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October 25, 2022

Via Email and Hand Delivery

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Taplin, Ben Bartlett, Kate Harrison,
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Re: **Appeal to City Council re 2065 Kittredge Street (Use Permit #ZP2021-0193)**

Dear Mayor Arreguín, Members: Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, and Mr. Numainville:

We are writing on behalf of **East Bay Residents for Responsible Development** (“East Bay Residents” or “Residents”) to appeal the Zoning Adjustment Board’s (“ZAB”) September 22, 2022 approval of the 2065 Kittredge Street Project (Use Permit #ZP2021-0193).¹ The Project, proposed by Bill Schrader and CA Student Living Berkeley (collectively “Applicant”), includes the proposed demolition of existing structures representing approximately 95,000 square feet of office, food service, and cinema uses. These uses would be replaced by approximately 4,993

¹ **Exhibit A:** City of Berkeley, Zoning Adjustment Board, Notice of Decision - 2065 Kittredge Street, Use Permit #ZP2021-0193 (“Date of Board Decision: September 22, 2022; Date Notice Mailed: October 11, 2022; Appeal Period Expiration: October 25, 2022; Effective Date of Permit (Barring Appeal or Certification): October 26, 2022”) (hereinafter “Notice of Decision”).

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square feet of commercial space (retail, food service, and live/work), 183 units of new residential units (four live/work units), and approximately 4,600 square feet in two privately-owned plazas (at Allston and Kittredge) that would be open for public use. The Project would be eight stories, 87 feet in height, with 9 very low-income units, and 43 residential vehicle parking spaces in ground-level garage.

This appeal is timely filed within 14 days of the City's mailing of the Notice of Decision of the ZAB decision, pursuant to Berkeley Municipal Code ("BMC" or "Municipal Code") Section 23.410-1. This Appeal is taken from the following ZAB actions, and is accompanied by payment of the required appeal fee of \$1500:

- Approval of Use Permit under BMC Section 23.326.070(A) to demolish a non-residential building.
- Approval of Use Permit under BMC Section 23.204.020(A) to construct a new mixed-use development.
- Approval of Use Permit under BMC Section 23.204.020(A) to construct dwelling units.
- Approval of Use Permit under BMC Section 23.204.030(B)(1) to create new floor area of 10,000 square feet or more.
- Approval of Use Permit under BMC Section 23.204.130(E)(1) to exceed the maximum building height limits, up to 75 feet (plus 5-foot parapet, by right).²

I. SUMMARY OF REASONS FOR APPEAL

Residents appeals the ZAB's actions pursuant to BMC Sections 23.410.030 and 23.406.040(E) on the grounds that the Project is detrimental to the general welfare of the City, its residents, and its workers, in violation of the City's zoning code. For the reasons explained herein and in Residents' September 8, 2022 comments to the ZAB,³ the Project is inconsistent with the City's construction workforce goals, and is inconsistent with the workforce and economic policies of the General Plan and Downtown Area Plan.

Unlike its predecessor, the original Harold Way Project developer HSR Berkeley Investments, who signed a labor agreement with the Building & Construction Trades Council of Alameda County that committed the Project to

² Notice of Decision, p. 1 of 4.

³ **Exhibit B:** Letter from ABJC to ZAB re *Agenda Item 4 - 2065 Kittredge Street Project (Use Permit #ZP2021-0193)* (September 8, 2022).

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using 100% union labor,⁴ the current Project Applicant has made no commitment to build the Project using a local skilled and trained workforce, to provide apprenticeship training opportunities for City of Berkeley or East Bay residents, or to provide healthcare for its construction workforce. These shortcomings render the Project inconsistent with Berkeley plans, policies, and goals which seek to ensure that Berkeley has an adequate supply of decent housing and living wage jobs. Unless these inconsistencies are mitigated, Project construction and operation would be detrimental to the general welfare of the City, its residents, and its workers, in violation of the City's zoning code.⁵

The Municipal Code prohibits the City from approving a use permit if the project is "detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use.....or to the general welfare of the City."⁶ Municipal Code Section 22.20.020 defines detrimental impacts to include, *inter alia*, increased demand for workforce housing, training, and benefits: "The increased demand for affordable housing, child care and public services, ***adequate employment training and placement facilities and amenities***, and the other impacts generated by development projects, unless mitigated, are detrimental to the City's public health, safety and general welfare."⁷ Under Section 22.20.020, a detriment to the general welfare occurs when the City fails to mitigate the impacts of a development project, including the increased demand for housing, workforce training, and public services that may result from the Project.⁸

Housing development projects in the City must also implement the goals and policies of the General Plan, including the following:

- 1) Ensure that Berkeley has an adequate supply of decent housing, living wage jobs, and businesses providing basic goods and services.
- 2) New housing will be developed to expand housing opportunities in Berkeley to meet the needs of all income groups.⁹

⁴ Emilie Raguso, High-rise Developer in Berkeley to Use 100% Union Labor (October 31, 2014). Available at: <https://www.berkeleyside.org/2014/10/31/high-rise-developer-in-berkeley-to-use-100-union-labor>

⁵ BMC §§ 23.406.040(E)(1); 22.20.020.

