SUPPLEMENTAL COMMUNICATIONS AND REPORTS 2

BERKELEY CITY COUNCIL SPECIAL MEETING

DATE OF MEETING: TUESDAY, FEBRUARY 7, 2017

TIME: 6:00 P.M.

The agenda packet for this meeting was distributed/posted on January 29, 2017. Communications in this supplement were received after 5pm, January 31, 2017. This communication packet was distributed/posted on February 7, 2017.

Action Calendar – Public Hearing

Each item in this supplement follows from the corresponding item on the City Council Agenda for the same date.

Item 1: ZAB Appeal: 2777 Shattuck Avenue/2474 Adeline Avenue

7. Donna Mickleson
8. Elisa Cooper
9. Marianne Sluis (2)
10. Claire Yskamp
11. Margy Wilkinson
12. Kazuko Nishita
13. Gale Garcia
14. Ali Kashani (2)
15. Lan Nguyen, Shute, Mihaly & Weinberger LLP
16. Kristine Steensma
17. Christine Byrne
18. Rob Wrenn
19. MiSoon Burzlaff
20. Marcia Edelen
21. Christian Vettermann
22. Zeina Saad
23. Margaret Radke
24. Ann Foley
25. Christina Oatfield
26. Shirley Dean
27. Kelly Hammargren
28. Alex Stone
29. Andrew Sabey, Cox, Castle & Nicholson LLP

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Harris, Leslie D.

From:	Temp1 <Temp1@smwlaw.com>
Sent:	Friday, February 03, 2017 3:24 PM
To:	City Clerk
Cc:	Berkeley Mayor's Office; Maio, Linda; Davila, Cheryl; Bartlett, Ben; Hahn, Sophie; Wengraf, Susan; Worthington, Kriss; Cowan, Zach; Droste, Lori; All Council; attorney; Cowan, Zach; Planning Dept. Mailbox; Johnson, Carol; Allen, Shannon; Zoning Adjustments Board (ZAB); Zoning Adjustments Board (ZAB); akashani@citycentric.net; DRshattuck@comcast.net; asabey@coxcastle.com; benbartlett2016@gmail.com; electdeborahmatthews@gmail.com; markcoplan.district3@gmail.com; algmurraylegal@yahoo.com; Allison A. Johnson; Gabriel M.B. Ross
Subject:	Appeal of ZAB Approval, Berkeley Honda Use Permit #AP2015-0102
Attachments:	2777 Shattuck Neighbors Letter to City Council 11.7.16.PDF; MRO Berkeley Honda Traffic Comment Ltr Final.PDF; 2777 Shattuck Neighbors Letter to City Council re Hearing Date& Traffic Analysis.nrl.pdf; Notice Of Public Hearing.pdf; Email from Carol Johnson to Louise Rosenkrantz 1.30.17.pdf; Email from Shannon Allen to Louise Rosenkrantz 1.31.17.pdf

My Apologies, here are the correct documents.

Please find attached a letter and several supporting documents regarding the proposed auto dealership at 2777 Shattuck Avenue and 2747 Adeline Street. We submit these materials on behalf of 2777 Shattuck Neighbors. Please include our office on the notice list for this matter and include the attached materials in the packet of materials provided to the City Council.

Thank you,
Lan Nguyen
Administrative Assistant to Allison Johnson
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February 3, 2017

Via E-Mail

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Re: Appeal of ZAB Approval, Berkeley Honda Use Permit #ZP2015-0102

Dear Councilmembers:

On behalf of the 2777 Shattuck Neighbors, we urge to you reschedule the February 7, 2017 hearing so it may be properly noticed and reverse the Zoning Adjustments Board's ("ZAB") September 8, 2016 legally-flawed approval of the proposed Berkeley Honda development at 2777 Shattuck Avenue and 2747 Adeline Street ("Project").

I. The City Must Postpone the Hearing for Failure to Provide Proper Notice.

The City failed to provide appellants and the general public with proper notice of the Project hearing currently scheduled for Tuesday, February 7. The Berkeley Municipal Code ("BMC") requires the City to provide at least 14 days' notice of this hearing. BMC 23B.32.060(A), 23B.32.060(C), (D). This includes a requirement that the City mail notice to affected neighbors, interested community groups, and the Main Library "not fewer than 14 days prior to the hearing." BMC 23B.32.060(D).

The City failed to comply with these requirements and misled stakeholders about the date of the hearing. First, the mailed notices appear to have been mailed on January 26, not January 24 as required by the BMC. Second, the notices stated that the hearing was scheduled for March 7, which created confusion among parties interested in this hearing. When members of the appellant group, 2777 Shattuck Neighbors, reached

out to City staff for clarification about the hearing date, they were informed that the hearing would be postponed because the City had failed to provide proper notice. For example, Planning Director Carol Johnson confirmed in writing on January 30 that the mailed notices included "the incorrect date (Mar 7) on the other [front side of the notice] in more prominent text. As a result, the notice is invalid." Email from Carol Johnson, Planning Director, to Louise Rosenkrantz, 2777 Shattuck Neighbors, Change in date of Council appeal to March 7 (Jan. 30, 2017). Ms. Johnson indicated that the City would move the hearing to an alternative date. *Id.*

Based on the City's representations, members of 2777 Shattuck Neighbors halted their advocacy efforts and did not finalize materials they intended to submit for inclusion in the City Council's meeting packets. Then, less than one hour before the comment deadline for the February 7 City Council meeting, members of 2777 Shattuck Neighbors received an email stating the City had decided to hold the hearing on February 7, despite the invalid notice. The change at this late hour deprived appellants of sufficient time to provide written materials and it harmed their efforts to gather community members to speak at the hearing. The City's vacillation is fundamentally unfair to the neighborhood and has damaged appellant's ability to exercise its rights under the BMC.

As the City Council is well aware, this Project is controversial and includes significant flaws. It is your job to protect the public's right to participate fully and actively in this process. Failure to so do will unnecessarily expose the City to legal risks and harm the Berkeley community.

II. The City Must Complete a Thorough Review of the Project's Traffic Impacts.

If the City moves ahead with the February 7 hearing, it should uphold 2777 Shattuck Neighbors' appeal. As we noted in our November 7, 2016 letter to the Council (attached), the Project and its approval violate key provisions of Berkeley's Zoning Ordinance, General Plan, and other land use policies, as well as the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 et seq.). A decision to uphold the ZAB approval would be detrimental to neighboring properties, the neighborhood, and the City, and it could subject the City to years of litigation that would divert staff time and financial resources from important City programs.

The Project's potential impacts on traffic, pedestrians, bicyclists, and parking are of particular concern. The attached traffic analysis from MRO Engineers details numerous illustrations of the Project's flaws. We have highlighted several of the most critical issues identified in this analysis below.

First, multiple components of Honda's traffic analysis rely on projections and estimates, rather than easily accessible real data. For example, the actual data from a 2010 traffic study indicates that the new facility would likely generate more than double the trips projected by Honda's estimate. This existing data could have been used for a reality check, and Honda's failure to use it resulted in a gross underestimation of the Project's traffic impacts.

Second, MRO's analysis notes that – contrary to Honda's claims – traffic related to the Project is likely to pose safety threats to bicyclists and pedestrians, and the proposed traffic adjustments and signage will provide inadequate protection. Even Honda's analysis reflected current high levels of broadside collisions in the immediate vicinity of the Project, due to conflicts between vehicles and bicyclists that likely stem from the significant traffic delays common on this portion of Shattuck Avenue. The Project will exacerbate this existing hazard by introducing a left turn lane on southbound Shattuck Avenue, with inadequate passing space on the right. This additional risk, in an already dangerous zone, is unacceptable.

Third, the MRO analysis identifies multiple parking impacts that Honda and the ZAB did not adequately address. The Project will displace an unknown number of on-street parking spaces, either temporarily or permanently. For instance, Honda proposes to park delivery trucks in curbside parking spaces on Adeline Street. The impacts of this proposal remain vague. If these parking spaces are occupied when trucks arrive, trucks are likely to block the flow of traffic. Alternatively, if this space is dedicated to deliveries, additional on-street parking will be lost. Either way, the impact of Honda's scheme must be analyzed.

Finally, Honda has not provided level of service calculations, which makes it impossible for stakeholders and the City to properly assess the validity of Honda's analysis. Indeed, the City confirmed that Honda's traffic analysis "does not include an appendix with model outputs or summary sheets or anything of a technical nature and planning staff did not request or receive such outputs." Letter from Shannon Allen, Principal Planner to Allison Johnson, Attorney for 2777 Shattuck Neighbors, re Public Records Act Request (Nov. 7, 2016). Without this information, the City cannot reach defensible conclusions regarding the Project's traffic impacts.

In sum, the attached analysis from MRO identifies serious public safety threats that follow from the ZAB's approval of this Project. The ZAB's analysis of the Project could have identified these issues, if it had prepared the required environmental analysis of the Project, rather than improperly finding the Project exempt from CEQA.

III. Summary

We appreciate the Council's consideration of these and the numerous other concerns that the community has raised with regard to the Project. The issues raised here and by members of 2777 Shattuck Neighbors deserve careful and thorough consideration at a properly noticed public hearing. As our November 7 letter explained, the Project violates numerous state and local laws. Accordingly, we respectfully request that the Council postpone the February 7 hearing, uphold the 2777 Shattuck Neighbors' appeal, and reverse the Project Approval.

Sincerely,

SHUTE, MIHALY & WEINBERGER LLP

for Gabriel M.B. Ross & Allison A. Johnson

Attachments:

- Invalid hearing notice mailed January 26 with March 7 hearing date
- Email from Carol Johnson, Planning Director, to Louise Rosenkrantz, 2777 Shattuck Neighbors, Change in date of Council appeal to March 7 (Jan. 30, 2017)
- Email from Shannon Allen, Principal Planner, to Louise Rosenkrantz, 2777 Shattuck Neighbors, Berkeley Honda Appeal (Jan. 31, 2017, 4:13 pm)
- Letter from Neal K. Liddicoat, P.E., Traffic Engineering Manager, MRO Engineers, Inc., to Allison Johnson, Attorney for 2777 Shattuck Neighbors, Review of Traffic Study (Jan. 26, 2017)
- Letter from Gabriel Ross and Allison Johnson, Attorneys for 2777 Shattuck Neighbors, to City Council, City of Berkeley, Appeal of ZAB Approval, Berkeley Honda Use Permit #ZP2015-0102 (Nov. 7, 2016)

Cc:
Mayor & City Council Members
City Attorney
Planning Director
Shannon Allen, Principal Planner
ZAB Members
Applicant
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November 7, 2016

Via E-Mail

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Re: Appeal of ZAB Approval, Berkeley Honda Use Permit #ZP2015-0102

Dear Councilmembers:

On behalf of the 2777 Shattuck Neighbors, we urge to you reverse the Zoning Adjustments Board's ("ZAB") September 8, 2016 legally-flawed approval of the proposed Berkeley Honda development at 2777 Shattuck Avenue and 2747 Adeline Street ("Project").

