

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

kfederman@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

KEVIN T. CARMICHAEL  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
KELILAH D. FEDERMAN  
RICHARD M. FRANCO  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
DARIEN K. KEY  
RACHAEL E. KOSS  
AIDAN P. MARSHALL  
TARA C. RENGIFO

*Of Counsel*  
MARC D. JOSEPH  
DANIEL L. CARDOZO

September 22, 2022

**Via Email Only**

Berkeley Zoning Adjustments Board  
Land Use Planning Division  
1947 Center Street, 2nd Floor,  
Berkeley, CA 94704  
**Email: ZAB@cityofberkeley.info**

Sharon Gong  
**Email: sgong@cityofberkeley.info**  
Samantha Updegrave  
**Email: supdegrave@cityofberkeley.info**

**Re: Agenda Item 4 - 2065 Kittredge Street Project (Use Permit #ZP2021-0193)**

Dear Zoning Adjustment Board Members Duffy, Gaffney, Thompson, O'Keefe, Kahn, Kim, Sanderson, Tregub, Ms. Gong, and Secretary Updegrave:

This letter is submitted on behalf of **East Bay Residents for Responsible Development** ("East Bay Residents" or "Residents") regarding Agenda Item 4, the 2065 Kittredge Street Project (Use Permit #ZP2021-0193; APNs: 057-2027-00600, -00700, -00800, and -00900) ("Project") proposed by Bill Schrader, CA Student Living Berkeley, LLC (listed as Property Owner) (collectively, "Applicant").<sup>1</sup>

The Project proposes to demolish existing structures representing approximately 95,000 square feet of office, food service, and cinema uses. These uses would be replaced by approximately 4,993 square feet of commercial space (retail, food service, and live/work), 187 units of new residential units (including 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 high, 87 feet in height, with 9 very low income units, and 43 residential vehicle parking spaces in ground-level garage. The Project is eligible for a 20% density bonus by committing to the nine very low-income units. The Applicant is requesting a Use Permit under Berkeley Municipal Code Sections:

---

<sup>1</sup> City of Berkeley, Zoning Adjustments Board, Staff Report for Board Action September 22, 2022 (ITEM 4 ZAB 09-22-2022) 2065 Kittredge Street (Use Permit Use Permit #ZP2021-0193). Available at: [https://berkeleyca.gov/sites/default/files/documents/2022-09-22\\_ZAB\\_2065%20Kittredge%20with%20attachments.pdf](https://berkeleyca.gov/sites/default/files/documents/2022-09-22_ZAB_2065%20Kittredge%20with%20attachments.pdf) ("Staff Report").  
6287-001cmc

September 22, 2022

Page 2

23.326.070(A) to demolish a non-residential building; a Use Permit under BMC Section 23.204.020(A) to construct a new mixed-use Development and new dwelling units; a Use Permit under BMC Section 23.204.030(B)(1) to create new floor area of 10,000 square feet or more; and a 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).

As discussed herein, the Project is inconsistent with the City's construction workforce goals, and is inconsistent with the workforce and economic requirements of the General Plan and Downtown Area Plan. As a result, the Project may be detrimental to the general welfare of the City, its residents, and its workers, in violation of the City's zoning code. The Zoning Adjustments Board ("ZAB") should not approve the Project until the Applicant provides the City with substantial evidence demonstrating that the Project fully complies with the zoning code, General Plan and Downtown Area Plan.

## I. SUMMARY OF ISSUES

The City of Berkeley is a leader in supporting workers' rights, living wage, healthcare, and safety. Existing and pending City ordinances raise the standards for living and working conditions for all Berkeley workers, including the local construction workforce. The City has explained that these laws promote the general welfare and further the City's interest in "support[ing] a pipeline of skilled workers to accomplish the construction objectives and policies of the Berkeley General Plan" and has concluded that "Berkeley should and can create 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."<sup>23</sup> The City has found that ongoing shortages of skilled construction workers, particularly residential trade workers, threaten to delay or derail housing development plans in the City, which in turn threatens the City's ability to meet its State-mandated RHNA housing allocation and comply with the General Plan Economic Development & Employment Element.<sup>4</sup>

---

<sup>2</sup> City of Berkeley, Agenda and Staff Report, 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").

<sup>3</sup> *Id.* at p. 80.