⁶ BMC § 23.406.040(E)(1)(a), (b).

⁷ BMC § 22.20.020 (emphasis added).

⁸ *Id.*

⁹ General Plan Economic Development and Employment Element, p. ED-5; HARD HATS Staff Report, p. 7.
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General Plan Policy ED-1 requires the City to “[i]ncrease the number of jobs that go to Berkeley citizens by coordinating economic development efforts with employment placement,”¹⁰ and provides that the City intends to “[w]ork with job training programs and encourage training for life skills, job readiness, and specific target industries.”¹¹ The City has determined that “it is in the City of Berkeley’s economic interest to support a pipeline of skilled workers to accomplish the construction objectives and policies of the Berkeley General Plan.”¹²

Finally, the Downtown Area Plan provides that “[a]ll new buildings shall deliver significant community benefits, many of which should be in proportion to building height.”¹³ Projects above 75 feet, like the instant Project, must include significant community benefits, which may specifically include “job training, and/or employment opportunities.”¹⁴

Project construction will increase the local demand for a construction workforce. The Project’s lack of workforce standards and worker healthcare may exacerbate the existing demand for local affordable housing and public services by construction workers that currently receive low pay without benefits. These impacts are detrimental to the general welfare and render the Project inconsistent with City plans, requiring mitigation. Residents raised these issues to the ZAB prior to approval. However, the ZAB approved the Project without mitigating these impacts and despite substantial evidence in the record demonstrating that the Project’s failure to comply with the City’s workforce standards and policies would cause a detriment to the general welfare of the City and its residents. Without mitigation, these impacts remain significant and the ZAB’s findings that the Project complied with the zoning code were unsupported and should be set aside.

The City Council may take action on the subject of an appeal or any aspect of an appealed project (de novo review) pursuant to BMC Section 23.410.040(E)(1).¹⁵ The Municipal Code grants the City Council the authority to:

¹⁰ Berkeley General Plan Economic Development and Employment Element, p. ED-5. Available at: https://berkeleyca.gov/sites/default/files/documents/12_Economic%20Development%20and%20Employment%20Element-FINAL.pdf.

¹¹ *Id.*

¹² HARD HATS Staff Report, p. 7.

¹³ City of Berkeley, Downtown Area Plan (2012) p. LU-12. Available at: <https://berkeleyca.gov/sites/default/files/2022-03/Downtown-Area-Plan.pdf> (emphasis added).

¹⁴ *Id.*

¹⁵ Berkeley Municipal Code (“BMC”) Section 23.410.040(E)(1).
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- Modify, reverse, or affirm, wholly or partly, any decision, determination, condition or requirement of the prior review authority; or
- For appeals to the City Council, remand the matter to the prior review authority to reconsider the application, and/or any revisions to the application submitted after the review authority's action.¹⁶

Pursuant to the Code, the City Council should find that the Project is detrimental to the general welfare of the City and its residents such that the Project's use permit should not be issued without mitigation. We urge the Council to modify the ZAB's approval of the Project to apply conditions to the Project which mitigate the Project's detrimental impacts by implementing workforce standards that satisfy zoning code, General Plan and Downtown Area Plan requirements. The conditions should include public benefits such as apprenticeship opportunities, local hire provisions, and healthcare, which promote the general welfare. Such conditions would be consistent with the Municipal Code and would increase compliance with the General Plan and Downtown Area Plan. Mitigating the Project's adverse workforce impacts would also be consistent with the City's stated goals of "help[ing] address the growing need for skilled and trained construction workers," and "to make sure the people that are building the thousands of needed homes in Berkeley and across the state will have health care and a decent standard of living."¹⁷

I. STATEMENT OF INTEREST

East Bay Residents for Responsible Development is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. The association includes the UA Plumbers and Pipefitters Local 342, International Brotherhood of Electrical Workers Local 595, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, their members and families, and City and Alameda County residents.

