recommendation Status - Data Analysis of the City of Berkeley's Police Response**

**From:** City Manager

**Referred:** May 23, 2023

**Due:** November 7, 2023

Contact: Jennifer Louis, Police, (510) 981-5900

**Action:** 2 speakers. M/S/C (Taplin/Wengraf) to forward the item to Council with a positive recommendation.

**Vote:** All Ayes.

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

- 3. Information Report Request: Alternatives to Chemical Agents for Response to Violent Large-Scale Crowd Scenarios**  
**From: Councilmember Taplin (Author)**  
**Referred: August 29, 2022**  
**Due: October 31, 2023**

**Recommendation:** Direct the City Manager to study alternatives to chemical agents to improve the Berkeley Police Department's ability and capacity to respond to and de-escalate large-scale crowd scenarios, including violent militias, and return a report to the City Council by the end of Fiscal Year 2023. Report should include but not be limited to the following factors: -BPD intelligence-gathering capabilities on potentially violent large crowd scenarios; - BPD response protocols including procedures for protecting bystanders, peaceful protesters, and businesses; -Tools and tactics available for crowd control in potentially violent scenarios; -Mutual aid and support from other local/state/federal agencies; -Applicable state and federal laws on crowd control and First Amendment rights.

**Financial Implications:** Staff time

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

## Items for Future Agendas

- None

## Adjournment

**Action:** M/S/C (Taplin/Kesarwani) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 10:55 a.m.

I hereby certify that the foregoing is a true and correct record of the Public Safety Committee meeting held on September 18, 2023.

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Neetu Salwan, Assistant City Clerk

## Communications

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# 2024 Local Hazard Mitigation Plan (LHMP)

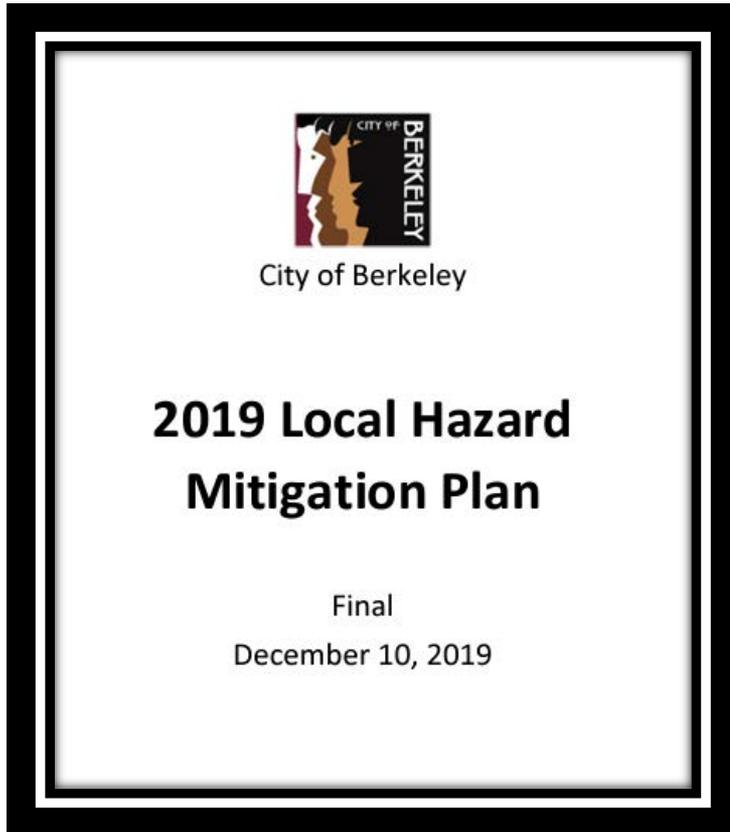
## First Draft Plan

Public Safety Committee  
July 15, 2024

# Agenda

- Local Hazard Mitigation Plan (LHMP) Overview
- What is Hazard Mitigation?
- Plan Changes Since 2019
- First Draft Plan: Risk Assessment and Mitigation Strategy Updates
- Public Outreach
- Next Steps

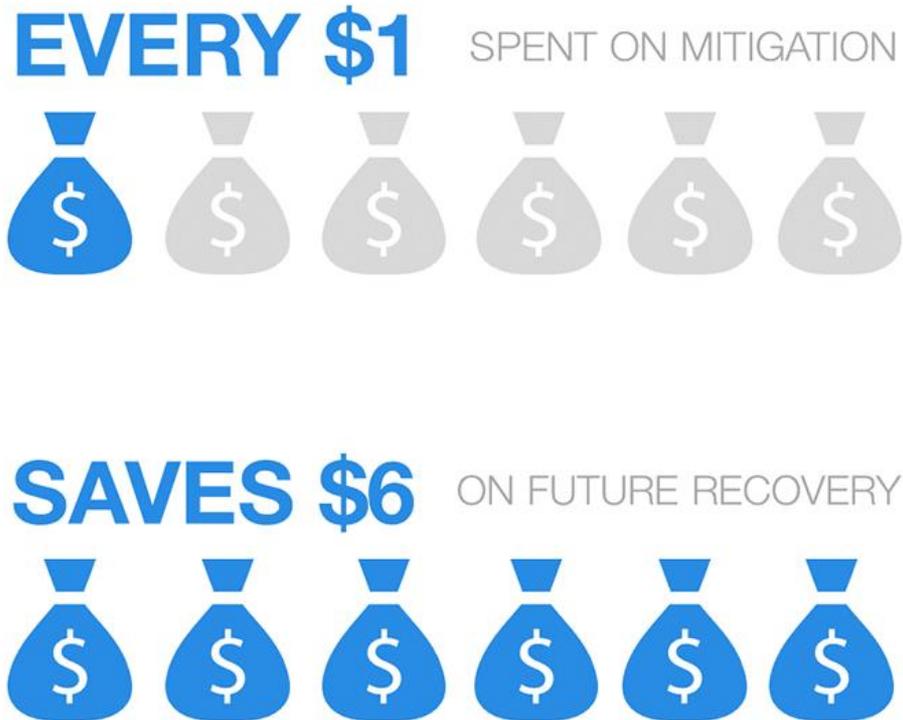
# Local Hazard Mitigation Plan



- Appendix to City's General Plan
- Adopted in 2004, 2014, and 2019
- Financial incentives (pre- and post-disaster)
- Public Review for First Draft: May 24 to August 8
- Key Plan Elements
  - B: Risk Assessment
  - C: Mitigation Strategy

# What is Hazard Mitigation?

**Hazard mitigation breaks the cycle of damage, by taking action now to reduce impacts later.**



*Image Credit: Boston.gov*

# Examples of mitigation activities

- Home hardening (like in top photo)
- Strengthening structures (like earthquake retrofits)
- Making land use decisions that will minimize damage
- Reducing vegetation in high-fire areas (like in bottom photo)
- Strapping down water heaters



# First Draft Plan: Risk Assessment and Strategy Updates

# Risk Assessment Summary

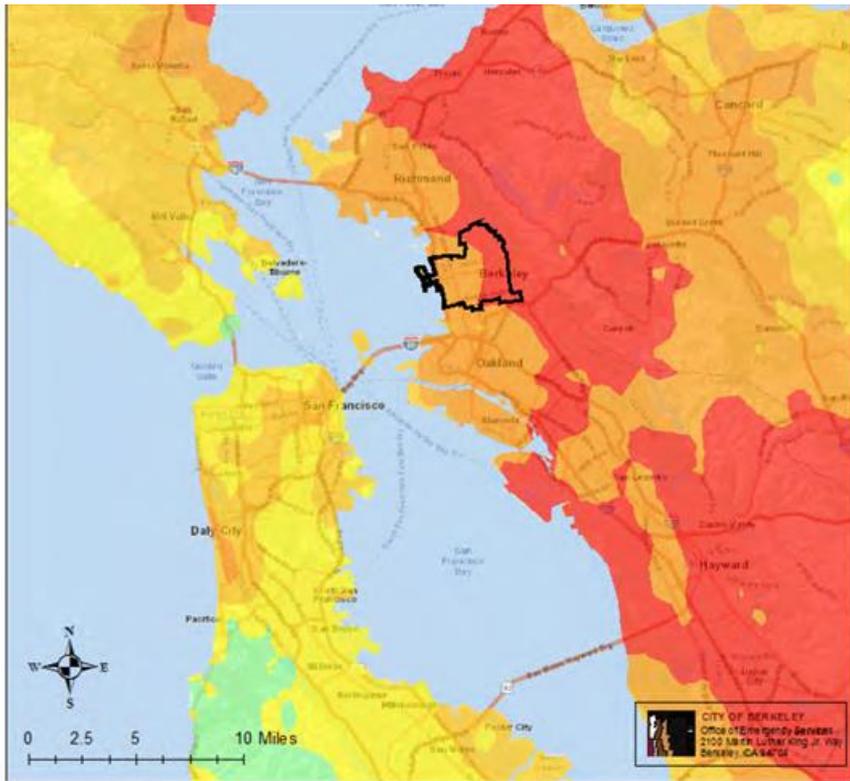
| Hazard                        | Likelihood | Severity of Impact       |
|-------------------------------|------------|--------------------------|
| Earthquake                    | Likely     | Catastrophic             |
| Wildland-Urban Interface Fire | Likely     | Catastrophic             |
| Extreme Heat                  | Likely     | Moderate to Catastrophic |
| Poor Air Quality*             | Likely     | Minor                    |
| High Wind*                    | Likely     | Minor                    |
| Landslide                     | Likely     | Minor to Catastrophic    |
| Tsunami                       | Possible   | Minor to Catastrophic    |
| Sea Level Rise*               | Likely     | Minor to Major           |
| Floods                        | Likely     | Minor                    |
| Utility Interruption*         | Likely     | Minor to Major           |
| Hazardous Materials Release   | Likely     | Minor to Catastrophic    |
| Infectious Disease*           | Likely     | Minor to Catastrophic    |

\*New Hazard in 2024 Plan Page 17

# Mitigation Strategy Summary

- 33 Actions
- Focus:
  - Current work with funding secured
  - Improvements to buildings, infrastructure, and wildfire mitigation (aligning with the Community Wildfire Protection Plan)
  - New actions or activities related to new hazards
  - Upcoming Environmental Justice and Safety Element updates

# Earthquake



Source: USGS, HayWired Scenario, August 2017.  
Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community

