



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: March 25, 2025

Item Number: 9

Item Description: ZAB Appeal: 3000 Shattuck Avenue, Use Permit #ZP2022-0046

Submitted by: Jordan Klein, Director, Planning & Development Department

On March 10, 2025, the City received Supplemental Comments on the 3000 Shattuck Avenue project from Adams Broadwell Joseph and Cardozo, on behalf of East Bay Residents for Responsible Development, included here as **Supplemental Attachment 1**. The comment letter includes Exhibit A, a letter from Salter Acoustical Consultants dated March 10, 2025, and Exhibit B, a letter from Soil Water Air Protection Enterprise (SWAPE) dated February 10, 2025.

The letter does not raise any new issues beyond those which have already been addressed by the City in the 2025 Addendum (Exhibit C of Attachment 1 in the original March 25, 2025 staff report) and the Response to Appeal Comments (Attachment 5 to the original staff report). The appellants' Exhibit A does not raise any new issues regarding acoustical issues, because the HVAC equipment for the proposed project will be located on the roof of the proposed ten story (114-foot) building, further from receptors. The proposed project will lead to a 3-dBA increase in traffic noise. Furthermore, Conditions of Approval to address noise apply to the project and include: *Construction Noise Reduction Program, Damage Due to Construction Vibration, Construction Noise Management- Public Notice Required, Construction Phases, HVAC Noise Reduction, Interior Noise Levels, Construction Hours, Construction Hours- Exceptions, and Project Construction Website.*

Air quality impacts were updated in the 2025 Addendum. The appellants' Exhibit B does not raise any new issues related to air quality.

Supplemental Attachment 1: Supplemental Comments from Appellant Adams Broadwell Joseph and Cardozo, on behalf of East Bay Residents for Responsible Development

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March 10, 2025

Via Email Submission

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Re: Supplemental Comments on 3000 Shattuck Avenue (Use Permit #ZP2022-0046; Addendum (SCH# 2017062025))

Dear Mayor Ishii, Councilmembers, Mr. Numainville, and Ms. Riemer:

We are writing on behalf of East Bay Residents for Responsible Development ("East Bay Residents" or "EBRRD") to provide supplemental comments on East Bay Residents' appeal ("Appeal") of the Zoning Adjustment Board's ("ZAB") May 11,

2023 approval¹ of the 3000 Shattuck Project (“Project”),² including Use Permit #ZP2022-0046 and the Addendum to the 3000 Shattuck Avenue Project Initial Study Negative Declaration (“IS/ND”) (SCH #2017062025)³ prepared by the City of Berkeley (the “City”) for the Project. The Project is proposed by Mark Rhoades of the Rhoades Planning Group and Khan Shazada & Farhat (collectively, “Applicant”).

The Project proposes to demolish the existing 1,163-square-foot (“SF”) gas station and construct a new 81,522 square-foot building with 166 residential units, 1,043 SF of retail space, and zero parking spaces on the 0.31-acre site. The Addendum states that Project construction will last eighteen months.⁴ The Project site is located at 3000 Shattuck Avenue, Berkeley, CA 94705 (APNs 53-1592-1 & 53-1592-2). The Project site is designated as Avenue Commercial in the City’s General Plan and is located in the South Area Commercial (C-SA) zoning district. The original project proposed 32,603 SF of residential uses, with 44 units including 4 affordable units. The current Project proposes 80,235 SF of residential uses, with 166 units including 17 affordable units.⁵

This Appeal was filed in 2023, almost two years ago. The Appeal provided substantial evidence demonstrating that the City failed to comply with CEQA by preparing an Addendum to the 2018 IS/ND in light of substantial changes to the Project and surrounding circumstances which necessitated a supplemental or subsequent environmental impact report (“EIR”). EBRRD’s Appeal provided substantial evidence supporting a fair argument that the Project changes may result in new significant effects on the environment which were not analyzed or mitigated in the IS/ND, including expert comments documenting major errors and omissions in the Project’s air quality analysis.⁶ Since that time, the City has not

¹ City of Berkeley, Zoning Adjustment Board, Notice of Decision (May 11, 2023), https://www.dropbox.com/s/860yr17ya9zcd3a/2023-05-18_ZAB_NOD_3000%20Shattuck.pdf?dl=0.

² City of Berkeley, Zoning Adjustment Board, Staff Report for Board Action May 11, 2023, https://berkeleyca.gov/sites/default/files/documents/2023-05-11_ZAB_Item%205_3000%20Shattuck_Combined%20Staff%20Report%20and%20Attachments.pdf (hereinafter “Staff Report”).

³ City of Berkeley, Addendum to the 3000 Shattuck Avenue Project Initial Study – Negative Declaration (Permit No. ZP2015-0229, SCH # 2017062025) (January 2023), https://www.dropbox.com/s/kr0fme3neozjqvf/2023-01-27_CEQA_Addendum%20to%20IS-ND_3000%20Shattuck.pdf?dl=0 (hereinafter “Addendum”).

⁴ Addendum, p. 3, Table 1.

⁵ Addendum p. 3.

⁶ *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 957-960; *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2022) 11 Cal.App.5th 596, 607.
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taken the steps necessary to comply with CEQA or the City's Municipal Code ("BMC"). The City has not prepared a supplemental EIR, and has not provided Appellants or the public with any new studies, analysis or proposed mitigation measures to address the Project's unmitigated significant effects. As a result, the Project still fails to comply with CEQA, fails to disclose or mitigate significant individual and cumulative environmental and public health impacts, and would result in a detriment to the general welfare of the City and its residents, in violation of the BMC.

CEQA requires that a subsequent or supplemental EIR be prepared if there are substantial changes in a project which increase the project's impacts; if there are substantial changes in circumstances surrounding the project; or if new information demonstrates that the project will have new or more severe effects than previously analyzed or are subject to new or different mitigation or alternatives.⁷ As explained in the Appeal, the Project has been substantially changed from the original 2018 project by more than tripling the number of residential units on site and almost tripling the Project's square footage, resulting in substantially more severe construction and operational impacts than previously analyzed. There is also new information demonstrating that the Project will have potentially significant impacts which require mitigation beyond that previously considered for the original project. The City failed to proceed in the manner required by law by relying on a CEQA addendum and failing to prepare a subsequent or supplemental EIR in those circumstances. These issues were not resolved by the ZAB prior to its approval of the Project, and have not been resolved since the ZAB's 2023 approval.

In particular, the Addendum fails to quantify and mitigate the Project's significant air quality, health risk, noise, vibration, traffic, and cumulative impacts which are new or more severe than the impacts analyzed in the 2018 IS/ND. Our review of the Addendum and 2018 IS/ND demonstrates that the Project fails to comply with CEQA. There is substantial evidence to support a fair argument that the Project will result in significant, unmitigated impacts from noise, air quality, health risk, and cumulative impacts that the City must resolve in response to this Appeal. The City may not approve the Project until the City prepares a subsequent EIR that adequately analyzes the Project's potentially significant impacts, incorporates all feasible mitigation measures to avoid or minimize these impacts, and ensures that the Project will not jeopardize the general welfare of the City or its residents.

⁷ Pub. Res. Code § 21166; 14 Cal. Code Regs. § 15162.
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EBRRD prepared these comments with the assistance of noise and vibration expert Jeremy Decker, PE, Vice President of Salter Acoustics whose technical comments and curriculum vitae are attached hereto as Exhibit A.⁸ Mr. Decker's comments demonstrate that the Project results in new significant noise impacts which were not analyzed in the 2018 IS/ND, and are not adequately mitigated by the City's Standard Conditions of Approval ("SCA"). EBRRD also prepared these comments with the assistance of Paul Rosenfeld, Ph.D., of Soil Water Air Protection Enterprise ("SWAPE"). SWAPE's comments continue to demonstrate that the Addendum's air quality analysis contains substantial errors and omissions which result in underestimated impacts, and that additional mitigation is required to mitigate the Project's impacts.⁹ SWAPE's comments and curriculum vitae are attached hereto as Exhibit B. East Bay Residents reserves the right to submit supplemental comments and evidence at any later hearings and proceedings related to the Project, in accordance with State law.¹⁰

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, and their members and their families who live and/or work in the City of Berkeley and Alameda County.

The individual members of East Bay Residents and its affiliated labor organizations live, work, and raise their families in Alameda County, including in the City of Berkeley. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will therefore be first in line to be exposed to any health and safety hazards that may exist on the Project site.

⁸ See **Exhibit A**, Jeremy Decker, P.E., 3000 Shattuck, Berkeley, CA: Initial Study – Negative Declaration and Addenda Acoustical Review and Comments Salter Project #24-0503 (Dec. 20, 2024) ("Decker Comments").

⁹ See **Exhibit B**, Paul Rosenfeld, Ph.D., Comments on the 3000 Shattuck Mixed-Use Project (SCH No. 2017062025) (Feb. 20, 2025) ("SWAPE Comments").

¹⁰ Gov. Code § 65009(b); Pub. Resources Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* ("Bakersfield") (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.
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The organizational members of East Bay Residents also have an interest in enforcing the City's planning and zoning laws and the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there. Indeed, continued degradation can, and has, caused restrictions on growth that reduce future employment opportunities. Finally, Residents' members are concerned about projects that are built without providing opportunities to improve local recruitment, apprenticeship training, and retention of skilled workforces, and without providing lifesaving healthcare expenditures for the construction workforce.

II. APPEAL BACKGROUND

CEQA requires that a subsequent or supplemental EIR be prepared if there are substantial changes in a project which increase the project's impacts; if there are substantial changes in circumstances surrounding the project; or if new information demonstrates that the project will have new or more severe effects than previously analyzed or are subject to new or different mitigation or alternatives.¹¹ The Appeal explains that, in this case, the Project has been substantially changed from the original 2018 project by more than tripling the number of residential units on site and almost tripling the Project's square footage, resulting in new and substantially more severe construction and operational impacts than previously analyzed. There is also new information demonstrating that the Project will have potentially significant impacts which were not discussed in the 2018 IS/ND and are more severe than those analyzed in the 2018 IS/ND. The Project's significant environmental effects require mitigation beyond that previously considered for the original project, and beyond the City's SCAs. Feasible mitigation measures are available to reduce the Project's significant environmental impacts, but were not adopted as part of the original Project or the ZAB's May 2023 approval of the modified Project. Therefore, the City failed to proceed in the manner required by law by relying on a CEQA addendum and failing to prepare a subsequent or supplemental EIR.

The Appeal further explains that the City prepared the Addendum in violation of the court's holding in *Friends of College of San Mateo Gardens v. San Mateo County Community College District*. There, the court held that the Community College District improperly prepared an addendum to an MND, because there was substantial evidence to support a fair argument that the project changes

¹¹ Pub. Res. Code § 21166; 14 Cal. Code Regs. § 15162.
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may result in a significant effect on the environment.¹² Agencies are permitted to prepare an addendum to an adopted MND, rather than a subsequent EIR or negative declaration, if only “minor technical changes or additions are necessary or none of the conditions described in [CEQA Guidelines] Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.”¹³ Here, the changes proposed in the Addendum were not “minor technical changes or additions” but constituted major revisions to the Project based on physical changes and new significant environmental effects, thus requiring preparation of an EIR. Substantial evidence supports a fair argument that the Project’s potentially significant impacts cannot be adequately mitigated by the measures proposed in the Addendum and 2018 IS/ND. Therefore, a subsequent EIR should have been prepared for this Project. The ZAB’s decision to approve the Project without preparing a subsequent or supplemental EIR was an abuse of discretion which violated CEQA.

The Appeal also explains that the Project may also be detrimental to the general welfare of the city, residents, and workers, in violation of the BMC. The significant, unmitigated environmental and public health impacts resulting from the City’s failure to prepare a subsequent or supplemental EIR are detrimental to the general welfare of the City, its residents, and its workers, in violation of the City’s zoning code.¹⁴ Additionally, the Project Applicant has not committed to ensuring that the Project is built with local skilled and trained workforce. The Project is therefore likely to be detrimental to the City’s local workforce goals and to 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.

The Project is inconsistent with the General Plan because 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.”¹⁵ 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.

¹² *Friends of College of San Mateo Gardens*, 1 Cal.5th at 957-960; *Friends of College of San Mateo Gardens*, 11 Cal.App.5th at 607.

¹³ CEQA Guidelines, § 15164, subd. (b).

¹⁴ Berkeley Municipal Code (“BMC”) Sections 23.410.030 and 23.406.040(E).

¹⁵ *Id.*

Moreover, the Project is inconsistent with the General Plan Housing Element because the Project fails to provide the City's required 20% affordable units on-site, contributing to the City's current shortage of affordable units, while removing a viable project site from production for additional affordable units. Although the Project will pay an in-lieu fee, the Project would not be consistent with the Housing Element because it places the burden on the City to identify alternate sites to construct affordable housing units in time to meet its RHNA requirements.¹⁶

Finally, the ZAB rushed the Project's approval process before complying with CEQA by erroneously concluding that the Project was required to be approved on May 11, 2023 pursuant to the Housing Accountability Act ("HAA").¹⁷ The ZAB incorrectly reasoned that the hearing on May 11, 2023 was the final hearing allowed under the HAA under the Act's five-hearing limit.¹⁸ This was incorrect. The May 11, 2023 hearing was the *second hearing* for the Project following the Design Review Committee hearing on January 19, 2023.¹⁹

East Bay Residents urges the City Council to uphold this Appeal and remand the Project to City Staff to prepare a subsequent or supplemental EIR for the Project, as required by CEQA. The Project should not be rescheduled for a further public hearing until these issues have been resolved.

III. THE ZAB'S APPROVAL OF THE PROJECT UNDER AN ADDENDUM VIOLATED CEQA - A SUBSEQUENT EIR MUST BE PREPARED

A. A Subsequent EIR Must Be Prepared Because the Project's Substantial Changes Result in Significant Unmitigated Environmental Effects

The Project changes addressed in the Addendum are not "minor technical changes or additions" but constitute major revisions to the Project analyzed in the 2018 IS/ND based on new significant environmental effects. A new CEQA document a subsequent or supplemental EIR is required. The original project

¹⁶ City of Berkeley, Adopted 2023-2031 Housing Element, p. 107.

¹⁷ Gov. Code. §§ 65589.5, 65589.5(h)(2).

¹⁸ Gov. Code. § 65905.5(a). The HAA limits agencies to five public hearings to consider project approval, including appeals, but excluding hearings related to legislative action and not restricting CEQA compliance.

¹⁹ See the figure below on page 11 from the May 11, 2023 ZAB hearing Staff Report.
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proposed 32,603 SF of residential uses, with 44 units including 4 affordable units.²⁰ This Project proposes 80,235 SF of residential uses, with 166 units including 17 affordable units.²¹ The original project proposed the inclusion of 17 parking spaces for automobiles, this Project proposes zero parking spaces.²²

Courts have previously held that an increase in the size of a project constitutes a substantial change in the project requiring preparation of a subsequent EIR. The court in *Ventura Foothill Neighbors v. County of Ventura*²³ held that the County of Ventura was required to prepare a subsequent EIR analyzing building height and profile-related impacts when the height of the medical building was increased 15 feet from the height analyzed in the original EIR. The court held that the increase of the medical building from 75 feet to 90 feet was a “substantial change” to the project requiring major revisions to the environmental impact report such that a supplemental EIR, rather than an EIR addendum, was required.²⁴ The addendum prepared by the county failed to analyze the increased height’s significant environmental impact.²⁵ The court held that the county abused its discretion for failure to prepare a supplemental EIR.²⁶ The court ordered that a focused supplemental EIR, limited solely to analysis of height and profile-related impacts, be prepared.²⁷

The court in *American Canyon Community United for Responsible Growth v. City of Am. Canyon*²⁸ held that the change in the type of retail use from a shopping center to a 24-hour super center and 6.5 increase in size of retail component of the project required supplemental environmental review. The court in *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* held that an increase from six to ten acres of proposed theater in fairgrounds area, 200% increase in seating capacity, and acoustic effects of moving stage to face single-family dwellings were “substantial changes” requiring filing of a subsequent environmental impact report to assess environmental effects.²⁹

²⁰ Addendum, p. 3.

