Planning and Development Department

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Via Electronic Mail Only

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Re: Finance and Capital Strategies Committee Meeting, May 15, 2019; Agenda Item F3 – Approval of Long Range Development Plan Amendment 4 and Design Following Action Pursuant to the California Environmental Quality Act, Upper Hearst Development for the Goldman School of Public Policy and Housing Project, Berkeley Campus

Dear Board of Regents and Mr. Breines:

On behalf of the City of Berkeley, I am submitting the following comments on the final Supplemental Environmental Impact Report ("FSEIR") for the project titled "Upper Hearst Development for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan" ("Project"). The City previously submitted comments on the draft SEIR, included herewith as Attachment 1.

Unfortunately, the FSEIR does little to address the concerns raised in the City's comments, especially concerns related to the Project's impacts on City services. The document remains inadequate.

For example, one of the "thematic responses" provided in the FSEIR asserts that the document's analysis of increased enrollment is not part of the "project" being analyzed, but rather just an "updated baseline." As discussed below, this discussion is not

responsive to the concerns raised in the City's comments on the draft SEIR, as it fails to point to any specific instance in which the SEIR uses this "updated baseline" in analyzing the impacts of the GSPP Project, and it continues to refer to the SEIR's analysis of impacts caused by this increased enrollment. Under CEQA, a lead agency only analyzes project impacts. A baseline by definition has no impacts.

Regardless, if UC is committed to this position, it must also commit itself to analyzing and mitigating all of the impacts associated with all of the enrollment increases above and beyond those projected in the 2020 LRDP when UC updates this LRDP in the coming years. UC has not committed to such an endeavor in the FSEIR, and thus the City has no choice but to present its concerns in the context of this SEIR.

Responses to the City's remaining comments are similarly inadequate. For example, the University's dramatic increase in enrollment, coupled with its failure to build sufficient housing on-campus, has exacerbated housing insecurity throughout the City. The FSEIR rejects the City's request for analysis of this issue, claiming that creating a housing shortage is not an environmental impact. But there are very real environmental impacts associated with this issue, including the construction of additional housing; the traffic, air quality, and greenhouse gas impacts associated with forcing a population to commute farther to school and work; and the physical effects on human wellbeing. The FSEIR must be revised to analyze these impacts.

The City was also disappointed to read the University's response to its comments—supported with extensive, expert analysis—that the University's annual net fiscal impact on the City of Berkeley has increased from an estimated $11 million in 2003 to *over $21 million* in 2018. In response, the University asserted simply that it is exempt from "local regulations and local taxes." But this assertion does nothing to undermine the City's calculations. Moreover, it fails to address the significant environmental impacts associated with this new burden on public services, including the need for new facilities.

The City appreciates the unique opportunities—and challenges—of being home to UC Berkeley. The City and the University have a long history of collaboration and partnership for the benefit of the community. But the City simply cannot maintain the health, safety, and well-being of the entire Berkeley community—a substantial percentage of which is comprised of University students—unless the University takes responsibility for, and mitigates, the impacts of its own actions. This FSEIR largely ignores these impacts and is, unfortunately, dismissive of the comments it has received

from the City and members of our shared community. It must be revised and recirculated.[1]

I. The FSEIR's Project Description Remains Confusing, Unclear, and Incomplete.

As the City noted in its comments on the draft SEIR, an EIR must accurately and consistently describe the project it analyzes. Guidelines § 15124; Guidelines § 15378 (defining "project"); *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-3 ("An accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR."). Here, it remains entirely unclear whether the project being analyzed is just the GSPP Project (i.e., the physical development at the GSPP site) or the GSPP project *plus* an update to the LRDP's enrollment headcount numbers.

The FSEIR's "thematic responses" to this comment fail to provide clarity and, in fact, raise more questions than they answer. First, these responses continue to maintain that the increased enrollment numbers were part of an "updated baseline" in the SEIR, not a project element. But the responses fail to cite a single instance in which this "baseline" was used to determine the impacts of the GSPP development—which is, purportedly, the entire project (at least in some instances). The fact that these increased enrollment numbers were never used as the "existing environment" in the analysis of the GSPP project's impacts cast substantial doubt on UC's claim that they are part of the "baseline" for this analysis.

Similarly, the responses to comments continue to maintain that the FSEIR "evaluates the environmental impacts of the updated campus headcount baseline." FSEIR at 15. This statement is confusing at best. Under CEQA, a lead agency analyzes the environmental impacts of a *project* on the *existing environment*. It does not analyze the environmental impacts of the existing environment itself. Thus, by maintaining that the SEIR analyzes the impacts of the increased enrollment, the FSEIR strongly suggests that this increased enrollment *is* part of the project. The ongoing confusion about the scope of the project being analyzed renders the entire document inadequate.

The "thematic responses" also mischaracterize UC's obligations to comply with CEQA. Both the Education Code and CEQA require UC to analyze and mitigate the impacts of changing enrollment levels. Education Code § 67504(b)(1) (finding that the

[1] It also appears that the Regents intend to vote on approval of the ground lease, leaseback business terms, and financing of the Project in closed session before approving the SEIR. The approval of these items in closed session without first adopting an EIR would violate CEQA. *See Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139 (original alterations omitted) CEQA process must be complete before any "decision which commits the agency to a definite course of action in regard to a project").

expansion of campus enrollment and facilities may negatively affect the surrounding environment and noting the legislative intent that UC sufficiently mitigate significant off-campus impacts related to campus growth and development); Pub. Resources Code 21080.09(b) (requiring that environmental effects related to change in enrollment be considered for each campus in the EIR for its LRDP). Contrary to the FSEIR's assertion, however, the "impacts" that must be analyzed in this programmatic EIR are not limited to the impacts of physical development on campus. FSEIR at 15-16. In fact, the Education Code specifically finds that the expansion of campus enrollment and facilities may negatively affect the *surrounding environment* and requires analysis of *off-campus* impacts. Educ. Code § 67504(b)(1). The FSEIR's failure to clearly analyze and mitigate impacts from increased enrollment also violates Education Code section 67504(b)(1), which requires the University to "sufficiently mitigate significant off-campus impacts related to campus growth and development."

Moreover, nothing in the cited statutes exempts UC from other provisions of CEQA, including the fundamental tenet that a public agency comply with the statute whenever it takes a discretionary action to approve a project that could impact the environment. See e.g., *Laurel Heights Improvement Assn v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 388, *as modified on denial of rehg* (1989) (challenging EIR prepared by Regents for the purchase of the Presidio Corporate Center to relocate the UC San Francisco School of Pharmacy). Decisions to increase enrollment would clearly trigger this requirement, as they are within the discretion of the Regents and, for all the reasons stated in the City's prior letter, have significant environmental impacts. As with all other discretionary actions taken by state and local agencies, if those decisions exceed what was analyzed in the LRDP EIR, UC must conduct additional environmental analysis to consider the impacts of those decisions.

UC's assertion that compliance with CEQA requirements would be impractical is not a defense. See FSEIR at 16. UC must comply with its clear statutory mandate to analyzing and mitigating any impacts of changed enrollment levels in this FSEIR. Otherwise, UC could provide a low estimate of enrollment in its LRDP, identify accordingly paltry mitigation in the EIR analyzing those low numbers, and then immediately exceed the adopted enrollment estimates without having to reassess the environmental impacts. Nothing in CEQA or any other state statute supports that approach.

With respect to other flaws in the project description, the FSEIR is similarly unpersuasive. For example, with respect to the SEIR's failure to describe and evaluate impacts of dewatering during construction, the SFEIR continues to defer this analysis, rather than conducting preliminary readings of existing groundwater on site.

The University points to the need for preliminary data gathering—along with mitigation measures that require surveys to be conducted before construction happens—in defense of its failure to provide complete information on the Project's environmental setting and its failure to evaluate project-related impacts. *See* FSEIR at 47 and 60. This response is not sufficient. The public and decision-makers need this information now to evaluate the Project, before the University commits itself to a course of action. *See Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564. As we explained in our DEIR comment letter, CEQA does not allow after-the-fact studies as "mitigation" to substitute for the information necessary to inform the public and conduct informed decision-making. The University must conduct the necessary preliminary evaluations now, and then include that information in the EIR and use it to analyze the Project's significant impacts, and to develop appropriate mitigation measures—and then recirculate the EIR. To do otherwise violates CEQA.

For all of these reasons, UC must go back to the drawing board with this EIR and clarify what precise project it is seeking to approve here. Without that clarification, the document remains inadequate under CEQA.

II. The SEIR Should Not be Tiered Off the 2020 LRDP EIR.

Under CEQA, a tiered EIR is appropriate for a later project that is *consistent with but narrower than* a plan or program analyzed in a previous EIR. *See* Pub. Res. Code §§ 21068.5, 21094(b)(1)-(3). Tiering allows a public agency to "exclude duplicative analysis of environmental effects examined in previous environmental impact reports." *Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 344 (citations omitted).

As the City pointed out in its previous comments, tiering is *not* appropriate for a change in the fundamental assumptions of the original EIR, or for a project that is admittedly inconsistent with the original program, like the change in enrollment numbers and GSPP development project at issue here. With respect to the increased enrollment, the University contends tiering is appropriate because the campus is still operating within the envelope of capacities analyzed in the 2020 LRDP Final EIR. FEIR at 47-48. "Therefore, most of the environmental analysis in the 2020 LRDP EIR remains valid and usable for tiering purposes." *Id.* But, regardless of whether you consider the increased headcount part of the baseline assumptions or part of the project itself, it is clear that the original LRDP and its EIR were based on an entirely different, and much lower, enrollment figure. The fact that the University has not yet completed its physical buildout of the 2020 LRDP EIR does not render the increased headcount consistent with the 2020 LRDP or its EIR. As a result, it was not appropriate to tier the analysis off that decision of the 2020 LRDP EIR.

III. The Project Should be Studied Using a Subsequent, Not a Supplemental, EIR.

As noted in the City's comments on the DEIR, a supplemental EIR is appropriate for minor changes to a previous EIR. Guidelines § 15163 (a lead agency "may choose to prepare a supplement to an EIR rather than a subsequent EIR" if "[o]nly minor additions are changes would be necessary to make the previous EIR adequately apply" to the project). Because the addition of 11,000 new students is not a minor change, the University was required to prepare a subsequent rather than a supplemental EIR.

The University did not respond meaningfully to this comment. In its response to comments, the University acknowledges the regulations dictating when a subsequent EIR is required, along with the limited circumstances when a supplemental EIR may be appropriate. FEIR at 48-49. However, the University merely concludes, without explaining, that "[i]n the case of the GSPP EIR, UC Berkeley was supplementing information contained in the 2020 LRDP EIR." FEIR at 49. This rationale is unrelated to the criteria dictating when a supplemental EIR may be prepared, and does not explain how the extreme increase in enrollment headcount fits into the category of "minor additions or changes." Guidelines § 15163(a)(2).

Additionally, though UC relies on the fact that both a supplemental and a subsequent EIR require the same level of public notice and circulation, and they both provide information about the environmental consequences of a project, an agency must "proceed in the manner CEQA provides." *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 984 (citation omitted). In this case, the decision to not treat the significant increase in enrollment via a subsequent EIR, as is required for a change of this magnitude, is consistent with the University's refusal to acknowledge and analyze the degree of the change.[2]

IV. The FSEIR Fails to Correct the Draft SEIR's Errors in Analyzing and Mitigating Project Impacts.

A. The FSEIR's Analysis of the Project's Impact on Berkeley's Population and Housing Conditions for University Students and Berkeley Residents Remains Inadequate.

The University contends it is not obligated to analyze the growth-inducing impacts of its increase in student enrollment outside of the preparation of an LRDP. FEIR at 61. However, as noted above, the University's actions here go beyond what was considered in the LRDP. Thus, additional review is required.

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[2] The City was unable to locate the mandatory CEQA findings document, indicating that the University may not have prepared these findings as required pursuant to Public Resources Code section 21081.

In addition, under CEQA, a project has significant impacts if it would "induce substantial population growth *in an area*, either directly . . . or indirectly . . . " CEQA Guidelines, Appendix G, section XIV.a. This Project will cause a significant impact in the City of Berkeley by dramatically increasing the City's population and exacerbating the housing shortage for Berkeley residents and UC students alike. As the City noted in its comments, the increase of 11,000 students represents roughly nine percent of the City's population. Because the University had provided only 1,119 beds through the end of 2018, out of a mere 2,600 planned through 2020, the bulk of the increased student population will be required to find housing off-campus. The SEIR acknowledged that "most of the additional campus population would live in Berkeley" or nearby areas. Draft SEIR at 130; *see also* FEIR at 39 ("[A]pproximately 65% of UC Berkeley students actually live on campus or within 1 mile of campus."). Thus, since Berkeley is bearing, and will continue to bear, the brunt of this increased population, the SEIR errs in assessing the impact of the growth in population in the entire Bay Area, rather than in the City of Berkeley and nearby areas where the growth will actually occur. *See* Draft SEIR at 130.

The University is required to assess and mitigate the impacts of its increased enrollment on the City of Berkeley, where the population growth is exacerbating housing insecurity. The City has seen an increased number of development applications for multi-unit student housing in the City, along with the increased use of master leases by the University for student housing in Berkeley. Both trends decrease the available supply of market rate housing and result in the displacement of non-student Berkeley residents. Though the University contends its practice of using master leases is an interim solution, there is no indication of when it will reduce the practice. The University's reliance on off-campus, privately developed student housing undermines the City's obligation to achieve its RHNA goals, and eliminates a source of property and business taxes for the City.

The University's argument that the City's concern about student population growth "does not address a significant environmental impact" (*id.* at 49) is inconsistent with CEQA, as well as with the Education Code. Guidelines section 15131(a) provides that "[a]n EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes." Here, the economic effects of displacement will result in physical changes, including the need to build additional housing and the traffic, air quality, and greenhouse gas impacts associated with forcing a population to commute farther to work, along with physical effects related to human wellbeing. CEQA policy goals including "providing a decent home and satisfying living environment." Pub. Res. § 21000(d). Unmet housing needs can also result in significant health costs by forcing residents into crowded and substandard housing. *See* The Case for Housing Impacts Assessment: the Human and Social Impacts of Inadequate Housing and Their Consideration in CEQA Policy and Practices, attached as Attachment

2. As a result, housing displacement is a significant impact that the University must disclose, analyze, and mitigate.

The University appears to acknowledge some of the physical changes that accompany displacement, but attempts to distance itself from any responsibility for these consequences. *See* FEIR at 22 (noting that additional enrollment beyond that planned in the 2020 LRDP "would exert greater demand on the private housing market," which in turn would incentivize building private housing that caters to the University students, thereby potentially "requir[ing] the displacement of substantial numbers of people or existing housing, necessitating the construction of replacement housing elsewhere"). Rather than analyze these inevitable consequences of its discretionary decisions to increase enrollment, the University shifts the burden to assess these consequences to future decision makers, asserting that the "environmental impacts" of such future actions to accommodate the increased enrollment "would be evaluated as required by CEQA on a project-specific basis." *Id.* at 22. The University's abdication of its responsibility to assess the impacts of its decisions violates CEQA. *See* CEQA Guidelines, Appendix G, section XIV.b (an agency must assess whether a project would "[d]isplace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere").

Elsewhere, the University contends it has assessed the effect of increased enrollment on the displacement of Berkeley residents. FEIR at 50. However, the University's "discussion" fails to respond to the City's concerns or to meaningfully analyze the impacts of its increased enrollment.

For example, rather than meaningfully assess the physical impacts in Berkeley of meeting the University's housing needs, the University repeats its contention that the increased enrollment will not cause physical development on the University's campus in exceedance of the LRDP's plan. *See* FEIR at 12, DEIR at 151 ("It is expected that UC Berkeley would accommodate the additional headcount without leading to physical development that exceeds the 2020 LRDP EIR's projected growth in student beds and building square footage."). This response focuses on the University's own physical development while ignoring the burden on the City. This failure to assess the impacts of the population growth on Berkeley violates CEQA. *See* Guidelines, App. G, § XIV.a. It also violates the Education Code, which expressly states that the Legislature intends "that the University of California sufficiently mitigate significant off-campus impacts related to campus growth and development." § 67504(b)(1).

The University also contends that it has provided a discussion of the environmental impacts of its students living off-campus. FSEIR at 22. However, this discussion merely concludes summarily, and without substantial evidence, that students living off-campus in Berkeley will not introduce new sources of noise or other disturbances, will not have a significant impact on public services, and will not tax

existing facilities. *Id.* at 12-14. Interestingly, the University relies on enforcement of the Berkeley Noise Ordinance to bolster its contention that its students' off-campus impacts will not be significant, thereby conveniently shifting the burden onto the City manage these impacts, despite generally rejecting any obligation to conform to City's standards. The University's unsubstantiated conclusions about the off-campus impacts of its population do not amount to a meaningful analysis of the University's increased enrollment on the City. Notably, this discussion omits any mention of the impacts of displacement or the housing crisis in the City.

In the instances when the University does acknowledge its contribution to Berkeley's housing shortage and displacement of tenants, it fails to assess the impacts of its contribution, but rather attempts to diminish its contribution or to distract from the problem. For example, while conceding that its increased enrollment would contribute to Berkeley's existing exceedance of its General Plan population forecast, the University downplays its role by contending that the assumption about the student population "is conservative because it assumes that all additional UC Berkeley students under the increased headcount would be new Berkeley residents," when any student already residing in Berkeley would not increase the City's population. TDC at 12, Draft SEIR at 151. It also claims that it will have "1,228 fewer employees than projected in the 2020 LRDP for the year 2020," thereby reducing pressure on the market. FSEIR at 13, Draft SEIR at 151. It is not clear that the reduction in employees is an impact only on the campus itself, or if, more likely, the 1,228 employees are simply living in the City of Berkeley rather than on campus. As such, there is no evidence that this reduction in expected employees has resulted in a reduction to the City's population. Even if these arguments were substantiated with evidence, they would not change the conclusion that the University is contributing a significant number of new residents to the City of Berkeley—roughly 10,000—which amounts to a significant impact requiring assessment and mitigation.

The University also relies on its future hypothetical construction of housing, ignoring the fact that the current housing demand it has created is being met with private housing, not University housing. The University's ostensible plan to "develop an additional 8,800 student beds within the next ten years," while laudable, is not an enforceable mitigation measure and does not address the University's present obligation to assess and mitigate the impacts of its current enrollment increase on the City. FSEIR at 13. Similarly, the FSEIR's attempt to address displacement problems by contending that future University housing will be built in compliance with the 2020 LRDP's land use strategy, which "prioritizes the siting of new housing on UC Berkeley's current property" and other sites where displacement can be minimized (Final SEIR at 22) is inadequate. Even assuming the housing goals in the 2020 LRDP are met, this would only generate an additional roughly 1,500 beds, and would not address the vast remainder of the housing need, which is being met with off-campus housing. Thus, the University's arguments do not address the current displacement problem it has created.

Additionally, it is not clear why the University refers to some 2,370 beds that were under construction in 2003 to support its claim that students will vacate private market units "to reside in new campus student housing," making private market units "available to UC employees and other non-students." Final SEIR at 28. It is unclear how these units in process before the 2020 LRDP process in 2005 are relevant to the current student housing gap. It is also not clear why the University assumes students will leave current housing to move into these units.

B. The FSEIR Fails to Account for Impacts to Public Services.

A project has significant impacts under CEQA if it would result in the need for new or altered facilities that would cause significant environmental impacts "in order to maintain acceptable service ratios, response times, or other performance objectives" for fire and police protection, schools, parks, and other public facilities. CEQA Guidelines Appendix G section XV.a. The increase of more than 11,000 students burdens the City's provision of public services, and could lead to increased service ratios and response times, along with potential physical alterations to facilities. Despite these likely outcomes, both the Draft SEIR and FSEIR failed to fully evaluate the impacts of the increased enrollment on Berkeley's public services.

The University responded to the City's comments about to the burden on public services by asserting that the University is "constitutionally exempt from both local regulations and local taxes," and that because it is a State entity, it "is presumed to serve the public interest, and transferring funds from the State to local jurisdictions is considered not to serve the broader public interest." FSEIR at 26-27. This argument fails to acknowledge that the City's provision of public services ensures the University is able to "serve the public interest," and that, without the City's services, the University would not be able to ensure the basic safety and needs of its students, faculty, and staff. Moreover, public universities are not precluded from making payments to municipalities to reflect their fair share of the expenses involved in meeting the universities' needs. *See City of Marina v. Bd. of Trustees of California State University* (2006) 39 Cal.4th 341, 359-60 (upholding a payment from the California State University for its fair share of the cost of infrastructure improvements off-campus as a form of mitigation).

The University also disclaims any obligation to consider the economic or social effect of its project—here, in the context of public services—unless those effects result in physical changes. *See* FSEIR at 27 (citing Guidelines § 15131). The University contends that the project would not result in substantial physical impacts associated with new or physically altered emergency or utility service facilities. *Id.* However, as the City has pointed out, and as discussed below, many of the increased burdens on the City's public services are likely to have physical impacts.

Police Services:

The increase in enrollment necessarily increases the population for which the UC and Berkeley police departments must provide services. However, in spite of the significant increase in the student population, the UCPD has reduced the size of its force. The FSEIR does not assess the impact of this reduction coupled with the increase in enrollment. Berkeley's police department, in turn, faces the burden of serving the University's increased population. This burden is reflected in the fact that University calls to Berkeley's police comprised 19 percent of the City's totals in 2018, up from 14 percent in 2003.

Rather than address this impact on Berkeley's police force or provide an explanation for the reduction in the UCPD, the FSEIR notes only that, though UCPD fails to meet is service ratio goals, it maintains a better officer to service population ratio than typical municipal police services and remains committed to its service ratio goal. FSEIR at 13-14, 50. These statements are irrelevant and fall short of addressing the impact of the resulting burden on Berkeley's police services.

The University excuses its lack of analysis on the grounds that "staffing and support needs for public services are relevant only to the extent they translate into physical changes which in turn result in environmental impacts." FSEIR at 13-14; *see also id.* at 50. Even assuming this narrow scope of analysis, there will be associated environmental impacts: The need for Berkeley police to respond to the increasing level of calls from the University will likely result in additional driven miles and could contribute to traffic. Such impacts have been found to constitute physical changes that require assessment and mitigation. *See Goleta Union School Dist. v. Regents of University of California* (1995) 37 Cal.App.4th 1025, 1032 (an SEIR was required to analyze the effects of a UC plan that would result in overcrowding of local schools, "ultimately requir[ing] physical changes in the environment" including potentially building new classroom facilities and "new bus schedules or changed traffic patterns"). The increase in police traffic along with the potential need for an additional facility constitute substantial evidence that the increased demand for Berkeley's police services caused by the University's increased enrollment is resulting in physical changes with potentially significant environmental impacts. The University is therefore obligated to analyze and mitigate these impacts.

Fire and Emergency Medical Services:

As the City pointed out, the Berkeley Fire Department (BFD) provides the majority of the University's fire and emergency medical protection, and the University represented 37% of BFD's costs in 2018. The continued increase in the University's population will only exacerbate the need for the fire and emergency services to increase

their capacity, leading to the potential for physical facilities to accommodate the expansion.

In its responses to comments, the University minimizes the impacts of its increased enrollment on Berkeley's fire and emergency medical services, contending that there is a lack of evidence that new or physically altered fire protection facilities will be required as a result of the increase in enrollment. FSEIR at 51. This response ignores the City's comment that BFD expects that a continued increase in service calls will result in the need for additional personnel *and new facilities*. *See* City Comments at 14 (citing Personal Communication, C. Borg consulting planner to the City and D. Sprague, Assistant Fire Chief, City of Berkeley, April 1, 2019). In fact, Berkeley has identified a need for a new fire station in South Berkeley to meet the increasing need for its services. *Id.*

Additionally, the 2019 Audit of the Workload for Dispatch in Fiscal Year 2018 (attached as Attachment 3) came to a similar conclusion. This Audit found that Berkeley's dispatch call center is facing an increasing number of calls, resulting in a longer time to answer calls. Attachment 3 at 6. The report focused on the "[r]apid population growth in Berkeley" since 2010, which is "creating unprecedented challenges." The Call Center handled over 256,000 calls in 2017, up from 184,000 in 2013. *Id.* at 7. The report found that "[t]he physical space the Center currently occupies is small and at capacity," with "no room to add workstations for dispatchers." *Id.* at 11. As a result, the report calls for the City to "plan now, including looking for a bigger space to run the Center." *Id.*

Thus, the FEIR fails to acknowledge that both BFD and Berkeley's dispatchers are at capacity, and will likely be required to build new facilities or alter their existing facilities in the near future to meet the increasing need. This reflects a significant impact from the University's increased enrollment. Additionally, as with the provision of police services discussed above, it is likely that an increase in fire and emergency responses will create traffic and require increased driving, both of which represent physical changes. *See Goleta Union School Dist.*, *supra*, 37 Cal.App.4th at 1032. Indeed, the City has already added another ambulance to support the rise in population, indicating that it is already being forced to respond with increased emergency response trips. As such, the University is required to assess the impacts caused by this burden on the City's fire and emergency services, and to identify mitigation measures for these impacts.

The FSEIR's focus on City of Berkeley emergency vehicle access to the University campus fails to capture the nature of the burden the University's enrollment places on the City's emergency services. Continued implementation of Best Practice PUB-2.3, which merely ensures emergency vehicles have access to University buildings, will not address the burden of increased enrollment on already overburdened fire and emergency services.

Public Health:

As the City noted in its comments, the FSEIR ignores the impact of the enrollment increase on the City's provision of public health services. The City's Health, Housing, and Community Services Department (CHHCS) provides public health services to Berkeley residents, including students living in the City. As the University concedes, its students contribute a significant portion of cases managed by the CHHCS. However, the Response to Comments fails to provide any analysis of the burden UC students pose on CHHCS's services, contending that this comment does "not address a significant environmental impact, and no further response is required." FSEIR at 51.

Contrary to the University's conclusory rejection of this argument, the City's comment pointed out that the outsized burden of the increased enrollment on CHHCS's services could result in the need for additional facilities and staff. As a result, the University should have assessed this enrollment. See CEQA Guidelines Appendix G Section XV.a. Instead, the University's response fails to meaningfully address the City's comment. This failure is a violation of CEQA. as "CEQA is concerned with public health and safety, and requires a finding of 'a significant effect on the environment' [Pub. Res. Code § 21083(b)] whenever the 'environmental effects of a project will cause substantial adverse effects on *human beings*, either directly or indirectly.' [Pub. Res. Code, § 21083(b)(3)]." *California Building Industry Ass'n v. Bay Area Air Quality Management District* (2016) 2 Cal.App.5th 1067, 1077-78 (quoting California *Building Ass'n v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, 387).

Cost on City:

The University's net fiscal impact on the City of Berkeley has risen from $11 million in 2003 to over $21 million in 2018. The University's demand for City services has outpaced the growth in demand from the rest of the City, so that the University's service population and calls for service now represents a greater share of citywide totals. The increase in cost to the City to meet the University's needs will only be exacerbated by the University's vastly increased enrollment. Rather than address this increasing cost or discuss the feasibility of contributing its fair share of the City's public services, the University repeatedly falls back on its status as a State entity to avoid paying its share. *See* FSEIR at 44. The University also asserts that the matter of payment for City services is not within the scope of CEQA, relying on Guidelines section 15131. *Id.* at 26.

This argument is incorrect. There is substantial evidence that increased demand for City services, including police, emergency response, and public health services, may or will soon result in physical changes to serve that increased demand. Additionally, the increase in police, fire, and emergency service traffic in the City to address University calls itself represents a physical effect that the University must analyze and mitigate. As such, these effects fall within the category of effects that

Guidelines section 15131(a) expressly condones assessing: "An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes." Here, the economic costs borne by the City to meet the University's needs will likely begin to result in physical changes that the University is obligated to assess.

Additionally, though the University may assert that it is exempt as a State entity from contributing to the City for the impacts on its public services, the University is not precluded from making payments to address its fair share of these services. *See City of Marina*, *supra*,39 Cal.4th at 359-60. As such, it is disingenuous for the University to claim that such issues are simply beyond the scope of the project's EIR. FSEIR at 26. As the University acknowledges, it "depends on the adequacy and quality of some public services' provided by Berkeley and other cities. *Id.* It is thus in the University's interest to assess its significant impact on these services and to pay its fair share.

Parkland:

The FSEIR also fails to analyze the impact on City parkland. In the Draft SEIR the University merely assessed the effect of the increase in campus headcount on the service ratio of UC Berkeley facilities, projecting a decrease in service ratio of 8 percent. Draft SEIR at 160. The Draft SEIR concluded that the Project would not result in an increased use of recreation facilities to an extent that would result in their physical deterioration. *Id.* However, the Draft SEIR failed to assess the impact of the increased headcount on City parks and recreation facilities. This failure renders the SEIR's analysis insufficient. *City of Hayward v. Board of Trustees of California State University* (2015) 242 Cal.App.4th 833, 859. A meaningful analysis of the impact of the increased enrollment on City parks and facilities requires a study of the extent of use of current students, from which a determination of the use by the additional students may be extrapolated. *Id.*

C. The FSEIR Fails to Address the Project's Indirect Impacts on Off-site Infrastructure.

The University uses the oft-repeated response that because the SEIR does not demonstrate that impacts related to a variety of topics would be significant, the impacts would be less than significant. See, e.g., FSEIR at 14. For example, the City commented that the Project (increase in population) results in a corresponding burden on off-site infrastructure, such as the City's storm drain and sewer systems, which would result in the need for expanded or improved facilities. This concern was raised in consultation with experienced engineers working for the City who are knowledgeable about the City's infrastructure and its ability to withstand substantial additional flows, especially during wet weather. See City Draft SEIR comment A 8.47. Rather than address

the comment however, the FSEIR asserts that UC wastewater impacts are "limited to those few lines into which this wastewater is discharged." FSEIR at 14. The FSEIR fails to disclose and define the "limited" impact, perpetuating the SEIR's failure to describe the extent and severity of this significant impact. Instead, it relies on the 2020 LRDP Continuing Best Practice HYD-4-e to conclude that runoff would be adequately managed. FSEIR at 14. However 2020 LRDP Continuing Best Practice HYD-4-e does not address impacts to sewer infrastructure. It only addresses stormwater runoff and states:

> "UC Berkeley shall continue to manage runoff into storm drain systems such that the aggregate effect of projects implementing the 2020 LRDP is no net increase in runoff over existing conditions."

The FSEIR then states that there is no evidence that increases in population may tax existing facilities and that the SEIR's analysis did not demonstrate that the increased population would result in adverse effects. Common sense dictates that an increase of 11,000 residents will indeed add a substantial burden to the City's infrastructure. *See Save the Plastic Bag Coal. v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175 ("Common sense … is an important consideration at all levels of CEQA review"). The University has an obligation to conduct the analysis and analyze the level of impact of the increased wastewater flow before it can conclude that impacts would not be significant. The University may not use the inadequacy of its impacts review to avoid mitigation: "The agency should not be allowed to hide behind its own failure to collect data." *Sundstrom v. County of Mendocino* (1988) , 202 Cal.App.3d at 36. Nor may the University use vague mitigation measures to avoid disclosing impacts. *Stanislaus Natural Heritage Project v. County of Stanislaus*, 1996 48 Cal.App.4th at 195. Put another way, an EIR must set forth specific mitigation measures or set forth performance standards that such measures would achieve by various, specified approaches. See CEQA Guidelines § 15126.4; see also *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1034. The FSEIR however, contains no meaningful analysis and thus fails to comply with this bedrock CEQA requirement.

D. The FSEIR's Traffic Analysis Remains Inadequate.

The FSEIR fails to adequately respond to comments regarding estimating trip generation to Campus Park by new student residents. The FSEIR claims that estimating these trips is not feasible because UC provides numerous parking structures dispersed throughout the campus and surrounding areas. FSEIR at 51 and 52. However, UC could have easily estimated trips by 1) collecting intersection turn volumes or roadway tube counts at all the access points to capture the majority of the movements on/off campus and 2) quantifying off-campus parking. The analysis could have included, for example, a survey of parking demand on a typical workday with no UC classes in session and a survey on a day with classes. While this analysis might be time-consuming,

it is not infeasible. The California Supreme Court has made clear that there is "no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency's task may be difficult." *Laurel Heights, supra*, 47 Cal.3d at 399; *Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal.App.4th 1099, 1106-12 (2004). Instead, the lead agency must "use its best effort to find out and disclose all that it reasonably can." *Citizens to Preserve the Ojai v. County of Ventura*, 176 Cal.App.3d 421, 431 (1986).

In response to the City's comment that the SEIR should include a Construction Management Plan, the University points to Continuing Best Practices TRA-3-a, TRA-3-b, and TRA-3-c as addressing construction traffic impacts. FSEIR at 46. This response falls short of addressing the City's comment by failing to identify the potential traffic impacts of the project during construction. Both the Upper Hearst Development-Transportation Assessment (January 25, 2019) included in the Draft SEIR, and the Upper Hearst Development-Transportation Assessment (April 26, 2019) included in the FSEIR state that the project will result in reduced trip generation. However, the analysis fails to account for construction-related traffic impacts. Specifically, the FSEIR acknowledges that 40 construction worker parking spaces per day will be needed throughout the 23 month construction period (FSEIR at 10), but the FSEIR fails to take into account the trips generated during construction. The combination of construction workers and a variety of construction vehicles, including haul trucks, water trucks, dump trucks, and concrete trucks results in increased trip generation for multiple years (Draft SEIR at 66), the impacts of which are not disclosed in the FSEIR.

Additionally, though the FSEIR asserts that "[n]either CEQA . . . nor the CEQA Guidelines require inclusion of a Construction Management Plan in EIRs" (FSEIR at 46), the University's own Best Practices that it asserts it will follow *do* include preparation of a Construction Traffic Management Plan. FSEIR at A-33. As such, the University's own practices bolster the necessity of such a plan for this Project. The Construction Management Plan should be prepared now, as part of the CEQA process, so that the public and decision makers understand the full impact of the Project and so that the University can identify specific, feasible, enforceable mitigation measures to minimize significant impacts.

The FSEIR also fails to clarify the Project's impact on parking supply and the related effect on trip generation. The University claims without support that on-campus parking is being reduced via the Project, and it is unclear about the related effect on trip generation.

First, contrary to the University's contention, on-campus parking supply is not being reduced. The assertion in the Transportation Section and the Upper Hearst Development-Transportation Assessment (April 26, 2019) that the Project would result in lower trip generation due to a reduction in parking spaces is fundamentally flawed and

contradicted by other sections of the FSEIR. Reducing the number of parking spaces in the Upper Hearst area will not result in reduced trips to campus because the UC Berkeley Parking and Transportation office will "work with permit holders affected by demolition of the Upper Hearst parking structure to provide them with alternative parking options proximate to the campus." FSEIR at 11. The University is also committing to increasing the parking supply in other areas, including stacking parking in the Foothill parking lot to add 75 to 145 additional cars (*see* Chancellor's letter to friends and colleagues, at p. 10, attached as Attachment 4) adding 50 permit spaces at the Lower Hearst lot, and providing 150 to 200 parking spaces at Maxwell Family Field, an offset which could continue even after the new Upper Hearst parking structure is built. FSEIR at 10. Thus, while 235 parking spaces will be eliminated in the Upper Hearst area, between 275 and 395 additional parking spaces will be provided elsewhere. Even if reducing parking spaces would reduce vehicle trips, the FSEIR should not subtract any trips from the project's trip generation estimate because parking spaces are not being reduced.

Second, the FSEIR is internally inconsistent about the impact of reducing parking supply in the Project area. The FSEIR states that the City's comments presented no evidence that reduced parking supply in the Upper Hearst area could simply shift parking demand elsewhere (FSEIR at 52), but it also acknowledges that some motorists traveling to UC Berkeley use off-campus parking facilities or on-street parking (FSEIR at 51). This acknowledgment itself supports the conclusion that reducing the Upper Hearst parking supply will likely simply shift parking to these alternatives.

In addition, it should be noted that the University received 74 comments on the Draft SEIR from faculty, staff, and students regarding the continued need for parking to facilitate commuters. The continued desire of commuters to use automobiles and the availability for off-campus and on-street parking means that reducing supply in one on-campus parking lot will not necessarily reduce trip generation. Additionally, the FSEIR relies on erroneous analysis of the Project's trip generation potential. The FSEIR does not analyze the potential traffic impacts of the proposed campus housing and academic building for which the FSEIR identifies positive trip generation potential. Because the effects of the Project's trip generation are not analyzed, the full impacts of the project are not disclosed and the FSEIR is incomplete and inadequate.

With respect to the City's comments that the Draft SEIR does not address impacts to bicycle and pedestrian facilities, the FSEIR relies on the flawed conclusions in the Draft SEIR. The FSEIR cites an answer to the CEQA checklist question in the Draft SEIR that provides conclusions without analysis. *See* FSEIR at 53. The FSEIR also asserts that the City's guidelines for traffic studies are not applicable because the University is not subject to local governments' regulations. However, the University is required by CEQA to address whether the project would conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities. The Draft SEIR and FSEIR fail to address the City's Guidelines

on these topics. Additionally, despite the fact that the campus headcount will increase from the 2020 LRDP EIR's analysis, the FSEIR fails to provide any analysis of the bicycle or pedestrian travel demand, the adequacy of bicycle and pedestrian infrastructure, or impacts to bicycle and pedestrian facilities. The absence of this analysis leaves the FSEIR incomplete, flawed, and inadequate.