<sup>4</sup> *Id.*

Housing development projects in the City must 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.

The zoning code mandates that use permits for housing projects developed within the City cannot be approved if they are detrimental to the health, safety, peace, morals, comfort, or general welfare of the City, its residents, workers and visitors, to the surrounding neighborhood, or are inconsistent with zoning.<sup>5</sup> The Project is inconsistent with these requirements and fails to meet the City's goals for ensuring a stable and viable construction workforce.

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.<sup>6</sup>

This Project has not committed to apprenticeship or healthcare standards for its construction workforce, and may therefore perpetuate precisely the problems that the City's General Plan, zoning code, and pending HARD HATS Ordinance seek to remedy.

The HARD HATS Staff Report explains that "[t]he creation and utilization of apprenticeship along with the commitments to paid healthcare act to both recruit

---

<sup>5</sup> Berkeley Municipal Code Section 23.406.040(E).

<sup>6</sup> Id. at pp. 4-5.  
6287 001cmc

and retain an adequate base of construction workers and to be a pipeline for future supervisors and licensed independent contractors.”<sup>7</sup> 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.”<sup>8</sup>

The Project is not required to use apprentices or provide healthcare benefits to its construction workers, and the Applicant has not agreed to use a skilled local construction workforce to construct the Project. The Project may therefore be built with low-wage, out-of-area<sup>9</sup> workers who lack the livable wages, health benefits, stability, and basic standard of living that Berkeley has committed to ensuring for all of its workers on all housing developments constructed in the City. If so, the Project would be detrimental to the health, safety, peace, morals, comfort, and general welfare of the City and its residents, especially its local construction workforce. The Project is also inconsistent with the workforce and economic requirements of the General Plan and Downtown Area Plan.

The Staff Report lacks substantial evidence that the Project would not be detrimental to the general welfare. The ZAB therefore lacks the evidence necessary to support the findings to issue a use permit under the City’s zoning ordinance. The ZAB should not approve the Project until the Applicant provides substantial evidence demonstrating that the Project will not be detrimental to the City, its residents, and its workers, and until the Project fully complies with the General Plan and Downtown Area Plan.

## II. PROJECT BACKGROUND

The Applicant proposes to demolish portions of existing City Landmark commercial buildings and construct an 8-story, 87-foot tall, mixed-use building with 187 dwelling units, 4,993 square feet commercial space and 43 parking spaces.<sup>10</sup> Entitlements were previously obtained for the project site in 2015 (UP13-10000010 and LM13-40000002, under the address 2211 Harold Way) to demolish historic

---

<sup>7</sup> HARD HATS Staff Report.

<sup>8</sup> *Id.*

<sup>9</sup> Statement by Councilmember Hahn, Oakland City Council Hearing (September 20, 2022 6 PM): City Councilmember Hahn, in favor of the HARD HATS Ordinance, said that the ordinance is necessary because workers are “being bussed in from the Central Valley” which deprives them of time with their families and loved ones, and prevents them from being able to take their children to school in the morning.

<sup>10</sup> Staff Report, p. 1.

structures and construct an 18-story, 302-unit, mixed-use building, with approximately 10,877 square feet of commercial space, a ten-theater cinema complex, and 177 underground parking spaces (“Harold Way Project”).<sup>11</sup> Building permits were never obtained for the project, and the City deemed the permits expired on January 17, 2020.<sup>12</sup>

The original Harold Way Project developer, HSR Berkeley Investments, had signed a labor agreement with the Building & Construction Trades Council of Alameda County which committed the Project to using 100% union labor.<sup>13</sup> As a result, the Harold Way Project would have provided high living standards for the local construction workforce through the use of a local skilled and trained workforce, apprenticeship training, and community benefits.

Here, the Project Applicant has not made a commitment to ensure the Project is built with local skilled and trained workforce, or that the Project will provide apprenticeship training opportunities for City of Berkeley or East Bay residents. The Staff Report also states that the Project is not required to provide community benefits. 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.

### III. 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 enforcing public interest, health and safety, labor and environmental laws that encourage sustainable development and ensure a safe working environment for its

---

<sup>11</sup> Staff Report, p. 11.

<sup>12</sup> *Id.*

<sup>13</sup> 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>  
6287 001cmc

members. Residents' members are also concerned about projects that are built without providing opportunities to improve the recruitment, training, and retention of skilled workforces.

