



American Federation of Labor & Congress of Industrial Organizations
Building & Construction Trades Council of Alameda County
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August 28, 2023
Via Email Submission

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Re: Construction Workforce Standards for Oakland 2045 General Plan Update Zoning Package

Dear Mr. Gilchrist, Mr. Manasse, Mr. Johnson, Ms. Hanson, Ms. Rajagopalan, Ms. Kaminski, Ms. Aspilla, Mr. Branson:

On behalf of the Building & Construction Trades Council of Alameda County (“BTCA”), this letter summarizes the status of BTCA’s ongoing discussions with the City of Oakland (“City”) about the adoption of construction workforce standards in the Phase I 2045 General Plan Update Zoning Package (“GP Update”).

BTCA appreciates the time and commitment the City has shown recently to address BTCA’s concerns, and to address the urgent need to remedy the inequities of Oakland’s housing construction market through workforce standards that promote local hire, worker healthcare expenditures, and union apprenticeship programs to train the next generation of skilled construction workers. Recent meetings with City staff have been productive. However, this process will require an accelerated commitment from staff to respond to BTCA’s proposals and to present a timely written construction workforce proposal to the City Council for adoption with the GP Update.

BTCA’s letters of May 19, 2023¹ and August 1, 2023 articulated BTCA’s initial proposal for construction workforce standards. The letters also provided legal and policy reasons for incorporating construction workforce standards into the GP Update’s Housing Overlay Zones. During recent meetings with City staff, BTCA and the City have refined the proposal into a set of potential mechanisms to adopt workforce standards during the GP Update process. BTCA has also updated the language for the proposed construction workforce policy.

Construction projects which do not utilize a local, skilled construction workforce and do not provide health benefits to construction workers perpetuate income and healthcare inequality, and fail to ensure the safety of new housing developments.² The Racial Equity Impact Assessment (“REIA”) prepared for the City’s Housing Element Update concluded that allowing up to 80% of housing units in the Housing Sites Overlay Zones to be market rate was a “Barrier to Equity” which would not alleviate the City’s affordable housing crisis and “may still result in displacement.”³

BTCA consists of over twenty affiliated Building Trades Unions that represent over three thousand Oakland households. BTCA works to promote diversity in the Trades, with a focus on African-American recruitment and retention. BTCA’s non-profit Construction Workforce Training Initiative⁴ works closely with the Oakland Unified School District, along with the MC3 programs Cypress Mandela⁵ and Rising Sun,⁶ to provide apprenticeship opportunities to Oakland’s youth and at-risk workers, particularly targeting the City’s African-American workforce. BTCA’s proposed construction workforce standards for the S-14 Overlay Zone represents a necessary step towards restoring equity for the City’s construction workforce.

¹ BTCA’s letter appears in the GP Update Final EIR at pp. 4-18 to 4-25.

² See 8/1/23 BTCA Letter to Planning Commission, pp. 4-5.

³ See 2023-2031 Adopted Housing Element, Racial Equity Impact Analysis for the Housing Element Update (“Housing Element REIA”), available at https://cao-94612.s3.amazonaws.com/documents/Housing-Element-REIA-1.6.23_Final.pdf, at p. 11 (“Barriers to Equity...Ensuring 20 percent of units in market rate housing are affordable may not be a sufficient threshold to alleviate the affordable housing crisis and may still result in displacement.”).

⁴ See <https://ctwi-btca.org/>. BTCA’s Construction Workforce Training Initiative advances economic and social justice by strengthening pathways to family-sustaining union construction careers for underrepresented communities.

⁵ See <https://www.cypressmandela.org/>. Oakland’s Cypress Mandela Training Center is an award-winning construction training center providing pre-apprentice construction and life skills training along with employment assistance. Among other awards, Cypress Mandela has received the Civil Rights Partnership Award from the United States Department of Transportation’s Federal Highway Administration for outstanding efforts in bringing more minorities and women into the construction trades.

⁶ See <https://risingsunopp.org/>, and <https://www.dir.ca.gov/das/e-news/2022/Rising-Sun.html>. Rising Sun is a certified apprenticeship readiness program for careers in the union construction trades. Rising Sun’s workforce development programs specialize in preparing youth, women, people of color and individuals in reentry for high-road careers and green pathways that offer family-sustaining wages across the greater Bay Area.

BTCA requests that the City provide a written response to this letter which includes the City’s specific proposal(s) and timeline for placing construction workforce standards into the GP Update through planning documents, standard conditions of approval (“SCA”), or amendments to the municipal code.

A. Direction from City Decision Makers

On July 11, 2023, the City’s Community and Economic Development (“CED”) Committee directed staff to work with BTCA to discuss possible mechanisms for incorporating labor standards in the GP Update.

On August 2, 2023, the Planning Commission voted to recommend that the City Council adopt construction workforce standards as part of Council’s adoption of the GP Update, under the direction of City staff.⁷

On August 3, 2023, City staff began weekly meetings with BTCA about the proposed construction workforce standards. The meetings have been constructive and we have discussed the substantive components of a construction workforce proposal for City Council consideration.

B. BTCA Proposal

Below is a summary of BTCA’s current construction workforce proposal.

1. Proposed Construction Workforce Language

BTCA is preparing updated language for the proposed construction workforce standards to be included in the GP Update. BTCA anticipates providing the updated workforce language prior to our next meeting with staff. BTCA’s proposal includes apprenticeship requirements and healthcare expenditures for housing construction workers.⁸ As indicated in our prior correspondence, these components are essential for the following reasons.

a. Apprenticeships

Apprenticeship programs are a primary pathway for providing disadvantaged workers good-paying construction-career opportunities.⁹ The California Department of Apprenticeship Standards requires every apprenticeship program to include an equal opportunity program with an affirmative action plan to recruit women and

⁷ 8/2/2023 Planning Commission meeting, recording available at <https://www.oaklandca.gov/meeting/planning-commission-meeting-22#recordings> (last visited 8/24/23).

⁸ See BTCA Comments (5/19/23) pp. 4-8, Attachment A.

⁹ See e.g. Cypress Mandela Training Center (<https://www.cypressmandela.org/> and <https://www.cypressmandela.org/programs>), providing free training for construction careers. In 2000, Cypress Mandela Training program received the Civil Rights Partnership Award from the United States Department of Transportation’s Federal Highway Administration for outstanding efforts in bringing more minorities and women into the construction trades.

minority applicants.¹⁰ Contractors that do not participate in apprenticeship programs are not subject to these requirements.

More than two-thirds of participants in union apprenticeship programs are people of color and 95 percent of apprenticeship graduates are produced by union programs. BTCA's proposed workforce standards provide an effective framework to address wage and benefit inequities that women, workers of color, and immigrants often face in the non-unionized workplace.¹¹

b. Health Care

Health care security is one of the most challenging issues facing California workers and families, particularly construction workers. Construction trade workers experience exceptionally high rates of serious injury on the job. As the Occupational Safety and Health Administration ("OSHA") explains:

Construction is a **high hazard industry** that comprises a wide range of activities involving construction, alteration, and/or repair. Construction workers engage in many activities that may expose them to serious hazards, such as falling from rooftops, unguarded machinery, being struck by heavy construction equipment, electrocutions, silica dust, and asbestos.¹²

Despite these workplace hazards, construction workers who live in Alameda County are uninsured at rates 3-4 times higher than the rate of non-construction workers. A peer-reviewed study in 2010 found that only 35 percent of blue-collar construction workers who are not covered by collective bargaining agreements had health insurance paid for at least in part by an employer.¹³

Lack of healthcare benefits for construction workers also results in additional costs to taxpayers. A 2021 UC Berkeley Labor Center study found that, along with the negative impact on construction workers' wellbeing, lack of health care benefits adds expenses for the state, counties, and the federal government due to increased reliance by construction workers and their families on public health safety net programs (like Medicaid).¹⁴

The health care expenditures proposed in Appendix A are a vital step towards closing the health care equity gap for Oakland's housing construction workforce and reducing public health care costs to taxpayers.

2. Proposed Housing Overlay Zone

¹⁰ Cal.Code.Reg. tit. 8, § 215; see also Labor Code Section 1777.5 (f).

¹¹ Thomason & Bernhardt, UC Berkeley Center for Labor Research and Education, *The Union Effect in California #2: Gains for Women, Workers of Color, and Immigrants* (June 2018) at p. 1.

¹² OSHA, Construction Industry

¹³ (2019). *Rebuilding California: The Golden State's Housing Workforce Reckoning*. Smart Cities Prevail. pp. 23-25. Downloaded 3/26/2021 via https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP_HousingReport.0118_2.pdf.

¹⁴ UC Berkeley Labor Center, K. Jacobs and K. Huang, *The Public Cost of Low-Wage Jobs in California's Construction Industry* (June 8, 2021), available at <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-californias-construction-industry/>.

