

1 RESOLUTION NO. -N.S.

2 APPROVING A FINAL ENVIRONMENTAL IMPACT REPORT AND USE PERMITS FOR
3 THE CONGREGATION BETH EL PROJECT AT 1301 OXFORD STREET

4 WHEREAS, Congregation Beth El (the Applicant) submitted an application for a new synagogue
5 and associated religious school and day care facilities at 1301 Oxford Street (the Project); and,

6 WHEREAS, the application was complete on October 17, 1999; and,

7 WHEREAS, the proposed Project requires the following discretionary approvals from the City of
8 Berkeley: a use permit for the demolition of the existing on-site structures (BMC Section
9 23C.08.050); a use permit for the operation of the synagogue and school (BMC Section
10 23D.16.030); a use permit for a height adjustment (BMC Section 23D.16.070.C), and a use permit
11 to allow automobile parking within required yards abutting a street (BMC Section 23D.12.080.C).
12 The Project also requires a Structural Alteration Permit issued by the Landmarks Preservation
13 Commission (LPC) (BMC Section 3.24.200); and,

14 WHEREAS, the City determined that an Environmental Impact Report (EIR) was necessary under
15 the California Environmental Quality Act (CEQA, at Public Resources Code Section 21000 et
16 seq.), and retained the firm of Pacific Municipal Consultants (PMC) to prepare the EIR for the
17 Project; and,

18 WHEREAS, PMC conducted the preparation of the EIR under the direction of City staff, and all
19 draft products prepared by PMC were reviewed and approved by City staff; and

20 WHEREAS, the Notice Of Preparation of an EIR was circulated for review to the public and other
21 agencies in February, 2000 (CEQA Guidelines Section 15082); and

22 WHEREAS, in March 2000, the City held a publicly noticed scoping session to receive public
23 input on the scope of the EIR (CEQA Guidelines Section 15083); and

24 WHEREAS, the Draft EIR was prepared and completed. A Notice Of Completion was filed with
25 the State OPR on July 20, 2000 (CEQA Guidelines Section 15085). The Draft EIR consists of two
26 documents: *Congregation Beth El Synagogue and School Draft Environmental Impact Report*,
27 dated July, 2000 and the *Technical Appendices*, dated July, 2000; and

28 WHEREAS, the public review period for the Draft EIR continued for 45 days, through September
29 8, 2000 (CEQA Guidelines Section 15087); and

30 WHEREAS, on August 7, 2000, the City of Berkeley Landmarks Preservation Commission met to
31 receive public comments on the Draft EIR and on August 10, 2000, the City of Berkeley Zoning
32 Adjustments Board (ZAB) met to receive public comments on the Draft EIR; and

33 WHEREAS, at the close of the public review period, City staff and PMC compiled all of the
34 written responses on the Draft EIR and prepared Responses to Comments, all of which are
35 contained in the Final EIR titled *Congregation Beth El Synagogue and School Final
36 Environmental Impact Report/Response to Comments*, dated October 20, 2000 (CEQA Guidelines
37 Sections 15088, 15089); and

1 WHEREAS, the applicant granted a 90-day extension to allow the City to certify the EIR no later
2 than January 15, 2001 (CEQA Guidelines Section 15108; Government Code Section Section
3 65950(b), 65957.); and,

4 WHEREAS, the ZAB held properly noticed public hearings on whether to certify the EIR on
5 November 9, and 27 and December 14, 2000; and,

6 WHEREAS, on December 14, 2000, the ZAB certified the Final Environmental Impact Report
7 (FEIR) for the Congregation Beth El Project as complete (CEQA Guidelines Section 15090); and,

8 WHEREAS, the project application seeks permission to demolish all the structures remaining on
9 the site, except the “small white shed” and the following facts are relevant to this permit’s
10 consideration: a) The Zoning Ordinance requires the approval of a Use Permit to demolish any
11 non-residential building over 300-square feet in area; b) Two of the existing structures are of a size
12 to require this Use Permit; c) When, at their November 19, 1990 meeting, the LPC moved to
13 reaffirm the subject property’s historic significance, their motion cited the remaining resources
14 (including: the trees, open creek bed, and a fence) as examples and remnants of a past era but it did
15 not cite the existing buildings as resources; d) The 1998 survey of the property’s historical
16 elements, prepared by a LPC subcommittee, identifies the “small white shack” as the only
17 structure that should be “reused, preserved or restored” if “documentable as original”; and,