The individual members of Residents live, work, and raise their families in the Berkeley and Alameda County. They would be directly affected by the Project and its impacts. The organizational members of Residents also have an interest in

¹⁶ *Id.* at 23.140.040(G).

¹⁷ Nico Savidge, Berkeley May Mandate Health Coverage for Workers in Big Construction Projects: Builders of apartments and other large projects could be required to provide apprenticeships and health care coverage for workers under a new proposal, Berkeley side (September 1, 2022) <https://www.berkeleyside.org/2022/09/01/berkeley-construction-labor-standards-housing-worker-shortage>.

enforcing public interest, health and safety, labor and environmental laws that encourage sustainable development and ensure a safe working environment for its members. Residents' members are also concerned about projects that are built without providing opportunities to improve the recruitment, training, and retention of skilled workforces.

II. THE ZAB'S APPROVAL OF THE PROJECT VIOLATED BMC SECTION 23.406.040 BECAUSE THE PROJECT IS DETRIMENTAL TO THE GENERAL WELFARE

The Project contravenes Municipal Code Section 23.406.040(E)(1) which requires that, in order to approve a Use Permit for a Project, the ZAB must find that the Project will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.¹⁸ Pursuant to Municipal Code Section 22.20.020, these impacts require mitigation.

A. The Project is Detrimental to the General Welfare of the City, Residents, and Workers Due to A Lack of Workforce Standards and Public Benefits

In addition to the existing workforce standards contained in the Municipal Code, General Plan, and Downtown Area Plan, on September 20, 2022, the City Council authorized the City Attorney and City Manager to draft the Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards ("HARD HATS") Ordinance, which will implement apprenticeship program requirements and healthcare security for workers on General Plan area projects. Among the many general welfare concerns cited by the City was the detrimental role that the homebuilding industry plays in perpetuating income inequality by using low wage construction workers:

Homebuilding is supposed to reduce the number of people waiting in line for housing they can afford. But when the homebuilding industry itself generates excessive very low and low wage construction employment, that just increases the number of people needing subsidies from the taxpayer. Low wage employment is in fact a problem in both the residential and commercial construction markets.¹⁹

¹⁸ *Id.* at § 623.406.040(E)(1).

¹⁹ *Id.* at pp. 4-5.
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The HARD HATS Staff Report provided substantial evidence demonstrating that housing projects that are constructed with low-wage or uninsured construction workers are detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or visiting the City and the Project's Downtown neighborhood, as well as to the general welfare of the City. In evaluating the need for the HARD HATS Ordinance, the Council relied on numerous studies documenting the negative impacts that low wage construction employment has on workers, communities, and on the sustained development of housing in California.

For example:

- Shortages of skilled construction workers, particularly residential trade workers, threaten to delay or derail development plans.
 - In San Francisco, many entitled projects with thousands of units awaiting construction are stalled due to skilled labor shortages, diminished contractor productivity, and construction costs that spiked. These shortages are attributable to factors such as reduced utilization of state-approved apprenticeships, fewer young labor force entrants, dwindling contractor offerings of health and retirement plans, and the related trend of lagging construction productivity growth.²⁰
 - Only 1,250 construction sector employees lived in Berkeley in 2018.²¹
- Low wage employment is a problem in both the residential and commercial construction markets. Fifty-five percent of Alameda County construction workers' households are Extremely Low Income, Very Low Income, or Low Income.²²
- Jobsite Health, Healthcare and Safety:
 - Construction trade workers experience exceptionally high rates of serious injury on the job, especially on sites with inadequately trained workers.
 - One of every five serious workers' compensation insurance claims which involve death, permanent total disability or major permanent partial disability - is related to a construction employee, despite the fact that construction jobs account for less than one out of every 25 California jobs.
 - For a working life in construction, the risk of fatal injury is approximately one death per 200 full-time-equivalent employees

²⁰ HARD HATS Staff Report, p. 4.

²¹ *Id.*, citing U.S. Census Bureau LEHD Origin-Destination Employment Statistics, Version 7, Residence Area Characteristics.