The projects proposed to be covered by BTCA’s workforce standards are **housing development projects of 50 units or more (to be consistent with state legislation) in the S-14 Housing Overlay Zone.**

The S-14 Zone was adopted with the 2023-2031 Housing Element Update to allow all sites included in the Housing Element’s Housing Sites Inventory (Table C-26 of the Housing Element) to develop owner-occupied and rental multifamily uses by right for developments in which 20% or more of the units are affordable to lower-income households.¹⁵ Unlike the Affordable Housing Overlay Zone (S-13 zone) for 100% affordable housing projects, projects in the City’s S-14 Housing Sites Overlay Zone will qualify for by-right approval and development incentives for projects which contain **up to 80% market rate housing units.**¹⁶

Government Code section 65583.2(c) requires local agencies to implement by-right approval for residential projects of certain residential densities on non-vacant sites from the prior housing element, and on vacant sites that remained undeveloped in two or more consecutive housing cycles, in which at least 20 percent of the units are affordable to lower income households.¹⁷ The S-14 Zone proposes to implement this requirement. The by-right approvals described in Section 65583.2 and the City’s proposed S-14 Zone Municipal Code sections¹⁸ prohibit the City from requiring conditional use permits or other discretionary land use permits that would create a requirement for CEQA review, but do not bar compliance with workforce standards or other objective standards.

The City’s Regional Housing Needs Allocation (“RHNA”) for the previous Housing Element planning period was 14,765 new housing units between 2014 and 2022.¹⁹ The 2023-2031, or 6th cycle, RHNA identifies an overall need of 26,251 new units in Oakland.²⁰ The City has explained that the proposed S-14 Zone includes two parts: (1) housing approved in the prior Housing Element cycles (4th and 5th Cycles),²¹ and (2) housing proposed for the 6th Cycle.

Pipeline projects are projects that are approved, permitted, or will receive a Certificate of Occupancy during the projection period (June 30, 2022, to December 15, 2030) and can be credited toward the City’s 6th cycle RHNA. Using data from the City’s Accela permitting system, the Housing Element Update found that 336 pipeline projects with 12,593 units are spread across the City, with the majority in the Downtown, West Oakland, Eastlake/Fruitvale, and North Oakland/Adams Point areas.²²

¹⁵ Housing Element Update, 2023-2031, Action 3.4.10,

¹⁶ See FEIR, p. 3-38 (“To implement HAP Action 3.4.10, a Housing Sites Overlay Zone is proposed to permit affordable housing by right with at least 20 percent affordable housing units for all sites identified in the Housing Sites.”)

¹⁷ Gov. Code Sec. 65583.2(c).

¹⁸ Proposed OMC Chapter 17.96, S-14 Housing Sites Combining Zone Regulations.

¹⁹ City of Oakland, Housing Element, Appendix A: Evaluation of the 2015-2023 Housing Element, https://cao-94612.s3.amazonaws.com/documents/Appendix-A-Evaluation-of-the-2015-2023-Oakland-Housing-Element_11.28.22-clean.pdf.

²⁰ City of Oakland, Housing Element, Appendix C: Sites Inventory, https://cao-94612.s3.amazonaws.com/documents/Appendix-C-Sites_Inventory-2.9.23_2023-02-17-214143_drit.pdf; Housing Element Update, p. 41, *Table 3-2: Summary of Residential Capacity to Accommodate the 2023-2031 Oakland RHNA.*

²¹ City staff referred BTCA to the Housing Element Update, Appendix C (Sites Inventory), Tables C-5-A, C-5-B, and C-25 for lists of previously approved sites.

²² Housing Element Update, p. 43, Pipeline Projects.

BTCA's preference is for the construction workforce standards to apply to projects of 50 or more residential units in both Part 1 and 2 of the S-14 Zone, to the extent those projects are not already entitled.

3. Mechanisms for Adopting Construction Workforce Standards

BTCA and the City have discussed potential mechanisms for incorporating the construction workforce standards, including:

- Non-environmental Standard Conditions of Approval for projects in the S-14 Zone.
- Planning Code amendments as part of the GP Update.
- Adding construction workforce conditions to the components of the S-14 Zone Part 1 and 2.
- Ordinance adding new Municipal Code provisions outside the Planning Code, with clerical revisions to the Planning Code to reference the new sections and apply them to the S-14 Zone.

BTCA's preference is to include the workforce standards in the GP Update as non-environmental Standard Conditions of Approval or Planning Code amendments. City staff have indicated their preference may be to adopt an ordinance adding the construction workforce conditions as new Municipal Code provisions outside the Planning Code, with accompanying clerical revisions to the Planning Code to reference the new sections.

BTCA has asked the City to respond to BTCA's proposal in writing, and to describe the procedure and proposed timeline for the adoption and implementation of the construction workforce standards. BTCA has emphasized that, whichever mechanism is selected for implementation of the construction workforce standards, time is of the essence to ensure that the workforce proposal is presented to the City Council for adoption concurrently with the rest of the GP Update, as directed by the Planning Commission.

4. Timing for Adoption of Construction Workforce Standards

On August 2, 2023, the Planning Commission directed staff to provide direction to the City Council on adopting construction workforce standards with the GP Update. The City Council is tentatively scheduled to consider the GP Update on September 19, 2023.

During recent meetings, BTCA asked the City to postpone the City Council hearing to allow staff and BTCA time to complete discussions on construction workforce standards and for staff to present the standards to the City Council for proposed adoption with the GP Update. Staff responded that the City cannot extend the September 19 hearing date because the City is behind schedule for the Housing Element's projected timeline to implement the Housing Overlay Zones.²³

²³ See Housing Element, Chapter 4, Housing Action Plan, available at https://cao-94612.s3.amazonaws.com/documents/Oakland-Adopted-Housing-Element-Ch-1-4-21023_2023-02-17-213804_ddow.pdf (last visited 8/25/23). The Housing Element Action Plan sets forth projected timelines for implementation of Housing Element Actions ranging from Fall 2022 through 2031. The projected timeline for the Housing Overlay Zones is June-July 2023. Notwithstanding the projected timelines, Government Code Section 65583 provides three years from the date the City adopted its housing element to complete the rezoning to bring the City's zoning regulations into compliance with the housing element. Gov. Code Sec. 65583(c).

BTCA conferred with representatives from HCD on August 18, who advised that HCD would not object to a later City Council approval date for the GP Update.²⁴ BTCA and City staff are working together to arrange a meeting with HCD to confirm this and discuss the timing for the City's adoption of the zoning amendments.

C. Conclusion

BTCA looks forward to continuing our work with the City to implement construction workforce standards as part of the GP Update. This process will ensure the City's Housing Element buildout plan meets the City's dual goals of complying with State housing requirements and providing viable futures for all Oakland residents through the land use permitting process.

Sincerely,



Andreas Cluver, Secretary-Treasurer
Building & Construction Trades Council of Alameda County

²⁴ 8/18/23: Personal communication from J. Dalrymple/J. Adiarte re HCD staff and GP Update.



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August 1, 2023
Via Email Submission

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Re: Agenda Item No. 1: Phase I Oakland 2045 General Plan Update (SCH Number 2022030800)

Dear Chair Fearn, Commissioners, Ms. Rajagopalan, Mr. Branson:

This letter is submitted on behalf of the Building & Construction Trades Council of Alameda County (“BTCA”) regarding City of Oakland (“City”) Planning Commission Agenda Item No. 1, the Phase I Oakland 2045 General Plan Update (“GP Update”). The Planning Commission will conduct a public hearing to consider recommending that the City Council adopt staff’s proposed amendments to the General Plan, proposed Planning Code, Zoning Map, and General Plan Text and Map amendments, and certify the Final Environmental Impact Report (“FEIR”).

BTCA consists of over twenty affiliated Building Trades Unions that represent over three thousand Oakland households. BTCA works to ensure that skilled workers are employed on construction projects in Alameda County, that labor standards are upheld, that community benefits created by development projects include local jobs, and to promote union apprenticeship programs to train the next generation of skilled construction workers.¹

BCTA submitted written comments on May 19, 2023² asking the City to:

¹ See <https://www.btcameda.org/about/> (last visited 7/29/23).

² BCTA’s letter appears in the FEIR at pp. 4-18 to 4-25.

- (1) adopt construction workforce standards for buildout projects in the GP Update Housing Overlay Zones as community benefits in exchange for the extensive benefits and development incentives being provided to private housing developers, to ensure that construction workers are protected by the Housing Element with basic labor standards, not exploited by it.
- (2) incorporate construction workforce conditions as standard conditions of approval (“SCAs”) in the FEIR pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Sections 15183 and 15183.3 to reduce the non-environmental effects of buildout projects on construction workers;³ and
- (3) incorporate construction workforce standards in the GP Update to support the findings required by CEQA that “employment opportunities for highly trained workers” warrant the adoption of a statement of overriding considerations to address the GP Update’s significant and unavoidable environmental and public health impacts.⁴

BCTA’s letter explained that, without conditions regulating construction worker standards for General Plan buildout projects, housing developers are more likely to utilize low wage, poorly trained construction workers in order to maximize profits. BCTA provided substantial evidence demonstrating that projects which do not utilize a local, skilled construction workforce, and do not provide health benefits for their workers, can result in poorly built projects which threaten the safety of future residents, and perpetuate income inequality in the construction industry, which has many low-income workers.