You may believe that Berkeley Honda is a good use for the proposed site. Regardless of the merits of that position, the City's action must conform to the law. The City must give every project—even projects it favors—the mandated degree of environmental review, and it may not approve a project—even a beneficial one—that violates City zoning. The procedural and substantive requirements bind the City, as the courts have recognized. As this letter explains, the Project may not legally be approved. The ZAB's decision to do so (the "Approval") was based on clear errors of law and fact; the City Council's duty is to overrule that flawed approval.

The Project violates several key provisions of Berkeley's Zoning Ordinance. The auto service and repair component of the Project is not allowed in the South Area Commercial (C-SA) District and does not meet the definition of an "ancillary use." The Project also falls far short of the City's off-street parking requirements. The Zoning Ordinance bars its approval.

The Project is also inconsistent with Berkeley's General Plan and other pedestrian-friendly land use policies. It will interfere with pedestrian use of south Shattuck Avenue and Adeline Street, including safe school routes, and deprive the neighborhood of commercial space that could be used to serve the community's basic needs. The City has repeatedly committed to prioritizing pedestrian use of this area, as part of its vision for a walkable Berkeley. The Project will seriously impede the City's ability to realize this vision. The applicable plans plainly disfavor the proposed uses. Approval of the Project would discard years of community democracy and disregard ongoing planning processes. This is not how Berkeley runs.

In addition, the Project will have numerous potentially significant effects on the environment and requires full environmental review pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 et seq.) and the CEQA Guidelines (California Code of Regulations, title 14 § 15000 et seq.). The Project is not, as the ZAB determined, exempt from CEQA, and the Project's primary traffic and noise impacts will harm the surrounding area. The Project must not proceed unless and until the City analyzes its environmental impacts and properly identifies mitigation measures.

As detailed below a Council decision to uphold the Approval would be an abuse of discretion. Not only would such a decision be detrimental to neighboring properties, the neighborhood, and the City, it could subject the City to years of litigation that would divert staff time and financial resources from important City programs. Thus, the Council should uphold the appeal filed by the 2777 Shattuck Neighbors.

I. The Berkeley Municipal Code Prohibits the Project.

The ZAB is bound by the City's Municipal Code, including its Zoning Ordinance. *Groch v. City of Berkeley* (1981) 118 Cal.App.3d 518, 523 (Berkeley's ZAB "must grant or deny permit applications within guidelines set forth by the city council in the master plan and in the purpose clause of the zoning ordinance"); *Land Waste Management v. Contra Costa County Bd. of Supervisors* (1990) 222 Cal.App.3d 950, 957, 959 (land-use decisions must be consistent with controlling land-use legislation); *Robison v. Oakland* (1968) 268 Cal.App.2d 269, 274 (a city is "obviously bound by the provisions of its own ordinance").

The Project would violate the City Zoning Ordinance in several ways. Most directly, it would locate an auto service and repair facility in a district that prohibits those uses and would provide less than the required off-street parking. The Project would additionally fall short on several other zoning policies by impairing walkability and

contributing to congestion in the neighborhood. As a result, the Project would harm the health, safety, peace, comfort, and general welfare of neighbors, the surrounding area, and the City. Accordingly, it does not meet the basic requirements for a conditional use permit, and the ZAB abused its discretion in approving the Project. *West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1518 (decision based on action that did not proceed in the manner required by law, not supported by findings, or based on findings not supported by evidence is an abuse of discretion).

A. The Project Would Include Auto Service and Repair as a Primary Use, Not an Ancillary Use, In Violation of the Zoning Ordinance.

Berkeley's Zoning Ordinance limits commercial activities to prevent adverse effects on the community. Berkeley Municipal Code ("BMC") 23A.04.030(F). To this end, the C-SA District allows only "lower intensity community Commercial Uses" (BMC 23E.52.020(C)) and prohibits high-intensity commercial uses such as auto service, auto repairs, and even car washes (BMC 23E.52.030(A)). The ZAB does not have the power to allow these prohibited uses. *See Groch*, 118 Cal.App.3d at 524-25.

The only way auto service and repair activities may be allowed on the Project site is if they are "ancillary" to an allowed use. *See* BMC 23E.52.030(A) (allowing "automobile sales" with outdoor activities in the C-SA District only with a use permit and subject to additional restrictions); BMC 23F.04.010 (noting "[a]ncillary uses and services that are supporting of an automobile sales use *may* include . . . repair, maintenance, bodywork and other service of automobiles.") (emphasis added).

The applicant's lengthy discussion of "primary" vs. "ancillary" uses is thus beside the point. *See* ZAB Staff Report, 2777 Shattuck Avenue/2747 Adeline Street (Sept. 8, 2016) ("Staff Report"), Attachment C at 1-6)Auto sales are allowed (with a use permit), service and repairs are barred unless they are ancillary. The Zoning Ordinance defines "ancillary use," and the C-SA provisions regarding auto sales offer no exception to this definition. BMC 23F.04.010; BMC 23E.52. Auto repair and service activities are allowed *only* if they meet the requirements for an "ancillary use." *See* BMC 23E.52.030(A); BMC 23F.04.010. City staff and the Project applicant were thus incorrect in asserting that all auto sales operations are entitled to include service and repair operations in the C-SA District. *See* Staff Report at 16, Attachment C at 3 (supplemental applicant statement arguing service and repair *must* be permitted to accompany any auto sales). To approve the Project on the basis of this misreading of the Zoning Ordinance would be an abuse of discretion.

The proposed auto service and repair component of the Project, moreover, cannot meet the Zoning Ordinance's definition of ancillary use. Under the Zoning Ordinance, an "ancillary use" must be "dependent on" the principal permitted use and must "not result in greater or different impacts than the principal use." BMC 23F.04.010. However, the ZAB completely ignored these requirements. *See* Staff Report at 16 (claiming that auto service is an ancillary use because it is "commonly associated" with auto sales and neglecting the other two prongs of the "ancillary use" definition).

As evidenced by the applicant's current two-site operation, the service and repair portion of the business is not "dependent on" the sales portion—they can operate at independent locations. *See* Staff Report at 11. Indeed, the applicant's materials indicate that sales and service have separate staff, different operating hours, and different parking needs. *Id.*, Attachment C at 3, 8, Attachment D at 2. Plainly the auto sales operation can continue in the proposed location without an onsite service center; sales is not dependent on service.

The applicant claims that it "must have an integrated sales, service, parts, and inventory operation at this proposed location." ZAB Staff Report, 2777 Shattuck Avenue/2747 Adeline Street (June 9, 2016) ("June Staff Report"), Attachment 3 at 1. Its only explanation for this exigency is based on its business model. *Id.* However, there is no indication that the Zoning Ordinance uses "dependent on" to mean "our business plan places these two uses on the same site." The Zoning Ordinance governs the physical location of land uses. BMC 23A.04.030(B). "Dependency" in the context of ancillary uses must mean that there is some physical requirement that the uses be co-located. the applicant has not shown that its proposal would offer anything more than a convenience and, perhaps, a business enhancement, That is not enough to show that service is a use ancillary to sales under the Zoning Ordinance.

If "dependent on" extended beyond physical dependence, the Zoning Ordinance would allow any business that sought an additional source of income to pursue that source of income as an "ancillary use" (provided it met the other prongs of the "ancillary use" definition). The ZAB does not have the power to modify the City's rules to fit the applicant's financial and business model constraints. *Groch*, 118 Cal.App.3d at 523 (ZAB must review applications within guidelines set forth by the City).

Further, the proposed service and repair operation is not an ancillary use under the Zoning Ordinance because will have greater and different significant impacts than a sales-only operation. Most obviously, it will increase traffic impacts, along with impacts that are driven by traffic, such as noise and air quality

There is no question that the proposed Project would have greater impacts than a sales-only facility. *See, e.g.*, Staff Report at 18 ("Circulation patterns in and near the site would change as a result of . . . the applicant's proposed access to auto service on-site"). The service and repair activities account for at least two-thirds of the Project's large footprint. Staff Report at 16. When the applicant claims that the dealership is "dependent" on the service operation (*see* June Staff Report, Attachment 3 at 1), it is admitting that that a sales-plus-service dealership brings more customers than a sales-only facility. The current sales operation has customers generating trips and adding to traffic; the current repair operation has its own set of customers, trips, and concomitant traffic. Adding these two operations together necessarily creates additional traffic: the applicant's materials state that the purpose of offering service is to bring in repeat customers and that "[e]xcept for 1-2 vehicles which are towed daily to the dealership for service, [service] customers drive their vehicles to the dealership." Staff Report, Attachment C at 3, 7. The auto repair equipment will also generate significant noise. Staff Report at 19.

Moreover, the hazardous materials impacts of service and repair would be different than the impacts from sales alone. Staff Report at 20 ("Operation of the service center would involve the use of hazardous materials."); *see* BMC 23F.04.010. The service center would handle significant amounts of oil and coolant that would not be present at a sales-only facility. *Id.*

The Staff Report claims that some of the Project's impacts can be mitigated (*see* CEQA discussion below), but that is not the question here. The ZAB was required to determine whether the proposed auto service and repair uses will result in "greater or different impacts" than the auto sales use. They will and the ZAB erred as a matter of law when it failed to recognize this uncontested fact and apply the Zoning Ordinance accordingly.

Accordingly, the proposed service and repair component of the Project exceeds the limits on ancillary uses in the C-SA District. Without that ancillary use designation, auto service and repair are not allowed at the Project site. The ZAB was therefore incorrect in approving the Project, and the City Council must reverse that error.