The FSEIR's new mitigation measure that ostensibly addresses traffic impacts caused by special events is inadequate. Mitigation Measure T-1 states that prior to occupancy of the new building, the University shall prepare and approve a transportation management plan for special events that are expected to have at least 200 external attendees. As it is currently presented, Mitigation Measure T-1 presents conclusory statements without supporting analysis. This new mitigation measure lacks any supporting evidence, and it highlights a traffic impact that the FSEIR has failed to study. *See* FSEIR at 21-22.

Additionally, this mitigation measure represents an acknowledgment that special events included in the project description have the potential to generate trips from external attendees. Some analysis of those trips is therefore necessary prior to approval of the Project, rather than after approval, as suggested by Mitigation Measure T-1. The FSEIR fails to provide such analysis

The Mitigation Measure is also inadequate because the menu of options it describes will not have a meaningful effect on mitigating impact on traffic in the City of Berkeley. Strategies for managing pick-up and drop-off at the event venue do nothing to lessen the impacts created by special events on the City and the regional roadway networks that must be traversed to reach the event venue. "An EIR may not ignore the regional impacts of a project proposal, including those impacts that occur outside of its borders." *Citizens of Goleta Valley*, *supra*,52 Cal.3d at 575. As such, the University must analyze potential special event traffic impacts prior to project approval, must analyze potential impacts to City and regional roadways and intersections, and must identify feasible mitigation for potential impacts to City and regional roadways and intersections before it can reach any conclusion about those impacts.

E. The FSEIR's Analysis of Impacts Related to Air Quality and Greenhouse Gasses Remains Inadequate.

The FSEIR asserts in Response A 8.28 that because the proposed GSPP project would not exceed UC Berkeley's overall growth in student beds or physical facilities, that the project is within the scope of the 2020 LRDP's analysis of consistency with clean air plans and would not conflict with the BAAQMD's Clean Air Plan. However, the FSEIR contains no analysis of consistency with the BAAQMD's current 2017 Clean Air Plan as requested in the City of Berkeley's comment letter.

The proposed GSPP building project and the increase in campus enrollment must be evaluated against the current BAAQMD Clean Air Plan in order to determine if in fact the Project would be consistent with or obstruct implementation of a clean air plan. The FSEIR continues to assert that the mitigation measures included in the 2020 LRDP EIR would "ensure growth is accurately addressed in the Clean Air Plan." This approach is unacceptable because, as the City pointed out in its previous comment letter, consistency with the Clean Air Plan is determined based on the project's support of the primary goals of the Clean Air Plan, application of specific control measures from the Clean Air Plan, and assurance that the project would not disrupt or hinder implementation of any Clean Air Plan control measures. Growth predictions are not currently an indicator of consistency with the Clean Air Plan. It is therefore impossible for University decision-makers and the general public to understand how the proposed project either furthers or conflicts with the applicable Clean Air Plan goals without additional analysis. The FSEIR continues to be deficient in this regard.

The University continues to assert that mobile emissions from the Project would not exceed the levels anticipated in the 2020 LRDP EIR due to the assumption that the increased student enrollment would not result in greater vehicle trips than previously assumed. As discussed above, the FSEIR relies on erroneous analysis of the trip generation potential of the project to reach this conclusion. Because the effects of the project's trip generation are not analyzed, the full air quality impacts of the project are not disclosed and the FSEIR remains inadequate.

The FSEIR also fails to address the need to quantify greenhouse gas emissions associated with the proposed project. The FSEIR continues to rely on implementation of Mitigation Measure GHG-1, which would require the University to purchase offset credits to reduce project greenhouse gas emissions. The University's documentation of the project's greenhouse gas emissions, and therefore, the amount of off-set credits that would be required for the project continues to be inadequate. The FSEIR also relies on project design features to reduce greenhouse gas emissions; however, these features have not been defined or quantified in the FSEIR. The FSEIR did not address greenhouse gas impacts related to traffic or any other project operations and therefore remains inadequate.

F. The FSEIR Fails to Remedy the SEIR's Inadequate Evaluation of the Project's Noise Impacts.

The FSEIR fails to address the need to evaluate the ambient noise environment during both the nighttime and morning hours. The industry standard among acoustical consultants is to take noise measurements also during the peak hour of the project's noise generation. In this case, the project would include a roof-top terrace that would have events during times outside of the peak hour of the adjacent street traffic. Therefore, the impacts of the outdoor use spaces and HVAC equipment in relation to the

ambient noise levels were inadequately assessed. Additionally, the operational noise analysis from the outdoor space was limited to conversation noise. Programming of the roof-top terrace (including the use of any amplified sound system or crowd noise) is not analyzed or provided in the FSEIR. Therefore, the FSEIR remains inadequate.

The FSEIR also fails to address construction vibration impacts to adjacent structures. The FSEIR continues to rely on Mitigation Measure NOI-5, which requires a pre-construction survey, to reduce the impacts of construction related vibration impacts. However, Mitigation Measure NOI-5 only requires a pre-construction survey when construction includes pile driving activities. The project does not include pile driving, and therefore, it is unclear how the preconstruction survey would be implemented as part of the project. The University's documentation of vibration impacts and mitigation continues to be inadequate.

G. The FSEIR Fails to Analyze and Mitigate Significant Impacts to Cultural Resources.

The City's comments raised concerns about the Draft SEIR's failure to mitigate the Project's significant impacts on known historic resources. As noted in those comments, the SEIR relies on Mitigation Measure MM-CUL-1, which calls for future consultation with an historic architect to modify the building design. FSEIR at 93. This approach defers analysis and mitigation of the Project's effects on historic resources until the Project is undergoing future redesign. The FSEIR fails to acknowledge this error or to provide the requisite mitigation for the Project's impacts, and instead the University defends its inadequate approach.

CEQA requires the implementation of feasible mitigation measures even when such measures would not reduce the severity of an impact to less than significant. By relying on MM CUL-1 the University has deferred the analysis of design characteristics of the project that could create a facility that is respectful of historical resources in the project's vicinity. MM CUL-1 relegates the input of a historical architect to the status of unenforceable best practices, and delays this input until a later unspecified date. The input from an historical architect with respect to how exterior building treatments, massing, and volume may negatively affect the integrity of feeling and setting should be obtained during the project's design, as these characteristics are key to conveying the architectural heritage of the Daley Scenic Park Tract.

As noted by the Berkeley Architectural Heritage Association (BAHA) in its comments on the DEIR, because many buildings and structures in the area were destroyed in the 1923 Berkeley fire, the visual cohesiveness of the cluster of resources that remain, several of which are designated City Landmarks, is especially susceptible to disruption by new construction of the scale and exterior appearance proposed in the project. Other commenters, including the Landmarks Preservation Commission (LPC), a

City of Berkeley commission charged with ensuring that preservation values are considered in new development, reiterated this concern about the appropriate scale of the proposed project. Mitigation Measure CUL-1 would not avoid such impacts on the surrounding area, since deferred post-CEQA analysis by an architect would merely result in recommendations for exterior building materials that would be forwarded to University decision-makers to "consider," without any demonstrable enforceability to avoid or reduce the severity of the impact.

Because there is no requirement in the SEIR that a preservation professional review the proposed design and provide input on ways to avoid or substantially reduce the Project's potentially discordant visual effects, the SEIR's analysis does not appear to meaningfully assess the likelihood that the project materially impairs the significance of adjacent and nearby resources. As specified in CEQA Guidelines Section 15064.5 (emphasis added):

> (b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.
>
> (1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or *alteration of the resource or its immediate surroundings* such that the significance of an historical resource would be materially impaired.

One of the ways material impairment occurs is when a project, per Section 15064.5(b)(2):

> (A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources[.]

The proposed project's massing and imposing volume, and the resulting contrast in building envelopes, massing, and architectural exterior treatments, which BAHA aptly describes as "insensitive massing and inappropriate architectural character," would adversely impact the surrounding area. As noted, this area is populated with buildings that qualify as historical resources under CEQA, and whose historic significance is derived from the continuity of historical thematic association with a particular and important period in Berkeley's past, along with visual consistency born of similar architectural styles and relatively uniform streetscape presentation.

The LPC's comments underscore the importance of using harmonious materials and compatible façade presentation in a neighborhood of historic character: "The curved white monolithic appearance of the project . . . is inappropriate." FSEIR at

A-2. The LPC concludes that the project, as proposed, "fails to make even a slight concession to [the project's] historic setting." This statement supports the inherent and thoroughly documented importance of the visual continuity of the neighborhood buildings, their exterior treatments, and their massing. These buildings together make a significant contribution to Berkeley's architectural heritage, and the area is susceptible to insensitive new development. The University itself has acknowledged the acute disparity between the existing and proposed massing and height: "Since the proposed residential building would be up to six stories in height, it would be approximately three times to [sic] height of two-story houses on Ridge Road." FSEIR at 196.

As the City and other commenters have noted, and as the University appears to acknowledge, the proposed Project as designed will cause a significant impact on the architectural heritage and historical resources in the area. The deferred input of an historical architect on future proposed redesigns following CEQA review fails to avoid or substantially reduce this impact. Contrary to the University's assertions, this impact is not unavoidable. The FSEIR simply reinforces the error in the Draft SEIR by doubling down on the contention that the University is not obligated to mitigate the impacts of the Project on historic resources to a less than significant level, and by failing to revise its mitigation measures to avoid or substantially reduce the impact of the project on nearby historical resources.

The City, along with BAHA, commented that the FSEIR provided an incomplete description of existing cultural resources at the Project site. See FSEIR at A-57. As the City noted, the SEIR fails to identify a City Landmark across the street from the Project site, and another nearby. The FSEIR ignores these additional cultural resources, and instead attempts merely to justify the limited scope of its historical analysis. However, both the limited scope of the University's study, and the resulting failure to identify at least two historical resources, render its assessment of existing conditions inadequate.

Although the baseline identification tasks listed by the University are commonly consulted for projects in Berkeley (e.g., the Northwest Information Center), the city's rich architectural history requires that overlapping and multi-layered resource inventories must be consulted to prepare a cultural resources baseline that is adequate for CEQA analysis. See FEIR at 29-30. For instance, the degree to which historical resources (as defined by CEQA) occur adjacent to or near a project site, and may be subject to impact, is a reasonable and commonly applied threshold for determining whether the effort to identify baseline conditions is adequate. As noted by BAHA and LPC, , important local inventories, including information about the Northside Landmarks provided on BAHA's website, should have been consulted to adequately provide a "snapshot" of the specific resources subject to potential impact, including resources currently designated as City Landmarks. The FSEIR provides no explanation for its failure to consult these local inventories.

The University also erred by defining the relevant area of study narrowly, and as a result the FSEIR omits at least two existing cultural landmarks from its study. As stated in CEQA Guidelines Section 15125(a), "The description of the environmental setting shall be no longer than is necessary to an understanding of the significant effects of the proposed project and its alternatives." Contrary to the University's assertion, and supported by BAHA's and LPC's comments, the extent of identification efforts for the neighborhood appears to be inadequate given the likelihood that the Project will overwhelm and potentially materially impair the significance of nearby resources. Due to the sheer size of the proposed building, which the University notes is three times taller than the two-story buildings across Ridge Road, the area susceptible to visual impacts is incorrectly established in the SEIR as those areas adjacent to the project site. The FSEIR similarly notes that the area at issue includes only those resources "within or adjacent to the Project site." FEIR at 29.

In fact, additional buildings, including some City Landmarks, would be subject to the substantially increased vertical volume and presence of the proposed Project. These impacts would occur within an area of established architectural character that conveys the time and place from which the resources' significance is drawn, and that justifies their status as historical resources under CEQA. The impact to collective aspects of integrity, such as "setting" and "feeling" (as described in National Park Service Bulletin 15, How to Apply the National Register Criteria for Evaluation, 1990 found here https://www.nps.gov/nr/publications/bulletins/nrb15/), are especially important when considering the effects of a project on concentrations of resources, such as historic districts or long-established and architecturally cohesive neighborhoods like the neighborhood in the vicinity of the Project site.

Additionally, CEQA Guidelines section 15125(c) states that "[s]pecial emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project" (emphasis added). The fire of 1923, which greatly reduced the Northside building stock, rendered the remaining historical buildings significant due to their scarcity. The SEIR should have discussed the potential for indirect impact on these uncommon, or even rare, buildings. The FEIR fails to remedy this error. Without identifying the sensitive resources subject to potential impact, the SEIR analysis failed to meaningfully address or mitigate such impacts.

The City also noted that the SEIR fails to provide information to identify the likelihood of significant archaeological resources on the Project site, thereby failing to establish the site's baseline conditions for cultural resources. In response, the FSEIR merely asserts the adequacy of its discussion without meaningfully addressing the City's concerns.

The SEIR's reliance on the 2020 LRDP's mitigation measures to address archaeological resources at the Project site is inadequate. In *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, the court established that preservation in place is the preferred manner of mitigating impacts to archaeological historical resources, one that must be adopted unless an another approach is documented to better serve the interests protected by CEQA. However, the SEIR makes no mention of preservation in place. Instead, it relies upon the 2020 LRDP's Continuing Best Practice CUL-4-a, which does not provide for this clearly preferred treatment of archaeological deposits that qualify as historical or unique archaeological resources under CEQA.

Continuing Best Practice CUL-4-a merely requires a passive approach, involving reacting to damage incurred via accidental discovery of resources. An archaeological deposit cannot be identified before a portion of the deposit is disturbed by excavation equipment that exposes artifacts and features. At that point, from an archaeological perspective, those deposits would be irreparably harmed because their integrity, or the ability to be interpreted and provide information about the past, would be destroyed. Once disturbed, archaeological deposits' ability to provide such information is effectively eliminated, and the deposits' potential eligibility for inclusion in the California Register of Historical Resources is lost. Additionally, the potential for even more egregious damage is heightened because accidental discovery mitigation relies on construction crew that are not trained in recognizing archaeological constituents and interpreting whether a potentially significant deposit is present.

The nature of prior land use in the Project site, particularly the Roman Catholic facility (Newman Hall/Holy Spirit Parish complex), indicates a likelihood that archaeological deposits persist, especially given the lack of substantial subsurface excavation in subsequent development of the parcel. The likelihood that the site contains resources that could qualify as historical or unique archaeological resources under CEQA is sufficient to warrant preconstruction archaeological testing. Such testing would be consistent with the *Madera* decision emphasizing the importance of early identification of archaeological deposits.

The University acknowledged in the SEIR that the site likely contains archaeological deposits. As such, the University should undertake preconstruction testing to adequately inform the baseline archaeological conditions. Such testing would allow of the use of preservation in place of significant deposits during the CEQA review. As part of this testing, a more expansive discussion of the potential occurrence of such resources beneath the parking lot should, at a minimum, address the following impact scenarios: (a) whether the former buildings and structures on the project site had basements, which are often receptacles of historic-period artifacts that may have been filled and paved over; (b) whether there were wells or privies located on the property, which are often similarly "sealed" by subsequent construction; and (c) whether the previous buildings/structures were removed only from the ground up, leaving subsurface features relatively intact. This

assessment, combined with preconstruction testing, would materially inform the analysis by identify baseline conditions for archaeology commensurate with the likelihood of impact.

The FSEIR did not address the City's comments regarding the inadequacy of the proposed mitigation measures or respond to the City's proposed testing. The FSEIR improperly maintains that the Project's impact on archaeological resources would be less than significant based only on the inadequate mitigation measure discussed herein.

In response to the City's comment that the Draft SEIR's mitigation measures to address vibration impacts on adjacent structures is inadequate, the University asserts that Mitigation Measure NOI-5 from the 2020 LRDP EIR will be used during construction of the Project. FSEIR at 57. However, as the City noted in its comments, this mitigation measure is wholly inadequate to protect the historic structures in the Project's vicinity.

The use of the noise Mitigation Measure NOI-5 to address all types of construction vibration, and its potential impacts on historical resources, improperly defers analysis. This mitigation measure also lacks clear objectives and performance standards for damage thresholds or procedures to ensure that the resources do not sustain the intensity of vibration that would result in damage, and it fails to assign persons responsible for review and implementation of the measure. Particularly with respect to historical architectural resources, the delicate nature of historic fabric, period structural components, and joinery render such buildings especially susceptible to vibration-related damage. Mitigation Measure NOI-5 is ineffective in this context because it does not comport with the specialized composition of historic buildings and the monitoring necessary to avoid or substantially reduce impacts.

To this end, the SEIR analysis should be based on the preparation and implementation of a Vibration Management and Monitoring Plan (VMMP) that is specifically tailored for and responsive to the specialized needs of historic buildings, especially those adjacent to the project site. To properly assess the potential for vibration-related impacts, and to meaningfully inform the SEIR analysis, the VMMP should include pre-construction surveys of the historic buildings to allow for a robust discussion of the baseline conditions and their susceptibility to certain types and levels of construction vibration.

The FSEIR failed entirely to acknowledge the City's concerns, and merely doubled down on the contention that the noise mitigation measure would suffice during construction. Since, as discussed here, this measure would fail to protect the historic buildings near the Project site during construction, this response is inadequate.

H. The FSEIR Fails to Analyze or Mitigate Inconsistencies with the City's General Plan and Zoning.

The FSEIR acknowledges that the GSPP project is inconsistent with the City's General Plan and Zoning Ordinance in many ways: it is too tall and too dense, and it ignores all setback limits. It is also inconsistent with the City's General Plan policies related to affordable housing, child care, and historic resources, and is inconsistent with the City Code's standards related to noise and public art. The effect of the University's increasing enrollment without providing adequate housing is also inconsistent with the City's affordable housing policies.

Though the FSEIR acknowledges these incompatibilities, it concludes without any analysis that any mitigation measure to address these incompatibilities would "impair attainment of Project objectives to meet housing demand." The failure to substantiate this conclusion with evidence violates CEQA. Moreover, the FSEIR belies this conclusion by repeatedly asserting that the University has ample opportunities to build housing in conformance with the 2020 LRDP elsewhere on campus. *See* SEIR at 15. It is thus evident that the University could modify the proposed GPSS project to bring it into compliance with the City's land use regulations, while still meeting its 2020 LRDP housing goals.

In its response to comments, the University continues to acknowledge the inconsistencies, but concludes that it is not subject to the City's land use planning jurisdiction. However, the fact that an agency is not subject to the City's jurisdiction does not eliminate its obligation to consider a project's effects on the surrounding area. Instead, "an EIR may not ignore the regional impacts of a project proposal, including those impacts that occur outside of its borders." *Citizens of Goleta Valley*, *supra*, 52 Cal.3d at 575; *see also City of Marina*, *supra*, 39 Cal.4th at 360 ("CEQA requires a public agency to mitigate or avoid its projects' significant effects not just on the agency's own property but '*on the environment'* [citation omitted], with the 'environment' defined for these purposes as 'the physical conditions which exist *within the area which will be affected by a proposed project*.' [citation omitted].")

Indeed, despite the exemption from local land use regulations, the University's own Continuing Best Practice U-2-c aims to minimize incompatibilities with the City's General Plan targeted densities and with local zoning standards for height and setbacks. *See* FSEIR at 58. While the University concedes this inconsistency with the Continuing Best Practice, the FSEIR makes no attempt to mitigate the Project's inconsistencies, and instead reasserts that the Project will have a significant and unavoidable land use impact. This conclusion is not supported by substantial evidence, because, as noted, the University could certainly avoid these impacts by bringing the Project into alignment with local land use policies.

In addition to conflicting with the City's General Plan, Zoning Ordinance and other City Code standards, the project also conflicts with the University's own 2020 LRDP. Indeed, the FSEIR's failure to assess and mitigate the project's inconsistencies with the City's policies violates the LRDP, which calls for any "project location and design" occurring according to the 2020 LRDP to be "informed by municipal land policies." LRDP at 23. The project also fails to comply with the LRDP's policy that in the City Environs, the University's objectives "must be informed by the plans and policies of neighboring cities, to respect and enhance their character and livability through new university investment." *Id.* at 49. As the City has explained, the FSEIR fails to adequately analyze and mitigate the proposed building's impacts on the surrounding area, or to assess the project's inconsistencies with the City's plans and policies. The significant increase in enrollment without providing housing also fails to respect the City's plans and policies, as required by the LRDP.

Additionally, by significantly increasing its enrollment without providing even the housing planned in the 2020 LRDP, let alone housing needed for the additional 11,000 students, the University has failed to satisfy the LRDP's housing policies, which aim to guarantee housing for a certain percentage of students in particular classes. *See* LRDP at 25. Instead, the increased headcount increases housing insecurity for the University's students, without providing any analysis of these impacts. The University's attempt to minimize the impacts of the increase in enrollment are also belied by the 2020 LRDP, which called its planned enrollment increase of 4,000 students by 2010 "a significant increase for any campus, but particularly for a mature, urban campus with aging facilities and limited capacity to expand." *Id.* at 13. If an increase of 4,000 is "significant" by the terms of the 2020 LRDP, an increase of 11,000 surely merits an analysis far beyond the cursory review the University has provided in the FSEIR.

I. The FSEIR Provides No Evidence to Support Its Conclusion that the Project Will Have No Significant Growth-Inducing Impacts.

In response to the City's concerns about the growth-inducing impacts of increasing enrollment by 11,000 students—an increase equal to the entire population of Emeryville—the FSEIR states that there is no evidence in the EIR suggesting such an increase would require infrastructure improvements. But, of course, UC cannot hide behind the EIR's failure of the EIR to properly analyze these impacts. *Sundstrom*, *supra*, 202 Cal.App.3d at 36. As the City has repeatedly informed UC, this increased enrollment will have dramatic effects on public services, infrastructure, and housing development in the surrounding community. UC must assess these impacts in a revised and recirculated EIR.

J. The FSEIR Must Be Revised to Discuss an Alternative That Addresses Impacts Associated with Increased Enrollment.

As with so many of the City's comments, UC fails to respond to the City's concerns about the SEIR's alternatives analysis. The primary purpose of CEQA's alternatives requirement is to explore options that will reduce or avoid adverse impacts on the environment. *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089. Therefore, the discussion of alternatives must focus on project alternatives that are capable of avoiding or substantially lessening the significant effects of the project, even if such alternatives would impede to some degree the attainment of the project objectives or would be more costly. CEQA Guidelines § 15126.6(b); see also *Watsonville Pilots*, *supra*, 183 Cal.App.4th at 1089 ("[T]he key to the selection of the range of alternatives is to identify alternatives that meet most of the project's objectives but have a reduced level of environmental impacts").

Here, the record contains substantial evidence that increasing student enrollment without providing adequate on-campus housing will result in a host of impacts to the surrounding community. See Letter from T. Burroughs to R. Breines dated April 12, 2019 and attached as Attachment 1. Thus, the City proposed an alternative that would commit UC to building more student housing by a date certain to address those impacts. *Id.* at 40 and 41. Rather than analyzing this alternative or providing a reasoned explanation of why such an alternative would be infeasible, the FSEIR once again denies that increased enrollment is part of the project being analyzed. For all the reasons stated above, this denial is unsupported by the record. Thus, UC must consider an alternative that would address the impacts caused by the substantial increase in enrollment.

V. Conclusion

For all these reasons, the City of Berkeley urges the University to revise and recirculate the environmental analysis for this project to fully analyze and mitigate its impacts.

Sincerely,

Timothy Burroughs
Director, Department of Planning & Development

List of Attachments:

Attachment 1	Letter from T. Burroughs to R. Breines dated April 12, 2019 (without attachments)
Attachment 2	The Case for Housing Impacts Assessment: the Human and Social Impacts of Inadequate Housing and Their Consideration in CEQA Policy and Practices.
Attachment 3	2019 Audit of the Workload for Dispatch in Fiscal Year 2018
Attachment 4	Chancellor's letter to friends and colleagues

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Planning and Development Department

April 12, 2019

Via Electronic Mail Only

Raphael Breines, Senior Planner
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Re: Upper Hearst Development for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan Draft Supplemental Environmental Impact Report to the UC Berkeley 2020 Long Range Development Plan EIR, SCH# 2003082131.

Dear Mr. Breines:

On behalf of the City of Berkeley, I am submitting the following comments on the draft Supplemental Environmental Impact Report ("SEIR") for the project titled "Upper Hearst Development for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan" ("Project").

The City and the University of California, Berkeley ("University" or "UC Berkeley") have a long history of working together on planning and development projects to ensure that our community remains vibrant, attractive, and safe. The California Environmental Quality Act ("CEQA") plays a vital role in this planning process, as it allows the City to review specific development proposals, as well as longer-term planning efforts, undertaken by the University and ensure that the impacts of such projects on the surrounding community are adequately considered and mitigated. It is in this spirit of broader cooperation toward a common goal of maintaining our thriving community that we submit these comments.

Our overarching concern with the SEIR is that it combines environmental analysis of a specific development project—two new buildings for the Goldman School of Public Policy ("GSPP")—with analysis of increased overall enrollment projections at the University through 2023. To avoid this significant and unnecessary confusion about

what is under consideration, we yet again ask the University to revise the environmental analysis to consider these two distinct projects in separate documents.

In addition, the University must correct a number of significant flaws in its analysis of this Project. From a CEQA perspective, the SEIR lacks a clear, stable, and finite definition of what the Project is. On one hand, the "Project Description" suggests that the "Project" is nothing more than the expansion of the Goldman School of Public Policy, which involves the demolition of two parking areas and the construction of one academic building and one housing structure. However, the NOP and impact analysis sections tell a different story: There, the SEIR makes it clear that the University is also purporting to analyze the environmental impacts of dramatically increased student enrollment—nearly five times the increase anticipated in the 2020 LRDP.

This foundational flaw dogs the SEIR throughout every impact analysis section. Without a clear definition of what the "Project" is, the public and decision-makers simply cannot tell what the impacts of approving the Project will be.

Ignoring the dramatic impact of exponential population growth and referring to it as a new "baseline" does not make it so. Legally, it violates CEQA. The law specifically requires that the University analyze and mitigate the impacts of such an increase. Exponential population growth without appropriate planning, analysis, and mitigations has a profound impact on the City of Berkeley – not to mention deteriorating quality of life for the student population. For example, an 8,000 student increase over the 2020 LRDP estimates for 2020—and projected 11,000 student increase through 2023—represents an approximate 9% increase in the City's total population. Further, an 8,000 student increase for 2020 is nearly a 500% increase over LRDP estimates for 2020. This comes with the University's admitted inability to house most of its students. The resulting displacement of City residents exacerbates the housing and homelessness crises, which disproportionately impacts the most vulnerable and thus should heighten, and not obscure, the University's responsibilities. Unplanned, unmitigated and unanalyzed population growth stress the City's already overtaxed services, such as police, fire and social services. These impacts reduce response times, potentially require new facilities and put others where there is no social safety net. All of these impacts must be identified, analyzed, and mitigated in revised environmental documents.

The University does not contribute to the City's general fund through property taxes or development impact fees, which are the primary funding sources for City services like police and fire. It does not house its population on campus. Nor does it pay to mitigate the off-campus impacts. In our comment letter, the City simply asks the University to comply with CEQA. This would require the University to pay its fair share to mitigate impacts caused by development projects and enrollment decisions.

The City has engaged Economic & Planning Systems, Inc. (EPS) to study the fiscal impacts of these increased service demands on the City of Berkeley; while the

preliminary findings are presented below, a more thorough and complete analysis will require approximately four to six months to complete. According to these preliminary findings, the University's net fiscal impact on the City of Berkeley has increased from an estimated $11 million per year in 2003 to *over $21 million* for the year 2018 alone. This impact directly affects the City's ability to allocate resources to pressing environmental factors such as the local streets, storm drain, sewers, public buildings, public safety resources, and other infrastructure and services.

The SEIR's analysis of the GSPP expansion is about one project, as opposed to the greatly expanded population's impact on the whole City. The GSPP expansion has a wholly different conflict with CEQA. While the City believes the GSPP expansion is a positive development in concept, the design clearly does not respect the historic resources in the surrounding neighborhood, as the City's Landmarks Preservation Commission indicated. The SEIR dismisses out of hand even modest measures that could reduce these impacts. Similarly, the SEIR glosses over the potentially significant noise, archaeological, air quality, and other impacts associated with this new development, as discussed in detail below.

In addition, the University dismisses CEQA's requirements to consider public comment. The University indicated its commitment to the Project prior to certifying an EIR for it. *See e.g.*, Letter from Vini Bhargava, Director, Physical and Environmental Planning, UC Berkeley to Timothy Burroughs, Director, Department of Planning & Development, City of Berkeley dated March 14, 2019, (stating that the University would not grant a longer extension for the public comment period to May 1 because doing so would "push the GSPP project approval to a later Regents meeting, thereby jeopardizing the construction start date"). As the Supreme Court has held, "an agency has no discretion to define approval so as to make its commitment to a project precede the required preparation of an EIR." *Save Tara v. City of West Hollywood* (2008) 45 Cal. 4th 116, 132. This statement is also a clear indication that the University is not taking seriously its obligation under CEQA to consider public comments.

In sum, the SEIR violates the minimum standards of adequacy under the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 et seq., and the "CEQA Guidelines," California Code of Regulations, title 14, § 15000 et seq. Moreover, the University's use of a supplemental—rather than a subsequent—EIR was inappropriate, as neither the GSPP project nor the exponential enrollment growth is consistent with the LRDP analyzed in the previous EIR. Given these flaws, the University must prepare a new EIR with a clear project description and thorough impact analyses.[1]

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[1] The City prepared these comments in consultation with Shute, Mihaly & Weinberger LLP; LSA; and Economic & Planning Systems, Inc. Attachment A to this letter is a report prepared by

I. The SEIR's Flawed Project Description Does Not Permit Meaningful Public Review of the Project.

A. The University's Increased Enrollment Is Part of the Project, Not the Baseline, and the SEIR's Failure to Describe It as Such Violates CEQA.

An EIR must accurately and consistently describe the project it analyzes. Guidelines § 15124; Guidelines § 15378 (defining "project"); *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-3 ("An accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR."). An inaccurate or incomplete project description undermines CEQA's purposes because it thwarts a full analysis of project impacts, thus minimizing the project's effects. *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656 ("*San Joaquin Raptor*"). Thus, when an EIR gives "conflicting signals to decision-makers and the public about the nature and scope of the activity being proposed," the courts have found it "fundamentally inadequate and misleading." *San Joaquin Raptor Rescue*, 149 Cal.App.4th at 655-56.

Here, the SEIR fails this fundamental test by including an unclear and inconsistent description of the "project" being analyzed. In some places, the SEIR states that the "project" is simply the expansion of the Goldman School of Public Policy (referred to herein as "GSPP" or "GSPP Project"), while in other places the SEIR indicates that the "project" is the GSPP *plus* the increase in enrollment projected at the University through 2023. For example, the Executive Summary and Introduction state that the spiking enrollment is not part of the "project" but instead is just an "updated population baseline." See, e.g., SEIR at 3, 6. The impact analysis sections, however, treat the updated enrollment numbers as a change in the original LRDP *project* and purport to analyze whether the impacts associated with the dramatic enrollment increase projections were adequately assessed in the original EIR for the 2020 LRDP. See, e.g., SEIR at 54 (concluding that there would not be increased aesthetic impacts associated with the increase in campus headcount); see also SEIR at 45 ("The environmental analysis of each impact category in Section 6 of this SEIR takes into account the updated campus headcount baseline and explains how the increased campus headcount factors into and/or affects *the environmental analysis and significance conclusions* reached in the 2020 LRDP Final EIR and this SEIR.") (emphasis added); Notice of Availability of Draft SEIR (indicating that the SEIR provides "a program-level analysis of development anticipated

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EPS. We respectfully refer the University to that report, both here and throughout these comments, for further detail and discussion of the SEIR's inadequacies. We request that the University reply to the comments in this letter and to the comments in the attached EPS report.

to accommodate current and projected enrollment at the UC Berkeley campus"). This ambiguity in the project description renders the entire SEIR analysis invalid.

Moreover, it is clear from the SEIR and CEQA itself that the significantly increased enrollment numbers must be part of the project, and not just part of an updated "baseline," for at least two reasons.

First, CEQA specifically requires the University to analyze and mitigate the impacts of dramatically increased enrollment, i.e., treat massive increased enrollment as a project subject to environmental review. See PRC § *See* Cal. Pub. Res. Code § 21080.09(a) (requiring the University to analyze and mitigate for change in enrollment levels); 14 C.C.R. § 15081.5(b) (same). This is exactly what the University did in the original 2020 LRDP EIR, where the projected 2020 enrollment numbers were not part of the *baseline* but rather part of the *project* being analyzed. See LRDP EIR, Section 3.1.5 (including "Campus Population" as part of the LRDP, i.e., the project being analyzed); Section 5.1.1 (analyzing a "lower enrollment" project alternative). Thus, to the extent the SEIR is analyzing a change in enrollment, it is analyzing a change in the LRDP itself, not the baseline.

Second, the SEIR's analysis of the increased enrollment clearly purports to look at the *impacts* of that action. Under CEQA, a "baseline" has no environmental impacts; it is the existing environment. Guidelines § 15125. Only "projects" have impacts. Thus, the analysis contained in the SEIR itself provides strong evidence that the increased enrollment is part of the project, not the baseline.[2]

Because the SEIR fails to accurately describe the project as including the changes in enrollment, and instead repeatedly refers to this project element as part of a "baseline update," the SEIR violates CEQA. Any revised environmental document must include the changed enrollment numbers as part of the project description, or separate this part of the project out and analyze it in a separate document.

Moreover, to the extent the SEIR purports to analyze the potential impacts of the changed enrollment, that analysis is also inadequate. We will address these inadequacies in our discussion of the specific impact areas. For convenience, we refer to

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[2] The SEIR also never relies on the "updated" enrollment numbers (40,955 students enrolled and total campus headcount of 57,637, as of the date of the Notice of Preparation) as a baseline for analyzing any of the Project's impacts. SEIR at 44. In fact, rather than using a proper baseline—i.e., existing environmental conditions on the ground—to analyze most Project impacts, the SEIR repeatedly states that the Project's impacts would be less than significant because the LRDP is not physically built-out. But comparing the proposed Project to the LRDP does not provide an adequate CEQA analysis. Rather, the SEIR must analyze whether the Project has significant impacts compared to existing conditions, not to prior plans. Guidelines § 15125(a).

the GSPP portion of the project as "GSPP" or "GSPP Project." We refer to the enrollment changes as the "Enrollment Project."

B. Components of the GSPP Project Are Not Adequately Described.

In addition to the Project Description flaws related to the Enrollment Project, the SEIR also fails to adequately describe all of the components of the GSPP Project. In some cases, aspects of the GSPP Project critical to its analysis are omitted altogether. For example, the SEIR indicates that the Project would include use of bio-retention facilities that ensure no net increase in the volume of stormwater runoff. SEIR at 129. But the SEIR fails to identify the location of these facilities or to provide any details about their capacity and function. This information is critical to understanding the GSPP Project and whether the proposed low-impact development (LID) facilities are feasible to install or may result in additional impacts.

Many LID infrastructure projects implemented by the City are being implemented within street rights-of-way. For example, the City installed a bioswale at the corner of Hearst and Oxford that includes approximately 200 square feet of area to capture and treat stormwater. Personal Communication, C. Borg (consultant planner to the City) and D. Akagi, Engineer, City of Berkeley, April 2, 2019. Here, because the proposed GSPP building does not provide the setbacks required by the City, and because the LID facilities are not described, it is unclear where the LID facilities could be located and whether they will be adequate.

Similarly, the SEIR acknowledges that construction would involve a variety of construction vehicles, including haul trucks, water trucks, dump trucks, and concrete trucks (SEIR at 66) but fails to include a Construction Traffic Management Plan. According to the SEIR, Continuing Best Practices TRA-3-a, TRA-3-b, and TRA-3-c describe measures for reducing or minimizing traffic impacts during construction. SEIR at 164. These measures include preparation of a Construction Traffic Management Plan for *each* construction project. Id. Such plans are important to ensure that traffic and public safety impacts are minimized, especially when construction takes place in an urbanized, congested area such as this campus in Berkeley. But the Construction Traffic Management Plan does not appear anywhere in the document. (And to the extent the University would treat these plans as mitigations rather than part of the Project, their omission from the SEIR would be an impermissible deferral of mitigation.)

In another example, the SEIR provides no information on the number, size, time of day, or frequency of events to be held at the event center, which will be part of the academic building. As a result, it is impossible to determine whether these events will cause significant noise and traffic impacts, impacts to pedestrians, or other impacts, either separately or cumulatively with the nearby Greek Theater, for example. In addition, the SEIR fails to describe exterior lighting on the terrace, which could result in light and glare impacts.

The SEIR also provides no information on the dewatering process to be used during construction. The SEIR discloses that Project excavation is estimated to be 23 feet below ground surface, which may require dewatering. SEIR at 127. However, other than a statement that dewatering activities would have to comply with the applicable National Pollutant Discharge Elimination System ("NPDES") permit, the SEIR provides no details related to these activities, e.g., where the referenced dewatering features will be located, what provisions will be in place to contain sediment, what measures will be in place to prevent contamination of the storm drain system. Without a detailed project description that includes these basic planning and design considerations, the SEIR will remain incapable of addressing and analyzing the Project's important environmental effects.