## Mitigation Actions

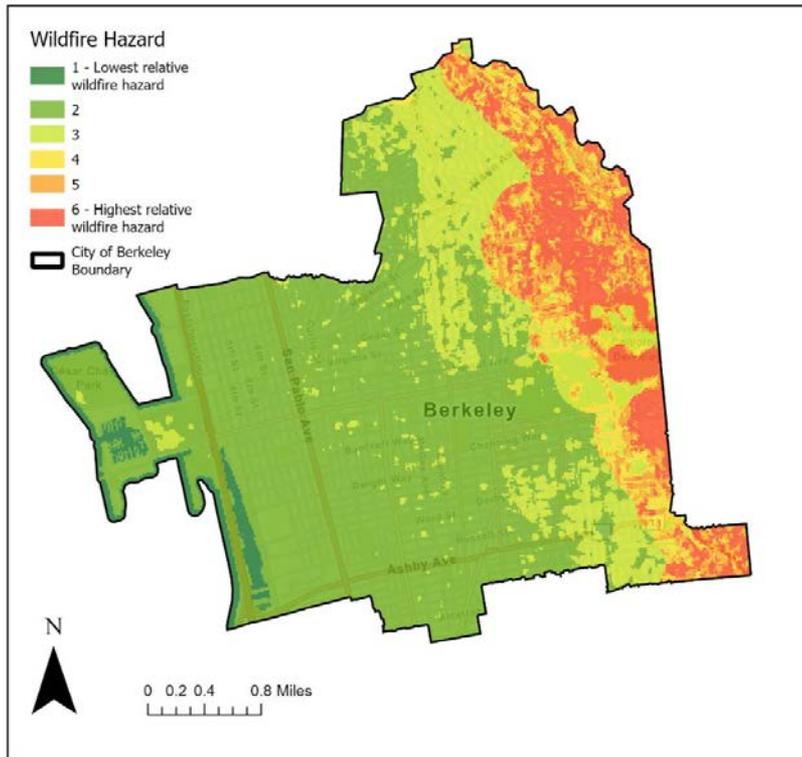
### City buildings

- Building assessments
- Strengthen and replace in prioritized order

### Privately owned buildings

- Soft Story Retrofit Program
- Retrofit Grants Program
- Concrete Retrofit Ordinance Research
- URM Ordinance

# Wildland-Urban Interface Fire



## Mitigation Actions

- Coordinate regional mitigation strategies
- Improve responder access and community evacuation in Fire Zones 2 and 3 through road maintenance and parking restrictions
- Manage and promote pedestrian evacuation routes in Fire Zones 2 and 3
- Mitigate risk to Berkeley’s overnight camps
- Reduce fire risk through:
  - fire code and updates and enforcement
  - vegetation management
  - residential assistance program
  - utility undergrounding
  - Implementing actions in the Community Wildfire Protection Plan

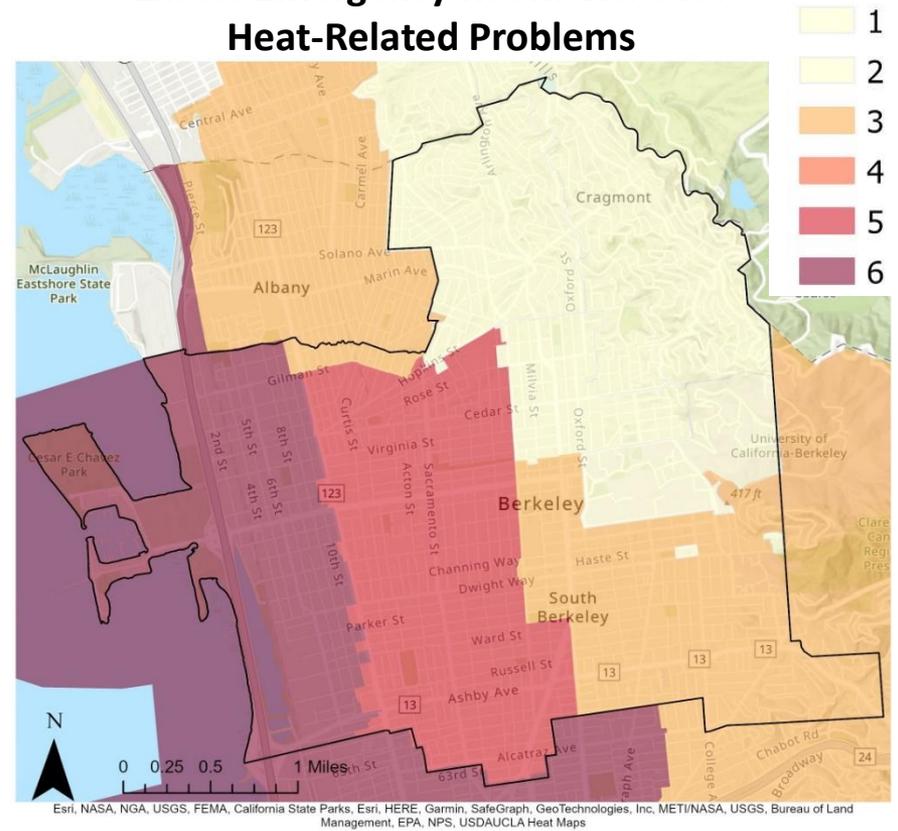
Sources: 2020 Alameda and Contra Costa County Wildfire Risk to Structures and Wildfire Hazard Maps for Fire Prevention Planning, East Bay Regional Parks, et al. California State Parks, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA, USFWS

# Extreme Heat

## Mitigation Actions

- Expanding Urban Forestry team and their activities
- Encouraging passive and energy-efficient strategies to cool down buildings
- Continuing to seek out funding to use cool paving materials on streets when feasible to reduce urban heat island impacts
- Implementing transportation projects and programs to reduce emissions

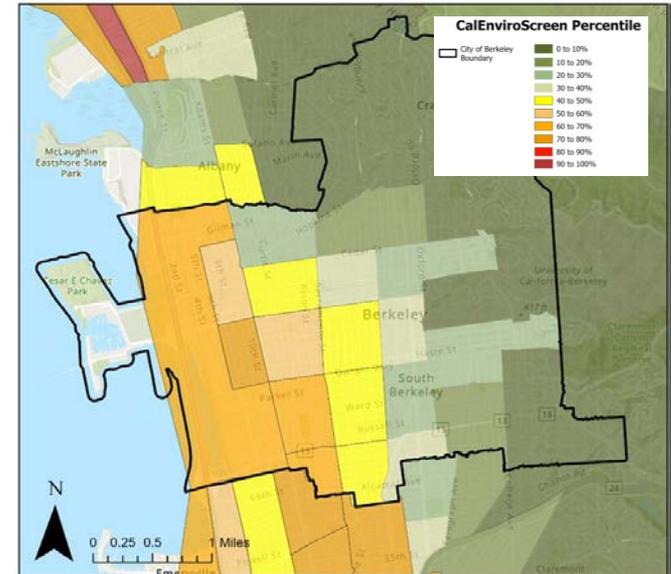
**Excess Emergency Room Visits for Heat-Related Problems**



# Poor Air Quality

## Mitigation Actions

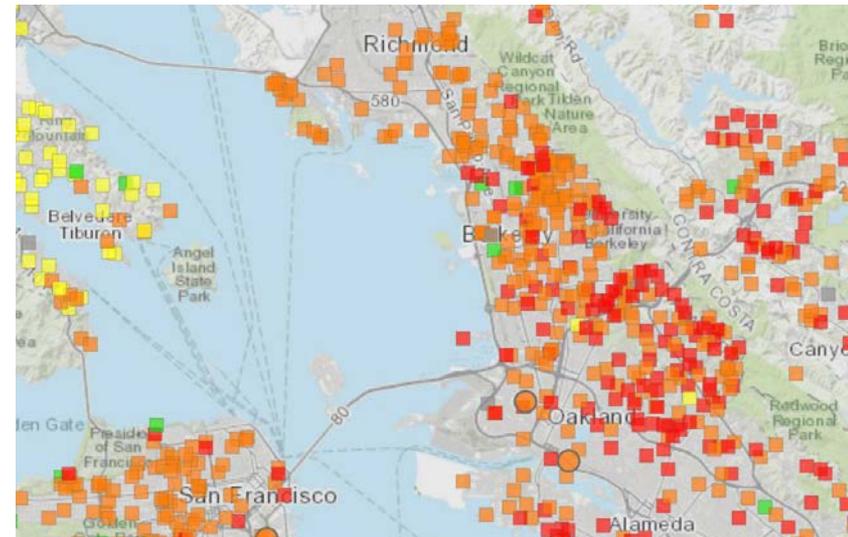
- Expanding Urban Forestry team and their activities
- Implementing transportation projects and programs to reduce emissions



Credits: CalEnviroScreen 4.0, October 2021

Esri, NASA, NGA, USGS, California State Parks, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc., METI/ NASA, USGS, Bureau of Land Management, EPA, NPS, USDA

## Regular day poor air quality



## Poor air quality from fires

# Community Engagement

# Individual and Household Actions

- Previous versions: What can City government do?
- 2024 LHMP: And what can you do in your household?
- Example: Earthquake
  - City: Retrofitting municipal buildings, facilitating grants
  - Household: bolting down furniture



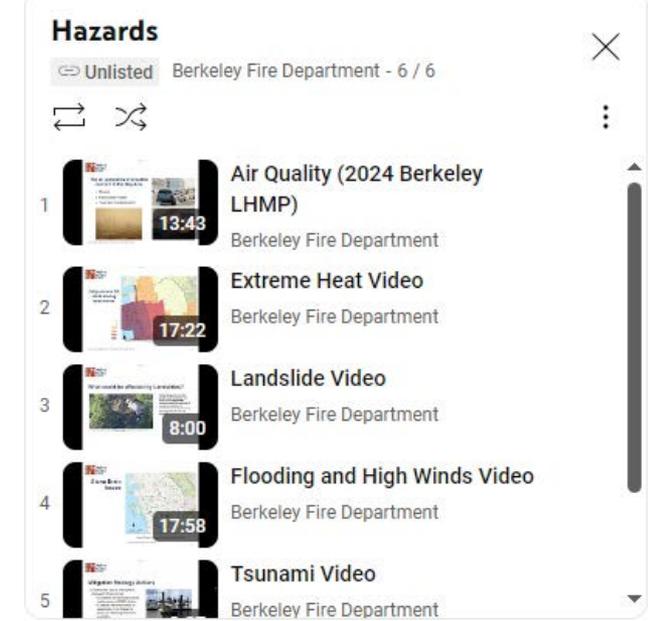
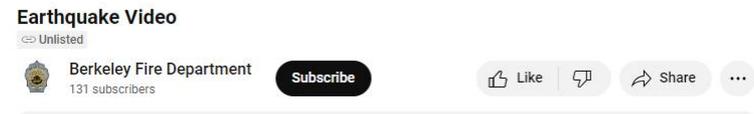
# Engagement Methods

- In-person outreach at various events during the drafting stage, including National Night Out and Solano Stroll
- Two in-person workshops during the drafting stage, including a Winter Weather Workshop and a Tsunami Workshop at the Marina
- Two in-person workshops after First Draft is released
  - June 3 5:30pm – 730pm at Central Library
  - July 20 10am – 12pm at South Berkeley Library
- Detailed hazard videos posted to YouTube
- Presentations to the Planning and Disaster and Fire Safety Commissions, memos to all other Commissions
- Community members are invited to send in feedback via email or in person at the Fire Department



# Videos

- LHMP is written to satisfy FEMA requirements, making it long and dense.
- We don't want to just check the box!
  - We want community members to be able to engage with this material, so we made hazard videos.
- You can watch at your leisure and focus on the hazards you're most worried about.
- Videos are designed as both an alternative and a supplement to in-person meetings.
- These videos will remain available even after the LHMP process, continuing to support our outreach about hazards.