B. The Project Provides Insufficient Off-Street Parking.

The Project also violates the Zoning Ordinance's off-street parking requirements. *See* BMC 23E.28. The City requires off-street parking to: "prevent worsening of the already serious deficiency of parking spaces"; provide parking for traffic-generating uses; and reduce on-street parking, "thus increas[ing] the safety and

capacity of the City's street system." BMC 23E.28.010. The Project violates general off-street parking requirements and specific requirements for an auto sales operation in the C-SA District. BMC 23E.28, 23E.52.080.

The ZAB relied on a Staff Report that grossly understated the number of parking spaces the Project would require. *See* Staff Report at 10. Developments in the C-SA District must meet parking requirements that go above and beyond the general parking requirements for commercial developments. BMC 23E.52.080(A) ("All parking shall be provided in accordance with the requirements of this section and Chapter 23.E.28, except as set forth in this section."). The District's standard minimum parking requirement is two spaces per 1,000 square feet of gross floor area. BMC 23E.52.080(B). Although existing auto sales operations in the C-SA District have a lower requirement (one space per 1,000 square feet), auto sales operations that require a change of use or add newly constructed floor area must meet the "more restrictive" district minimum of two spaces per 1,000 square feet. *Id.*

Because the Project involves a change of use and newly constructed floor area, there is no question that the "more restrictive" two space per 1,000 square feet minimum applies. *See id.* The Project site in the C-SA District is currently vacant; the Project would change its use to active auto sales, service, and repair and add significant floor area. *See* ZAB Notice of Decision, 2777 Shattuck Ave/2747 Adeline Ave. (Sept. 15, 2016) ("Decision") at 1; BMC 23F.04.010 (defining "change of use" as "any change in the nature or character of the use of a building or structure").[1] Accordingly, the Project is required to provide two spaces per 1,000 square feet of gross floor area. *See* BMC 23E.52.080(B). The Project will encompass at least 23,510 square feet, and thus requires at least 47 spaces. *See* Decision, Attachment A at 2-3; BMC 23E.52.080(B).

Nonetheless, the applicant and Staff Report appear to erroneously apply the lower parking requirement for existing operations, without explanation. *See* Staff Report at 10 ("The proposed 23,510 sq. ft. of gross floor area requires 23 off-street parking spaces.").[2] Thus, the ZAB's finding that "the project will meet C-SA District

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[1] Even if the past use, Any Mountain's outdoor goods retail operation, were the baseline for change, the Project does not propose to continue that retail use; it proposes completely different auto sales, service, and repair uses. June Staff Report, Attachment 3 at 1; *see* BMC 23E.52.030 (listing "Retail Sales" and "Automobile and Other Vehicle Oriented Uses" as separate use categories).

[2] The Staff Report figure also appears to include a rounding error. *See* BMC 23E.28.050(C) ("When the formula for determining the number of required off-street

requirements for the number of off-street parking spaces" was an abuse of discretion. Decision, Attachment A at 2 (finding 1.C); *see West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1518 (decision based on action that did not proceed in the manner required by law or based on findings not supported by evidence is an abuse of discretion).

Additionally, the applicant plans to count 14 spaces in the service queue and service bays toward the parking requirement. *See* Staff Report at 19, Attachment D at 2. These spaces are not actually dedicated parking spaces—they are part of the business. This refusal to completely dedicate space to off-street parking violates the City's parking requirements and flies in the face of the City's parking policies. This problem is compounded by the planned occupation of existing parking spaces at 2747 Adeline and the removal of 13 parking spaces at 2777 Shattuck to accommodate the proposed addition. *See* Staff Report at 10, 18-19. Neighborhood residents have documented numerous parking conflicts at nearby auto dealerships, and the proposed Project will add to, rather than alleviate, these problems. *See, e.g.*, Staff Report, Attachment H at 3-9, 11-17; 69 South Berkeley Residents, "Use of publicly- owned land by car dealerships in the C--SA District: An Open Letter to Berkeley City Officials," The Berkeley Daily Planet (Sept. 2, 2016).[3]

The ZAB's Approval of the Project without adequate parking was improper. *See Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 727 ("a governmental body may not waive the requirements of an ordinance enacted for the public benefit"). The Council should reverse the Approval.

C. The Project Would Harm Neighbors, the Surrounding Area, and the City.

Finally, the Approval is invalid because it violates the core requirement for conditional use permits. The sales operation itself requires a conditional use permit. BMC 23E.52.030(A). This requirement is not simply a formality. It directs the ZAB to carefully determine whether this use is appropriate "under the circumstances . . . existing

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parking spaces results in a requirement of a fractional space, . . . fractions including and over one-half shall be counted as requiring one parking space.") (23,510/1,000 = 23.51, which must be rounded to 24).

[3] *Available at* http://www.berkeleydailyplanet.com/issue/2016-09-02/article/44835?headline=Use-of-publicly-owned-land-by-car-dealerships-in-the-C--SA-District-br-An-Open-Letter-to-Berkeley-City-Officials---69-South-Berkeley-Residents.

at the time at which the application is granted." BMC 23B.32.040. This is because some uses may be detrimental to the health, safety, peace, morals, comfort or general welfare of neighbors, the surrounding area, and the City, under certain circumstances; such uses must not receive a conditional use permit. *Id.*

That is the case here. Increases in traffic and car-related activities from the Project would mean increases in pollution and conflict between cars and walkers, cyclists, school-goers, and other local activity. As the letters and comments from numerous neighbors indicate, the noise and traffic from the Project will disrupt the peace in the neighborhood and interfere with their comfort and general welfare. *See, e.g.*, Staff Report, Attachment H at 20-22, 27-29. As noted below, under the South Berkeley Area Plan, "the people who live, work, and own property or businesses in this community are as important as the land uses that overlay the pattern of their daily lives." South Berkeley Area Plan (1988) at 18. The ZAB's approval of the Project runs counter to this principle, and the ZAB's finding that the Project will not be detrimental is not supported by the record. *See* Decision, Attachment A at 1 (finding 1); *West Chandler Boulevard Neighborhood Assn.*, 198 Cal.App.4th at 1518 (decision based on findings not supported by evidence is an abuse of discretion).

II. The Project Conflicts with Berkeley's Pedestrian-Friendly Land Use Policies.

The Project is also inconsistent with numerous overarching land use policies for the Project site. The Project would be located at one of the City's nine gateways, on a portion of Shattuck Avenue that the Berkeley General Plan designates an "Avenue Commercial Area." City of Berkeley, General Plan: A Guide for Public Decision-Making (2002) ("General Plan"), UD-2 (Fig. 24), LU-7 (Policy LU-27). The General Plan, South Shattuck Strategic Plan, South Berkeley Area Plan, Pedestrian Master Plan, draft Adeline Corridor Plan, and the Zoning Ordinance provisions that implement these policies all direct the City to ensure this area is pedestrian-friendly, visually appealing, and serves the neighborhood. Instead, the Project would interfere with walkability, negatively impact aesthetics, and promote the purchase and use of cars.

Each of these plans represents the results of City democracy at work. The people and neighborhoods of Berkley have determined how their streets should look and be used. This Project, as explained below, is incompatible with that vision. It is inconsistent with the plans on a number of specific, technical grounds, and thus should not be approved. Perhaps more importantly, it is plainly out of step with the spirit of all these plans. It is impossible to imagine the drafters of these plans, and the communities whose ideas informed them, looking on this Project with approval. Those democratic contributions deserve weight in the Council's decision.

The Adeline Corridor Plan presents a particular problem for the City's action on the Project. The plan is still in development, and will likely include mandatory policies relevant to the proposed site. To rush this development ahead of the comprehensive, community-based plan for Adeline would be to hobble the process. South Berkeley's voices should be heard on this key site and its appropriate uses. The only way to honor the neighborhood's choices is to wait until the Adeline Corridor Plan is complete.

In light of the conflicts and inconsistencies detailed below, the Approval must be reversed. *See Mira Development Corp. v. City of San Diego* (1988) 205 Cal.App.3d 1201, 1214-15 (assessing consistency with the city's land use plan to determine whether a charter city's action was an abuse of discretion); *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 414-15 ("a [charter] city's general plan may be viewed in many ways as the city's articulated perceptions of what constitutes the locale's 'general welfare,'" so decisions inconsistent with the general plan are presumed to be an abuse of discretion).

A. Berkeley's Land Use Plans Direct the City to Prioritize Pedestrians and Community-Serving Uses at the Project Site.

The General Plan, the "constitution" that determines the direction of Berkeley's development (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541), puts pedestrians and neighborhood needs first. It directs the City to "[m]aintain and improve Avenue Commercial areas . . . as pedestrian-friendly, visually attractive areas of pedestrian scale and ensure that Avenue areas fully serve neighborhood needs." General Plan, Policy LU-27. Site and architectural design should be pedestrian-oriented. *Id.*, Policies UD-26, 27, 28. In support of these policies, the General Plan includes numerous actions that will make South Shattuck more pedestrian-friendly. *Id.*, Policy LU-27. These actions include requiring ground-floor commercial uses to be oriented to the street and sidewalks; ensuring safe, wide walkways; and maintaining and encouraging a wide range of community and commercial services, including basic goods and services. *Id.* The General plan also directs the City to "make the most efficient use of existing and new parking areas." *Id.*, Policy T-32.

In addition, eight "core" General Plan policies "specific to pedestrian planning issues" form the basis for Berkeley's Pedestrian Master Plan. City of Berkeley, Pedestrian Master Plan (2010) ("PMP") at 2-1 to 2-2. The Pedestrian Master Plan envisions a Berkeley where people "can conveniently walk to their destinations" and "feel safe walking." *Id.* at 1-1. It aims to create a city where "[v]isitors are attracted to the enhanced walking environment" and "[c]ommercial streets are exciting places to visit."

Id. The Plan directs the City to treat the needs of pedestrians as the "highest priority" in the face of competing goals. *Id.* at 2-3 (Policy 1.2, Pedestrian Priority: "When addressing competing demands for sidewalk space, the needs of the pedestrian shall be the highest priority."). Berkeley's Climate Action Plan supports these goals by directing the City to accelerate implementation of the Pedestrian Master Plan and the Bicycle Plan, to reduce vehicle miles traveled and greenhouse gas emissions. City of Berkeley, Climate Action Plan (2009) at ES4; *see also* General Plan, Policy T-4 (Transit-First Policy: "Give priority to alternative transportation and transit over single-occupant vehicles on Transit Routes identified on the Transit Network map," including the portions of Shattuck and Adeline that pass the proposed Project site); Climate Action Plan at 27-28 (locate neighborhood-serving retail development along transit corridors to reduce vehicle miles traveled and increase other mobility options).