In addition, the proposed mitigation to address impacts on the historic character of the area may result in redesign of the project. SEIR at 93. However, because this mitigation is deferred, the SEIR fails to describe the redesign called for to address identified impacts. Id. Because of this unstable GSPP Project description, it is impossible for decision-makers and the public to evaluate the Project's impacts, whether redesign of the site to protect all the potentially effected resources is feasible, and whether the identified impacts will indeed be mitigated.

In sum, the SEIR fails to describe the project with sufficient accuracy and specificity. The failure to describe the whole of the project is a serious and pervasive deficiency, as it renders faulty the environmental impact analyses as well as the discussion of potential mitigation measures to minimize those impacts. A revised environmental document must provide accurate information including, but not limited to, a sufficient description of anticipated special events; construction activities, including a description of the Project's dewatering plan; and any other Project details relevant to its potential environmental impacts. This information is necessary to allow decision makers, the public, and responsible agencies to evaluate potential environmental impacts.

II. The University May Not Tier Off of the LRDP EIR for this Project as Neither the Enrollment Project or GSPP Project Is Consistent with the 2020 LRDP.

It is inappropriate for the University to tier its analysis of either the GSPP Project or the Enrollment Project off the 2020 LRDP EIR because neither Project is consistent with the 2020 LRDP.

Tiering is a method of conducting environmental review in sequence, from an EIR covering general matters and environmental effects associated with a general plan or program to a narrower or site-specific EIR. Pub. Res. Code § 21068.5. Tiered environmental review is applicable only to a later project that is "[c]onsistent with the program, plan, policy, or ordinance for which an [EIR] has been prepared and certified," consistent with local land use plans and zoning, and "[n]ot subject to Section 21166." *Id.* at § 21094(b)(1)-(3). The purpose of tiering is to "exclude duplicative analysis of

environmental effects examined in previous [EIRs].” *Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 344 (citations omitted).

Because the current enrollment figures are substantially different from the figures used in the 2020 LRDP EIR, a tiered environmental review of this increase in enrollment is inappropriate. The enrollment increase described in the SEIR is not a site-specific project or a narrower project than the 2020 LRDP. Instead, it represents a fundamental change to the assumptions in the 2020 LRDP regarding the number of students assumed in that plan. The massive increase in enrollment of more than 8,000 students is patently inconsistent with the previously planned increase of 1,650. Similarly, the SEIR itself states that the GSPP Project is inconsistent with the LRDP, and actually requires an amendment. SEIR at 41 and 134. Given these inconsistencies, tiering is inappropriate here.[3]

Indeed, in litigation filings the University has acknowledged the shortcomings of the existing 2020 LRDP EIR as the basis of later tiered analyses: “Long term planning documents remain valid, and the EIRs for those documents remain useful for tiering, so long as the predictions hold true. However, when predictions become outdated, the lead agency must re-examine impacts at the time of the *next discretionary approval*.” Regents Reply to Opposition to Demurrer to Third Amended Petition, *Save Berkeley’s Neighborhoods v. Regents of the University of California* (Jan. 8, 2019) at 8 (emphasis in original). Because the University’s enrollment predictions in its 2020 LRDP EIR have not held true, the 2020 LRDP EIR no longer remains useful for tiering. As a result, the University must re-examine the impacts of the enrollment increase, and may not simply tier this analysis off the 2020 LRDP EIR.

III. A Supplemental EIR Is Not Appropriate Here, Given the Significant Changes Proposed to the LRDP.

The EIR prepared by the University purports to supplement the 2020 LRDP EIR. However, a supplemental EIR is appropriate only if an EIR has already been prepared for a project, that project is subsequently changed, and “[o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the same situation.” Guidelines § 15163.

Here, an EIR was prepared for the LRDP. However, the dramatic increase in the enrollment numbers proposed in the Enrollment Project will require significant, rather than minor, changes to the 2020 LRDP. As such, the supplemental EIR prepared by the University is inadequate. Instead, a subsequent EIR must be prepared. Guidelines § 15162.

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[3] Additionally, tiering is inappropriate for the Enrollment Project because the enrollment increase is a substantial change subject to CEQA § 21166. CEQA § 21094(b)(1)-(3).

IV. The SEIR Is Inadequate Under CEQA.

A. The Project Would Substantially Increase the Local Population and Exacerbate Inadequate Housing Conditions for University Students and for City of Berkeley Residents.

It is important to keep in mind the context of the University's decision when considering this Project. The Bay Area is experiencing a housing crisis. Moreover, UC Berkeley students are experiencing this crisis through severe housing insecurity and, in some cases, homelessness.

The Project includes a substantial increase in the campus population. Notice of Preparation for the Draft SEIR for the Upper Hearst Development for the Goldman School of Public Policy and Minor Amendment to the 2020 Long Range Development Plan at 2. As the SEIR makes clear, the University has not provided sufficient housing to accommodate this increased population. SEIR at 151 (UC Berkeley has added 1,119 student beds through the end of 2018, leaving a balance of almost 1,500 student beds remaining under the 2020 LRDP's development parameter of 2,600 student beds, which were intended to accommodate student enrollment of 10,000 fewer people than is now being projected). In fact, a 2017 report prepared by the University's Office of Planning and Analysis as part of the UC Berkeley Office of the Chancellor's Housing Initiative (hereafter referred to as "Housing Survey") found that the demand for campus housing significantly outpaces supply and that UC Berkeley has the lowest percentage of beds for its study body of any UC campus in the State. *See*, https://chancellor.berkeley.edu/task-forces/housing-initiative and Housing Survey Findings by UC Berkeley Office of Planning and Analysis, Fall 2017 at slide 2 *available at* https://housing.berkeley.edu/sites/default/files/pdf/HousingSurvey_03022018.pdf

Available and planned housing stock in the City is not sufficient to serve this increased population. The dearth of housing available to students has resulted in housing insecurity for many of the University's students. For example, the University's Housing Survey found that ten percent of students have experienced homelessness while attending UC Berkeley, while the number for doctoral students is twenty percent. Id. at 10.

The SEIR acknowledges the shortage of student housing. SEIR at 151. The SEIR also acknowledges that "most of the additional campus population would live in Berkeley or nearby parts of the Bay Area." SEIR at 130. However, rather than analyzing impacts from the massive increased enrollment above and beyond the planned enrollment projected in the LRDP, the SEIR rationalizes that because the increase in population would represent a small percentage of the projected increase in the *entire Bay Area's* population from 2000 to 2020, the increased enrollment would not substantially effect the regional population. *Id*. However, as discussed below, this rationale does not comport with CEQA guidance for analysis of impacts associated with population and housing.

Under CEQA, a project has significant impacts if it would "induce substantial population growth *in an area*, either directly…or indirectly…" CEQA Guidelines, Appendix G, section XIV.a. and SEIR at 149. In this case, it is reasonable to assume that new students, faculty, and staff would be drawn to living in Berkeley due to the City's proximity to campus and the campus' location in the heart of the City. The increase of 11,000 students is roughly equal to nine percent of the City of Berkeley's population. U.S. Census Bureau, 2017 (Berkeley population in 2017 was approximately 122,324). Thus the increased population represents a significant increase in population to the City.[4]

The University's failure to provide housing for this increased population places a burden on the City and results in significant impacts that have not been addressed in the SEIR. Specifically, the increased demand for housing has increased pressure for development in the City. The City has seen a marked increase in development applications over prior years particularly for the development of multi-unit housing developments typically marketed to students.

Moreover, a substantial number of housing units constructed in the City of Berkeley are being leased to the University for exclusive use by students. Specifically, multiple new developments built by private developments have been 'master leased' by the University and have been taken off the market for other users. These projects include the New Sequoia Apartments at 2441 Haste, the Garden Village Apartments at 2201 Dwight Way, and the Shattuck Studios at 2711 Shattuck. The City has also seen a trend of landlord preference to rent housing units to students, often at higher resident densities than usual and not in household arrangements. These trends combine to effectively displace non-student Berkeley residents from the housing market in the City. The lack of adequate campus housing for students reduces available supply of housing for non-student residents and displaces existing residents, including residents in historically low-income neighborhoods such as South and West Berkeley. This has the effect of reducing the racial and economic diversity of Berkeley.

The Regional Housing Needs Allocation (RHNA) for Berkeley, mandated by State Housing Law, calls for the creation of 2,959 new units between 2014 and 2022, including 1,558 units below 120% area median income. As of September 2017, Berkeley has approved only 50% of these RHNA recommendations, including 94% of the Market Rate housing goal and 10% of the Below Market Rate housing goal. Unfortunately, the RHNA does not take into consideration student housing. As a university town, Berkeley's

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[4] It is not reasonable to assume, as the SEIR does (SEIR at 149-50) that the relevant "area" of impact is the entire Bay Area. This assumption only serves to minimize the impact of this dramatic increase in enrollment. Moreover, the SEIR provides no evidence to support this assumption, such as statistics on where University students tend to live or would prefer to live, as living far from campus compromises the student experience. In fact, this same analysis suggests that the additional students would live in Berkeley. SEIR at 150, 151.

rental market includes a constant influx and changing tenancies of students, in addition to the needs of our workforce and long-term residents.

The use of master leasing, whether through the purchasing of existing units or earmarking units that are proposed or under construction, places a burden on the Berkeley community as this removes units from the general rental market, making it more difficult to achieve the RHNA goals. While solutions to the student housing shortage should be multi-pronged, it should not be done at the expense of housing availability in the greater community.

Homelessness—whether it results from students who are unable to afford housing or residents who are displaced by students living off campus and driving up rents—also leads to physical impacts on parks, streets and other public spaces, public safety issues related to homeless encampments locating in unsafe locations, and an increase in public health problems.

The SEIR fails to discuss any of the aforementioned impacts. It provides no data on current and anticipated housing stock on campus or within the City of Berkeley and surrounding communities. It provides no data regarding the number of homeless UC Berkeley students and fails to analyze how the substantial increase in campus population will contribute to higher housing insecurity for both students and residents of Berkeley.

B. The Increased Enrollment Will Result in a Substantial Increase in Service Population that Will Significantly Impact Public Services.

The SEIR is especially lacking in its analysis of impacts to public services. Massive increased enrollment at the University results in direct and indirect impacts to a broad range of City services, including but not limited to, police, fire services, and public health. Under CEQA a project has significant impacts if it would result in the need for new or altered facilities that would cause significant environmental impacts "in order to maintain acceptable service ratios, response times, or other performance objectives" for fire and police protection, schools, parks, and other public facilities. CEQA Guidelines Appendix G Section XV.a. Here, the Project will increase the University's enrollment by approximately 11,000 students, which has the potential to increase service ratios, response times or other performance standards for public services. Therefore, the SEIR has an obligation to fully evaluate these impacts.

1. Police Services

In evaluating the Enrollment Project's impacts on police protection, the SEIR acknowledges that the increased enrollment would increase the service population for police protection. SEIR at 156. The SEIR also acknowledges that the University's police department currently fails to meet service ratio goals. Id. The SEIR even concedes that the Enrollment Project would frustrate service ratio goals by reducing the service

ratio from the current 1.6 officers per 1,000 to a projected 1.1 officers per 1,000 people. Id. Furthermore, the UCPD has had a reduction of their force and there is no information on how the University has maintained their commitment to assign ten (10) University police officers on a full-time basis to work jointly with the City police officers in areas proximate to the Campus as per the Mitigation Implementation Agreement By and Between the City of Berkeley and the Regents of the University of California. Yet, the SEIR provides no information about the ramifications of this reduced level of service. It fails to evaluate the impacts of relying more heavily on the City's police department to fill the gap in services and it fails to analyze potential changes in response times due to the increased service population.

While UC Berkeley has a police department (UCPD), the City of Berkeley provides extensive back up and off campus services related to the student population and the University. With the limited amount of on-campus housing, more students live off campus and thus within the sole jurisdiction of the BPD. The City's recent experience serving new student housing facilities off-campus strongly indicates that the massive enrollment increase will adversely affect response time. Some of the new housing development projects in the City are affiliated with the University (*see* https://housing.berkeley.edu/) and, as discussed above, many others are built by private developers but are largely rented to students. These developments are located in the City's jurisdiction and therefore require services from the City's police department that in some cases are beyond the average service provided citywide. For example, the Berkeley Police Department routinely directs several officers in the nuisance abatement unit to monitor and respond to calls in the Clery Act crime reporting area of the City, which is predominantly occupied by students. The inevitable increase in student housing to accommodate the large enrollment jump will necessitate increased police services as well.

In fact, according to the EPS Report attached as Attachment A, calls for police service from within UC Berkeley and its environs increased from about 14 percent to 19 percent of the citywide total in 2003 and 2018, respectively. EPS Report at 3. The Berkeley Police Department already provides services to many University events and allocates resources for officers to attend student judicial affair hearings and safety presentations. In addition, the City anticipates being called upon to provide increased support at football and other sporting events and to provide increased policing to more densely populated areas.

Moreover, the SEIR fails to address the University's recent increased reliance on City of Berkeley police services due to civil unrest at protests and riots related to events on campus. These services require a significant commitment of City resources both in terms of service hours and fiscal resources, and likely correspond to reduced service ratios and increased response times that may necessitate the need for additional personnel and equipment. The SEIR fails to analyze these impacts and its conclusion that

impacts related to police protection services would be less than significant lacks evidentiary support.

2. Fire and Emergency Medical Services

As explained in the EPS Report, while UC Berkley has its own fire inspection and code enforcement personnel, it does not maintain a firefighting team or Emergency Medical Services (EMS) staff. As a result, the BFD provides the vast majority of fire and emergency medical protection for the campus. The EPS analysis estimates BFD costs at over $9.9 million in 2018, with approximately 37 percent of the total cost of service attributable to the University. Actual BFD costs attributable to the University could be even greater due to the complex firefighting and EMS environment created by the unique, high-density and/or high capacity structures owned and operated by UC Berkeley.

UCB and Berkeley Labs have extensive amounts of hazardous materials, including nuclear, that require high risk operations by Berkeley firefighters. The unique circumstances of the campus, its buildings, facilities (stadium, labs, etc.) and chemical, biological, nuclear and other materials requires special training that would not be required of a normal fire department, and exposes BFD to significant additional risk, far above and beyond a normal fire department. In addition, the campus topography, tall buildings, canyon, location on the Hayward fault, vegetation, large venues such as Memorial Stadium, Edwards Stadium, Hass Pavilion, Greek Theater, and Zellerbach Hall all are hugely impactful to our firefighters and EMS.

The increase in building height and densities, such as is found with higher density apartment buildings to accommodate students, also present unique challenges for fire fighters and medical personnel. Personal Communication, C. Borg consulting planner to the City, D. Brannigan, Fire Chief, City of Berkeley, March 29, 2019. Responding to calls for service in these housing environments require twice the staff on fire engines and trucks because these calls require evacuation and management of hundreds of people. Id.

Similarly, the SEIR's evaluation of Project-related impacts to fire protection and emergency medical services is equally deficient. The SEIR acknowledges that the Project would increase the service population for fire protection. SEIR at 157. Nonetheless, the SEIR claims that the dramatic expansion of student enrollment will not increase the need for expanded services and dismisses potential impacts as insignificant, without any analysis or support. To the contrary, the dramatic increase correlates with an increase in the City's residential population, which in turn will result in an increase in service calls for fire protection and for emergency medical services provided by the BFD. Having failed to adequately evaluate the Project's impacts on response times and service level, the SEIR also fails to identify mitigation for this impact. Once again, the SEIR relies on the 2020 LRDP EIR and points to "Best Practices" to mitigate any impacts. Id.

However the Best Practices alluded to only provide for continued partnership with the City and other agencies and do nothing to address the change in service population.

In evaluating service levels for emergency medical services, the Unit Hour Utilization (UHU) is a calculation that measures the amount of time a transport unit is staffed, on duty, and assigned to providing response, triage, treatment and transport of patients in a given period of time. Personal Communication, C. Borg consulting planner to the City and D. Sprague, Assistant Fire Chief, City of Berkeley, April 1, 2019. UHU times are influenced by road conditions, the time it takes to manage an incident, and transport times to various facilities. Together, these factors are used to calculate the amount of time that a service vehicle is in-service and available for calls. A higher UHU per service vehicle means lower availability for service calls and poor availability indicates increases in response times. BFD's current estimated UHU for the four emergency medical service vehicles is approximately 0.39, which as shown in the table below is considered to be in the Above Average utilization range. Id.

Unit Hour Utilization Range
.55 - .45 – High Utilization
.45 - .35 – Above Average Utilization
.35 - .25 – Average Utilization
.25 - .15 – Below Average Utilization
.15 - .01 – Low Utilization

(Smiley, 2011)

The BFD estimates that they get approximately 15,000 service calls annually or 0.125 calls per capita. Personal Communication, C. Borg consulting planner to the City and D. Sprague, Assistant Fire Chief, City of Berkeley, April 1, 2019. The increase in student enrollment would translate to roughly 1,375 *additional* service calls per year. Id. In addition, with the anticipated closure of Alta Bates Hospital in Berkeley, service calls for emergency medical services are likely to increase even more. Id. This increase in service calls is significant and will affect the UHU and ultimately the BFD's response rate for service calls. Id. The BFD anticipates that the increased service calls will result in a need for additional personnel and new facilities to accommodate them. Id.

The SEIR should have evaluated the impacts of the massive enrollment increase on fire and emergency medical services. Instead, the SEIR once again, relies on unsupported statements to conclude that impacts related to fire and emergency medical services will not be significant. SEIR at 157.

3. Public Health Services

Finally, the SEIR ignores the Project's impacts on public health services. The City's Health, Housing and Community Services Department ("HHCS Department") provides public health services to Berkeley residents, including University students who live in the City. HHCS operates a number of inspection, support, and outreach programs that support a safe and healthy environment for City and UC residents.

One of the HHCS Department's objectives is to control and prevent the occurrence and spread of communicable diseases. While the University provides clinical services for students suffering from infectious disease, it is HHCS that manages the public health aspect of those cases (i.e., investigation of exposure potential and follow-up). Personal Communication, C. Borg, consulting planner and Lisa Hernandez, Health Officer City of Berkeley, March 29, 2019. In some cases, a high volume of the cases HHCS manages is related to University students. For example, between 2011 and 2018, 40 percent of tuberculosis cases managed by HHCS were student related. Id. Services associated with managing these cases include contacting contagious people and any others that may have been exposed to them, testing of all of the individuals, and treatment that lasts for approximately six months. Id. These services require a substantial commitment of City staff time and fiscal resources. Id.

Similarly, during the same time period, HHCS managed a substantial number of University student sexually transmitted disease cases. Id. University students comprised 14 percent of syphilis cases, 16 percent of gonorrhea cases, and 20 percent of chlamydia referred to HHCS. Id. These cases are less intensive to manage and treat but have a much higher rate of incidence (hundreds of cases annually) and are predominantly experienced by young adults (e.g., college-aged students). Id. Thus, the increase in student enrollment will add to the already strained ability of the City's HHCS to provide services related to public health, which could result in the need for additional facilities and staff. Id. These impacts should have been evaluated as part of the SEIR. CEQA Guidelines Appendix G Section XV.a.

In summary, the SEIR's evaluation of Project-related impacts on public services is inadequate because, rather than actually addressing the public services that will be needed in light of an increase in 11,000 students, the SEIR relies on the unsupported statement that public services will not change because the 2020 LRDP has not been fully built-out (physically). However, population has far exceeded projections, creating significant new demands on City services. A revised EIR must be prepared to analyze the potentially significant impacts caused by the expanded enrollment.

4. Massive Enrollment Increase Imposes Substantial Costs on the City.

It is important that the City and the University work together to ensure that City services and University programs remain in balance. However, the University failed to consult with the City regarding this Project, and particularly about the planned enrollment increase. City services are already burdened with providing services to a growing population. As discussed above, the proposed Project exacerbates demands on fire, police, and public health services. The SEIR acknowledges the University's dependence on City services for fire and police protection, but falls far short of analyzing the Project's impacts on the both the University and the City's ability to provide adequate services.

The cost to the City of providing these services to 11,000 new students, as well as to the existing University population, is staggering. The EPS Report, which is Attachment A to this letter, estimates that the University's annual net fiscal impact on the City of Berkeley has increased from an estimated $11 million in 2003 to over $21 million in 2018. Costs result from demand for public services, with the analysis evaluating the University's impact on major City departments. In cases where the University partially covers its service demands by providing its own set of services (e.g., campus police, onsite open space, and recreational facilities), the analysis considers net demand on City services. The analysis also evaluates revenue accruing to the City that is attributable to UC Berkeley, including sales tax and other tax and fee revenues, as well as payments made as part of a 2005 settlement agreement.

Since 2003, the demand for services generated by the University has grown relative to citywide demand, with the University's service population and calls for service now making up a greater share of the citywide totals. For example, calls for police service from within UC Berkeley and its environs increased from about 14 percent to 19 percent of the citywide total in 2003 and 2018, respectively.

The City's most substantial cost burden caused by the University is the provision of fire and emergency services. While the University has its own fire inspection and code enforcement personnel, it does not maintain a firefighting team or Emergency Medical Services (EMS) staff. As a result, the Berkeley Fire Department (BFD) provides the vast majority of fire and emergency medical protection for the campus. The cost of these services is estimated at over $9.9 million in 2018; actual BFD costs could be even greater due to the complex firefighting and EMS environment created by the high-density structures owned and operated by UC the University.

Nowhere in the SEIR does the University discuss the feasibility of contributing its fair share towards these services. *City of Marina v. Board of Trustees of*

the California State University (2006) 39 Cal.4th 341, 359-60. Moreover, to the extent that the University is relying on its 2005 Settlement Agreement with the City of Berkeley to mitigate the Project's impacts to City services, the SEIR provides no evidence to support such a conclusion. As shown in the EPS Report, the amount of mitigation funding provided through that Agreement is insufficient to offset the actual costs of services. In any event, the Agreement expires by its own terms in Spring of 2021 and therefore cannot be relied upon to address impacts beyond that date.

C. The SEIR's Analysis of Traffic and Transportation Impacts Is Incomplete and Flawed.

The SEIR's analysis of transportation impacts fails to achieve CEQA's most basic purpose: informing governmental decision-makers and the public about the potential significant environmental effects of a proposed activity. Guidelines § 15002(a). CEQA additionally requires "adequacy, completeness, and a good-faith effort at full disclosure" in an environmental document. Guidelines § 15003(i). Here, the SEIR's analysis of the Project's traffic impacts fails to meet these standards.

The SEIR's deficiencies related to the traffic analysis include: (1) failure to analyze traffic impacts from the whole of the Project; (2) lack of empirical data to support trip generation assumptions; (3) failure to analyze construction period traffic impacts; and (4) failure to analyze Project impacts on pedestrian and bicycle facilities. Each of these deficiencies is described below.

1. Analysis of Trip Generation Is Flawed

As discussed above, one of the flaws that implicates all of the sections of the SEIR is the failure to adequately analyze the impacts associated with the increased headcount. The addition of approximately 11,000 students generates more traffic citywide and generates a need for increased infrastructure. The SEIR asserts that potential environmental impacts associated with the increased headcount were accounted for in the analysis provided. SEIR at 168. The basis for this statement appears to be a comparison between vehicle trip generation estimates for the 2001-2002 academic year and vehicle trip generation estimates for the 2017-2018 academic year. This comparison (presented in SEIR at Table 19) shows that the campus generates fewer vehicle trips despite the increase in student population. But, the trip generation calculation appears to be based solely on student commute surveys, rather than on empirical data. The information provided by these surveys is questionable at best, and falls short of substantial evidence. Traffic impact analysis best practices routinely include explicit trip generation and distribution assumptions for all project elements. This should include any redistribution of campus uses that have been relocated off the campus core.

Under CEQA, an EIR is obliged to support its conclusions with facts. *See Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th

1344, 1371 (striking down an EIR "for failing to support its many conclusory statements by scientific or objective data"). Even if the SEIR could rely on student commute surveys alone, the SEIR failed to provide any details about the survey. The SEIR fails to describe the survey questions or the sample size of students to whom it was administered, and fails to include employees, professors, etc. who also commute. It provides no corroborating evidence whatsoever to support the SEIR's conclusion. Without additional information about the survey and empirical data to support the trip generation estimates, the SEIR's assertions are unsupported.

Similarly, the SEIR states in several instances that the loss of approximately 207 existing marked and attendant parking spaces (due to implementation of the GSPP project) is estimated to reduce trip generation from existing conditions. However, the SEIR provides no evidence to show that parking demand is reduced by increases in non-automobile travel. It is possible that a reduction in parking supply at the project site could result in higher parking demand elsewhere. The SEIR only presents a concurrent comparison showing an increase in BART ridership at the Downtown Berkeley station. SEIR at 167 and 168. An expanded description of alternative travel modes, reduction in parking spaces, and increase in student beds is provided in the UC Berkeley Long Range Development Plan Trip Generation Comparison (Fehr & Peers, September 2018). However, the information provided in this report states that the number of parking permits issued has declined by 100 between 2001-2002 and 2017-2018. Evidence that 100 fewer parking permits are issued does not support the assertion in Table 19 that AM and PM peak hour trips are reduced by more than 300 or that parking supply could be reduced by more than 100 spaces.

Existing traffic volumes are also used to support the trip generation conclusions. The LRDP Trip Generation Comparison (Fehr & Peers, September 2018) includes a comparison of traffic volumes collected during the AM and PM peak hours at intersections in 2002 to traffic volumes collected at the same intersections in 2017 and 2018. This data is presented as evidence of the effectiveness of the LRDP's Transportation Demand Management ("TDM") program. SEIR Appendix G – Fehr and Peers Memo dated September, 2018 at 3 and 4. While traffic volumes on Hearst Avenue, Oxford Street, and Bancroft Way appear to have declined over the period, changes to traffic volumes or traffic patterns on City streets may result from factors other than land uses within the University. Here, again, the SEIR fails to provide empirical data specific to the University (such as vehicle counts at University access points or data on parking demand that is met off-site) to support its assertions regarding the effectiveness of the University's TDM program.

This SEIR's approach of failing to provide empirical evidence to support its assertions violates CEQA. An EIR must contain facts and analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568. Nor may an agency defer its assessment of important environmental impacts until

after the project is approved. *Sundstrom*, 202 Cal.App.3d at 306-07. An EIR's conclusions must be supported by substantial evidence. *Laurel Heights I*, 47 Cal.3d 376 at 409. The SEIR fails to meet these standards.

2. Failure to Analyze Construction Period Impacts

The SEIR fails to provide analysis describing Project-related impacts to traffic during the construction period. The SEIR provides no analysis of construction worker trips and parking, and no analysis of material hauling. The SEIR relies on LRDP Continuing Best Practices TRA-3-a, TRA-3-b, and TRA-3-c for reducing or minimizing traffic impacts during construction. These measures include preparation of a Construction Traffic Management Plan for each construction project. However, as presented in the SEIR, the Continuing Best Practices do not include, as they should, City review and approval of the Construction Traffic Management Plans. The City of Berkeley Guidelines for Development of Traffic Impact Reports require coordination with City staff when evaluating traffic impacts. The City of Berkeley Guidelines for Development of Traffic Impact Reports at 1. A revised analysis should include provision for City review and approval of the Construction Traffic Management Plans prior to issuing relevant permits.

3. Failure to Analyze Impacts to Pedestrian and Bicycle Facilities

The City of Berkeley Guidelines for Development of Traffic Impact Reports state that projects generating fewer than 25 net peak hour trips should still provide analysis of pedestrian, traffic, and bicycle traffic. The guidelines specifically state that "Impacts on alternative modes can result from projects that in themselves generate a significant number of trips for these modes or that are located on roadways that have been designated to serve these modes of travel." The City of Berkeley Guidelines for Development of Traffic Impact Reports at 8. If, as the traffic analysis contends, fewer automobile trips are generated and walking and bicycling commuting has increased and will continue to increase, then the traffic analysis must analyze the potential impacts to the facilities accommodating these modes of travel. For instance, if the travel volume of alternative modes exceeds the capacity of their facilities, the Project would lead to a substantial hazard and to unsafe conditions for pedestrians or bicyclists.

Specifically, the analysis should identify existing pedestrian and bicycle travel paths to/from the University, calculate the capacity of these routes, quantify travel volumes, determine existing volume to capacity ratios and level of service, forecast future travel volumes, determine future volume to capacity ratios and level of service, and disclose and mitigate any project impacts to pedestrian and bicycle facilities.

D. The SEIR Fails to Adequately Analyze or Mitigate the Project's Significant Impacts Related to Air Quality.

1. Consistency with the Clean Air Plan

The SEIR concludes that the proposed Project would not result in significant Project or cumulative air quality impacts that result in conflicts with the regional air quality plan. SEIR at 65-67. However, the document reaches this conclusion without completing the required analysis related to the Project's air emissions. Specifically, the SEIR acknowledges that the 2020 LRDP EIR concluded that campus growth may not be consistent with the most recent Clean Air Plan ("CAP"). SEIR at 64. Moreover, despite the fact that the proposed Project includes construction of a building in a zone not previously identified in the LRDP, the SEIR concludes that because the University has not built out to the capacity of the 2020 LRDP, there is no need to conduct additional analysis. This approach violates CEQA. First, the Bay Area Air Quality Management District ("BAAQMD") published an updated CAP in 2017. The proposed Project, which entails both the GSPP building and the increase in enrollment, must be evaluated against the most current CAP and not against older documents.

In addition, the SEIR restates the LRDP EIR's conclusion that with implementation of mitigation measures in that EIR, the LRDP "would likely" be in compliance with air quality plans. SEIR at 64. The LRDP EIR's noncommittal assertion is not evidence of compliance. Nor is this failure remedied by the mitigation measures proposed. As described in the SEIR, the mitigation measures for potential inconsistency with the CAP include working with the City, ABAG, and BAAQMD to ensure that campus growth is accurately addressed in the CAP. Id. However, the SEIR fails to document any coordination efforts between the University and the identified agencies and if the increase of 11,000 students combined with the proposed GSPP project are inconsistent with the current CAP, coordination alone will not alter the inconsistency.

Under CEQA, a proposed project will have a significant impact if it "[c]onflicts with or obstruct[s] implementation of the applicable air quality plan." Guidelines, Appx. G(III)(a). The BAAQMD CEQA Guidelines recommend a three-step analysis for determining whether a project is consistent with a Clean Air Plan. The three questions to be answered are:

> (1) Does the project support the primary goals of the Clean Air Plan (attain air quality standards, reduce population exposure and protect public health, reduce GHG emissions and protect the climate)?;
>
> (2) Does the project include applicable control measures from the Clean Air Plan?; and
>
> (3) Does the project disrupt or hinder implementation of any Clean Air Plan control measures?

BAAQMD CEQA Guidelines at 9-2 to 9-3. The SEIR did not perform this or any other analysis of the Project's consistency with the 2017 Clean Air Plan. Therefore, the SEIR's approach violates CEQA. The SEIR must be revised to include a true analysis of whether the proposed Project, which entails both the GSPPs buildings and the increase in enrollment, conflicts with or obstructs implementation of the Bay Area's CAP.

2. The SEIR's Evaluation of Project-Related Exposure of Sensitive Receptors to Pollutant Concentrations Is Incomplete

The SEIR's analysis of exposure of sensitive receptors to pollutant concentrations is inadequate because it fails to analyze whether the project area would be exposed to substantial pollutant concentrations. The BAAQMD provides stationary source screening analysis tools that should have been used to determine the risk levels of stationary sources within 1,000 feet of a project site. The SEIR does not discuss the potential risk to residents of the project site from the existing stationary sources of pollutants in the project vicinity, which could be potentially significant.

3. Cumulative Air Quality Impacts

The SEIR's analysis of cumulative air quality impacts is also incomplete. First, the SEIR limits its review of potential air quality impacts to the GSPP portion of the Project and ignores emissions associated with the increase in student enrollment. This myopic approach ignores the indirect impacts associated with the spiking enrollment increase, such as emissions associated with students commuting to the University from other parts of Berkeley and other cities in the Bay Area.

Second, the CalEEMod analysis employed by the SEIR to estimate Project emissions fails to account for construction of the parking garage. The garage should have been identified as an additional proposed land use within the model. This omission results in an underestimation of the project construction and operational impacts.

Finally, because the SEIR's transportation analysis assumes that no new vehicle trips would be generated compared to existing conditions, it fails to present an accurate estimate of the Project's total operational emissions. SEIR at 66. Thus, the SEIR's conclusion that total operational emissions would be below the BAAQMD thresholds is unreliable. Once the traffic analysis is corrected and the SEIR identifies the number of trips or amount of vehicle miles travelled ("VMT") that can reasonably be expected to be generated by the GSPP Project and the massive enrollment increase, a revised environmental document must include a revised air quality analysis.

4. The SEIR Fails to Evaluate Impacts Related to Health Risk

The SEIR fails to conform to CEQA because it fails to include a health risk assessment ("HRA") and fails to provide evidence to support its assertion that the Project would not result in impacts associated with toxic air contaminants. SEIR at 67. Since the release of the 2020 LRDP, the BAAQMD has published a stationary source screening tool that identifies sources of toxic air contaminants in the project vicinity. For example, the Lawrence Berkeley Laboratory is located just east of the project site. The screening level data provided by the BAAQMD[5] indicates this facility generates an increased cancer risk of 144.36 cases per million, which exceeds the BAAQMD CEQA threshold of 10 in 1 million. Therefore, further analysis of this source needs to be conducted to determine the future impact of this facility on future residents of the project site. This data and data from other stationary sources should be referenced to document and disclose sources of TACs in the project vicinity to determine whether the project would expose future occupants of the GSPP buildings or new students, faculty and staff to a cancer risk above the threshold of 10 in one million.

In addition, the SEIR fails to assess the Project's health risks associated with construction emissions. The BAAQMD 2017 CEQA Guidelines include project specific thresholds for construction risk assessments. Construction of the proposed project may expose surrounding sensitive receptors to airborne particulates, as well as construction equipment pollutants (usually diesel-fueled vehicles and equipment). The SEIR indicates that the 2020 LRDP EIR evaluated construction activities. SEIR at 65. However, the LRDP EIR analysis did not account for the updated guidance issued by the California's Office of Environmental Health Hazard Assessment (OEHHA) and the BAAQMD's Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants, which contains updated guidance for age sensitivity factors, age exposure variables, and exposure duration. Under the updated analysis methods, cancer risk estimates could increase by a factor of three, even under the same emission rates.

The City and other nearby jurisdictions typically require all construction projects to implement diesel particulate matter controls during construction. The City requires project applicants to prepare a health risk assessment or equip all construction equipment with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type as certified by the California Air Resources Board (ARB), to ensure construction would not expose nearby offsite sensitive receptors to substantial pollutant concentrations during project construction and

[5] BAAQMD, 2012. Alameda County Stationary Source Screening Analysis Tool. http://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/ceqa-tools

requires implementation of equipment emission reduction measures. Without such emission controls or project specific health risk assessment, the project may expose sensitive receptors to pollutant concentration in excess of the BAAQMD health risk standards. If particulate emissions exceed the BAAMD thresholds, the Project may expose nearby sensitive receptors to an elevated health risk, which would likely require the preparation of a health risk assessment.

In summary, a revised environmental document must evaluate the Project's construction- and operation-related emissions impacts, to include the necessary analysis and identify mitigation for any significant impacts.

E. The SEIR Fails to Adequately Analyze or Mitigate the Project's Significant Impacts Related to Greenhouse Gas Emissions.

1. The Project Will Generate Greenhouse Gas Emissions that Could Result in Significant Impacts.

The SEIR's evaluation of impacts related to greenhouse gas ("GHG") emissions is incomplete and flawed. As an initial matter, the SEIR's failure to present a complete analysis of the Project's traffic-related impacts implicates its GHG analysis. Inasmuch as the greenhouse gas emissions are dependent on the transportation analysis assumptions, any underestimation of vehicular trips necessarily results in an underestimation of vehicle-related greenhouse gas emissions. Once the University accurately models the Project's increase in traffic volumes, it must revise the greenhouse gas emissions impact analysis. Additionally, the SEIR inaccurately defines the Service Population (SP) of the campus. According to the BAAQMD CEQA Guidelines, for purposes of determining GHG impacts, the service population is determined by adding the number of residents to the number of employees (page 9-5)[6]. The service population identified in Table 8 of the SEIR appears to include all students, not just resident students as allowed under the BAAQMD Guidelines methodology. The actual service population calculation would be much lower when commuter students are omitted. This error drastically underestimates the Per SP Emissions (Table 8) for the campus, which in turn results in an underestimation of GHG emissions.

In addition, the SEIR concludes that the Project would not result in significant impacts related to generating a significant amount of greenhouse gas emissions but fails to provide support for this conclusion. SEIR at 114 and 115. The SEIR relies on two lines of reasoning to reach this conclusion. First, it claims that because the GSPP Project is within the development parameters of the 2020 LRDP, the greenhouse gas emissions associated with this component of the Project would not be

[6] BAAQMD, 2017. *CEQA Air Quality Guidelines.* May.

additional to those anticipated in the LRDP. SEIR at 114. However, as discussed above the SEIR cannot rely on the LRDP's status to justify foregoing analysis.