²¹ *Id.*

²² *Id.*

²³ (2014) 232 CA4th 429.

²⁴ *Ventura Foothill Neighbors v. County of Ventura* (2014) 232 CA4th 429, 436.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 434.

²⁸ (2006) 145 CA4th 1062.

²⁹ (1986) 42 Cal.3d 929, 938.

The court in *Mira Monte Homeowners Assn. v. County of Ventura* held that the agency's failure to prepare a supplemental or subsequent EIR effectively deprived the public of any meaningful assessment of the actual project chosen by the agency.³⁰ The court held that, the commencement of a project under these circumstances is more misleading than if the agency had prepared no EIR, since the public might justifiably but erroneously assume that the project being built is the one discussed in the EIR.³¹

The City of Berkeley is not excused from conducting thorough environmental review of the Project simply because the original Project was previously approved in 2018. Tiering from the 2018 IS/ND when the Project has substantial changes from the 2018 project is a dereliction of the City's duty to analyze the instant Project's environmental impacts under CEQA. The substantial changes in the Project's height, increase in square footage, increase in units, increase in daily trips results in significant environmental impacts which must analyzed and mitigated in a subsequent EIR.

The Addendum includes only a cursory and conclusory discussion of impacts associated with the increase in the Project's height. For example, the Addendum's Biological Resources section provides that "While the modified project would be taller compared to the original project, the increased height would not impact wildlife movement, specifically birds, given the prevalence of structures of similar height in the vicinity. No significant new or substantially increased biological resource impacts would occur compared to the original project."³² The Addendum includes no substantial evidence supporting the conclusion that the height of the Project would not result in increased impacts to biological resources.

The Addendum's Energy Section 4.5 does not analyze impacts of the Project's increased height on energy usage.³³ The Addendum's conclusion that "No significant new or substantially increased energy impacts would occur compared to the original project" is therefore not supported by substantial evidence. The Addendum's GHG Section 4.6 likewise fails to analyze the extent to which the Project's increased size will result in increased greenhouse gas ("GHG") emissions.³⁴

³⁰ (1985) 165 Cal.App.3d 357, 365.

³¹ *Coalition For Canyon Preservation v. Bowers* (1980) 632 F.2d 774, 779.

³² Addendum, p. 31.

³³ Addendum, p. 17-18.

³⁴ Addendum, p. 19.

The increase in the Project's height and overall size results in substantial changes requiring analysis of the Project's energy, GHG and other environmental impacts in a subsequent EIR.

By failing to adequately analyze the height increase as a substantial change in the Project, the City failed to proceed in the manner required by law. The substantial change of the Project's height by nearly double, and increased intensity and residential units, results in new and more severe environmental impacts, as discussed below. A subsequent or supplemental EIR is required.

B. Substantial Changes in the Project Results in Significant Unmitigated Air Quality Impacts Which Are Underestimated in the Addendum Due to Errors in the City's Emissions Calculations

The Project has been substantially changed from the original 2018 project by more than tripling the number of residential units on site and almost tripling the Project's square footage, resulting in substantially more severe construction and operational air quality impacts than previously analyzed. SWAPE also explains that the Addendum's air quality analysis incorrectly fails to analyze construction impacts pursuant to the construction schedule in the Addendum, and omits an entire phase of construction – demolition – from its emissions calculations. These errors result in underestimated emissions which do not support the Addendum's conclusion that construction air quality impacts would be less than significant.

i. Significant Unmitigated Reactive Organic Gases Emissions

The air quality and health risk impacts associated with the larger Project size result in Reactive Organic Gas ("ROG") emissions which exceed the Bay Area Air Quality Management District ("BAAQMD") threshold of 54 pounds per day ("lbs/day"). SWAPE calculated that the Project would result in ROG emissions of 71.55 lbs/day.³⁵ The changes to the Project result in a 2,285% increase in ROG emissions, far and away exceeding the BAAQMD significance threshold. ROG air pollution and health risk impacts remain significant but neither the Addendum nor the 2018 IS/ND adequately mitigate ROG emissions to less than significant levels. SWAPE concludes that the SCAs likewise fail to mitigate ROG emissions to less than significant levels because they do not target reductions in volatile organic compounds ("VOCs") or ROGs.

³⁵ SWAPE Comments, p. 3.
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SWAPE's comments provide substantial evidence demonstrating that additional mitigation measures are required to reduce significant construction VOC and ROG emissions. SWAPE recommends the following feasible mitigation measures:³⁶

- Require the use of super compliant, low-VOC paints less than 10 g/L during the architectural coating construction phase.
- Further mitigation used by other land use development projects to address VOC/ROG emissions is as follows:³⁷
- Recycle leftover paint. Take any leftover paint to a household hazardous waste center; do not mix leftover water-based and oil-based paints.
- Keep lids closed on all paint containers when not in use to prevent VOC emissions and excessive odors.
- For water-based paints, clean up with water only. Whenever possible, do not rinse the cleanup water down the drain or pour it directly into the ground or the storm drain.
- Use compliant low-VOC cleaning solvents to clean paint application equipment.
- Keep all paint- and solvent-laden rags in sealed containers to prevent VOC emissions.
- Contractors shall construct/build with materials that do not require painting and use pre-painted construction materials to the extent practicable.
- Use high-pressure/low-volume paint applicators with a minimum transfer efficiency of at least 50 percent or other application techniques with equivalent or higher transfer efficiency.
- If paints and coatings with VOC content of 0 grams/liter to less than 10 grams/liter cannot be utilized, the developer shall avoid application of architectural coatings during the peak smog season: July, August, and September.
- Natural materials such as solid wood products (e.g., hard wood flooring and wood paneling), natural stone (e.g., granite and marble), ceramic tile, and glass.
- Composite wood products that comply with the California Air Resources Board's ("CARB") Airborne Toxic Control Measure for formaldehyde.

³⁶ "Reducing occupant exposure to volatile organic compounds (VOCs) from indoor sources: Guidelines for building occupants." California Department of Public Health, July 1996, *available at*: https://www.cdph.ca.gov/Programs/CCDC/DEOD/EBL/IAQ/CDPH%20Document%20Library/reducing_occupant_exposure_vocs_guidelines_ADA.pdf.

³⁷ "Banning Commerce Center Project." Kimley-Horn and Associates, Inc., June 2024, *available at*: <https://ceqanet.opr.ca.gov/2022090102/2>; Draft Environmental Impact Report, p. 1-7.

- Interior paints, coatings, adhesives, and sealants that comply with South Coast AQMD Rule 1168 or CARB's Suggested Control Measure for Architectural Coatings.
- Flooring materials that are certified as low emitting under the California Department of Public Health (CDPH) Standard Method v1.2 or equivalent.
- Steel cabinets instead of plywood; prefinished, nailed-down hardwood flooring instead of carpeting; and masonry flooring such as ceramic tile or marble instead of carpeting.
- Sealer on the surface of spray-on fireproofing to reduce adsorption of VOCs using a low-VOC sealer, if necessary.³⁸

These measures are feasible and would further reduce significant VOC and ROG emissions associated with Project construction above and beyond any reductions achieved by the City's SCAs, but were not adopted in the addendum or in the Conditions of Approval.

Pursuant to CEQA Guidelines Section 15162(a)(3)(D), a subsequent EIR must be prepared if new information of substantial importance shows that mitigation would substantially reduce a significant project impact but the project proponents decline to adopt the mitigation measures. SWAPE's comments provide substantial evidence demonstrating that additional mitigation measures would substantially reduce the Project's ROG and VOC emissions, which exceed BAAQMD thresholds, but these measures were not adopted. These measures must be included in a subsequent EIR before the Project can lawfully be approved.

ii. Omission of Emissions from Trucking Modular Units

The Addendum fails to analyze the Project's new and more severe construction impacts associated with trucking modular housing units as part of construction of the Project. The Addendum provides that "Modular construction may be employed for the modified project, but site preparation and air quality would be substantially the same as for traditional construction."³⁹ Trucking large modular components may result in more severe construction air quality, health risk, and traffic impacts than analyzed in the 2018 IS/ND. The modular units may be trucked hundreds of miles from out of state, which would substantially increase the Project's air pollution emissions. The addendum fails to analyze this change in the Project and the potentially more severe air quality, health risk, and traffic from that analyzed in the 2018 IS/ND.

³⁸ SWAPE Comments p. 3.

³⁹ Addendum, p. 15.

iii. Unsupported Construction Duration

The Addendum fails to analyze the full scope of Project construction emissions for the entire duration of the construction period. The Addendum states that Project construction will last 18 months.⁴⁰ The Addendum states that the original project included a construction period of 18 months as well. But, the 2018 IS/ND provided that the construction period will last 20 months. Thus, it is particularly troubling, that the Addendum’s air quality analysis relies on a 21-month construction period, resulting in an underestimation of the Project’s construction emissions. SWAPE explains that the Addendum’s use of an elongated construction duration results in an underestimation of the daily emissions resultant from construction equipment onsite by spreading the emissions over a longer period of time, thus artificially reducing the daily emissions totals which are used to assess exceedances of BAAQMD construction thresholds.⁴¹ SWAPE concludes that the analysis improperly relies on the assumption that there will be less construction activities required per day and, consequently, less pollutants emitted per day.⁴² The Addendum’s air quality construction emissions calculations therefore erroneously underestimate the Project’s daily emissions and are not supported by substantial evidence. The City must prepare a legally adequate EIR which accurately analyzes the Project’s daily construction emissions with an accurate construction schedule guiding the analysis.

iv. Exclusion of Demolition Emissions

The Addendum further fails as an informational document under CEQA for failing to model the emissions associated with demolition of the existing building on the Project site. SWAPE explains that the Addendum’s air quality analysis fails altogether to analyze the demolition phase of construction and inputted zeros into the calculations for square feet being demolished, despite the Addendum elsewhere describing demolition as one of the Project’s construction phases.

See Addendum Appendix A, pp. 72:

Phase Name	Material Imported (Ton of Debris)	Material Exported (Ton of Debris)	Acres Graded (acres)	Material Demolished (sq. ft.)
Site Preparation	0.00	0.00	20.5	0.00
Grading	0.00	0.00	15.8	0.00
Paving	0.00	0.00	0.00	0.00

⁴⁰ Addendum, p. 18.

⁴¹ SWAPE Comments, p. 2.

⁴² SWAPE Comments, p. 2.

As set forth above, the Addendum describes demolition emissions as “0.00” (zero). This is not an accurate assessment of the required demolition of the existing gas station, two gas pump islands, and related infrastructure.⁴³ Demolition of existing infrastructure will obviously exceed zero square feet of demolition activity, counter to the Addendum’s unsupported calculations. SWAPE concludes that the failure to include the demolition emissions presents a significant issue, because by failing to include any amount of required demolition, the model underestimates the emissions associated with fugitive dust, debris removal, as well as exhaust from hauling trucks traveling to and from the site, which may be significant and remain unmitigated. SWAPE further explains that these impacts are not sufficiently mitigated by measures proposed in the Addendum or the 2018 IS/ND and are not sufficiently mitigated by the City’s SCAs.

In addition to the Addendum containing obvious errors, these impacts are more severe than analyzed in the 2018 IS/ND given the Project’s increased size, and must be analyzed in a subsequent or supplemental EIR.

C. Substantial Changes in the Project Results in Significant Unmitigated Hazards Impacts

Due to substantial changes in the Project, the Project’s hazardous contamination impacts may be more severe than analyzed in the 2018 IS/ND because the Project is increasing the intensity of the development and bringing more people to the area affected by the hazardous contamination. Cleanup of the Project site will result in new significant environmental effects from hazards, air quality, traffic, and cumulative impacts.

The Project site is contaminated with hazardous contaminants from its historical use as a service station operated by Atlantic Richfield Company (ARCO).⁴⁴ ARCO later became an affiliate of BP and the site was operated as BP Station No. 00414 until it was sold to Mr. Shahzada Khan on February 25, 2004.⁴⁵ The Project site is listed on the State Water Resources Control Board’s Geotracker database as Site T0600100094. The site is therefore on a Cortese List per Section 65962.5 of the Government Code. The Project site is currently an operational gas

⁴³ SWAPE Comments, p. 2.

⁴⁴ Atlantic Richfield Company, Case Closure Summary Report Former British Petroleum Station #00414 City of Berkeley case #27540. 3000 Shattuck Avenue Berkeley, California (June 9, 2010), https://documents.geotracker.waterboards.ca.gov/esi/uploads/geo_report/8836282312/T0600100094.PDF p. 2/16 (hereinafter “Case Closure Summary Report”).

⁴⁵ *Id.*

station and smog check location operated by Berkeley Gas & Smog. The Project site contained three underground storage tanks (USTs) that contained gasoline, and one waste oil UST.⁴⁶

The Addendum tiers from the 2018 IS/ND which states:

The site is included on the list of hazardous materials sites compiled pursuant to Government Code 65962.5 (Cortese List) as “closed” cases. As described in the Environmental Setting, the RWQCB issued a case closure letter for the clean-up case in September 2014, concluding that the current plume is restricted to the site and does not present a current or potential risk to human health or the environment. Therefore, the project would not create a significant hazard to the public or the environment and the impact would be less than significant.⁴⁷

The 2018 IS/ND relies on the misleading statement that the cleanup case is “closed.”⁴⁸ The Addendum then relies on the same misleading proposition. The Addendum states that “[t]here are two closed State Water Quality Control Board GeoTracker investigations on the project site (T0600100094 [closed 2013] and T10000004483 [closed 2014]).”⁴⁹

These statements are misleading because the site was closed to commercial/industrial screening levels, “based on the assumption that land use at the site will remain unchanged” – not to residential levels as required for a residential project.⁵⁰ Here, the site is being converted from commercial/industrial to residential use. Residents will live on the site, their children may play on the grounds, but the site was cleaned only to commercial/industrial screening levels. The modified Project will also result in more residents living on the contaminated site than analyzed in the 2018 IS/ND, thus exacerbating the public health risk to future residents beyond what was considered in the IS/ND. Exposure to the contamination that remains onsite may result in significant health risk impacts to the residents and the community that are more severe than previously analyzed.

⁴⁶ *Id.*

⁴⁷ IS, https://www.dropbox.com/s/19ieh5spqget2qb/IS-ND%20with%20appendices_3000%20Shattuck.pdf?dl=0, p. 23.

⁴⁸ *Id.*

⁴⁹ Addendum p. 22.