# Next Steps

# Please help us engage the community

- Public Review Workshop
  - Sat 7/20 10a-12p Tarea Hall Pittman  
South Berkeley Branch
- Hazard videos and Plan  
[berkeleyca.gov/mitigation](https://berkeleyca.gov/mitigation)
- Feedback to  
[mitigation@berkeleyca.gov](mailto:mitigation@berkeleyca.gov)



**Local Hazard Mitigation Plan Workshop**

Learn and share how we can protect Berkeley from natural hazards like wildfires and earthquakes!

June 3, 5:30 PM- 7:30 PM at Berkeley Central Library  
July 20, 10 AM- 12 PM at the South Berkeley Library

**EXTRA San Francisco Chronicle**  
**FIRE SWEEPS BERKELEY**  
Fifty Blocks Razed; 6000 Left Homeless  
More Perished



# Plan Review and Approvals Process



## Next Steps

- First Draft 2024 LHMP at [www.BerkeleyCa.gov/Mitigation](http://www.BerkeleyCa.gov/Mitigation)
- Commission and community feedback deadline: August 8, 2024
- Submit written feedback:
  - To [Mitigation@berkeleyca.gov](mailto:Mitigation@berkeleyca.gov)
  - Via postal mail to the Fire Department
  - Via business hours drop off at the Fire Department



Disaster and Fire Safety Commission

ACTION CALENDAR  
May 7, 2024

To: Honorable Mayor and Members of the City Council  
 From: Disaster and Fire Safety Commission  
 Submitted by: Weldon Bradstreet, Chairperson, Disaster and Fire Safety Commission  
 Subject: Recommendation Regarding Panoramic Hill Secondary Evacuation

RECOMMENDATION

Adopt a Resolution approving the development of a plan that includes a feasibility study and identification of funding sources for the construction of an emergency secondary egress road on Panoramic Hill. Such a plan could include discussions between the City of Berkeley, the City of Oakland, UC Berkeley, East Bay Regional Parks District and Alameda County and should also provide for continued contact with the Disaster and Fire Safety Commission (DFSC) as well as other related Berkeley Commissions as the Council determines.

FISCAL IMPACTS OF RECOMMENDATION

The full fiscal impacts of constructing a secondary access/egress route are yet unknown and will need to be researched following the completion of a feasibility study. The Fire Chief has indicated that Berkeley's portion of a feasibility study should be able to be funded through existing Department funds.

CURRENT SITUATION AND ITS EFFECTS

The difficulty of providing both fire/emergency services to Panoramic Hill and evacuation of residents has been well known for more than 70 years. In 1959, an emergency secondary access road was constructed which allowed only emergency vehicle access into the area, but not emergency secondary egress for residents to evacuate. In the meantime, development in Berkeley and Oakland has continued and the situation for residents has become increasingly serious. The neighborhood is surrounded by wildlands on three sites and by recent Southside upzoning and Memorial Stadium (capacity 63,000) and the Hayward Earthquake Fault at its base. The Panoramic Hill neighborhood is zoned ES – R (Environmental Safety – Residential) the only area in Berkeley so designated. Information regarding the ES – R zone can be found in the Berkeley Municipal Code, Title 23, section 23.202.070. The stated General Purpose of the ES-R District is as follows:

Because of its substandard vehicular access, steep slopes, inadequate water pressure and proximity to the Hayward Fault and vegetated wildlands, the Panoramic Hill area is exceptionally vulnerable to severe damage or destruction from fire and earthquake hazards. Panoramic Hill also includes one of Berkeley's most architecturally significant residential districts, which is listed in the National Register of Historic Places because of its association with the Arts and Crafts movement of the Bay Area Tradition

### BACKGROUND

This is an urgent matter as all current information indicates that wildfires have become more frequent and intense than in previous years. Additionally, we also are hearing that the likelihood of a major earthquake along the Hayward Fault is long overdue. The ES-R zoning of Panoramic Hill officially recognizes the area as having residential development with only one way in and one way out. While the city has recognized this for years, the area's evacuation problems have not been addressed. Today, Berkeley is the second most dense city on a list of 51 largest cities in the State of California. Berkeley is exceeded only by San Francisco. We are denser than Los Angeles and San Diego, and further we are uniquely bisected by a major earthquake fault, and have numerous officially designated landside areas and liquefaction zones within a tiny 10 square mile area.

**Commission Vote:** Vote: Ayes – Katz, Wilson, Kinoshian, Dean, Murphy, Bradstreet; Noes – None; Abstain – None

### RATIONALE FOR RECOMMENDATION

There is no public transportation, nor is there likely to be any in the future of Panoramic Hill. The problem of evacuation has been recognized in part by enacting street parking restrictions in the area. However, street parking enforcement has always been a problem and enacting further restrictions is not the answer as buildings have been constructed over the years without on-site parking and street parking restrictions have already been enacted. Recently, in response to comments from the State Department of Community Development, new regulations have been approved which allow construction of both an ADU and JADU on each parcel in all High Severity Fire Areas which includes Panoramic Hill. This may change when an evacuation study is completed sometime next year, but if it does, it cannot be undone by retroactively requiring that existing buildings install on-site parking. Consideration of adding more street parking restrictions currently simply ignores the serious problems that already exist.

While an emergency apparatus *only* access road (the Jordon Trail) was constructed many years ago, it is past time to also recognize that no secondary emergency egress road for residents to evacuate the area when needed is a matter of basic public safety. Such an escape road does not need to be paved with asphalt and have sidewalks and

curbs like a city street, Construction of a secondary emergency egress road that saves lives by providing an escape route combined with the existing secondary access road for emergency vehicles benefits not only residents of Panoramic Way, but also all residents of the city by slowing the expansion of potentially catastrophic events and saving lives. For the sake of public safety, we must take action now.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CITY MANAGER

See Companion Report

CONTACT PERSON

Weldon Bradstreet, Chairperson, Disaster and Fire Safety Commission

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

RECOMMENDATION REGARDING PANAROMIC HILL SECONDARY EVACUATION

WHEREAS, because of its substandard vehicular access, steep slopes, inadequate water pressure and proximity to the Hayward Fault and vegetated wildlands, the Panoramic Hill area is exceptionally vulnerable to severe damage or destruction from fire and earthquake, and

WHEREAS, Panoramic Hill also includes one of Berkeley's most architecturally significant residential districts, which is listed in the National Register of Historic Places because of its association with the Arts and Crafts movement of the Bay Area Tradition, and

WHEREAS, the difficulty of providing both fire/emergency services to Panoramic Hill and evacuation of residents has been well known for more than 70 years. In 1959, an emergency secondary access road was constructed which allowed only emergency vehicle access into the area, but not emergency secondary egress for residents to evacuate.

WHEREAS, the ES-R zoning of Panoramic Hill officially recognizes the area as having residential development with only one way in and one way out. While the city has recognized this for years, the area's evacuation problems have not been addressed. Today, Berkeley is the second most dense city on a list of 51 largest cities in the State of California. Berkeley is exceeded only by San Francisco. We are denser than Los Angeles and San Diego, and further we are uniquely bisected by a major earthquake fault, and have numerous officially designated landside areas and liquefaction zones within a tiny 10 square mile area.; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that approves the development of a plan that includes a feasibility study and identification of funding sources for the construction of an emergency secondary egress road on Panoramic Hill. Such a plan could include discussions between the City of Berkeley, the City of Oakland, UC Berkeley, East Bay Regional Parks District and Alameda County and should also provide for continued contact with the Disaster and Fire Safety Commission (DFSC) as well as other related Berkeley Commissions as the Council determines.



Office of the City Manager

ACTION CALENDAR  
May 7, 2024

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Dave Sprague, Fire Chief

Subject: Companion Report: Recommendation Regarding Panoramic Hill Secondary Evacuation

RECOMMENDATION

Adopt a Resolution directing the Fire Department to reach out to other impacted landowners to determine interest in pursuing, and coordinate costs sharing to conduct a feasibility study to identify a safe secondary evacuation and access route for the access impaired Panoramic neighborhood. The results of the study should then be shared with the Public Safety Policy Committee.

FISCAL IMPACTS OF RECOMMENDATION

No impact to the General Fund. The study would use funds within the Fire Department's budget.

CURRENT SITUATION AND ITS EFFECTS

See Disaster and Fire Safety Commission (DFSC) report.

BACKGROUND

See DFSC report.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts that will occur as a result of initiating this study.

RATIONALE FOR RECOMMENDATION

**Long-Term Solution:** A secondary escape and escape route has been contemplated since at least 1959. Today it is a solution that the City should fully investigate in order to determine what impact it could have during an evacuation of – and emergency response to – the Panoramic hill neighborhood in the event of wildfire.

The subsequent design and construction of this road will likely be outside the scope and scale of what available Fire Department funding could support, thus alternate funding strategies would have to be identified.

**Determining Feasibility is the First Step:** The Fire Department supports the DFSC recommendation to conduct a feasibility study if other impacted landowners are supportive. Determining the overall feasibility and cost of a secondary escape route is the first step and must be completed prior to future action being taken with regard to identification of funding sources for design and construction.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

David Sprague, Fire Chief, (510) 981-3473

Attachments:

- 1: Resolution
- 2: Panoramic Hill Area Development and Environmental Resources Study, Summary Report, June 1974
- 3: Alternate Panoramic Hill Access Routes Map. May 27, 1959

RESOLUTION NO. ##,###-N.S.

DFSC PANORAMIC EGRESS/ACCESS FEASIBILITY STUDY

WHEREAS, a secondary escape and access route has been contemplated since at least 1959, and

WHEREAS, this solution should be fully investigated in order to determine what impact it could have during an evacuation of – and emergency response to – the Panoramic hill neighborhood in the event of wildfire, and

WHEREAS, the Fire Department supports the (Disaster and Fire Safety Commission (DFSC) recommendation to conduct a feasibility study if other impacted landowners are supportive, and

WHEREAS, determining the feasibility and cost of a secondary route is the first step and must be completed prior to future action being taken with regard to identification of funding sources for design and construction.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Fire Department to reach out to other impacted landowners to determine interest in pursuing, and coordinate costs sharing to conduct a feasibility study to identify a safe secondary evacuation and access route for the access impaired Panoramic neighborhood. The results of the study should then be shared with the Public Safety Policy Committee.

PANORAMIC HILL AREA  
DEVELOPMENT AND ENVIRONMENTAL  
RESOURCES STUDY  
SUMMARY REPORT

Berkeley Planning Department  
June, 1974

CONTENTS OF SUMMARY REPORT

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ACKNOWLEDGMENT

The Panoramic Hill Study would not have been possible without the assistance of Panoramic Hill residents, representatives of various public agencies and the City of Berkeley staff.