On July 11, 2023, the City’s Community and Economic Development (“CED”) Committee directed staff to work with BCTA to discuss possible mechanisms for incorporating labor standards in the GP Update. During their subsequent July meeting with BCTA,⁵ City staff raised concerns that BCTA’s request for labor standards was not warranted because the GP Update’s proposed Overlay Zones did not provide benefits or concessions for market rate housing beyond existing law. That is incorrect.

The FEIR also failed to respond to BCTA’s comments, despite their relevance to the City’s mandatory CEQA approval findings. Instead, the FEIR states that “[BCTA’s] comment will be addressed in the Staff Report for the Proposed Project.”⁶ However, the Staff Report does not respond to any of BCTA’s comments. Responses to public comments on the Phase 1 Draft Zoning Amendments state that staff is “working in a comprehensive manner in the context of the Community Workforce Agreement negotiations and Measure U discussions.”⁷ However, this comment is unrelated to the GP Update and, contrary to the direction of the CED Committee, fails to discuss any mechanisms for incorporating labor standards into the GP Update.

The City’s failure to incorporate construction workforce standards in the GP Update is a major flaw in City’s long-term planning process for the development of the tens of thousands of new Oakland residences.

BCTA urges the Planning Commission to direct City staff to follow the direction of the CED Committee by proposing construction workforce standards to be incorporated in the GP Update *before* bringing the GP Update to the City Council for consideration.

³ SCA’s for non-environmental effects are discussed at FEIR, p. 4.0-4.

⁴ CEQA requires that any statement of overriding considerations be supported by an analysis of: “Specific economic, legal, social, technological, or other considerations, including the provision of employment opportunities for highly trained workers.” (Pub. Res. Code § 21081(a)(3), (b)). Without that analysis, the City lacks substantial evidence to support a statement of overriding considerations.

⁵ Staff have declined BCTA’s requests for additional meetings.

⁶ FEIR, p. 4-18.

⁷ See Planning Commission Staff Report (“Staff Report”), Attachment 26, pp. 5-6.

A. The GP Update Fails to Consider Its Construction Workforce

Housing construction is a fundamental component of the GP Update. The Staff Report’s proposed approval findings explain that “*construction would be a reasonably foreseeable future outcome of the update.*”⁸ The General Plan Buildout Program anticipates approximately 41,458 new housing units would be developed under the GP Update during the projection period ending in 2030.⁹ This substantial amount of new construction will require a large, skilled and healthy construction workforce.

The GP Update’s Housing Element Implementation (“HEI”) component proposes Planning Code, Zoning Map, and General Plan text and map amendments to implement the Housing Element.¹⁰ The purpose of the HEI is “[t]o ensure a path for construction of Oakland’s Regional Housing Needs Assessment (RHNA) assigned production target by 2031.”¹¹ The proposed Planning Code amendments provide development incentives and concessions to housing developers in order to “incentivize the construction of affordable housing.”¹² However, the GP Update fails entirely to consider the impacts on the residential construction workers who will build the housing.

Studies show that construction projects which do not utilize a local, skilled construction workforce and do not provide health benefits to construction workers, perpetuate income and healthcare inequality, and fail to ensure the safety of new developments. For example:

- Low wage employment is a problem in both the residential +and commercial construction markets. Fifty-five percent of Alameda County construction workers’ households are Extremely Low Income, Very Low Income, or Low Income.¹³
- Jobsite Health, Healthcare and Safety:
 - Construction trade workers experience exceptionally high rates of serious injury on the job, especially on sites with inadequately trained workers.
 - One of every five serious workers’ compensation insurance claims which involve death, permanent total disability or major permanent partial disability - is related to a construction employee, despite the fact that construction jobs account for less than one out of every 25 California jobs.
 - For a working life in construction, the risk of fatal injury is approximately one death per 200 full-time-equivalent employees according to a recent study in the American Journal of Industrial Medicine.
 - Construction workers who live in Alameda County are uninsured at rates 3-4 times higher than the rate of non-construction workers. The under-performance of California contractors in providing health care security to employees constrains the supply of skilled construction labor. A peer-reviewed study in 2010 found that only 35 percent of blue-collar construction workers who are not covered by collective bargaining agreements had health insurance paid for at least in part by an employer. This same study found that health insurance funded through collectively bargained employer contributions to plans that are portable within the construction industry increased industry-retention rates by up to 40 percent compared to baseline retention rates of construction workers without any health insurance coverage.¹⁴

⁸ See Staff Report, Attachment A, Section II; FEIR, p. 1-2 (emphasis added).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* (emphasis added).

¹² *Id.*; FEIR, p. 2-3.

¹³ Analysis of U.S. Census, ACS 2015-2019 Microdata.

¹⁴ (2019). Rebuilding California: The Golden State’s Housing Workforce Reckoning. Smart Cities Prevail. pp. 23-25. Downloaded 3/26/2021 via <https://www.smartcitiesprevail.org/wpcontent/>

The scale of such impacts in Oakland would be substantial given the amount of residential development planned in the GP Update. Yet, it does not include *any* construction workforce standards to ensure that these inequities do not occur in Oakland. In particular, the GP Update does not provide any apprenticeship opportunities, nor does it require local hire or healthcare commitments for its residential construction workers. This omission would have a detrimental effect on Oakland’s construction workforce for decades.

BCTA proposed a list of workforce standards for the GP Update housing overlay zones which included detailed apprenticeship requirements and proposals for healthcare expenditures for housing construction workers.¹⁵ The Staff Report fails to respond to, or incorporate, *any* of these proposals. BCTA urges the Planning Commission to consider and incorporate these workforce standards into the GP Update’s conditions of approval.

B. The Proposed S-14/Housing Sites Inventory Zones Include Market-Rate Housing Units

While the proposed Affordable Housing Overlay Zone (S-13 zone) addresses By Right approval for 100% affordable housing projects, the proposed Housing Sites Overlay Zones (S-14 zone / Housing Sites Inventory) would authorize By Right approval and development incentives for projects which contain up to 80% market rate housing units.¹⁶

The GP Update’s proposed Chapter 17.96, *S-14 Housing Sites Combining Zone Regulations*, would allow By Right approval for (1) housing projects proposed on a Prior Housing Element Sites parcel with at least twenty percent (20%) of the project’s units are affordable,¹⁷ and for (2) projects proposed on a parcel included in the Housing Sites Inventory in Appendix C of the Housing Element, but *which were not* a Prior Housing Element Sites parcel, and provide between twenty to one hundred percent (20-100%) affordable units,¹⁸ as follows:

Under proposed OMC Sec. 17.96.060, if a project is proposed on a Prior Housing Element Sites parcel and at least twenty percent (20%) of the project’s units will be made available to lower income households, the project would be subject to By Right Approval. This means that up to 80% of the housing units may be market rate.¹⁹

Under proposed OMC Sec. 17.96.070, if a project is proposed on a parcel included in the Housing Sites Inventory in Appendix C of the Housing Element and is not a Prior Housing Element Sites parcel, the project would be subject to By Right Approval if, for each income category, the project proposes at least as many units as described as the realistic capacity for the parcel, and at least *one of the following conditions* applies:

- A. One hundred percent (100%) of the housing units, other than manager’s units, are restricted to very low, low and moderate-income residents; or
- B. At least twenty percent (20%) of the housing units are restricted to very low-income households; or
- C. At least twenty-five percent (25%) of the housing units are restricted to lower-income household; or

uploads/2019/01/SCP_HousingReport.0118_2.pdf

¹⁵ See BCTA Comments (5/19/23) pp. 4-8, Attachment A.

¹⁶ See FEIR, p. 3-38 (“To implement HAP Action 3.4.10, a Housing Sites Overlay Zone is proposed to permit affordable housing by right with at least 20 percent affordable housing units for all sites identified in the Housing Sites.”)

¹⁷ Proposed OMC Sec. 17.96.060 (By Right Residential Approval for Prior Housing Element Sites).

¹⁸ Proposed OMC Sec. 17.96.070 (By Right Residential Approval for Sites not used in Prior Housing Elements).

¹⁹ Proposed Muni Code Section [17.96.020](#): “Prior Housing Element Sites” means sites included in the Housing Sites Inventory and also included in the previously adopted 2007-2014 or 2015-2023 Housing Elements, as identified in [column O of Table C-26 of the City of Oakland 2023- 2031 Housing Element](#) as either “Used in Prior Housing Element – Non-Vacant” or “Used in Two Consecutive Prior Housing Elements – Vacant.”