⁵⁰

Moreover, the Addendum includes the Case Closure Summary Report, which admits that “[s]oil vapor samples have not been collected at the site.”⁵¹ The Case Closure Summary was required to include “Cumulative data tables for all soil, groundwater samples, including grab samples, and soil vapor *must* be included.”⁵² ***Data on soil vapor samples and cumulative data on the potential for soil vapor intrusion was not included in the Case Closure Summary, the IS/ND, or the Addendum, and is still not available for public review and scrutiny – two years after this Appeal was filed.***

At the time of the site’s closure in 2010, “[a] station building [was] present at the site and the entire site [was] paved, with no exposed soil present at the ground surface.”⁵³ Project construction here, will disrupt and expose soil, potentially exposing dangerous and previously untested levels of soil vapor. At the time of the closure, the “potential for soil vapor intrusion was evaluated by comparing current groundwater concentrations to groundwater ESLs...for the protection of the vapor intrusion pathway in a ***commercial setting***.”⁵⁴

The Project’s soil vapor and potential health risk impacts have not been analyzed for a residential setting and may pose a significant risk to residents of the Project site. The Project’s increased resident population may be more at risk of exposure to the Project’s hazardous contamination. This impact must be analyzed in a subsequent EIR in accordance with CEQA.

D. A Subsequent EIR Must be Prepared Because Substantial Changes in The Project Result in Significant Unmitigated Construction Noise Impacts

CEQA Guidelines Section 15162(a)(1) requires that a subsequent EIR be prepared when substantial changes in a project will require major revisions of a previous ND due to the involvement of significant environmental effects or a substantial increase in the severity of a previously identified effect. As demonstrated herein and in the expert consultant reports attached hereto, the Project’s noise impacts associated with the increased average daily trips will be more severe than analyzed in the 2018 IS/ND due to the Project’s increase in trips from 590 trips to 804 average daily trips.⁵⁵

⁵¹ Case Closure Summary Report, p. 10/16.

⁵² *Id.* at pdf 83 of 86.

⁵³ Case Closure Summary Report, p. 10/16.

⁵⁴ *Id.*

⁵⁵ Decker Comments, p. 1.

Unlike the original project, this Project would have more vehicle trips than the existing use.⁵⁶ The existing use generates approximately 590 average daily trips, while this Project would generate approximately 804 average daily trips.⁵⁷ Substantial evidence in Mr. Decker's comments demonstrates that the Project's modification to increase average daily trips may result in more severe traffic noise impacts than analyzed in the 2018 IS/ND.⁵⁸ Increased traffic volumes results in increased levels of traffic noise⁵⁹ which may adversely affect nearby sensitive receptors. The Project's increased average daily traffic trips results in traffic noise impacts more severe than those analyzed in the 2018 IS/ND because the number of trips increased by over 200 daily trips or 36 percent.⁶⁰ The City's reliance on an addendum is therefore improper and a subsequent EIR must be prepared.⁶¹

Moreover, the increase in the size and height of the Project results in more severe construction noise impacts.⁶² Mr. Decker estimated that construction noise associated with development of the Project taller and more intensive than the Project analyzed in the 2018 IS/ND results in exceedance of the City's Commercial Zoning District noise ordinance, pursuant to Berkeley Municipal Code Section 13.40.050 Table 13.40-1. Mr. Decker's calculations of the noise impacts of the Project's construction equipment demonstrates an exceedance of the noise ordinance during regular construction and business hours. Therefore, the SCA's in the original project providing that construction would only occur from 8:00 am to 6:00 pm would not adequately mitigate impacts because construction noise will exceed allowable levels during these hours.⁶³ Moreover, Mr. Decker explains that the Addendum fails to include calculations of existing ambient noise levels at the Project site, and fails to disclose the increases in noise levels at the Project site that will occur during Project construction. Without this information, the City lacks substantial evidence to conclude that the Project's construction noise impacts would be less than significant.⁶⁴

⁵⁶ Addendum, p. 22.

⁵⁷ *Id.*

⁵⁸ Decker Comments, p. 1.

⁵⁹ *Id.*

⁶⁰ Addendum, p. 22.

⁶¹ Decker Comments, p. 1.

⁶² Decker Comments, p. 1.

⁶³ Addendum, p. 22.

⁶⁴ *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732-733; *Berkeley Jets*, 91 Cal.App.4th at 13-81-1382 (CEQA noise analysis unsupported where there had been no "meaningful analysis of existing ambient noise levels").

Table 1: Typical Construction Noise Levels¹

Equipment	Berkeley Exterior Noise Limit Table 13.40-1	Sound Level at 50 Feet (dBA)	Usage Factor (%)	Hourly Average Noise Level (dBA) @ 50 Feet per Usage Factor	Hourly Average Noise Level (dBA) @ 25 Feet per Usage Factor
Backhoe	65	80	40	76	82
Dozer	65	85	40	81	87
Grader	65	85	40	81	87
Excavator	65	85	40	81	87
Forklift	65	83	40	79	85
Jackhammer	65	85	20	78	84
Roller	65	85	20	78	84
Concrete Mixer	65	85	40	81	87
Concrete Pump	65	82	20	75	81
Tower Crane	65	85	16	77	83
Generator	65	82	50	79	85
Air Compressor	65	81	40	77	83
Saw	65	76	40	72	78

65

Substantial evidence demonstrates that the Project results in significant construction noise impacts to nearby sensitive receptors due to the Project’s increased size. The Project site is designated as Avenue Commercial in the City’s General Plan and is located in the South Area Commercial (C-SA) zoning district. Therefore, the Project is subject to Berkeley Municipal Code Noise Limits of 65 dBA from 7:00am – 10:00 pm and 60 dBA from 10:00 pm – 7:00 am.⁶⁶ Mr. Decker explains that the Project exceeds the noise limit during the proposed construction times of 8:00 – 6:00 pm,⁶⁷ resulting in a violation of the BMC and significant noise impacts.

Mr. Decker’s comments provide substantial evidence that the Project’s changes from a low-rise building to a mid-rise building come with the potential for additional noise impacts.⁶⁸ The Addendum asserts that limited construction hours

⁶⁵ Decker Comments, p. 5.

⁶⁶ Berkeley Municipal Code § 13.40.050 Table 13.40-1.

⁶⁷ Decker Comments, p. 5.

⁶⁸ *Id.*

would reduce construction noise to less than significant levels, but this is not supported. Mr. Decker's comments demonstrate that that construction equipment used onsite will result in noise impacts during construction which exceed construction noise limits set in the BMC, and that the City failed to disclose the increases over ambient noise levels during Project construction. These impacts must be analyzed in a subsequent EIR in accordance with CEQA.

The Project's construction noise impacts are more severe than previously analyzed and are not adequately mitigated by the City's SCAs. The Addendum relies on the conclusion that because "construction would only occur from 8:00 am to 6:00 pm Monday through Friday, and between 9:00 am and noon on Saturday, pursuant to conditions of approval for the original project", construction noise impacts would be less than significant.⁶⁹ This conclusion is not supported by substantial evidence because the Project is subject to SCA 39 which provides that "Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday."⁷⁰ The Project would have more construction hours than previously analyzed, resulting in more severe construction noise impacts to sensitive receptors than that analyzed in the 2018 IS/ND. The SCAs do not sufficiently mitigate construction noise impacts, as demonstrated above and in Mr. Decker's expert consultant report attached hereto. The City must prepare a subsequent or supplemental EIR to analyze and mitigate the Project's increased construction noise impacts before the Project can lawfully be approved.

1. Existing Construction Noise SCAs Are Non-Binding and Unenforceable

SCA 20 provides that the applicant shall develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above [7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday], as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:

⁶⁹ Addendum, p. 23.

⁷⁰ 3000 Shattuck Notice of Determination, Attachment 1: Findings & Conditions (May 11, 2023) p. 14 of 22.

- A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
- B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
- C. Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
- D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
- E. Prohibit unnecessary idling of internal combustion engines.
- F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
- G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
- H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.⁷¹

While these measures would reduce some of the Project’s construction impacts, they are not binding on the Applicant. The language in the SCA that “[t]he noise reduction program *should* include, but shall not be limited to, the following available controls to reduce construction noise levels *as low as practical*” and includes numerous carveouts to make the measures unenforceable through the inclusion of the term “where feasible.”⁷² “Where feasible” is not enforceable or binding. Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments.⁷³ Failure to include enforceable mitigation measures is considered a failure to proceed in the manner required by CEQA.⁷⁴ Here, the Project’s construction of a Project significantly larger than the

⁷¹ 3000 Shattuck Notice of Determination, Attachment 1: Findings & Conditions (May 11, 2023) p. 9 of 22 (emphasis added).

⁷² *Id.*

⁷³ *Id.* at §15126.4(a)(2).

⁷⁴ *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 672. 6154-014j

project contemplated in the 2018 IS/ND results in more severe noise impacts which are not adequately mitigated by measures in the 2018 IS/ND or the Project's Conditions of Approval.

E. The Addendum Impermissibly Defers Analysis of the Project's Operational Noise Impacts Until After Project Approval

The Project results in operational noise impacts more severe than those analyzed in the 2018 IS/ND. The Addendum includes substantial changes to the Project description, but its noise analysis does not reflect these changes. Mr. Decker's comments demonstrate that the record lacks substantial evidence, including lacking any review, analysis, or evidence documenting projected equipment noise to justify the Addendum's purported conclusion that Project equipment noise would be less than significant. By contrast, Mr. Decker provides substantial evidence demonstrating that operational noise impacts are significant and more severe than previously analyzed.⁷⁵

Pursuant to SCA 30, the Applicant is required to submit plans that show the location, type, and design of proposed heating, ventilation, and cooling ("HVAC") equipment.⁷⁶ The SCA requires the applicant to provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050.⁷⁷ The City's Planning and Development Department shall then review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.⁷⁸ The SCA contravenes CEQA's requirement that agencies must analyze environmental impacts prior to Project approval and at the earliest feasible stage in the planning process.⁷⁹ HVAC noise impacts are reasonably foreseeable and quantifiable now. To analyze these impacts in a later report following project approval is impermissibly deferred analysis in violation of CEQA.

The failure to analyze the Project's HVAC noise in comparison with City noise standards, is a dereliction of the City's duty to analyze the Project's environmental impacts and constitutes impermissibly deferred analysis in violation

⁷⁵ Decker Comments, p. 3.

⁷⁶ 3000 Shattuck Notice of Determination, Attachment 1: Findings & Conditions (May 11, 2023) p. 12 of 22.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Sundstrom* (1998) 202 Cal.App.3d 296, 305.
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of CEQA.⁸⁰ “By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process.”⁸¹

Absent quantified analysis or enforceable mitigation in the Addendum, Mr. Decker’s comments demonstrate that the Project’s operational noise impacts from HVAC, rooftop solar energy system, inverters, and battery storage will be significant and are more severe than previously analyzed.⁸² Mr. Decker further explains that unmitigated building equipment noise may exceed City Noise Ordinance standards unless appropriate noise-reduction features are identified and incorporated into a subsequent EIR.⁸³ And, as with construction noise impacts, the Addendum fails to disclose the increase over ambient noise levels that would occur during Project operation, in violation of CEQA. Substantial evidence in Mr. Decker’s comments demonstrate that operational noise impacts of the Project will result in significant impacts that more severe than previously analyzed due to the Project’s increased height, intensity, and increased residential units.

F. The Addendum Impermissibly Defers Analysis of the Project’s Vibration Impacts Until After Project Approval

The Project’s changes also result in more severe and significant construction vibration impacts to nearby sensitive receptors than analyzed in the IS/ND. Mr. Decker’s comments provide substantial evidence that the Project’s use of demolition and vibratory compaction equipment has the potential to generate excessive and disturbing vibration at sensitive receptors near the project boundary.⁸⁴ Project construction equipment may generate vibration in excess of limits set in the BMC, and will increase noise levels over existing ambient levels to a greater degree than the original Project. These significant impacts must be analyzed in an EIR before the Project can lawfully be approved.

⁸⁰ CEQA requires disclosure of the severity of a project’s impacts and the probability of their occurrence *before* a project can be approved. 14 CCR §§ 15143, 15162.2(a); *Cal. Build. Indust. Ass’n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90 (“*CBLA v. BAAQMD*”) (disturbance of toxic soil contamination at project site is potentially significant impact requiring CEQA review and mitigation); *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal. App. 4th 48, 82; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1370-71; CEQA Guidelines, Appendix G.

⁸¹ *Sundstrom* (1998) 202 Cal.App.3d 296, 305.

⁸² Decker Comments, p. 3.

⁸³ Decker Comments, p. 3.

⁸⁴ Decker Comments, p. 5.

The City's reliance on SCA 21 related to Damage Due to Construction Vibration, also constitutes impermissibly deferred analysis and mitigation.⁸⁵ SCA 21 requires⁸⁶:

The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall take into account project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake an existing conditions study (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage. This study shall:

- establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and
- include written descriptions and photographs.

The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage

⁸⁵ 3000 Shattuck Notice of Determination, Attachment 1: Findings & Conditions (May 11, 2023) p. 10 of 22.

⁸⁶ *Id.*
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shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.⁸⁷

The City's failure to analyze the Project's vibration impacts in the Addendum constitutes impermissibly deferred analysis in violation of CEQA.⁸⁸ "By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process."⁸⁹ The City must prepare a subsequent or supplemental EIR to adequately analyze and mitigate the Project's significant operational noise impacts which are more severe than analyzed in the 2018 IS/ND and are not adequately mitigated by existing SCAs or mitigation measures.

G. Substantial Changes in the Size of the Project Result in Significant Unmitigated Cumulative Impacts

The cumulative impacts associated with concurrent development in the neighborhood did not exist and were not analyzed at the time the 2018 IS/ND was prepared. These impacts constitute new significant environmental effects requiring preparation of a subsequent or supplemental EIR.

The California Supreme Court held in *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.*, that if "the project modification introduces previously unstudied and potentially significant environmental effects that cannot be avoided or mitigated through further revisions to the project plans, then the appropriate environmental document would no longer be a negative declaration at all, but an EIR."⁹⁰ Thus, "an agency [must] prepare an EIR whenever there is substantial evidence that the changes to a project for which a negative declaration was previously approved might have a significant environmental impact not previously considered in connection with the project as

⁸⁷ 3000 Shattuck Notice of Determination, Attachment 1: Findings & Conditions (May 11, 2023) p. 10 of 22.

⁸⁸ CEQA requires disclosure of the severity of a project's impacts and the probability of their occurrence *before* a project can be approved. 14 CCR §§ 15143, 15162.2(a); *Cal. Build. Indust. Ass'n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90 ("*CBIA v. BAAQMD*") (disturbance of toxic soil contamination at project site is potentially significant impact requiring CEQA review and mitigation); *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal. App. 4th 48, 82; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* ("*Berkeley Jets*") (2001) 91 Cal.App.4th 1344, 1370-71; CEQA Guidelines, Appendix G.

⁸⁹ *Sundstrom* (1998) 202 Cal.App.3d 296, 305.

⁹⁰ *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 958.
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originally approved, and courts must enforce that standard.”⁹¹ The court held that the Community College District improperly prepared an addendum to an MND, because there was substantial evidence to support a fair argument that the project changes may result in a significant effect on the environment.⁹² The court found that substantial evidence supported a fair argument that the aesthetic impacts of replacing the garden with a parking lot were significant, and the college’s choice to rely on an addendum violated CEQA. The court found that the change in the Project as detailed in the Addendum was significant enough to require additional environmental review, and that an Addendum was not the appropriate CEQA document.