The Planning Department acknowledges the major assistance provided by Fire Chief Elmer Silva of the University of California Lawrence Laboratory and Professor Emeritus Harold Biswell of the University of California School of Forestry.

Also providing considerable assistance were Owen Eide of the East Bay Municipal Utility District; Roy Oakes and William Dabel of the Berkeley Public Works Department; Victor Porter and Milton Steele of the Berkeley Fire Department; and Fire Marshal Russell Norman of the University of California. Ken Moye, a city planning student at the University of California, donated many hours of volunteer work and was later added to the study staff.

The Panoramic Hill Association provided major assistance to the study, primarily through its Planning and Zoning Committee. The Committee which consists of Patrick Devaney, chairman, Della Reid, Dan Keig, and Judd Boynton met regularly with the study staff.

Dean Armstrong, Project Director  
Thomas F. Peak, Director of Planning

## **Introduction**

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## I N T R O D U C T I O N

### Origin of the Study

Panoramic Hill has long been recognized as a portion of the Berkeley planning area that needed special study. The area consists of two steep ridges upon which the cities of Oakland and Berkeley have allowed the construction of 200 dwelling units over the last 50 years. Severe fire hazards, a single twisting narrow access road barely adequate for residential access, and severe traffic congestion plague the neighborhood.

Because it was felt that existing regulations and programs were not solving the neighborhood problems, on June 5, 1973, the Berkeley City Council imposed a one year development moratorium on the Berkeley portion of the Panoramic Hill area. At that time, the Berkeley Planning Department was directed to review existing development policies and analyze Panoramic Hill problems. Consequently, a study was begun of fire hazards, traffic circulation, parking and other problems in both the Berkeley and Oakland portions of the Panoramic Hill area. The Oakland portion of the Hill was included because it is impossible to separate the problems and environmental characteristics of the Oakland area from the Berkeley area.

### Components of the Study

Supporting the Study Conclusions and Recommendations are two major studies: 1) the Fire Vulnerability Study; and 2) the Environmental Assessment Study.

The Fire Vulnerability Study analyzes the factors that determined fire vulnerability: 1) factors promoting fire ignition; 2) fire hazards, especially fuel characteristics; 3) the capability of fire forces to respond to a fire emergency; 4) the degree to which people, property and other things of value are exposed or would be exposed in the future to fire danger.

The Environmental Assessment Study surveys the existing and potential environment of Panoramic Hill. Factors studied were: 1) the natural environment; 2) the social and cultural environment; and 3) threats to the environment.

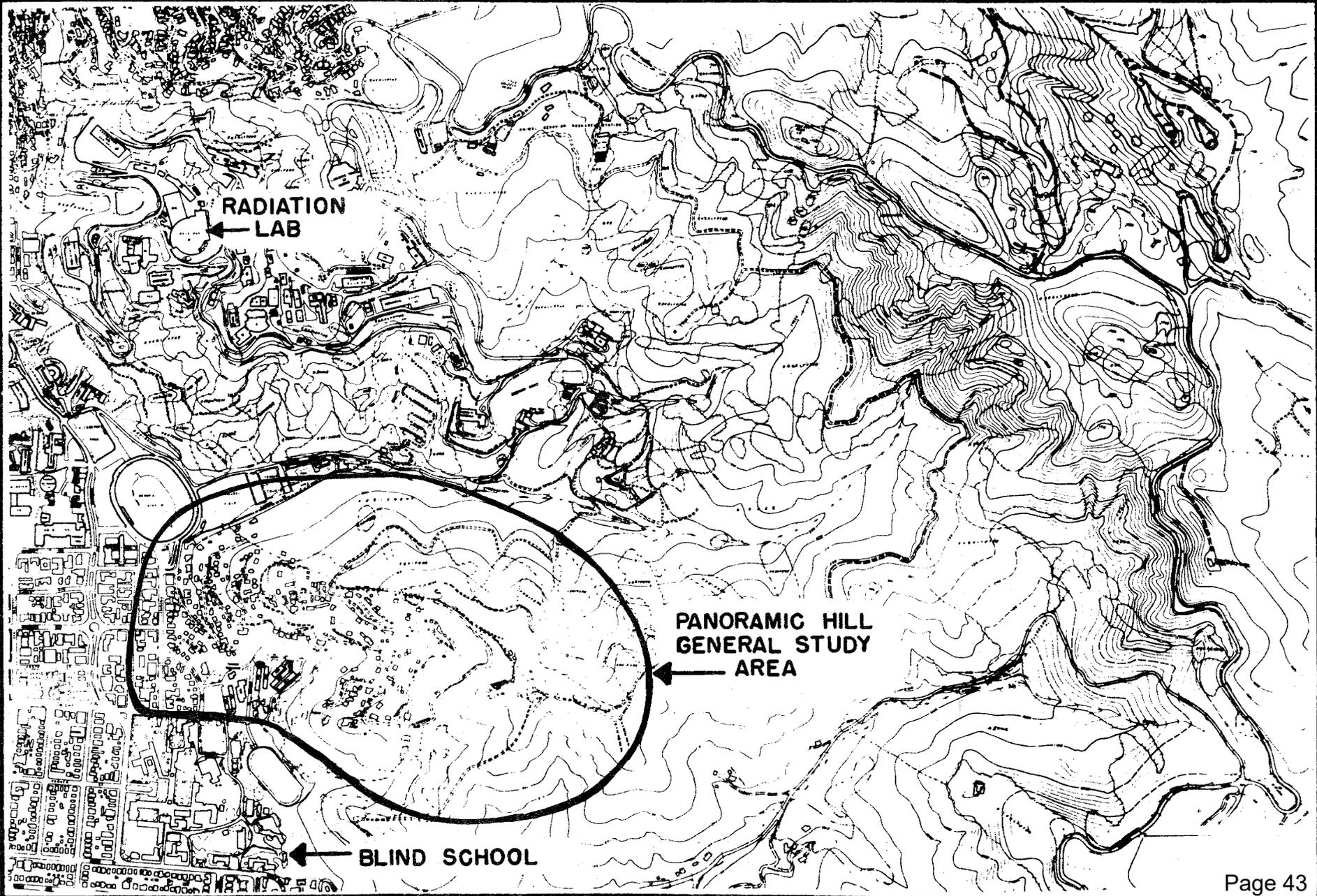
### Citizen Participation

Throughout the study, a major effort was made to achieve resident participation and to keep the residents informed. All of the residents were sent information on the study and their views were solicited through two separate questionnaires. Because it represents approximately one-half of the residents, the Panoramic Hill Association

PANORAMIC HILL STUDY AREA  
BERKELEY PLANNING DEPARTMENT 6-74



LOCATION MAP # 1



was given the opportunity to provide significant input to the study including bi-weekly meetings between Planning Department Staff and a sub-committee of the Association. Staff presentations were also made at regular Association meetings.

The members of the Planning and Zoning Committee of the Association included Patrick DeVaney, Chairman; Della Reid, Dan Keig and Judd Boynton. Association members who also provided significant assistance were Bill Freedenberg and Doris Maslach.

## **Summary of Study Findings**

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SUMMARY OF STUDY FINDINGS

General Description of the Neighborhood

Panoramic Hill is a neighborhood that straddles the Berkeley-Oakland border. It consists of approximately 200 dwelling units, 3/4 of which are located in the Berkeley portion of the Hill. Although the environment is very woodsy and rural, nearly half of the dwelling units are in buildings having two or more dwelling units.

The neighborhood rests on two ridges that jut out from the Berkeley Hills just south of Strawberry Canyon. Most of the development is on the north ridge (See attached map) that is bounded on the north by Strawberry Canyon and on the south by the middle fork of Derby Creek. The south ridge, which has only ten percent of the Hill's homes, is a far less prominent physical feature. It is bounded to the north by Derby Creek and to the south by the wildlands leased by the East Bay Regional Park District from the California School for the Blind and Deaf.

The neighborhood has "wildland" properties to the north (UC-Strawberry Canyon), the east (steep ridgelines owned by the University of California), and to the south (steep hillsides once a part of the California School for the Blind and Deaf). On the west, the neighborhood borders on a highly urbanized portion of the City of Berkeley which lies adjacent to the University of California Stadium. This adjacent neighborhood has many student-oriented apartments, fraternity and sorority houses.

Physical Character of the Hill

The lower part of Panoramic Hill was first settled in the early years of the twentieth century. The homes become much newer at the higher elevations. At the top of the Hill (in Oakland) most of the houses were built since World War II. Most of the houses are made of wood. This, combined with the large yards and dense vegetation and the very narrow, twisting streets, gives much of the Hill the feeling of a National Geographic Magazine picture spread of a mountain village.

The main road of the Hill is Panoramic Way, a street varying in width from 12 to 18 feet. Panoramic Way provides the only access to the Hill. All traffic that enters or leaves the Hill must therefore, funnel through this narrow road. The road is extremely twisty--three major turns have corners with angles of far less than 90°.