²² *Id.*, citing Analysis of U.S. Census, ACS 2015-2019 Microdata. 6287-003acp

- according to a recent study in the American Journal of Industrial Medicine.
- A recent Canadian study of workers' compensation claims from 58,837 construction companies found that unionization was associated with a 25% lower incidence of lost-time allowed injury claims, a 23% lower incidence of musculoskeletal lost-time allowed injury claims, and a 16% lower incidence of lost-time allowed critical injury claims. In California too, employers of lower paid construction workers make more serious and non-serious workers compensation claims.²³
 - Construction workers who live in Alameda County are uninsured at rates 3-4 times higher than the rate of non-construction workers. The under-performance of California contractors in providing health care security to employees constrains the supply of skilled construction labor. A peer-reviewed study in 2010 found that only 35 percent of blue-collar construction workers who are not covered by collective bargaining agreements had health insurance paid for at least in part by an employer. This same study found that health insurance funded through collectively bargained employer contributions to plans that are portable within the construction industry increased industry-retention rates by up to 40 percent compared to baseline retention rates of construction workers without any health insurance coverage.²⁴
 - California residential building was strongest when apprenticeship training was strongest:
 - During the 1970s, when California was producing housing at the average annual rate of 200,000 units, the state reported an average of 9,000 apprentices. California residential builders utilized apprentices every bit as much as commercial builders, according to a 1976 U.S. Bureau of Labor Statistics report.
 - De-unionization and the recession of the early 1990s, however, led to sharply reduced utilization of apprentices by residential contractors. Carpenter apprenticeship completions fell by 50 percent between 1996-2005 compared to 1973-1982.²⁵

²³ *Id.*, citing Workers Compensation Insurance Rating Bureau "Relativity Review Sheets," various years.

²⁴ (2019). Rebuilding California: The Golden State's Housing Workforce Reckoning. Smart Cities Prevail. pp. 23-25. Downloaded 3/26/2021 via https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP_HousingReport.0118_2.pdf

²⁵ *Id.*, citing U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 1911, "Industry Wage Survey: Contract Construction September 1973," Washington, D.C.: 1976. See Tables 28 & 46. Downloaded via <http://fraser.stlouisfed.org>; Littlehale, Scott. (2019). Rebuilding California: The Golden State's Housing Workforce Reckoning. Smart Cities Prevail. pp. 23-25. Downloaded 6287-003acp

This evidence demonstrates that projects like this one, which do not utilize a local skilled construction workforce and do not provide health benefits, are likely to be detrimental to the general welfare of the City, its residents, and its workers. By contrast, there is no evidence in the record demonstrating that the Project would avoid these negative impacts. If the Project proceeds without mitigation, it would be detrimental to the general welfare.

1. The Project is Detrimental to the General Welfare Because It Does Not Provide Apprenticeship Opportunities

The ZAB's failure to mitigate the Project's development impacts through an apprenticeship program is detrimental to the general welfare of the City of Berkeley. The ZAB therefore approved the Project in violation of BMC Section 23.406.040.

The HARD HATS Staff Report explained that “[t]he creation and utilization of apprenticeship along with the commitments to paid healthcare act to both recruit and retain an adequate base of construction workers and to be a pipeline for future supervisors and licensed independent contractors.”²⁶ It further provides that “[r]equiring contractors on major projects in Berkeley to employ apprentices results in a higher volume of apprentice training, and thus, an increase in the construction labor force available to carry out the construction anticipated by the general plan, and especially that targeted by the Housing Element.”²⁷

Apprenticeship programs have historically been viewed as an “escalator to the middle class” providing an opportunity to build a stable, family supporting career that is not dependent on a college degree.²⁸ Research shows that apprenticeships not only substantially raise the lifetime earnings of their participants, but provide significant net social benefits through higher tax collections, private health care coverage, and reduced reliance on unemployment insurance and other forms of assistance.²⁹ Further research shows that

3/26/2021 via

https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP_HousingReport.0118_2.pdf

²⁶ HARD HATS Staff Report.

²⁷ *Id.*

²⁸ Dan Calamuci, *Training the Golden State: An Analysis of California Apprenticeship Programs*, Smart Cities Prevail (December 2020). Available at: <https://www.smartcitiesprevail.org/wp-content/uploads/2021/12/Training-the-Golden-State.pdf>.

²⁹ Lantsberg Report, p. 2.

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apprenticeship programs improve workmanship and expand the pool of skilled workers.³⁰

Particularly, apprenticeship programs and union apprenticeship programs result in a more diverse workforce,³¹ as shown in the figure below. Apprenticeship programs are serving to improve both racial and gender wage inequalities.³²