#### **IV. THE PROJECT MAY BE DETRIMENTAL TO THE GENERAL WELFARE OF THE CITY, RESIDENTS, AND WORKERS**

In order to approve a Use Permit, under Berkeley Municipal Code Section 23.406.040, the Zoning Adjustments Board must find that the proposed project:

- 1) Will not be 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; and
- 2) Will not 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.

The HARD HATS Staff Report provides 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.

##### **A. Failure to Use Skilled Construction Labor and Provide Health Benefits to Workers Results in Detrimental Impacts**

The City 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 in evaluating the need for the HARD HATS Ordinance. 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.<sup>14</sup>

- Only 1,250 construction sector employees lived in Berkeley in 2018.<sup>15</sup>
- 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.<sup>16</sup>
- 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 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.<sup>17</sup>
  - 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

---

<sup>14</sup> HARD HATS Staff Report, p. 4.

<sup>15</sup> *Id.*, citing U.S. Census Bureau LEHD Origin-Destination Employment Statistics, Version 7, Residence Area Characteristics.

<sup>16</sup> *Id.*, citing Analysis of U.S. Census, ACS 2015-2019 Microdata.

<sup>17</sup> *Id.*, citing Workers Compensation Insurance Rating Bureau "Relativity Review Sheets," various years.

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.<sup>18</sup>

- 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.<sup>19</sup>

This evidence demonstrates that projects which do not utilize a local skilled construction workforce and do not provide health benefits may be detrimental to the general welfare of the City, its residents, and its workers. There is no evidence in the record demonstrating that the Project would avoid these negative impacts. If the Project proceeds in that manner, it would be detrimental to the general welfare.

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

One of the main rationales for HARD HATS Ordinance was to increase the housing supply through the use of a local skilled and trained labor force. Berkeley has been assigned a Regional Housing Needs Assessment (RHNA) of roughly 9,000 units of housing to produce over an eight year period, or over 1,100 units per year.<sup>20</sup> But, 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

---

<sup>18</sup> (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](https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP_HousingReport.0118_2.pdf)

<sup>19</sup> 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 3/26/2021 via

[https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP\\_HousingReport.0118\\_2.pdf](https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP_HousingReport.0118_2.pdf)

<sup>20</sup> HARD HATS Staff Report, p. 80.



public and private commercial nonresidential buildings and infrastructure.<sup>21</sup> Only 1,250 construction sector employees lived in Berkeley in 2018.<sup>22</sup> Berkeley cannot rely on contractors to reliably import surplus skilled construction workers from other cities.<sup>23</sup> Construction jobs – particularly residential construction jobs – have lost their competitive edge relative to other jobs in the Bay Area regional economy.<sup>24</sup> 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 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.<sup>25</sup> 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.”<sup>26</sup> 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.”<sup>27</sup>

Mayor Arreguin noted that the “key to addressing the significant shortage of housing is addressing the shortage of a skilled and trained workforce.”<sup>28</sup> The Project does not meet this goal of addressing the housing shortage by utilizing local skilled and trained workers.

### **B. Utilizing a Local Skilled Workforce Promotes the Goals Set Forth in the General Plan Economic Development & Employment Element**

The Berkeley General Plan Economic Development and Employment Element provides that it is Policy ED-1 of the City to “Increase the number of jobs that go to Berkeley citizens by coordinating economic development efforts with employment placement.”<sup>29</sup> Further, the General Plan provides that the City intends to “Work with job training programs and encourage training for life skills,

---

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Statement by Councilmember Hahn, Oakland City Council Hearing (September 20, 2022 6 PM).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Statement by Mayor Arreguin, Oakland City Council Hearing (September 20, 2022 6 PM).

<sup>29</sup> 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](https://berkeleyca.gov/sites/default/files/documents/12_Economic%20Development%20and%20Employment%20Element-FINAL.pdf).

job readiness, and specific target industries.”<sup>30</sup> Using local skilled construction workforce furthers the goals laid out in the General Plan Economic Development and Employment Element, that the City enacted to promote the general welfare.

To comply with the General Plan Economic Development and Employment Element, the City should ensure that new housing developments provide jobs that go to Berkeley residents and provide job training programs and job readiness.