Similarly, the South Shattuck Strategic Plan objectives include: encouraging use of "alternatives to the automobile"; creating and enhancing the identity of South Shattuck as "a unique and pleasant district that complements adjacent residential neighborhoods"; making traffic improvements that "complement economic development and urban design goals"; and preserving quality of life in residential neighborhoods. City of Berkeley, South Shattuck Strategic Plan (1998) at 3-4. The General Plan directs the City to implement the South Shattuck Strategic Plan and take action to achieve its objectives. General Plan, Policy LU-30. Accordingly, the South Shattuck Strategic Plan emphasizes pedestrian-oriented development and includes several strategies aimed at enhancing the pedestrian-friendly character of the area. South Shattuck Strategic Plan at 3; Staff Report at 23. As the Staff Report notes, these strategies include reducing automobile impacts and improving relationships between buildings, activities, residents, and shoppers. Staff Report at 3. And like the General Plan, the Strategic Plan promotes efficient use of parking. South Shattuck Strategic Plan at 34-35 (directing the City to minimize parking impacts of new developments by strategically locating parking on Shattuck and Adeline).

The South Berkeley Area Plan adds two critical goals for the Project area: "the retention and encouragement of an existing and vital Black community, and the revitalization of the community's economic base." City of Berkeley, South Berkeley Area Plan (1988) at 14. The "underlying theme" of the Area Plan is that "the people who live, work, and own property or businesses in this community are as important as the land uses that overlay the pattern of their daily lives." *Id.* at 18. It, like the Pedestrian Master Plan, envisions a South Berkeley where "[r]etail uses have reclaimed the streets for pedestrians." *Id.* at 19. The Area Plan specifically identifies numerous desirable businesses for South Berkeley, including various food establishments, home furnishing

stores, book stores, and childcare facilities. *Id.* at 28. Auto sales, service, and repair are not on the list.

Finally, the new Adeline Corridor Plan will build on the South Shattuck Strategic Plan and the South Berkeley Area Plan. City of Berkeley, Adeline Corridor Plan, Draft Existing Conditions Report (2015) ("Adeline Corridor Plan") at 1-4. It identifies the intersection where Adeline meets Shattuck, where the Project would be located, as a "key intersection." *Id.* at 4-51.

B. The Auto-Focused Project Cannot Be Reconciled with these Plans.

The Project is incompatible with the City's land use policies. *Cf Napa Citizens for Honest Gov. v. Napa County* (2001) 91 Cal.App.4th 342, 378-79 (project must be compatible with land use plans for approval to be valid). The Project would introduce a curb and cut and driveway on Shattuck that would "increase potential conflicts" with pedestrians, "interrupt the pedestrian-friendly environment," and "make the streetscape less pedestrian-friendly." Staff Report at 18, 23.

The Staff Report completely omits discussion of the General Plan policy for Avenue Commercial areas and South Shattuck, but staff's conclusions about the South Shattuck Strategic Plan strategies are also relevant to the General Plan policies. The Report notes that the Project is inconsistent with three Strategic Plan policies related to urban design, walkability, and transportation. *Id.* at 23. The Project would interfere with safe, wide walkways and reduce space available for businesses that provide basic goods and services. *See* General Plan, Policy LU-27. It would also directly conflict with the Strategic Plan objective to encourage "alternatives to the automobile" and to minimize the impacts of parking for new developments. *See* South Shattuck Strategic Plan at 4, 34-35. Further, as the Staff Report acknowledges, auto sales, rental, service, and body work businesses are on an explicit list of "undesirable" businesses for the South Shattuck Corridor. Staff Report at 24.

The Staff Report's conclusion that the Project will interfere with pedestrian use of South Shattuck is consistent with other cities' assessments of auto facilities. For example, Oakland's Broadway/Valdez District Specific Plan notes that auto uses "undermine the pedestrian environment with physical distractions such as curb cuts, driveways and roll-up garage doors and uses that provide limited interest to most pedestrians." Broadway/Valdez District Specific Plan (June 2014) at 34. That Plan further notes that auto uses bring people to an area "just on the occasion of purchasing or repairing one's car," rather than providing consistent attractions that contribute to a thriving local community. *Id.* at 95.

The Project is also likely to conflict with the new Adeline Corridor Plan. *See* Staff Report, Attachment H (letter from Sierra Club noting Project may conflict with affordable housing plans and regional sustainable planning efforts). The Project would occupy a key site in the Adeline Corridor and the ZAB's decision will directly impact the Corridor planning process. To allow this Project to run ahead of that process would eviscerate the existing and ongoing community engagement in the Adeline Corridor Plan.

Further, contrary to the position taken in the Staff Report (Staff Report at 24), the fact that the Project is consistent with some General Plan policies does not override its incompatibility with the City's other clear and fundamental policies and objectives. *See Napa Citizens for Honest Gov.*, 91 Cal.App.4th at 378-79 (project must be compatible with land use plans). The Staff Report identifies three inconsistencies with the South Shattuck Strategic Plan in Table 6, but the Report's broader discussion of land use policies does not address these issues. Staff Report at 22. It merely highlights policies that support the Project. *Id.* at 21, 24. But zoning allowing limited auto sales and the applicant's potential sale of electric cars do not trump the clear land use policies for the area. *Compare Mira Development Corp.*, 205 Cal.App.3d 1201, 1214-15 (decision inconsistent with the city's land use plans may be an abuse of discretion) *with* Staff Report at 21 ("conformance with the Zoning Ordinance, specifically BMC Chapter 23E.52, which was revised to allow new or relocated auto sales, take [sic] priority over the strategies in the South Shattuck Strategic Plan").

The purpose of the General Plan and Berkeley's other land use policies is to guide land use decisions, including ZAB's decisions about proposed developments. General Plan, Introduction. The ZAB was obliged to adhere to those directives. *Groch*, 118 Cal.App.3d at 523 (ZAB does not make City policies; it implements them.).

III. The Project Requires Full CEQA Review.

Finally, the ZAB's determination that the Project is exempt from CEQA is legal error, for three reasons. First, the Approval turns on changes to the Project aimed at mitigating its potentially significant impacts. Such mitigation measures cannot support a categorical exemption finding. *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102. Second, even with these mitigation measures, the Project does not fall within the categorical exemptions for existing facilities, small structures, or in-fill development. CEQA Guidelines §§ 15301, 15303, 15332. Third, even if it did, several exceptions to these exemptions apply. *Id.* § 15300.2. Thus, the City must complete environmental review before the ZAB may consider Project approval.

A. The ZAB Improperly Relied on Mitigation Measures to Find the Project Exempt.

An agency cannot rely on mitigation measures in its determination that a project is categorically exempt. *Salmon Protection*, 125 Cal.App.4th at 1102. Categorical exemptions allow agencies to forgo CEQA review for projects that will not have significant environmental impacts. *Id.* at 1107. In contrast, where a project may have significant environmental impacts, any appropriate mitigation measures must be identified in the environmental review process, not outside of it. *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1199-1200. This ensures that impacts are reduced to the greatest extent possible, as a result of informed decisionmaking. *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 658. Accordingly, reliance on mitigation measures to avoid CEQA review amounts to an "end run" around the governing standards. *Azusa Land Reclamation Co.*, 52 Cal.App.4th at 1201.

For example, in *Salmon Protection*, a county found that construction of a house near a creek would have possible adverse impacts on species habitat and "created '[p]ossible disharmonies with the creek.'" *Salmon Protection*, 125 Cal.App.4th at 1108. Nonetheless, the county approved the project as categorically exempt "subject to conditions meant to minimize 'adverse physical effects on the natural environment.'" *Id.* at 1103. The court found the county had improperly relied on mitigation measures to find the project categorically exempt. *Id.* at 1107-08. "Reliance upon mitigation measures (whether included in the application or later adopted) involves an evaluative process of assessing those mitigation measures and weighing them against possible environmental impacts, and that process must be conducted under established CEQA standards and procedures for EIR's or negative declarations." *Id.* at 1108; *see also Lotus*, 223 Cal.App.4th at 656-58 (potential mitigation measures must be analyzed independent of the significance determination).

Here, the ZAB determined that mitigation measures proposed by the applicant and conditions of approval eliminate the Project's potentially significant impacts. For example, the Staff Report notes that conditions of approval were added to reduce the noise impacts of the service and repair operation. Staff Report at 20; *see* Decision, Attachment A at 8 (conditions of approval 19, 20). The ZAB also required a reduction in operating hours in an attempt to mitigate the Project's noise impacts. Decision, Attachment A at 12 (condition of approval 40); Staff Report at 20. The ZAB purports to mitigate traffic impacts by requiring the applicant to "identify operating measures and operating procedures to ensure that the service use is managed so that access to the site does not result in traffic congestion due to double parking in a traffic

lane, or to impede transit, pedestrian or bicycle movements in the right-of-way."[4] Decision, Attachment A at 5 (condition of approval 10); *see also id.* at 12 (condition of approval 36) (requiring a traffic study *after* the Project is in operation), 12 (condition of approval 41) (limiting location of test drives). These are all mitigation measures that should have been assessed through CEQA review. *Salmon Protection*, 125 Cal.App.4th at 1108; *see also Lotus*, 223 Cal.App.4th at 656-58. They cannot support a finding that the Project is categorically exempt from such review. *Salmon Protection*, 125 Cal.App.4th at 1102.