Similarly here, the Project’s changes, including tripling the number of housing units, almost tripling the square footage, and doubling of the building height will result insubstantially increased air quality, public health, hazards impacts, and cumulative impacts that are new and more severe than previously analyzed such that an Addendum is inappropriate and a subsequent EIR must be prepared. The City Council must uphold this Appeal and remand the Project to Staff to prepare a legally adequate subsequent or supplemental EIR for the Project, because substantial evidence supports a fair argument that the changes in the Project require major revisions to the 2018 IS/ND due to new significant environmental effects from noise, hazards, air quality, and cumulative impacts.

CEQA requires agencies to analyze whether a project has impacts that are individually limited, but cumulatively considerable.⁹³ Cumulatively considerable means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects). Cumulative impacts are defined as “two or more individual effects, which, when considered together, are considerable or which compound or increase other environmental impacts.”⁹⁴ Cumulative impacts associated with construction and operation of the Project constitute new impacts pursuant to Section 15355 because recent development in the Project area was not previously analyzed in the 2018 IS/ND and was not contemplated at the time the 2018 IS/ND was released. The Addendum fails to analyze these new cumulative impacts associated with the Project.

⁹¹ *Id.* at p. 959.

⁹² *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2022) 11 Cal.App.5th 596.

⁹³ CEQA Guidelines § 15355(b); *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 905.

⁹⁴ CEQA Guidelines § 15355.

The ZAB approved the Project in violation of CEQA because the Addendum failed to address these new projects and failed to include any analysis supported by substantial evidence to conclude that the Project does not result in new or more severe cumulatively considerable impacts than the 2018 project. In fact, the Addendum only mentioned cumulative impacts for transportation and air quality impacts, but dismissed all other potentially new and significant cumulative impacts outright, without providing substantial evidence to support its conclusions.⁹⁵

The 2018 IS/ND concluded that, because the Project is “an infill location,” cumulative impacts are less than significant for all resource areas.⁹⁶ The opposite is true. It is precisely because this Project is an infill project located in an area of the City that is currently undergoing rigorous development, that a cumulative analysis of concurrent construction impacts is so critical.

The Project may be constructed concurrently with numerous developments in the Project vicinity which are also on the Cortese List per Section 65962.5 of the Government Code and require remediation prior to construction. Within 1000 feet of the Project site, there are three Cortese listed sites, including: 1) 2001 Ashby Redevelopment;⁹⁷ 2) 2920 Shattuck Avenue;⁹⁸ and 3) 2701 Shattuck Avenue⁹⁹, all of which are likely to require removal and remediation of contaminated soil as part of project construction, which would result in extended cumulative construction impacts. The concurrent construction of three large Cortese listed projects within 1000 feet may result in potentially significant cumulative hazards and construction impacts that must be analyzed in an EIR before the Project can be approved.

The 2001 Ashby Redevelopment, located within 600 feet of the Project site, will require “remediation and/or off-Site disposal of impacted soil at a permitted disposal facility; extraction, treatment, and discharge of groundwater to the sanitary sewer; and installation of vapor mitigation engineering controls to control potential vapor intrusion to indoor air of the proposed development and migration along new utility corridors.”¹⁰⁰ The remediation associated with construction of the

⁹⁵ Addendum p. 13; 28.

⁹⁶ 2018 IS/ND, p. 38.

⁹⁷ California State Water Resources Control Board Geotracker, 2001 Ashby Redevelopment (T10000014891), https://geotracker.waterboards.ca.gov/case_summary?global_id=T10000014891.

⁹⁸ California State Water Resources Control Board Geotracker, ARCO # 00414 (T0600100094), https://geotracker.waterboards.ca.gov/profile_report?global_id=T0600100094.

⁹⁹ California State Water Resources Control Board Geotracker, 2721 Shattuck Ave, Bekins Van Storage (T0600100167), https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0600100167.

¹⁰⁰ California State Water Resources Control Board Geotracker, 2001 Ashby Redevelopment (T10000014891), https://geotracker.waterboards.ca.gov/case_summary?global_id=T10000014891. 6154-014j

2920 Shattuck Project may include removal of on-site hazardous materials which may exceed 55 gallons of liquids, 500 pounds of solids, or 200 cubic feet of compressed gases.¹⁰¹ Based on evidence in the record demonstrating that contamination levels at the 3000 Shattuck site exceed residential standards, it is likely that that the 3000 Shattuck Project will also require remediation and/or off-site disposal of contaminated soil and installation of vapor mitigation engineering controls to control potential vapor intrusion to indoor air of the proposed development and migration along new utility corridors.

The concurrent remediation and removal of contaminated soil on both project sites within such close proximity may result in potentially significant cumulative hazards, air quality, and traffic impacts which were not analyzed or mitigated in the 2018 IS/ND nor the Addendum.

Project construction may also occur concurrently with numerous proposed developments within 1000 feet including: 2001 Ashby (within 600 feet), 2701 Shattuck (within 1000 feet), 2920 Shattuck (within 500 feet), 2902 Adeline St (within 1000 feet), 3031 Adeline St. (within 1000 feet).¹⁰²

Here, the Project is surrounded by existing sources of pollution and is proposed to be constructed concurrently with numerous other new Berkeley high rise developments in the direct vicinity of the Project site. Concurrent development within a mile of the 2920 Project include: 1) 2440 Shattuck Ave.; 2) 2650 Telegraph Ave.; 3) 2800 Telegraph Ave.; and 4) 3031 Telegraph Ave. The cumulative impacts from concurrent construction, including but not limited to air pollution, GHG emissions, toxic air contaminants, noise, and vibration impacts may result in cumulatively significant impacts to the surrounding community which must be analyzed in a subsequent EIR in accordance with CEQA.

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

The ZAB may not approve a Use Permit under Berkeley Municipal Code Section 23.406.040 unless it finds that the proposed project:

¹⁰¹ State Water Resources Control Board, Unified Program Consolidated Form Facility Information, FA0000211, The Model Garage Inc, 2920 Shattuck Ave Berkeley, CA 94705, <https://www.dropbox.com/s/s484da7bkuism3i/Shattuck%20Avenue%202920%20Model%202013%2004%2030%20RPT%20HMBP%20Redacted.pdf?dl=0>.

¹⁰² Google Maps, 2024.
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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.¹⁰³

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.”¹⁰⁴ 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.¹⁰⁵ The ZAB lacked the evidence necessary to approve the requested Use Permit for the Project because substantial evidence demonstrates that the Project will be detrimental to the general welfare due to both the unmitigated environmental and public health impacts discussed herein, and the Project’s failure to demonstrate compliance with the General Plan’s workforce standards.

The Project’s changes, including the tripling the number of housing units, almost tripling the square footage, and doubling of the building height will result insubstantially increased air quality, public health, hazards impacts, and cumulative impacts that are new and more severe than previously analyzed such that an Addendum is inappropriate and a subsequent EIR must be prepared.

The public health and safety impacts that result from the increased size and scope of the Project results in more severe hazardous contamination impacts, air quality, traffic, and noise and vibration and may 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” in violation of the Municipal Code.¹⁰⁶

¹⁰³ BMC § 23.406.040.

¹⁰⁴ BMC § 22.20.020(G) (emphasis added).

¹⁰⁵ *Id.*

¹⁰⁶ BMC § 23.406.040

With regard to workforce, pursuant to Municipal Code Section 22.20.020, the Project may result in detrimental impacts to the general welfare for failure to provide employment training, placement facilities, and amenities.¹⁰⁷ The Project Applicant has not made a commitment to ensure the Project is built with a local skilled and trained workforce, or that the Project will provide apprenticeship training opportunities or healthcare benefits or other workforce benefits or amenities for City of Berkeley or East Bay residents. Without committing to these actions, the Project may be built with low-wage, out-of-area 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 who may not have the opportunity to build much-needed housing in their own community.

On May 2, 2023, the City adopted a new ordinance titled Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (“HARD HATS”) Ordinance.¹⁰⁸ The Ordinance was enacted to improve the recruitment, training, and retention of skilled construction workers, ensuring larger projects within the City are awarded to contractors that participate in high quality, industry proven apprenticeship programs, and that apprentices working under such contracts are competently trained.¹⁰⁹

The HARD HATS ordinance does not apply to the Project because the Project application was filed before the Ordinance went into effect. However, the evidence and findings which supported the City's adoption of the Ordinance demonstrate that projects which do not provide workforce benefits may be detrimental to the general welfare of the City and its residents.¹¹⁰ Accordingly, the ZAB recommended (but did not require) that the Applicant comply with the Ordinance.

¹⁰⁷ BMC § 22.20.020(G).

¹⁰⁸ City of Berkeley, Revised Agenda Material May 2, 2023, Item #1, Adding BMC Chapter 13.107, Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (HARD HATS) Ordinance, <https://berkeleyca.gov/sites/default/files/documents/Supp%203%20Item%201%20HARD%20HATS%20Ordinance.pdf>.

¹⁰⁹ *Id.*

¹¹⁰ 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”).

Two years later, there is no evidence in the record that the Applicant has considered or committed to complying with HARD HATS or with any General Plan workforce standards. If the Project is constructed without workforce benefits, it would be detrimental to the general welfare of the City and its residents for the reasons described in the findings for the HARD HATS Ordinance.

BMC 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.”¹¹¹ 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.¹¹² Pursuant to Municipal Code Section 22.20.020, the Project’s adverse impacts to the general welfare include failure to provide employment training, placement facilities, and amenities.¹¹³

ZAB had discretion to approve the Use Permit for demolition of a non-residential building or structure only if ZAB finds that “demolition will not be materially detrimental to the commercial needs and public interest of any affected Hi neighborhood or the City of Berkeley”¹¹⁴ Here, ZAB lacked substantial evidence to make the necessary findings that demolition of the existing structure and construction of the Project is in the public interest absent mitigation for the Project’s outstanding significant effects and absent community and workforce benefits to promote the general welfare.

The City has found that housing projects, like this one, 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.¹¹⁵

¹¹¹ BMC § 22.20.020(G) (emphasis added).

¹¹² *Id.*

¹¹³ BMC § 22.20.020(G).

¹¹⁴ *Id.* at § 23.326.070(D)(1).

¹¹⁵ 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: 6154-014j

BMC Section 22.104.030 provides that the “Zoning Ordinance establishes *minimum* requirements to promote the public health, safety, and general welfare.”¹¹⁶ 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.”¹¹⁷ It is therefore the responsibility of the City Council to promote the general welfare beyond the minimum required by law.

The City Council should ask the Applicant to voluntarily agree to include community benefits in the Project including local hire provisions and healthcare standards and benefits in order to promote the general welfare.

A. The Project May Be Detrimental to the General Welfare for Failing to Hire Locally

Absent a commitment from the Applicant to hire locally, the Project may be detrimental to the general welfare of Berkeley residents. The ZAB recommended that the Applicant hire locally in accordance with the HARDHATS Ordinance, but this is not binding and there is no evidence in the record that the Applicant has agreed to comply with the Ordinance.

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.¹¹⁸ 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.¹¹⁹

<https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-09-20%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf> (“HARD HATS Staff Report”).

¹¹⁶ BMC § 22.104.030.

¹¹⁷ *Id.* at § 2.09.020.

¹¹⁸ 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.

¹¹⁹ *Id.*

City Councilmembers at the September 20, 2022 HARD HATS hearing explained that there is a “shortage of qualified local construction workers” and that is one reason why it is hard to get housing built.¹²⁰ 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.”¹²¹ 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.”¹²² Mayor Arreguin noted that the “key to addressing the significant shortage of housing is addressing the shortage of a skilled and trained workforce.”¹²³ The Project does not meet this goal of addressing the housing shortage by utilizing local skilled and trained workers and may result in a detriment to the general welfare.

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. The City should request the Applicant commit to providing a local hire percentage of 30 percent as a community benefit for the Project.

B. The Project May Be Detrimental to the General Welfare for Failing to Provide Healthcare Expenditures to Its Construction Workforce

The Applicant has not committed to providing healthcare expenditures for the construction workers building the Project. This may result in a detriment to the general welfare of the City and its residents, including in particular, to its construction worker residents. In adopting the HARD HATS Ordinance, the Council found that health care security is vital for construction workers. If the Project does not provide, or have a prequalified contractor provide, healthcare expenditures for its construction workforces, it would leave the responsibility of providing for the health, safety, and welfare of the Project’s construction workforce on the workers themselves, or potentially on taxpayer-funded public assistance, thus externalizing the cost of construction. This would result in a detriment to the general welfare.

¹²⁰ Statement by Councilmember Hahn, Oakland City Council Hearing (September 20, 2022 6 PM).

¹²¹ *Id.*

¹²² *Id.*

¹²³ Statement by Mayor Arreguin, Oakland City Council Hearing (September 20, 2022 6 PM).

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.¹²⁴ 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.¹²⁵ In authorizing drafting of the HARD HATS Ordinance, the Council reiterated the importance of providing healthcare expenditures for 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."¹²⁶

The City Council should request the Applicant commit to complying with the provisions of the HARD HATS Ordinance which address healthcare expenditures for the construction workforce.¹²⁷

V. THE PROJECT IS NOT CONSISTENT WITH THE GENERAL PLAN

CEQA requires an agency to analyze whether a project conforms with the applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.¹²⁸ The Project fails to demonstrate consistency with General Plan economic and employment policies.¹²⁹

¹²⁴ HARD HATS Staff Report at 81.

¹²⁵ *Id.*

¹²⁶ *Id.* at 77.

¹²⁷ HARD HATS Ordinance Section 13.107.050 (Health Care Expenditures).

¹²⁸ CEQA Guidelines Appendix G, XI Land Use and Planning.

¹²⁹ The Addendum also fails as an informational document under CEQA for failing to analyze the Project's consistency with the General Plan; such inconsistencies constitute significant impacts under CEQA. *Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903 (where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment).

A. The Project May Be Inconsistent with the General Plan Economic Development & Employment Element

The record lacks substantial evidence demonstrating that the Project would be consistent with the General Plan Economic Development & Employment Element. Thus, the Project should not have been approved until consistency was demonstrated.¹³⁰

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.”¹³¹ 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.”¹³² There is no evidence in the record that the Project includes a commitment to provide construction jobs to Berkeley or East Bay residents, and the Applicant has not committed to contribute to any apprenticeship or other construction job training programs. 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.¹³³

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.”¹³⁴ The Project could support this goal by

¹³⁰ SB 330 requires conformance with applicable, objective general plan and zoning standards. Gov. Code § 65905.5. (a).

¹³¹ 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.

¹³² *Id.*

¹³³ Berkeley General Plan Economic Development and Employment Element, p. ED-5.

¹³⁴ City of Berkeley, Agenda and Staff Report, Berkeley City Council, Council Consent Item 14 Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (HARD HATS), <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-09-20%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf> (“HARD HATS Staff Report”) (Sept. 20, 2022) p. 7.

including community benefits such as local hire and healthcare and workforce benefits. Absent such benefits, the City lacks substantial evidence demonstrating compliance with Policy ED-1.

Moreover, the Applicant's decision to pay an in lieu fee to the City in place of meeting the City's on-site affordable unit recommendations fails to meet the City's onsite affordable housing goals, fails to demonstrate consistency with the General Plan's objective that development in the City should ensure an "adequate supply of decent housing," and may contribute to inconsistencies with the General Plan Housing Element (discussed below).¹³⁵ The City may allow the Applicant to pay a fee, in lieu of providing an adequate supply of affordable housing on the Project site.¹³⁶ However, the payment of in lieu fees defers the production of affordable housing to an indefinite future time. As discussed below, delaying construction of additional affordable units to the future may result in the City being unable to timely meet its Regional Housing Needs Allocation ("RHNA"). The City Council should ask the Applicant to consider adding additional on-site affordable units as a means of increasing compliance with the General Plan.