18 WHEREAS, the proposed demolition permit was forwarded to the LPC for review and comment
19 as required by BMC Section 23C.08.050.C (Demolitions of Buildings Used for Commercial,
20 Manufacturing or Community, Institutional or Other Non-residential Uses); however, the LPC did
21 not send comment to the ZAB regarding this proposal; and,

22 WHEREAS, the LPC, at their meeting of March 5, 2001, denied the requested “Alteration Permit”
23 regarding the construction of the subject project, pursuant to BMC Section 3.24.200 (Landmarks,
24 historic districts and structures of merit--Construction, alteration or modification--Approval
25 required) based on the finding that the proposed project was too massive for the site and would
26 adversely affect the special character and historical nature of the site, and the LPC also determined
27 that the project EIR was not adequate for their purpose; and,

28 WHEREAS, the ZAB held properly noticed public hearings on whether to approve the required
29 use permits on January 11, 25, February 8, 22, and March 8, 2001; and,

30 WHEREAS, the ZAB approved Use Permit #99-10000079 on March 8, 2001; and,

31 WHEREAS, the Berkeley City Council, on April 24, 2001, certified for its review the above Use
32 Permits pursuant to BMC Section 23B.32.090 (Certification of Use Permits by City Council) and
33 appealed the decision of the LPC pursuant to BMC Section 3.24.300.A (Appeals—Procedures
34 required—City Council authority); and,

35 WHEREAS, the Berkeley City Council held duly noticed public hearings regarding the
36 aforementioned Use Permits and Structural Alteration Permit on June 5, 26, July 16, 19, 24; and,

37 WHEREAS, at the public hearing before the City Council on July 24, 2001, the Applicant
38 submitted a revised site plan for the project that relocates the parking area and driveways to the

1 south side of Codornices Creek and makes other changes including a reduction in floor area,
2 increase in the south side setback, and addition of a public overlook, which changes were the result
3 of mediated discussions with representatives of a coalition of neighbors and environmental groups
4 and are depicted on that drawing entitled "SITE PLAN/ ROOF PLAN: Supplement #11
5 8/24/2001" (Sheet # A2.0); and,

6 WHEREAS, pursuant to California Environmental Quality Act (CEQA) Guidelines, Section
7 15164, the City prepared three addenda to the Final Environmental Impact Report, dated March 6,
8 May 30, and August 7, 2001 that evaluated revisions to the plans and clarifications regarding
9 operations of the proposed use, which concluded that the proposed project as revised would not
10 create any new significant impacts or substantially increase any impacts that were previously
11 identified in the FEIR; and,

12 WHEREAS, the Berkeley City Council on September 13, 2001 held a duly noticed public hearing
13 on the additional Use Permit required by the revised plan to allow automobile parking within
14 required yards abutting a street; and,

15 WHEREAS, the City Council has considered the Project, the FEIR, the Addenda to the FEIR, and
16 the information submitted in the staff reports and at the public hearings; and,

17 WHEREAS, changes and alterations have been incorporated into the project or will be required as
18 conditions of approval that will avoid or substantially lessen significant impacts identified in the
19 FEIR as described below; and,

20 WHEREAS, Exhibits A (Conditions of Approval) and B (Mitigation Monitoring Program) are
21 attached hereto and are incorporated by reference as if they were fully set forth herein.