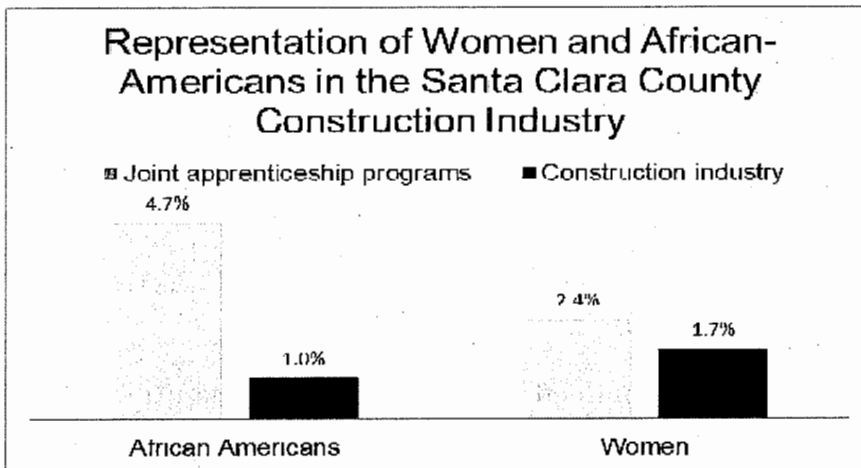


Figure 4. Data represents residents of Santa Clara County. “Construction industry” includes residents employed in non-supervisory construction occupations.

Source: DAS and ACS 2006-2008

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An analysis of joint apprenticeship program enrollments in Santa Clara County compared with construction industry employment from 2006-2008 shows that 126 African Americans residing in Santa Clara County enrolled in joint apprenticeship programs during this period, making up 4.7% of all enrollments.³⁴ Among all residents employed in non-supervisory construction occupations, African

³⁰ Philips, Peter, *Construction: The Effect of Prevailing Wage Regulations on the Construction Industry in Iowa*, Economics Department, University of Utah (2006).

³¹ Larissa Petrucci, *Constructing a Diverse Workforce: Examining Union and Non-Union Construction Apprenticeship Programs and Their Outcomes for Women and Workers of Color*, University of Oregon Labor Education and Research Center (October 26, 2021). Available at: <https://lerc.uoregon.edu/2021/10/26/apprenticeship/>.

³² Working Partnerships USA, *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* (April 25, 2011), p. 6. Available at: https://www.wpusa.org/5-13-11%20prevailing_wage_brief.pdf (“Working Partnerships Report”).

³³ Working Partnerships Report at Figure 4, p. 12.

³⁴ *Id.* at p. 12.

Americans made up just 1.0%.³⁵ Joint apprenticeships were therefore 4.7 times more likely than the industry at large to employ an African-American.³⁶

Examining the data by gender, the research showed that women comprised just 1.7% of construction industry workers, yet made up 2.4% of enrollments in joint apprenticeship programs.³⁷ Joint apprenticeships were therefore 1.4 times more likely than the industry at large to employ a woman.³⁸ While these numbers are still low, they indicate that the pipeline of workers currently being trained through apprenticeship programs, if they remain employed in construction, will diversify the industry relative to its current state.³⁹ Without apprenticeship opportunities, the opportunity to access construction careers for women, African Americans and other underrepresented groups in Berkeley could be considerably reduced.⁴⁰

The City Council should mitigate the Project's detrimental impacts on the general welfare with apprenticeship training standards.

2. The Project is Detrimental the General Welfare Because It Does Not Include Local Hire

Because the Project is not publicly funded, the Applicant is not required to provide local hire opportunities, and has not voluntarily agreed to do so. The lack of local hiring commitments for Project construction workers may result in longer commutes, and further exacerbate housing inaffordability.

Recent studies have confirmed that the absence of locally hired construction workers can exacerbate the impacts of construction project. For example, a Working Partnership case study in San Jose found that, in 2008, non-local construction workers employed in Santa Clara County cumulatively drove over 1 million miles per day to and from work.⁴¹ If the work done by non-locals was instead performed by locals with shorter commutes, then the estimated savings would be 123,619,000 miles per year.⁴² The study also found that, if the City of San Jose's major municipal buildings from 2007-2012 were not built under prevailing wage, then

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Working Partnerships Report, p. 12.

⁴¹ Working Partnerships USA, *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* (April 25, 2011). Available at: https://www.wpusa.org/5-13-11%20prevailing_wage_brief.pdf.