Next, the SEIR improperly avoids analysis of potential impacts by relying on Project features to mitigate Project-related impacts. The SEIR describes a list of design features for the GSPP Project and concludes that these features would reduce the Project's greenhouse gas emissions to an insignificant level. SEIR at 115. CEQA does not allow an EIR to fold what is effectively an assumed mitigation measure into a significance determination—the project's significant impacts must be determined first, and then the EIR must identify enforceable mitigation that will "offset" the impacts. See *See Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656, 658 (rejecting EIR that relied on project modifications to find no significant impact, instead of identifying significant impacts and considering mitigation measures). *Lotus* held that an EIR was legally inadequate where it assumed certain mitigation techniques would be incorporated into the project, and thus the EIR did not disclose the impacts of the project without those special techniques. See id.

Further, the court in *Lotus* held that the EIR there was inadequate because it "fail[ed] to discuss the significance of the environmental impacts apart from the proposed 'avoidance, minimization, and/or mitigation measures' and thus fail[ed] to consider whether other possible mitigation measures would be more effective." Id. at 657. Such is the case here: the SEIR relies on a list of Project design features as a key factor in its determination that Project-related impacts would be less than significant. See SEIR at 115. In so doing, the SEIR fails to reveal the true nature of the impacts and to consider other feasible mitigation measures and their effectiveness, in violation of CEQA.

2. The SEIR Fails to Support Its Conclusion that the Project Would be Consistent with Applicable Plans.

The SEIR concludes that the Project would contribute to greenhouse gas emissions impacts and to inconsistency with the UC Carbon Neutrality Initiative and Sustainable Practices Policy and Executive Order B-55-18 requiring carbon neutrality statewide by 2045. SEIR at 104,109, 116, and118. But the SEIR fails to describe the extent and severity of this impact (by way of quantifying Project-related emissions), a clear violation of CEQA.

The SEIR's proposed mitigation for this impact calls for the University to purchase carbon offsets and/or renewable energy certificates to reduce annual campus-wide greenhouse gas emission to 1990 baseline levels. SEIR at 118. However, due to the qualitative nature of the SEIR analysis, there is not clear evidence regarding the amount of GHG emission reductions that can be achieved through the implementation of UC Sustainable Practices Policy or any other measured sustainability approaches Project-related GHG emissions. Without a quantitative analysis it is virtually impossible to determine the amount of carbon offsets/renewable energy certificates that would be

required to offset the GHG emissions to meet the State's 2030 and 2050 emission targets and/or the UC Climate Neutrality goals, or if other mitigation measure would be more appropriate. Therefore, the SEIR must quantify the Project's effects related to greenhouse gas emissions, and the efficacy of the proposed mitigation, so that the public and decision makers may reach their own conclusions. *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 130.

Moreover, offsets alone will not fully mitigate the Project's impacts. In practice, even the most sophisticated offset programs have failed. A 2016 report prepared for the European Union Directorate General for Climate Action concluded that nearly 75% of potential certified offset projects had a low likelihood of actually contributing additive GHG reductions, and less than 10% of such projects had a high likelihood of additive reductions. See Attachment B, How Additional is the Clean Development Mechanism? Analysis of the application of current tools and proposed alternatives, Institute of Applied Ecology, March, 2016 at 11; see also Attachment C, Carbon Credits Likely Worthless in Reducing Emissions, Study Says, Inside Climate News, April 19, 2017. If an offset program does not achieve additive reductions, it will not actually mitigate a project's GHG emissions. Because of these known problems with enforcement and efficacy, agencies typically permit offsets to constitute only a very small part of an overall emission reduction program. For example, California's cap and trade program allows no more than eight percent of GHG reductions to come from offsets, which will drop to four percent in 2021, at which point at least half of the offsets used must "provide direct environmental benefits in state." Health & Safety Code § 38562(c)(2)(E).

The problems with the University's carbon offset program extend beyond the fact that offsets may not be available or effective. CARB explicitly prioritizes onsite measures to reduce a project's GHG emissions: "[t]o the degree a project relies on GHG mitigation measures, CARB recommends that lead agencies prioritize on-site design features that reduce emissions, especially from VMT, and direct investments in GHG reductions within the project's region that contribute potential air quality, health, and economic co-benefits locally." See Attachment D, CARB's 2017 Climate Change Scoping Plan, at 102 (emphasis added). Here, however, the University does not intend to require that GHG mitigation be local or even within the County. Thus, instead of mitigating GHG emissions by, e.g., implementing adequate on-campus residential development to reduce VMT, the University intends to simply write a blank check for carbon "offsets," some of which could be out of the Bay Area region. SEIR at 118. This approach is directly contrary to CARB's recommendation to prioritize onsite GHG emission reduction. CARB's 2017 Climate Change Scoping Plan, at 102.

Finally, the SEIR's analysis is flawed because it limits its analysis of the Project's consistency to only a subset of relevant plans and policies. For example, the SEIR fails to analyze the Project's consistency with the City of Berkeley's Climate

Action Plan. Without analysis of the Project's consistency with the City's Climate Action Plan the SEIR's analysis is incomplete and therefore inadequate.

F. The SEIR's Analysis of Noise Impacts Is Incomplete and Flawed.

The SEIR acknowledges that the Project site is surrounded by noise-sensitive receptors: multi-family residential housing, student housing, and occupants of nearby academic buildings. SEIR at 139. Despite the potential to affect hundreds of receptors, the SEIR presents a flawed analysis of project noise impacts that fails to fully analyze impacts to adjacent noise sensitive land uses. To conclude, as the SEIR does, that an impact is less than significant, the analysis must be supported with substantial evidence. Substantial evidence consists of "facts, a reasonable presumption predicated on fact, or expert opinion supported by fact," not "argument, speculation, unsubstantiated opinion or narrative." Pub. Res. Code § 21080(e)(1)-(2). Once again, the SEIR fails on many levels.

First, the SEIR improperly relies on measured existing ambient noise levels taken along Hearst Avenue during the noisiest time of day (i.e., 4:00 to 5:00 pm) on a weekday, when traffic levels are highest during the afternoon peak hour. SEIR at 140. These readings (approximately 65 dBA) are misleading because they do not account for the quieter nighttime and morning hours and do not reflect ambient noise levels at the adjacent residential community. In fact, the SEIR itself discloses that noise levels just across the street from the proposed GSPP site near the multi-family residences on La Loma measured 58.7 dBA. Id. at Table 11. Therefore, the SEIR's reported existing ambient noise levels are artificially high and skew the analysis.

The SEIR then assumes that the elevated ambient noise levels of 65 dBA, because they would exceed the City's baseline allowable daytime exterior noise level, become the daytime standard for purposes of analyzing the Project's noise impacts. SEIR at 144. This assumption is wrong and is not based on any policy of the City of Berkeley or the University. Thus, the SEIR's selection of this threshold of significance is not supported by substantial evidence.

The noise analysis also inadequately describes sources of noise from the Project. For example, the SEIR fails to evaluate the impact of the Project's operational noise sources including outdoor activities associated with special events and HVAC operation. The noise analysis should have identified whether the outdoor activity space would include any amplified music or public address systems and should have included a description of the anticipated programming and use of the space. The SEIR does none of this.

In addition, the SEIR identifies Project-related potential vibration impacts to adjacent structures from typical construction activities, such as vibration rollers. SEIR at 147. The SEIR concedes that Project construction would cause vibration levels in

excess of the vibration limit of 0.2 inches per second peak particle velocity identified in the LRDP. Id. The SEIR then relies on implementation of LRDP Mitigation Measure NOI-5 to reduce impacts from expected vibration levels on adjacent historic structures and other buildings. However, Mitigation Measure NOI-5 applies only to pile driving activities, which are not proposed activities at the GSPP site. SEIR at 143. Therefore, it is unclear how this measure would be implemented during construction of the GSPP component of the Project. Additionally, NOI-5 does not have a performance standard to ensure that building damage would be avoided. The SEIR fails to provide any other measures to address this potentially significant impact to nearby buildings and fails to provide evidence that Mitigation Measure NOI-5 will be effective at mitigating the impacts, let alone to less-than-significant levels.

Moreover, the SEIR's method for estimating noise levels from the Project is inconsistent with the City's Municipal Code. *See* Berkeley Municipal Code Section 13.40.050. The Code has noise standards that specify noise limits within specific time periods, with more stringent limits between the hours of 10:00 p.m. and 7:00 a.m. Id. A revised environmental document should assess noise levels associated with the project for this time period.

Finally, the SEIR proposes only minimal measures to lessen the severity of noise impacts and absolutely no measures to avoid them. The Salter Noise Study identified specific building acoustical enhancements that are required for the project to meet the City's interior noise standards. Charles Salter letter report to Melissa Godfrey at Solomon Cordwell Buenz dated May 9, 2018 at 2 and 3. The SEIR failed to incorporate these recommendations as mitigation measures for the GSPP project. Instead, the SEIR relies on LRDP Mitigation Measure NOI-3, which states only that the University will comply with building standards and that housing built in areas where noise exposure levels would exceed 60 Ldn would incorporate design features to minimize noise exposure to the occupants. SEIR at 142. Mitigation Measure NOI-3 fails to include specific measures or performance standards to ensure that noise standards will be met. A revised environmental document should incorporate the Project-specific recommended measures provided in the Salter Noise Study.

In short, the SEIR's analysis of noise impacts dramatically understates the Project's potential to significantly affect area residents. At the same time, the SEIR fails to provide effective, enforceable measures to mitigate such potentially significant impacts. To comply with CEQA, the University must prepare an EIR fully analyzing the Project's potential impacts and identifying effective mitigation measures.

G. The SEIR Fails to Adequately Analyze the Project's Land Use Impacts.

The SEIR acknowledges that the GSPP Project is inconsistent with the City's General Plan and Zoning Ordinance in numerous ways: It is too dense, too tall, and ignores all setback limits. See SEIR at 137-38. The SEIR fails to analyze any

potential mitigation measures to address these land use incompatibilities, however, stating out of hand that any such mitigation "would impair attainment of Project objectives to meet housing demand."

The SEIR fails to provide any evidence to support this summary conclusion, in plain violation of CEQA. In fact, the SEIR repeatedly states that the University has ample opportunity to build housing according to the approved 2020 LRDP elsewhere on campus. SEIR at 15. This evidence indicates that the University could meet its objectives of increasing housing supply by building on-campus while also reducing the height of the proposed GSPP buildings (and increasing their setbacks) in compliance with the City's land use standards.

Nor can the University ignore the impacts of these inconsistencies solely because the University is not subject to the City's land use planning jurisdiction. The GSPP Project is right on the edge of the University and thus will necessarily impact properties outside the University's boundaries. The City's height and setback requirements are designed to prevent adverse aesthetic impacts in the community. Under CEQA, the University must consider those impacts even if they occur outside the University's boundaries. *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 575 ("[A]n EIR may not ignore the regional impacts of a project proposal, including those impacts that occur outside of its borders."); *see* Guidelines § 15126.6(f)(1); see also *Save the Plastic Bag Coal. v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 173 ("Indeed, 'the purpose of CEQA would be undermined if the appropriate governmental agencies went forward without an awareness of the effects a project will have on areas outside of the boundaries of the project area.'"); *see also City of Marina*, 39 Cal.4th at 359-60; *City of San Diego v. Bd. of Trustees of Cal. State Univ.* (2015) 61 Cal.4th 945, 961.

Lastly, the University fails to identify other inconsistencies with the City's code. For example:

- **Affordable Housing and Child Care.** The General Plan's Housing Element expressly identifies the need for the University of California to "maximize the supply of appropriately located, affordable housing for its students and also to expand housing opportunities for faculty and staff." Policy H-21. Similarly, the General Plan's Land Use Element seeks to "[m]inimize the negative impacts of the size of the University population and University expansion on adjacent neighborhoods and the city as a whole." Policy LU-36. The General Plan also calls more generally for the encouragement of "housing production adequate to meet City needs and the City's share of regional housing needs." Policy H-32. The GSPP Project does not appear to provide any housing dedicated as affordable, and thus is inconsistent with these policies. The Enrollment Project plainly conflicts with these policies as well, as the SEIR acknowledges. SEIR at 151 ("[t]he

additional student population would exceed anticipated growth in UC Berkeley-provided housing, placing greater demand on the private housing market"). The University also is not paying the City's affordable housing mitigation fee (BMC § 22.20.065(A)8; Resolution No. 68, 074-N.S) or the affordable child care fee (Resolution 66,618-N.S.).

- **Historic Resources.** The Berkeley General Plan Urban Design and Preservation Element includes a policy calling for the use of "a wide variety of regulatory, incentive, and outreach techniques to suitably protect Berkeley's existing built environment and cultural heritage." To enact this policy, the General Plan calls for the "identif[ication] and protect[ion] [of] historically significant structures, sites, districts, and neighborhoods." Policy UD-1. Despite these policies, the SEIR describes the proposed residential building's massing and design as "depart[ing] from and compromise[ing] the setting of adjacent historic resources that were built in the First Bay Tradition of architecture." SEIR at 56. This inconsistency undermines the General Plan's goal of protecting the City's cultural heritage.

- **Noise.** The Berkeley Municipal Code provides exterior noise standards according to zoning districts, and based on the time of day. BMC § 13.40.050. In particular, the Municipal Code provides noise standards between 7 A.M. and 10 P.M. which differ from the standards that apply between 10 P.M. and 7 A.M. *Id.* at Table 13.40-1. The GSPP Project fails to comply with these noise standards.

- **Public Art.** Municipal Code Chapter 23C.23 provides that construction projects incorporate publicly accessible art or contribute a percentage of the project cost for public art elsewhere in the City. Municipal Code § 23C.23.050 General Requirements. This project fails to do either and is thus inconsistent with the City's code.

In analyzing the potential land use impacts of the Enrollment Project, the SEIR states that the only potential impacts are those related to "physical development on the UC Berkeley Campus and City Environs." SEIR at 132. Not so. As the SEIR elsewhere acknowledges, the University is increasing enrollment without increasing on-campus housing for these students. This means any additional students must find off-campus housing, most likely in Berkeley. Attracting huge new populations without planning for or providing housing is contrary to the affordable housing policies discussed above. These impacts must be analyzed and mitigated in a revised environmental document.

H. The SEIR Fails to Adequately Analyze or Mitigate the Project's Significant Impacts Related to Cultural Resources.

1. The SEIR Fails to Adequately Describe Existing Conditions at the Project Site.

The SEIR acknowledges that construction of the proposed GSPP component of the Project has the potential to result in impacts to adjacent historic structures as well to as unearth historic archaeological resources associated with a former building beneath the site's existing paved surface. SEIR at 90 to 94. However, the SEIR provides an incomplete description of existing cultural resources. First, the SEIR fails to identify a third listed City Landmark across the street from the Project site and another designated City Landmark comprised of a cluster of houses designed by significant Berkeley architects. *See* Letter from the Landmarks Preservation Commission providing comments on the Draft SEIR for the GSPP dated March 7, 2019 at 1.

Second, the SEIR also fails to provide the necessary details to adequately identify the likelihood of significant archaeological resources on the GSPP site, thus failing to establish the project site's baseline conditions for cultural resources. Specifically, based on the nature of prior historic-period land uses on the GSPP project site, there is a reasonable potential for the presence of the archaeological remains of Newman Hall/Holy Spirit Parish, the Roman Catholic student center associated with UC Berkeley from 1905 to the 1960s. Id. Given the nature of a portion of the project site, that of a minimally modified surface parking area, it is possible, even likely, that remains from the Newman Hall/Holy Spirit Parish complex persist under the surface capped with asphalt. Yet, the SEIR fails to provide a detailed investigation of these potential resources.

Depending on the general date that this portion of Berkeley received water and sanitation service for the first time, other prior land uses that pre-date the Roman Catholic phase of the project site may have resulted in hollow/fill features (such as backfilled wells and/or privies) that could have been effectively capped by subsequent development. Such features are notorious, if intact, for containing well-preserved archaeological deposits with a high degree of "visibility" and "focus," which are archaeological concepts related to the abundance of material (visibility) and the specificity of the association between those deposits and a particular occupation, event, or family (focus).

These types of deposits, depending on the nature of their preservation (archaeological integrity), have a high potential to contain information that would render them eligible for inclusion in the California Register of Historical Resources (CRHR) because of containing ". . . information important in prehistory or history" (PRC Section

5024.1(c)(4)). Should these deposits or features be so eligible, then they would qualify as archaeological manifestations of a historical resource, as defined at PRC Section 21084.1, and their destruction by proposed construction would result in the material impairment of the significance of said resources, which would be a significant impact under CEQA.

Additionally, although the project site does not contain known precontact archaeological deposits according to UC Berkeley's confidential resource map, the absence of evidence does not indicate evidence of absence, particularly in this part of Berkeley that has yielded precontact archaeological deposits in the past. Based on the nature of prior land uses within the GSPP project site, as well as the minimal nature of apparent subsurface modification in portions of the site, the potential for intact features and deposits that could qualify as historical resources under CEQA justify a more robust identification effort to inform the SEIR and to serve as a basis for determining if the LRDP 2020 analysis and mitigation measures are adequate. In other words, the development of a sensitivity assessment would appear to be warranted given the known prior land use, which represents potentially significant historical associations with religious life at UC Berkeley in the early 20th century.

Therefore, a more expansive discussion of the likelihood that archaeological deposits and/or features exist beneath the parking lot could be informed by an examination of historic-period maps, demolition permits, diocese records, and former members of the congregation and/or neighborhood. At a minimum, such an analysis should include the following information: (a) whether the former buildings and structures have basements, which are often receptacles of historic-period artifacts that may have been filled and paved over; (b) whether there were wells or privies located on the property, which are often similarly "sealed" by subsequent construction; and (c) whether the previous buildings/structures were removed only from the ground up, leaving subsurface features relatively intact. Given these factors at the GSPP site, the SEIR should have included a sensitivity assessment, to support an analysis of whether or not it is likely that such deposits and/or features exist.

2. The SEIR Fails to Adequately Analyze or Mitigate Impacts Relating to Archaeological Resources.

Under CEQA, an agency may not defer its assessment of important environmental impacts until after the project is approved. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, at 306-307. CEQA requires that the extent and severity of the Project's impacts be determined now and not at a future date. For this Project, the nature of any architectural remains or subsurface features would only be perceivable through archaeological investigation. As discussed above, the SEIR foregoes thorough investigation to determine whether sensitive archaeological resources exist on the GSPP site.

Having failed to describe the existing conditions, the SEIR concedes that unknown underground resources might exist and relies on Continuing Best Practice CUL-4b to minimize impacts. This measures essentially describes a reactive contingency policy to respond to archaeological discoveries during construction. However, the SEIR fails to provide evidence that this measure will adequately protect buried resources. Artifacts such as these are a delicate, nonrenewable resource that is easily damaged. A mitigation measure that generally calls for stopping work if resources are discovered does nothing to protect the resources from being destroyed by large construction vehicles during excavation. Moreover, most construction workers are not adequately trained and knowledgeable enough to identify such resources so that there is a high likelihood that artifacts would suffer damage before they are discovered.

An alternate approach could involve preconstruction archaeological testing to identify the nature and extent of possible archaeological deposits, an evaluation of such deposits' eligibility for the California Register of Historical Resources, and, should the deposits qualify as a historical resource, the mitigation of their loss through the implementation of a data recovery program. Preservation in place is the "preferred manner" of mitigating impacts to archaeological historical resources. *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48. Therefore, this testing should take place prior to recirculation of a revised CEQA analysis.

3. The SEIR Provides an Incomplete Analysis of Impacts to Identified Historic Resources

The SEIR provides an incomplete evaluation of impacts to known historic resources. Specifically, the SEIR provides no justification for conclusory statements that the proposed project is compliant with the Secretary's Standards with respect to Founder's Rock. The SEIR states that the Project would not result in a visual intrusion on Founder's Rock because the proposed project is "far enough away." SEIR at 90. The SEIR fails to provide sufficient comparative basis to assert compliance with the Secretary's Standards No. 9 and 10. A revised EIR should include information about the sightlines to and from Founder's Rock and a ranking of these views on a hierarchical scale to determine which ones are most important as contributors to the setting of the resource.

4. The SEIR Defers Mitigation of Significant Impacts to Identified Historic Resources

Lastly, the SEIR fails to adequately mitigate for identified significant impacts to known historic resources. Under CEQA, the University cannot defer identifying mitigation until after Project approval, or delegate that authority to staff, in the absence of clear performance standards. *Sundstrom*, 202 Cal.App.3d at 307, 309 (county improperly deferred mitigation to later administrative approval and improperly

delegated the county's legal responsibility to staff). Thus, the SEIR's approach does not comport with CEQA.

First, the Berkeley Landmarks Preservation Commission (LPC) and Design Review Committee (DRC) reviewed schematic plans for the proposed project in 2018. Based on that review and a presentation by the University, both the LPC and DRC noted their concern with several aspects of the project and its potential to impact adjacent historical resources. The crux of the concerns lay in ". . . the mass, scale, and non-contextual architectural design and palette of materials of the GSPP development, vis-à-vis neighboring historic resources, among other concerns." SEIR at 87. In addition, the proposed building will include a high intensity reflective roof, which may result in glare impacts to uphill neighbors.

Rather than affirmatively addressing the City's concerns, the SEIR acknowledges the Project's significant impacts to the adjacent historic resources but then fails to adequately mitigate these impacts. SEIR at 93. Instead, the SEIR mitigation measure MM-CUL-1 calls for consultation with an historic architect to modify the building design. *Id*. This approach impermissibly defers analysis and mitigation of the Project's effects until future redesign as required by mitigation measure MM-CUL-1. It also wholly undermines the SEIR's purpose as an informational document, since it suggests the Project as described may be wholly redesigned after approval.

Second, as discussed above in section IV.F of this letter, the SEIR identifies the potential for significant impacts to the adjacent historic structures due to vibration during construction of the GSPP building. SEIR at 147 and 148. However, as explained in more detail above, the proposed mitigation for this impact is wholly inadequate. A revised environmental document should include more robust mitigation, including but not limited to preparation of a Vibration Management and Monitoring Plan to be adopted prior to Project approval. At a minimum, this Plan would:

(a) be prepared, reviewed, approved, and administered collaboratively by a qualified Acoustical Engineer, the Structural Engineer, and the Historic Architect;

(b) require pre-construction surveys of the existing historic buildings;

(c) include clear objectives and performance standards that establish damage thresholds for the adjacent historical resources, develop procedures and alternative approaches for construction/demolition to ensure that the resources do not sustain the intensity of vibration that would result in damage, and identify the persons responsible for developing, reviewing, and approving aspects of the Vibration Monitoring Plan.

I. The SEIR Fails to Adequately Analyze or Mitigate the Project's Significant Impacts Related to Water Quality and Hydrology.

The SEIR's treatment of the Project's water quality impacts fails to provide the public and decision-makers with essential information about the Project. The SEIR fails to adequately analyze project impacts associated with hydrology and water quality because, among other reasons, existing setting information is missing as discussed below. In addition, the SEIR wrongly assumes that, aside from risks associated with flooding, the potential environmental impacts resulting from the increase in campus headcount are limited to physical development on the UC Berkeley campus. SEIR at 126. This assumption is incorrect. The increase in campus headcount also results in indirect impacts associated with construction of new housing elsewhere in the city to accommodate the substantial increase in the number of students.

1. The SEIR Fails to Describe the Existing Setting.

The SEIR fails to adequately describe the existing hydrologic setting of the receiving waters for drainage from the project site. Specifically, the SEIR fails to describe baseline conditions for surface waters (i.e., Strawberry Creek) that would be impacted by the Project. Instead, the SEIR refers to a description of conditions in the LRDP EIR prepared in 2004. However, the SEIR cannot rely on a description of conditions fifteen years ago. It must describe the current water quality conditions. A current description is particularly important here because the 2004 LRDP EIR disclosed that Strawberry Creek experiences increases in pollutants during rain events. LRDP EIR at 4.7-14 and 15. Heavy rains in the years since the LRDP was prepared, and especially in recent months, may have altered conditions in the creek. Therefore, an updated description of water quality conditions is important information from which to establish a baseline.

Without a proper description of baseline conditions, the SEIR is unable to provide an adequate analysis of Project-related contributions to changes in water quality relative to existing conditions. A revised analysis must include a Hydrology and Water Quality section that adequately describes the hydrologic setting.

2. The SEIR Fails to Evaluate Impacts from the Whole of the Project.

As discussed above, the increased headcount associated with the Project results in indirect impacts to off-site infrastructure. Specifically, as discussed throughout this letter, the addition of approximately 11,000 students generates a need for providing housing, infrastructure, and services, which in turn results in induced growth that will likely result in a need for upgraded stormwater facilities.

The SEIR acknowledges the potential for construction of the GSPP component of the Project to result in increased sediment in discharge water and on haul truck tires to enter storm drains and sewers, causing inlets to clog and reducing the functional capacity of pipes to convey flows. SEIR at 126. Nonetheless, the SEIR fails to evaluate the extent and severity of this potential impact and fails to describe project features for curtailing erosion and sedimentation and fails to describe measures to avoid or minimize the impact.

In addition, the SEIR fails to evaluate impacts of the increased headcount on the City's stormwater system. Part of maintaining the City's stormwater infrastructure includes maintaining screens that capture litter to prevent clogging in the system. Personal communication, C. Borg (consulting planner to the City) and M. Buttress, Engineer, City of Berkeley, April 2, 2019. Models that track high litter areas around the City consistently show that higher density areas produce more litter and require more intensive maintenance consisting of periodic cleaning of litter screens. Id. As discussed throughout this letter, much of the new housing being constructed is located in high density areas of downtown and south Berkeley. It is reasonable to assume that many of these new apartments will be occupied by University students. Therefore, the increase in students results in indirect impacts to City infrastructure and the need for increased maintenance.

Instead of analyzing and mitigating these impacts, the SEIR repeatedly violates CEQA by relying solely on best management practices and yet-to-be prepared plans and reports. For example, the SEIR acknowledges the need for the Project to include preparation of a Stormwater Management Report and to identify Low Impact Development Techniques. SEIR at 128. However, the SEIR fails to provide the required report, fails to describe the specific stormwater techniques that would be used (providing only a generic laundry list of possibilities), and fails to provide evidence that the Project design would not result in impacts.

Moreover, the SEIR relies on compliance with UC Berkeley's Best Practices and cites adherence to Best Practices HYD-1-a through HYD-1-1d as mitigating measures. Id. However, these practices also fail to ensure that no impacts would result. For instance, Best Practice HYD-2-a states that the University would "continue to review each development project to determine whether project runoff would increase pollutant loading." SEIR at 125. Because this practice does nothing more than defer the analysis of whether project runoff would result in pollutants, it cannot be relied upon to reduce impacts of the proposed Project.

3. SEIR Fails to Provide Any Analysis of Project-Related Impacts Associated with Dewatering During Construction.

The City has standard practices addressing dewatering during construction that the SEIR fails to address. Dewatering activities can draw in contamination from outside areas such that testing and monitoring of the groundwater discharges may be required to ensure the discharge of clean water and the protection of the community from vapors or other health hazards. Additionally, testing for soils contamination prior to soil disturbance may also be appropriate. The SEIR fails to perform any of this analysis to determine whether dewatering activities would result in environmental impacts related to water quality and to public safety.

J. The SEIR's Analysis of Project-Related Impacts on Utilities Is Incomplete.

The SEIR's evaluation of the Project's impacts on utilities and service systems suffers from the same narrow view taken to evaluate impacts discussed throughout this letter. For example, the SEIR concludes that the Project would have a less than significant impact on water supply, but it does so without evaluating the impacts associated with the massive enrollment increase. SEIR at 175 and 176. The SEIR therefore presents an artificially limited analysis.

The SEIR's evaluation of Project impacts on wastewater infrastructure serving the project area takes the same truncated approach and limits its review to the GSPP component of the Project. What analysis the SEIR does conduct related to wastewater collection and treatment is incomplete and inadequate. First, the SEIR fails to adequately describe the existing setting of the wastewater infrastructure in the vicinity of the GSPP project area. See, SEIR at 173 stating only that the Project would connect directly to the city's system via 6-inch lateral connections to sewer lines beneath La Loma Avenue and Hearst Avenue. The failure to describe the existing setting is problematic because this area of the city has aging infrastructure that is already suffering leaks and other problems. Personal Communication, C. Borg (consulting planner to the City) and T. Pham, Associate Civil Engineer, City of Berkeley, March 22, 2019. Adding additional connections to this already burdened infrastructure could result in significant impacts, as acknowledged by the SEIR. However, the University failed to consult with the city regarding the required connections and thus failed to describe the baseline conditions.

Second, while the SEIR concludes that the project would result in significant impacts associated with the Project's contribution to high wet weather flows that would exceed allowable levels at the Wastewater Treatment Plant, the SEIR fails to

provide any information on the extent and severity of the impact. SEIR at 178 and 179. Merely stating that an impact will occur is insufficient; an EIR must also provide "information about how adverse the adverse impact will be." *Santiago County Water District v. County of Orange* (1981) 118 Cal. App. 3d 818, 831. This information, of course, must be accurate and consist of more than mere conclusions or speculation. Id. The SEIR's analysis of impacts to utilities and service systems fails to fulfill this mandate.

K. The SEIR's Analysis of Growth Inducing Impacts Is Incomplete and Flawed.

CEQA requires that an EIR include a "detailed statement" setting forth the growth-inducing impacts of a proposed project. § 21100(b)(5); *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal. App. 3d 1325, 1337. The statement must "[d]iscuss the ways in which the proposed project could foster economic growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." Guidelines § 15126.2(d). It must also discuss how the project "may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively" or "remove obstacles to population growth." Id.

Here, the SEIR's analysis of growth-inducing impacts is wholly inadequate. As with other issues, the document relies on speculation instead of evidence to support its conclusions. The SEIR's conclusion that the Project will have no growth-inducing impacts is not supported by substantial evidence. The scope of the study area is too narrow to adequately assess the Project's growth-related impacts. Although the SEIR does not explicitly describe the study area in which it analyzes the Project's potential to induce growth, it appears to only analyze the Project's growth-inducing effects on campus. SEIR at 186 (discussing how "it is anticipated that physical development to accommodate an increasing population of students, faculty, and staff would not exceed the development parameters assumed in the 2020 LRDP").

In conducting this narrow analysis, the SEIR ignores the fact that the University's increased enrollment will necessitate development of housing in the City of Berkeley and other nearby communities. The SEIR provides no rationale for its limited analysis. Such "dismissive treatment of relocated growth pressures on [] outlying towns [] is inconsistent with a hard look at relocated or redirected growth . . ." *Senville v. Peters* (D. Vt. 2004) 327 F. Supp. 2d 335, 368. Indeed, the EIR's failure to "discuss any development pressure on towns not directly adjacent to" the Project means that the City's determination that the Project will not have significant impacts related to relocated growth is not "based upon reason," and therefore violates CEQA. Id. (discussing parallel provisions under the National Environmental Protection Act). CEQA specifically requires an agency to assess all environmental impacts of a project, even if "the project's effect on growth and housing will be felt outside of the project area." *Napa Citizens for Honest Govt. v. Napa County Board of Supervisors*, 91 Cal. App. 4th 342, 369 (2001). As the

court in *Napa Citizens for Honest Government* stated: "the purpose of CEQA would be undermined if the appropriate governmental agencies went forward without an awareness of the effects a project will have on areas outside of the boundaries of the project area." Id.

The proposed Project could induce growth or affect growth patterns in numerous areas other than the University campus property. For example, as discussed throughout this letter, the Project would increase pressure to develop property in the City of Berkeley and in other parts of the Bay Area, and therefore could induce growth there. The SEIR admits as much, stating that "most of the additional campus population would live in Berkeley or nearby parts of the Bay Area. SEIR at 150. However, it fails to evaluate impacts from this induced growth.

Moreover, the SEIR fails to analyze the Project's potential to induce growth in areas that are not immediately adjacent to campus. The SEIR is deficient because it does not describe whether property in Berkeley or other nearby jurisdictions is nearly built-out, and the extent to which the very large enrollment growth would induce growth in those areas.

In sum, in addition to considering the environmental impact from constructing housing on-campus as part of the GSPP component of the Project, the University must study the degree to which massive enrollment jump induces growth and displacement of residents in the city and how that growth could impact the environment, including transit facilities and vehicle miles traveled in the area. See CEQA Guidelines, § 15064.3(a) and Appendix G, Section XVII.a.hfg

L. The SEIR's Cumulative Impacts Analysis Is Underinclusive and Legally Flawed.

An EIR must discuss significant "cumulative impacts." CEQA Guidelines § 15130(a). "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." CEQA Guidelines § 15355. "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." CEQA Guidelines § 15355(a). A legally adequate "cumulative impacts analysis" views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable future projects whose impacts might compound or interrelate with those of the project at hand. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." CEQA Guidelines § 15355(b). Cumulative impacts analysis is necessary because "environmental damage often occurs incrementally from a variety of small sources [that] appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact." *Communities for a Better Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 114.

Here, the analysis of cumulative impacts in the SEIR is inadequate because the analysis is limited to the GSPP component of the Project. The SEIR thus fails to consider the impacts of the GSPP project in combination with the enrollment spike. As discussed throughout this letter, the massive enrollment increase will result in impacts beyond the campus boundary. Given the lack of housing opportunities for housing on campus, it stands to reason that a substantial number of students, staff and faculty will live, work, and recreate in the City. This increase in population will result in increased air emissions, increased noise, a substantial increase in the need for public services, and increased wear-and-tear to utilities, infrastructure, recreation facilities and other facilities (e.g., library services). Therefore, unless the SEIR is revised to incorporate a more inclusive approach, its analysis of cumulative impacts will remain deficient.

Moreover, the list of reasonably foreseeable future projects considered in the SEIR appears to be underinclusive, especially in light of the potential geographic scope of certain potentially significant impacts. For instance, the SEIR fails to consider most of the projects currently under review by the City of Berkeley except for two (i.e., 2012 Berkeley Way and 1601 Oxford Street). In fact the City has recently approved or is currently reviewing more than two dozen projects that should have been considered in the cumulative impacts analysis. *See*, List of Larger/Complex Projects as of February 1, 2019, attached as Attachment E. Given that the increased enrollment is likely to result in impacts citywide (e.g., impacts to traffic, air quality, noise, public services, utilities and infrastructure, and recreation), the SEIR should have looked at cumulative impacts citywide.

M. The SEIR Fails to Consider Feasible Alternatives that Would Lessen Significant Impacts Associated with the Project.

The SEIR does not comply with the requirements of CEQA because it fails to undertake a legally sufficient study of alternatives to the Project. A proper analysis of alternatives is essential to comply with CEQA's mandate that, where feasible, significant environmental damage be avoided. Pub. Resources Code § 21002 (projects should not be approved if there are feasible alternatives that would substantially lessen environmental impacts); CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(f). The primary purpose of CEQA's alternatives requirement is to explore options that will reduce or avoid adverse impacts on the environment. *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089. Therefore, the discussion of alternatives must focus on project alternatives that are capable of avoiding or substantially lessening the significant effects of the project, even if such alternatives would impede to some degree the attainment of the project objectives or would be more costly. CEQA Guidelines § 15126.6(b); see also *Watsonville Pilots*, 183 Cal.App.4th at 1089 ("[T]he key to the selection of the range of alternatives is to identify alternatives that meet most of the project's objectives but have a reduced level of environmental impacts").

In addition, a "lead agency may not give a project's purpose an artificially narrow definition," to shape this determination but rather must "structure its EIR alternative analysis around a reasonable definition of underlying purpose and need." *In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1166. In particular, using overly narrow objectives to dismiss reasonable and feasible alternatives constitutes prejudicial error. See *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 669-70 (where the lead agency's overly narrow project purpose caused it to "dismiss[] out of hand" a relevant alternative, this error "infected the entire EIR"). The SEIR's discussion of alternatives in the present case fails to live up to these standards.

As discussed throughout this letter, the SEIR's failure to disclose the severity of the Project's wide-ranging impacts or to accurately describe the Project necessarily distorts the document's analysis of Project alternatives. As a result, the alternatives are evaluated against an inaccurate representation of the Project's impacts. The University may have identified additional or different alternatives if the Project impacts had been properly analyzed and if the Project had been accurately described.

Moreover, without sufficient analysis of the underlying environmental impacts of the entire Project, the SEIR's comparison of this Project to the identified alternatives is utterly meaningless and fails CEQA's requirements. If, for example, the SEIR concluded that the Project would result in significant impacts related to population and housing as it should have, the SEIR would be required to evaluate an alternative that did not pose these risks of impact. These additional alternatives would necessarily include alternatives that minimized population growth and/or increased the amount of on-campus housing provided.

Similarly, if the SEIR concluded that the Project would result in significant impacts related to growth inducement, the SEIR would be required to evaluate an alternative that minimized that growth. The LRDP EIR analyzed such an alternative, taking into account projections of both growth in enrollment and growth in sponsored research. LRDP EIR at 5.1-3.