D. At least forty percent (40%) of the housing units are restricted to moderate-income households.²⁰

The remaining units, 80%, 75%, and 60% respectively, may therefore be market rate and By Right Approval would still apply. And, while the housing sites under proposed OMC Sec. 17.96.060 were included as Prior Housing Element Sites,²¹ the housing sites under proposed OMC Sec. 17.96.070 were not.

C. Construction Workforce Standards Should Be Included in the GP Update

1. Construction Workforce Standards Should Be Included in the GP Update as Community Benefits in Exchange for Concessions Provided to Housing Developers

Unlike the City's concurrently proposed Downtown Oakland Specific Plan ("DOSP"),²² the draft GP Update's Housing Sites Overlay Zones do not include any community benefits in exchange for the development concessions and permit streamlining offered to housing developers. This is a major omission given the equity deficit identified in the City's Housing Element from creation of these zones.

The Racial Equity Impact Assessment ("REIA") prepared for the Housing Element concluded that allowing up to 80% of housing units in the Housing Sites Overlay Zones to be market rate was a "Barrier to Equity" which would not adequately alleviate the City's affordable housing crisis and "may still result in displacement."²³ To resolve this inequity, the Housing Element REIA recommended increasing the minimum affordability for by-right development in these zones to 30 percent deeply affordable in high-resource areas and 50 percent affordable in low-resource areas.²⁴ The GP Update's proposed Chapter 17.96 (S-14 Housing Sites Overlay Zones) *does not* implement this recommendation, thus leaving an equity deficit which should be addressed through additional community benefits.

The only community benefit requirement referenced in the FEIR is the Housing Element's existing requirement to negotiate community benefits during development agreement approvals for major entitlements and the use of City land.²⁵ However, this requirement would not apply to new housing developments in the Overlay Zones due to their ministerial by-right permitting and development standard exceptions.

It is therefore critical that community benefits, including construction workforce standards, be built into the GP Update's Overlay Zones before the GP Update is approved.

²⁰ Proposed OMC Sec. 17.96.070.

²¹ See e.g. 2023-2031 Adopted Housing Element, Appendix C, Sites Inventory, available at https://cao-94612.s3.amazonaws.com/documents/Appendix-C-Sites_Inventory-2.9.23_2023-02-17-214143_drit.pdf.

²² Oakland Downtown Specific Plan available at <https://www.oaklandca.gov/topics/downtown-oakland-specific-plan>. City of Oakland, *Downtown Oakland Specific Plan (DOSP): Zoning Amendments FAQ 2* (October 12, 2022), <https://cao-94612.s3.amazonaws.com/documents/2022-10-12-DOSP-Zoning-Amendments-FAQ-Final-1.pdf>, p. 3 (community benefits to include on-site affordable housing units; below market-rate ground floor commercial space; streetscape, open space, and other culturally-relevant neighborhood improvements; public Restrooms in building lobby; and in lieu fees or other mechanism for job training and/or job placement support programs).

²³ See 2023-2031 Adopted Housing Element, Racial Equity Impact Analysis for the Housing Element Update ("Housing Element REIA"), available at https://cao-94612.s3.amazonaws.com/documents/Housing-Element-REIA-1.6.23_Final.pdf, at p. 11 ("Barriers to Equity...Ensuring 20 percent of units in market rate housing are affordable may not be a sufficient threshold to alleviate the affordable housing crisis and may still result in displacement.").

²⁴ *Id.*; see Staff Report, Attachment 27, p. 5, Action 3.4.10, REIA Recommendation.

²⁵ DEIR, 4.12-14 (Housing Element Policy 1.1 (Tenant Protections and Anti-Displacement), includes this community benefit requirement as Action 1.1.13).

2. Construction Workforce Standards Can Be Included as Standard Conditions of Approval

The GP Update includes existing and proposed SCAs pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183 (and now Section 15183.3).²⁶ The SCAs address three aspects of buildout projects: (1) general administrative aspects of the project approval; (2) environmental protection measures that are incorporated into a project and are designed to, and will, substantially mitigate environmental effects; and (3) other SCAs containing requirements to reduce non-environmental effects of the buildout projects.²⁷ SCAs are mandatory City requirements for GP Update buildout projects.²⁸

Construction workforce conditions for Overlay Zone housing projects can and should be integrated into the SCAs as part of the third category: requirements to reduce non-environmental effects of the buildout projects. As discussed herein, there is substantial evidence demonstrating that housing projects that are constructed with low-wage or uninsured construction workers are detrimental to the safety and sustainability of the housing industry and to the health, safety and general welfare of the communities in which the projects are built.

These impacts can be reduced or avoided by incorporating standard conditions of approval into the GP Update which require construction worker benefits and apprenticeship requirements to ensure the Housing Element will be built with a skilled and healthy construction workforce.

3. Construction Workforce Standards Are Consistent with City Policies and Environmental Justice Element Goals and Are Necessary to Ensure Equity for the City's Construction Workforce

Oakland Municipal Code (“OMC”) Section 2.29.170.1 specifies that “the City of Oakland will intentionally integrate, on a Citywide basis, the principles of ‘fair and just’ in all the City does in order to achieve equitable opportunities for all people and communities.”²⁹ The GP Update’s draft Environmental Justice (“EJ”) Element implements this policy, as well as State law requirements to address environmental justice in local agencies’ general plans.³⁰

The draft EJ Element contains workforce goals and policies which would be directly implemented by adopting construction workforce standards for the GP Update which focus on local hire, use of apprentices, and access to healthcare for construction workers and their families. These include:

Goal EJ-9: Expand economic development, income equality, and opportunity for all Oaklanders Workforce Development and Training

Policy EJ-9.6: Labor Force Skills Development. Partner with educational institutions, employers, and community based organizations to develop a local labor force with skills to meet the needs of the area’s businesses and industries. Continue and expand local-hire initiatives, training, apprenticeships, and partnerships with employers.

Policy EJ-9.7: Barriers to Workforce Participation. Collaborate with regional and local partners to identify and address barriers to workforce participation and access to training. Solutions to explore may include:

- Two-generation programs that link education, job training, and career-building for low-income parents with supports for their children;
- Bridge programs that prepare people with low academic skills for further education and training; and

²⁶ DEIR, pp. 3-39; Table 2-1 (pp. 2-10 to 2-89); 4 0-4.

²⁷ *Id.*

²⁸ DEIR, p. 4.0-4.

²⁹ OMC Sec. 2.29.170.1.

³⁰ SB 1000 (https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1000).

- Transitional jobs programs that provide short-term subsidized employment or training for formerly incarcerated individuals.³¹

Apprenticeship programs are a primary pathway for providing disadvantaged workers good-paying construction-career opportunities.³² The California Department of Apprenticeship Standards requires every apprenticeship program to include an equal opportunity program with an affirmative action plan to recruit women and minority applicants.³³ Contractors that do not participate in apprenticeship programs are not subject to these requirements. More than two-thirds of participants in union apprenticeship programs are people of color and 95 percent of apprenticeship graduates are produced by union programs.

Construction workforce standards which require use of apprentices, as proposed by BCTA, would promote “fair and just” treatment of Oakland’s construction workforce and would provide the types of programs identified in the EJ Element to train the local construction labor force and directly link education to jobs in the construction trades. This is consistent with the City’s reasoning in proposing Goal EJ-9, which recognizes that “workforce development that is not tied to a guaranteed job after completion of training with flying colors may not lead to improved economic livelihoods.”³⁴

The construction workforce standards proposed by BCTA are also consistent with the EJ Element’s REIA recommendation to:

Establish high road partnerships that go beyond standard worker training/retraining to include plant modernization and market development help for employers, ***targeted assistance for minority and women jobseekers***, technology-testing operations, and high school equivalency and English as a second language (ESL) education to ensure a just transition of the workforce.³⁵

A critical driver of economic inequity in Oakland has been the recent massive infusion of development capital and the high expectation investors have for the return on their investment. Construction has become a bifurcated industry, split into two business models: the “high-road” model in which companies compete on productivity, efficiency, timeliness and quality of work, and the “low-road” model in which companies compete primarily by paying their workforce as little as possible.

This disparity impacts workers of color the most, especially in the non-union residential sector, which makes up the majority of construction hours.

Among construction workers:

- Latino workers are paid, on average, 38% less than white workers.
- Asians are paid 52% less than white workers.
- African-Americans are paid 38% less than white workers.

³¹ See 2045 General Plan Environmental Justice Element, July 2023 Hearing Draft, Goal EJ-9, available at https://cao-94612.s3.amazonaws.com/documents/EJ-Element_Public-Hearing-Draft_073123.pdf; see also REIA for EJ Element, pp. 74-75,

³² See e.g. Cypress Mandela Training Center (<https://www.cypressmandela.org/> and <https://www.cypressmandela.org/programs>), providing free training for construction careers. In 2000, Cypress Mandela Training program received the Civil Rights Partnership Award from the United States Department of Transportation’s Federal Highway Administration for outstanding efforts in bringing more minorities and women into the construction trades.