⁴² *Id.*

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major economic impacts would include reduction in total economic activity of \$164 million, net loss of 1,510 local jobs, and loss in local property and sales tax revenues of \$1.9 million.⁴³ This includes a direct impact of 1,155 fewer construction jobs and indirect impacts of 355 fewer jobs in other sectors, a total loss in local property and sales tax revenues of \$1.9 million, and a decrease in sales taxes collected by the City of San Jose of \$181,000.⁴⁴

Local hire policies provide local jobs and also incentivize the creation of career ladders by moving community members into apprenticeship programs and into middle-class careers.⁴⁵ By definition, local hire policies require that a certain number of journeyworkers and apprentices who are residents of the local area to be employed on development projects.⁴⁶ Condition of approval that mandate local hire in public projects have been found to be concrete mechanisms to ensure that the investment of public funds into the community helps low-income residents.⁴⁷

Local hire commitments are a critical way not only to hire local residents, but to use project hiring needs to target opportunities to low-income residents and people of color who might otherwise not benefit from new development.⁴⁸ Local hire programs help address the fragmentation inherent in the development process, establishing better communication among developers, employers, community organizations, local job training resources, and the workforce development system that can provide job readiness and job retention support services.⁴⁹

⁴³ Working Partnerships USA, *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* (April 25, 2011), p. 6. Available at: [https://www.wpusa.org/5-13-11%20prevailing wage brief.pdf](https://www.wpusa.org/5-13-11%20prevailing%20wage%20brief.pdf).

⁴⁴ *Id.*

⁴⁵ Corinne Wilson, *Construction Apprenticeship Programs: Career Training for California's Recovery*, Center on Policy Initiatives (September 2009). Available at: <https://cpisandiego.org/research/construction-apprenticeship-programs-2009/>.

⁴⁶ Corinne Wilson, *Construction Apprenticeship Programs: Career Training for California's Recovery*, Center on Policy Initiatives (September 2009). Available at: <https://cpisandiego.org/research/construction-apprenticeship-programs-2009/>.

⁴⁷ Kathleen Mulligan-Hansel, PhD. 2008. *Making Development Work for Local Residents: Local Hire Programs and Implementation Strategies that Serve Low-Income Communities*. Partnership for Working Families. <http://www.communitybenefits.org/downloads/Making%20Development%20Work%20for%20Local%20Residents.pdf>.

⁴⁸ Kathleen Mulligan-Hansel, *Making Development Work for Local Residents: Local Hire Programs and Implementation Strategies that Serve Low-Income Communities*, (July 2008). Available at: <https://s3.amazonaws.com/proggov21-uploads/uploads/asset/asset file/Making Development Work Local Residents Mulligan-HanselPWF2008.pdf>.

⁴⁹ *Id.*

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In voting to support the drafting of the HARD HATS Ordinance, the City Council found that it is in the general welfare of persons in the Berkeley area to utilize local labor for local projects.⁵⁰ Specifically, the Council concluded that “it is in the City of Berkeley’s economic interest to support a pipeline of skilled workers to accomplish the construction objectives and policies of the Berkeley General Plan.”⁵¹ The HARD HATS Staff Report provided numerous examples of how a local skilled and trained workforce supports the general welfare of the community and the individual workers and their families.

Here, the Project Applicant has not made a commitment to ensure the Project is built with local skilled and trained workforce. The Project is therefore likely to be detrimental to City goals and the Berkeley community – particularly to its highly qualified construction workforce, who may not have the opportunity to build much-needed housing in their own community.

3. The Project Externalizes the Costs of Construction Because It Does Not Provide Healthcare Benefits

The Project has not committed to healthcare standards or benefits for the construction workers building the Project. This results in a detriment to the general welfare of the City and its residents, including in particular its construction worker residents. By failing to provide healthcare for its construction workers, the Project leaves the responsibility of providing for the health, safety, and welfare of the workers and the community on the workers themselves, or on taxpayer-funded public assistance, thus externalizing the cost of construction.

The City’s HARD HATS Ordinance Staff Report explained that construction trade workers experience exceptionally high rates of serious injury on the job, especially on sites with inadequately trained workers.⁵² For example, one of every five serious workers’ compensation insurance claims which involve death, permanent total disability or major permanent partial disability - is related to a construction employee, despite the fact that construction jobs account for less than one out of every 25 California jobs.⁵³ In authorizing drafting of the HARD HATS Ordinance, the Council reiterated the importance of providing paid healthcare for

⁵⁰ City of Berkeley, Agenda, Berkeley City Council, Tuesday September 20, 2022 6:00 PM, Council Consent Item 14 Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (HARD HATS) Referral, p. 77. Available at: <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-09-20%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf> (“HARD HATS Staff Report”).

⁵¹ HARD HATS Staff Report, p. 77.

⁵² *Id.* at 81.