Here, the SEIR fails to consider any alternative that addresses the significant impacts associated with the massive enrollment increase component of the Project and the housing demands that increase generates. The SEIR should have analyzed an alternative that stabilizes enrollment at existing levels and includes a commitment by the University to build additional housing on campus. As the SEIR repeatedly asserts, the 2020 LRDP planned for the addition of 2,600 new beds on campus, but the University has only provided 1,119. SEIR at 151. This alternative should include a commitment to build out the housing planned for in the 2020 LRDP by 2023 to address the housing needs of the new students added to the Berkeley campus in recent years. Such an alternative would address many of the impacts discussed throughout this letter and could feasibly be accomplished given that the housing is already included in the LRDP. As the City has pointed out in previous correspondence, the University should especially focus

on prioritizing creation of student housing through new construction projects on sites at Fulton/Bancroft, University/Oxford, Channing/Ellsworth and infill development at Unit 3. Development at these sites has the potential to yield the remaining 1,500 housing units identified in the 2020 LRDP. *See*, Letter from Berkeley City Council to Chancellor Christ dated June, 2018.

Under CEQA, an agency may not approve a proposed project if a feasible alternative exists that would meet most of the project's objectives and would diminish or avoid its significant environmental impacts. Pub. Res. Code § 21002; *Kings County Farm Bureau* (1990) 221 Cal.App.3d 692, 731. Given the extensive environmental impacts this Project will have, the consideration of alternatives will not be complete until an EIR presents decision-makers and the public with a rigorous, good-faith assessment of options that reduce the environmental consequences of the Project.

V. Conclusion

For all these reasons, the City of Berkeley urges the University to revise and recirculate the environmental analysis for this project. Specifically, the University should break down the Project into its two component parts—the GSPP Project and Enrollment Project. For clarity, the City believes it would be best to analyze these two Projects in separate environmental documents. Because neither project is consistent with the LRDP, however, the University may not tier off of the 2020 LRDP EIR, but instead must prepare a subsequent EIR. This subsequent EIR must be circulated for public review and comment.

Sincerely,

Timothy Burroughs
Director, Department of Planning & Development

List of Attachments:

Attachment A — Memorandum from Benjamin Sigman at Economic & Planning Systems ("EPS), Inc. to Jordan Klein, Economic Development Manager, Office of Economic Development, City of Berkeley, re: Preliminary Fiscal Impact Analysis of UC Berkeley in 2018, dated March 27, 2019.

Attachment B	How Additional is the Clean Development Mechanism? Analysis of the application of current tools and proposed alternatives, Institute of Applied Ecology, March, 2016.
Attachment C	Carbon Credits Likely Worthless in Reducing Emissions, Inside Climate News, April 19, 2017.
Attachment D	CARB's 2017 Climate Change Scoping Plan.
Attachment E	City of Berkeley List of Larger/Complex Projects as of March 1, 2019.

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THE CASE FOR HOUSING IMPACTS ASSESSMENT:

THE HUMAN HEALTH AND SOCIAL IMPACTS OF INADEQUATE HOUSING AND THEIR CONSIDERATION IN CEQA POLICY AND PRACTICE

PHES TECHNICAL RESEARCH REPORT
MAY 2004

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH
OCCUPATIONAL & ENVIRONMENTAL HEALTH SECTION
PROGRAM ON HEALTH, EQUITY, & SUSTAINABILITY

Contents

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INTRODUCTION

The California Environmental Quality Act (CEQA)[1] requires governmental agencies to provide a public accounting of all potentially adverse impacts of decisions that change the environment. While some consider CEQA to be concerned exclusively with the physical environment, the aims of CEQA extend to human well being. For example, CEQA's policy goals include maintaining "…conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations," and "..,providing a decent home and satisfying living environment for every Californian." (California Government Code §21000) Under CEQA, a local agency must consider reasonably foreseeable "… environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly."[2]

Traditionally, health and human impact assessment within environmental review has focused on hazardous environmental agents such as air pollutants. While such impacts are important, the relationships between the physical environment and human health include many other neglected dimensions.

Unmet housing needs in San Francisco result in particularly significant public health costs. Inadequate or unaffordable housing forces San Francisco residents into crowded or substandard conditions; requires them to compromise access to jobs and services, and quality education; and requires them to work multiple jobs to make ends meet. The Department of Public Health witnesses these effects when we care for the homeless, in the course of our enforcement of environmental health and housing standards, and through our efforts to improve the housing of those with environmentally related illnesses such as asthma.

Unmet housing needs also have indirect environmental and economic consequences. High housing costs are disincentives for business development or expansion which also means reduced economic opportunities for residents. High cost housing in regional job centers such as San Francisco is one factor that drives development of lower cost housing on the urban fringe, contributing to traffic congestion and air pollution, as well as the loss of regional farmland and open space.[3]

As one strategy to ensure adequate affordable housing in San Francisco, the San Francisco Department of Health, in partnership with the City's Department of Planning, has researched how environmental impact analysis might more

[1] CEQA, similar to NEPA, predated the more proscriptive environmental regulatory approaches such as the Clean Water Act aiming instead to ensure transparency and accountability in decision making. CEQA requires public agencies to produce an Environmental Impact Report (EIR) prior to making public decision that may have significant adverse environmental effects. (California Public Resources Code, Environmental Protection, §21000) An EIR must analysis on all potentially significant adverse environmental impacts, feasible alternatives, and steps to avoid or limit impacts. If an EIR concludes that a project would have significant impacts, the agency can not approve it until it either they determine that mitigation or alternatives are infeasible or that the project's benefits outweigh the adverse impacts.

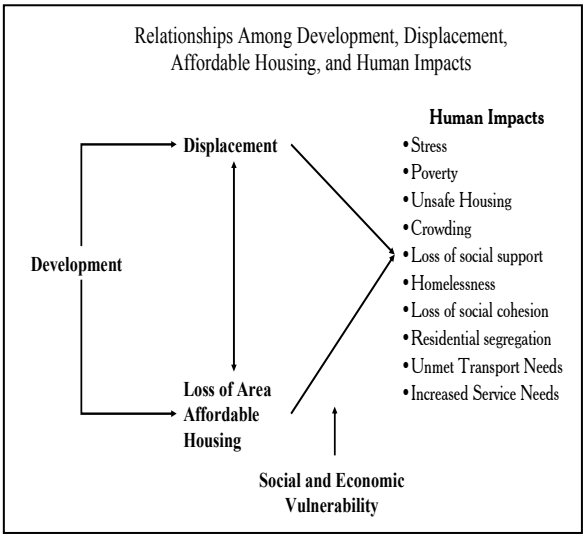
[2] CEQA Guidelines. Title 14. California Code of Regulations. (Accessed at http://ceres.ca.gov/topic/env_law/ceqa/guidelines/)

[3] http://www.brookings.edu/views/speeches/downs/20030529_downs.htm

comprehensively account for impacts on affordable housing and residential displacement.

CEQA guidelines allow cities to determine their own impacts of concern, screening criteria, assessment and evaluative methodologies, and preferred mitigation measures. In addition, though the guidelines provide a list of potential adverse impacts on the environment they do not provide a way of judging whether the effects are significant in a particular set of circumstances. One way for local jurisdictions and public agencies to ensure consistent and objective determinations in their environmental review is to adopt a 'threshold of significance.'[4]

CEQA authorizes local governments to adopt by "…ordinance, resolution, rule, or regulation" locally specific "objectives, criteria, and procedures for the evaluation of projects." (California Government Code §21082). These 'thresholds of significance' are qualitative or quantitative standards that provide local agencies a way to differentiate whether a particular environmental effect is significant. Thresholds may be based on health based standards, service capacity standards, ecological tolerance standards, policies and goals within the city's general plan, or any other standard based on environmental quality. Ideally, threshold development should involve public participation and the documentation of a threshold should include (1) a definition for the effect (2) the reasons the effect is significant (3) the criteria at which effect becomes significant (4) references and sources (5) potential mitigation measures if available.



Methods to consider impacts on housing affordability and residential displacement exist; however, these methods have not been applied to impact assessment practice in San Francisco. In California, several local jurisdictions (Los Angeles, Santa Barbara, and LakeTahoe) have adopted comprehensive, environmental review guidelines which include thresholds of significance for housing impacts. San Francisco adopted level of service standards (LOS) for the evaluation of impacts on automobile and transit in 2002 but does not have consistent evaluative criteria for several other important environmental effects included effects on housing.

This technical report outlines several ways that impacts on housing affordability and residential displacement can be included in the process of environmental review. It also provides the groundwork for developing local significance thresholds criteria for housing impacts. We have organized this document into three sections: (1) Social and health consequences of housing affordability and residential displacement; (2)

[4] Thresholds of Significance: Criteria for Defining Environmental Significance. CEQA Technical Advice Series Govenor's Office of Planning and Research 1994 Accessed May 24th 2004 at: http://ceres.ca.gov/topic/env_law/ceqa/more/tas/threshld.pdf

Interpretation of CEQA policy and guidelines with regards to the analysis of social, health, and environmental justice impacts; (3) Public agency guidelines for affordable housing and displacement impact assessment.

The first section provides a scan of the public health and social science research that relates affordability and displacement to adverse human outcomes. We organized this section using a public health framework that relates project development to residential displacement and housing affordability and these effects to indirect adverse human impacts. (The framework used in this report is illustrated in the figure above.) The second section considers the impacts on affordability and displacement as indirect social impacts, as indirect human health impacts, as environmental justice impacts, and as impacts that affect long term environmental policy goals. The third section provides a scan of impact assessment methods and practice applicable to housing impacts analysis bringing together a number of federal, state, and local tools and guidelines.

SECTION I. SOCIAL AND HEALTH CONSEQUENCES OF HOUSING AFFORDABILITY AND RESIDENTIAL DISPLACEMENT

The pathways between affordable housing, residential displacement, and human health and well being are numerous and complex. The impacts of any particular project or program that affects housing affordability or displaces residents depend on both contextual and individual factors including the availability of affordable housing units, the extent of relocation assistance provided, the income and savings of displaced residents, and the availability of social support networks.

This section provides a summary of available evidence on the adverse human consequences of housing affordability and residential displacement. Sources include case studies, interviews, and studies on homelessness, and public health and social science research.

Unmet Needs for Affordable Housing in California and San Francisco

According to *Slum Housing in LA*, a recent publication by UCLA's Advanced Policy Institute, the Federal goal of "securing the health and living standards of its people…" has only been met for upper and moderate income groups, while communities that are poor in both rural and inner city areas lack adequate housing.[5] Three in ten US households have housing affordability problems.

The affordable housing crisis is particularly acute in California. In San Francisco, only 7.3% of households currently earn enough to afford the median sale price of housing.[6] In addition, the fair market rent for a two-bedroom apartment is $1,904 which is affordable only to those who make 90% of the average family's median income of $86,100.[7] Exacerbating this situation, the gap between the minimum wage and the minimum hourly wage required to afford adequate housing has increased. Currently, over 35,000 low income renters pay more than 50% of their income in rent. Even individuals earning modest wages, such as, public service employees and those in the construction trades simply cannot afford to live where they work.[8]

A related factor, affecting low income renters, is the unmet demand for subsidized housing programs. In California, over two-thirds of qualifying low income households remains on waiting lists for housing assistance.[9] The state has 186,000 rental units housing 450,000 low income people which benefited from public finance. About 70% of this stock, over 120,000 units, represents housing in the HUD Section 8 program for which rent subsidy contracts are expiring. The conversion of subsidized housing will further aggravate unmet demand for low income housing.

[5] Richman N, Pitkin B. Understanding Slum: The Case of Los Angeles, USA. 2003 UCLA Advanced Policy Institute. Los Angeles, CA.

[6] San Francisco Planning Department. Update of the Housing Element of the General Plan. (Accessed at: http://www.ci.sf.ca.us/planning/citywide/c1_housing_element.htm)

[7] National Low Income Housing Coalition Out of Reach 2003: America's Housing Wage Climbs. (Accessed at: http://www.nlihc.org/oor2003/)

[8] Governor' Environmental Goals and Policy Report. Office of Planning and Research 2003

[9] Forbes, Elaine. 2000

While the population of San Francisco is growing, San Francisco is not currently meeting the housing production goals of moderate income, low income and very low income communities. The Mayor's Office of Housing estimates that the City needs to build 19,000 units of affordable housing between 2001 and 2005 to meet its needs. Furthermore, according to the Housing Element of the General Plan, the strongest job growth is expected in the service and retail sectors; however, much of that growth is represented by low and medium wage jobs including cashiers, waiters and cooks, sales people and clerks, and painters, carpenters and electricians.

The Relationship between Displacement and Affordable Housing

Residential displacement has become a critical issue in California where housing shortage disproportionately affects low income and minority populations. Displacement can occur in the context of demolition or redevelopment of residential property or the conversion of rental units to ownership housing. Displacement also occurs in the context of gentrification when neighborhoods change in a way that inflates rents. Structural forces that contribute to displacement of individuals and families and unsatisfactory relocation in San Francisco include the relatively high cost of housing relative to incomes, the large unmet need for housing particularly at lower income levels, and the high cost of land and housing. Given that San Francisco is a setting with a limited supply of affordable housing, residents displaced through eviction or redevelopment are unlikely to be successfully relocated into adequate and affordable housing replacement housing.

Human Health Impacts of Inadequate Housing

Residential displacement or the permanent loss of area affordable housing can be expected to lead to diverse health effects. Both displaced residents and those entering the housing market may have to pay more for housing.[10] Some may accept affordable but inadequate, substandard, or poorer quality housing. Some may move out of the city or region while others may move into a temporary living situation with a friend or family member. Finally, some may become homeless. Low income individuals and families are more susceptible to adverse consequences after displacement as they have limited options for relocation.

Stress Displacement may increase levels of psychological and physiological stress, for example, by creating a new economic strain among low income individuals. If residents are displaced away from jobs or schools, longer commutes may be a further source of stress and reduce time for leisure or family activities. For children, frequent family relocation leads to children's grade repetitions, school suspensions, and emotional and behavioral problems.[11] Living in resource poor neighborhoods, frequent school changes, and substandard housing all contribute to poor child development and school

[10] Hartman, Chester. Comment on "Neighborhood revitalization and displacement: A review of the evidence. Journal of the American Planning Association. 1979;45:488-491.
[11] Cooper, Merrill. Housing Affordability: A Children's Issue. Canadian Policy Research Networks Discussion Paper. Ottawa. 2001

performance.[12]

A number of scientific studies have demonstrated health consequences of psychosocial stress. For example, a randomized study of healthy human volunteers demonstrated that chronic stress doubled the rate at which inoculation with a common cold virus led to a clinical infection. [13] Other studies have linked the experience of stress with chronic diseases including heart disease, hypertension, and diabetes.[14] Among pregnant women, stress has also been associated with a greater likelihood for pre-term delivery and low birth weight birth – both factors that potentially lead to developmental delays and increased infant morbidity and mortality.

Poverty There is little doubt that poverty leads to poor health. Numerous research studies in diverse countries show that poverty contributes to a poorer subjective sense of health, higher mortality, less emotional stability, worse chronic conditions, and poorer physical functioning.[15]

Unaffordable housing is both a dimension of poverty and a contributor to poverty. Households with incomes several times the full-time minimum wage can pay more than half of their incomes for housing.[16] When housing is unaffordable, people often sacrifice other material needs including food, clothing, and health care services. Nationally, those with incomes in the bottom fifth of the income distribution and paying 50% of their incomes for housing have an average of $417 to cover all non-housing monthly expenses.[17] Lack of affordable housing has also been linked to inadequate nutrition, especially among children. A recent survey of American cities found that low paying jobs and high housing costs are the most frequently cited reasons for hunger.[18] Children from low-income families receiving housing subsidies showed increased growth compared with children whose families were on a subsidy waiting list, an observation consistent with the idea that subsidies provide a protective effect against childhood malnutrition.

Unaffordable housing may add to psychosocial stress. People required to work extra hours or at multiple jobs may sacrifice personal leisure family relationships. Time pressured parents may choose either more punitive or low-effort strategies to resolve conflict with children.[19] Studies have shown that economic strains such as being unable to pay the bills cause depression in mothers and harsh parenting styles. Displacement and relocation may also result in job loss with potential further aggravation of

[12] Ross, DP & Roberts, P. Income and child well being: A new perspective on the policy debate. Canadian Council for Social Development. Ottawa. 1999.
[13] Cohen, Sheldon et al. Types of Stressor that increase susceptibility to the common cold in Healthy Adults. Health Psychology. 1998; 17(3):214-223.
[14] McEwen, Bruce E. Protective and damaging effects of stress mediators. New England Journal of Medicine. 1998; 338(3): 171-179.
[15] Phipps, Shelly. The Impact of Poverty on Health: A Scan of the Research Literature. Ottawa. Canadian Institute for Health Information 2003.
[16] The State of the Nation's Housing. Joint Center for Housing Studies of Harvard University. 2003.
[17]
[18] Sandel, M, Sharfstein, J, Shaw, R. There's no place like home: How America's Housing Crisis Threatens our Children. Housing America. San Francisco. 1999.
[19] Dunn, James R. A population health approach to housing: A framework for research. Report prepared for the National Housing research Committee and the Canada Mortgage and Housing Committee. University of Calgary. 2002.

economic strain and psychosocial stress.

Overcrowding Statewide, 24% of renter households are overcrowded while in San Francisco over 30% of renter households are characterized as overcrowded.[20] [21] Families frequently double up as a way to cope with the lack of affordable housing. Similarly, displaced residents find temporary lodging with families or friends. Overcrowding results in respiratory infections in adults and ear infection in children.[22] Overcrowding also means the lack of quiet space for children to do homework, negatively impacting their development, education, and future life opportunities.[23]

Housing Safety Over half of the San Francisco's housing was built over 50 years ago and requires significant rehabilitation to maintain habitability; 94% of the housing stock was built before 1978. Most of the city's pre-1950 dilapidated housing stock is located in low-income neighborhoods. A number of environmental conditions in older and poorly maintained housing affect health. Inadequate heating can lead to overexposure to cold. Poorly maintained paint leads to lead poisoning. Other unsafe conditions include exposed heating sources, unprotected windows and slippery surfaces that increase risks for injuries. Older units and low-income units tend also to have a greater likelihood of deferred maintenance.

[20] Govenor's Environmental Goals and Policy Report. Op Cit.
[21] Based on San Francisco data from the 1999 American Housing Survey. (Accessed at: http://www.census.gov/hhes/www/ahs.html)
[22] Krieger, J & Higgens, DL. Housing and Health: Time again for Public Health Action. American Journal of Public Health. 2002; 92: 758-768.
[23] Cooper, M. op cit.

Indoor Air Quality Irritants and allergens present in one's home environments contribute to asthma. Some of the most important allergens implicated in the development and recurrence of asthma include house dust mites, cockroach antigens, cat dander, mold spores, and pollens.[24] Old carpeting serves as a reservoir for dust, allergens and chemicals. Kitchens and baths, particularly in older housing stock, often lack adequate ventilation increasing problems associated with moisture and mold.

Since 1999, SFDPH has conducted several hundred assessments for asthmatic children and adults and identified through evaluation research the role of housing affordability as a barrier to reducing asthma triggers in the home. While SFDPH enforces laws to ensure the safety and habitability of housing, inspectors have found many instances where substandard and unhealthy conditions exist yet tenants are reluctant to initiate enforcement actions. Commonly, tenants are fearful of landlord reprisal or eviction in an unaffordable housing market.

Social Support If displaced residents are forced to relocate outside of their neighborhood, valuable supportive family and community relationships can be lost both for those leaving and well as for those remaining behind. Strong social relationships and community cohesion are protective of health in multiple ways. Neighbors, friends, and family provide material as well as emotional support. Support, perceived or provided, can buffer stressful

[24] Institute of Medicine. Clearing the Air: Asthma and Indoor Air Exposures. National Academy Press. Washington D.C. 2000.

situations, prevents damaging feelings of isolation, and contributes to a sense of self-esteem and value.[25] The magnitude of the effect of social support on health is substantial and has been illustrated by several prospective long term studies in the United States. For example, in the Alameda County Study, those with fewer social contacts (e.g. marriage, family, friends, and group membership) had twice the risk of early death, even accounting for income, race, smoking, obesity, and exercise.[26]

Homelessness One of the most severe consequences of both unaffordable housing and displacement is homelessness. Hunger and homelessness are on the rise in major American cities, according to a 2003 survey by the U.S. Conference of Mayors.[27] Requests for emergency shelter assistance increased by an average of 13 percent in the 25 large cities surveyed. Twenty-three participating cities reported that lack of affordable housing was the leading cause of homelessness.

Over 350,000 Californians are estimated to be homeless.[28] A particularly disturbing trend is the rise of family homelessness. It is estimated that between 80,000 and 95,000 homeless children exist in California.[29] The USCM survey documents that Eighty-four percent of the cities have turned away homeless families from emergency shelters due to lack of resources.

Homelessness contributes to a number of other well described physical, behavioral and mental health problems in adults and children. Lack of housing and the overcrowding found in temporary housing for the homeless have been found to contribute to morbidity from respiratory infections and activation of tuberculosis. Substandard housing, such as that used by the homeless population, often lack safe drinking water and hot water for washing; often have ineffective waste disposal, intrusion by disease vectors (e.g., insects and rats); and often have inadequate food storage, all of which have long been identified as contributing to the spread of infectious diseases. [30] A 1994 study of children living in homeless shelters in the Los Angeles area found that the vast majority (78%) of homeless children interviewed suffered from depression, a behavioral problem, or severe academic delay.[31] Among sheltered homeless men and women, age adjusted death rates are several fold higher than in the general population.[32]

Homelessness is strongly linked to hunger. Temporary housing for homeless children often lacks cooking facilities.[33] In the 2003 US

[25] Cohen, S, Underwood, LG, Gottlieb, BH. Social Support Measurement and Intervention. Oxford University Press. New York. 2000.
[26] Berkman LF, Syme SL Social networks, host resistance, and mortality: a nine-year follow-up study of Alameda County residents. American Journal of Epidemiology. 1979; 109(2):186-204.
[27] The United States Conference of Mayors Hunger and Homelessness Study December 2003.
[28] Governor's Environmental Goals and Policy Report. Op Cit.
[29] Governor's Environmental Goals and Policy Report Op Cit.
[30] US Conference of Mayors
[31] Zima BT, Wells KB, Freeman HE. Emotional and behavioral problems and severe academic delays among sheltered homeless children in Los Angeles County. American Journal of Public Health. February 1994 Vol 84: 260-264
[32] Barrow, SM, Herman, DB, Cordova P, Stuening, EL. Mortality among Homeless Shelter Residents in New York City. American Journal of Public Health. 1999; 89: 529-534.
[33] Krieger J, Higgins DL. Housing and Health: Time Again for Public Health Action. American Journal of Public Health. May 2002, Vol 92, No. 5: 758-768

Conference of Mayors' (USCM) survey, requests for emergency food assistance increased by an average of 17 percent over the past year. The USCM survey finds that 59 percent of individuals requesting emergency food assistance were members of families with children and their parents, and that 39 percent of the adults requesting such assistance were employed. Eighty-seven percent of the cities surveyed expect that requests for emergency food assistance will increase again over the next year. Ninety-one percent of cities participating in the survey expect that requests for emergency food assistance by families with children will increase next year. Eighty-eight percent expect that requests for emergency shelter will increase next year, and 80% expect requests for shelter by homeless families will increase in 2004.

Social Cohesion One of the most significant effects of eviction and displacement may be the erosion of social capital and social cohesion which are social indicators strongly associated with health, education, and neighborhood safety.[34]

The New York Times recently profiled a community, Franklin Square, as one of the few places in the NY area where housing affordability is promoted resulting in the integration of generations residing side-by-side. In addition to the richness of sharing experiences across generations, the Franklin Square community benefits from long-term residents who invest in maintaining the built environment, invest in the community, and contribute to community cohesion and youth development:

"'[Franklin Square] It's just a wonderful, very stable community,' said Julie Soffientini, an assistant school superintendent who moved in 30 years ago and raised two daughters with her husband, Raymond. She said she appreciated the clean streets, well-kept properties and convenient local shopping."

"Pupils begin at the Franklin Square Union Free School District, an elementary district with an enrollment of 1,975 in three schools, all for kindergarten through Grade 6. Statistics released by the state Department of Education in October showed that 99.3 percent of fourth grade students in the district met or exceeded state standards in math. Elementary school students in the Franklin Square district consistently score above state averages on other standardized tests."

The example provided above illustrates the positive impacts on society by long-term resident investment: cleaner streets, resulting in reduced cost of City-subsidized loitering cleaning; higher school performance, particularly among the younger aged-group, which results in higher school completion.

In contrast, the erosion of neighborhoods as a result of forced displacement results in the reduction of long-term residents who are most likely to invest in their communities. In areas where residents feel less invested because of the continual threat of displacement, one can find depilated environmental conditions, such as broken windows on buildings, loitering and illegal disposing of hazardous substances. Furthermore, neighborhoods where residents have little incentive to invest are shown to have higher high school drop out rates, as well as crime rates.

[34] Putnam, Robert. Social Capital: Measurement and Consequences. ISUMA. 2001(Spring): 41-51.

Segregation The loss of affordable housing and displacement may also lead to residential segregation and 'ghettoization'. Displacement may contribute to residential segregation (by ethnicity, income, or class) if available housing for displaced residents is not available in integrated neighborhoods. A study that examined expiring HUD Section 8 agreements with private owners in California, found that, on average, families relocated to relatively more racially-segregated communities.[35]

Racially segregated neighborhoods tend to have less neighborhood amenities such as schools, libraries and public transportation due to economic, political and linguistic isolation, and racism. Research has documented the health impacts of residential segregation. Many studies have shown, for example a strong association between segregation and homicide rates. Besides an excess in mortality, studies have also demonstrated a relationship between residential segregation and negative health outcomes including teenage childbearing, tuberculosis, cardiovascular disease, availability of food establishments serving healthy fare and exposure to toxic air pollutants.[36]

Strong evidence for the effects of segregated environments comes from the HUD Moving to Opportunity demonstration program. This program, implemented in five US cities, evaluated the health and social effects of relocating households from public or subsidized housing in high poverty neighborhoods to private rental housing in non-poverty neighborhoods. The program design involved a random assignment of families to an experimental group (vouchers for housing in low poverty neighborhoods and relocation assistance) a section 8 group (geographically unrestricted vouchers), and a control group and longitudinal follow-up of families over 10 years. The executive summary of the interim evaluation (midpoint of follow up) testify to the social value of non-poverty area residence. [37]

> From the families' perspectives, the principal benefit of the move was a substantial improvement in housing and neighborhood conditions. Families who moved with program vouchers largely achieved the single objective that loomed largest for them at baseline: living in a home and neighborhood where they and their children could feel and be safe from crime and violence. On a list of observable characteristics, their homes and neighborhoods were substantially more desirable than those where control group members lived. These benefits accrued to families in both the experimental group and the Section 8 group, although the improvements tended to be roughly twice as large for experimental group families, who were required to move to low-poverty areas, at least initially.
>
> Perhaps not surprisingly, these improvements in living environment led to significant gains in

[35] Forbes E. Eroding Neighborhood Integration: The Impact of California's Expiring Section 8 Rent Subsidy Contracts on Low-Income Family Housing. 2000 The Ralph and Goldy Lewis Center for Regional Policy Studies. UCLA, School of Public Policy and Social Research. Los Angeles, California

[36] Acevedo-Garcia D, Lochner KA, Osypuk TL, Subramanian SV. Future Directions in Residential Segregation and Health Research: A Multilevel Approach. American Journal of Public Health. 2003; 93:215-221

[37] U.S. Department of Housing and Urban Development Moving to Opportunity for Fair Housing Demonstration Program: Interim Impacts Evaluation. 2003 (accessed at www.huduser.org)

mental health among adults in the experimental group. The levels of psychological distress and depression were substantially reduced in this group. In addition, adults in both the experimental and Section 8 groups experienced substantial reductions in obesity for reasons we do not yet understand. Among the children in these families, girls appear to have benefited from the move in several ways. They experienced improved psychological well-being, reporting lower rates of psychological distress, depression, and generalized anxiety disorder, and improved perceptions of their likelihood of going to college and getting a well paid, stable job as an adult. These girls' behaviors changed as well, with a smaller proportion working instead of attending school. They were less likely to engage in risky behavior or to use marijuana. Finally, both these girls and society as a whole benefited from a reduced number of arrests for violent crimes.

Increased Transportation System Demands Displaced residents may find that affordable and adequate replacement housing only exists far from their current neighborhoods, potentially, meaning that they will live far from jobs and schools. Relocation may thus create a new demand for public transportation services or alternatively new demands for automobile purchase and use. Studies on the effects of urban sprawl have found that low income families, children and the elderly are disproportionately affected by the longer distances needed to travel as a result of relocation to the outskirts of a city or a region. The working poor rely on both urban public transit systems to hold steady jobs and access health care, child care and other critical social services. Former welfare recipients are particularly dependent upon the provision of reliable and convenient transportation services.

Increased Demands for Social Services For a project that results in significant displacement or relocation to non comparable housing, the magnitude of human health and social impacts may be severe. This may result in the need to fund and develop new social services to address the human impacts. For example, displacement may potentially result in new demand for safety net services for health and welfare, for mental health services, and for special educational services for children. In San Francisco, services for homeless adults and children cost the City millions of dollars and over the past several years demand for services has greatly exceeded capacity. The demand for such services is indirectly related to the magnitude of the adverse displacement outcomes.

Displacement in California and San Francisco

During the period from March 2002 through February 2003, a total of 1,643 various eviction notices were filed with the department. This figure includes 93 notices given due to failure to pay rent, which are not required to be filed with the department. The number of notices filed with the department for this period represents a 22% decrease over the prior year's filings (2,101).

The largest declines were in owner occupancy evictions, 516, or a 29% decrease, nuisance declined by 10% to 251 and eviction notices for breach declined by nearly 40% to 231. The only increases were in temporary capital improvement evictions which increased from 44

to 68, or a 26% increase and Ellis Act evictions, from 148 buildings to 187 for a 26% increase for the period. In San Francisco, the Ellis Act, a state law which says that landlords have the unconditional right to "go out of business" is used by property owners to 'change the use' of the building (condominium conversions) resulting in evictions.

Reasons for Just-Cause Evictions 2001/02 and 2002/03[38]

Just Cause	2001/02	2002/03
Owner-Occupied	726	516
Demolish/remove unit	113	67
Capital improvement (temporary)	44	68
Ellis eviction	148	187

While the issues of affordable housing, displacement, and gentrification are high on the public agenda, limited recent research has tracked the direct consequences of displacement on people. A 1999-2000 analysis of Ellis evictions in San Francisco conducted by the San Francisco Tenants' Union reveals that:

- Seniors, people with disabilities and children are most likely to become victims of the Ellis Act, comprising 51% of all Ellis Act evictions since 1999.

- Those most apt to be evicted are renters with long-term tenancies and affordable rents. Those evicted under Ellis had an average tenancy of over 11 years and were paying an average rent of $1,024 for a 2 bedroom apartment.

- Further, the Ellis Act is resulting in the loss of thousands of affordable units. For every new affordable unit that is built, 5 affordable units are lost.

Accounts from local housing advocacy organizations reveal some consequences of forced eviction among low-income families and the elderly. St. Peter's Housing, a Mission district-based non-profit organization serving low income families around housing issues and landlord/tenant problems, for example, report that a significant proportion of the families they serve are forced to separate to obtain temporary shelter, while other families resort to overcrowding in illegal units and yet other families are forced to leave their neighborhoods and the City in order to secure an affordable place to live.

St. Peter estimates that at least 20% of their clients have one or more family member aged 60 years or older. According to St. Peter's Housing, elderly residents and families are more frequently displaced, experience particularly high levels discrimination in securing housing, and are most vulnerable for separation as a result of eviction. The following case history illustrates the complexity of housing issues confronted by families with elderly members:

> An elderly couple was forced to separate (from their daughter and grandchildren) and to resort to live in an illegal in-law unit. The unit was so poorly maintained that the stairs leading to the entrance of the unit collapsed resulting in the broken hip of the elderly woman. The elderly woman reported the incidence to St. Peter's for advice. St. Peter reported this case the

[38] Rent Stabilization and Arbitration Board, April 28, 2003

> Department of Building Inspections (DBI) whose inspector cited the owner for the illegal unit, and forced the owner to shut down the illegal unit. DBI's inspection is in itself intended to protect families from living in substandard conditions and yet, in this particularly case, served to aggravate the elderly couple living situation. The elderly couple was not only forced to separate from their family, but were now suffering from the injured hip and its incurred health care cost, and as a result of the inspection was now faced with displacement. [Personal communication, St. Peter's Housing, December 2003]

The effects of displacement as a result of the lack of affordable housing among the senior population are heightened among its Gay and Lesbian subgroups. Recent, cross-sectional evidence of GLBT elderly living in the greater Los Angeles Area shows that:

- Same-sex partners cannot share a room in most care facilities, forcing many GLBT older adults retreat back into the closet, in order to secure housing at nursing homes.
- Same-sex partners cannot receive Social Security survivor benefits.
- GLBT older adults do not have the same family support systems as their heterosexual counterparts.
- There are many government programs that target the elderly, but none are geared towards GLBT older adults.[39]

[39] Gay and Lesbian Elder Housing of Los Angeles Website: http://www.glehc.org/facts.htm, accessed on December 3, 2003

SECTION II SOCIAL, HEALTH, AND ENVIRONMENTAL JUSTICE IMPACTS IN CEQA POLICY

As discussed in the section above, the lack of housing affordability in California and its human impacts suggests that environmental impact assessment (EIA) should consider how a development project might impact housing affordability or displaced residents. Four ways in which these issues fit into the framework of the California Environmental Quality Act (CEQA) include:

- As potential indirect social and economic impacts on population and housing;
- As indirect health impacts of physical or social impacts;
- As environmental justice impacts;
- As impacts requiring evaluation for consistency with city, regional and state housing and environmental policy goals.

Adverse Social and Economic Effects of Impacts on Population and Housing

CEQA considers the loss of housing requiring construction of new housing and the displacement of people as potential adverse environmental impacts requiring analysis in the environmental checklist provided in CEQA Guidelines. The checklists screening questions include:

- Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?
- Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?
- Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

However, impacts on population and housing may have particular adverse effects on parts of the population. For example, if a project replaces low income housing with market rate housing, this may disproportionately and adversely impact those with lower income. This type of impact may be considered an adverse social impact. Under CEQA, adverse social and economic impacts may be analyzed in determining the significance of physical environmental changes. Title 14, section 15064, subsection (e) of the California Administrative Code provides the following guidance:

> Economic and social changes resulting from a project shall not be treated as significant effects on the environment. *Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment.* Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. *If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant.* [Emphasis added]

For example, if a project would cause overcrowding of a public facility and the overcrowding causes an

> adverse effect on people, the overcrowding would be regarded as a significant effect.

Despite the guidance above, the inclusion of social and economic impacts under CEQA is controversial. Many interpret the language in section 15064, subsection (e) to mean that the analysis of indirect adverse social and economic effects may be considered in an EIR but are not, strictly speaking, required.[40] According to the California Department of Transportation: "Many people in California, including some decision-makers, harbor the general belief that CEQA addresses only purely "environmental" issues, not social, demographic, or economic issues often raised by proposed projects. This is erroneous. The assumption however is understandable due to the complex linkage that must be demonstrated between the physical, social, and economic environment, and the determination of 'Significance'."[41]

Some case law has directly addressed this issue. In Citizen's Association for Sensible Development of Bishop Area v. County of Inyo,[42] the courts reconciled the ambiguity of section 15064, subsection (e) with subsections (d) and (f) which discussed evaluation of secondary or indirect consequences of a project. In the Bishop case, the Court ruled that subsection (f) gave the lead agency discretion to determine whether the consequences of social and economic changes were significant but did not give it discretion not to consider these consequences at all. In their ruling, the Court interpreted section 15064 as follows: "the lead agency shall consider the secondary or indirect environmental consequences of economic and social changes, but may find them to be insignificant."

Indirect Health Impacts

Environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly are considered mandatory findings of significance in accordance with CEQA Guidelines Section 15065.

> A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur: (d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

As discussed in the evidence provided above, housing affordability and displacement affect health in numerous ways. Projects that have area or regional affects on the availability of affordable housing may be considered to have potential indirect adverse health consequences. Since displaced residents may not be relocated in adequate housing, the potential indirect health impacts of displacement also warrant consideration.

Environmental Justice Impacts

Environmental justice is rooted in the Equal Protection Clause of the U.S. Constitution and can be advanced using National Environmental

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[40] Bass, RE., Herson, AI, Bogdan, KM. CEQA Deskbook A step-by-step guide on how to comply with the California Environmental Quality Act. Solano Press. Point Arena, 2001.
[41] Guidelines for Community Impact Assessment. California Department of Transportation. 1997
[42] Citizen's Association for Sensible Development v. County of Inyo, 172Cal.App.3d 151 (1985)

Policy Act (NEPA) as well as the Civil Rights Act of 1964. Environmental Justice provides another rationale for considering the effects on affordable housing or the displacement of low income residents under CEQA. California Law defines Environmental Justice as "… the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies."[43]

While environmental justice analysis and efforts in California have historically emphasized disproportionate health effects of toxic physical environmental agents, the concept of environmental justice is broader than the physical environment and human health. As stated in the 1997 President's Council of Economic Quality (CEQ) guidance adverse environmental justice effects can be also economic, social, cultural, and ecological impacts directly or indirectly related to physical environmental changes or impacts. 1997 CEQ Guidance states:

> When determining whether environmental effects are disproportionately high and adverse, agencies are to consider the following three factors to the extent practicable:
> (a) Whether there is or will be an impact on the natural or physical environment that significantly (as employed by NEPA) and adversely affects a minority population, low-income population, or Indian tribe. Such effects may include ecological, cultural, human health, economic, or social impacts on minority communities, low-income communities, or Indian tribes when those impacts are interrelated to impacts on the natural or physical environment; and
> (b) Whether environmental effects are significant (as employed by NEPA) and/or may be having an adverse impact on minority populations, low-income populations, or Indian tribes that appreciably exceeds or is likely to appreciably exceed those on the general population or other appropriate comparison group; and
> (c) Whether the environmental effects occur or would occur in a minority population, low-income population, or Indian tribe affected by cumulative or multiple adverse exposures from environmental hazards.