22 NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley:

23 Certifies that the FEIR for the Project has been completed in compliance with the requirements of
24 CEQA and together with the Second and Third Addenda to the FEIR, dated May 30 and August 7
25 respectively, reflect the Council's independent judgment and analysis; and

26 Approves the following permits, based upon the affirmations and findings set forth in this
27 resolution and subject to the Use Permit Conditions of Approval set forth in Exhibit A(attached)
28 and to the Mitigation Monitoring Program set forth in Exhibit B (attached):

29 1. A Use Permit to construct and operate a Religious Assembly use (BMC Section
30 23D.16.030);

31 2. A Use Permit to allow the demolition of two non-residential buildings (BMC Section
32 23C.08.050 A and B);

33 3. A Use Permit for a height adjustment (BMC Section 23D.16.070.C);

34 4. A Use Permit to allow automobile parking within required yards abutting a street (BMC
35 Section 23D.12.080.C).

1 BE IT FURTHER RESOLVED, that the Berkeley City Council makes the following findings
2 regarding potentially significant environmental impacts of the project under CEQA; measures that
3 will mitigate the impacts to less than significant levels; changes or alterations that have been
4 required in, or incorporated into, the project to avoid or substantially lessen these significant
5 impacts; impacts that are not significant, and project alternatives. (CEQA Guidelines Section
6 15091)

7 **FINDINGS REGARDING POTENTIAL IMPACTS AND MITIGATION MEASURES**
8 **UNDER CEQA.**

9 (Parenthetical references are to the Mitigation Measures set forth in Exhibit A). (CEQA Guidelines
10 Section 15091)

11 1. Site Access, Circulation and Parking. The proposed Project could result in congestion at the
12 project's entrance and exits during peak drop-off and pickup times. Changes and
13 improvements in the project design, signage, layout and operation have been incorporated
14 into the Project which reduce this impact to less than significant. (MM 4.2-3) Rationale:
15 Simple, low-cost improvements and operating requirements can prevent significant adverse
16 effects associated with parking and traffic.

17 2. Noise

18 • Play Area. The predicted noise levels associated with the play area will exceed the
19 City of Berkeley Noise Ordinance daytime noise level standard of 55 dB L50. The
20 use of a barrier wall or reductions in the level of activities can reduce noise impacts
21 from the Project's play area to less than significant. (MM 4.3-1) Rationale: Shielding
22 the source of noise from off-site receptors or reducing the amount of noise generated
23 will minimize adverse noise impacts from the Project.

24 • Parking and Circulation. The Project will have on-site parking and circulation noise
25 levels which will exceed the City of Berkeley Noise Ordinance daytime noise level
26 standard of 55 dB L50, at the nearest residences to the north during the operation of
27 Camp Kee Tov staging. The use of a barrier wall or changes or reductions in Camp
28 Kee Tov staging activities can reduce noise impacts from the Project's traffic to less
29 than significant. (MM 4.3-2) Rationale: Shielding the source of noise from off-site
30 receptors or reducing the amount of noise generated onsite will minimize adverse
31 noise impacts from the Project.

32 • Construction. During the construction phases of the Project, noise from construction
33 activities would add to the noise environment in the immediate Project vicinity. This
34 impact is considered potentially significant. Changes and modifications in the
35 Project's construction operations and scheduling can reduce impacts from
36 construction-related noise to less than significant. (MM 4.3-3 a. through g.)
37 Rationale: Restricting the timing of certain noise-generating activities during
38 construction and other measures will minimize adverse noise-related impacts.

1 3. Air Quality

2 • Fine Particulate Matter. Emissions of fine particulate matter (PM₁₀) due to
3 construction-related activities could have a potentially significant impact. Standard
4 dust reduction measures will reduce generation of dust during construction of the
5 project to a level that is less than significant. (MM 4.4-1) Rationale: Sound
6 construction management techniques can minimize adverse impacts associated with
7 dust generation during project construction.

8 • Asbestos. The demolition and removal of structures on site that may contain asbestos
9 materials is a potentially significant impact. The release of potentially harmful
10 amounts of asbestos can be mitigated to a level that is less than significant. (MM 4.4-
11 2) Rationale: Compliance with current hazardous materials handling requirements
12 will ensure that adverse impacts of asbestos contamination will be avoided.

13 4. Geology and Hydrology

14 • Groundshaking. The project site will be subject to moderate groundshaking during
15 earthquakes. The potentially significant impacts caused by groundshaking can be
16 mitigated to a level less than significant through application of existing City codes
17 and requirements. Rationale: The City of Berkeley’s building codes are designed to
18 minimize potential harmful effects of groundshaking.