VI. THE PROJECT IS INCONSISTENT WITH THE CITY'S HOUSING ELEMENT

CEQA requires an agency to analyze whether a project conforms with the applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.¹³⁷ The Project fails to demonstrate consistency with General Plan Housing Element.¹³⁸

The Project proposes to construct a ten-story residential building containing 166 dwelling units (17 Very Low-Income unit).¹³⁹ The project is seeking a 50% Density Bonus by providing 15% of the base project units as affordable to very low-income households. The Developer stated in their application for the Project that,

¹³⁵ Berkeley General Plan Economic Development and Employment Element, p. ED-5.

¹³⁶ City of Berkeley Planning and Development, Zoning Project Application, 3000 Shattuck Ave. Berkeley CA 94705 (March 14, 2022), https://www.dropbox.com/s/n987ldxqb6pesmp/2022-03-29_APP_PCKT_3000%20Shattuck%20%281%29.pdf?dl=0.

¹³⁷ CEQA Guidelines Appendix G, XI Land Use and Planning.

¹³⁸ The Addendum also fails as an informational document under CEQA for failing to analyze the Project's consistency with the General Plan; such inconsistencies constitute significant impacts under CEQA. *Pocket Protectors*, 124 Cal.App.4th 903.

¹³⁹ Addendum p. 2.

in order to “comply with City of Berkeley Affordable Housing rental requirements, the project will also be providing additional Affordable Units and/or/or-in-combination-with providing an in-lieu Mitigation Fee per the City of Berkeley requirements.”¹⁴⁰ More affordable units must be provided for the Project to be consistent with the City’s Housing Element and state law.

The RHNA is the State-required process that seeks to ensure cities and counties plan for enough housing in their Housing Element cycle to accommodate all economic segments of the community.¹⁴¹ Accordingly, the Housing Element of the City’s General Plan identifies the City’s housing conditions and needs, evaluates the City’s ability to meet its RHNA, establishes the goals, objectives, and policies of the City’s housing strategy, and provides an array of programs to create mixed-income neighborhoods across the City.¹⁴² The Housing Element, which was amended on February 17, 2023, states that “the City has a remaining RHNA of 5,033 units (1,923 very low income; 852 low income; 1,227 moderate income; and 1,031 above moderate income units)... The City must identify adequate sites capacity for this remaining RHNA.”¹⁴³ Accordingly, Policy H-1 – Extremely Low, Very Low, Low and Moderate-Income Housing – provides: “Increase the number of housing units affordable to Berkeley residents with lower income levels.”¹⁴⁴ Because the City has not produced and is not expected to produce enough affordable housing to meet its RHNA, projects that do not contribute to the City’s RHNA are inconsistent with the City’s Housing Element, a primary goal of which is to meet the RHNA.

BMC Section 23.328.010 provides that residential housing projects constructing five or more dwelling units must include at least 20 percent of the total number of dwelling units within the project as inclusionary units. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees in-lieu of providing below-market rate units.¹⁴⁵

¹⁴⁰ City of Berkeley Planning and Development, Zoning Project Application, 3000 Shattuck Ave. Berkeley CA 94705 (March 14, 2022), https://www.dropbox.com/s/n987ldxqb6pesmp/2022-03-29_APP_PCKT_3000%20Shattuck%20%281%29.pdf?dl=0.

¹⁴¹ Cal. Gov. Code Section 65580 – 65589.9; see City of Berkeley, Adopted 2023-2031 Housing Element, available at https://berkeleyca.gov/sites/default/files/documents/Berkeley_2023-2031%20Housing%20Element_02-17-2023v2_0.pdf.

¹⁴²*Id.*

¹⁴³ City of Berkeley, Adopted 2023-2031 Housing Element, p 107.

¹⁴⁴ *Id.* at 15.

¹⁴⁵ Effective July 1, 2022, the fee is set at follows: Paid at Certificate of Occupancy: \$46,185 per rental unit; or Paid at building permit: \$43,185 per rental unit.
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However, the City has failed to meet its RHNA in previous cycles. Under the 5th RHNA Cycle from 2015-2023, Berkeley was required to plan for 2,959 units.¹⁴⁶ This includes 532 at very low income, 442 at low income, 584 at moderate income, and 1,401 at above moderate income. For the 6th RHNA Cycle from 2023-2031, Berkeley was required to plan for 8,934 units.¹⁴⁷ This includes 2,446 at very low income, 1,408 at low income, 1,416 at moderate income, and 3,664 at above moderate income.¹⁴⁸ The Housing Element states that 3,742 units have been built, or 126% of the target. However, the targets for affordable housing were missed, with 309 very low income (58%), 130 low income (29%), and 106 moderate income (18%) units completed. 3,197 units of above moderate, or market rate housing was built, which was 228% of the goal. Thus, the City already has adequate above moderate and market rate housing units to meet its RHNA requirements, but is short on production of affordable units.

Here, the Project fails to provide the City's required 20% affordable units on-site, contributing to the City's current shortage of affordable units, while at the same time taking a viable project site out of production for those additional affordable units. Although the Project will pay an in-lieu fee, the Project would not be consistent with the Housing Element because it places the burden on the City to identify alternate sites to construct affordable housing units in time to meet its RHNA requirements.¹⁴⁹

The Applicant's proposal to pay in lieu fees instead of providing 20% on-site affordable units for the 3000 Shattuck Project is not unique. The Project is one of at least three concurrent projects proposed by the Applicant, which similarly fail to contribute an adequate percentage of affordable units. The Applicant also proposes to construct the 2900-2920 Shattuck Avenue Project,¹⁵⁰ a ten-story residential building containing 221 dwelling units (22 Very Low-Income unit).¹⁵¹ The 2920 Shattuck Avenue project is seeking a 46.25% Density Bonus by providing only 14% of the base project units as affordable to very low-income households.¹⁵² The Applicant's 1598 University Project similarly proposes to pay an in lieu fee for the

¹⁴⁶ City of Berkeley, Adopted 2023-2031 Housing Element, pg. D-8.

¹⁴⁷ <https://berkeleyca.gov/construction-development/land-use-development/general-plan-and-area-plans/housing-element-update>.

¹⁴⁸ *Id.*

¹⁴⁹ City of Berkeley, Adopted 2023-2031 Housing Element, p. 107.

¹⁵⁰ Use Permit #ZP2022-0116 (APN: 053 159000501).

¹⁵¹ City of Berkeley, Zoning Project Application, 2920 Shattuck Ave. Berkeley CA 94705, APN 053 159000501, (Sept. 4, 2022), https://www.dropbox.com/s/528twax3fw4fw9p/2022-09-04_APP_PCKT_2920%20Shattuck.pdf?dl=0 ("Application Packet"), pdf pg. 2108 of 2143.

¹⁵² City of Berkeley, Zoning Project Application, 2920 Shattuck Ave. 6154-014j

affordable units required by the City in excess of the on-site affordable necessary to qualify for a density bonus. The Applicant's decision not to provide the recommended 20% of on-site affordable units for its pending projects contributes to a cumulative shortage of affordable units that the City Council should address in its consideration of this Appeal.

VII. CONCLUSION

For the reasons stated herein, we urge the City Council to uphold this Appeal, vacate the ZAB's approval of the Project, and remand the Project to Staff to prepare a revised environmental analysis in a subsequent EIR, as required by CEQA. The new analysis must identify and implement all feasible mitigation measures available to reduce the Project's potentially significant site-specific impacts to less than significant levels before the City reconsiders approving the Project.

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

KDF:ljl

EXHIBIT A

10 March 2025

Kelilah D. Federman

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**Subject: 3000 Shattuck, Berkeley, CA: Initial Study – Negative Declaration and Addendum
Acoustical Review and Comments
Salter Project #24-0503**

Dear Kelilah:

As requested, we reviewed the noise sections of the following primary documents related to the environmental impact review for the proposed 3000 Shattuck mixed-use project. We have the following comments on the Initial Study – Negative Declaration (IS-ND) and the addenda.

- 2018 Initial Study – Negative Declaration (for “original” project)
- January 2023 Addendum to the IS-ND (for notable project revision)
- May 2023 Rincon memo re. Supplementary Analysis to the IS-ND Addendum (for minor projection revision)
- May 2023 Conditions of Approval

SUMMARY

Traffic Noise: The 2018 IS-ND and 2023 Addendum do not include an assessment of existing ambient noise levels nor calculated projections of future traffic/ambient noise to justify the claim of a “less than significant” impact. Absent a quantitative analysis of existing traffic noise, the Addendum’s noise analysis is unsupported by substantial evidence. A thorough analysis and explanation must be conducted to demonstrate such a finding, particularly since the project modification addressed in the 2023 addendum increased the projected average daily trips (ADT) to a level that is greater than the existing use ADT. The traffic noise impact would therefore be more severe than previously analyzed in the 2018 IS-ND.



Building Equipment Noise: The 2018 IS-ND did not provide any review, analysis, or commentary on equipment noise to justify the conclusion that noise from project equipment would be “less than significant.” In our experience, unmitigated building equipment noise can often exceed City Noise Ordinance standards. The concern applies to rooftop HVAC systems of the original Project. The modified Project only elevates this concern with the additional of a solar energy storage and cooling system and HVAC changes related to the increases in building height, quantity of residential units, interior square footage. As part of the CEQA review process, rooftop noise levels should be quantified and compared to the ambient noise level and the City noise limit, and the Applicant must develop a plan to mitigate potentially significant equipment noise in order to reduce noise impacts on residents and other nearby receptors and comply with the City Noise Ordinance. All potentially significant impacts and requirements for mitigation must be disclosed in an appropriate environmental document.

Construction Noise and Vibration: The IS-ND and Addendum provide only unjustified claims that construction noise and vibration would be “less than significant.” In our experience, uncontrolled and unmonitored construction noise and vibration can often result in complaints from nearby neighbors. The Project’s construction noise and vibration impacts at nearby sensitive receptors should be carefully studied and addressed and limitations enforced to reduce the potential for significant impacts on the community. The potential impact of construction noise and vibration and the specific reductions that would be achieved through mitigation (including but not limited to the Standard Conditions of Approval) should be disclosed in an appropriate environmental document.

PERMANENT INCREASE IN AMBIENT NOISE - TRAFFIC

Summary Notes on IS-ND and Addendum

The 2018 IS-ND indicated that vehicular traffic ADT and related noise on adjacent roadways resulting from the project would be lower than existing conditions [see Sections 5.12 and 5.16(a)].

The 2023 Addendum and Rincon memo indicate that the modified project would generate more ADT than the original project but not enough to generate a significant increase in traffic volume and noise on nearby roadways as compared to existing conditions. [see 2023 Addendum Section 4.9]

Comment

Neither the 2018 IS-ND nor the Addendum or Rincon memo provide an assessment of existing ambient noise levels or calculate projections of future traffic/ambient noise. The Addendum acknowledges that the current project will increase ADT over the original project, but fails to disclose either the ambient or projected traffic noise levels associated with the modified project. This omission is not corrected by the Rincon memo. Thus, there is insufficient evidence to conclude that traffic noise impacts would be less than significant. A quantitative analysis is needed to assess the extent to which the modified Project's traffic noise levels will increase over the original project and to determine whether the increase would result in a significant impact. The analysis should be based on measurements of ambient noise levels and calculations of future traffic noise levels to provide evidence to support the findings. This is particularly important since the project modification addressed in the 2023 addendum increased the projected ADT to a level that is greater than the existing use ADT. Increasing traffic volume levels lead to increasing noise levels, a fact that the Addendum ignores.

AMBIENT NOISE – BUILDING EQUIPMENT AND THE CITY NOISE ORDINANCE

Summary Notes on IS-ND and Addendum

In the Environmental Checklist, Item 5.12a, the 2018 IS-ND claimed that the project-generated noise, as compared to the applicable standards of the City, would result in a “less than significant” impact. Though the discussion section mentioned that the original project would generate noise from rooftop mechanical equipment and summarized the City Noise Ordinance, there was no further assessment or discussion of the Project's HVAC equipment in Section 5.12.

The modified project adds a rooftop solar and battery storage system to the original project's rooftop equipment. In addition, the size or extent of the project HVAC system was likely increased as well. The 2023 Addendum and Rincon memo do not disclose the additional noise that will be added by the new equipment. Instead the documents simply state that “on-site stationary noise sources would be similar as under the original project, such as rooftop mechanical equipment (shielded by a rooftop parapet wall)” (2023 Addendum Section 4.9, page 24, paragraph 1). There is no further corroborating information or justification for this statement.

Comment

The 2018 IS-ND did not provide any review, analysis, or commentary on equipment noise to justify the conclusion that project equipment noise would be “less than significant.” The addendum also fails to quantify rooftop equipment noise levels. In our experience, unmitigated building equipment noise can often exceed City Noise Ordinance standards unless appropriate noise-reduction features are identified and incorporated into the project. Unless it can be demonstrated at the impact analysis stage that project equipment would not generate excessive noise (which the IS-ND and Addendum did not do); there is insufficient evidence to support a conclusion that the modified project’s noise levels would be less significant compared to the original project.

The impact analysis must compare the expected equipment noise levels to the City noise limits and the ambient levels. If the projected increases in noise are significant, a plan must be developed to mitigate equipment noise in order to reduce noise impacts and comply with the City Noise Ordinance. A qualified professional should be involved to perform a detailed noise analysis and to advise the design team regarding any effective noise-reduction measures, if needed, based on specific equipment noise ratings and design features. Close attention should be paid to loud equipment and nighttime noise at residential receptors.

Though the Addendum appears to ignore this process of analysis and mitigation, we do note that a related condition of approval (#30, HVAC Noise Reduction) has been applied to the project. As such, since mitigation is required to attenuate HVAC system noise, the potentially significant impact with and without mitigation must be disclosed in an appropriate environmental document. Furthermore, Condition of Approval #30 only applies to HVAC systems, whereas the project includes other noise generating equipment. The impacts from the modified project’s rooftop solar and battery storage equipment are not addressed by the project’s standard conditions of approval. The requirement of complying with the City Municipal Code noise limits must also apply to all noise-generating equipment, such as the rooftop solar energy system with a battery storage system, which may contain cooling fans that generate noise.

TEMPORARY INCREASE IN AMBIENT NOISE - CONSTRUCTION

Summary Notes on IS-ND and Addendum

The 2018 IS-ND simply stated that, since the project conditions of approval limit construction to certain hours of the day, that the “potential impact during operation of the project and during construction would be less than significant.” [2018 IS-ND Section 5.12 discussion]

The 2023 Addendum adopts the same approach, stating that “construction techniques under the modified project would be similar to those under the original.” (2023 Addendum Section 4.9, page 24, paragraph 2). It also enumerates that the project would be subject to conditions of approval related to “*Construction Noise Reduction*” and “*Construction Noise Management – Public Notice Required.*”

Comment

There is no justification for the Addendum’s claim that limited construction hours would reduce construction noise to be “less than significant,” and the Addendum fails to quantify the differences in construction noise for the modified project over the original project. The Addendum also appears to ignore the fact that construction noise limits are included in the Berkeley Municipal Code (Section 13.40.070, Item B.7). The Addendum should have included a comparison of the projected construction noise levels at sensitive residential receptors to the Municipal Code noise limits. The results of that analysis should have been used to develop the required mitigation. Without this analysis, the conclusions in the Addendum are unsupported.