In California, Assembly Bill 1553 requires that the principles of environmental justice be incorporated into state guidelines for local general plans. As discussed below, this broader definition of environmental justice effects is consistent with adverse environmental effects under NEPA and CEQA as well as the 2003 State of California General Plan Guidelines Section on Environmental Justice and Sustainability and the 2003 Governor's Environmental Goals and Policy Report. The 2003 General Plan Guidelines include mixed-income housing development as a component of sustainability and environmental justice. Even from the standpoint of public health, inequitable social and economic effects can be equally if not more important that inequitable environment quality effects. An environmental justice analysis of projects that result in population or housing loss could focus on the potential for disproportionate impacts to low income and minority populations both living in the current units as well as effects on the market for affordable housing in the region.

[43] California Government Code Section 65040.12

Consistency with Local, Regional and State Land Use Policy

CEQA guidelines consider potential significant environmental impacts to include: "Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?" Local policies related to affordable housing can be found in the Housing Element of the General Plan, the HUD Consolidated Plan, and local ordinances related to rent and to eviction prevention.

California State law defines also a jurisdictions fair share housing goals in terms of four categories of affordability through the Regional Housing Needs Determination (RHND) process, devised to address the need for and planning of housing across a range of affordability and in all communities throughout California. Each jurisdiction within the Bay Area (101 cities, 9 counties) is given a share of the anticipated regional housing need. The Bay Area's regional housing need is specified by the California State Department of Housing and Community Development (HCD) and finalized through negotiations with Association of Bay Area Governments. The timeframe for this RHND process is January 1, 1999, through June 30, 2006, (a seven and a half year planning period). The current RHND requires 5244 units affordable to very low income residents, 2136 units affordable to low income residents, 5639 units affordable to moderate income residents, and 7363 units affordable to above moderate income residents. While San Francisco has met its market rate housing targets in recent years, it has not met moderate income, low income and very low income housing needs.

Total Need	Very Low	Low	Moderate	Above Moderate
20,372	5,244	2,126	5,639	7,363

The 2003 State of California General Plan Guidelines may also be viewed as applicable impacts on affordable housing.[44] The guideline's section on sustainability and environmental justice emphasize the need to carefully match employment potential, housing demand by income level and type, and new housing production.

The importance of ensuring adequate and affordable housing for every sector of the population to long term environmental quality and ecological sustainability is also emphasized in the 2003 Governor's Environmental Goals and Policy Report.[45] These State policies together with the emphasis on long term environmental goals in CEQA guidelines Section 15065 (b) suggests that impacts on housing affordability and adequacy are also potential mandatory findings of significance.

[44] 2003 State of California General Plan Guidelines. Office of Planning and Research. 2003
[45] Governor's Environmental Goals and Policy Report. Office of Planning and Research. 2003 (Accessed at: http://www.opr.ca.gov/EnvGoals/PDFs/EGPR--11-10-03.pdf)

SECTION III IMPACT ASSESSMENT METHODS AND GUIDELINES FOR AFFORDABLE HOUSING AND DISPLACEMENT

A number of federal, state and local agencies consider displacement of low-income populations and loss affordable housing as potentially adverse impacts in the context of Environmental Impact Assessment. Examples of methods and guidelines are provided below:

Social Impact Assessment (SIA) The practice of SIA dates back to the construction of the trans-Alaska pipeline. At the time, critics argued that the Environmental Impact Statement (EIS) produced for that project failed to address potential social effects such as the influx of tens of thousands of non-native construction workers on the culture of the Inuit. In 1994, the U.S. Federal Government published a set of guidelines for SIA to support social assessment under NEPA.[46] Social impacts are defined as "…the consequences to human populations of any public or private actions-that alter the ways in which people live, work, play, relate to one another, organize to meet their needs and generally cope as members of society. The term also includes cultural impacts involving changes to the norms, values, and beliefs that guide and rationalize their cognition of themselves and their society." The guidelines categorized social impact variables as follows:

1. Population Characteristics mean present population and expected change, ethnic and racial diversity, and influxes and outflows of temporary residents as well as the arrival of seasonal or leisure residents.

2. Community and Institutional Structures mean the size, structure, and level of organization of local government including linkages to the larger political systems. They also include historical and present patterns of employment and industrial diversification, the size and level of activity of voluntary associations, religious organizations and interests groups, and finally, how these institutions relate to each other.

3. Political and Social Resources refer to the distribution of power authority, the interested and affected publics, and the leadership capability and capacity within the community or region.

4. Individual and Family Changes refer to factors which influence the daily life of the individuals and families, including attitudes, perceptions, family characteristics and friendship networks. These changes range from attitudes toward the policy to an alteration in family and friendship networks to perceptions of risk, health, and safety.

5. Community Resources: Resources include patterns of natural resource and land use; the availability of housing and community services to include health, police and fire protection and sanitation facilities. A key to the continuity and survival of human communities are their historical and cultural resources. Under this collection of variables we also consider possible

[46] http://www.nmfs.noaa.gov/sfa/social_impact_guide.htm

changes for indigenous people and religious sub-cultures.

U.S. Department of Transportation Community Impact Assessment Guidance Among transportation agencies, changes in policies have included redefining the definition of "environment" to include "the natural environment, the built environment, the cultural and social fabric of our country and our neighborhoods, and the quality of life of the people who live here,' and considering project mediated effects on community cohesion; public facilities; employment; tax and property values; displacement of people, businesses, and farms; and adverse impacts on community and regional growth.

DOT guidelines for community impact assessment consider a number of social and economic factors.[47] They further recognize that while community impact assessment should not be exhaustive, it should focus on community goals and issues of community concern and controversy. The guidelines identify that displacement can involve, neighborhoods, businesses, and people. (www.ciatrans.net) Recommended analysis of impacts on residential displacement include the number and type (multi-family, single family) of residences displaced and the particular needs of vulnerable groups (disabled, minority, elderly).

Council on Environmental Quality Environmental Justice Guidance The Council on Environmental Quality, the federal agency tasked with oversight of NEPA and government compliance with Executive Order 12898 developed guidance to assist federal agencies with addressing environmental justice concerns in the context of NEPA procedures. This guidance suggests that agencies should 'determine whether minority populations, low-income populations, or Indian tribes are present in the affected area…consider data concerning the potential for multiple or cumulative exposure to human health or environmental hazards…recognize the interrelated cultural, social, occupational, historical, or economic factors that may multiply the natural and physical environmental effects…[and]…should assure meaningful community representation in the process.[48]

California Department of Transportation The California Department of Transportation (CalTrans) reference documents for CEQA provide specific guidance for the evaluation of impacts on population and on housing displacement. The 1997 Guidelines for Community Impact Assessment point out that the disproportionate displacement of vulnerable populations can have significant adverse human impacts:

> Certain population groups such as senior citizens, low income residents and non English speaking people often have strong community ties and depend on primary social relationships and important support networks that can be severed upon relocation. Households with school aged children may consider relocation especially disruptive if school transfers would be involved. Disabled people and those

[47] Federal Highway Administration Community Impact Assessment Website (Accessed at: www.ciatrans.net)

[48] Environmental Justice: Guidance under the National Environmental Policy Act. Council on Environmental Quality. 1997.

> without automobile transportation often have special relocation problems.

The guidelines suggest investigating the demographics of the residents to determine if any vulnerable groups (Low income, minority, seniors, disabled, and children) would be impacted. The guidelines suggest evaluating the effects on the stock of affordable housing:

> A loss of a substantial number of houses affordable to people with low and moderate incomes may have an effect on the community stock of affordable housing. This could have the effect of increasing the demand for housing in a given sector of the market, bidding up the cost of that housing if the market supply is constrained and thereby disproportionately affecting certain income groups.

Similarly, the 2003 Desk Guide for Environmental Justice in Transportation Planning and Investments. The environmental justice guidelines categorize social and economic impacts into land use and development, population and housing, and fiscal and economic. These guidelines suggest analysis of population and housing impacts consider a number of variables. These include:

- Property acquisition and displacement
- Access to neighborhoods
- Community Cohesion
- Safety and security
- Visual and aesthetic quality
- Property values and gentrification

A particular concern emphasized by CalTrans is impacts of displacement and relocation on neighborhood or community cohesion. The decision tree for residential displacement includes assessment of the availability of relocation housing in the community where displacement is occurring. Social impacts considerations identified by CalTrans related to cohesion include:

- Is there evidence that community cohesion exists?
- Will the proposed project affect interaction among persons and groups?
- Will the proposed project cause redistribution of the population or an influx or loss of populations?
- Will certain people be separated or set apart from others?

City of Los Angeles Thresholds Guide In its *1998 CEQA Thresholds Guide*, the City of Los Angeles uses the following screening criteria for evaluating significant effects on population and housing displacement.[49]

- *Would the project result in the net loss of any existing housing units affordable to very low income or low income households (as defined by federal and/or City standards), through demolition, conversion, or other means.*

The Los Angeles guidelines evaluate the significance of population and housing impacts by considering the following factors:

- The net change in market rate and affordable units in the project area
- The current and anticipated supply of market rate and affordable units in the project area

[49] http://www.ci.la.ca.us/EAD/EADWeb-AQD/Thresholds_PDF/introceq.pdf

- The demographics of the project area
- The consistency with city and regional housing policies

The guidelines also suggest the following two mitigation measure for displacement of affordable housing:

- Exceed the statutory requirements for relocation assistance
- Increase the number of housing units affordable to lower income households

Tahoe Regional Planning Agency (TRPA) The TRPA Initial Environmental Checklist[50] requires a response to and evidence for the following questions relevant to the displacement of low income residents and the loss of affordable housing:

- Will the proposal include or result in the temporary or permanent displacement of residents?
- Will the proposal decrease the amount of housing in the Tahoe Region historically or currently being rented at rates affordable by lower and very-low-income households?
- Will the proposal result in the loss of housing for lower-income and very-low-income households?

Mitigation of affordable housing loss is required for project approval. According to planners at the TRPA any loss of affordable housing due to redevelopment has to be either rebuilt on site or offsite taking into account similar accessibility to transport resources. A recent example of such mitigation occurred with the proposed development of the 138 unit Round Hill Vacation Resort. The development of the time share condominium involved the removal of the 186 unit Lake Park Apartments. To mitigate displacement, the project included the construction of 67 new apartment units offsite prioritized for displaced tenants, affordable housing restrictions for the new apartments, phased demolition over 24 months with eviction of no more than 8 units per month, and relocation assistance.[51]

County of Santa Barbara Santa Barbara's 1993 Environmental Thresholds and Guideline Manual[52] provide a specific threshold for the loss of affordable housing. The rationale for establishing such a threshold comes from the county's affordable housing policies. The Santa Barbara County Housing Element documents a substantial shortfall in affordable housing opportunities and the preservation of the existing affordable housing stock is a stated goal of the Housing Element. According to the Element, "the loss or demolition of existing affordable units can displace very low to moderate income persons and further restricts the housing market." The threshold for Very Low to Moderate Income Housing Units is as follows:

- *The loss of four or more very low to moderate income housing opportunities through demolition, conversion, or other means represents a significant housing impact. Affordability is determined on the basis of the applicable definitions within the County's Comprehensive Plan and Coastal Plan.*

[50] http://www.trpa.org/Applications/new_applications2003/IECFINAL%20APRIL%202002%20Comp.pdf

[51] Lyn Barnett, Tahoe Regional Planning Association,. Personal Communication. and Balloffet and Associates. Round Hill Vacation Resort / Lake vista Apartments Environmental Assessment.

[52] http://ceres.ca.gov/planning/ceqa/thresholds.html

Mitigations to assist persons residing in those units shall be applied.

Santa Barbara's CEQA guidance also provides the following mitigation measures:

- *Mitigations would include extended length of notice to quit premises, relocation expenses, demolished or converted units through physical on or off-site replacement or by the payment of fees. Onsite replacement of low or moderate income housing is the preferable alternative. If onsite replacement is infeasible, the units shall be replaced offsite. Payment of an in-lieu fee shall occur only if on and off-site replacement are proven to be infeasible. Housing mitigation fees shall be sufficient to provide replacement of the demolished or converted units.*

Appendix I Model Housing Impacts Analysis

Screening Criteria

- Will the project result a decrease in the supply of housing?
- Will the project result in an increase in the demand for housing?
- Will the proposal result in the loss of housing affordability, availability or quality for low income or otherwise sensitive populations?
- Will low income or otherwise sensitive be displaced or relocated?

Setting Variables

- The demographics of the project area and locality
- The current and anticipated supply of housing units in the project area and locality disaggregated by affordability;
- Availability of vacant units in the project area and locality disaggregated by level of affordability;
- The quality (safety, environmental conditions…) of available housing units in the project area and locality (sources: census, local housing complaint data)
- Evidence of social cohesion in project area(e.g. organization, interactions, relationships, and support among residents)
- Access to public services in the project area (transportation, schools, childcare…)
- The number and type of employment opportunities in proximity to the project area

Analysis Variables

- The net change in market rate units historically or currently being rented at rates affordable by lower and very-low-income households in the project area
- The net change in affordable (including section 8, permanently affordable, and rent-controlled) units historically or currently being rented at rates affordable by lower and very-low-income households in the project area
- Existence within the displaced population of a higher than average proportion of ethnic minority, low income, medically vulnerable or health sensitive populations among displaced residents
- The location and comparability of replacement housing for displaced households;
- Effects on support (food, advice, childcare, elder care) provided to and by displaced residents
- Increased dependence on public assistance or public services
- Changes in accessibility to or utilization of public services
- Changes in the number of family or relatives living in close proximity
- Effects on crowding: changes in the number of individuals per room in the project area
- Changes in accessibility to public transportation
- Changes in the need for automobile ownership or use

Significance Criteria

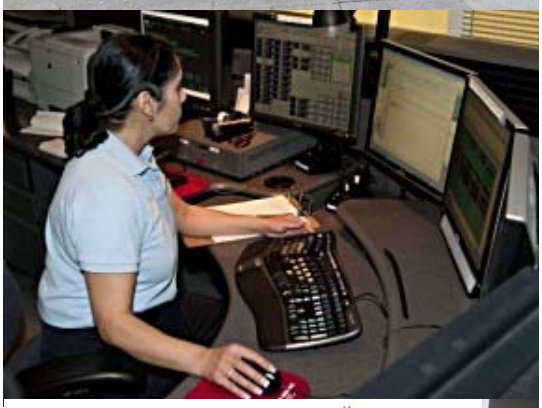
- Net loss of housing supply relative to demand in the area, locality, or region;
- Net loss of affordable housing in the project area or locality;
- Significant reduction in housing quality or safety;
- Significant number of residents relocated to non-comparable housing;
- Any residents made temporarily or permanently homeless;
- Loss of community cohesion in project area;
- Increase of local residential segregation.

Mitigation Measures

- Change land use / zoning controls to enable increased housing density;
- Develop relocation plan consistent with California State Relocation Assistance and Property Acquisition Guidelines;
- Construct of replacement affordable housing onsite or offsite;
- Housing impact fees.

Audit Report
April 25, 2019

911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale



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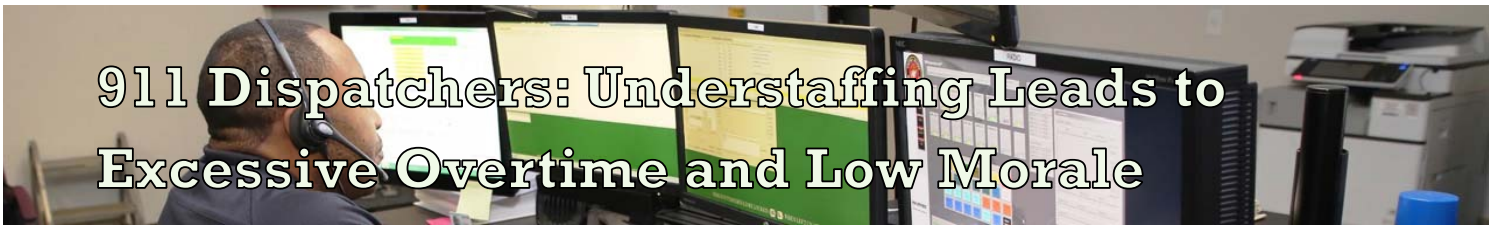

911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale

Report Highlights

April 25, 2019

Findings

- It is taking longer than previous years for call takers to answer 911 calls and the Communications Center does not have enough call takers to answer the current 911 call volume. We also found that, with predicted population growth, the Communications Center would likely need additional resources in the future to maintain its emergency response services.
- Due to consistent understaffing, the Communications Center relies heavily on overtime to meet minimum staffing requirements, spending nearly $1 million in 2017 on overtime.
- Morale in the Communications Center is low and dispatchers feel unsupported. We found that there are some resources available for staff to manage stress; however, dispatchers often do not have time to access them.

Recommendations

We recommend that the Police Department conduct a staffing analysis to determine the appropriate staffing levels, create a recruitment and continuing training plan for dispatchers, establish a call taker classification, and implement automated scheduling software to provide information to inform future budgeting decisions, decrease the reliance on overtime, and relieve the burden placed on overworked staff.

We also recommend that the Police Department implement programs to increase morale and communication. These include recommendations to establish routine meetings with dispatch supervisors, sworn police, and fire personnel, and to establish a comprehensive stress management program.

Objectives

1. To what extent does the Communications Center, which answers 911 calls, have sufficient staffing to handle workloads and service demands?
2. What contributes to overtime use?
3. How do working conditions affect morale?

Why This Audit Is Important

The Police Department Communications Center serves as Berkeley's 911 public safety answering point, receiving all emergency and non-emergency police, fire, and medical calls in the city and dispatching public safety personnel to respond as appropriate. To ensure the wellbeing of the public, police officers, firefighters, paramedics, and dispatchers, the City must maintain a Communications Center that is appropriately staffed. Without sufficient staff, it takes longer for call takers to answer 911 calls. The faster the Communications Center can get a police officer, firefighter, or paramedic to the scene, the better the chances of a good outcome. The seconds it takes to answer and prepare a call for dispatch can mean the difference between life and death.

BERKELEY CITY AUDITOR

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Promoting transparency and accountability in Berkeley government.

Table of Contents

Introduction

We identified workload capacity as an immediate concern to the City's operations and strategic planning in our fiscal year 2018 Audit Plan. We, therefore, included in our audit plan a series of audits that evaluated the City's ability to provide expected and critical services to the Berkeley community. To ensure the wellbeing of the public, police officers, firefighters, paramedics, and dispatchers, the City must maintain a Communications Center (Center) that is appropriately staffed. Without sufficient staff, it takes longer for call takers to answer 911 calls. The faster the Center can get a police officer, firefighter, or paramedic to the scene, the better the chances of a good outcome. The seconds it takes a call taker to answer and prepare a call for dispatch can mean the difference between life and death.

Objectives, Scope, and Methodology

Our objectives were to determine:

1. To what extent does the Communications Center, which answers 911 calls, have sufficient staffing to handle workloads and service demands?
2. What contributes to overtime use?
3. How do working conditions affect morale?

We examined the Center's call volume data for calendar years 2013 through 2017, performed interviews, and conducted a survey to gain an understanding of the program. We specifically assessed minimum staffing levels, call answer performance, overtime, recruitment, retention, training, and morale. For more information, see p. 26.

Background

The Public Safety Dispatcher (dispatcher) is often the unsung first responder of the emergency response team. Dispatchers are highly trained professionals, who gather essential information from callers and dispatch the appropriate response team to the scene. They take control of situations that may be chaotic, stressful, confusing, and traumatic. They must be quick-thinking, organized, levelheaded, and confident in their abilities. Dispatchers are at the core of a coordinated emergency response and must make split-second decisions in order to ensure the safety of responders and the public.

The Center, run out of the Police Department, serves as Berkeley's 911 public safety answering point (PSAP), receiving all emergency and non-emergency police, fire and medical calls in the city and dispatching public safety personnel to respond as appropriate. To ensure the wellbeing of dispatchers, police officers, firefighters, paramedics, and the public, the City must maintain a Center that is appropriately staffed.

Structure, Staffing, and Training

The Center is part of the Support Services Division of the Berkeley Police Department, overseen by a sworn police captain. The Center is staffed 24 hours a day, 365 days of the year by a team of trained dispatchers under the direction of a non-sworn manager. Sworn personnel take an oath to support the Constitution of the United States and the laws of the state and local jurisdiction. This includes police officers and detectives. Non-sworn (civilian) personnel do not take an oath and have limited legal powers or none at all. This includes dispatchers and parking enforcement officers.

Figure 1. Berkeley Police Department Organizational Chart

Source: City of Berkeley 2018-2019 Biennial Budget

The 2018 City budget authorized 33 non-sworn full-time equivalent positions for the Center, including 28 public safety dispatchers, four supervisors, and one manager. At the end of May 2018, the Police Department had only filled 23.5 of the 28 authorized full-time equivalent dispatcher positions and was

actively recruiting for new hires. In addition to civilian dispatchers, the Center utilizes three additional Police personnel who work overtime as call takers to meet minimum staffing levels on an as-needed basis and dependent on their availability.

Dispatcher Roles

Dispatchers have four primary roles: call taker, records desk operator, fire radio dispatcher, and police radio dispatcher. All Berkeley dispatchers are cross-trained and may perform any function during a shift.

Table 1. Dispatcher Work Positions and Duties

Position	Duties
Call Taker	• Accepts and processes inbound 911 and administrative calls for police, fire, and medical services as well as other services such as animal control • Inputs call information into Computer-Aided Dispatch (CAD) system and transfers the information to fire and police dispatcher staff
Records Desk Operator	• Monitors and responds to radio transmissions on a designated channel • Conducts warrants, license, and other checks on persons of interest and vehicles
Fire Dispatcher	• Dispatches all fire and medical related calls* requiring a response from firefighters or paramedics • Maintains radio contact with field staff
Police Dispatcher	• Dispatches all police related calls requiring a response from law enforcement • Enters all officer initiated incidents into CAD such as pedestrian and traffic stops • Maintains radio contact with field staff

*Dispatchers route all medical calls requiring pre-arrival instructions to Alameda County.

Source: City of Berkeley Communications Center Manual

It is taking longer to answer 911 calls and there are not enough call takers.

It is taking longer for the City to answer 911 calls because the Communications Center (Center) does not have enough call takers. The number of budgeted dispatchers has remained the same even as call volume has increased. The Center uses a staff-forecasting tool, but has not conducted a thorough staffing analysis to determine the number of dispatchers needed on each shift and the total number of dispatchers needed to staff the Center 24/7. Without a thorough staffing analysis, the Police Department cannot inform future budgeting decisions of dispatcher positions.

It Is Taking Longer to Answer 911 Calls, Falling Below State Standard

The Center is taking longer to answer 911 calls. The faster the Center can get a police officer, firefighter, or paramedic to the scene the better the chances of a good outcome. The seconds it takes a call taker to answer and prepare a call for dispatch can mean the difference between life and death.

California has a state standard requiring public safety answering points to answer 95 percent of 911 calls within 15 seconds. The state standard does not apply to non-emergency calls. Call data from the State's Emergency Call Tracking System (ECaTS) indicates the Center did not meet the performance target in answering 911 calls in two of the last five calendar years (as shown in Table 2). The data shows that in 2017, dispatchers only answered 89 percent of calls within 15 seconds. If the Communications Center is not able to reach this call answer target, they risk losing State funding in the future.[1]

Call taking is one of the four primary roles of a Berkeley dispatcher. All dispatchers are cross-trained to perform any function. A call taker accepts and processes inbound 911 and non-emergency telephone calls for police, fire, and medical service. They input call information into the CAD system, which provides information to Police and Fire dispatchers. Call takers also answer and transfer calls intended for other Police units and other City departments.

[1] Funding from the State is contingent upon adherence to the state's mandatory standards including call answer times. In early 2016, the 911 Emergency Communications Branch of the Governor's Office of Emergency Services issued a review of fiscal and operational policies of the Berkeley Communications Center covering the time period of March 2015 through March 2016. The state found that the Communications Center was meeting the call answer standard and estimated that they will receive approximately $161,000 in state funding over the next five years. This includes reimbursement for language interpretation calls, ECaTS expenses, annual training allotment, and maintenance/upgrades of the phone system.

Table 2. 911 Call Answer Performance

Calendar year	Percent answered within 15 seconds	Average answer time (seconds)	Total 911 calls (Police, Fire, Medical)	Average call duration (seconds)
2013	92%	9	49,579	81
2014	95%	9	54,599	80
2015	95%	9	54,190	88
2016	96%	8	52,520	91
2017	89%	10	55,587	100

Source: ECaTS data

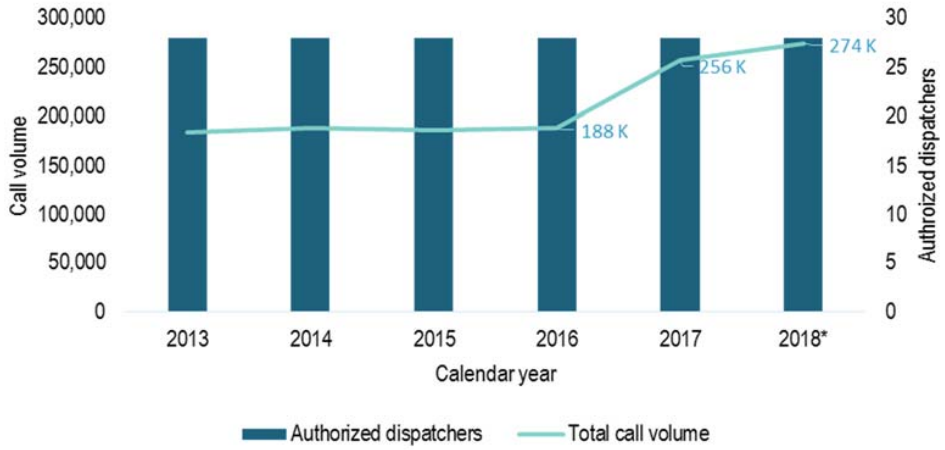
Call Volume Has Risen but Staffing Has Stayed the Same

The Center is experiencing more calls, but staffing has not increased to keep up with the call volume. Rapid population growth in Berkeley since the 2010 Census is creating unprecedented challenges for public safety personnel as more people are calling 911. As Berkeley's population has risen, so has the number of calls into the Center, both emergency and non-emergency. In 2013, the Center handled 184,000 calls, including emergency, non-emergency, and outbound calls. There was a significant increase in call volume in 2017, rising to over 256,000 calls for the year (Figure 2). According to the data, the majority of this increase came from a rise in non-emergency calls into the Center and outbound calls from the Center. Call volume data does not explain why there was an increase and the Police Department could not provide support for the increase.

In early 2017, the Department installed a new phone system. According to the Department, they believe that the old phone system was capturing incomplete non-emergency call volume data and the newly installed system is capturing complete call volume data. The Department was unable to provide evidence to support this theory but did provide us with 2018 call data to demonstrate that the call volume continues to be much higher than captured before the phone installation. Regardless of whether the increase in call volume was an actual increase in calls or just the data captured, the Department has not increased staffing in response to the noted increase in call volume. The Center has not had an increase in budgeted dispatcher positions since 2004. The number of authorized dispatcher positions remains at 28.

In early 2016, the 911 Emergency Communications Branch of the Governor's Office of Emergency Services issued a review of fiscal and operational policies of the Berkeley Communications Center covering the time period of March 2015 through March 2016. The state found that the Communications Center was meeting the call answer standard and estimated that they will receive approximately $161,000 in state funding over the next five years.

Figure 2. Call Volume for Communications Center Increased with No Change in Authorized Staffing



*The Police Department provided us with only summary data for calendar year 2018. We did not assess the reliability of the summary data as it was not part of our audit scope. We provide it here because there was a significant increase in non-emergency and outbound calls after 2016, which the Department largely attributes to a new phone system, as well as an increase in calls. Providing the 2018 data for comparative purposes helps demonstrate the Department's hypothesis.

Note: Total call volume includes emergency, non-emergency, and outbound calls.

Source: City of Berkeley Biennial Budgets, ECaTS, and auditor analysis

Center Is Understaffed by One Call Taker Each Shift

Based on the Communications Center's current shift staffing model, the Center is understaffed by one call taker at all times of the day to handle 911 calls. The National Emergency Number Association (NENA) published a staffing guidelines report that we used to determine the adequate call taker staffing for the Center.[2] According to our analysis, the Center should have a minimum of three call takers on shift during normal hours and four calls takers on shift during busy hours. However, the Center is not able to follow the NENA guidelines with current budgeted staffing levels. Instead, the Center must set its current minimum staffing levels to include only two call takers during normal hours and three call takers during busy hours. Management determines these levels based on the current minimum staffing and an analysis of call volume. Management stated that the current shift staffing levels are low compared to the call volume and they are unable to adopt higher minimum staffing numbers due to the consistent understaffing of dispatcher positions.

[2] We conducted the staffing analysis using the Erlang C mathematical formula and the results are based on 911 call volume; call duration; and queuing theory. For more information, see methodology section.

During this audit, the Police Department implemented a phone tree on the non-emergency lines in an effort to maximize the efficiency of call takers. The goal is to route calls for service needing a non-emergency response in the most expedient manner possible. This will help ensure that call takers are answering fewer non-emergency calls that they would normally transfer to a different agency or City Department. It is too early in the implementation to understand how the phone tree will affect the overall workload of call takers. A more in-depth analysis of non-emergency call volume is needed to understand the workload impact of these calls with the implementation of the phone tree.

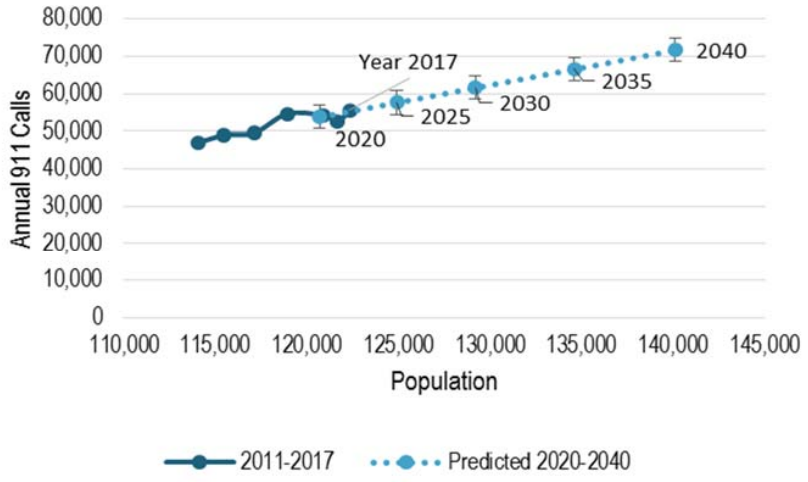
Non-emergencies: General calls related to the Police or Fire Departments that do not pertain to an immediate threat to life or property. This includes situations that may be criminal in nature, but do not require immediate attention. These non-emergency calls include "cold-crimes," vehicle complaints, and routine civil matters.

Additional Resources Are Necessary to Maintain 911 Services in the Future

The City of Berkeley's population grew rapidly in the ten years following the 2000 Census. The population rose by almost nine percent to 112,580 according to the 2010 Decennial Census. The City continues to grow approximately one percent every year. The Association of Bay Area Governments (ABAG), projected Berkeley's population to grow 24.4 percent between 2010 and 2040, to about 140,100 people. If the City's population grows to 140,100 people by 2040, the Communications Center's annual call volume may grow to between 253,000 and 350,000 total calls and of those calls, 68,500 - 75,000 would be 911 calls (Figure 3).[3] While population is a good indicator of 911 call volume, additional factors should be considered when planning for the future. Some of those considerations include crime rate, public access to affordable health care, and local attitudes on the use of 911.

[3] Our analysis did not take into account additional factors that may influence 911 call volume.

Figure 3. 911 Calls May Grow Above 70,000 by 2040



Sources: US Census, American Community Survey, ABAG 2013 Projections, Auditor analysis

Next Generation 911 and Proposed Fire Department Changes Could Further Burden Call Center Capacity

Berkeley is preparing to upgrade to Next Generation 911 (NG911). The purpose for this upgrade is to create a more successful and reliable network of 911 systems nationwide that are able to accept voice, video, photo, and text messages. Some local jurisdictions, including San Francisco, Fremont, Hayward, and Alameda County, are already accepting 911 text messages. While the Federal Communications Commission encourages all call centers to begin accepting texts, it is up to each center to decide on a method of implementation. Berkeley is not yet set up to accept text messages but has started to make changes to prepare for NG911, including upgrading its systems. Additional staffing is likely necessary to handle the more complex service demands.

The Fire Department desires to add emergency medical dispatching capabilities to the Center, in keeping with regional standards. Currently, medical calls are transferred to Alameda County Regional Emergency Communications Center for this service. Providing in-house emergency medical dispatching would allow the Center to triage medical calls and provide immediate pre-arrival instructions from dispatchers with direct communication to responders. This will require additional resources, including staff, equipment, physical space, procedures, and training. Emergency medical dispatching will also increase call duration times as

An emergency medical dispatcher gathers information related to medical emergencies, dispatches the appropriate EMS response, provides assistance and instructions to callers over the phone prior to the arrival of emergency medical services, like how to administer CPR. They also communicate with responding units.

someone from the Center will need to stay on the line with the caller until the responding unit arrives. This will increase call time and, therefore, decrease the Center's availability to answer calls without sufficient increases in staffing.

The physical space the Center currently occupies is small and at capacity. There is no room to add workstations for dispatchers. To prepare for increases in call volume and services, Police can begin to plan now, including looking for a bigger space to run the Center. They will quickly outgrow their current resources with any increase in the minimum staffing levels.

Recommendations

To address public safety service demands, we recommend the Police Department:

1.1 Conduct an annual staffing analysis of required minimum staffing levels and budgeted dispatchers to ensure budget staffing requests and scheduling efforts meet demand and limit the use of overtime where possible. Use the staffing analysis to communicate to Council and the public during the annual appropriations process:

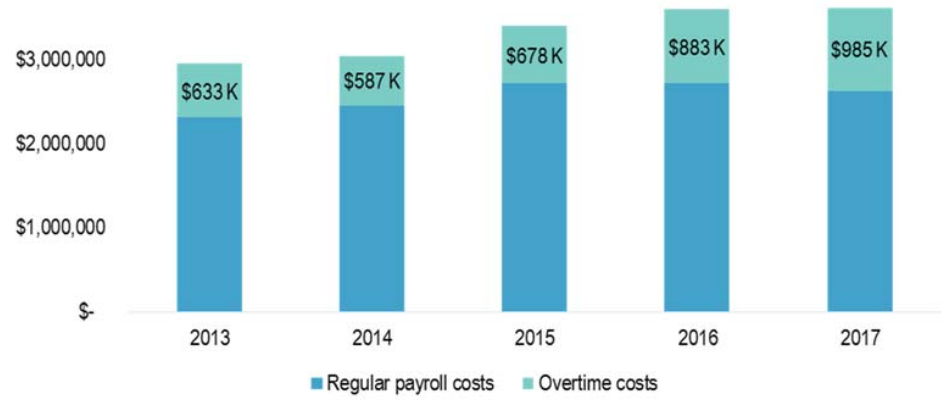
- Service level demands;
- The full-burdened cost of budgeting for additional staff;
- Whether there is sufficient funding available to budget for the additional staff or a shortfall (quantified in dollars); and
- Additional staffing requests, if needed.

1.2 Use the staffing analysis performed in response to recommendation 1.1, to determine future resource needs of the Communications Center, including staffing, equipment, and physical space. Take into account planned changes to services and factors that may influence call volume.

The Communications Center relies on significant overtime leading to inadequate training and an unhealthy work environment.

Due to consistent understaffing, the Center relies heavily on overtime to meet service demands through minimum staffing requirements, spending nearly $1 million in 2017 on overtime (Figure 4). Historically, recruitment and training processes left the Police Department unable to fill vacant positions in the Center. During this audit, the Department invested additional resources to improve department-wide recruitment efforts. There are further opportunities to strengthen the Department's recruitment and training efforts for dispatcher positions. The lengthy hiring process also contributes to the ongoing vacancies and related overtime costs. In particular, delays occur during the extensive background investigations when recruitments for police officers take priority over dispatchers.