⁵³ *Id.*

construction workers to support a sustainable construction workforce: “The creation and utilization of apprenticeship along with the commitments to paid healthcare act to both recruit and retain an adequate base of construction workers and to be a pipeline for future supervisors and licensed independent contractors.”⁵⁴

Lack of paid healthcare and a deficit in wages are major factors in externalizing the costs of construction onto individual workers and public services. A study by Smart Cities Prevail calculated that, if California’s multifamily residential construction resembled the rest of the industry on wage standards, worker income would increase by more than \$1 billion, state and local government coffers would grow \$55 million a year, and public assistance payments for direct expenditures like MediCal would decrease by at least \$30 million per year.⁵⁵ A typical non-union construction employee on a non-prevailing wage project without health benefits would be eligible for \$916 to \$8,032 in public assistance for his or her family.⁵⁶ At prevailing wage with health benefits, the same worker would earn enough to support his or her family with no public assistance.⁵⁷

By failing to provide healthcare standards, the Project would perpetuate existing income and healthcare inequities for construction workers, causing a detriment to the general welfare by failing to provide for the health and safety of its workers. The City should ask the Applicant to provide healthcare benefits as a public benefit of the Project.

4. Providing Workforce Benefits Furthers Berkeley’s Goals as Laid out in the Municipal Code

The Municipal Code provides that the “Zoning Ordinance establishes *minimum* requirements to promote the public health, safety, and general welfare.”⁵⁸ The Municipal Code also provides that, “[t]o the extent possible, it is the government’s responsibility to balance the responsibility to ensure the health, safety, and general welfare of the public at large in a fiscally and environmentally sustainable manner.”⁵⁹ It is therefore the responsibility of the City Council to promote the general welfare beyond the minimum required by law.

⁵⁴ *Id.* at 77.

⁵⁵ Lantsberg Report, p. 2.

⁵⁶ Working Partnerships USA, *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* (April 25, 2011). Available at: https://www.wpusa.org/5-13-11%20prevailing_wage_brief.pdf (“Working Partnerships Report”).

⁵⁷ *Id.*

⁵⁸ BMC § 22.104.030.

⁵⁹ BMC § 2.09.020.

Here, the City Council must ensure the health, safety, and general welfare is promoted in a fiscally and environmentally sustainable manner. The Council should endeavor to do so through the implementation of apprenticeship standards, healthcare benefits, and local hire commitments for the Project.

5. Utilizing a Skilled Construction Workforce Promotes the Goals Set Forth in the Regional Housing Needs Assessment

One of the main rationales for the HARD HATS Ordinance was to increase the City's housing supply through the use of a local skilled and trained labor force. Berkeley has been assigned a Regional Housing Needs Assessment ("RHNA") by the State of roughly 9,000 units of housing to produce over an eight year period, or over 1,100 units per year.⁶⁰ But, the City has determined that Berkeley does not have an adequate supply of construction workers to build over 1,100 housing units per year while also building, altering, and maintaining public and private commercial nonresidential buildings and infrastructure.⁶¹ Only 1,250 construction sector employees lived in Berkeley in 2018.⁶² The City has also concluded that Berkeley cannot rely on contractors to reliably import surplus skilled construction workers from other cities.⁶³ Construction jobs – particularly residential construction jobs - have lost their competitive edge relative to other jobs in the Bay Area regional economy.⁶⁴ To meet its General Plan goals, Berkeley must create working conditions, on the Project site in particular, that will help to overcome the construction labor market's failures to make construction jobs attractive enough to recruit and retain productive trade workers.

At the September 20, 2022 HARD HATS hearing, City Councilmembers explained that there is a "shortage of qualified local construction workers" and that is one reason why it is hard to get housing built.⁶⁵ Councilmember Hahn explained that Berkeley should "develop more labor, have working conditions, and pay, and benefits that you need to live in the Bay Area."⁶⁶ Further Councilmember Hahn asserted that Berkeley needs to expand the available workforce of people who are able to build housing and other projects, and "to ensure they have protections."⁶⁷ Mayor Arreguin noted that the "key to addressing the significant shortage of

⁶⁰ HARD HATS Staff Report, p. 80.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Statement by Councilmember Hahn, Oakland City Council Hearing (September 20, 2022 6 PM).

⁶⁶ *Id.*

⁶⁷ *Id.*

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housing is addressing the shortage of a skilled and trained workforce.”⁶⁸ The Project does not meet this goal of addressing the housing shortage by utilizing local skilled and trained workers.

In order to ensure that the City remains on track to meet its State RHNA housing allocation, the Council must ensure that this Project, and every housing project constructed in Berkeley, includes workforce standards which promote the development and retention of a local skilled and trained workforce.