Sensitive residential receptors are located directly adjacent to the project. This proximity and the larger scale of the modified project are likely to result in increased noise levels over the original project. This further necessitates quantification of the expected construction noise. In our experience, uncontrolled construction noise for such projects can result in complaints from the community due to excessive noise. Table 1 below is provided with examples of potential construction noise which could exceed City Noise Ordinance limits.

Table 1: Typical Construction Noise Levels¹

Equipment	Sound Level at 50 Feet (dBA)	Usage Factor (%)	Hourly Average Noise Level (dBA) @ 50 Feet per Usage Factor	Hourly Average Noise Level (dBA) @ 25 Feet per Usage Factor
Backhoe	80	40	76	82
Dozer	85	40	81	87
Grader	85	40	81	87
Excavator	85	40	81	87
Forklift	83	40	79	85
Jackhammer	85	20	78	84
Roller	85	20	78	84
Concrete Mixer	85	40	81	87
Concrete Pump	82	20	75	81
Tower Crane	85	16	77	83
Generator	82	50	79	85
Air Compressor	81	40	77	83
Saw	76	40	72	78

¹ Sources: U.S. Environmental Protection Agency (1971), FHWA Construction Noise Handbook Tables 9.1 and 9.9

In addition, the 2023 Addendum provides no justification for the claim that construction techniques for the modified project would be similar to those under the original project. The change from a low-rise to a mid-rise building comes with the potential for additional noise impacts if alternative structure and framing materials are used. Concrete structures would require additional equipment, such as formwork erection or steel framing and metal deck handling and installation. The handling, installation, and welding of large, corrugated metal deck panels would involve new potential noise impacts if not addressed properly. The potential use of metal stud framing for wall can also result in significant noise impacts from handling and especially cut stations where abrasive cutting disc chop saws are used. The possibility of these alternative construction methods and potential for additional noise must be addressed in the impact analysis and appropriate mitigation measures should be developed such as the following:

1. The need for noise barriers at elevated floors as the building is erected and enclosed will be further evaluated during construction. For example, the noise generated by framing cut stations at elevated floors will be considered. If the noise is excessive and exceeds the City noise goals at sensitive neighboring properties, noise should be reduced. This could be accomplished by surrounding the cut stations with local noise barrier blankets to further reduce noise from the saw or by alternative methods.
2. Utilize the best available noise control techniques (e.g., equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible) for equipment and trucks
3. Locate stationary noise sources as far from adjacent properties as possible, and they shall be muffled and enclosed within temporary sheds or incorporate insulation barriers to provide noise reduction
4. Use hydraulic or electric-powered impact tools wherever possible to avoid noise associated with compressed air exhaust from pneumatically-powered tools
5. Use “quiet” equipment when available such as (gasoline or electric-powered compressors)
6. Manage truck traffic to reduce idling
7. Minimize drop height when loading excavated materials onto trucks and moving materials on-site
8. Use back-up beepers only when required. If acceptable according to safety concerns, spotters, flaggers, or broadband noise tones should be used in lieu of back up beepers to direct backing operations when allowable
9. In response to complaints or during the noisiest phases of construction, noise is to be monitored at the site by conducting acoustical measurements. The protocol for these measurements will be selected based on the sequencing and types of activities occurring on-site. Reports will be submitted within one week of the measurements being taken. These reports will be used to fine tune the proposed mitigation measures or identify additional required mitigation, as needed.

Condition of Approval #20 includes some of these measures, but does not make them mandatory conditions of approval, or binding mitigation measures. The above measures should be included as a mandatory condition of approval.



Similar to HVAC noise, though the Addendum does not include the analysis and mitigation of construction noise, we note that related conditions of approval (#20, #22, and #23) have been applied to the project. Condition 20 requires the applicant to develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise. Condition 22 requires that the applicant provide notice to businesses within 500 feet of the Project site. Condition 23 requires that the applicant provide the Zoning Officer with a schedule of major construction phases and changes. As such, since mitigation is required to attenuate construction noise, the potentially significant impact with and without mitigation must be disclosed in the Addendum. Furthermore, there is no information to support the conclusion that the requirements of Conditions of Approval #20, #22, and #23 are actually adequate to reduce construction noise to a less-than-significant level or meet the City Municipal Code noise limits.

EXCESSIVE GROUND-BORNE VIBRATION – CONSTRUCTION

Summary Notes on IS-ND and Addendum

The 2018 IS-ND simply stated that construction activities could contribute to short-term increases in vibration but the “vibration impacts would be less than significant.” [2018 IS-ND Section 5.12 discussion]

The 2023 Addendum states that “vibration levels would be similar to the original project and would be further reduced by compliance with standard condition of approval, *Damage Due to Construction Vibration*. (2023 Addendum Section 4.9, page 24, paragraph 2)

Comment

The record does not provide substantial evidence to support the claim that construction vibration would be “less than significant.” The addendum appears to ignore the fact that vibration is clearly addressed in the Berkeley Municipal Code Section 13.40.070(B), which states the following:

The following acts, and the causing or permitting thereof, are declared to be in violation of this chapter... (8) Vibration. Operating or permitting the operation of any device that creates a vibration, which annoys or disturbs at least two or more reasonable persons of normal sensitiveness who reside in separate residences (including apartments and condominiums) at or beyond the property boundary of the source, if on private property, or at least 150 feet (46 meters) from the source, if on a public space or public right-of-way.

Heavy demolition and vibratory compaction has the potential to generate excessive and disturbing vibration at sensitive receptors near the project boundary, in violation of the Municipal Code.

Table 2 below is provided with examples of potential construction vibration, and commonly used limits are listed in Tables 3 and 4 for human perception and building damage.² Several activities could generate vibration in violation of the Municipal Code due to the Project’s proximity to sensitive receptors. The Addendum contains no analysis of the Project’s actual vibration impacts, and no evidence to support a conclusion that construction vibration would be less than significant or would not result in a more severe impact that described in the original IS ND.

Table 2: Typical Construction Vibration Levels and Limits (PPV, in/sec)

Location	Vibration Level at 25 Feet
Rubber Tired Dozers	0.089
Excavators	0.089
Tractors/Loaders/Backhoes	0.089
Concrete/Industrial Saws	0.089
Bore/Drill Rigs	0.089
Graders	0.089
Cranes	0.076
Forklifts	0.003
Pavers	0.089
Paving Equipment	0.003
Cement and Mortar Mixers	0.076
Vibratory Rollers	0.210

Table 3: Guideline Vibration Damage Potential Threshold Criteria (Maximum PPV, in/sec)

Structure and Condition	Transient Sources	Continuous/Frequent Intermittent Sources
Extremely fragile historic buildings, ruins, ancient monuments	0.12 PPV	0.08 PPV
Fragile buildings	0.2 PPV	0.1 PPV
Historic and some old buildings	0.5 PPV	0.25 PPV
Older residential structures	0.5 PPV	0.3 PPV
New residential structures	1.0 PPV	0.5 PPV
Modern industrial/commercial buildings	2.0 PPV	0.5 PPV

² Sources: Caltrans “Transportation and Construction Vibration Guidance Manual” (April 2020) and the US DOT FTA “Transit Noise and Vibration Impact Assessment Manual” (September 2018).

Table 4: Guideline Vibration Annoyance Potential Criteria (Maximum PPV, in/sec)

Subjective Effect	Transient Sources	Continuous/Frequent Intermittent Sources
Barely perceptible	0.04 PPV	0.01 PPV
Distinctly perceptible	0.25 PPV	0.04 PPV
Strongly perceptible	0.9 PPV	0.1 PPV
Severe	2.0 PPV	0.4 PPV

Similar to construction noise, though the Addendum does not include adequate analysis and mitigation of construction vibration, we note that related condition of approval #21 has been applied to the project. However, Condition #21 only provides a vibration impact assessment be prepared if the project has the potential to result in damage to structures. The mitigation is not sufficient to bring the Project’s vibration impacts in conformance with the Municipal Code. Furthermore, there is no information to support the conclusion that the requirements of Condition of Approval #21 are actually adequate to reduce construction vibration to a less-than-significant level and meet the City Municipal Code requirements. Since mitigation is required to reduce construction vibration impact, the potentially significant impact with and without mitigation must be disclosed in an appropriate environmental document.

* * *

Sincerely,

SALTER



Jeremy L. Decker, PE
Vice President

P/2025-03-10 IS Update Acoustical Peer Review R 24-0503 3000Shattuck



RESUME

Jeremy Decker, PE

Vice President



Mr. Decker has been an acoustical consultant with Salter since 2005. His areas of expertise include environmental noise studies, architectural noise control, room acoustics, mechanical system noise and vibration reduction, and vibration analyses. He has consulting experience with multi-family housing, offices, educational facilities, and community buildings.

Project Experience

- Lawrence Berkeley National Laboratory CRT Noise Impact Study, Berkeley, CA
- Lake Merritt BART Residences Construction Noise, Oakland, CA
- East 12th Street Residences Construction Noise, Oakland, CA
- Tamal Vista Mixed-Use EIR, Corte Madera, CA
- Saranap Village EIR, Walnut Creek, CA
- Centre Place South Noise Impact Study, Walnut Creek, CA
- SoHay Residences EIR, Hayward, CA
- USF North Mountain Dorm EIR, San Francisco, CA
- 2nd and Main Retail Noise Impact Study, Walnut Creek, CA
- 2800 Mitchell Senior Living Noise Impact Analysis, Walnut Creek, CA
- West Dublin BART Transit Village Noise Study, Dublin, CA
- German International School Environmental Noise Study, Berkeley, CA
- Applied Materials Arques Campus EIR, Sunnyvale, CA
- FedEx Distribution Center Noise Impact, Various Cities, CA, AZ, TN
- NRG Cogeneration Facility Noise Impact, San Francisco, CA
- San Francisco Fire Dept. Water Supply Facility, San Francisco, CA
- Caldecott Tunnel 4th Bore Noise Study, East Bay Area, CA
- Kaneohe/Kailua Sewer Tunnel Construction Noise Study, Kailua, HI
- Fivepoint Amphitheater Noise Impact Study, Irvine, CA
- Kaiser Permanente Construction Noise Study, Oakland, CA
- Alta Bates Summit Medical Center Construction Noise, Oakland, CA

Education

California Polytechnic State University, San Luis Obispo, BS Mechanical Engineering

Professional Registration

California: M.E. No. 34231

Professional Affiliation

Allied Member of AIA San Francisco
Acoustical Society of America
Institute of Noise Control Engineering



San Francisco | San Jose | Los Angeles | Honolulu | Seattle
salter-inc.com

Acoustics
Audiovisual
Telecommunications
Security

EXHIBIT B



Technical Consultation, Data Analysis and
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February 20, 2025

Kelilah Federman
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd #1000
South San Francisco, CA 94080

Subject: Comments on the 3000 Shattuck Mixed-Use Project (SCH No. 2017062025)

Dear Ms. Federman,

We have reviewed the May 2024 Memorandum (“Memo”) and the January 2023 Addendum (“Addendum”) to the Initial Study/Negative Declaration (“IS/ND”) for the 3000 Shattuck Mixed-Use (“Project”) located in the City of Berkeley. The Memo explains that the Project proposes to reduce the commercial area by 52-square-feet (“SF”) and subsequently increase the residential area by 274-SF, however as asserted in our April 10, 2023 comment letter, we maintain that the Addendum and IS/ND remain insufficient in addressing our concerns regarding the Project’s air quality impacts.

Air Quality

Unsubstantiated Input Parameters Used to Estimate Project Emissions

The Memo argues that the changes to the Project’s land uses would not affect construction or operational air quality emissions. It asserts that the impact would remain less than significant and, therefore, does not include an updated air quality analysis (p. 2). The Memo, however, does not respond to our previous concerns with the Addendum’s air quality analysis. In our April 10th, 2023 comment letter, we identified several errors in the Project’s California Emissions Estimator Model (“CalEEMod”) output files, provided as Appendix A to the Addendum, that, in our estimation, resulted in an underestimation of the Project’s construction emissions. We maintain that the Project’s construction emissions are more severe than analyzed in the original Negative Declaration, and that an Environmental Impact Report (“EIR”) should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction of the Project will have on local and regional air quality.

Unsubstantiated Construction Schedule

As stated in our April 10, 2023 comment letter, the “3000 Shattuck Detailed Report” model includes a 21-month construction schedule, which conflicts with the information provided in the Addendum and related documents (Appendix A, p. 70). The Addendum and original IS/ND specifies that project construction would take 18 months, meaning the model overestimates the construction duration by three months (p. 3, Table 1). This error resulted in daily construction emission estimates being underreported by spreading emissions over a longer construction period than would actually occur. Furthermore, the Memo does not address the Addendum’s complete omission of a demolition phase in its air quality analysis(Addendum, p. 6).

Additionally, we maintain that the Memo fails to explain or correct the errors from the Addendum’s air quality analysis regarding the individual construction phase lengths. Without specific justification of the changes made to the construction schedule from the Addendum and original IS/ND, the Memo and associated documents fail to meet the California Environmental Quality Act (“CEQA”)’s requirement to provide “substantial evidence.”¹ The model should have included a proportionately adjusted construction schedule to match the Project’s proposed 18-month timeline until the individual phases and total duration are substantiated.

Overestimating the construction schedule causes the model to assume more days are needed to complete the required construction activities for the extended phases. This can result in fewer emissions-generating activities being modeled per day, which artificially lowers the daily pollutant emissions. Therefore, the Addendum’s emissions modeling contains erroneous emissions calculations and cannot be accurately used to determine the significance of the Project’s construction emissions, making the Memo’s conclusion unreliable.

Failure to Model Demolition

The Memo does not address our April 10, 2023 comment about omitting emissions from demolished materials in the Addendum’s air quality analysis. As previously mentioned, the Addendum states that the Project would involve the demolition of existing structures on the Project site (p. 6). However, the Addendum’s “3000 Shattuck Detailed Report” model does not include demolition debris in its inputs (Appendix A, pp. 72). The Addendum therefore omitted an entire phase of construction from its emissions modeling.

CalEEMod calculates emissions for the demolition phase of construction based on demolition materials. Dust emissions during this phase primarily result from mechanical or explosive disassembly, debris removal from the site, and truck traffic on paved and unpaved roads.² The Addendum omitted this analysis entirely, and the Memo does not correct this error. We therefore maintain that the

¹ “CalEEMod User Guide.” California Air Pollution Control Officers Association (CAPCOA), April 2022, available at: https://www.caleemod.com/documents/user-guide/01_User%20Guide.pdf, p. 10.

² “CalEEMod User’s Guide Version 2022.1.” California Air Pollution Control Officers Association (CAPCOA), April 2022, available at: https://www.caleemod.com/documents/user-guide/01_User%20Guide.pdf, p. 2.

construction-related criteria air pollutant emissions estimate the Memo depends upon to determine Project significance are potentially underestimated and therefore unreliable.