### **C. Utilizing a Local Skilled and Trained Workforce Standards Promotes Jobsite Health and Safety**

Berkeley Mayor Arreguin asserted in the HARD HATS Ordinance drafting approval hearing, that it is “unacceptable to build housing on the backs of low wage workers” and noted that there is exploitation of our construction workforce.<sup>31</sup> The Mayor cited to projects here in Berkeley where there is wage theft, OSHA violations, unsafe workplace conditions, and worker exploitation.<sup>32</sup> The Mayor further emphasized the importance of enabling the Berkeley construction workforce to access healthcare through the implementation of measures in the HARD HATS Ordinance.

The 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.<sup>33</sup> 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.<sup>34</sup> For a working life in construction, the risk of fatal injury is approximately one death per 200 full-time-equivalent employees according to a recent study in the American Journal of Industrial Medicine.<sup>35</sup> A policy that promotes apprenticeship training and higher construction compensation rates will reduce the occurrence of non-fatal and fatal injuries on construction projects.<sup>36</sup>

Here, the Applicant provides no assurance that the Project will implement measures to reduce the risk of injury, illness, or death of construction workers.

---

<sup>30</sup> *Id.*

<sup>31</sup> Statement by Mayor Arreguin, Oakland City Council Hearing (September 20, 2022 6 PM).

<sup>32</sup> Statement by Mayor Arreguin, Oakland City Council Hearing (September 20, 2022 6 PM).

<sup>33</sup> HARD HATS Ordinance Staff Report, p. 80.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

## **V. THE PROJECT MAY BE INCONSISTENT WITH GENERAL PLAN GOALS**

The Project may be inconsistent with the General Plan and the General Plan Economic Development & Employment Element, and thus cannot be approved under SB 330 until consistency is demonstrated. SB 330 requires conformance with applicable, objective general plan and zoning standards.<sup>37</sup>

The Berkeley General Plan Economic Development and Employment Element provides that it is the Policy (ED-1) of the City to “Increase the number of jobs that go to Berkeley citizens by coordinating economic development efforts with employment placement.”<sup>38</sup> 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.”<sup>39</sup>

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, and especially that targeted by the General Plan Housing Element.<sup>40</sup> Further, the City Council Staff report provides that in order to meet its General Plan goals, Berkeley must create 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.<sup>41</sup>

The Project does not include these elements and therefore fails to demonstrate consistency with the General Plan Economic Development and Employment Element.

## **VI. 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

---

<sup>37</sup> Gov. Code § 65905.5. (a).

<sup>38</sup> 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](https://berkeleyca.gov/sites/default/files/documents/12_Economic%20Development%20and%20Employment%20Element-FINAL.pdf).

<sup>39</sup> *Id.*

<sup>40</sup> HARD HATS Ordinance Staff Report, p. 80.

<sup>41</sup> *Id.*

Area Plan provides that “All new buildings *shall* deliver significant community benefits, many of which should be in proportion to building height.”<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> This Project violates the Downtown Area Plan for failure to include community benefits as binding conditions of approval.

## VII. CONCLUSION

In promoting the HARD HATS Ordinance, Mayor Arreguin said, “This ordinance is needed to help address the growing need for skilled and trained construction workers,” as well as “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.”<sup>45</sup>

The HARD HATS Ordinance Staff Report found 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.”<sup>46</sup> Further the City provided 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.”<sup>47</sup>

Without providing community benefits or workforce standards, the Project would be precisely the type of project that the City has declared to be contrary to the general welfare. This Project should not be approved until the ZAB is presented

---

<sup>42</sup> 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).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> 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, Berkeleyside (September 1, 2022) <https://www.berkeleyside.org/2022/09/01/berkeley-construction-labor-standards-housing-worker-shortage>.

<sup>46</sup> HARD HATS Staff Report, p. 77.

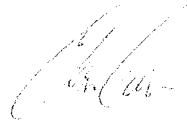
<sup>47</sup> *Id.*

September 22, 2022  
Page 13

with substantial evidence demonstrating that the Project will comply with the zoning ordinance and General Plan by providing employment opportunities for a local skilled construction workforce.

Thank you for considering our comments. Please place this comment letter in the record of proceedings for this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christina Caro".

Christina Caro  
Kelilah D. Federman

:kdf