³³ Cal.Code.Reg. tit. 8, § 215; see also Labor Code Section 1777.5 (f).

³⁴ REIA for EJ Element, p. 75.

³⁵ REIA for EJ Element, p. 76 (emphasis added).

This low-road residential construction model also contributes to the unequal impact on communities of color by limiting access of Black and Brown workers to apprenticeship opportunities in the Trades. With few exceptions, residential contractors in Oakland do not employ apprentices enrolled in State of California approved Joint Labor-Management Apprenticeship Program (“JATC”) programs. As a result, hundreds of apprenticeship opportunities in Oakland have been lost. Without these potential slots to fill in the region’s JATCs, programs like Rising Sun and Cypress Mandela have limited opportunity to place at-risk Oakland workers into a middle-class career pathway.

The UC Berkeley Labor Center has identified three key principles to equitable workforce development³⁶:

- Ensure jobs with family-supporting wages, benefits, career paths and safe and healthy working conditions.
- Support prevailing wage and skilled workforce standards.
- Increase access to career-track jobs for workers from disadvantaged communities.

Incorporating construction workforce standards in the GP Update would improve safety and efficiency outcomes of Oakland’s new housing developments by ensuring the use of a well-trained workforce, while at the same time increasing equity for minority and low-income construction workers through local hire provisions, job training and support of apprenticeship programs, and ensuring payment of family-supporting wages and the provision of healthcare and retirement benefits. Workforce standards provide an effective framework to address wage and benefit inequities that women, workers of color, and immigrants often face in the non-unionized workplace.³⁷ This is due largely to the standardized training, wages and workplace rules that level the playing field for all employees.

BCTA’s proposed construction workforce standards promote high-road contracting and are consistent with those equitable workforce development principles.

D. The Proposed Statement of Overriding Considerations Is Inadequate Because the GP Update Fails to Consider Employment Opportunities for Highly Trained Workers

BCTA’s May 2023 letter explained that the City must adopt a statement of overriding considerations pursuant to CEQA because the Project has environmental and public health impacts which the FEIR finds to be significant and unavoidable.³⁸ This requirement reflects the policy that public agencies must weigh a project’s benefits against its unavoidable environmental impacts, and may only find the adverse impacts acceptable if the benefits outweigh the impacts.³⁹

To adopt the statement of overriding considerations for the GP Update, the Planning Commission and City Council must consider whether the GP Update presents specific overriding economic, legal, social, technological, or other benefits which outweigh the significant effects on the environment, including whether the project provides “*employment opportunities for highly trained workers.*”⁴⁰

The entire GP Update – staff reports, FEIR, draft code sections, plan amendments – is silent on whether *any* employment opportunities will be provided to highly trained workers, including specifically residential construction

³⁶ UC Berkeley Labor Center, *Advancing Equity in California Climate Policy: A New Social Contract for Low-Carbon Transition* (2016) at p. 45, available at <https://laborcenter.berkeley.edu/pdf/2016/Advancing-Equity.pdf>.

³⁷ Thomason & Bernhardt, UC Berkeley Center for Labor Research and Education, *The Union Effect in California #2: Gains for Women, Workers of Color, and Immigrants* (June 2018) at p. 1.

³⁸ BCTA Comments (5/19/23), pp. 7-8; Pub. Resources Code, § 21081(b); CEQA Guidelines §§ 15043, 15093(a), (b).

³⁹ Pub. Res. Code § 21081(b); CEQA Guidelines, § 15093(a), (b).

⁴⁰ Pub. Res. Code § 21081(a)(3) and (b) (emphasis added).

workers. The GP Update does not require local hire, does not include any apprenticeship program requirements or healthcare security for construction workers, and does not take any other steps to ensure employment of highly trained and skilled craft workers for the GP Update's buildout projects.

Incorporating BCTA's proposed workforce conditions would support a finding that the GP Update will provide such employment opportunities to highly trained workers.

E. Conclusion

BCTA respectfully requests that the Planning Commission direct City staff to follow the direction of the CED Committee by proposing construction workforce standards to be incorporated in the GP Update before bringing the GP Update to the City Council for consideration.

We look forward to working with the City to ensure that implementation of the GP Update and the City's Housing Element buildout plan meet the City's dual goals of complying with State housing requirements and implementing the City's vision of providing viable futures for all Oakland residents through the land use permitting process.

Sincerely,



Andreas Cluver, Secretary-Treasurer
Building & Construction Trades Council of Alameda County

ATTACHMENT A
PROPOSED WORKFORCE STANDARDS

Apprenticeship Requirements

- a. During the duration of construction of each Overlay Zone housing project (“Covered Project”), each Contractor shall do at least one of the following:
- i. participate in a Joint Labor-Management Apprenticeship Program;
 - ii. participate in an apprenticeship program approved by the State of California Division of Apprenticeship Standards that has a graduation rate of 50% or higher and has graduated an average of at least thirty (30) apprentices annually for the five (5) years immediately preceding the start of construction date on the Covered Project. The Contractor will also maintain at least the ratio of apprentices required by California Labor Code section 1777.5 for the duration of the Covered Project. Any change in program participation must be immediately provided to the City; or
 - iii. make hourly contributions on a monthly basis to the California Apprenticeship Council for every hour worked by any Covered Construction Worker in any Apprenticeable Craft or Trade on the Covered Project of at least the apprenticeship contribution rate for the classification of “plumber, pipefitter, steamfitter” in Alameda County.
- b. A Contractor without covered construction worker employees shall comply with this Section by showing a contractual obligation that its subcontractors comply with this Section.
- c. Applicants shall ensure that the Apprenticeship requirement in this Section is included in all construction contracts for the performance of the Covered Project.

Health Care Expenditures

- a. Prequalification: In order to be prequalified, each Contractor will sign and submit to the City a statement stipulating to and providing documented proof that the Contractor and its subcontractors, must have provided health care expenditures to or on behalf of each covered construction worker for the 180 consecutive day period prior to the submission of prequalification documents (“Contractor Prequalification Questionnaire”). This requirement is in addition to the regular hourly wages paid to its employees.
- In the case of a Contractor that has employed no covered construction workers for the 180 consecutive day period prior to the submission of the prequalification documents, said Contractor shall show a contractual obligation that its subcontractors provide health care expenditures to or on behalf of each Covered Construction Worker employee for the 180 consecutive day period.
- b. Covered Project Duration: For purposes of the Covered Project, each Contractor shall make health care expenditures to or on behalf of each covered construction worker, in addition to their regular hourly wages, during periods of employment on the Covered Project (and sign a statement certifying that it will do so as part of the Contractor Prequalification Questionnaire).

In the case of a Contractor that will employ no covered construction workers on the Covered Project, said Contractor shall show a contractual obligation that its subcontractors will provide health care expenditures on behalf of each covered construction worker for the duration of the Covered Project.

A Contractor shall make health care expenditures on behalf of the covered construction workers employed by its subcontractors in the event said subcontractors fail to make required health care expenditures.

c. Health care expenditures may be made to: (1) a health plan in which the covered construction worker is enrolled at the health care expenditure rate; (2) a covered construction worker's health savings account at the health care expenditure rate; and/or (3) a covered construction worker in the form of cash at one and a half (1.5) times the rate of the health care expenditure rate.

d. The Applicant shall ensure that the health care expenditures requirements in this Section are included in all construction contracts for the performance of the Covered Project.

Required Applicant and Contractor Statements

A declaration must be signed by the Applicant at the time of permit issuance for the Covered Project, attesting to compliance with this Chapter under penalty of perjury ("Applicant Declaration"). By signing the Applicant Declaration, the Applicant commits to ensuring that all Contractors on the Covered Project have and will comply with the apprenticeship and health care expenditures requirements of this condition, including by ensuring that all contracts for the performance of the Covered Project so require, requiring all Contractors to complete the statements established by this Section, and submitting all Contractor statements to the City within seven (7) days of receipt.

Prior to executing their contract for the Covered Project, but no later than seven (7) calendar days before their first day of work on the Covered Project, each Contractor will sign and submit to the Applicant a statement stipulating that on the Covered Project it will comply with the Apprenticeship and Health Care Expenditures as set forth in this Chapter during the duration of the Covered Project, and that it has met the health care expenditures prequalification requirements identified in the Contractor Prequalification Questionnaire.

Within 30 calendar days of completing their work on the Project, each Contractor must sign and submit to the Applicant a statement certifying that it complied with the apprenticeship and health care expenditures requirements of this condition ("Contractor Satisfaction Statement").

Prior to issuance of a certificate of occupancy for the Covered Project, the Applicant shall sign and submit to the City a certification that all Contractors on the Covered Project satisfied the apprenticeship and health care expenditures requirements of this condition ("Applicant Certification of Compliance").