Updated Analysis Indicates a Potentially Significant Air Quality Impact

Our previous analysis found that, when properly calculated, the reactive organic gases (“ROG”) emissions associated with Project construction exceed the applicable Bay Area Air Quality Management District threshold of 54 pounds per day (“lbs/day”), as referenced by the Addendum (p. 14). Our updated CalEEMod model, as detailed in our April 10 comment letter, estimated construction-related ROG emissions at approximately 71.55 pounds, which is 2,285% higher than the Addendum's estimate.³ We reassert that an EIR should be prepared to more adequately assess and mitigate the potential air quality impacts that the larger Project may have on the environment.

Mitigation

Feasible Mitigation Measures Available to Reduce Emissions

The Memo and associated documents are required under CEQA to implement all feasible mitigation to reduce the Project’s potential impacts. As demonstrated in the sections above, the Project would result in potentially significant air quality impacts that should be mitigated further.

To reduce the volatile organic compounds (“VOC”)/ROG emissions associated with Project construction, we recommend the IS/ND consider incorporating the following mitigation measure from the California Department of Justice:⁴

- Require the use of super compliant, low-VOC paints less than 10 g/L during the architectural coating construction phase.

Further mitigation used by other land use development projects to address VOC/ROG emissions is as follows:⁵

- Recycle leftover paint. Take any leftover paint to a household hazardous waste center; do not mix leftover water-based and oil-based paints.
- Keep lids closed on all paint containers when not in use to prevent VOC emissions and excessive odors.
- For water-based paints, clean up with water only. Whenever possible, do not rinse the cleanup water down the drain or pour it directly into the ground or the storm drain.
- Use compliant low-VOC cleaning solvents to clean paint application equipment.
- Keep all paint- and solvent-laden rags in sealed containers to prevent VOC emissions.
- Contractors shall construct/build with materials that do not require painting and use pre-painted construction materials to the extent practicable.

³ See Attachment A for construction schedule calculations and Attachment B for SWAPE’s CalEEMod output files.

⁴ “Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act.” State of California Department of Justice, September 2022, *available at*: <https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf>, p. 8 – 10.

⁵ “Banning Commerce Center Project.” Kimley-Horn and Associates, Inc., June 2024, *available at*: <https://ceganet.opr.ca.gov/2022090102/2>; Draft Environmental Impact Report, p. 1-7.

- Use high-pressure/low-volume paint applicators with a minimum transfer efficiency of at least 50 percent or other application techniques with equivalent or higher transfer efficiency.

Los Angeles County, additionally, recommends:⁶

- If paints and coatings with VOC content of 0 grams/liter to less than 10 grams/liter cannot be utilized, the developer shall avoid application of architectural coatings during the peak smog season: July, August, and September.

While the Project is not located in Los Angeles County, the use of low-VOC paints would nonetheless decrease the Project's significant VOC/ROG emissions.

The United States Environmental Protection Agency recommends conducting calculations for coverage area and thinning ratios prior to purchasing paints. By applying these calculations, the appropriate quantity of paint can be acquired, thereby helping to minimize waste and optimize resource use.⁷

To reduce construction VOC/ROG emissions, the California Department of Public Health recommends the use of:⁸

- Natural materials such as solid wood products (e.g., hard wood flooring and wood paneling), natural stone (e.g., granite and marble), ceramic tile, and glass.
- Composite wood products that comply with the California Air Resources Board's ("CARB") Airborne Toxic Control Measure for formaldehyde.
- Interior paints, coatings, adhesives, and sealants that comply with South Coast AQMD Rule 1168 or CARB's Suggested Control Measure for Architectural Coatings.
- Flooring materials that are certified as low emitting under the California Department of Public Health (CDPH) Standard Method v1.2 or equivalent.
- Steel cabinets instead of plywood; prefinished, nailed-down hardwood flooring instead of carpeting; and masonry flooring such as ceramic tile or marble instead of carpeting.
- Sealer on the surface of spray-on fireproofing to reduce adsorption of VOCs using a low-VOC sealer, if necessary.

These measures offer feasible ways to incorporate lower-emitting design features into the proposed Project, which subsequently reduce emissions released during Project construction. An EIR should be prepared that includes all feasible mitigation measures, as well as updated air quality analysis to ensure

⁶ "Mitigation Monitoring and Reporting Program." Los Angeles County Housing Element Update Program EIR. August 2021, available at: https://planning.lacounty.gov/wp-content/uploads/2023/07/Housing_final-peir-mitigation-monitoring.pdf.

⁷ "Methods for Estimating Air Emissions from Paint, Ink, and Other Coating Manufacturing Facilities." Emissions Inventory Improvement Program, February 2005, available at: https://www.epa.gov/sites/default/files/2015-08/documents/ii08_feb2005.pdf, Volume II, Chapter 8, p. 8.3-1.

⁸ "Reducing occupant exposure to volatile organic compounds (VOCs) from indoor sources: Guidelines for building occupants." California Department of Public Health, July 1996, available at: https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/EHLB/IAQ/CDPH%20Document%20Library/reducing_occupant_exposure_vocs_guidelines_ADA.pdf.

that the necessary mitigation measures are implemented to reduce emissions to the maximum extent feasible. The EIR should also show a commitment to implementing these measures before Project approval to address potentially significant air quality emissions effectively.

Disclaimer

SWAPE has received limited documentation regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,

A handwritten signature in blue ink that reads "Paul Rosenfeld". The signature is written in a cursive, flowing style.

Paul E. Rosenfeld, Ph.D.



Technical Consultation, Data Analysis and
Litigation Support for the Environment

SOIL WATER AIR PROTECTION ENTERPRISE

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Paul Rosenfeld, Ph.D.

Principal Environmental Chemist

Chemical Fate and Transport & Air Dispersion Modeling

Risk Assessment & Remediation Specialist

Education

Ph.D. Soil Chemistry, University of Washington, 1999. Dissertation on volatile organic compound filtration.

M.S. Environmental Science, U.C. Berkeley, 1995. Thesis on organic waste economics.

B.A. Environmental Studies, U.C. Santa Barbara, 1991. Thesis on wastewater treatment.

Professional Experience

Dr. Rosenfeld has over 25 years' experience conducting environmental investigations and risk assessments for evaluating impacts to human health, property, and ecological receptors. His expertise focuses on the fate and transport of environmental contaminants, human health risk, exposure assessment, and ecological restoration. Dr. Rosenfeld has evaluated and modeled emissions from oil spills, landfills, boilers and incinerators, process stacks, storage tanks, confined animal feeding operations, industrial, military and agricultural sources, unconventional oil drilling operations, and locomotive and construction engines. His project experience ranges from monitoring and modeling of pollution sources to evaluating impacts of pollution on workers at industrial facilities and residents in surrounding communities. Dr. Rosenfeld has also successfully modeled exposure to contaminants distributed by water systems and via vapor intrusion.

Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing lead, heavy metals, mold, bacteria, particulate matter, petroleum hydrocarbons, chlorinated solvents, pesticides, radioactive waste, dioxins and furans, semi- and volatile organic compounds, PCBs, PAHs, creosote, perchlorate, asbestos, per- and poly-fluoroalkyl substances (PFOA/PFOS), unusual polymers, fuel oxygenates (MTBE), among other pollutants. Dr. Rosenfeld also has experience evaluating greenhouse gas emissions from various projects and is an expert on the assessment of odors from industrial and agricultural sites, as well as the evaluation of odor nuisance impacts and technologies for abatement of odorous emissions. As a principal scientist at SWAPE, Dr. Rosenfeld directs air dispersion modeling and exposure assessments. He has served as an expert witness and testified about pollution sources causing nuisance and/or personal injury at sites and has testified as an expert witness on numerous cases involving exposure to soil, water and air contaminants from industrial, railroad, agricultural, and military sources.

Professional History:

Soil Water Air Protection Enterprise (SWAPE); 2003 to present; Principal and Founding Partner
UCLA School of Public Health; 2007 to 2011; Lecturer (Assistant Researcher)
UCLA School of Public Health; 2003 to 2006; Adjunct Professor
UCLA Environmental Science and Engineering Program; 2002-2004; Doctoral Intern Coordinator
UCLA Institute of the Environment, 2001-2002; Research Associate
Komex H₂O Science, 2001 to 2003; Senior Remediation Scientist
National Groundwater Association, 2002-2004; Lecturer
San Diego State University, 1999-2001; Adjunct Professor
Anteon Corp., San Diego, 2000-2001; Remediation Project Manager
Ogden (now Amec), San Diego, 2000-2000; Remediation Project Manager
Bechtel, San Diego, California, 1999 – 2000; Risk Assessor
King County, Seattle, 1996 – 1999; Scientist
James River Corp., Washington, 1995-96; Scientist
Big Creek Lumber, Davenport, California, 1995; Scientist
Plumas Corp., California and USFS, Tahoe 1993-1995; Scientist
Peace Corps and World Wildlife Fund, St. Kitts, West Indies, 1991-1993; Scientist

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Rosenfeld, P. E., Grey, M. A., Sellev, P. (2004). Measurement of Biosolids Odor and Odorant Emissions from Windrows, Static Pile and Biofilter. *Water Environment Research*. 76(4), 310-315.

Rosenfeld, P.E., Grey, M and Suffet, M. (2002). Compost Demonstration Project, Sacramento California Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility. *Integrated Waste Management Board Public Affairs Office, Publications Clearinghouse (MS-6)*, Sacramento, CA Publication #442-02-008.

Rosenfeld, P.E., and C.L. Henry. (2001). Characterization of odor emissions from three different biosolids. *Water Soil and Air Pollution*. 127(1-4), 173-191.

Rosenfeld, P.E., and Henry C. L., (2000). Wood ash control of odor emissions from biosolids application. *Journal of Environmental Quality*. 29, 1662-1668.

Rosenfeld, P.E., C.L. Henry and D. Bennett. (2001). Wastewater dewatering polymer affect on biosolids odor emissions and microbial activity. *Water Environment Research*. 73(4), 363-367.

Rosenfeld, P.E., and C.L. Henry. (2001). Activated Carbon and Wood Ash Sorption of Wastewater, Compost, and Biosolids Odorants. *Water Environment Research*, 73, 388-393.

Rosenfeld, P.E., and Henry C. L., (2001). High carbon wood ash effect on biosolids microbial activity and odor. *Water Environment Research*. 131(1-4), 247-262.

Chollack, T. and **P. Rosenfeld**. (1998). Compost Amendment Handbook For Landscaping. Prepared for and distributed by the City of Redmond, Washington State.

Rosenfeld, P. E. (1992). The Mount Liamuiga Crater Trail. *Heritage Magazine of St. Kitts*, 3(2).

Rosenfeld, P. E. (1993). High School Biogas Project to Prevent Deforestation On St. Kitts. *Biomass Users Network*, 7(1).

Rosenfeld, P. E. (1998). Characterization, Quantification, and Control of Odor Emissions From Biosolids Application To Forest Soil. Doctoral Thesis. University of Washington College of Forest Resources.

Rosenfeld, P. E. (1994). Potential Utilization of Small Diameter Trees on Sierra County Public Land. Masters thesis reprinted by the Sierra County Economic Council. Sierra County, California.

Rosenfeld, P. E. (1991). How to Build a Small Rural Anaerobic Digester & Uses Of Biogas In The First And Third World. Bachelors Thesis. University of California.

Presentations:

Rosenfeld, P.E., "The science for Perfluorinated Chemicals (PFAS): What makes remediation so hard?" Law Seminars International, (May 9-10, 2018) 800 Fifth Avenue, Suite 101 Seattle, WA.

Rosenfeld, P.E., Sutherland, A; Hesse, R.; Zapata, A. (October 3-6, 2013). Air dispersion modeling of volatile organic emissions from multiple natural gas wells in Decatur, TX. *44th Western Regional Meeting, American Chemical Society*. Lecture conducted from Santa Clara, CA.

Sok, H.L.; Waller, C.C.; Feng, L.; Gonzalez, J.; Sutherland, A.J.; Wisdom-Stack, T.; Sahai, R.K.; Hesse, R.C.; **Rosenfeld, P.E.** (June 20-23, 2010). Atrazine: A Persistent Pesticide in Urban Drinking Water. *Urban Environmental Pollution*. Lecture conducted from Boston, MA.

Feng, L.; Gonzalez, J.; Sok, H.L.; Sutherland, A.J.; Waller, C.C.; Wisdom-Stack, T.; Sahai, R.K.; La, M.; Hesse, R.C.; **Rosenfeld, P.E.** (June 20-23, 2010). Bringing Environmental Justice to East St. Louis, Illinois. *Urban Environmental Pollution*. Lecture conducted from Boston, MA.

Rosenfeld, P.E. (April 19-23, 2009). Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States. *2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting*, Lecture conducted from Tuscon, AZ.

Rosenfeld, P.E. (April 19-23, 2009). Cost to Filter Atrazine Contamination from Drinking Water in the United States" Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States. *2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting*. Lecture conducted from Tuscon, AZ.

Wu, C., Tam, L., Clark, J., **Rosenfeld, P.** (20-22 July, 2009). Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States. Brebbia, C.A. and Popov, V., eds., *Air Pollution XVII: Proceedings of the Seventeenth International Conference on Modeling, Monitoring and Management of Air Pollution*. Lecture conducted from Tallinn, Estonia.

Rosenfeld, P. E. (October 15-18, 2007). Moss Point Community Exposure To Contaminants From A Releasing Facility. *The 23rd Annual International Conferences on Soils Sediment and Water*. Platform lecture conducted from University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (October 15-18, 2007). The Repeated Trespass of Tritium-Contaminated Water Into A Surrounding Community Form Repeated Waste Spills From A Nuclear Power Plant. *The 23rd Annual International*

Conferences on Soils Sediment and Water. Platform lecture conducted from University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (October 15-18, 2007). Somerville Community Exposure To Contaminants From Wood Treatment Facility Emissions. The *23rd Annual International Conferences on Soils Sediment and Water*. Lecture conducted from University of Massachusetts, Amherst MA.

Rosenfeld P. E. (March 2007). Production, Chemical Properties, Toxicology, & Treatment Case Studies of 1,2,3-Trichloropropane (TCP). *The Association for Environmental Health and Sciences (AEHS) Annual Meeting*. Lecture conducted from San Diego, CA.

Rosenfeld P. E. (March 2007). Blood and Attic Sampling for Dioxin/Furan, PAH, and Metal Exposure in Florala, Alabama. *The AEHS Annual Meeting*. Lecture conducted from San Diego, CA.

Hensley A.R., Scott, A., **Rosenfeld P.E.**, Clark, J.J.J. (August 21 – 25, 2006). Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility. *The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006*. Lecture conducted from Radisson SAS Scandinavia Hotel in Oslo Norway.

Hensley A.R., Scott, A., **Rosenfeld P.E.**, Clark, J.J.J. (November 4-8, 2006). Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility. *APHA 134 Annual Meeting & Exposition*. Lecture conducted from Boston Massachusetts.

Paul Rosenfeld Ph.D. (October 24-25, 2005). Fate, Transport and Persistence of PFOA and Related Chemicals. Mealey's C8/PFOA. *Science, Risk & Litigation Conference*. Lecture conducted from The Rittenhouse Hotel, Philadelphia, PA.

Paul Rosenfeld Ph.D. (September 19, 2005). Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, *Toxicology and Remediation PEMA Emerging Contaminant Conference*. Lecture conducted from Hilton Hotel, Irvine California.