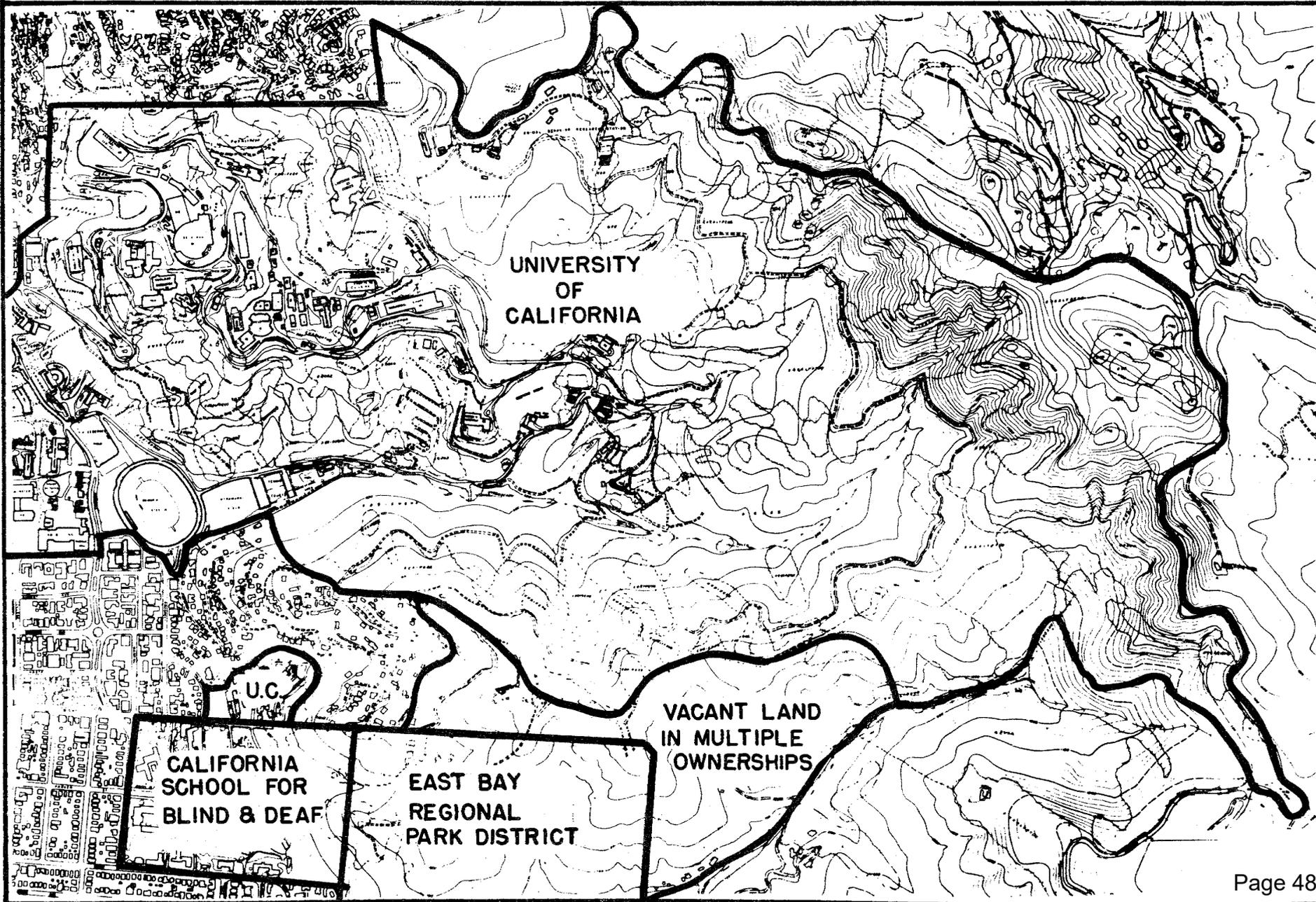
# PANORAMIC HILL STUDY AREA

BERKELEY PLANNING DEPARTMENT 6-74

SCALE IN FEET



## LARGE LAND HOLDINGS



### Fire Vulnerability

The most important environmental characteristic of the Panoramic Hill area is the presence of a very dangerous fire situation. The proximity to the densely wooded University of California Strawberry Canyon watershed is the main reason for concern. However, heavy amounts of fuel (wood houses, debris, thick vegetation) within the neighborhood itself constitute a dangerous situation. These problems combined with the effects of high wind conditions during dry parts of the year (September primarily), very steep topography and extremely poor access, make the Panoramic Hill neighborhood among the most fire-dangerous neighborhoods in the Bay Area. (For details see Fire Vulnerability Study) (The attached map explains the fire situation)

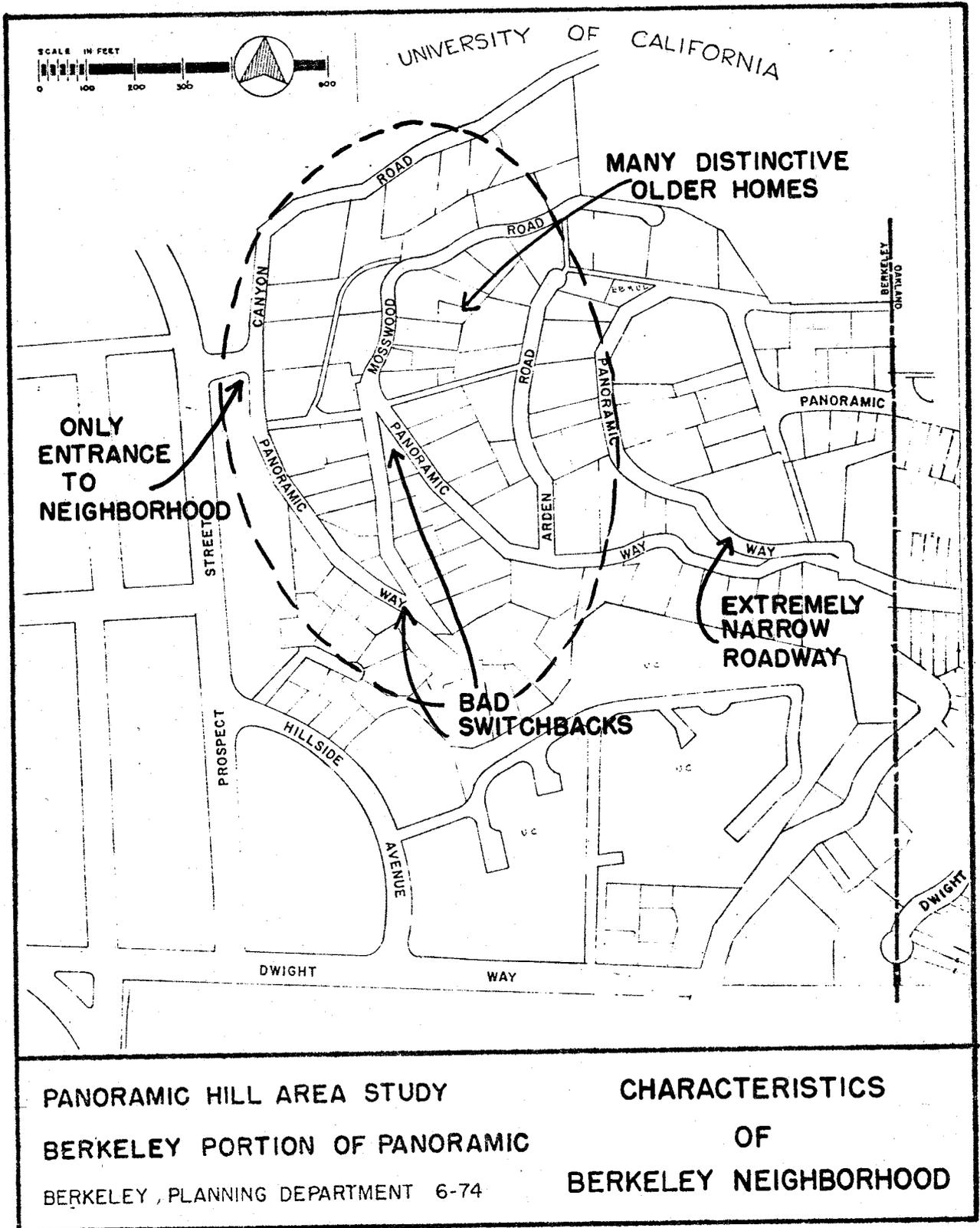
### Geologic Hazards

If the fire hazard did not overshadow all other concerns, geologic hazards would have to be considered of greatest significance for Panoramic Hill; in fact, the two are related, with the potential for earthquake activity exacerbating the fire hazard. Geologic problems include the potential for: ground rupture from earthquake fault movement; intense ground shaking; landsliding; mudsliding; erosion and flooding. While all are important considerations, ground rupturing from earthquake activity is a very significant potential hazard.

Panoramic Hill is transected by the Hayward Fault, a major fault in the San Andreas Fault system. This fault experienced earthquakes in the 19th century which were nearly as severe as the San Francisco Quake of 1906. Seismic experts predict that there will be a major earthquake centered on this fault in the near future. When such a quake occurs there is a likelihood that the ground will be ripped open for much of the length of the fault. If this happens, the ground on one side of the fault would move as much as seven to ten feet relative to the other side. Given such fault movement, many homes, sewers, water lines, and gas lines would be severely damaged in a band that would transect the whole width of the Hill neighborhood. Gas lines breaking and starting fires combined with damage to water lines, the existing difficult access situation and the presence of severe fire hazards, could result in devastation.

### The Natural Environment

Panoramic Hill consists of a major ridge and a minor ridge. The major ridge which is on the north side of the Hill area is a part of the Strawberry Canyon Watershed. The two ridges together form the watershed for the middle fork of Derby Creek. The south ridge also is in the watershed of the south fork of Derby Creek.



The ridges were formed by erosion and mass wasting (mudslides, landslides) of less resistant rock. This erosion and mass wasting is a continuing process in the Hill's environment. Most problems with drainage, landsliding and mudslides have occurred in the area near the middle fork of Derby Creek.

Panoramic Hill originally was composed of grasslands and brush on the ridges with dense tree and other growth along the creeks. However, man has altered the environment greatly. Between 1914 and 1924, the University of California planted dense mixed conifer stands in the watershed land on both sides of Strawberry Canyon. These trees have now matured into a forest. Within the neighborhood, residents have planted dense stands of trees and other vegetation, such that the homes look as though they had been built within the forest.

Since the vegetation that has been planted is for the most part not natural to the area and because of the man's presence, wildlife in the area is not especially unusual. Deer, raccoons, deer mice and jays are the predominant form of wildlife.

While the area cannot be called "natural", it is extremely beautiful. The beauty of the forest, however, has strong competition from the breathtaking views of the entire Bay Area. In addition, the Hill itself is a scenic asset of the Berkeley community. The forested, house-dotted north ridge of Panoramic Hill is the most prominent natural landmark in the Berkeley hills above the University Campus. The importance of how the Hill looks is made obvious by looking at one of the emblems of the City of Berkeley which features the north ridge of Panoramic Hill as a backdrop to the Campanile. (For more details see the "Environmental Assessment Report")