B. The Project Does Not Qualify for a Categorical Exemption.

The ZAB erred in finding the Project qualifies for Class 1, 3, and 32 categorical exemptions. *See* Decision at 2; Staff Report at 1-2. CEQA exempts certain categories of projects based on the determination of the California Natural Resources Agency that, barring unusual circumstances, those projects will never have a significant effect on the environment and therefore will never require environmental review or mitigation. *Salmon Protection*, 125 Cal.App.4th at 1107. Because exempt projects require no CEQA review, courts construe the exemptions narrowly "to afford the fullest possible environmental protection." *Azusa Land Reclamation Co.,* 52 Cal.App.4th at 1193-94. Here, numerous factors, including the proposed change in use to auto sales and service, the Project's reliance on hazardous materials, conflicts with Berkeley's land use policies, and the Project's effects on traffic, noise, and air quality, disqualify the Project from exemption. Thus, the ZAB's reliance on these exemptions was improper as a matter of law and would not withstand judicial scrutiny. *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1021 (scope of categorical

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[4] The applicant's traffic analysis "does not include an appendix with model outputs or summary sheets or anything of a technical nature and planning staff did not request or receive such outputs." Letter from Shannon Allen, Principal Planner to Allison Johnson, Attorney for 2777 Shattuck Neighbors, re Public Records Act Request (Nov. 7, 2016) (attached); *see* Staff Report, Attachment D. The conclusions in the analysis appear to be unsupported, and they cannot be scrutinized by the public due to the lack of technical supporting information. The traffic analysis thus lacks the required substantial evidence. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426 (abuse is discretion is established "if the determination or decision is not supported by substantial evidence") (quotation omitted); *City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, 839 (courts resolve substantive CEQA issues by determining whether the administrative record contains substantial evidence to support the agency's determinations).

exemptions is a question of law, subject to de novo review); *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 693.

1. *The Project is not a Class 1 addition to an existing facility.*

Class 1 exempts various activities related to existing facilities, provided such activities "involv[e] "negligible or no expansion of use beyond that existing at the time of the lead agency's determination." CEQA Guidelines § 15301. The "key consideration" for Class 1 exemption—the project's relationship to an existing use—excludes the Project from that exemption. *Id.*

The Decision correctly notes that Class 1 may exempt additions to existing structures of up 10,000 square foot. Decision at 2; *see* CEQA Guidelines § 15301(e). However, this is not blanket exemption for any such addition. Because *use* is the "key consideration," the exemption does not apply where, as here, the expansion also involves a change from the use "existing at the time" of the project approval.

The use "existing at the time of the [ZAB's] determination" was *no* use – an empty building (June Staff Report, Attachment 3 at 1), and the Project would change that use to auto sales, service, and repair. The Staff Report's claim that the Project "would not result in a substantial expansion or intensification of use on-site" is thus wholly unsupportable. Staff Report at 2. Rather, this significant change in use would generate a new set of potential environmental impacts that require analysis. At a minimum, the Project would generate noise, traffic, and aesthetic impacts that far exceed those currently created by a vacant building, as well as the impacts of past retail use. Therefore, the Project does not meet the requirements for Class 1 exemption, and cannot be approved as such.

2. *The Project is not a Class 3 small structure.*

The Project also exceeds the bounds of the Class 3 "small structures" exemption. *See* CEQA Guidelines § 15303. Class 3 only exempts: "construction . . . of limited numbers of new, small facilities or structures"; "installation of small new equipment and facilities in small structures"; and "conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure." *Id.*

The Project is not a small structure by any stretch of the imagination. It is the conversion of a 20,000 square-foot building and the construction of a 4,000 square-foot addition. Staff Report at 9. And contrary to the ZAB's CEQA finding, the Project

will substantially change the physical appearance of the existing building. *Cf* Decision, Attachment A at 2 ("The project will not substantially change the physical appearance of the existing building."). The Project includes a 4,427 square foot addition. *Id.* Further, "[t]o accommodate the service function," the Project would require a 20-foot curb cut, an "enlarged 19'10" opening with a roll-up door," and a two lane service reception driveway/service entrance/exit, in addition to new paint, signage, podium, fencing, and planters. *Id.* at 12. Even if the structure could be deemed small, this work goes far beyond "minor modifications."

The ZAB's reliance on the Class 3 exemption appears to be based erroneously on a reference to 10,000 square-foot structures in an example in the CEQA Guidelines. *See* Decision at 2 ("Section 15303 . . . addresses the change of use not exceeding 10,000 square feet"); CEQA Guidelines § 15303(c). In urbanized areas, a project may be exempt if it includes 10,000 feet or less in total area—not just the area newly constructed. CEQA Guidelines § 15303(c); *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1258. The Honda building, however, will include just under 24,000 square feet, more than the double the limit on "small structures." Staff Report at 11.

The Staff Report additionally confirms that "[o]peration of the service center would involve the use of hazardous materials" that preclude reliance on the Class 3 exemption. *See id.* at 20; CEQA Guidelines § 15303(c). The Project would require handling of exhaust fumes as well as above-ground storage of "a 1,000-gallon tank for used oil, a 200-gallon tank for waste coolant, and a 500-gallon tank for lubricant oil." Staff Report at 20. These are significant volumes of hazardous materials that disqualify the Project from Class 3 exemption. *See* CEQA Guidelines § 15303(c) (the Class 3 exemption applies to "commercial buildings not exceeding 10,000 square feet in floor area . . . , if not involving the use of significant amounts of hazardous substances").

The Staff Report claims that compliance with regulatory requirements and industry standards would minimize the risks that these hazardous materials pose for nearby residents. *Id.* This may (or may not) be so, but it cannot override the limitations on the categorical exemption. The exemption determination is not about whether the Project's significant effects can be mitigated. The question is simply whether the Project meets the exemption criteria set out in the Guidelines. Here, the use of hazardous materials means that the Project does not qualify for the proposed exemption. *See* CEQA Guidelines § 15303(c).

In sum, the ZAB approved a 23,531[5] square-foot auto sales, service, and repair building that will handle hazardous materials and an 11,619 square-foot auto display and parking lot on a 47,676 square-foot site that abuts a residential neighborhood. Staff Report at 11. This is far from the type of "limited" and "small" development the Resources Agency determined will never have a significant effect on the environment. *See* CEQA Guidelines § 15303; *Salmon Protection*, 125 Cal.App.4th at 1107. CEQA will not allow the approval of this Project on the basis of a small-structure exemption.

3. *The Project is not a Class 32 exempt in-fill development.*

Finally, the Project does not meet two of the five mandatory requirements for the Class 32 in-fill exemption. CEQA Guidelines § 15332. The Project is not "consistent with the applicable general plan designation and all applicable general plan policies [or] with applicable zoning designation and regulations." *Id.* § 15332(b). It will also "result in [] significant effects relating to traffic, noise, [and] air quality." *Id.* § 15332(d). Thus, the Class 32 exemption does not apply.

As explained in detail above, the Project violates Berkeley's General Plan and Zoning Ordinance in several ways. *See* CEQA Guidelines § 15332(b). The Zoning Ordinance prohibits the Project's service and repair components, and the Project would not provide the required off-street parking. The operation is also inconsistent with the General Plan because it would interfere with the pedestrian experience at one of the City's important gateways and deprive the neighborhood of space that could be dedicated to serving the community's basic needs.

The Staff Report also acknowledges the Project will generate numerous potentially significant effects related to transportation and traffic (increased visits, parking issues); noise (auto service, repair, deliveries); and air quality (emissions from test drives, exhaust from auto service and repair). Staff Report at 12-24; *see* CEQA Guidelines § 15332(d). For example, the applicant's own unsupported traffic analysis (which substantially understates impacts by improperly using Any Mountain, not the current vacant building, as the baseline), notes that the Project would generate 41 new car trips during morning peak hours (31 more than Any Mountain) and a whopping 59 more trips during evening peak hours (more than double the 24 trips Any Mountain generated). *Id.*, Attachment D at 3; *see also* Staff Report at 17.

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[5] The Staff Report refers to a 23,510 square-foot building, but describes approvals totaling 23,531 square feet. *See* Staff Report at 11.

In contrast with Any Mountain's retail operation, the proposed auto dealership and service hours directly conflict with morning commute times. This will impact pedestrians and bikers in addition to drivers, and will conflict with safe routes to nearby schools. The area also already suffers significant weekend congestion near neighborhood retailers Berkeley Bowl Marketplace and Walgreens. *See* Adeline Corridor Plan at 4-48 ("Berkeley Bowl and Walgreens are [] two of the more frequently visited destinations" in the Adeline Corridor area). Weekend patrons of the Project would exacerbate this heavy weekend traffic, both by driving to the Project site and by test-driving cars nearby. Full, independent environmental review is necessary to determine the extent to which the Project's many effects are significant, as well as to identify additional issues.

The ZAB proposes to mitigate the Project's traffic and noise impacts by limiting parking hours and days. Staff Report at 20-21, Attachment A at 11. Again, a project cannot qualify for exemption based on mitigation measures. *Salmon Protection*, 125 Cal.App.4th at 1106-08. Further, an important part of the CEQA process is identifying whether alternatives to the Project would reduce environmental impacts. Pub. Resources Code § 21002. An alternative location, with fewer traffic congestion and noise issues and without known contamination, may more effectively reduce the Project's significant impacts on the environment. A split operation, with service at another site (as is currently in operation), could also alleviate the Project's adverse effects.[6] CEQA does not allow the ZAB to impose mitigation in place of full CEQA review that will require consideration of a wide range of alternatives to this Project. *See Salmon Protection*, 125 Cal.App.4th at 1106-08.

In sum, the Project does not qualify for a categorical exemption, and it will have numerous potentially significant effects on the environment, so the Project warrants full CEQA review. The ZAB's failure to direct staff to prepare an Initial Study was an abuse of discretion.

C. Multiple "Exceptions to the Exemption" Require CEQA Review.

Even if the Project did appear to qualify for categorical exemption, exceptions to the exemptions require review of the Project. If there is "any reasonable

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[6] For example, Albany Ford Subaru operates on three lots: new car sales at 718 San Pablo in Albany, auto repair at 929 San Pablo, and used car sales at 10481 San Pablo in El Cerrito. The repair operation, with longer hours, is set back from residences that might be affected.

possibility" that a project may have a significant effect on the environment, exemption is improper. *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205-06; *Azusa Land Reclamation Co.,* 52 Cal.App.4th at 1195. The CEQA Guidelines specifically identify numerous situations where further environmental review is necessary, even if a proposed project fits an identified exemption. CEQA Guidelines § 15300.2. At least four of these "exceptions to the exemptions" apply here. *See id.* § 15300.2(a), (b), (c), (f). Thus, the ZAB erred in relying on categorical exemptions for Project approval and in finding no exceptions apply. *See* Decision, Attachment A at 1.