Figure 4. Communications Center Total Annual Payroll vs. Overtime Costs, Calendar Years 2013-2017

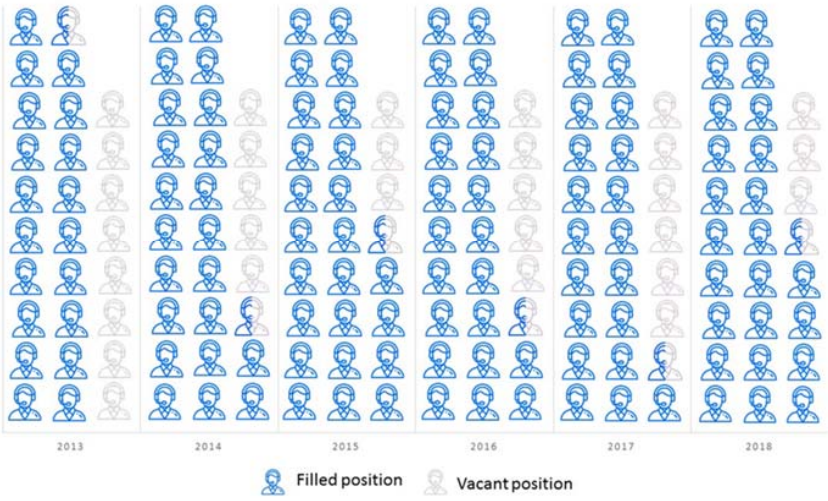


Source: City of Berkeley Cognos payroll data, Auditor analysis

Position Vacancies Lead to Excessive Overtime Use

Historically, the Center has struggled to reach full staffing of the current budgeted positions. Between 2013 and 2018, the Center had between 3.5 and 8 dispatcher position vacancies. In order to meet minimum staffing requirements, supervisors schedule existing employees for mandatory overtime to fill vacant shifts.

Figure 5. Dispatcher Positions Have Historically Been Understaffed, 2013-2018



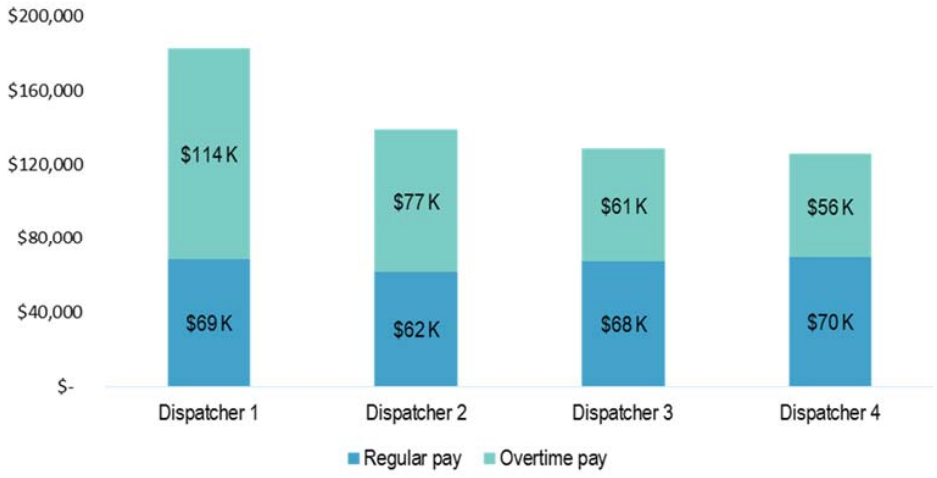
Source: City of Berkeley Human Resource staffing reports

If the Police Department fills all the vacant positions in the Center, they would be able to reduce the amount of overtime. The nearly $1 million spent in overtime in 2017 is offset by the current budgeted vacant positions in the Center. However, even if Police fill all the vacant dispatcher positions, the Center would continue to be understaffed according to NENA staffing guidelines. We recognize that the some amount of overtime is necessary for all public safety positions due to unplanned absences and events that may require an increase in staffing levels, but there is room to decrease the amount needed.

Excessive Overtime May Lead to Fatigue and Safety-Related Incidences

The four dispatchers working the most overtime in the Center received 40 percent of the 2017 overtime paid (Figure 6). This much overtime may contribute to worker fatigue and decreased quality of service.

Figure 6. Top Four Overtime Earners in Calendar Year 2017



Source: City of Berkeley Cognos payroll data

Although overtime is generally less expensive than hiring additional staff because overtime pay excludes benefits, there are important non-financial benefits to reducing overtime by hiring additional dispatchers. Dispatching is a high-stress job that requires dispatchers to be alert and use good judgement. Overtime, when used in excess, can inhibit these essential skills, threatening the safety of responders and the public. For example, in a traffic stop, dispatchers may need to tell an officer if someone is on parole or probation; has a warrant; has a weapons history; or is in a stolen vehicle. All this information allows the officer to make informed decisions about how to approach a situation safely. Therefore, dispatchers must be alert and ready to quickly convey information.

The continued use of overtime is not an ideal situation for any public safety position and exposes staff to an unhealthy work environment. Studies have shown that in law enforcement and across other industries, working excessively long work shifts, particularly those that are 12 hours or more, can lead to fatigue and safety-related incidents, and decrease quality of service, communication, and cognitive performance. By filling vacant positions, the Center can reduce their reliance on overtime and reduce the risk of employee burnout and potential workers compensation claims that may result from overworking.

The Communications Center's current staffing policy allows individuals to sign up for four voluntary overtime shifts at the beginning of each two-week scheduling period for up to 15 hours each. This is equal to a maximum of 60 hours of overtime over two weeks. When added to regular time, an individual could potentially work 70-hour weeks with shifts up to 15 hours in length. When supervisors do not have enough volunteers to work overtime, they schedule dispatchers to work mandatory overtime shifts.

"Our mandatory overtime creates a very stressful environment while at work and extremely poor health and quality of life outside of work. When can we sleep when we are working 14.5-16 hour shifts each day?" – Berkeley Dispatcher

Manual Scheduling Is Time Consuming and Subject to Errors

The Center's staffing processes are not automated. Supervisors are responsible for creating and maintaining manual schedules, including any overtime, or changes to the schedule due to absences. As a result, the task of meeting daily scheduling and staffing needs is cumbersome, time-consuming, and prone to human error. The manual process for filling overtime is even more complex as supervisors must adhere to complex union labor agreements and overtime policies. The supervisor in charge of scheduling said that it is a difficult job and it gets complicated when dealing with overtime and filling absences. She said that sometimes she makes mistakes and has to scramble to find someone to fill a position to reach minimum staffing. Automating the scheduling system will allow the Center to ensure that scheduling adheres to all policies.

Police Department Can Improve Dispatcher Recruitment Efforts

The Police Department is responsible for all recruitment efforts for the entire Department, not just those for dispatchers. The Department has shown a commitment to improving the recruitment process by dedicating resources to general Department recruitment efforts. The Chief of Police approved the creation of a four-person recruitment team within the Personnel and Training Bureau. The team will develop better branding and marketing of the Department and career paths for sworn and civilian positions.

The Police Department recently opened the Public Safety Dispatcher II classification to continuous recruitment; however, they do not continuously recruit for entry-level Public Safety Dispatcher I positions. Continuous recruitment of all dispatcher positions would allow prospective candidates to submit application materials at any time and the City to respond quickly to changing staffing needs.

Recruiting events are critical to finding potential applicants with the skills necessary to succeed at the job. The Personnel and Training Bureau attends career fairs and community events around the Bay Area to advertise police career opportunities to targeted audiences. Dispatchers have not routinely been involved in the recruitment process. The Police Department has created

The Fire Department manages firefighter scheduling with an industry-known public safety scheduling software called Kronos TeleStaff. TeleStaff functionality allows Fire to:

- Automatically fill vacancies based on organizational qualifications and availability
- Manage shift trades and leave requests
- Control and maintain staffing levels and rotations
- Manage the daily schedule by maintaining on-duty and off-duty personnel at all times
- Capture payroll data and export to third-party HR/ payroll systems
- Provide manager and employee self-service access
- Increase oversight and save time currently spent on manual scheduling

marketing material for educating people about the Police Academy but there were no materials about a career in dispatching. Involving dispatchers in this recruitment process and creating unique marketing materials for dispatcher positions would allow the Department to better identify and engage potential recruits. The Department's recruitment webpage is outdated and lacks information about dispatching. Personnel and Training should engage in best practice marketing strategies including the use of websites and social media to engage with targeted audiences.

Background Investigations Cause Delays in Hiring

While the recruitment process can take months, mandatory background checks add even more time to the process. Candidates that pass the interview panel are assigned to an internal background investigator in the Department. When the Department has multiple background investigations to conduct, significant delays can occur. According to the Personnel and Training Bureau, the Department prioritizes backgrounds for sworn over non-sworn positions, and dispatcher candidates can fall to the bottom of the pile. During this delay, the Department may lose candidates to other agencies. Options to increase the processing of background investigations include adding staff time or contracting with an outside firm. There are private background investigation firms that could conduct all or some of the Department's recruitment background investigations to alleviate the workload of investigators, expedite the process, and retain more applicants.

Opportunity to Increase Trainee Retention

A majority of employee separations occur during dispatchers' first year while still in training. Under the current staffing model, dispatchers are cross-trained to work all four positions in the Center: call taker, records desk, police desk, and fire desk. If a trainee does not pass one phase, they are released from training even if they successfully passed other phases. The reason the Center requires all dispatchers to be cross-trained is because it provides the most flexibility in scheduling. There may be, however, an opportunity to retain qualified individuals as call takers, in order to provide current dispatchers with some workload relief.

Current and former management of the Center identified the Police Desk phase of dispatcher training as the most difficult part of training, stating that

Figure 7. Dispatcher Training

Source: City of Berkeley Dispatcher Training Manual

people cannot handle the pace and stress associated with police calls. The training program for new hires is approximately nine months long with the Police Desk phase at the end (Figure 7). Our analysis of staff turnover revealed that only 45 percent of those hired as trainees in 2013-2017 successfully completed the training program to become permanent dispatchers. Department managers reported that this is an improvement over previous years. In the current training program, trainees are terminated if they are not able to pass all phases of the program. Twenty-eight percent of the trainees were unable to complete the training program and exited between seven and nine months from their start date, approximately during the Police Desk phase of training.

Call taking is the first phase of training that dispatchers receive. This duty currently accounts for two or three staff positions on each shift. By changing practices to retain dispatchers who are able to pass call taking training but are not able to pass all training phases as call takers, the Center may be able to reduce overtime in the short term. Those individuals may later be able to resume training to advance to a fully cross-trained dispatcher if they desire.

Staffing Shortages Impact Ability to Meet Ongoing Training Requirements

The understaffing of dispatcher positions and the resulting need for dispatchers to work lots of overtime means less time for training. According to the Police Department's Personnel and Training Bureau, the Center does not fully comply with California's Police Officer Standards and Training (POST) ongoing training requirements. In such a highly technical profession with changing technology, it is vital that those answering 911 calls are receiving appropriate and adequate ongoing training.

Table 3. Compliance with State Training Requirements

Reporting Years	Total Dispatchers*	In Compliance	Not in Compliance
2013/2014	30	16	14
2015/2016	30	21	9
2017/2018	31	26	5

*Includes dispatchers who have separated from the City

Source: Berkeley Police Department Personnel and Training Bureau

California's Commission of Police Officer Standards and Training (POST) established minimum training requirements for public safety dispatchers. Every dispatcher and supervisor is required to complete 24 hours of continuing professional training every two years to maintain, expand, and enhance knowledge and skills.

A lack of training means that dispatchers may not have the skills, knowledge, or abilities to handle calls, which could lead to serious consequences. In order to ensure that the Center is appropriately trained, the Department needs to increase recruitment efforts to attract quality candidates to fill vacant positions. In addition, adding call taker positions will allow the Center to reduce their reliance on overtime, relieving the burden placed on staff who are working excessive overtime and allow dispatchers more time to complete mandatory training.

Recommendations

In order to ensure well-rested and content dispatchers, and to reduce reliance on overtime, we recommend the Police Department through its recruitment actions:

2.1 Open all dispatcher positions to continuous recruitment.

2.2 Work with Communications Center staff to create a specific recruitment plan for dispatcher positions including recruitment events and marketing material. Use recruitment best practices to reach potential applicants and increase the number of applicants.

2.3 Identify and implement feasible options to improve turnaround time on background checks for dispatcher positions. This can include outsourcing background investigations or working with Human Resources to ensure that the Department is able to complete all background investigations in a timely manner.

2.4 Design a way to retain staff that are unable to pass the Police Desk training, for example, keep staff as Public Safety Dispatcher I and have them work as a call taker or create a new job classification for a call taking position.

2.5 Evaluate the results from dispatcher recruitment routinely (e.g., annually or at the end of a recruitment cycle) to determine areas for improvement. Update recruitment plans.

In order to ensure adequate staffing and well-trained dispatchers, we recommend the Police Department:

2.6 Implement an automated scheduling software that has built-in decision-making capabilities to automatically fill shifts based on specified qualifications and staff availability.

2.7 Decrease the concentration of overtime among dispatchers.

2.8 Develop and implement a Communications Center training plan to ensure compliance with POST training requirements. Evaluate training processes and update training plans routinely.

Working conditions adversely affect dispatcher morale.

All the dispatchers who responded to our survey stated that morale in the Center was low. According to staff, the major cause of the low morale is the understaffing of dispatch positions and subsequent excessive overtime needed to achieve minimum staffing. As the Center has continued to rely on overtime, staff have little to no time in their work days to complete ongoing training, build a healthy workplace culture, and access stress management resources. They also have less time off work to take care of their physical and mental health. Management reported that they have taken steps to address the low morale and provide resources to support dispatchers. However, there is more that needs to be done to ensure dispatchers have access to and participate in these resources.

100% of survey respondents agreed or strongly agreed that morale within the Communications Center is low.

Communication Improvements Can Help Morale

Communication is a key tool to a healthy work environment. The majority of dispatchers feel that they are not given opportunities to voice their concerns, ideas, and opinions. This has caused dispatchers to feel disconnected from supervisors and management. Shift work creates a challenge when it comes to communication because there is no time in the day when staff are all together. Additionally, the type of work does not allow the entire unit to be off work and communicate as a whole. In our interviews, supervisors said that there is a lack of communication because they work different shifts and this makes it hard to be on the same page. Supervisors recognized that this challenge likely causes communication issues up and down their chain of command.

73.33% of survey respondents disagreed or strongly disagreed that they are given opportunities to voice concerns, opinions, and ideas.

Management has recognized the need for greater transparency about management decisions and appear to be committed to creating better communication practices in order to achieve that. There are opportunities to increase transparency by holding regular meetings with supervisors and management where information is shared and communication plans are made. This would help ensure that supervisors are communicating consistent information down to dispatchers and that supervisors have time to bring ideas, concerns, and issues to management. Center staff also expressed that there are communication barriers between dispatchers and sworn police officers. Staff reported feeling largely ignored and forgotten by the Department. The Center and Police Department previously had a committee that met routinely to

Supervisors are directly responsible for training and conveying information to dispatchers. It is also the job of the supervisor to resolve issues and refer to management as necessary.

discuss issues between patrol staff and dispatchers and keep communication open. The committee has since stopped meeting. A meeting between patrol staff and the Center, if properly managed, could help dispatchers communicate with the Department, build rapport, and solve recurring issues.

Center staff reported having a good working relationship with the Fire Department. They feel that Fire is very mindful about how their policies affect dispatchers and will initiate discussions with supervisors to address changes and issues, and to solicit feedback. However, there is room to improve communication with Fire by including all Center supervisors in those routine discussions to ensure that all significant issues are discussed. Currently, one of the supervising dispatchers serves as the liaison to Fire and is responsible for this communication. While it is important to have a point person, the Center may benefit from involving all supervisors and management in more routine meetings with Fire.

Unaddressed Work-Related Stress Increases Risk to Department

There is no such thing as a good day in the Center. A bad day for most people is every day for a dispatcher. Dispatchers do not just hear when crimes or tragedies occur, they are on the phone with someone who was involved or witnessed what happened. According to the National Emergency Number Association, approximately 16.3 percent of dispatchers may be at risk of Secondary Traumatic Stress Disorder.[4] Experts identify risks associated with unaddressed 911 stress, including serious health issues, lower employee retention, impaired work performance, and declining morale in the workplace. All of these impacts have the potential to threaten the health of dispatchers and the ability of the Center to fulfill its mission to provide optimal emergency response to the public.

Experts have found that workplace satisfaction reduces the cost of employee turnover and sick leave while increasing performance and productivity. Low morale has been associated with the opposite. With mounting evidence that work-related stress is having more of an impact on 911 dispatchers, industry experts have established standards for a comprehensive stress management program.

The National Emergency Number Association provides standards for creating a comprehensive stress management program, including:

- Stress management training for all staff
- On-site educational materials and resources about stress and related risks
- Information on the role of nutrition, exercise, and sleep in preventing stress disorders
- Written procedures for ensuring participation in post-trauma response, debriefing, and peer support
- A PSAP peer support program
- Personal health incentives program to promote employee investment in lifestyle changes and practices shown to prevent mental and physical disease

[4] Secondary Traumatic Stress Disorder is the specific stress experienced by an individual who has experienced a traumatic event involving a threat to the physical integrity of another person; the stress resulting from helping or wanting to help a traumatized person.

Dispatchers Are Tired of Dirty Workplace and Broken Equipment

Our survey and interviews revealed that poor equipment maintenance and workplace cleanliness are also contributing to employee dissatisfaction in the Center. There is currently no planned continuous maintenance on Center equipment. In addition to contributing to employee satisfaction, having working equipment is vital to the success of the City's emergency response. Implementing a maintenance plan will allow management to plan routine upgrades and replacement of equipment. Supervisors also commented on the lack of cleanliness in the Center. Overcrowded and cramped working quarters, as well as staff's frequent inability to leave their desks for lunch breaks, are likely contributors to the unclean space. The crowded conditions are likely to worsen as the Center expands to take on additional dispatchers. The Department may need to invest in additional cleaning services to address all sanitation issues.

Dispatchers Believe They Need Better Access to Stress and Wellness Resources

The Police Department has policies and practices that address workplace stress, promote wellness, and show appreciation for employees. There are some resources that dispatchers have access to, for example, recognition during National Public Safety Telecommunicators Week and the City Employee Assistance Program. However, there are other resources that dispatchers report that they have a hard time accessing: post-trauma response, peer support, incident debriefing, and use of the Department gym. Center staff reported that dispatchers do not have time to access many of these resources due to understaffing. Management reported that they have introduced new wellness resources including a healthy-meal delivery service, access to a mobile meditation application, and a physical meditation space. Management recognizes that they will need to continue to work towards improving these services and access to these services.

Center staff also stated that dispatchers do not receive adequate ongoing training. The Center should provide ongoing training on the structured call-taking process, including the management of suicidal callers and calls involving persons with mental illness, to ensure that dispatchers have the skills and knowledge to handle the calls and manage their own stress. In

86.67% of survey respondents disagreed or strongly disagreed that they receive the resources needed to effectively manage the stress of being a dispatcher.

60% of survey respondents disagreed or strongly disagreed that they receive adequate ongoing training to understand their evolving responsibilities and do their job well.

addition to their current stress management practices, the Police Department could benefit from adding practices to ensure that dispatchers have access to the resources they need to continue to do their job and remain healthy. Without addressing staffing and overtime issues, dispatchers will continue to not have time to access essential stress management resources. By creating a comprehensive stress management program specifically for dispatchers, the Center can make time for dispatchers to access vital stress management resources that are relevant to staff needs.

Management has voiced their commitment to increasing transparency and providing additional support to improve the environment. While the initial implementation of programs to improve morale will have financial costs, these can be offset by cost reductions related to sick time, resignations, and workers compensation claims. The City's investment in its people is critical to ensuring that the Center is prepared to respond to calls for service and effectively communicate information to public safety personnel.

Recommendations

In order to improve morale and communication, we recommend Communications Center management:

3.1 Create a comprehensive stress management program specifically for the Communications Center that includes the following:

- Stress management training for all staff, 8 hours minimum during career
- Access to on-site educational resources to help with stress and related risks, e.g., directory of local therapists specializing in treatment of stress and traumatic stress disorders and City programs that provide information on how and where to access help
- Procedures assuring participation of staff in critical incidence stress management activities (e.g., debriefing sessions when involved in traumatic call events)
- A Peer Support Program
- Comprehensive, ongoing training on structured call-taking processes

3.2 Develop and implement plans to address workplace cleanliness and equipment maintenance and replacement.

3.3 Conduct regular supervisor level meetings to share information about operations and staffing. Use these meetings to improve understanding of the supervisor role, identify problems, discuss changes that may affect operations, and establish communications plans for distributing information to all staff.

3.4 Routinely have Police and Fire staff meet with all Center Supervisors to solicit feedback on Center operations and to address any issues. Use these meetings to improve understanding of the dispatcher role and current policies of public safety, identify problems that should be evaluated for further discussion, and discuss known and expected changes that may affect the Communications Center.

Management Response Summary

City Management agreed to our findings, conclusions, and recommendations. In our meetings with Police Department management, they described their current and planned actions to address our audit recommendations. We found those verbal responses reasonable. For example, to address recommendations 1.2 and 2.4, Police Department management said they plan to request a new Call Taker position. This will help them hire staff who are able to handle call intake but may not be suited to handle police desk responsibilities. This will help reduce reliance on overtime.

The Police Department provided us with written summary information describing the conditions that led to our audit recommendations and identified some of their milestone dates. Some responses did not include complete, written corrective action plans or expected implementation dates as requested. Therefore, we will be working with Police Department management to obtain that information so that we can monitor their progress with implementing our audit recommendations. Please see Appendix III for the Police Department's written response to our audit recommendations.

Appendix I—Methodology and Statement of Compliance

Methodology

We audited the Communications Center's (Center) recruitment, staffing, overtime, retention, and training program for calendar years 2013 through 2017. We performed a risk assessment of the Center's practices and procedures to identify potential internal control weakness, including fraud risks, within the context of our audit objectives. To gain an understanding of the Center's operations and threats to performance and to achieve our audit objectives, we:

- Reviewed the Center's current minimum staffing requirements.
- Sat along during three dispatching shifts to observe operations.
- Interviewed the Captain of the Support Services Division, the Communications Center Manager, Dispatcher Supervisors, and Public Safety Dispatchers to gain an understanding of operations, staffing, and workload.
- Reviewed professional literature to identify common threats to the capacity of public safety dispatching agencies and best practices for staffing, recruitment, and stress management.
- Performed a regression analysis on estimated population growth and call volume.
- Analyzed call data by hour, including time to answer and duration on a call to understand call volume and call types for calendar years 2011-2017.
- Obtained and presented 2018 summary call data at the request of the Police Department to help demonstrate their hypothesis about the change in call volume post 2016.
- Ran a staffing analysis to determine the number of call takers needed to handle the current 911 call volume and compared those numbers to the current staffing.
- Analyzed the Center's use of overtime to meet minimum staffing requirements for calendar years 2013-2017.
- Calculated historic turnover and vacancy rates of dispatcher classifications for calendar years 2013-2018. This is one instance in which we were able to obtain 2018 data for analysis.
- Reviewed budget documents, written procedures, and common forms and reports used by the Police Department.
- Reviewed State and Department of Justice audits.
- Observed dispatcher candidate interviews and analyzed recruitment data to understand the recruitment and hiring process, including a number of applicants passing through each step of the recruitment process and the specific dates for various steps of the process for dispatchers hired.

- Interviewed Communications Training Officers to understand the training program and typical training timeframe for new dispatchers.
- Performed an anonymous survey of dispatchers to gauge morale and satisfaction with different aspects of their work environment.

We recognize that coordinated emergency response operations are complex, involving multiple City departments. The scope of this audit was narrow and looked only at the Communications Center role in answering 911 and non-emergency calls. We did not assess dispatching or emergency service response times, which are distinctly different from call answer times. When looking at answer times, we did not assess non-emergency calls as the California state standards apply to only 911 calls.

Explanation of Staffing Analysis

We used the National Emergency Number Association's PSAP Staffing Guidelines to analyze the Center's staffing level based on call volume. This method of determining how many persons should staff a PSAP looks at primary workload, which is considered to be 911 calls received. We used standard queuing theory to determine how many call takers should be available to process the calls. This queuing theory was created to account for call volumes where if the caller was blocked, then at least 85 percent of the time the caller immediately redials. This is the situation of a person seeking emergency help. The limitation of this analysis is that it does not take into account any factors that influence call handling and that are not in the queuing formula.

Data Reliability

We assessed the reliability of ECaTs data by reviewing them for reasonableness and completeness, interviewing data and data-system owners and managers, gaining an understanding of data access controls, and reviewing data system documentation. We determined that the data were sufficiently reliable for the purposes of this report. We did not include 2018 data in our reliability assessment. We included that data in Figure 2 at the request of the Police Department, but did not use it to support our audit findings, conclusions, or recommendations. We make that clarification under Figure 2.

We relied on US Census population and ABAG population predictions to support our finding regarding predicted increases to call volume. We considered both organizations to be known, reliable sources and, therefore, their data to be sufficiently reliable for our purposes. We recognized both the US Census and ABAG offer slightly differing predictive data. However, the purpose of our predictions is to give readers a general understanding of future impact with an understanding that actual population growth will be different. We do not expect this difference to be significant to the extent it impacts the purpose of our predications, which is to support that the Center will need to expand along with population growth.

We assessed the reliability of payroll data by reviewing it for completeness, appropriateness, and consistency. We determined it is sufficient and reliable for the purposes of our work. The data captures the date of the hours, the staff member, position title, and hour code. We noted a limitation in the data in that the position title associated with individuals is their current title, which does not necessarily reflect the title at the time the hours were earned. This limitation does not significantly impact our use of the data because all four of the current supervisors were in their positions before 2013. In addition, we combined the Public Safety Dispatcher I and Public Safety Dispatcher II totals so our calculations are not impacted by when dispatchers were promoted from Public Safety Dispatcher I to II.

Statement of Compliance

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II— Dispatcher Morale Survey: Design, Efforts, and Results

We designed a survey to gain an understanding of dispatchers' satisfaction on a number of issues, with a particular emphasis on determining the overall climate of the Communications Center (Center), and assessing which factors are contributing to dispatcher satisfaction and which are detracting from their satisfaction.

To collect the information contained in this report, we invited 23 dispatchers to participate through the SurveyMonkey online survey platform. Over a two-week period, a total of 15 employees completed the survey, which represents a participation rate of 65 percent. Because our survey focus was on dispatchers perceptions, we excluded supervisors and management. We interviewed the four supervisors, the Center Manager, and the Captain of Support Services separately to gain an understanding of their perceptions and concerns.

We created our survey in SurveyMonkey, an online platform for creating, distributing, and analyzing surveys. We designed our survey to keep responses anonymous.

Survey Limitations

When we started designing this survey, we understood that there are inherent limitations in using survey data to gauge the morale of an organization. However, even with those limitations, providing an anonymous survey to employees was the most effective and efficient way to hear from a large number of employees in shift work who could responded freely. During our audit, we kept the following in mind:

- Many factors can impact an employee's frame of mind when completing the survey, which could influence their responses either positively or negatively.
- People who are dissatisfied are more apt to reply to the survey.
- Ongoing changes within the Center would impact perceptions day to day.
- Unless the survey achieves 100 percent response rate, some dispatchers' opinions may not be reflected in the quantitative analysis of responses.
- Despite our extensive preparation, dispatcher could have interpreted questions differently than we intended.

Because the overall goal was to set a baseline of the morale at a point in time, we determined that the above factors would not create a significant risk as to the accuracy of our audit findings, conclusions, and recommendations. The 65 percent response rate was a strong indicator that the results were reliable, and the responses agreed with comments made during interviews, including discussions with supervisors and management.

Table 1: Overall Survey Results of Dispatcher Morale

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
There are enough dispatchers on duty during each shift to handle call volume.	6.67%	6.67%	13.33%	40.00%	33.33%
I am not able to take my required breaks due to workload and staffing shortages.	26.67%	33.33%	13.33%	20.00%	6.67%
I am required to work too much overtime.	73.33%	13.33%	6.67%	0.00%	6.67%
I received adequate new dispatcher training to understand my responsibilities and to do my job well.	13.33%	40.00%	26.67%	13.33%	6.67%
I receive adequate ongoing training to understand my evolving responsibilities and do my job well.	0.00%	13.33%	26.67%	13.33%	46.67%
I would like to receive additional training to advance my knowledge and skills.	66.67%	20.00%	0.00%	0.00%	13.33%
I am compensated fairly for my work.	13.33%	33.33%	26.67%	20.00%	6.67%
I am given opportunities to voice my concerns, opinions, and ideas.	0.00%	6.67%	20.00%	13.33%	60.00%
I receive the resources I need to effectively manage the stress of being a dispatcher.	0.00%	0.00%	13.33%	26.67%	60.00%
The Communications Center operations written policies and procedures provide appropriate direction and guidance.	0.00%	6.67%	13.33%	13.33%	66.67%
The Communications Center written policies and procedures are applied to all personnel equally.	0.00%	0.00%	6.67%	26.67%	66.67%
I feel supported by Supervising PSDs and can count on them to fill in when workload increases due to training, staff absences, or call increases.	0.00%	6.67%	20.00%	13.33%	60.00%

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
I feel supported by Supervising PSDs and can count on them to fill in when workload increases due to training, staff absences, or call increases.	0.00%	6.67%	20.00%	13.33%	60.00%
Supervisors contribute to a positive work culture.	0.00%	6.67%	20.00%	20.00%	53.33%
I have confidence in management's ability to perform their duties and run the Communications Center.	0.00%	0.00%	6.67%	26.67%	66.67%
Management contributes to a positive work culture.	0.00%	0.00%	13.33%	20.00%	66.67%
Overall, the morale within the Communications Center is low.	93.33%	6.67%	0.00%	0.00%	0.00%

Appendix III—Recommendations and Management Response

1.1

Conduct an annual staffing analysis of required minimum staffing levels and budgeted dispatchers to ensure budget staffing requests and scheduling efforts meet demand and limit the use of overtime where possible. Use the staffing analysis to communicate to Council and the public during the annual appropriations process:

- Service level demands;
- The full-burdened cost of budgeting for additional staff;
- Whether there is sufficient funding available to budget for the additional staff or a shortfall (quantified in dollars); and
- Additional staffing requests, if needed.

Management Response: We will research other available analysis options to determine if we are using best practices by June 2019. A monthly and yearly analysis of staffing is helpful when determining best use of the current employees in terms of scheduling. We recognize that our current use of a manual scheduling process is not optimal and that we would be better served by an automated scheduling program. The Department has already begun to consider several automated scheduling programs to replace our current manual method.

1.2

Use the staffing analysis performed in response to recommendation 1.1 to, determine future resource needs of the Communications Center, including staffing, equipment, and physical space. Take into account planned changes to services and factors that may influence call volume.

Management Response: Decide on Communications Center expansion versus relocation by December, 2019. We will need to increase our staffing levels to meet NENA staffing recommendations. Future enhancements to the 911 system such as text to 911 and Next Generation 911 will increase our call times and further hinder our ability to meet NENA standards on call answer times. The Communications Center will need to either expand the space it currently occupies in the Public Safety Building, or relocate to a separate building in order to increase the number of consoles needed to accommodate additional required staff.

The Department has already begun discussion on the Communications Center's spatial needs. In 2018, we implemented a new Computer Aided Dispatch system in order to enable us to receive 911 calls via the upcoming Next Generation technology. The Call Taker proposal will be submitted to Human Resources and the Personnel Board.

2.1 Open all dispatcher positions to continuous recruitment.

Management Response: We hope to obtain approval from Human Resources by September, 2019. Open and continuous recruitment of all dispatcher positions has long been the desire of Management. There are several factors that make hiring dispatchers challenging. The hiring process itself is lengthy due to required testing of applicants, background investigation and physical exam. Because of our limited resources in terms of floor trainers, we cannot hire more than three dispatchers at one time or the trainer's become overburdened. The Public Safety Dispatcher training program generally takes 9-10 months to complete. Often, it is not until the latter months of training that deficiencies that will not allow a trainee to complete the program are discovered. Allowing for open and continuous recruitment would give us the ability to create a pipeline of applicants to "plug in" once a trainee either completes or is released from the training program.

Human Resources has already agreed to open and continuous hiring for lateral Public Safety Dispatcher II classification and Management has requested the same for both the non-lateral and Public Safety Dispatcher I classifications.

2.2 Work with Communications Center staff to create a specific recruitment plan for dispatcher positions including recruitment events and marketing material. Use recruitment best practices to reach potential applicants and increase the number of applicants.

Management Response: In progress since 2018, the marketing firm is expected to begin work by May of 2019. Recruitment of a compassionate, competent, talented and diverse workforce is a priority for the entire department, and has been a challenge over the last several years due to a variety of reasons. Creation of a more specific plan for dispatcher positions can help reach potential applicants and increase the total number of applicants. Management recognizes the importance of both hiring and retaining applicants through the training program as being a key element in overcoming the staffing shortage.

The Department created a Recruitment and Retention Team in 2018 in order to address the departmental recruitment needs. This was the first step in setting out a concrete plan. This team has developed goals and priorities, with very specific tasks. The goals include better tracking of recruitment efforts, creation of recruitment videos, attending recruitment events, hiring a marketing firm to assist with web design, employment brochures and literature, social media outreach and other advertising avenues.

2.3 Identify and implement feasible options to improve turnaround time on background checks for dispatcher positions. This can include outsourcing background investigations or working with Human Resources to ensure that the Department is able to complete all background investigations in a timely manner.

Management Response: In progress since 2018. In April of 2019 the Department contracted with a background investigation firm that can complete up to three backgrounds at a time with a one month turn around. The Department also hired a retired BPD officer to complete backgrounds on a part time basis. This retiree has extensive experience conducting background investigations for the Department. The Department is experimenting with now assigning multiple categories of backgrounds out at one time, instead of exhausting higher categories before moving on.

The long background check process has been an impediment to successful recruitment and hiring for some time. The above described Recruitment and Retention Team has also identified improving the background investigation process as a critical task. Plans were considered to dedicate current employees as background investigators, hire independent background investigation companies or do some combination of the two. The proposed plan to affect change in this area is to hire an independent but highly experienced background investigation firm that can rapidly complete quality background investigations, continue to use Department employees to complete background investigations, and also continually evaluate and adapt practices.

2.4 Design a way to retain staff that are unable to pass the Police Desk training, for example, keep staff as Public Safety Dispatcher I and have them work as a call taker or create a new job classification for a call taking position.

Management Response: We want to have our final proposal for the call taker and revisions to the PSD classifications by June and implement by fall 2019. Historically, many trainees have gained proficiency in call taking, demonstrated excellent customer service skills and professionalism, but could not complete the training program due to their inability to pass Police Desk training.

Hiring more full time call takers would improve staffing levels, greatly relieve overtime required by dispatchers, significantly reduce overtime costs and allow us to meet NENA minimum staffing requirements. Once the Call Taker classification is approved, it would help Management to potentially retain valuable employees by offering them a position in a different classification they are already qualified to work.

2.5 Evaluate the results from dispatcher recruitment routinely (e.g., annually or at the end of a recruitment cycle) to determine areas for improvement. Update recruitment plans.

Management Response: Evaluation and more robust data collection on applications began in late 2018. By the summer of 2019 the Department should begin to have an adequate data set to review. Recruitment has changed over the last several years, and competition for qualified candidates is great among agencies. Continual evaluation of Departmental efforts will be critical to staying abreast of best practices and successfully hiring quality candidates. The Department plans to improve tracking and review of the number of applicants, how successful applicants are through the process, and where they most often are "lost" in the process. The Department also plans to review these results in line with testing processes in order to adjust as necessary.

2.6 Implement an automated scheduling software that has built-in decision-making capabilities to automatically fill shifts based on specified qualifications and staff availability.

Management Response: As of April 2019, there have been presentations by two separate software vendors. There is a plan to research a third vendor's software (Tyler Technology) at an upcoming annual conference. DoIT suggests implementing a scheduling software in line with other technology upgrades surrounding payroll (ERMA). The Department anticipates that review of available products and decisions as to whether to move to Implementation could occur in late Fall of 2019.

Implementation of a scheduling software could help relieve the current personnel engaged in scheduling, create a feeling of greater fairness and control which would be a morale boost. This would also allow for greater review over how much overtime individuals are working in order to ensure their wellness and that they are taking enough time off. The Department is interested in balancing the above opportunities with the challenges and expense of implementing a new software solution.

The Department has been communicating with and working alongside DoIT, union representatives and outside vendors to explore various scheduling software options. Efforts are also underway to identify best practices in other jurisdictions.

2.7 Decrease the concentration of overtime among dispatchers.

Management Response: Change in overtime distribution procedures implemented in 2018. For the past five years, the Communications Center's overtime has averaged roughly 300 hours per week in order to meet our minimum staffing requirements. Approximately 100 additional hours would be necessary to meet NENA minimum staffing levels.

Although we cannot reduce overtime levels until we hire more dispatchers and they successfully complete either the PSDII or call taking training program, in 2018 the scheduling supervisor was directed by the Communications Manager to re-order the way overtime is assigned in order to more equitably distribute overtime hours between all dispatchers, instead of the majority of hours falling to a portion of staff.

2.8 Develop and implement a Communications Center training plan to ensure compliance with POST training requirements. Evaluate training processes and update training plans routinely.

Management Response: In progress since January of 2019. The goal is that by end of 2019, all Communications Center Personnel will be on track with POST requirements (nearly half completed with all training hours at the halfway point of the training cycle).

Ongoing training of employees is a priority for the Department. The Department sees the value and benefit of these training opportunities for the employee's development and wellness, the Department's mission, and the quality of service the community ultimately receives.