19 • Water runoff. Development of the project site will increase the rate of storm water
20 run-off leaving site. Potentially significant impacts associated with increased storm
21 water run-off can be mitigated to a level that is less than significant through
22 application of well-established design and engineering. (MM 4.5-2) Rationale:
23 Project-generated storm water run-off can be minimized with sound design and
24 management of storm water run-off volumes. Further, compliance with City standards
25 and requirements for compliance with NPDES Permit and City Stormwater
26 Ordinance will also substantially reduce potential detrimental effects.

27 • Soil Saturation. Saturation of soils under the project’s parking lot with stormwater
28 runoff could cause soils under the Oxford-to-Spruce access road to become unstable.
29 The potentially significant impacts associated with soil instability can be reduced to a
30 less than significant level with sound engineering and design measures. (MM 4.5-3)
31 Rationale: Drainage improvements to the project site can minimize adverse effects of
32 soil instability.

33 • On-site Erosion. Development of the project site would entail earthwork and grading.
34 Due to the surface soil characteristics and the steep banks of Codornices Creek, the
35 project site is subject to erosion during project construction. Project-related
36 alterations in on-site drainage patterns during construction could compound and
37 increase on-site erosion. (MM 4.5-4) Implementation of the mitigation measures
38 would reduce construction-related erosion and sedimentation impacts to less-than-

1 significant levels. Rationale: Compliance with existing requirements for erosion
2 control can minimize erosion impacts.

- 3 • Drainage. On-site drainage and drainage outfalls to Codornices Creek may be affected
4 by post-development drainage from the project site. (MM 4.5-5) Implementation of
5 the mitigation measures would reduce project erosion and sedimentation impacts to
6 less-than-significant levels. Rationale: Sound design and engineering requirements
7 can reduce adverse impacts associated with erosion and drainage at the project site
- 8 • Non-point Source Pollution. The proposed project would increase the amount of
9 suburban non-point source pollutants generated by the site during storm events,
10 impacting the water quality of Codornices Creek, and causing a cumulative water
11 quality impact to San Francisco Bay. (MM 4.5-6) Implementation of the mitigation
12 measures would reduce project-generated contamination and run-off impacts to less-
13 than-significant levels. Rationale: Sound design and engineering requirements can
14 reduce adverse impacts associated with run-off and drainage pollutants at the project
15 site.

16 5. Biological Resources

- 17 • Wall's Effect on Trees. If construction of a wall along the north property line is
18 required for noise mitigation purposes, it could adversely affect existing mature trees.
19 (MM 4.6-3) Implementation of the mitigation measure would reduce impacts to a
20 level of less than significant. Rationale: Sound construction management and
21 oversight will reduce adverse impacts of construction.
- 22 • Dripline Encroachment on Coast live oaks. Construction of the proposed project may
23 result in impacts (i.e. dripline encroachment) to several Coast live oaks, a locally
24 protected tree species. Because the City of Berkeley recognizes these trees as a
25 significant biological resource, impacts to Coast live oaks would be considered
26 potentially significant and mitigation would be required. (MM 4.6-5) As a result of
27 changes to the site plan, no construction would occur on the north side of Codornices
28 Creek where many of the live oaks are located. Implementation of the mitigation
29 measures would reduce potential impacts to Coast live oaks to less than significant.
30 Rationale: Appropriate site plan design and techniques to protect significant trees
31 during and after construction , can reduce adverse impacts on biological resources.
- 32 • Work Within Creek High Water Mark. Implementation of the landscape plan and
33 recommendations regarding creek bed stabilization may require work within the
34 ordinary high water mark (OHWM) of Codornices Creek, a jurisdictional Waters of
35 the U.S. Because work below the OHWM is regulated under Section 404 of the
36 Federal Clean Water Act (CWA), impacts are considered potentially significant and
37 mitigation would be required. (MM 4.6-7) Implementation of the mitigation measures
38 will reduce impacts of the project to water-based ecosystems to a less than significant
39 level. Rationale: Compliance with existing State and federal requirements associated
40 with protection of water resources will reduce adverse impacts.