First, the Project is not exempt because "there is a reasonable possibility that the [Project] will have a significant effect on the environment due to unusual circumstances." CEQA Guidelines § 15300.2(c). This "unusual circumstances" exception applies where "the project has some feature that distinguishes it from others in the exempt class" or where there is evidence that the project will have a significant environmental effect. *Berkeley Hillside Preservation v. City of Berkeley* (2015) 241 Cal.App.4th 943, 952. Here, both are true. Many of the Project site's characteristics—particularly the known traffic congestion (including a nearby intersection with an "F" level of service rating), the site's inclusion in the City's Environmental Management Area for hazardous contamination, and the site's prominent location (designated as one of nine City gateways in the General Plan)—distinguish it from other similar locations and facilities. Further, the unusual impacts of the proposed use distinguish it from other commercial operations. Car dealerships tend to impose "spillover effects" on adjacent neighborhoods. *See, e.g.*, Berkeley Planning Staff Memo to Planning Commission, "Public Workshop and Discussion of Potential Zoning Change Options in West Berkeley for Business Retention of Automobile Sales" at 5 (Jan. 11, 2006).[7]

The proposed Project site, directly abutting neighborhoods and near high traffic intersections, will exacerbate such effects. In addition, as the Staff Report acknowledges, the Project will result in numerous significant environmental effects related to transportation and traffic; noise from auto service, repair, and deliveries; hazards and hazardous materials; air quality; aesthetics, including lighting and outdoor car displays; land use and planning, including circulation and walkability; and the proposed Project site's historic façade. Staff Report at 12-24. Accordingly, the unusual circumstances exception prohibits the ZAB from relying on categorical exemptions.

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[7] *Available at* https://www.cityofberkeley.info/uploadedFiles/Planning_(new_site_map_walk-through)/Level_3_-_General/20070425%20Item%2010%20Auto%20Sales%20Report%20Complete.pdf.

Second, the cumulative impact of traffic-generating projects in the immediate vicinity of the Project is significant. *See* CEQA Guidelines § 15300.2(b) (categorical exemptions inapplicable "when the cumulative impact of successive projects of the same type in the same place, over time is significant"). The proposed Project site, with 2777 Shattuck vacant, already suffers an unacceptable level of traffic congestion. Staff Report at 17. Not only would the Project introduce traffic beyond that generated by the retail operation that previously occupied the Project site, it would specifically attract and generate car trips. Potential car buyers would test drive cars near the site throughout operating hours. Patrons of the service portion of the operation would also bring their cars to and from the site for repair. This will add to and exacerbate car dealership-related parking and traffic issues that already plague the neighborhood. *See, e.g.*, Attachment H at 3-9, 11-17; 69 South Berkeley Residents, "Use of publicly- owned land by car dealerships in the C-SA District: An Open Letter to Berkeley City Officials," The Berkeley Daily Planet (Sept. 2, 2016) (documenting South Berkeley car dealerships' unpermitted use of parking and interference with walkways). The cumulative impacts that will result from adding another auto-centric business to this already impacted neighborhood must be reviewed.

Third, the project may adversely affect a historical resource. Pub. Resources Code § 21084.1; CEQA Guidelines § 15300.3(f). The Project site is included on the State Historic Resources Inventory. Staff Report at 14. The fact that it is not included in the local register of historic resources does not preclude a determination that the site may be a historical resource requiring protection under CEQA. Pub. Resources Code § 21084.1. The site is a significant historic resource and the Project will significantly impact it. Thus, the extent to which the Project would modify the site's historic façade must be assessed through CEQA review.

Finally, the Class 3 exemption does not apply where a project may impact a hazardous environment. CEQA Guidelines § 15300.2(a). The Staff Report notes that the Project site is located in the City's Environmental Management Area for hazardous contamination. Staff Report at 8. It identifies 2747 Adeline as the site of an underground storage tank where gasoline previously leaked. *Id.* The proposed expansion of the facility may result in environmental impacts related to this hazard. These circumstances warrant further consideration in the environmental review process.

In sum, the ZAB was required to take into account evidence that plainly triggers these "exceptions to the exemptions" and require additional environmental review. The Project cannot legally be approved on the basis of a categorical exemption.

IV. Conclusion

For the reasons described above, we respectfully request that the Council uphold the 2777 Shattuck Neighbors' appeal and reverse the Project Approval. The ZAB must not reconsider the Project until full CEQA review and the Adeline Corridor Planning process are complete. Even then, substantial changes will be required before the Project can comply with the City's zoning requirements. We appreciate the Council's consideration of these issues.

Please provide us with notice of the outcome of the hearing on this matter.

Sincerely,

SHUTE, MIHALY & WEINBERGER LLP

Gabriel M.B. Ross & Allison A. Johnson

Cc:
City Attorney
Planning Director
Shannon Allen, Principal Planner
ZAB Members
Applicant
Property Owner
Andrew Sabey, Cox, Castle & Nicholson
Ben Bartlett
Deborah Matthews
Mark Coplan
Al Murray

Attached: Letter from Shannon Allen, Principal Planner to Allison Johnson, Attorney for 2777 Shattuck Neighbors, re Public Records Act Request (Nov. 7, 2016)

838189.7

Planning and Development Department
Land Use Planning Division

MEMORANDUM

DATE: November 7, 2016

TO: Allison A. Johnson, Shute, Mihaly & Weinberger LPP, 396 Hayes Street
San Francisco, CA 94702

FROM: Shannon Allen, AICP, Principal Planner

SUBJECT: Public Records Act Request – Berkeley Honda
2777 Shattuck Avenue/2747 Adeline Street, Application #ZP2015-0102

Via a PRA request, you have requested all files related to traffic and parking impact analysis including technical studies, project analysis and Synchro intersection level of service calculation summary sheets for the AM and PM peak hours for all study scenarios and all study intersections described on pp. 5-8 of 8/30/2016 Stantec traffic impact study.

The final parking and traffic impact analysis were included as attachments to the September 8 ZAB staff report. These attachments, Attachment D. Traffic Impact Study for Berkeley Honda at 2777 Shattuck Avenue and 2747 Adeline Street, August 30, 2015, and Attachment E. Berkeley Honda Supplemental Traffic Analysis - Adeline Parking Lot Redesign, August 30, 2016, are available on-line:
http://www.ci.berkeley.ca.us/Planning_and_Development/Zoning_Adjustment_Board/2777_Shattuck.aspx

As noted on page 5 of the Study, Synchro software was used to conduct the LOS analysis. The Study does not include an appendix with model outputs or summary sheets or anything of a technical nature and planning staff did not request or receive such outputs. As such, they are not the planning file and cannot be provided by the Land Use Planning Division.

MRO
ENGINEERS
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Phone (916) 783-3936
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February 3, 2017

Ms. Allison A. Johnson
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, California 94102

Subject: ***Review of Traffic Study for Berkeley Honda at 2777 Shattuck Avenue and 2747 Adeline Street, Berkeley, California***

Dear Ms. Johnson:

As requested, MRO Engineers, Inc., (MRO) has reviewed the traffic impact study completed with respect to the proposed Berkeley Honda project in Berkeley, California. The traffic analysis was prepared by Stantec Consulting Services, Inc., and was documented in a letter report dated August 30, 2016.

Traffic Impact Study Review

Our review focused on the technical adequacy of the traffic analysis completed with respect to the proposed project. The results of our review are summarized below.

1. ***Project Trip Generation*** – The volume of traffic to be generated by the proposed project is summarized in Table 1 (p. 3) of the Stantec report. To reflect the fact that the proposed auto dealership will occupy space previously occupied by the Any Mountain sporting goods store, that table presents the derivation of a "net" trip generation estimate, in which the Any Mountain trips are deducted from the auto dealership trips. We have identified the following issues relating to the derivation of the project's trip generation estimate.

   Berkeley Honda Trip Generation Estimate

   The proposed project represents the relocation of an existing business, rather than the development of a new land use. Thus, it could be possible to perform traffic counts at the existing facility to establish actual peak-hour trip generation values for the project. At a minimum, such counts could serve as a reality check with respect to the estimated trip generation numbers used in the study. Instead, project traffic volumes were estimated using standard rates from the ITE *Trip Generation Manual*. The failure to use actual existing trip generation values represents a substantial deficiency in the traffic analysis.

   In addition, we are aware of a previous traffic study for a proposed project at 2598 – 2600 Shattuck Avenue, the former location of Berkeley Honda. (Reference: TJKM Transportation Consultants, *Final Traffic Impact Study For Parker Place Mixed-Use* Development, April 15, 2010) The "Parker Place" study included the following trip generation estimates for the then-46,092 square foot (SF) auto dealership:

   - AM peak hour: 93 trips (69 inbound, 24 outbound)
   - PM peak hour: 120 trips (47 inbound, 73 outbound)

   In contrast, the current study indicates that Berkeley Honda would generate only 41 AM peak hour trips and 59 PM peak hour trips – less than half as many trips as the earlier study. This substantial difference must be explained.

One possible explanation is that Berkeley Honda is moving into a much smaller facility than they occupied at 2600 Shattuck Avenue (23,510 SF proposed vs. 46,092 SF at the previous location). Because the ITE trip generation rates employed in the Stantec analysis determine project-related traffic based on the square footage of the facility's buildings, the resulting trip generation numbers will be correspondingly lower.

This result lacks credibility, however, and a detailed explanation is required as to why a long-established business would suddenly generate half as much activity as it did only two years ago. More likely, Berkeley Honda will continue to generate approximately the same volume of traffic at the smaller facility, so that its trip generation rate (in terms of trips per 1,000 SF) will be substantially higher than the average values presented in the ITE *Trip Generation Manual.*

To put this in context, the average trip generation rates (as used in the Stantec analysis) are shown below:

- AM peak hour: 1.92 trips per 1,000 SF
- PM peak hour: 2.62 trips per 1,000 SF

However, the ITE *Trip Generation Manual* also presents the entire range of the trip generation rates represented by the data used to derive the average rates. For the AM peak hour, based on 26 studies, the trip generation rates were as high as 6.17 trips per 1,000 SF, over three times higher than the rate used in the Berkeley Honda analysis. The individual PM peak hour rates, based on 41 studies, are as high as 5.81 trips per 1,000 SF, over double the rate used in the analysis.

While we are not suggesting that the maximum trip rate be used in analyzing the proposed project's traffic impacts, it appears that trip generation estimates based on the average ITE rates provide flawed values that do not accurately represent the level of tripmaking activity at the proposed project.