In January of 2019 the Communications Center leadership team implemented a plan to track POST training requirements along with yearly Performance Appraisal Reviews. At each employee's PAR anniversary date, their supervisor will review the number of hours of training received to date. Additionally, Personnel and Training will conduct an annual review of all Communications Center personnel to track POST training time. Finally, one of the Public Safety Dispatch Supervisors was assigned the job to work as a liaison with Personnel and Training for scheduling POST classes as well as directly with dispatchers to locate and sign dispatchers up for course of interest.

3.1 Create a comprehensive stress management program specifically for the Communications Center that includes the following:

- Stress management training for all staff, 8 hours minimum during career
- Access to on-site educational resources to help with stress and related risks, e.g., directory of local therapists specializing in treatment of stress and traumatic stress disorders and city programs that provide information on how and where to access help
- Procedures assuring participation of staff in critical incidence stress management activities (e.g., debriefing sessions when involved in traumatic call events)
- A Peer Support Program
- Comprehensive, ongoing training on structured call-taking processes

Management Response: All Communications Center Staff to receive 8 hours training by December, 2019. The Department recognizes the negative effects of stress on employees and utilizes Peer Support Counselors, a Crisis Intervention Team as well as the Employee Assistance Program and most recently the Headspace website which promotes mindfulness and meditation.

Work with Personnel and Training to Expand current stress management toolset to include a mandatory 8 hour stress management course for all Communications Center staff.

3.2 Develop and implement plans to address workplace cleanliness and equipment and furniture maintenance and replacement.

Management Response: Beginning fall 2018, the Communications Center receives a deep cleaning on a quarterly basis. Standalone Hepa filters will be purchased by July 2019. Management recognizes the need for improvement in the cleanliness of the Communications Center.

3.3 Conduct regular supervisor level meetings to share information about operations and staffing. Use these meeting to improve understanding of the supervisor role, identify problems, discuss changes that may affect operations, and establish communications plans for distributing information to all staff.

Management Response: Fully operational by October 2019. Management recognizes the need for improved communication across all ranks. The Communications manager is in the process of creating a web based information portal which includes sections for polices, Supervisory blog, Communications Center blog, resources, health and wellness, new dispatcher training, and links to web based training opportunities for tenured staff.

3.4 Routinely have Police and Fire staff meet with all Center Supervisors to solicit feedback on Center operations and to address any issues. Use these meetings to improve understanding of the dispatcher role and current policies of public safety, identify problems that should be evaluated for further discussion, and discuss known and expected changes that may affect the Communications Center.

Management Response: May 2019. The Department recognizes the need and benefit of such meetings. Logistically this has been challenging due to the various shifts and workdays of personnel from other divisions. Invite Police and Fire staff to attend the weekly Supervisor meeting whenever problems are identified or whenever known or anticipated changes may affect the Communications Center.

Mission Statement

Promoting transparency and accountability in Berkeley government.

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Office of the City Auditor

CONSENT CALENDAR
May 14, 2019

To: Honorable Mayor and Members of the City Council

From: Jenny Wong, City Auditor

Subject: 911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale

RECOMMENDATION

We recommend City Council request that the City Manager report back by November 19, 2019, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Police Department.

FISCAL IMPACTS OF RECOMMENDATION

The Communications Center risks losing State funding if it is not able to reach call-answering targets. Investing in adequate staffing and additional resources will allow the Communications Center to answer 911 calls within those required timeframes. The cost of much-needed resources will depend on the outcome of the staffing analysis we recommend that the Police Department complete to determine appropriate staffing levels now and in the future.

Life should not be measured in dollars. Without sufficient staff, it takes longer for call takers to answer 911 calls. The faster that dispatchers can get a police officer, firefighter, or paramedic to the scene, the better the chances of a good outcome.

CURRENT SITUATION AND ITS EFFECTS

It is taking longer than previous years for call takers to answer 911 calls. The Communications Center's staffing levels are not sufficient to meet current call demands and, with predicted population growth, the Center will soon need even more resources to maintain its emergency response service levels.

Due to consistent understaffing, the Communications Center relies heavily on overtime to meet minimum staffing requirements, spending nearly $1 million per year on overtime. The Police Department works to fill vacant positions, but the hiring and training processes are lengthy and extensive. There are opportunities to improve those processes to reduce both the number of continuous vacancies and the significant reliance on overtime. Understaffing also leads to low morale in the Communications Center. Dispatchers say that they do not feel supported and that they do not have the time needed to take care of their physical and mental health. Police management has taken some steps to address the low morale, but there is more to be done to address dispatcher needs.

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We recommend that the Police Department conduct a staffing analysis to determine appropriate staffing levels, create a recruitment and continuous training plan for dispatchers, establish a call-taker classification; and implement automated scheduling software to better inform future budgeting decisions, decrease the reliance on overtime, and relieve the burden placed on overworked staff.

We also recommend that the Police Department implement programs to increase morale and staff communication. These include establishing routine meetings with dispatch supervisors, sworn police, and fire personnel; and a comprehensive stress management program.

BACKGROUND

The Police Department Communications Center serves as Berkeley's 911 public-safety answering point, receiving all emergency and non-emergency police, fire, and medical calls and dispatching public-safety personnel to respond as appropriate. The 2018 City budget authorized 33 non-sworn full-time equivalent positions for the Center, including 28 public safety dispatchers, four supervisors, and one manager. The City has not added to the Communications Center dispatcher staffing levels since 2004.

ENVIRONMENTAL SUSTAINABILITY

Our office manages and stores audit workpapers and other documents electronically to significantly reduce our use of paper and ink. Our audit recommendation for the Communications Center to use modern staffing software could also reduce the use of paper and ink.

RATIONALE FOR RECOMMENDATION

The seconds it takes to answer and prepare a 911 call for dispatch can mean the difference between life and death. Implementing our recommendations will enable dispatchers to answer calls within required timeframes by ensuring the Communications Center is appropriately staffed and supported.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor's Office, 510-981-6750

Attachments:

1: Audit Report: 911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale, issued April 25, 2019

Dear friends and colleagues,

I am writing to provide additional, detailed information about the Upper Hearst development project, an endeavor that will help us address housing needs identified by our faculty, for our faculty, and expand needed academic and study spaces for a growing Goldman School of Public Policy. In the context of important campus objectives and the greater good of our community, the Upper Hearst project is vital to supporting our ability to recruit and retain early career faculty, continuing our progress toward the construction of new academic facilities in the absence of state capital funding, and strengthening our ability to utilize public-private partnerships (P3s) for multiple student housing projects — one of the campus' most important priorities given the region-wide housing crisis.

Last Monday, I met with College of Engineering (CoE) faculty and staff to address concerns and questions about the project. It became apparent that there remains a significant degree of misunderstanding about, among other things, the project's purpose, financial model and impact on parking.

The accompanying document and Q&A (below) address those misunderstandings and misconceptions so that we can have constructive engagement and discussion of the issues before, during and after the special Academic Senate meeting scheduled for the afternoon of May 1. As a preface, however, I want to address a few of the most salient issues:

Transparency and Communications

It was clear to me many of those at the CoE meeting were unaware of the basic facts about this project. There have been substantial attempts to foster campus engagement, including a March 2018 campus-wide message that described the project, a subsequent open house, extensive media coverage and three separate review meetings of our Capital Projects Committee. Beginning in 2016, project information was consistently provided to the deans of the College of Engineering and to the former vice provost for academic planning, who sat on the Capital Projects Committee, as does her successor. I have heard and take seriously the concerns that the information provided was not widely disseminated and that these efforts were inadequate. The current vice provost for academic planning will be reviving dormant academic planning processes and suggesting new opportunities for engagement. Along with every member of my leadership team, I am open to new ideas to ensure that faculty and staff have ample opportunity to provide input in the planning of new academic facilities.

The vice chancellor for finance is also actively responding to requests about the project's financial model. This morning, the vice chancellor for finance held an in-depth workshop to examine and analyze the agreement's contents and provisions. The review was led by representatives from the developer, with input from professors Nancy E. Wallace and Richard H. Stanton from Berkeley Haas, who are experts in real estate. Also attending was faculty representative Sanjay Govindjee, from the College of Engineering; Jennifer Johnson-Hanks, chair of the Academic Senate's Committee on Academic Planning and Resource Allocation; as

well as Academic Senate Division Vice Chair Oliver O'Reilly. All attendees are free to share their impressions and findings.

In a second meeting earlier today, the College of Engineering Ad-Hoc Committee for Review of GSPP Development Project was also provided an opportunity to review the financial details. Faculty member invitees were Dorit Hochbaum, Peter Hosemann, Sanjay Kumar, Kris Pister, Nicholas Sitar, Ting Xu, Eli Yablonovitch, Panos Papadopoulos and Tarek Zohdi.

Parking

While the project will have short- and long-term effects on available parking at the Upper Hearst site, the campus will take an unprecedented series of steps to support staff and faculty who commute to campus. To compensate for the loss of approximately 345 spots during construction and the net loss of approximately 200 spots once the project is completed, we will make 50 new C and F parking spots available in the Lower Hearst lot, provide 150 to 200 spaces for C/F parking at the nearby Maxwell Family Field garage, move stack parking and add a shuttle to the Foothill parking lot in order to accommodate 75 to 145 additional cars there. To speed and ease the search for open spots, we will also install real-time occupancy sensors at the Foothill lot, just as we have done at the Clark Kerr Southwest and Northwest lots, where there are another 100 open spaces. In response to town hall comments, we will also assess options for improving pedestrian access to the Foothill lot.

(Please see the map in the briefing document, below)

Debate and discussion about Upper Hearst parking issues HAS convinced me that a comprehensive plan for future parking on and around the campus must be a high priority. Space and sites for academic and residential use that are in close proximity to the center of campus are precious and in short supply. We must prioritize those areas for academic and residential space as part of our holistic planning for the future. For this reason, I have asked our Institute for Transportation Studies to provide us with consultation about parking infrastructure and mobility as we begin a comprehensive plan for the future.

The Financial Model

These are the essential financial terms of this public-private partnership (P3):

The Upper Hearst development will be owned by a non-profit partner, Collegiate Housing Foundation.
At the end of the ground lease period, 31 years, ownership of the building and all improvements to the property will transfer to the University of California without additional cost.
Any and all financial risk associated with the project will be borne by the non-profit developer

There is no “cross-subsidy” between the residential and academic elements of the project, though the academic building is able to access tax-exempt bonds because it is part of the residential and parking building project.
In compliance with the terms of tax-exempt bonds that will be issued, the residential rental units will be offered only to campus affiliates---faculty, graduate students, post-docs, and staff---with priority going to junior faculty.

While rents will cover operating costs and debt service associated with the residential portion of the project, GSPP revenues will be the sole source of funding for the academic facility debt service. Funded by philanthropy and program revenues, GSPP already has access to at least $10 million for its initial equity contribution that will reduce the bond amount and future debt payments. After careful scrutiny we are very confident that GSPP will have sufficient programmatic and philanthropic revenues to, on its own, meet the annual operational expenses of the building.

I believe we all have a shared interest in the continued success of the public-private partnership (P3) model that served us well for the construction of David Blackwell Hall, our newest student residence, and that will be used to develop the Upper Hearst site. I am convinced that P3s are an important part of our overall strategy to satisfy campus capital needs because this model allows the campus to reserve the use of general revenue bonds for larger academic building construction projects, including those under consideration by the College of Engineering.

Timing and Next Steps

On May 15, we will proceed with plans to present the project to the Regents for approval, with the expectation that construction will begin by fall 2019. A delay in presenting the project for approval will not result in changes to the proposal, based upon the feedback I have received. There are answers to the questions being asked that should allay the concerns behind them. What we now must do is more successfully communicate those answers to our community. I hope and believe this letter and the detailed briefing document below represent an important step in that direction.

Sincerely,

Carol Christ
Chancellor

Campus Strategic Overview

The shortage of available and affordable housing for Berkeley's students and untenured ladder faculty is a matter of urgent concern for the university. It adversely impacts the overall student experience and challenges our ability to recruit and retain faculty, graduate students and post-docs. The campus convened a housing task force to clarify the issues and to determine housing goals, and its report was issued in January 2017.

To develop a plan to achieve these goals, two groups further analyzed the task force's report and recommendations:

1. The Housing Master Plan Advisory Group for Student Housing solicited and analyzed feedback on the report's recommendations and researched affordability options.
2. In 2019, a Faculty Housing Strategy Working Group issued a report in response to the pressures of the Bay Area housing market, with a particular focus on recruiting faculty and on retaining faculty struggling to purchase reasonable housing. The group concluded that the campus should invest in more rental housing for untenured ladder faculty to aid in the recruitment of new faculty. The report further recommended that the university increase to six the number of years of service needed to be eligible to live in university housing, so as not to compel young faculty to move while they're still earning tenure. An average of 50 new faculty are hired annually, so to provide rental housing for all of them, the university would need a steady stock of 260 to 390 units of faculty housing. Currently, it has approximately 26 units.

The January 2017 Housing Master Plan Task Force Report identified the Upper Hearst parking structure as a potential site for a housing project of approximately 75 to 100 apartments. The report was shared campus-wide and extensively covered in the media. In spring 2017, the campus publicly issued to developers a request for qualifications to work with the campus on a project on the Upper Hearst site to address three uses — for academic programs, housing and parking.

Overall Upper Hearst Project Goals

1. In response to the Bay Area housing crisis impacting our students, faculty and staff, increase the number of campus housing units overall.
2. Provide better access to housing for new faculty so they don't have to compete with the general market. Through the use of subsidies supported by philanthropy, provide rental apartments at reasonable rents to assist with recruitment and retention of junior faculty. A faculty housing subsidy pool will be created to support faculty in this project. The pool will be available to subsidize units in the project based on need, and the vice provost for faculty will assign new faculty to these units.
3. Provide academic space to support undergraduate and graduate teaching by Goldman School of Public Policy (GSPP).

Project Details

The project consists of two separate, but architecturally interrelated, buildings for GSPP: one residential and parking building and one academic building. The project was presented to the Regents' as a discussion item in March, and approval is expected at the May meeting. It is anticipated that construction will commence in September 2019 and take approximately 23 months. Occupancy of the academic building is expected in late spring 2021 and the residential portion in fall 2021.

The residential and parking building will have approximately 145,000 square feet of new residential space and add about 150 new rental units, offered in a mix of studios and one- and two-bedroom apartments. There will be a parking garage with approximately 170 spaces. The residential portion of this building will provide almost half of the recommended 260 to 390 units needed to house ladder faculty in close to campus. The rental apartments will be available on a priority basis, first to faculty (particularly marketed to early career faculty), and then to Berkeley staff, postdocs and/or graduate students, if not fully rented by faculty. Due to the nature of the tax-exempt bond financing, the units must be rented by UC-affiliates and not the general public.

The development will be owned by a nonprofit partner, Collegiate Housing Foundation (CHF), which was selected by the University Office of the President. The residential component will be managed by American Campus Communities (ACC), which was selected by the campus as the developer and property manager for CHF. Rental rates will be set by the campus and will cover both the cost of the development and the ongoing operations of the building. The owner, Collegiate Housing Foundation, will earn a nominal fee established by the UC Office of the President. The ACC will be paid a fee for design and construction management of the project. Separately, once the residential building is complete, ACC will be paid for its property management services from rental revenues. Ownership of the development reverts to the campus at the end of the loan term, which is expected to be between 30 and 40 years.

The campus is committed to providing rent subsidies for untenured faculty and is currently working to ensure philanthropic support for that commitment. Such a subsidy, to assist with recruitment and retention of junior faculty, would be provided based on household income. Members of the subsidy pool will be allowed to subsidize units in the project based on household need, and the vice provost for faculty will assign new faculty to those units.

The parking portion of this building will include approximately 170 parking spaces. (Currently, there are 318 marked parking stalls for cars at the Upper Hearst lot. However, the project financing has been designed to pay $30,000 as compensation to campus (after operations and debt service) for a total of 345 slots, in order to account for stacked parking, as well as space currently available for scooters and motorcycles. As for every project on campus, the number of disabled parking spaces will comply with the California Building Code.

The entirety of the parking area will be operated and maintained by the campus's Office of Parking and Transportation. All revenues from the parking will flow to Parking and Transportation and will not be used to support project debt or operations/maintenance for the residential portion of the building. The exact mix is not yet determined, but the parking will be available to the occupants of the residential units and C or F parking permit holders.

Parking and Transportation will install approximately 10 electric vehicle chargers. Based on overall cost, the campus is negotiating with the developer to install basic infrastructure to allow additional spaces to be upgraded in the future to electric vehicle charging stations.

No designated parking for GSPP is contemplated in the project.

The GSPP academic building will provide approximately 37,000 gross square feet of academic space.

The Goldman School of Public Policy (GSPP) is one of the country's foremost policy analysis graduate programs. Sustaining the school's ability to meet the needs and interests of its students and faculty requires an expansion of its space and facilities. Over the last decade, the school has developed new activities and courses of instruction that directly serve and contribute to the university's mission. New academic space will enable GSPP to grow and continue to thrive. In terms of general assignment classrooms, GSPP is working with the administration to find ways to make maximum use of available space in this new building to support the needs of campus, including appropriate general assignment classroom space, while ensuring that GSPP has the right facilities to support undergraduate and graduate students from across campus. The issue of general assignment classroom space at Berkeley more broadly is the remit of the Campus Committee on Classroom Policy and Management and the Space and Capital Improvements Committee, which together will coordinate to develop formal policies.

The Overarching Financial Models

Using a public-private partnership (P3) model that has been used successfully on other UC campuses, the campus will ground lease the underlying land for the development of the project to Collegiate Housing Foundation (CHF), the nonprofit entity that that will hold the tax-exempt bonds and own the improvements for the duration of the ground lease. The CHF will contract with the developer, American Campus Communities (ACC)), to construct the project. Terms of the ground lease (not to exceed 50 years) will be equal to the bond amortization period. Once the bonds are paid off, the ground lease will expire, and the buildings will revert to the university.

This model allows the campus to finance the project with third-party debt (i.e., not state-funded), transferring some of the risk while preserving campus financing capacity for other high priority projects. At the end of the ground lease term, the improvements will revert to the Regents at no cost, free and clear of liens or encumbrances. Risk transference includes construction risk, financing risk and occupancy risk. There is no subordination of UC's land interest or its

leasebacks. The project rents are the only assets out of which the borrower is legally obligated to use to repay the loan

Residential and Parking Building Financial Model

The CHF will contract with ACC to operate and maintain the housing. Debt service, operations and major maintenance reserves will be funded solely through project revenues. Any residual cash flow after these costs will come to the campus as ground rent to be used at the discretion of the campus.

In order to cover operating expenses and meet debt service coverage requirements, estimated rents will be at or around market rates for newer projects with modern amenities in Berkeley and are expected to range from $2,800 to $4,200 in current dollars.

The entirety of the parking area will be operated and maintained by Parking and Transportation. All revenues from the parking will flow to Parking and Transportation and not be used to support the project debt or operations/maintenance of the residential portion of the building. The exact mix is not yet determined, but the parking will be available to occupants of the residential units, and C or F parking permit holders.

The project financing has been designed to pay $30,000 to campus (after operations and debt service) for 345 slots, which exceeds the number of currently available marked stalls for cars.

GSPP Building Financial Model

The GSPP will provide at least $10 million in initial equity, funded by philanthropy and program revenues, in order to reduce the bond amount. The entire academic building will be leased back by the campus to be operated and maintained by GSPP, and the leaseback rent will be equal to the annual debt service amount associated with the academic portion of the project. There is no additional management fee or consideration provided to the developer or nonprofit ownership entity. The expense of building operations and debt service will be funded solely by GSPP programmatic and philanthropic revenues. Funded by philanthropy and program revenues, GSPP already has access to at least $10 million for its initial equity contribution that will reduce the bond amount and future debt payments. After careful scrutiny, we are very confident that GSPP will have sufficient programmatic and philanthropic revenues to, on its own, meet the annual operational expenses of the building.

Background: Project Engagement and Approval Process

In March 2018, a project information page for the Upper Hearst Development, including an overall description, scope and renderings, was posted on the Capital Strategies website.

News of the forthcoming Upper Hearst Development project was also shared in a campus-wide housing update sent March 15, 2018, by the vice chancellor for student affairs and the associate

vice chancellor for capital strategies. The update was sent by Cal message to the campus community, shared by Berkeley News and posted to the chancellor's website.

On Tuesday, March 20, 2018, Capital Strategies and the Goldman School hosted an open house where the campus and community were invited to learn about the proposed Upper Hearst Development project in detail, to view detailed renderings and to engage in meaningful dialogue with representatives from the campus, school and development team. Open house flyers were distributed and posted around the community by Goldman School staff and students. Flyers were also emailed to the building coordinators of adjacent university buildings to share with their departments, including coordinators at Cory, Soda, Davis, O'Brien and Sutardja Dai halls. The open house was also advertised by email through Capital Strategies' campus and community contact list for project updates.

Following the March 2018 public open house, on June 21, 2018, the City of Berkeley Design Review Committee discussed the project, as did the City of Berkeley Landmarks Preservation Commission on July 5, 2018.

The project has also been covered and mentioned by local and campus media:
Berkeleyside (May 11, 2018)
Berkeleyside (July 13, 2018)
Daily Californian (July 18, 2018)
Berkeleyside (February 21, 2019)
Daily Californian (February 21, 2019)
[There have been additional articles]

Over the years, Dean Shankar Sastry has been advised on the project, including at a strategy meeting in July 2016 between GSPP and CoE deans and their senior staff. Consultation with the current dean of CoE occurred in January 2018, when she was the then-vice provost for academic space planning. Dean Liu (when VP of academic space planning) was also a member of Capital Projects Committee (CPC), which approved this project after three review meetings held on July 26, 2016, on March 1, 2017, and on January 18, 2018.

The campus has long charged the joint administrative/faculty Space Assignment and Capital Improvements Committee (SACI) with advising the administration on individual proposals for major and minor capital improvement projects. In that role, SACI appoints Academic Effect Study subcommittees (also known as program subcommittees) that include faculty nominated by the Senate, as well as administrative staff, to examine and provide advice on such proposals at early stages in their development and throughout design. Unfortunately, this practice was not followed for this project nor for other recent projects. However, the current vice provosts for academic planning and capital strategies are committed to rectifying this lapse for all future major capital projects to ensure that academic interests are given appropriate consideration in project development.

Environmental Review

The 2020 LRDP and the 2020 LRDP EIR, approved in 2005, anticipated that there would be 33,450 students on the Berkeley campus by 2020. Student enrollment during the 2018-2019 school year was almost 41,000. This increase is due, in large part, to significant 2015 enrollment increases at all UC campuses, including Berkeley.

While the campus would typically address these enrollment increases and new enrollment projections in its next LRDP, it cannot, as a matter of good planning practice, wait for the next LRDP to address the issue of campus population. While the next LRDP and its EIR are under development, new and important projects continue to move forward at the campus. In order to continue to approve these projects prior to approval of a new LRDP, the Draft Supplemental EIR for the Upper Hearst Project (Draft SEIR) establishes an updated population baseline to reflect the existing campus headcount and new campus headcount projections through the 2022-23 school year (assuming a modest growth to 44,735 students). These new population projections will give the campus some cushion to continue approving key projects as it prepares its next LRDP and associated EIR. The updated baseline also allows the campus to compare the impacts of the Upper Hearst project with existing environmental conditions at the time environmental review occurs, as required by the California Environmental Quality Act (CEQA).

On February 19, 2019, the campus released the draft SEIR, which evaluates a six-story residential building with no setbacks from adjacent streets, representing the maximum scope of development on the project site. Capital Strategies shared the draft SEIR via Berkeley News, online public notice, through postal mailing and through the Capital Strategies contact list. Capital Strategies hosted two public hearings on the draft SEIR (on March 12, 2019, and March 21, 2019). The public comment period on the draft SEIR closed on April 12, 2019. The final SEIR, which will include responses to all public comments received on the project, is currently under preparation and is expected to be released by May 6, 2019. Of note, in response to input from campus and community stakeholders, the campus has reduced the height of the project to five stories. The revised project design also includes demolition and partial replacement of the parking structure and the construction of separate academic and residential buildings — all of which will result in impacts similar to or less than those of the project as originally designed.

The draft SEIR determined that the Upper Hearst project would result in two new significant, unavoidable impacts that were not evaluated in the 2005 LRDP EIR: 1) visual character and quality and 2) land use compatibility.

The project was discussed by the Regents at their March 2019 meeting and will be considered by the Regents for approval at their May 2019 meeting.

Parking During and Post-Construction (Safety, Accessibility, Efficiency)

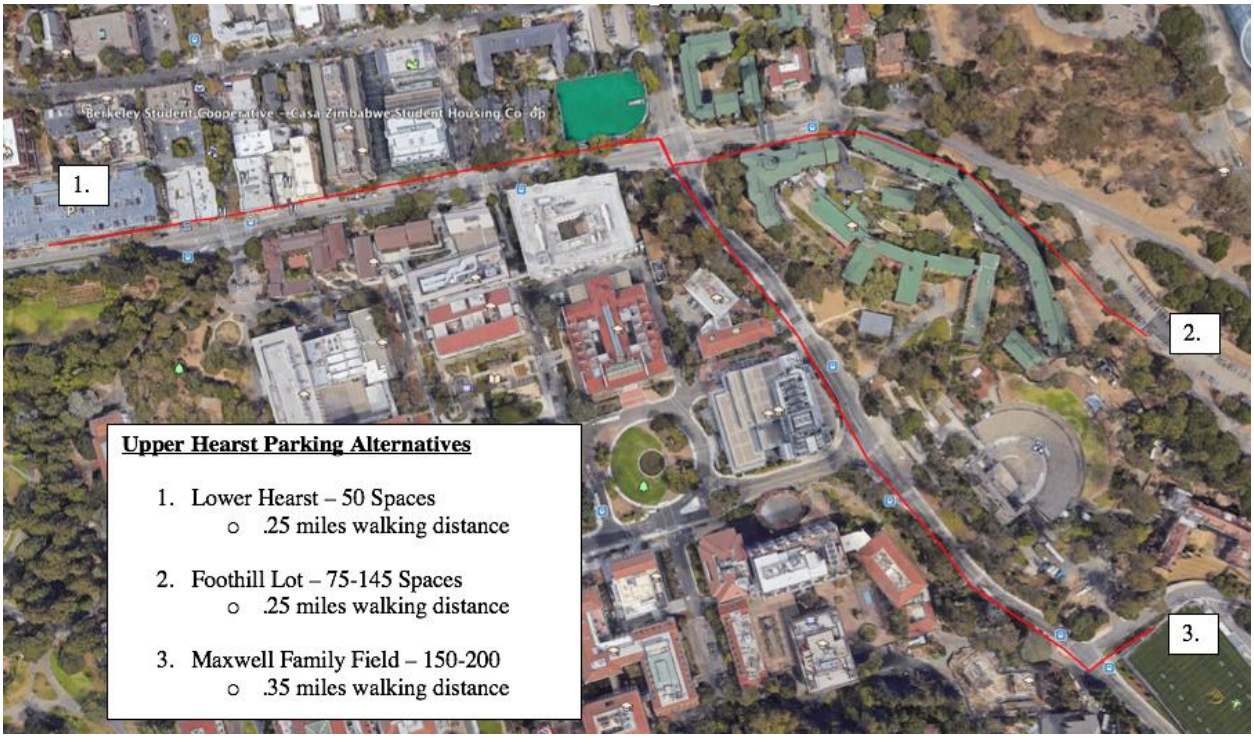
Note: Many of the concerns about parking that have been expressed during community discussions about the Upper Hearst project touch on broader concerns and anxieties about

parking and transportation on and around campus. As transportation options become more dynamic and varied, the campus must plan thoughtfully to respond to future parking and transportation opportunities and challenges. The campus is asking our Institute of Transportation Studies to partner with the office of the vice chancellor for administration to conduct a review of our current plans, as well as of any emerging options to address the needs of members of our community who commute to the campus. This effort will be one of the inputs to our recently announced long range development plan process.

While the project will have a short- and long-term effect on the availability of parking on the Upper Hearst site, the campus has committed to taking an unprecedented series of steps in support of staff and faculty who commute to campus. To compensate for the loss of approximately 345 spots during construction and a net loss of approximately 200 spots, once the project is completed, we will make 50 new C and F spots available at the Lower Hearst lot, provide 150 to 200 spaces for C/F parking at the nearby Maxwell Family Field garage at no cost to permit holders, move stack parking and add a shuttle to the Foothill parking lot in order to accommodate 75 to 145 additional cars and add a shuttle to Clark Kerr Campus parking lots.

To speed and ease the search for open spots, we will also install real-time occupancy sensors in the Foothill lot, just as we have done in the Clark Kerr Southwest and Northwest lots where we have another 100 open spaces. In response to what we heard at the town hall, we will also take steps to build a new sidewalk leading to the Foothill lot.

Accessible parking spaces proximate to the engineering quadrant of the campus can be found near Cory and Bechtel (4 spaces) halls and in the Lower Hearst garage, and at least one ADA space in the Memorial Stadium garage will be available under the campus agreement to use that facility. There will be no contractor parking on UC parking lots. Contractor parking will occur primarily in the Memorial Stadium garage, with some potential use of the project site itself once the parking podium is complete.



Questions and Answers Regarding the Upper Hearst Project

Will the campus administration address the concerns raised about this project before it is submitted for approval by the UC Regents?
Yes, a detailed campus communication is being prepared in order to address a wide range of questions and concerns as part of the environmental compliance (CEQA) process. In addition, Chancellor Christ and other campus leaders participated in an April 22, 2019 town hall meeting with staff and faculty from the College of Engineering in order to respond to their questions about the Upper Hearst Project. Further, the chancellor and provost will continue to meet with the CoE dean and groups of faculty to engage about issues related to the project.

Why is the Goldman School not simply building on its existing site?
According to Capital Strategies' Physical and Environmental Planning team, the current GSPP campus does not have additional room to accommodate an additional structure with the amount of gross square feet of academic space and/or residential space that the Upper Hearst Development would provide. In order to accommodate such a structure, one or both of the existing GSPP buildings would need to be demolished, creating a need for even more space to replace the space that would be lost. The GSPP programs would have to relocate during construction, and the campus would need to find suitable surge space. Additionally, one of the buildings, the Beta House at 2607 Hearst Ave., is listed on the California Register of Historic Resources. While this does not prevent demolition, the campus long range development plan provides for the campus to seek to minimize the impact of development upon historic resources. The Ridge Lot located next to the Upper Hearst Parking Structure is part of the overall

development site for the Upper Hearst Project. Specifically, it is part of the footprint for the residential and parking building.

What opportunities did the College of Engineering leadership have to weigh in on the use of this site?

The Upper Hearst Development project followed standard campus intake processes for proposed capital projects. The project concept was unanimously approved at the July 2016 Capital Planning Committee meeting, with potential CoE participation to be determined. The chancellor and CoE leadership ultimately decided to focus on their other initiatives. In March 2017, the project returned to the Capital Planning Committee, which approved the issuance of a request for qualifications (RFQ) to select a development team. The project returned for a third time to the Capital Planning Committee in January 2018 and was unanimously approved to proceed with the next step, with the proposed development terms coming back to this committee for their review and recommendation to the chancellor. The project returned to the Capital Planning Committee for a fourth time in January 2019. At this final review, project revisions were approved for submittal of a discussion item for the March 2019 Regents meeting. The project was brought to the Capital Planning Committee for a fifth time in March 2019 to review the business terms that will be submitted for consideration and approval by the Regents at their May 2019 meeting.

Will campus units other than the Goldman School be able to use the academic space in the proposed development?

In terms of general assignment classrooms, GSPP is working with the administration to find ways to make maximum use of the available space in this new building to support the needs of the campus, including appropriate general assignment classroom space, while ensuring that GSPP has the right facilities to support undergraduate and graduate students from across campus. The issue of general assignment classroom space at Berkeley more broadly is the remit of the Campus Committee on Classroom Policy and Management and the Space Assignment and Capital Improvements Committee, which will coordinate to develop formal policies.

How will the campus make the rental housing affordable for new faculty?

The property will be managed by ACC, the company selected through a competitive RFQ and contracted by the development's owner to oversee the property operations. Assignment of rental units will come from the vice provost for the faculty. The university will set the rental rates charged by the development's non-profit owner, CHF, to ensure coverage of the development costs and operations.

The campus is committed to providing rent subsidies for untenured faculty and is currently working to ensure philanthropic support for that commitment. Such a subsidy would be provided on an income and need basis and administered by the vice provost for the faculty. To the extent

that the housing project at the Upper Hearst site produces cash flow beyond the need to service the third-party debt and to operate the building, the campus will have the discretion to further invest in a subsidy of rent paid by junior faculty. Such subsidies would be provided on an income and need basis, and assignment of units will be made by the vice provost for the faculty.

Why does faculty housing have to be built so close to campus? Can new housing be built instead at Foothill, the Richmond Field Station or other locations controlled by the campus? What other sites have been considered for faculty housing?

The campus needs to develop housing on every possible site in order to meet the significant needs of the campus. All possible sites will be investigated for housing uses, including the Richmond Field Station. As per surveys and market research, proximity to campus is a priority for UC affiliates, the intended occupants of the Upper Hearst Project. Close proximity also results in less daily vehicle trips to and from campus by faculty, as well as an increased ability to be present in, and connected to, the campus community.

Conditions at the Foothill Lot, such as soil and seismic conditions, are particularly challenging for development, as compared with the Upper Hearst Parking Structure. Costs for development of the Foothill Lot would also be greater due to the site layout, proportions and potential excavation required due to topographical challenges. As such, the Foothill Lot is not optimal for housing development at this time.

Can the university subsidize rentals in the city of Berkeley, rather than build new housing at the Upper Hearst site?

The housing crisis is such that there is not sufficient housing in Berkeley to meet all the housing needs for Berkeley residents and for UC affiliates. When the university constructs its own housing, it can ensure availability for faculty and other campus affiliates. It can also control costs for rent, as well as the rate of future increases, neither of which is possible in the open market. The city of Berkeley is a relatively affluent community. Given rising demand for housing in Berkeley and throughout the Bay Area, campus-built housing helps guarantee and expand the supply for our population over the long term.

The campus is currently engaged in efforts that will secure philanthropy-based rent subsidies for faculty.

The campus already master leases private rental units in the city of Berkeley for student housing. This approach is seen as an interim approach only due to the city's strong opposition, given that master leases take properties off the property tax rolls and decrease the available supply of market rate housing.

How will parking needs for the disabled be accommodated during and after construction?

During construction, American with Disabilities (ADA) accessible parking spaces are not required because there will be no parking provided. However, during this period, accessible parking will be available in the Lower Hearst parking structure, and there are also four ADA spaces adjacent to Bechtel Engineering Center across Hearst Avenue. Post construction, the new lot will have the required number of ADA parking spaces, which is presently expected to be eight.

Can the Tolman site be paved to serve as surface parking, at least temporarily?

This idea has been reviewed and analyzed by campus Parking and Transportation, and it was determined not to be a financially defensible option. The cost of paving would be approximately $3 million. The pending development of the site for new buildings would then necessitate relocating any new, established parking sites at great cost, or simply eliminating them after a relatively short amount of time in service. There would also likely be a need for expensive, time-consuming environmental studies of the potential impacts of temporary parking on the Tolman site, as required by law under CEQA.

How many spots in the new structure will be available for C and F permit holders?
At this point, we plan on having 80 spots for C and F permit holders. The new parking structure will return 170 parking spaces to the campus inventory once completed. The developer, ACC, believes the residential demand will be about 60% of those spaces, or 90 spaces. The remaining 80 spaces will be in the Parking and Transportation general inventory, and our plan is to have those be C and F permit spaces.

When will a comprehensive, strategic plan for campus parking and transportation be developed?
Many of the concerns about parking that have been expressed during community discussions about the Upper Hearst project touch on broader concerns and anxieties about parking and transportation on and around campus. As transportation options become more dynamic and varied, the campus must plan thoughtfully to respond to future parking and transportation opportunities and challenges. Chancellor Christ will be asking our Institute of Transportation Studies to partner with the office of the vice chancellor for administration to conduct a review of our current plans, as well as any emerging options, to address the needs of members of our community who commute to the campus. This effort will be one of the inputs to our recently announced long range development plan process.

How much money will the campus lose if this development project is cancelled?
As with all major capital projects, the campus enters into contracts, expends staff time and makes limited financial commitments in order to specifically define a project and consider the costs, benefits and potential impacts of the proposed project. The expenditure of these funds is necessary to prepare a project for consideration and does not obligate the university to proceed with the proposed project. These pre-development costs are never more than the university can afford to forfeit if a decision is made to not proceed with a project. With regard to this proposed project, a pre-development agreement has been signed between the university (the Regents

have signatory authority over real estate transactions) and the developer (American Campus Communities). This is the only signed agreement at this time. Per the pre-development agreement, the university would be liable for at least half of the developer's costs (architectural fees, design fees, engineering and surveying fees, consultant fees, etc.) should the project be halted. The university could be liable for more than half, due to where we are currently in the pre-development process, as well as university-requested design-related changes that have taken place during the development of the project. While we cannot provide a precise dollar amount at this time, as all the fees and expenses from the developer would need to be calculated. The amounts would then need to be reviewed and negotiated as part of a settlement agreement, which would be guided by the terms of the pre-development agreement. This would be a legal settlement and not something quickly determined.