#### Threats to the Hill Area Environment

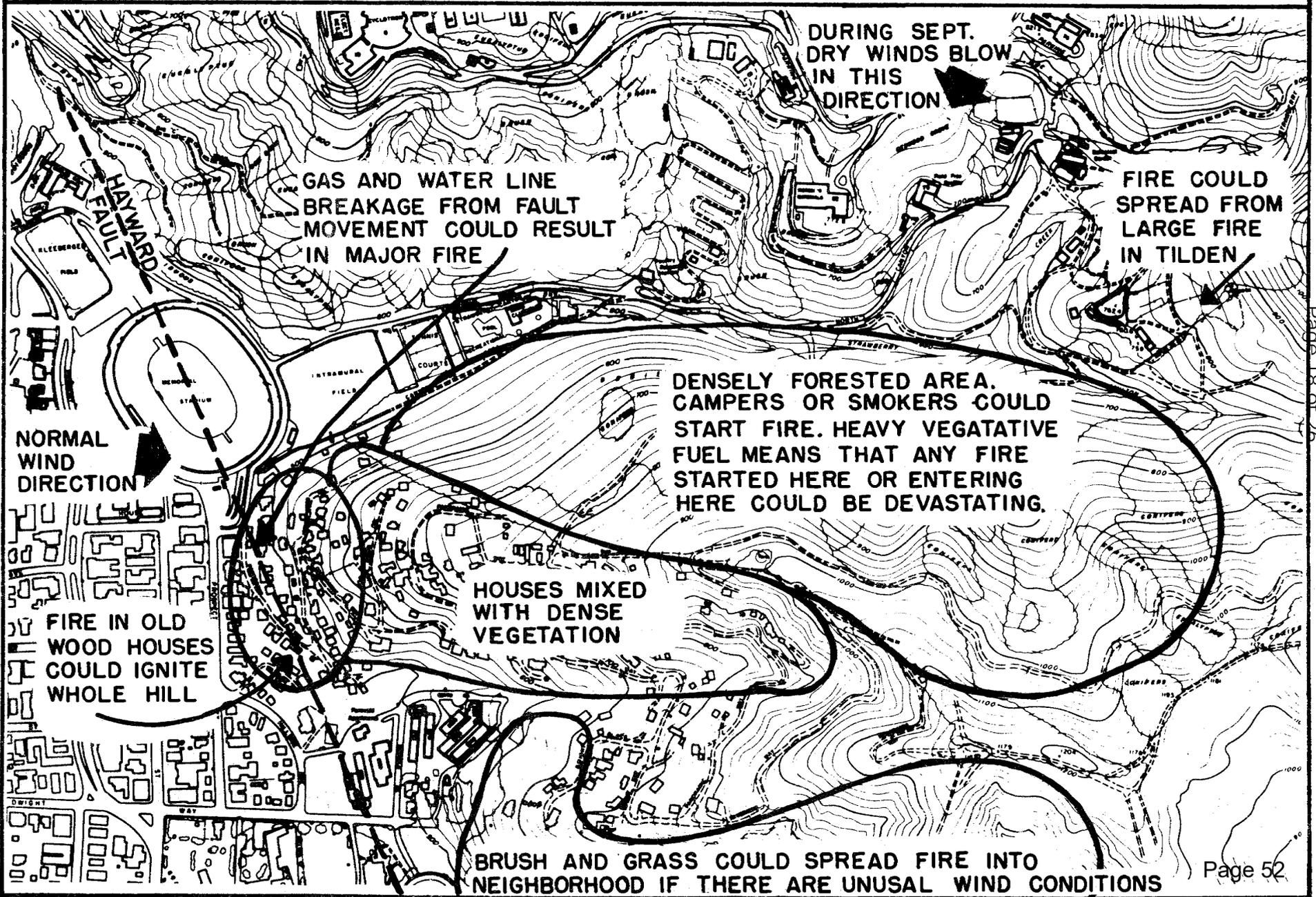
The Panoramic Hill area is a resource that benefits the entire City of Berkeley and not just the residents. Many hikers and joggers share in its beauty and rural qualities. However, this tranquil neighborhood has many problems that presently detract from its quality or could potentially destroy the quality altogether. These threats include: 1) fire; 2) land development; 3) geologic hazards; 4) conditions of sewers; and 5) street conditions. In addition, public actions aimed at these problems can themselves become threats to the environment.

Two threats completely overshadow the others. These are the threat of fire and the threat of major new development. The fire danger could not only kill people and destroy property but could destroy the natural qualities and man-created qualities of the Hill that make it a community asset. In 1923, Berkeley lost a whole neighborhood of Maybeck homes to a fire disaster. One can only imagine what that area of redwood homes and woodsiness would be like today. Similarly, the potential loss of Panoramic Hill and the Strawberry Canyon watershed must be viewed as a severe threat to the quality of the Berkeley environment. Major new

**PANORAMIC HILL STUDY AREA**  
BERKELEY PLANNING DEPARTMENT 6-74



**FIRE SITUATION**



development on Panoramic Hill would further clog existing congested streets, destroy its woodsy rural atmosphere, expose many more people to fire danger and imperil the quality of the view of the Hill from the rest of Berkeley. Any programs aimed at reducing fire threat must therefore be evaluated in terms of their propensity to promote additional residential construction.

The sewers on Panoramic Hill are over 50 years old in the Berkeley portion. They are in very bad condition. Problems include massive root intrusions at several locations, moderate root intrusion throughout the length of the sewer, numerous cracks and breaks, crushed pipes, displacement between pipes at the joints. Separation of pipes at the joints at several locations and settlement of pipes are problems. In several locations there are dips in the line.

Panoramic Hill is served by a 1900's style street system. The streets are very narrow (12 to 18 feet) and extremely twisty with two almost unmaneuverable switchbacks. There is only one road into the Hill. The streets have a very poor surface made up primarily of patched potholes. Major improvement to the street or sewer system however, are not now feasible because such improvements would require closing Panoramic Way and in effect closing the Hill for long periods of time.

Panoramic Hill has two personalities. During week days it is quiet, tranquil and quite empty of cars and people. However, in the evening and on weekends, it becomes noisy and congested. The reason apparently is that this steep hillside neighborhood with narrow twisting roads has a very low capacity to absorb people, automobiles and their problems. When too many cows graze land (that is exceed its carrying capacity), they destroy it; similarly, too many people and their automobiles may destroy Panoramic Hill.

The number one problem of this nature is the automobile. Parking is difficult on Panoramic Hill. Many dwelling units have inadequate off-street parking. Much of the area has parking limited to one side only. There are many apartments which do not provide adequate parking area. Many of the houses are rented to groups of adults thus generating extra automobiles. Because of the parking shortage, there are many cases of automobile parking in "No Parking" zones in front of driveways and the like. The result is unpleasant to residents and dangerously impairs traffic flow. Residents have complained often of inadequate enforcement of parking regulations. On Saturdays and Sundays, cars visiting the area roar up and down the narrow streets. (For descriptions of the situation see "Residents' Perception of the Neighborhood Environment in the Appendix.)

The crowding of more people and automobiles onto Panoramic Hill results in increased social tension, noise, dog activities and unpleasantness. (Older residents expressed the greatest concern about this unpleasant situation) (For more details see "Residents' Perception of Neighborhood Environment")

## **Conclusions and Recommendations**

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CONCLUSIONS AND RECOMMENDATIONS

1. Present and future fire problems of Panoramic Hill are caused by many natural and man-made factors. The major factors over which man has control are:
  - a. The heavy amount of vegetative fuel present in the University of California land immediately to the north and east of the Panoramic Hill residential area;
  - b. The heavy amount of fuel in the form of thick vegetation, wooden houses and trash found in the residential area of Panoramic Hill;
  - c. The extremely poor emergency traffic circulation pattern on the Hill for resident evacuation and emergency vehicle access;
  - d. The exposure of nearly 400 residents to extreme fire safety problems and the presence of zoning regulations that encourage creation of additional dwelling units and additional exposure of people;
  - e. The presence of several sources of fire ignition in the area including residence fires, recreationist fires and fires resulting from ground rupturing along the Hayward Fault which slices through the lower part of the Hill;
  - f. The congestion of the neighborhood, primarily caused by the inability of the neighborhood to absorb increased amounts of traffic and parked automobiles;
  - g. The lack of knowledge of residents relative to their possible actions in coping with a fire situation;
  - h. The large number of fire and other agencies that have jurisdiction over fire safety in the area.
2. Environmental problems of Panoramic Hill are:
  - a. Automobile congestion, destruction of vegetation, noise, traffic congestion, parking problems caused by increased new residential construction and intensification of the use of existing residences;

- b. The poor condition of the pavement of the streets, the poor condition of the sewers of the area, and the general aged condition of neighborhood utilities;
- c. Potential for ground rupturing, shaking and landsliding resulting from activity of Hayward Fault which transects the neighborhood;
- d. Creek erosion and minor flooding caused by destruction of Derby Creek, inadequate construction practices and construction on slopes of over 40%.
- e. The possible ground water pollution caused by the extensive use of Septic tanks in the Oakland portion of the Hill;
- f. The threat of substantial new development if the Hill were provided with improved traffic circulation or sewers were extended to the Oakland portion of the Hill.

R E C O M M E N D A T I O N S

For each of the study recommendations, the study staff has determined which City Council actions are necessary to insure that a desired recommendation is carried out. Once the City Council has determined which recommendations it supports, the appropriate action for that recommendation can be taken.

Recommendation #1: Develop Fire Emergency Response Plan for Panoramic Hill

The Berkeley Civil Defense Director (Fire Chief) should be directed to oversee the production of a Fire Emergency Response Plan for Panoramic Hill. In addition, Council correspondence requesting participation in this effort should be directed to the Oakland City Council and the UC, Berkeley Chancellor. The Plan should provide pre-disaster agreed upon procedures for public and private agencies and Hill area residents. The Civil Defense Director should assemble a committee consisting of representatives of the Berkeley Fire Department, the Oakland Fire Department, the UC Lawrence Berkeley Laboratory Fire Department, the UC Fire Marshal, the PG&E, EBMUD, the Alameda County Civil Defense Chief, the Oakland Civil Defense Chief, the California Office of Emergency Services and area police departments and neighborhood residents. This committee should produce a plan of action for residents and the agencies. The Plan should be in the form of a written document with maps and illustrations. The OES San Francisco Bay Area Earthquake Response Plan should be consulted as a reference. The written Fire Emergency Response Plan should be submitted to the City Council for review. Once completed, the Plan should form the basis for periodic disaster simulation exercises. The Plan should be explained and distributed to the residents.

Recommendation #2: Regulate New Development to Promote Fire Safety

The Planning Director and Planning Commission in cooperation with neighborhood residents, should be directed to prepare new zoning regulations for Panoramic Hill. These new zoning regulations should limit new construction to very low density single-family uses; limit floor area, height and bulk of new buildings; increase minimum yard areas; and require Board of Adjustments approval of the design of all new units. This design review should consider building layout, construction materials, landscaping, building size, fire fighting characteristics and other factors deemed necessary to promote fire safety. It should also consider such environmental considerations as site preparation and grading, drainage, alternatives to existing vegetation, open space and view protection. The City of Oakland should be requested to adopt similar regulations.

Recommendation #3: Develop a Fire Safety Public Information Program

The Fire Chief in cooperation with neighborhood residents should develop and/or collect already available information on measures Panoramic Hill residents can take to reduce fire hazards, prevent fire ignitions, suppress small fires, and handle home fire situations. The chief should forward this information to the City Council along with an outline of the program he intends to follow in getting this information across to the residents of the Hill. The Council should request the City of Oakland to undertake a similar effort.

Recommendation #4: Vigorously Enforce Existing City Regulations Which Affect the Level of Fire Safety.

The Director of Inspection Services, Planning Director, Police Chief and Fire Chief should be requested to identify which regulations under their responsibility relate to fire safety or factors related to fire safety such as overcrowding of units, illegal units or traffic congestion. Each of these directors should be directed to identify specific regulations that would pertain to the fire safety of Panoramic Hill. Each director should forward to the Council information on these regulations, a history of enforcement efforts and specific plans for more vigorous enforcement of regulations. A possible new tool would be to develop a required residential record report for when residential units are sold. Such a report would indicate to prospective buyers the existing zoning conditions. The report also becomes the basis for promoting compliance with existing regulations at the time of sale of property.

Recommendation #5: Insure that the University of California Officially Adopts and Implements a Fire Safety Vegetative Management Plan for Strawberry Canyon.

The City Council should request the University of California-Berkeley Chancellor to forward a report to them on the status of the vegetative management programs that would affect the level of fire safety for Panoramic Hill. The report should point out hazard areas, specify what steps the University presently is taking to lower hazard levels and what steps it plans to take in the future. The Council should suggest to the City of Oakland that they make a similar request. Once the report has been submitted, it should be reviewed by the Berkeley Fire Department for its adequacy in reducing hazards to Panoramic Hill residents.