Implementation and Enforcement

a. Issuance and Revocation of Permits

The City shall issue permits for the Covered Project only where an Applicant meets the requirements of this condition and submits the Applicant Declaration. The City shall include conditions of approval requiring compliance with this Chapter for all permits issued for Covered Projects. The City may revoke or modify the applicable permits for the Covered Project where an Applicant or any Contractor is out of compliance with this condition.

b. Community Benefits Agreement Exception

If an otherwise Covered Project is covered by a Project Labor Agreement (or community workforce agreement or similar labor agreement) with the local Building and Construction Trades Council that already requires health care expenditures and apprenticeship fund contributions, Contractors will be deemed in compliance with this Chapter.

c. Collective Bargaining Agreement Exception

A Contractor that is signatory to a valid collective bargaining agreement with a labor union that requires participation in a joint labor-management state-approved apprenticeship program and the provision of health care expenditures to all construction craft employees shall be deemed in compliance with this Chapter.

d. City Enforcement.

The City may take appropriate enforcement action to ensure compliance with this condition. The City may issue a citation to any Contractor or, Applicant or entity that has not complied with the requirements of this condition, including but not limited to, the following violations:

- (1) failing to post a required notice;
- (2) refusing to or not providing timely access to records or work sites;
- (3) failing to submit or submitting a false or misleading Applicant Declarations, Contractor Prequalification Questionnaires, Contractor Satisfaction Statements, and/or Applicant Certificates of Compliance; and/or
- (4) failing to comply with the Apprenticeship and/or health care expenditures requirements of this condition.

The fine shall vary based on the provisions of this condition violated, but may be up to a maximum of \$5,000/month per Covered Construction Worker during the period of the violation.



American Federation of Labor & Congress of Industrial Organizations
Building & Construction Trades Council of Alameda County
7750 Pardee Lane, Suite 100, Oakland, California 94621

May 19, 2023
Via Email Submission

Lakshmi Rajagopalan, AICP, Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Re: Comments on Phase I Oakland 2045 General Plan Update Draft EIR (SCH Number 2022030800)

Dear Ms. Rajagopalan:

These comments are submitted on behalf of the Building & Construction Trades Council of Alameda County regarding the Draft Environmental Impact Report (“DEIR”) prepared by the City of Oakland (“City”) for the Phase I Oakland 2045 General Plan Update (“GP Update” or “Project”).¹

The Alameda Building and Construction Trades Council consists of over twenty affiliated Building Trades Unions that represent over three thousand Oakland households.

The current City of Oakland General Plan elements were last updated and adopted at different times between 1996 and 2023.² State law requires the City to have and maintain a comprehensive, long-term general plan for the physical development of the City with specific contents to inform local decisions about land use and development.³ State law requires specific topics or "elements," including land use, circulation, housing, conservation, open space, noise, safety, and environmental justice.⁴ The GP Update includes proposed updates to the City’s General Plan Safety Element, adoption of a new Environmental Justice element, and amendments to the Planning Code, Zoning Map, and General Plan text and map to implement actions contained in the City's recently adopted 2023-2031 Housing Element.⁵

The Housing Element Implementation (“HEI”) component of the GP Update proposes the adoption of Planning Code, Zoning Map, and General Plan text and map amendments to implement goals, policies, and actions related to housing contained in the new Housing Element.⁶ The HEI proposes to modify City zoning designations and development standards in several ways, including adopting affordable housing overlay zones that would provide ministerial approval and other incentives to qualifying affordable housing developments.⁷ The stated purpose of the HEI is *“[t]o ensure a path for construction* of Oakland’s Regional Housing Needs Assessment (RHNA) assigned

¹ The GP Update DEIR is available at <https://www.oaklandca.gov/documents/oakland-2045-general-plan-draft-environmental-impact-report-eir> (last visited 5/8/23).

² DEIR, p. 1-1.

³ Gov. Code § 65300.

⁴ Gov. Code § 65302.

⁵ DEIR, p. 1-1.

⁶ DEIR, p. 1-1.

⁷ DEIR, p. 1-2.

production target by 2031.”⁸ The HEI Planning Code amendments include proposals to reduce and eliminate constraints on housing production and to “incentivize the construction of affordable housing.”⁹

Housing construction is a fundamental component of the GP Update. The General Plan Buildout Program anticipates approximately 41,458 new housing units would be developed under the GP Update during the projection period ending in 2030.¹⁰ This substantial amount of new construction will require a large, skilled and healthy construction workforce to meet General Plan buildout targets. As the DEIR explains, “while the GP Update does not propose specific private developments, *construction would be a reasonably foreseeable future outcome of the update.*”¹¹ However, the DEIR fails to address the impacts of the Housing Element buildout on residential construction workers, and the draft GP Update and affordable overlay zones lack construction workforce standards.

The City should adopt construction workforce standards for all buildout projects in the GP Update Overlay Zones as part of the City’s GP Update drafting and approval process. Absent conditions regulating construction worker standards for General Plan buildout projects, housing developers may utilize low wage, poorly trained construction workers in order to maximize profits. Projects which do not utilize a local skilled construction workforce, and do not provide health benefits for their workers, can result in poorly built projects which threaten the safety of future residents, and perpetuate income inequality in the construction industry.

There is substantial evidence demonstrating that the creation and utilization of construction apprenticeships, along with the commitments to paid healthcare for construction workers, act to both recruit and retain an adequate base of construction workers and to be a pipeline for future supervisors and licensed independent contractors.¹² The construction workforce standards proposed herein would establish apprenticeship and healthcare requirements for the construction workforce used to build new housing in the General Plan overlay zones to address these needs.

The City is at the heart of the East Bay’s construction industry. As the DEIR explains, the City is the county seat of Alameda County and the “geographic center of the Bay Area.”¹³ It General Plan Area encompasses 78 square miles.¹⁴ Requiring contractors on Housing Element buildout projects in the City’s affordable housing overlay zones to employ apprentices would result in a higher volume of apprentice training, and thus, an increase in the construction labor force available to carry out the construction anticipated by the General Plan, and especially that targeted by the Housing Element. Providing healthcare to those workers will help ensure the viability of the workers needed to build those projects.

Additionally, because the GP Update will have significant environmental and public health impacts which the DEIR considers “unavoidable,” the City must adopt a statement of overriding considerations which considers whether the GP Update provides “employment opportunities for highly trained workers.”¹⁵ The construction workforce conditions discussed below would meet these standards.

I. THE HEI AFFORDABLE HOUSING OVERLAY SHOULD INCLUDE CONSTRUCTION WORKFORCE STANDARDS TO ENSURE SAFE, WELL-BUILT AFFORDABLE HOUSING AND A SUSTAINABLE CONSTRUCTION WORKFORCE

A. Proposed Affordable Housing Overlay Zones

The DEIR explains that the proposed HEI code and zoning amendments are designed to expedite the approval process for housing projects with 20%-100% affordable units by providing streamlined design review procedures,

⁸ DEIR, p. 1-2 (emphasis added).

⁹ DEIR, p. 2-3.

¹⁰ DEIR, p. 1-2.

¹¹ DEIR, p. 1-2 (emphasis added).

¹² See e.g. City of Berkeley, 9/20/22 Staff Report re Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards Referral, p. 4, citing U.S. Census Bureau LEHD Origin-Destination Employment Statistics, Version 7, Residence Area Characteristics, and Analysis of U.S. Census, ACS 2015-2019 Microdata, available at <https://berkeleyca.gov/sites/default/files/documents/2022-09-20%20Item%2014%20Helping%20Achieve%20Responsible.pdf>.

¹³ DEIR, p. 2-2.

¹⁴ DEIR, p. 2-2.

¹⁵ Pub. Res. Code § 21081(a).

relaxed development standards, and allowing ministerial approval for more types of projects.¹⁶ The HEI’s Planning Code, Zoning Map, and General Plan text and map amendments are anticipated to result in an increase in housing development and associated increase in residential population in the City.¹⁷

Action 3.3.5 proposes an Affordable Housing Overlay (“AHO”) Zone to create and preserve affordable housing restricted for extremely low, very low, low, and/or moderate-income households.¹⁸ The AHO Zone would provide numerous concessions to affordable housing developers, including allowing additional height for eligible affordable housing projects (AHO projects), elimination of maximum residential density standards, and relaxation of other listed development standards.¹⁹ The AHO’s maximum proposed height and geographic area would apply the AHO Zone on top of fourteen (14) existing base zones in the City, allowing “bonus heights” for eligible AHO projects of two-three additional stories above base zoning limits, or a height of at least 65 feet.²⁰ The proposed AHO Zone would also authorize “unlimited density” that fits within the allowed building envelope of new or existing structures, reduced open space requirements, and eliminate minimum parking requirements.²¹ In 6 of the 14 base zones, AHO Zoning would allow a 70% increase in lot coverage, and reduced setbacks.²² And by-right approvals would be allowed for 100 percent affordable housing projects that fall within the AHO Zone.²³

Action 3.4.10 proposes a Housing Sites Overlay Zone to authorize by-right affordable housing development for all sites included in the Housing Element’s Housing Sites Inventory²⁴ where the housing development includes at least 20 percent affordable housing units.²⁵ This means that qualifying housing projects in the Overlay Zones would undergo a ministerial approval process that would not be subject to environmental or public health review under the California Environmental Quality Act (“CEQA”)²⁶ and would not be appealable by any members of the public.²⁷

In summary, under the GP Update’s AHO and Housing Sites Overlay Zone proposals, **new projects that include up to 80% market-rate housing units will be eligible for “bonus heights”, unlimited density, relaxed development standards, and will fully exempted from CEQA and the City’s land use public hearing process.** This is a windfall for private developers.