Any Mountain Trip Generation Estimate

We note that the Existing Conditions traffic volume counts at the study intersections were conducted prior to closure of the Any Mountain store. (Stantec, p. 5) As such, it would have been possible to perform traffic counts at the store to establish its actual trip generation values. Again, however, those values were estimated using generalized information from the ITE *Trip Generation Manual.* (Even if driveway counts are considered unreliable because some patrons park on-street, patrons entering and exiting the building's doors could be counted as a means of developing reasonable trip generation values.)

Adjustment for Non-auto Trips

The trip generation estimate for the automobile dealership was adjusted to deduct trips by employees who are assumed to use non-automobile modes to travel to and from work. Specifically, 25 percent of the employee trips were eliminated from the analysis. The source for the 25 percent transit reduction is the "mode split shown in the Alameda Countywide Travel Demand Model for employees in the Travel Analysis Zone (TAZ) where the proposed Berkeley Honda would be located." (Stantec, p. 3) We are puzzled as to why this adjustment fails to reflect the actual mode split of employees, which could be readily determined through a simple survey. We should also note that this artificial adjustment would not have been necessary had actual counts been conducted at Berkeley Honda and Any Mountain, as discussed above. Those counts would have accurately reflected the travel modes of employees at the two businesses.

Moreover, a similar adjustment was not made to reflect non-automobile commutes by the Any Mountain store employees. It seems reasonable to expect that the mode split of the sporting goods employees would be similar to the mode split of the auto dealership employees. It is unlikely the mode split information derived from the Alameda Countywide Travel Demand Model distinguishes between sporting goods employees and auto dealership employees, so no basis exists for failing to apply this adjustment to the Any Mountain store's employees.

By not accounting for non-auto travel by the employees of the Any Mountain store, the trip generation for that land use is overestimated. Consequently, the net trip generation for the proposed project is underestimated.

Trips Associated With Off-Site Vehicle Storage

As noted above, Berkeley Honda is moving into a much smaller facility than they occupied at 2600 Shattuck Avenue (23,510 SF proposed vs. 46,092 SF at the previous location). This constraint will require that much of the dealership's new car inventory be stored in off-site locations. Such off-site storage will necessitate trips between the proposed facility and the storage locations as, for example, the new vehicles will need to be delivered to the on-site service department to be prepared for delivery to buyers. It might also be necessary to transport potential buyers to the off-site storage locations to allow them to inspect vehicles they are considering purchasing.

These trips are unaccounted for in the traffic impact analysis. Consequently, the analysis understates the volume of traffic and, therefore, the traffic impacts associated with the proposed project.

Trips Associated With Used Car Sales

Although the project application is unclear on this point, it appears that used car sales would continue to be located at 2627 Shattuck Avenue, at least in the short term. The project proposes to locate new car sales at 2777 Shattuck Avenue and 2747 Adeline Street, but does not clarify whether the used car operation will continue at its current site. Assuming that is the case, however, the traffic study must address the magnitude of vehicular traffic occurring between the new and used car operations. Will sales people transport customers back and forth between the two sites? Will used cars be driven to and from the proposed service department? Once again, these potential trips are unaccounted for in the project's traffic impact analysis.

If, on the other hand, new and used car sales are to be consolidated at the proposed project location, the project trip generation estimate probably understates the volume of traffic that can reasonably be expected there. In such a case, the number of employees located on-site might be a better indicator of peak-hour traffic than building square footage.

In any event, the applicant's plans for the used car operation must be clarified so that any project-related traffic associated with the used car facilities can be fully considered in a revised traffic analysis.

2. ***Project Trip Distribution*** – According to page 4 of the Stantec report, the geographic distribution of trips associated with the proposed auto dealership and the Any Mountain sporting goods store was determined:

> *. . . based on knowledge of the study area, existing traffic volumes on the corridors, and input from City staff.*

Again, this approach ignores the fact that both the auto dealership and the sporting goods store that previously occupied the project site existed at the time the traffic study was initiated, so that the actual geographic orientation of patrons and employees could be determined through surveys and/or derived from credit card sales information (which can be used to determine the zip code of patrons). The fact that the project-related trip distribution is based on speculation rather than readily available data is a substantial flaw in the analysis.

3. ***Project Traffic Assignment*** – The net trip generation values discussed above were assigned to the study area road system to develop the "Existing Plus Project Conditions" and "Existing Plus Approved/Pending Projects Plus Project Conditions" analysis scenarios. This approach implicitly assumes that the geographic distribution of the trips associated with the proposed project is identical to the distribution of trips associated with the Any Mountain store. The traffic study provides no substantial evidence to demonstrate that this is the case.

   The preferable approach would be to assign the traffic using specific trip distribution percentages for the existing sporting goods store and the proposed auto dealership. The sporting goods trips could then be "unassigned" from the study intersections (i.e., subtracted from the existing traffic volumes), based on the appropriate distribution percentages. Finally, using the proposed project's specific trip distribution percentages, the auto dealership trips could be assigned in addition to the reduced existing traffic volumes.

   In short, the approach taken in the traffic analysis is speculative and, therefore, questionable. The rationale for estimating the trip generation and distribution values for both the previous and proposed land uses when data could be collected that would provide meaningful information must be explained. Further, the project traffic assignment is faulty, in that it depends directly on those estimated values rather than actual data.

4. ***Project Access*** – Project access is addressed on pages 8 - 9 of the Stantec report.

   <u>*Shattuck Avenue Driveway*</u>

   As described on page 8 of the Stantec report:

   > *Vehicles will access the driveway on Shattuck Avenue by making a left turn just south of Ward Street. The width of Shattuck Avenue southbound direction* [sic] *at the driveway location is approximately 24 feet, since currently it is a two lane roadway. The SR2S* [Safe Routes to School] *design would reduce Shattuck Avenue to one lane north of Wade* [sic] *Street. The roadway width will not be reduced south of the proposed bulb-out at the southwest corner of the intersection of Shattuck Avenue and Ward Street. Thus, even if a car needs to wait on Shattuck Avenue to find gaps in traffic and make a left turn into the driveway, there would be ample space for the car behind to pass by the stopped car without having to wait.*

   This is illustrated on sheet A1.1 of the project site plan dated August 30, 2016, which is presented as Attachment A for reference. As shown, a shared through/left-turn lane will be provided on southbound Shattuck Avenue with an adjacent unstriped "passing lane."

   Unfortunately, the passing maneuver described above may be illegal under the California Vehicle Code. Specifically, Section 21755(a) states:

> *The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting that movement in safety.*

In this case, the movement cannot be made safely. Because no bike lane exists along southbound Shattuck Avenue, bicyclists are forced to travel along the right-most edge of the street (or between the travel lane and the parking lane). Motorists who pass a car waiting to turn left into the project site pose a danger to such individuals.

The project access driveway at this location also poses a danger to pedestrians, as vehicles waiting to turn left into the project driveway (or queued behind such vehicles) might block the painted crosswalk across the south leg of Shattuck Avenue at Ward Street. Moreover, drivers on Shattuck Avenue who are distracted by vehicles entering or exiting the project driveway might fail to notice pedestrians in the crosswalk, thereby creating a dangerous situation.

With respect to traffic exiting the Shattuck Avenue driveway, the Stantec report (p. 8) says:

> *The left turn out of the driveway would be prohibited by a sign posted at the driveway, which would only allow right turn* [sic] *out of the driveway. This would eliminate the expected conflict between the traffic exiting the driveway and conflicting with the southbound flow on Shattuck Avenue.*

While such a sign might discourage some drivers from making the outbound left turn, it is unlikely to be highly effective in preventing such turns from being made. The only proven method to prevent left turns of this type is the construction of a barrier in the street, such as a raised median.

In fact, the same individual who completed the Berkeley Honda traffic analysis addressed this issue with respect to the Parker Place project referred to above. In a letter dated April 20, 2010, the Stantec engineer (who was employed by TJKM Transportation Consultants at the time) wrote:

> *The implementation of the turn restrictions at the project driveways are expected to reduce project traffic on Carleton Street. However, given the width of Carleton Street it may be difficult to design the driveways that would physically constrain drivers from making the right turns out of the driveways and the left turn into the driveways. These restrictions would need to be implemented with signage only, without any physical barrier.* ***The effectiveness of turn restrictions through signage is entirely dependent on the level of enforcement provided at the location. Without proper enforcement, drivers may tend to make illegal turns creating an unexpected hazardous condition for pedestrian, vehicular and bicycle traffic*** *on Carleton Street. . . . However,* ***turn restrictions based only on signage may not be adequate and may result in unexpected conditions due to illegal turns in and out of the driveways.*** [Emphasis added]

Ward Street Driveway

A second driveway would be located on Ward Street, a short distance east of Shattuck Avenue. However, an existing raised median precludes left turns from southbound Shattuck Avenue to eastbound Ward Street so drivers approaching from the north will be unable to take advantage of this driveway, except by highly circuitous means.

Also, the site plan indicates that drivers exiting this driveway will be prohibited from making a right turn; only outbound left turns will be allowed. It is unclear how this restriction will be

imposed or enforced. As noted above, only through the construction of physical features such as raised medians can a turn movement be effectively prohibited; signage alone is ineffective.

We also note that no restriction on entering traffic is proposed at this driveway. Consequently, entering vehicles, which will be allowed to make a left turn into the site from Ward Street, will adversely impact the residential neighborhood to the east of the project site.

The Stantec traffic study fails to address the operation of the Ward Street driveway, particularly with regard to the feasibility and effectiveness of the proposed turn restrictions and potential impacts on the adjacent residential neighborhood. This is a substantial deficiency in the analysis.

Adeline Street Driveway

The "auto display" facility bounded by Adeline Street, Shattuck Avenue, and Stuart Street will be accessible only via a driveway on Adeline Street. Because of the median-divided nature of that street, only northbound traffic will be able to use this driveway. Others (and particularly those approaching from the north) will be required to take a somewhat circuitous route to enter this driveway. Again, this will add traffic to nearby residential streets.

5. ***On-Street Parking Impacts*** – The Stantec report (p. 9) states that:

> *The* [Shattuck Avenue] *driveway would be designed to provide sufficient sight distance by removal of on-street parking spaces.*

However, the number of parking spaces to be removed is not stated. Further, the impact of this loss of on-street parking spaces is not evaluated and no determination was made with regard to whether it might constitute a significant impact.