Recommendation #6: Develop Improved Fire Road Access and Resident Emergency Escape Routes.

The Berkeley Fire Chief should assemble a committee consisting of himself, the Oakland Fire Chief, the U.C. Lawrence Berkeley Laboratory Fire Chief, the U.C. Fire Marshal, and appointed representatives from the Berkeley and Oakland Public Works and Planning Departments in order to study fire road needs in the Panoramic Hill area.

The fire road project should develop specific right-of-way locations and specific costs for new quick access fire roads and escape routes. The project should also recommend methods of improving existing fire roads so that they will be functional for all types of fire apparatus.

Residents of the Hill should be consulted as part of the fire road planning project. The committee should make proposals as to how the roads should be financed and who should pay what portions of the costs. Once completed, the Fire Road Plan should form the basis for capital improvements budgeting, University fire road maintenance programs and financial participation by property owners.

Recommendation #7: Limit the Quantity of New Construction on Panoramic Hill.

This can best be achieved as part of the implementation of Recommendation #2. The Council should request that the Planning Director and Planning Commission draft regulations that would require a minimum lot size of 12,000 square feet with only one unit allowed per lot. This new zoning should be applied to the entire Berkeley portion of Panoramic Hill. The City of Oakland should be requested to rezone the Oakland portion of the Hill from R-30 (5000 square feet per single family unit) to R-20 (12,000 square feet per single family unit).

Recommendation #8: Adopt and Implement a Mandatory Fire Prevention and Fire Hazard Reduction Program for the Private Homes and Vacant Lands on Panoramic Hill.

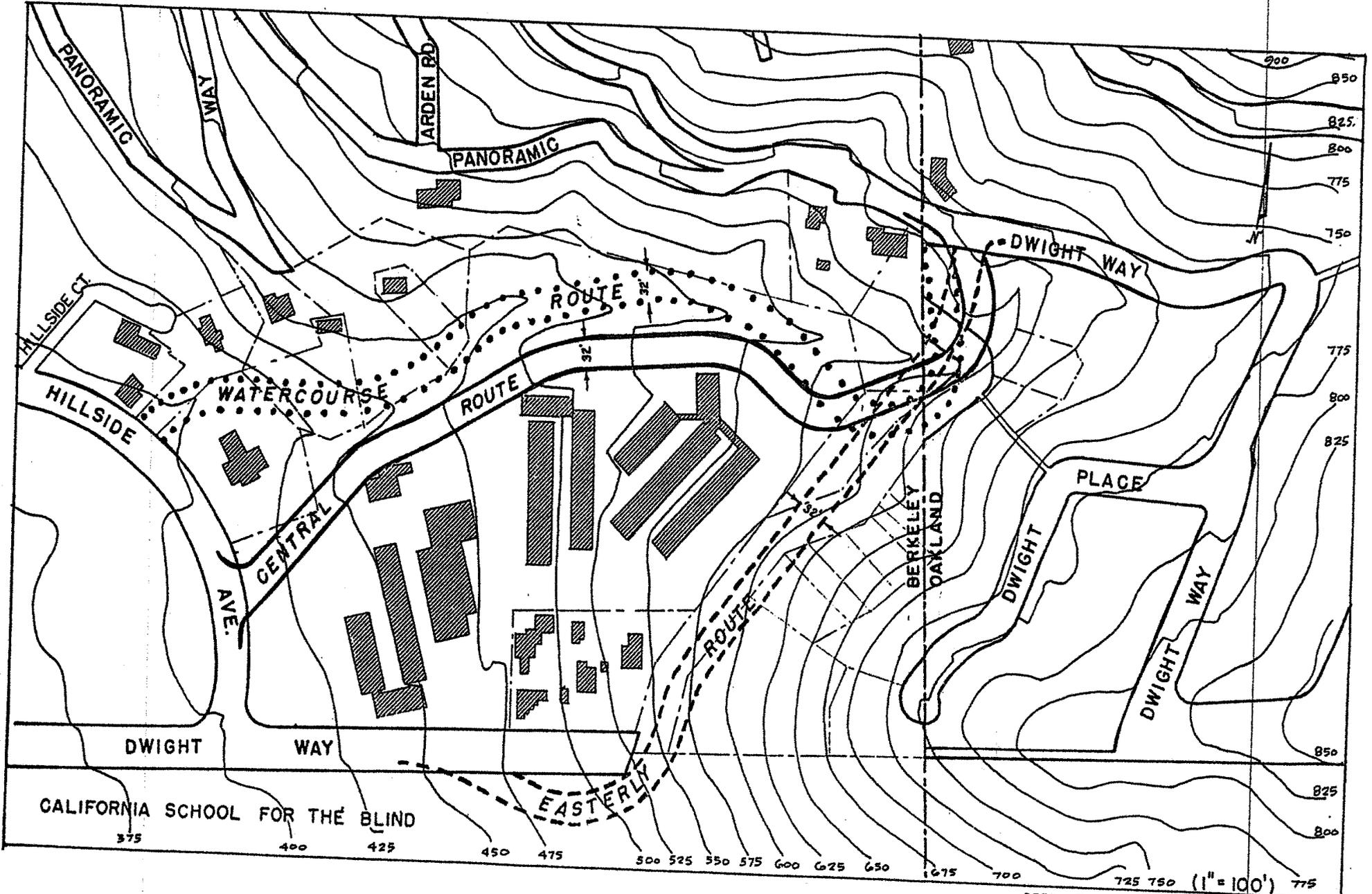
The Fire Chief should be directed to prepare a program designed to identify and abate fire hazards and prevent fire ignition. This program should require individual inspections of all Panoramic Hill residences and enforcement tools to insure that fire problems are eliminated.

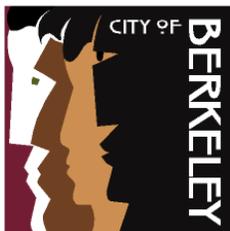
The Fire Chief should be requested to declare Panoramic Hill a High Fire Hazard Area. This action will automatically put into effect Fire Code provisions which require regulation of vegetative fuels for hazard reduction. The Fire chief should, through reconnaissance, determine the approximate amount of private effort needed to abate serious fire hazards. Based on this reconnaissance and in consultation with the Public Works Department, the Fire Chief should recommend public efforts that would assist the residents. Such efforts might include city assistance in vegetation and rubbish removal. The Oakland City Council should be contacted relative to developing a joint program aimed specifically at the fire hazards of the Panoramic Hill neighborhood. In addition to the vegetative management program, consideration should be given to amending the Fire Code to compel installation of fire-smoke (ionization type) detectors, and outside warning devices in all new and existing dwelling units on Panoramic Hill.

Recommendation for Later Action:

If the recommendations noted above relating to controlling new development in Oakland are adopted by the Oakland City Council, then the utilities and sewers in the Berkeley area should be immediately improved. However, the sewers should not be improved or extended to the Oakland portion of the Hill until new development density restrictions are adopted which are at least as restrictive as existing septic tank use restrictions.

# ALTERNATE PANORAMIC HILL ACCESS ROUTES





Kate Harrison  
Councilmember, District 4

**04**

CONSENT CALENDAR  
December 5, 2023

To: Honorable Members of the City Council

From: Councilmember Harrison

Subject: Resolution: Opposition to Police Brutality and Use of Force on Nonviolent Protesters

RECOMMENDATION

Adopt a Resolution reaffirming the City of Berkeley's opposition to and condemning police brutality towards nonviolent protesters and discouraging use of "less-lethal" weapons for crowd control.

BACKGROUND

The City of Berkeley has a long and storied history of nonviolent protest and civil disobedience. Unfortunately, that history is coupled with one of police brutality directed at nonviolent protesters. The most infamous example of police brutality in Berkeley occurred on "Bloody Thursday" in 1969 when James Rector was murdered by the Alameda County Sheriff force and a National Guard helicopter sprayed CS (tear gas) on thousands of protesters shortly following the founding of People's Park and deputies shot birdshot and buckshot at demonstrators.

While CS gas and pepper spray are both banned in warfare by international law, police in the United States commonly use them for crowd control purposes. On June 9, 2020, the City Council unanimously passed a motion to prohibit the use of CS gas by the Berkeley Police Departments or by any agency called for mutual aid in Berkeley.<sup>1</sup> This motion also prohibited the use of pepper spray and smoke by the Berkeley Police Department and by any agency called for mutual aid response in Berkeley, during the COVID-19 pandemic and until such time that the City Council removes this prohibition.<sup>2</sup> The City's recent suspension of the local COVID emergency does not mean that the COVID-19 pandemic is over, nor does it overturn the Council's 2020 pepper spray and smoke prohibition policy.

<sup>1</sup> <https://berkeleyca.gov/sites/default/files/city-council-meetings/06-09%20Annotated%20Agenda%204pm.pdf>

<sup>2</sup> <https://records.cityofberkeley.info/PublicAccess/api/Document/AfRL%C3%89LmUm28As5bQtd10Au1FOSJk1QHHaoDvg0JDhYupGbecgfU%C3%89KphfxL4BQWn%C3%81GtBmi8Z0%C3%81w8NXdky5pxceo%3D/>

Other devices can also harm people. LRADs, or Long-Range Acoustic Devices, have dire consequences for the protesters and bystanders who are exposed to them. According to the Berkeley Police Department's 2022 Police Equipment and Community Safety Annual Report, BPD currently has two LRADs in its possession. Use of LRADs in crowd control situations can be dangerous according to Physicians for Human Rights, and the City of Berkeley regulates their use. LRADs are "capable of causing not only permanent hearing loss, but also migraine, vestibular, and other auditory symptoms" and emit decibels up to 162 dB SPL (sound pressure level), exponentially higher than jet engines at 130 dB SPL, as decibel levels increase exponentially.<sup>3</sup>

Batons are commonly used by police to brutalize protesters, and recent legislation strongly restricts their use by the Berkeley Police Department. Under international law, "batons must never be used as a means of punishment, to disperse peaceful protests, or against people who are already restrained."<sup>4</sup> Yet batons were used by police forces across the United States to disperse peaceful protests during the Black Lives Matter protests of 2020, for example. During Berkeley Black Lives Matter protests in December of 2014, police forces used CS gas, blast rounds, and harmed protesters with batons to force crowds to disperse—which led to a successful civil rights lawsuit against the city.<sup>5</sup>

As a result, the City now is required to apply standards when less lethal weapons are used in a crowd using a standard closer to the lethal force standard. In addition, the policy requires BPD personnel to have a clear shot at an allegedly violent target to prevent injury to others, expansive use of force reporting, implementation of body worn cameras, cite and release provisions, crowd liaisons, and prohibitions on skirmish lines advancing rapidly into a crowd. Berkeley has to live up to its commitments, and other jurisdictions must adopt similar policies.