B. The Project is Inconsistent with the General Plan

The Project is inconsistent with the General Plan Economic Development & Employment Element, and thus cannot be approved until consistency is demonstrated.⁶⁹

The General Plan Economic Development and Employment Element Policy (ED-1) provides that the City must “[i]ncrease the number of jobs that go to Berkeley citizens by coordinating economic development efforts with employment placement.”⁷⁰ Further, the General Plan provides that the City intends to “[w]ork with job training programs and encourage training for life skills, job readiness, and specific target industries.”⁷¹ The Project does not include any commitment to provide construction jobs to Berkeley or East Bay residents, and does not contribute to any apprenticeship or other construction job training programs. The Project therefore fails to comply with Policy ED-1.

The HARD HATS Staff Report explains that requiring contractors on major projects in Berkeley to employ apprentices results in a higher volume of apprentice training, and thus, an increase in the construction labor force available to carry out the construction anticipated by the general plan.⁷² Further, the Staff report provides that, in order to meet its General Plan goals, Berkeley must create local working conditions that will help to overcome the construction labor market’s failures to make construction jobs attractive enough to recruit and retain productive trade workers.⁷³

⁶⁸ Statement by Mayor Arreguin, Oakland City Council Hearing (September 20, 2022 6 PM).

⁶⁹ SB 330 requires conformance with applicable, objective general plan and zoning standards. Gov. Code § 65905.5. (a).

⁷⁰ Berkeley General Plan Economic Development and Employment Element, p. ED-5. Available at: https://berkeleyca.gov/sites/default/files/documents/12_Economic%20Development%20and%20Employment%20Element-FINAL.pdf.

⁷¹ *Id.*

⁷² HARD HATS Ordinance Staff Report, p. 80.

⁷³ *Id.*

Providing a local skilled and trained workforce would further the goals laid out in the General Plan Economic Development and Employment Element, that the City enacted to promote the general welfare. The Project does not include any of these elements and therefore fails to demonstrate consistency with the General Plan Economic Development and Employment Element.

C. The Project is Inconsistent with the Downtown Area Plan

The Project does not conform with the Downtown Area Plan because it fails to provide “significant community benefits” as required by the Plan.

The Downtown Area Plan provides that “All new buildings *shall* deliver significant community benefits, many of which should be in proportion to building height.”⁷⁴ The Downtown Area Plan requires projects above 75 feet to include significant community benefits in the form of affordable housing, supportive social services, green features, open space, transportation demand features, job training, and/or employment opportunities.⁷⁵ The applicable public benefit requirements are to be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest.⁷⁶ The Project violates the Downtown Area Plan for failure to include community benefits as binding conditions of approval.

III. CONCLUSION

For the reasons stated above, the Project was approved by ZAB in violation of the Municipal Code due to detrimental impacts to the general welfare associated with construction of the Project. The City Council should modify the ZAB’s approval to add mitigation measures or conditions of approval to the Project which require the Applicant to provide workforce standards and public benefits that are consistent with Municipal Code and local plan standards to provide local employment training and placement facilities and amenities for construction workers, healthcare benefits, and apprenticeship opportunities.

⁷⁴ City of Berkeley, Downtown Area Plan (2012) p. LU-12. Available at: <https://berkeleyca.gov/sites/default/files/2022-03/Downtown-Area-Plan.pdf> (emphasis added).

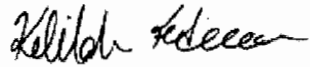
⁷⁵ *Id.*

⁷⁶ *Id.*

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Thank you for your attention to these comments. Please include them in the City's record of proceedings for the Project.

Sincerely,



Kelilah D. Federman

Attachments
KDF:acp

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Benado, Tony

From: Alisha C. Pember <apember@adamsbroadwell.com>
Sent: Tuesday, October 25, 2022 3:47 PM
To: All Council; City Clerk; Gong, Sharon; Updegrave, Samantha
Cc: Christina Caro; Kelilah D. Federman
Subject: Appeal to City Council re 2065 Kittredge Street (Use Permit #ZP2021-0193)
Attachments: 6287-003acp - Appeal to City Council re 2065 Kittredge Street.pdf

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Good afternoon,

Please find attached our **Appeal to City Council re 2065 Kittredge Street (Use Permit #ZP2021-0193)**.

We are also providing a Dropbox link containing Exhibits A-B and other supporting references: <https://www.dropbox.com/scl/fo/nl3npsu4crt1fe4aix9kj/h?dl=0&rlkey=fli4suqs3im6txr9907xj68n5>

If you have any questions, please contact Kelilah Federman.

Thank you.

Alisha Pember

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