B. Affordable Housing Overlay Zones Should Include Conditions Supporting Its Construction Workforce

As proposed, the AHO and Housing Sites Overlay Zone would substantially increase the rate and intensity of housing construction in the City, while providing a streamlined approval process and extensive benefits to private housing developers. However, the draft plan amendments and DEIR are silent on whether any construction workforce standards would apply to the new housing construction. Use of a skilled and trained construction workforce to build the thousands of new housing units identified in the Housing Element is essential to the safety, quality, and long-term sustainability of those projects, as well as to the vitality and welfare of current and future Oakland residents.

Construction workforce standards, including construction worker apprenticeship training standards and healthcare requirements, should be added to the Overlay Zones as standard conditions of approval to ensure that construction workers are protected by the Housing Element, not exploited by it, and to set basic labor standards for the City’s housing construction industry.

The City is currently considering several AHO and Overlay Zone variants.²⁸ As with the rest of the GP Update, the Overlay Zones are in the draft stage, affording the City great flexibility in determining the conditions that

¹⁶ DEIR, p. 3-31.

¹⁷ DEIR, p. 3-29.

¹⁸ DEIR, p. 3-31.

¹⁹ DEIR, p. 3-31.

²⁰ DEIR, p. 3-31.

²¹ DEIR, p. 3-32.

²² DEIR, p. 3-32.

²³ DEIR, pp. 3-31 to 3-32.

²⁴ Sites included in the Housing Sites Inventory are identified in Table C-26 in the Housing Element Update, Appendix C

²⁵ DEIR, pp. 3-30, 3-38.

²⁶ Pub. Res Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq.

²⁷ DEIR, p. 3-38.

²⁸ DEIR, p. 3-31.

should be applied to affordable housing permitting as part of the GP Update process. The City must build construction workforce protections into this process.

1. Workforce Standards Should Be Added to the GP Update’s Standard Conditions of Approval

Unlike the City’s concurrently proposed Downtown Oakland Specific Plan (“DOSP”),²⁹ the draft GP Update’s Affordable Overlay Zones do not include any community benefit requirements in exchange for the major development concessions and permit streamlining offered to housing developments in the Overlay Zones. The only community benefit requirement referenced in the DEIR is the Housing Element’s existing requirement to negotiate community benefits during development agreement approvals for major entitlements and the use of City land.³⁰ This community benefit requirement is unlikely to apply to new housing developments in the Overlay Zones due to their proposed ministerial by-right permitting and development standard exceptions. Under this permitting scheme, it is unlikely that many (if any) qualifying housing projects in the Overlay Zones would include a development agreement that would enable the City to negotiate community benefits at the permitting stage. It is therefore critical that community benefits, including construction workforce benefits, be built into the Overlay Zones themselves as standard conditions of approval.

The GP Update includes existing and proposed Standard Conditions of Approval (“SCAs”) pursuant to Public Resources Code Section 21083.3 and CEQA Guidelines Section 15183 (and now Section 15183.3).³¹ The SCAs address three aspects of buildout projects: (1) general administrative aspects of the project approval; (2) environmental protection measures that are incorporated into a project and are designed to, and will, substantially mitigate environmental effects; and (3) other SCAs containing requirements to reduce non-environmental effects of the buildout projects.³² SCAs are mandatory City requirements for GP Update buildout projects.³³

Construction workforce conditions for Overlay Zone housing projects can and should be integrated into the SCAs as part of the third category: requirements to reduce non-environmental effects of the buildout projects. As discussed below, there is substantial evidence demonstrating that housing projects that are constructed with low-wage or uninsured construction workers are detrimental to the safety and sustainability of the housing industry and to the health, safety and general welfare of the communities in which the projects are built. Shortages of skilled construction workers, particularly residential trade workers, can also threaten to delay or derail development plans.

These impacts can be reduced or avoided by incorporating standard conditions of approval into the GP Update which require construction worker benefits and apprenticeship requirements to ensure the Housing Element will be built with a skilled and healthy construction workforce.

2. Affordable Overlay Zone Conditions of Approval Should Establish Construction Worker Healthcare and Apprenticeship Standards for Buildout Projects

The City should incorporate construction workforce standards as standard conditions of approval for the GP Update’s Overlay Zones. These standards should include:

Apprenticeship Requirements

- a. During the duration of construction of each Overlay Zone housing project (“Covered Project”), each Contractor shall do at least one of the following:

²⁹ Oakland Downtown Specific Plan available at <https://www.oaklandca.gov/topics/downtown-oakland-specific-plan>. City of Oakland, *Downtown Oakland Specific Plan (DOSP): Zoning Amendments FAQ 2* (October 12, 2022), <https://cao-94612.s3.amazonaws.com/documents/2022-10-12-DOSP-Zoning-Amendments-FAQ-Final-1.pdf>, p. 3 (community benefits to include on-site affordable housing units; below market-rate ground floor commercial space; streetscape, open space, and other culturally-relevant neighborhood improvements; public Restrooms in building lobby; and in lieu fees or other mechanism for job training and/or job placement support programs).

³⁰ DEIR, 4.12-14 (Housing Element Policy 1.1 (Tenant Protections and Anti-Displacement), includes this community benefit requirement as Action 1.1.13).

³¹ DEIR, pp. 3-39; Table 2-1 (pp. 2-10 to 2-89); 4 0-4.

³² *Id.*

³³ DEIR, p. 4.0-4.

- i. participate in a Joint Labor-Management Apprenticeship Program;
- ii. participate in an apprenticeship program approved by the State of California Division of Apprenticeship Standards that has a graduation rate of 50% or higher and has graduated an average of at least thirty (30) apprentices annually for the five (5) years immediately preceding the start of construction date on the Covered Project. The Contractor will also maintain at least the ratio of apprentices required by California Labor Code section 1777.5 for the duration of the Covered Project. Any change in program participation must be immediately provided to the City; or
- iii. make hourly contributions on a monthly basis to the California Apprenticeship Council for every hour worked by any Covered Construction Worker in any Apprenticeable Craft or Trade on the Covered Project of at least the apprenticeship contribution rate for the classification of “plumber, pipefitter, steamfitter” in Alameda County.

b. A Contractor without covered construction worker employees shall comply with this Section by showing a contractual obligation that its subcontractors comply with this Section.

c. Applicants shall ensure that the Apprenticeship requirement in this Section is included in all construction contracts for the performance of the Covered Project.

Health Care Expenditures

a. Prequalification: In order to be prequalified, each Contractor will sign and submit to the City a statement stipulating to and providing documented proof that the Contractor and its subcontractors, must have provided health care expenditures to or on behalf of each covered construction worker for the 180 consecutive day period prior to the submission of prequalification documents (“Contractor Prequalification Questionnaire”). This requirement is in addition to the regular hourly wages paid to its employees.

In the case of a Contractor that has employed no covered construction workers for the 180 consecutive day period prior to the submission of the prequalification documents, said Contractor shall show a contractual obligation that its subcontractors provide health care expenditures to or on behalf of each Covered Construction Worker employee for the 180 consecutive day period.

b. Covered Project Duration: For purposes of the Covered Project, each Contractor shall make health care expenditures to or on behalf of each covered construction worker, in addition to their regular hourly wages, during periods of employment on the Covered Project (and sign a statement certifying that it will do so as part of the Contractor Prequalification Questionnaire).

In the case of a Contractor that will employ no covered construction workers on the Covered Project, said Contractor shall show a contractual obligation that its subcontractors will provide health care expenditures on behalf of each covered construction worker for the duration of the Covered Project.

A Contractor shall make health care expenditures on behalf of the covered construction workers employed by its subcontractors in the event said subcontractors fail to make required health care expenditures.

c. Health care expenditures may be made to: (1) a health plan in which the covered construction worker is enrolled at the health care expenditure rate; (2) a covered construction worker’s health savings account at the health care expenditure rate; and/or (3) a covered construction worker in the form of cash at one and a half (1.5) times the rate of the health care expenditure rate.

d. The Applicant shall ensure that the health care expenditures requirements in this Section are included in all construction contracts for the performance of the Covered Project.

Required Applicant and Contractor Statements

A declaration must be signed by the Applicant at the time of permit issuance for the Covered Project, attesting to compliance with this Chapter under penalty of perjury (“Applicant Declaration”). By signing the Applicant Declaration, the Applicant commits to ensuring that all Contractors on the Covered Project have and will comply with the apprenticeship and health care expenditures requirements of this condition, including by ensuring that all contracts for the performance of the Covered Project so require, requiring all Contractors

complete the statements established by this Section, and submitting all Contractor statements to the City within seven (7) days of receipt.