Of particular note, what will be the impact on the adjacent Kirala restaurant if the parking space immediately in front of that business is removed? Where will delivery vehicles park while servicing the restaurant?

Further, although not addressed in the August 30, 2016, Stantec report, a June 2, 2016 report by Stantec describes a proposed scheme for receipt of parts deliveries (p. 3):

> *The delivery truck would stop on Adeline Street and the parts trolley would be rolled across the street into the project site. Delivery truck would not be able to pull into the Honda driveway, but will stop only at the designated location on Adeline Street north of the existing curb cut as shown in Figure 1.*

It is not clear if the project's intent is to somehow dedicate this curbside section of Adeline Street for the exclusive use of Berkeley Honda. According to the project site plan, the designated area is 51-feet long, which currently provides 2 – 3 unmetered two-hour parking spaces. The Stantec study fails to address the impacts of loss of these on-street parking spaces. Moreover, if a vehicle were to occupy this area (whether or not it is reserved for Berkeley Honda's use), the delivery truck would be forced to park in the northbound lane of Adeline Street, blocking the flow of traffic and creating a potential safety hazard.

6. ***Off-Street Parking*** – The proposed off-street parking supply is described on page 2 of the Stantec report. However, no analysis was performed to determine whether the proposed parking supply will adequately accommodate the needs of the auto dealership. If the project's parking

needs are not fully met, customer parking will overflow onto nearby streets, potentially creating a significant impact.

7. ***Auto Service-Related Traffic*** – The Stantec report (p. 1) describes how:

   > *Once the cars are serviced, they are either left in the building, or driven to the dealership's parking lots on Adeline or Ward Street, until customers will pick them up.*

   How much activity of this type is anticipated each day? Specifically, how many trips will be added to Shattuck Avenue, Adeline Street, Ward Street, and Stuart Street by dealership employees shuttling vehicles about the site? Were these trips on the local streets accounted for in the traffic analysis? If not, the analysis needs to be revised.

8. ***Safety Analysis*** – Despite the fact that a June 2, 2016 Stantec report documented that 14 collisions occurred at the Shattuck Avenue/Stuart Street intersection between 2011 and 2015, no analysis was conducted to determine if the proposed project would exacerbate the existing safety deficiencies at that location. As documented in that memorandum report (Stantec, "Berkeley Honda Supplemental Traffic Impact Analysis," June 2, 2016), 7 of the 14 crashes were broadside collisions:

   > *. . . due to conflicts between northbound/southbound vehicles on Shattuck Avenue and eastbound/westbound vehicles/**bicyclists** from Stuart Street and conflict between eastbound vehicle and **pedestrian** crossing Stuart Street.* [Emphasis added]

   The substantial number of broadside collisions would be consistent with the intersection delay findings for this location. Specifically, Stantec Table 4 (p. 6) and Table 6 (p. 8) reveal that drivers on the westbound approach at Shattuck Avenue/Stuart Street experience delays in excess of 80 seconds per vehicle in the AM and PM peak hours. Because no level of service calculation sheets were provided, it is impossible to state just how far in excess of 80 seconds of delay each driver experiences. In any event, delays of that magnitude lead drivers to become impatient and perform risky maneuvers, such as attempting to take advantage of inadequate gaps in traffic on the major street (Shattuck Avenue). Those who do pull in front of oncoming vehicles are potentially subject to broadside collisions.

9. ***Trucks*** – No indication is provided in the traffic analysis as to how much truck traffic will be generated by the proposed project and how trucks will be accommodated at the project site. When new cars are delivered to the dealership, will the truck be able to get off the public street, or will a lane be blocked while that activity occurs? And if a lane is blocked, what will be the impact on traffic operations? Similarly, when other, smaller deliveries are made, how will they be accommodated – off-street or in the public right-of-way, blocking the flow of traffic? Have the project access driveways and building entrances been designed to accommodate trucks that may need to enter the site, including but not limited to tow trucks delivering disabled vehicles to the service department?

10. ***Intersection Level of Service Calculations*** – No intersection level of service calculations were provided in connection with the traffic study, so we were unable to review them to ensure that the assumptions and methodology were appropriate. Similarly, of course, City of Berkeley staff were unable to provide such a review.

11. ***Long-Term Analysis*** – No long-term analysis was performed. Consequently, it is not possible to determine whether the proposed project will have long-term impacts on traffic operations, pedestrian and bicyclist safety, or other considerations.

12. ***Pedestrian Safety Hazards*** – As noted above, according to a June 2, 2016, Stantec report, the project's plan for parts deliveries involves a truck stopping on Adeline Street, from which, "the parts trolley would be rolled across the street [i.e., Shattuck Avenue] into the project site." The current (August 30, 2016) report describes a similar process:

    > *For parts deliveries, Berkeley Honda proposes that all parts deliveries be made to 2747 Adeline Street and the employees will carry the parts into the service department via Shattuck Avenue . . .*

    Obviously, this plan creates a substantial hazard for service department employees who will be required to transport parts (some of which will certainly be heavy and awkward) across Shattuck Avenue. This issue was not addressed in either Stantec report.

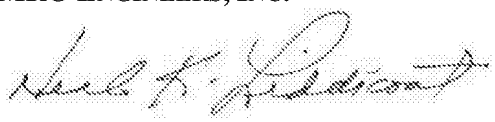
CONCLUSION

Our review of the traffic study prepared in connection with the proposed Berkeley Honda project in Berkeley, California revealed a number of issues affecting the validity of the conclusions presented in that document. These issues must be addressed prior to approval of the proposed project.

We hope this information is useful. If you have questions concerning anything presented here, please feel free to contact me at (916) 783-3838.

Sincerely,

MRO ENGINEERS, INC.



Neal K. Liddicoat, P.E.
Traffic Engineering Manager

MRO
ENGINEERS

ATTACHMENT A

Project Site Plan
August 30, 2016

City Clerk Department
2180 Milvia Street, 1st Floor
Berkeley, CA 94704

NOTICE OF PUBLIC HEARING

SUBJECT: City Council Consideration of
Zoning Adjustments Board
ZP2015-0102
2777 Shattuck Ave./2747 Adeline Ave.

Tuesday, March 7, 2017
City Council Meeting
6:00 PM
City Council Chambers
2134 Martin Luther King Jr. Way

MACHEN ERNEST
2136 WARD ST
BERKELEY CA 94705

NOTICE OF PUBLIC HEARING-BERKELEY CITY COUNCIL
CITY COUNCIL CHAMBERS, 2134 MARTIN LUTHER KING JR. WAY

ZAB APPEAL: 2777 Shattuck Ave. / 2747 Adeline Ave.

Notice is hereby given by the City Council of the City of Berkeley that on **February 7, 2017 at 6:00 PM** a public hearing will be conducted to consider appeals against a decision by the Zoning Adjustments Board's approval of Use Permit # ZP2015-0102 to establish a full service auto dealership, including auto sales, repair and maintenance, in an existing building; to construct a 4,427 square-foot addition to the building for auto access and service; and to use a portion of the existing 31-space surface parking lot at 2747 Adeline Street for dealership parking, car display, and inventory.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of January 26, 2017.

For further information, please contact Project Planner Shannon Allen, (510) 981-7430.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny (Code Civ. Proc. 1094.6(b)) or approve (Gov. Code 65000(c)(6)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.

PLEASE NOTE: Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.

From: "Johnson, Carol" <CJohnson@cityofberkeley.info>
Date: January 30, 2017 at 6:15:38 PM PST
To: Louise & Gene <louiseandgene@sbcglobal.net>
Cc: "Allen, Shannon" <ShAllen@cityofberkeley.info>
Subject: Re: Change in date of Council appeal to March 7

I apologize for the delay. I had an appointment out of the office this afternoon.

After checking with the City Clerk's Office, it appears they printed the correct date on one side (Feb 7) and the incorrect date (Mar 7) on the other in more prominent text. As a result, the notice is invalid.

We are looking into alternative dates and will let everyone know as soon as possible.

From: "Allen, Shannon" <ShAllen@cityofberkeley.info>
Date: January 31, 2017 at 4:13:33 PM PST
To: "'Louise Rosenkrantz'" <louiseandgene@sbcglobal.net>
Subject: FW: Berkeley Honda Appeal -- Feb 7th, 6 pm

Louise –

Please see the email below from the Clerk.

I'll see you on February 7, 2017 at 6:00 p.m.

I apologize for this confusion.

Sincerely,

Shannon

> **From:** "Numainville, Mark L." <MNumainville@cityofberkeley.info>
> **Date:** January 31, 2017 at 3:55:42 PM PST
> **To:** "Arreguin, Jesse L." <JArreguin@cityofberkeley.info>, "Bartlett, Ben" <BBartlett@cityofberkeley.info>, "Davila, Cheryl" <CDavila@cityofberkeley.info>, "Droste, Lori" <ldroste@cityofberkeley.info>, "Hahn, Sophie" <SHahn@cityofberkeley.info>, "Maio, Linda" <LMaio@cityofberkeley.info>, "Wengraf, Susan" <SWengraf@cityofberkeley.info>, "Worthington, Kriss" <KWorthington@cityofberkeley.info>
> **Cc:** "Williams-Ridley, Dee" <DWilliams-Ridley@cityofberkeley.info>, "Grogan, Jovan" <JGrogan@cityofberkeley.info>, "Cowan, Zach" <ZCowan@cityofberkeley.info>, "Johnson, Carol" <CJohnson@cityofberkeley.info>
> **Subject: Berkeley Honda Appeal**
>
> Mayor and City Councilmembers,

The ZAB appeal public hearing for 2777 Shattuck/2747 Adeline (Berkeley Honda) is scheduled for February 7, 2017. The public hearing notice that was mailed from the City Clerk Department had an incorrect date printed on the postcard. It mistakenly listed the hearing date as March 7 instead of February 7. The February 7 date was listed correctly on the back of the postcard. I apologize for this error and we have instituted a process to make sure this does not occur again the future.

We are issuing a corrected notice this afternoon. The appeal hearing will proceed as scheduled on February 7, 2017 at 6:00 p.m.

Mark Numainville

City Clerk

City of Berkeley

2180 Milvia Street, 1st Floor

Berkeley, CA 94704

(510) 981-6909 desk

(510) 981-6901 fax

mnumainville@cityofberkeley.info

Apply for Passports at the Berkeley City Clerk Department