So-called less-lethal or "kinetic impact" projectiles, including rubber bullets, are used by police forces across the country against nonviolent protesters, and their use should be strongly restricted. According to Amnesty International, "there has been an alarming increase in eye injuries, including eyeball ruptures, retinal detachments and the complete loss of sight, as well as bone and skull fractures, brain injuries, the rupture of internal organs and hemorrhaging, punctured hearts and lungs from broken ribs, damage to genitalia, and psychological trauma" by less-lethal munitions.<sup>6</sup> These

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<sup>3</sup> <https://www.asha.org/news/2020/long-range-acoustic-devices-for-crowd-control-can-cause-serious-hearing-loss-and-harm/>

<sup>4</sup> <https://www.amnesty.org/en/latest/news/2022/06/global-20-rules-for-ending-widespread-misuse-of-police-batons/>

<sup>5</sup> <https://www.berkeleyside.org/2015/06/11/police-report-mistakes-challenges-in-berkeley-protests>

<sup>6</sup> <https://www.amnesty.org/en/latest/news/2023/03/global-dozens-killed-and-thousands-maimed-by-police-misuse-of-rubber-bullets/#:~:text=There%20has%20been%20an%20alarming,damage%20to%20genitalia%2C%20and%20psychological>

weapons also include hard foam, rubberized buckshot, and CS gas. Amnesty International also states that “at least 53 people died from projectiles fired by security forces, according to a peer-reviewed study based on medical literature worldwide between 1990 and June 2017. It also concluded that 300 of the 1,984 people injured suffered permanent disability.” All less-lethal munitions can still be lethal, and should not be used for crowd control in Berkeley by UCPD or mutual aid agencies.

Finally, the practice of corralling, or “kettling,” can pose severe dangers to nonviolent and peaceful protesters. When police corral protesters in a confined space, there is nowhere to go if police begin to use force against protesters. As nonviolent and peaceful protesters are corralled into the same confined and potentially dangerous space, protesters may become victims of excessive police force more easily. Beyond the inability to escape police use of force, corralled protesters are put in a plainly frightening situation that may cause immense psychological distress. Importantly, even if police are focused on certain protesters, kettling places all protesters, including nonviolent and peaceful protesters, into the same confined and dangerous space. The City of Berkeley should strongly discourage any police departments responding to civil disobedience and protest in Berkeley from utilizing this strategy for crowd control.

“Less-lethal,” which is often erroneously described as “less-than-lethal,” is only relatively so. It can maim and even kill. It is known to have a disproportionate impact on persons with both physical disabilities and mental challenges. CS can be very detrimental to persons with asthma, COVID-19 or other respiratory diseases. Crowd control is a dynamic setting, and officers’ ability for precise shots is greatly impaired. The chances of hitting the intended individual with a projectile are low, and of hitting uninvolved protesters is high. Chemical munitions by their nature affect large numbers of people and even spread far beyond the immediate area. BPD Chief Meehan confirmed this in a *Berkeleyside* account from June 11, 2015:

“Chief Meehan noted that, even when an officer is focused on an individual, the projectile does not always find its mark due to the unpredictable movements of a crowd. A similar explanation was provided regarding baton strikes. Police said they are trained to avoid areas such as the head and neck, but that blows don’t always land in the right place because subjects move.”<sup>7</sup>

Use of less-lethal weapons in an indiscriminate manner against a demonstration that is non-violent, or even mixed, is a denial of First Amendment rights to free speech and assembly. In fact, it is tantamount to collective punishment, a denial of due process.

In September of 2021, Governor Gavin Newsom signed AB 48, which restricts police departments use of kinetic energy projectiles and chemical agents to disperse any assembly, protest, or demonstration, and AB 481, which requires law enforcement

<sup>7</sup> <https://www.berkeleyside.org/2015/06/11/police-report-mistakes-challenges-in-berkeley-protests>

agencies to obtain approval of military equipment. While these laws restrict the use of “less-lethal” munitions California law enforcement agencies, they also do not preclude municipalities from adopting more stringent policies or reaffirming their opposition to their use on nonviolent protesters.

This subject is of particular concern because the University of California is currently awaiting a decision by the Supreme Court in *Make UC a Good Neighbor v. The Regents of University of California* that could allow the University to begin building housing there, with resulting protests a likely outcome. On September 19, 2023, the City of Berkeley adopted a resolution authorizing the City Attorney to submit an amicus brief in support of the University of California Regents, defending the University’s proposed development of People’s Park. It is important that the Berkeley City Council immediately adopt a resolution denouncing the use of “less-lethal” devices and any police brutality against nonviolent protesters in Berkeley from any agencies and police departments, whether or not our police department participates in enforcement actions.

#### FISCAL IMPACTS OF RECOMMENDATION

Following Berkeley’s policies on crowd control will reduce the need for resource-intensive and expensive paramedic and medical care for injured protesters.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with adopting this recommendation.

#### ATTACHMENTS

1: Resolution

RESOLUTION NO. XXXX-N.S.

REAFFIRMING OPPOSITION TO AND CONDEMNING POLICE BRUTALITY  
TOWARDS NONVIOLENT PROTESTERS AND DISCOURAGING USE OF “LESS-  
LETHAL” WEAPONS FOR CROWD CONTROL

WHEREAS, Berkeley’s Southside neighborhood has historically been the site of violent police use of force and brutality towards protesting students and community members, most famously during “Bloody Thursday” in 1969 where the Alameda County Sheriff force murdered James Rector and a National Guard helicopter sprayed CS (tear gas) on thousands of protesters shortly following the founding of People’s Park; and

WHEREAS, the Chemical Weapons Convention and Geneva Convention prohibit CS gas and pepper spray in warfare; and

WHEREAS, the State of California recently enacted AB 481<sup>8</sup> and AB 48,<sup>9</sup> which demilitarize and regulate police departments’ acquisition and use of projectiles, chemical weapons, military equipment, and others, and protect protesters’ First and Fourth Amendment rights; and

WHEREAS, on April 27, 2021, the Berkeley City Council unanimously passed an ordinance to oversee and make transparent militarized police equipment used for crowd control and SWAT operations; and

WHEREAS, Berkeley Police Department’s 2022 Police Equipment and Community Safety Annual Report provided an inventory of reportable equipment, including 20 Less Lethal single 40MM launchers, 2 Less Lethal Milkor LTL 40 MM multi-launchers, 724 associated 40mm rounds, 8 Less Lethal FN 303 Launchers, 5,445 associated FN rounds, 190 Oleoresin capsicum (OC spray), 204 Chlorobenzylidene Malononitrile and Oleoresin capsicum, 2 Long Range Acoustic Devices, and 195 36’ batons; and

WHEREAS, on June 9, 2020,<sup>10</sup> the Berkeley City Council unanimously voted to prohibit the use of CS gas by the Berkeley Police Department or any outside department or agency called to respond to mutual aid in Berkeley and of pepper spray or smoke for crowd control by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic and beyond; and

WHEREAS, the University of California’s University-wide Police Policies and Procedures<sup>11</sup> allow the University of California Police Department to apply intermediate force, including batons, tasers, pepper spray, chemical agents (such as CS gas), and

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<sup>8</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB481](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481).

<sup>9</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB48](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48).

<sup>10</sup> <https://berkeleyca.gov/sites/default/files/city-council-meetings/06-09%20Annotated%20Agenda%204pm.pdf>.

<sup>11</sup> <https://ucnet.universityofcalifornia.edu/tools-and-services/administrators/policies/proposed/police-procedures-manual.pdf>.

rubber bullets, on nonviolent protesters displaying active resistance, which is defined as intentionally and unlawfully opposing the lawful order of a peace officer in a physical manner; and

WHEREAS, on August 3, 2022, UC Berkeley police forces in riot gear confronted protesters,<sup>12</sup> arrested students and community members participating in civil disobedience, and allegedly forcibly shoved nonviolent defenders of the park, resulting in severe injuries;<sup>13</sup> and

WHEREAS, following the conflict on August 3, 2022, police forces retreated and UC Berkeley declared construction paused indefinitely; and

WHEREAS, on August 3, 2022, the Berkeley City Council called for a special meeting on August 4th, 2022 to discuss and consider the temporary suspension of the June 9, 2020 policy prohibiting the use of CS gas, smoke, and pepper spray for the duration of the City Council recess following pressure from the Alameda County Sheriff, and then canceled it on August 4, 2022 following public outrage; and

WHEREAS, in 2020, 84% of Berkeley voters<sup>14</sup> approved amending the city charter to establish an independent police accountability board and director to provide oversight of local law enforcement, pointing to the public's desire for police reform; and

WHEREAS, violent, less-lethal forms of crowd control used by BPD, UCPD or mutual aid agencies, include but are not limited to Long Range Acoustic Devices, plastic and rubber bullets, hard foam, batons, corralling, launch projectiles, and Active Denial Systems; and<sup>15</sup>

WHEREAS, less-lethal weapons and tactics deployed in crowd control have disproportionate impacts on persons with both physical disabilities and mental challenges, can have detrimental impacts to persons with asthma, COVID-19 or other respiratory diseases; and

WHEREAS, less-lethal crowd control is a dynamic operation in which officers' ability for precise shots is greatly impaired and the chances of hitting the intended individual with a projectile are low, and of hitting uninvolved protesters is high; and

WHEREAS, chemical munitions by their nature affect large numbers of people and even spread far beyond the immediate area; and

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<sup>12</sup> <https://www.berkeleyside.org/2022/08/03/uc-berkeley-fences-off-peoples-park-begins-construction-process>.

<sup>13</sup> [https://www.instagram.com/p/ChYn3ZYrU9j/?img\\_index=2](https://www.instagram.com/p/ChYn3ZYrU9j/?img_index=2).

<sup>14</sup> [https://ballotpedia.org/Berkeley,\\_California,\\_Measure\\_II,\\_Police\\_Accountability\\_Charter\\_Amendment\\_\(November\\_2020\)](https://ballotpedia.org/Berkeley,_California,_Measure_II,_Police_Accountability_Charter_Amendment_(November_2020)).

<sup>15</sup> <https://news.berkeley.edu/2020/06/05/are-crowd-control-weapons-dangerous-very-says-uc-berkeley-expert>.

WHEREAS, use of less-lethal weapons or tactics in an indiscriminate manner against a demonstration that is non-violent, or even mixed, is a denial of First Amendment rights to free speech and assembly, and is tantamount to collective punishment, and a denial of due process.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley reaffirms its objection to and denounces any and all police brutality and use of force against nonviolent protesters, including those participating in nonviolent civil disobedience.

BE IT FURTHER AND FINALLY RESOLVED that the Council of the City of Berkeley strongly urges the University of California Police Department and any outside departments or agencies called to respond to mutual aid in Berkeley against using “less-lethal” weapons and tactics—including but not limited to CS gas, pepper spray, smoke, Long-Range Acoustic Devices, batons, rubber bullets, launched projectiles, and corralling—against nonviolent protesters, including those participating in nonviolent civil disobedience.