Paul Rosenfeld Ph.D. (September 19, 2005). Fate, Transport, Toxicity, And Persistence of 1,2,3-TCP. *PEMA Emerging Contaminant Conference*. Lecture conducted from Hilton Hotel in Irvine, California.

Paul Rosenfeld Ph.D. (September 26-27, 2005). Fate, Transport and Persistence of PDBEs. *Mealey's Groundwater Conference*. Lecture conducted from Ritz Carlton Hotel, Marina Del Ray, California.

Paul Rosenfeld Ph.D. (June 7-8, 2005). Fate, Transport and Persistence of PFOA and Related Chemicals. *International Society of Environmental Forensics: Focus On Emerging Contaminants*. Lecture conducted from Sheraton Oceanfront Hotel, Virginia Beach, Virginia.

Paul Rosenfeld Ph.D. (July 21-22, 2005). Fate Transport, Persistence and Toxicology of PFOA and Related Perfluorochemicals. *2005 National Groundwater Association Ground Water And Environmental Law Conference*. Lecture conducted from Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld Ph.D. (July 21-22, 2005). Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation. *2005 National Groundwater Association Ground Water and Environmental Law Conference*. Lecture conducted from Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. and Rob Hesse R.G. (May 5-6, 2004). Tert-butyl Alcohol Liability and Toxicology, A National Problem and Unquantified Liability. *National Groundwater Association. Environmental Law Conference*. Lecture conducted from Congress Plaza Hotel, Chicago Illinois.

Paul Rosenfeld, Ph.D. (March 2004). Perchlorate Toxicology. *Meeting of the American Groundwater Trust*. Lecture conducted from Phoenix Arizona.

Hagemann, M.F., **Paul Rosenfeld, Ph.D.** and Rob Hesse (2004). Perchlorate Contamination of the Colorado River. *Meeting of tribal representatives*. Lecture conducted from Parker, AZ.

Paul Rosenfeld, Ph.D. (April 7, 2004). A National Damage Assessment Model For PCE and Dry Cleaners. *Drycleaner Symposium. California Ground Water Association*. Lecture conducted from Radison Hotel, Sacramento, California.

Rosenfeld, P. E., Grey, M., (June 2003) Two stage biofilter for biosolids composting odor control. *Seventh International In Situ And On Site Bioremediation Symposium Battelle Conference Orlando, FL*.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. (February 20-21, 2003) Understanding Historical Use, Chemical Properties, Toxicity and Regulatory Guidance of 1,4 Dioxane. *National Groundwater Association. Southwest Focus Conference. Water Supply and Emerging Contaminants..* Lecture conducted from Hyatt Regency Phoenix Arizona.

Paul Rosenfeld, Ph.D. (February 6-7, 2003). Underground Storage Tank Litigation and Remediation. *California CUPA Forum*. Lecture conducted from Marriott Hotel, Anaheim California.

Paul Rosenfeld, Ph.D. (October 23, 2002) Underground Storage Tank Litigation and Remediation. *EPA Underground Storage Tank Roundtable*. Lecture conducted from Sacramento California.

Rosenfeld, P.E. and Suffet, M. (October 7- 10, 2002). Understanding Odor from Compost, *Wastewater and Industrial Processes. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association*. Lecture conducted from Barcelona Spain.

Rosenfeld, P.E. and Suffet, M. (October 7- 10, 2002). Using High Carbon Wood Ash to Control Compost Odor. *Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association*. Lecture conducted from Barcelona Spain.

Rosenfeld, P.E. and Grey, M. A. (September 22-24, 2002). Biocycle Composting For Coastal Sage Restoration. *Northwest Biosolids Management Association*. Lecture conducted from Vancouver Washington..

Rosenfeld, P.E. and Grey, M. A. (November 11-14, 2002). Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility. *Soil Science Society Annual Conference*. Lecture conducted from Indianapolis, Maryland.

Rosenfeld, P.E. (September 16, 2000). Two stage biofilter for biosolids composting odor control. *Water Environment Federation*. Lecture conducted from Anaheim California.

Rosenfeld, P.E. (October 16, 2000). Wood ash and biofilter control of compost odor. *Biofest*. Lecture conducted from Ocean Shores, California.

Rosenfeld, P.E. (2000). Bioremediation Using Organic Soil Amendments. *California Resource Recovery Association*. Lecture conducted from Sacramento California.

Rosenfeld, P.E., C.L. Henry, R. Harrison. (1998). Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. *Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings*. Lecture conducted from Bellevue Washington.

Rosenfeld, P.E., and C.L. Henry. (1999). An evaluation of ash incorporation with biosolids for odor reduction. *Soil Science Society of America*. Lecture conducted from Salt Lake City Utah.

Rosenfeld, P.E., C.L. Henry, R. Harrison. (1998). Comparison of Microbial Activity and Odor Emissions from Three Different Biosolids Applied to Forest Soil. *Brown and Caldwell*. Lecture conducted from Seattle Washington.

Rosenfeld, P.E., C.L. Henry. (1998). Characterization, Quantification, and Control of Odor Emissions from Biosolids Application To Forest Soil. *Biofest*. Lecture conducted from Lake Chelan, Washington.

Rosenfeld, P.E., C.L. Henry, R. Harrison. (1998). Oat and Grass Seed Germination and Nitrogen and Sulfur Emissions Following Biosolids Incorporation With High-Carbon Wood-Ash. Water Environment Federation 12th Annual Residuals and Biosolids Management Conference Proceedings. Lecture conducted from Bellevue Washington.

Rosenfeld, P.E., C.L. Henry, R. B. Harrison, and R. Dills. (1997). Comparison of Odor Emissions From Three Different Biosolids Applied to Forest Soil. *Soil Science Society of America*. Lecture conducted from Anaheim California.

Teaching Experience:

UCLA Department of Environmental Health (Summer 2003 through 20010) Taught Environmental Health Science 100 to students, including undergrad, medical doctors, public health professionals and nurses. Course focused on the health effects of environmental contaminants.

National Ground Water Association, Successful Remediation Technologies. Custom Course in Sante Fe, New Mexico. May 21, 2002. Focused on fate and transport of fuel contaminants associated with underground storage tanks.

National Ground Water Association; Successful Remediation Technologies Course in Chicago Illinois. April 1, 2002. Focused on fate and transport of contaminants associated with Superfund and RCRA sites.

California Integrated Waste Management Board, April and May, 2001. Alternative Landfill Caps Seminar in San Diego, Ventura, and San Francisco. Focused on both prescriptive and innovative landfill cover design.

UCLA Department of Environmental Engineering, February 5, 2002. Seminar on Successful Remediation Technologies focusing on Groundwater Remediation.

University Of Washington, Soil Science Program, Teaching Assistant for several courses including: Soil Chemistry, Organic Soil Amendments, and Soil Stability.

U.C. Berkeley, Environmental Science Program Teaching Assistant for Environmental Science 10.

Academic Grants Awarded:

California Integrated Waste Management Board. \$41,000 grant awarded to UCLA Institute of the Environment. Goal: To investigate effect of high carbon wood ash on volatile organic emissions from compost. 2001.

Synagro Technologies, Corona California: \$10,000 grant awarded to San Diego State University. Goal: investigate effect of biosolids for restoration and remediation of degraded coastal sage soils. 2000.

King County, Department of Research and Technology, Washington State. \$100,000 grant awarded to University of Washington: Goal: To investigate odor emissions from biosolids application and the effect of polymers and ash on VOC emissions. 1998.

Northwest Biosolids Management Association, Washington State. \$20,000 grant awarded to investigate effect of polymers and ash on VOC emissions from biosolids. 1997.

James River Corporation, Oregon: \$10,000 grant was awarded to investigate the success of genetically engineered Poplar trees with resistance to round-up. 1996.

United State Forest Service, Tahoe National Forest: \$15,000 grant was awarded to investigating fire ecology of the Tahoe National Forest. 1995.

Kellogg Foundation, Washington D.C. \$500 grant was awarded to construct a large anaerobic digester on St. Kitts in West Indies. 1993

Deposition and/or Trial Testimony:

In the Circuit Court Of The Twentieth Judicial Circuit, St Clair County, Illinois
Martha Custer et al., Plaintiff vs. Cerro Flow Products, Inc., Defendants
Case No.: No. 0i9-L-2295
Rosenfeld Deposition, 5-14-2021
Trial, October 8-4-2021

In the Circuit Court of Cook County Illinois
Joseph Rafferty, Plaintiff vs. Consolidated Rail Corporation and National Railroad Passenger Corporation
d/b/a AMTRAK,
Case No.: No. 18-L-6845
Rosenfeld Deposition, 6-28-2021

In the United States District Court For the Northern District of Illinois
Theresa Romcoe, Plaintiff vs. Northeast Illinois Regional Commuter Railroad Corporation d/b/a METRA
Rail, Defendants
Case No.: No. 17-cv-8517
Rosenfeld Deposition, 5-25-2021

In the Superior Court of the State of Arizona In and For the Cunty of Maricopa
Mary Tryon et al., Plaintiff vs. The City of Pheonix v. Cox Cactus Farm, L.L.C., Utah Shelter Systems, Inc.
Case Number CV20127-094749
Rosenfeld Deposition: 5-7-2021

In the United States District Court for the Eastern District of Texas Beaumont Division
Robinson, Jeremy et al *Plaintiffs*, vs. CNA Insurance Company et al.
Case Number 1:17-cv-000508
Rosenfeld Deposition: 3-25-2021

In the Superior Court of the State of California, County of San Bernardino
Gary Garner, Personal Representative for the Estate of Melvin Garner vs. BNSF Railway Company.
Case No. 1720288
Rosenfeld Deposition 2-23-2021

In the Superior Court of the State of California, County of Los Angeles, Spring Street Courthouse
Benny M Rodriguez vs. Union Pacific Railroad, A Corporation, et al.
Case No. 18STCV01162
Rosenfeld Deposition 12-23-2020

In the Circuit Court of Jackson County, Missouri
Karen Cornwell, *Plaintiff*, vs. Marathon Petroleum, LP, *Defendant*.
Case No.: 1716-CV10006
Rosenfeld Deposition. 8-30-2019

In the United States District Court For The District of New Jersey
Duarte et al, *Plaintiffs*, vs. United States Metals Refining Company et. al. *Defendant*.
Case No.: 2:17-cv-01624-ES-SCM
Rosenfeld Deposition. 6-7-2019

In the United States District Court of Southern District of Texas Galveston Division
M/T Carla Maersk, *Plaintiffs*, vs. Conti 168., Schiffahrts-GMBH & Co. Bulker KG MS “Conti Perdido”
Defendant.
Case No.: 3:15-CV-00106 consolidated with 3:15-CV-00237
Rosenfeld Deposition. 5-9-2019

In The Superior Court of the State of California In And For The County Of Los Angeles – Santa Monica
Carole-Taddeo-Bates et al., vs. Ifran Khan et al., Defendants
Case No.: No. BC615636
Rosenfeld Deposition, 1-26-2019

In The Superior Court of the State of California In And For The County Of Los Angeles – Santa Monica
The San Gabriel Valley Council of Governments et al. vs El Adobe Apts. Inc. et al., Defendants
Case No.: No. BC646857
Rosenfeld Deposition, 10-6-2018; Trial 3-7-19

In United States District Court For The District of Colorado
Bells et al. Plaintiff vs. The 3M Company et al., Defendants
Case No.: 1:16-cv-02531-RBJ
Rosenfeld Deposition, 3-15-2018 and 4-3-2018

In The District Court Of Regan County, Texas, 112th Judicial District
Phillip Bales et al., Plaintiff vs. Dow Agrosciences, LLC, et al., Defendants
Cause No.: 1923
Rosenfeld Deposition, 11-17-2017

In The Superior Court of the State of California In And For The County Of Contra Costa
Simons et al., Plaintiffs vs. Chevron Corporation, et al., Defendants
Cause No C12-01481
Rosenfeld Deposition, 11-20-2017

In The Circuit Court Of The Twentieth Judicial Circuit, St Clair County, Illinois
Martha Custer et al., Plaintiff vs. Cerro Flow Products, Inc., Defendants
Case No.: No. 019-L-2295
Rosenfeld Deposition, 8-23-2017

In United States District Court For The Southern District of Mississippi
Guy Manuel vs. The BP Exploration et al., Defendants
Case: No 1:19-cv-00315-RHW
Rosenfeld Deposition, 4-22-2020

In The Superior Court of the State of California, For The County of Los Angeles
Warrn Gilbert and Penny Gilbert, Plaintiff vs. BMW of North America LLC
Case No.: LC102019 (c/w BC582154)
Rosenfeld Deposition, 8-16-2017, Trail 8-28-2018

In the Northern District Court of Mississippi, Greenville Division
Brenda J. Cooper, et al., *Plaintiffs*, vs. Meritor Inc., et al., *Defendants*
Case Number: 4:16-cv-52-DMB-JVM
Rosenfeld Deposition: July 2017

In The Superior Court of the State of Washington, County of Snohomish
Michael Davis and Julie Davis et al., Plaintiff vs. Cedar Grove Composting Inc., Defendants
Case No.: No. 13-2-03987-5
Rosenfeld Deposition, February 2017
Trial, March 2017

In The Superior Court of the State of California, County of Alameda
Charles Spain., Plaintiff vs. Thermo Fisher Scientific, et al., Defendants
Case No.: RG14711115
Rosenfeld Deposition, September 2015

In The Iowa District Court In And For Poweshiek County
Russell D. Winburn, et al., Plaintiffs vs. Doug Hoksbergen, et al., Defendants
Case No.: LALA002187
Rosenfeld Deposition, August 2015

In The Circuit Court of Ohio County, West Virginia
Robert Andrews, et al. v. Antero, et al.
Civil Action NO. 14-C-30000
Rosenfeld Deposition, June 2015

In The Iowa District Court For Muscatine County
Laurie Freeman et. al. Plaintiffs vs. Grain Processing Corporation, Defendant
Case No 4980
Rosenfeld Deposition: May 2015

In the Circuit Court of the 17th Judicial Circuit, in and For Broward County, Florida
Walter Hinton, et. al. Plaintiff, vs. City of Fort Lauderdale, Florida, a Municipality, Defendant.
Case Number CACE07030358 (26)
Rosenfeld Deposition: December 2014

In the County Court of Dallas County Texas
Lisa Parr et al, *Plaintiff*, vs. Aruba et al, *Defendant*.
Case Number cc-11-01650-E
Rosenfeld Deposition: March and September 2013
Rosenfeld Trial: April 2014

In the Court of Common Pleas of Tuscarawas County Ohio
John Michael Abicht, et al., *Plaintiffs*, vs. Republic Services, Inc., et al., *Defendants*
Case Number: 2008 CT 10 0741 (Cons. w/ 2009 CV 10 0987)
Rosenfeld Deposition: October 2012

In the United States District Court for the Middle District of Alabama, Northern Division
James K. Benefield, et al., *Plaintiffs*, vs. International Paper Company, *Defendant*.
Civil Action Number 2:09-cv-232-WHA-TFM
Rosenfeld Deposition: July 2010, June 2011

In the Circuit Court of Jefferson County Alabama
Jaeonette Moss Anthony, et al., *Plaintiffs*, vs. Drummond Company Inc., et al., *Defendants*
Civil Action No. CV 2008-2076
Rosenfeld Deposition: September 2010

In the United States District Court, Western District Lafayette Division
Ackle et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.
Case Number 2:07CV1052
Rosenfeld Deposition: July 2009