Prior to executing their contract for the Covered Project, but no later than seven (7) calendar days before their first day of work on the Covered Project, each Contractor will sign and submit to the Applicant a statement stipulating that on the Covered Project it will comply with the Apprenticeship and Health Care Expenditures as set forth in this Chapter during the duration of the Covered Project, and that it has met the health care expenditures prequalification requirements identified in the Contractor Prequalification Questionnaire.

Within 30 calendar days of completing their work on the Project, each Contractor must sign and submit to the Applicant a statement certifying that it complied with the apprenticeship and health care expenditures requirements of this condition (“Contractor Satisfaction Statement”).

Prior to issuance of a certificate of occupancy for the Covered Project, the Applicant shall sign and submit to the City a certification that all Contractors on the Covered Project satisfied the apprenticeship and health care expenditures requirements of this condition (“Applicant Certification of Compliance”).

Implementation and Enforcement

a. Issuance and Revocation of Permits

The City shall issue permits for the Covered Project only where an Applicant meets the requirements of this condition and submits the Applicant Declaration. The City shall include conditions of approval requiring compliance with this Chapter for all permits issued for Covered Projects. The City may revoke or modify the applicable permits for the Covered Project where an Applicant or any Contractor is out of compliance with this condition.

b. Community Benefits Agreement Exception

If an otherwise Covered Project is covered by a Project Labor Agreement (or community workforce agreement or similar labor agreement) with the local Building and Construction Trades Council that already requires health care expenditures and apprenticeship fund contributions, Contractors will be deemed in compliance with this Chapter.

c. Collective Bargaining Agreement Exception

A Contractor that is signatory to a valid collective bargaining agreement with a labor union that requires participation in a joint labor-management state-approved apprenticeship program and the provision of health care expenditures to all construction craft employees shall be deemed in compliance with this Chapter.

d. City Enforcement.

The City may take appropriate enforcement action to ensure compliance with this condition. The City may issue a citation to any Contractor or, Applicant or entity that has not complied with the requirements of this condition, including but not limited to, the following violations:

- (1) failing to post a required notice;
- (2) refusing to or not providing timely access to records or work sites;
- (3) failing to submit or submitting a false or misleading Applicant Declarations, Contractor Prequalification Questionnaires, Contractor Satisfaction Statements, and/or Applicant Certificates of Compliance; and/or
- (4) failing to comply with the Apprenticeship and/or health care expenditures requirements of this condition.

The fine shall vary based on the provisions of this condition violated, but may be up to a maximum of \$5,000/month per Covered Construction Worker during the period of the violation.³⁴

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

³⁴ *Id.* at Attachment 1.

- Low wage employment is a problem in both the residential +and commercial construction markets. Fifty-five percent of Alameda County construction workers’ households are Extremely Low Income, Very Low Income, or Low Income.³⁵
- Jobsite Health, Healthcare and Safety:
 - Construction trade workers experience exceptionally high rates of serious injury on the job, especially on sites with inadequately trained workers.
 - One of every five serious workers’ compensation insurance claims which involve death, permanent total disability or major permanent partial disability - is related to a construction employee, despite the fact that construction jobs account for less than one out of every 25 California jobs.
 - Construction workers who live in Alameda County are uninsured at rates 3-4 times higher than the rate of non-construction workers. The under-performance of California contractors in providing health care security to employees constrains the supply of skilled construction labor.³⁶
- California residential building was strongest when apprenticeship training was strongest:
 - During the 1970s, when California was producing housing at the average annual rate of 200,000 units, the state reported an average of 9,000 apprentices. California residential builders utilized apprentices every bit as much as commercial builders, according to a 1976 U.S. Bureau of Labor Statistics report.
 - De-unionization and the recession of the early 1990s, however, led to sharply reduced utilization of apprentices by residential contractors. Carpenter apprenticeship completions fell by 50 percent between 1996-2005 compared to 1973-1982.³⁷

This evidence demonstrates that projects which do not utilize a local skilled construction workforce and do not provide health benefits may be detrimental to the general welfare of the City, its residents, and its workers, and may ultimately slow down housing development projects.

There is no evidence in the City’s record demonstrating that the Project would avoid these negative impacts. These impacts are likely to occur at an accelerated rate given the magnitude and fast pace of housing construction proposed for the City under the GP Update, unless conditions are added to the GP Update to prevent their occurrence. The City must take all feasible actions to ensure that Housing Element buildout projects in the Overlay Zones do not result in these negative impacts by adopting binding construction workforce conditions for future development in the GP Update Overlay Zones.

4. CEQA Requires the City to Consider Employment Opportunities for Highly Trained Workers

The DEIR identifies several significant environmental and public health impacts which it considers to be unavoidable, even with mitigation. These include the Project’s Aesthetics, Air Quality, Cultural Resources, Hazardous Materials, and Wildfire impacts.³⁸ Therefore, in order to approve the GP Update, CEQA requires the City to adopt a statement of overriding considerations, providing that the Project’s overriding benefits outweigh its environmental harm.³⁹ An agency’s determination that a project’s benefits outweigh its significant, unavoidable impacts “lies at the core of the lead agency’s discretionary responsibility under CEQA.”⁴⁰

³⁵ *Id.*, citing Analysis of U.S. Census, ACS 2015-2019 Microdata.

³⁶ (2019). Rebuilding California: The Golden State’s Housing Workforce Reckoning. Smart Cities Prevail. pp. 23-25. Downloaded 3/26/2021 via https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP_HousingReport.0118_2.pdf

³⁷ *Id.*, citing U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 1911, “Industry Wage Survey: Contract Construction September 1973,” Washington, D.C.: 1976. See Tables 28 & 46. Downloaded via <http://fraser.stlouisfed.org>; Littlehale, Scott. (2019). Rebuilding California: The Golden State’s Housing Workforce Reckoning. Smart Cities Prevail. pp. 23-25. Downloaded 3/26/2021 via https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP_HousingReport.0118_2.pdf

³⁸ DEIR, pp. 2-6 to 2-7 (DEIR identifies the Project’s Aesthetics, Air Quality, Cultural Resources, Hazardous Materials, and Wildfire impacts to be significant and unavoidable).

³⁹ CEQA Guidelines, § 15043.

⁴⁰ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

To approve the GP Update and certify the EIR, the City must set forth the reasons for its action, pointing to supporting substantial evidence in the administrative record.⁴¹ This requirement reflects the policy that public agencies must weigh a project’s benefits against its unavoidable environmental impacts, and may find the adverse impacts acceptable only if the benefits outweigh the impacts.⁴² Importantly, a statement of overriding considerations is legally inadequate if it fails to accurately characterize the relative harms and benefits of a project.⁴³

Here, the City must find that the GP Update’s significant, unavoidable impacts are outweighed by its benefits to the community. Among the factors the City must consider is whether the GP Update presents specific overriding economic, legal, social, technological, or other benefits which outweigh the significant effects on the environment, including whether the project provides “*employment opportunities for highly trained workers.*”⁴⁴ Currently, there is no substantial evidence in the record showing that the GP Update’s significant, unavoidable impacts are outweighed by benefits to the community because the draft GP Update does not include any community benefits. With regard to its construction workforce, the draft GP Update does not include any apprenticeship program requirements and healthcare security for construction workers on General Plan buildout projects or other steps to ensure employment of highly trained and skilled craft workers. The City would not fulfill its obligations under CEQA if it adopted a statement of overriding considerations and approved the GP Update absent such benefits.

We urge the City to comply with CEQA by including standard conditions of approval for the affordable housing Overlay Zones which include healthcare and apprenticeship standards for the construction workforce as a means of furthering “*employment opportunities for highly trained workers*” under the General Plan.⁴⁵

II. CONCLUSION

For the reasons discussed herein, [NAME] respectfully requests that the City revise and recirculate the DEIR to add construction workforce standards as standard conditions of approval for all projects in the GP Update’s Overlay Zones.

We look forward to working with the City to ensure that implementation of the GP Update and the City’s Housing Element buildout plan meet the City’s dual goals of complying with State housing requirements and implementing the City’s vision of providing viable futures for all Oakland residents through the land use permitting process. Please include these comments in the City’s record of proceedings for the GP Update.

Sincerely,

⁴¹ Pub. Resources Code, § 21081, subd. (b); CEQA Guidelines, § 15093, subds. (a) and (b); *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 357.

⁴² Pub. Resources Code, § 21081(b); CEQA Guidelines, § 15093, subds. (a) and (b)

⁴³ *Woodward Park Homeowners Association v. City of Fresno* (2007) 150 Cal.App.4th 683, 717.

⁴⁴ Pub. Res. Code § 21081(a)(3) and (b) (emphasis added).

⁴⁵ Pub. Res. Code § 21081(a)(3) and (b) (emphasis added).