- 1 • Rate of Stormwater Runoff. The proposed project will increase the rate of stormwater
2 runoff leaving the site. This is considered a potentially significant impact. The
3 increased rate of stormwater runoff could result in increased discharge into
4 Codornices Creek. The contaminants (oil, grease, heavy metals, etc.) which would be
5 discharged into Codornices Creek could be stressful to fish, particularly trout, and
6 could, thus, result in potentially significant adverse impacts on the fish of Codornices
7 Creek.

- 8 • Another potential impact of increased stormwater runoff would be increased duration
9 of flows, which would cause, or exacerbate, channel erosion. Channel erosion could
10 increase sediment in the creek and result in potentially significant adverse impacts on
11 trout habitat. In summary, an increase in the rate of stormwater runoff leaving the site
12 could result in a potentially significant adverse impacts on the fishes, particularly
13 trout, of Codornices Creek.

- 14 • The mitigation measures would reduce the proposed project’s contribution to
15 pollutant levels in runoff water from the site to a less than significant level. Rationale:
16 A comprehensive approach to run-off, drainage and pollution control can reduce
17 adverse project impacts.

18 6. Biological Resources

- 19 • Water quality. The construction-related activities (i.e. erosion as a result of
20 construction and associated with the site drainage system) could result in potentially
21 significant impacts to the water quality of Codornices Creek and San Francisco Bay.
22 Increased turbidity (murkiness) and potential algal blooms would be stressful to trout
23 and could result in potentially significant impacts to fish in Codornices Creek. The
24 mitigation measures described in the Geology/Hydrology section of the FEIR would
25 reduce construction-related impacts to a level that is less than significant. Hence, the
26 mitigation measures would reduce impacts to fishes, particularly steelhead trout, in
27 Codornices Creek, to less than significant levels, as well. Rationale: A comprehensive
28 approach to storm water run-off, drainage and pollution control can reduce adverse
29 project impacts to local water eco-systems.

- 30 • On-site Erosion. The proposed project could result in potentially significant erosion
31 caused by on-site drainage and drainage outfalls to Codornices Creek. This impact is
32 considered a potentially significant impact. The mitigation measures described in the
33 Geology/Hydrology section of the FEIR would reduce potentially significant impacts
34 to fish. With the above mitigation measures in place, the increased project runoff
35 would result in a less than significant impact to fish, including trout, in Codornices
36 Creek. Rationale: A comprehensive approach to storm water run-off, drainage and
37 pollution control can reduce adverse project impacts to local water eco-systems.

- 38 • Slope Stability. The proposed project could result in an increase in the amount of soil
39 infiltration and may contribute to slope stability problems along the north bank of
40 Codornices Creek on the project site (as described in the Geology/Hydrology section
41 of the FEIR). This could cause erosion or land sliding, which would release sediments

1 into the creek, causing the water to become murky and unsuitable for fish. The
2 mitigation measures described in the “Hydrology and Water Quality” section of the
3 FEIR would reduce potential impacts to less than significant. The mitigation
4 measures would result in a less than significant impact to fish, particularly trout, in
5 Codornices Creek. Rationale: A comprehensive approach to storm water run-off,
6 drainage and pollution control can reduce adverse project impacts to local water eco-
7 systems.

8 7. Aesthetics

- 9 • Stucco Walls at Oxford and Spruce. The construction of 6-foot high stucco walls
10 along the Oxford Street and Spruce Street frontages would generate potentially
11 significant impacts by creating an institutional appearance inconsistent with the
12 character of the surrounding neighborhood. (MM 4.8-1) The mitigation will reduce
13 this significant impact to a level that is less than significant. Rationale: Thoughtful
14 design that incorporates recommendations of the Board’s Design Review Committee
15 can mitigate adverse aesthetic impacts.

- 16 • Stucco Walls at Berryman Path. If necessary for noise mitigation purposes, the 7-foot
17 high stucco walls proposed along the northern property line would eliminate desirable
18 views into the site from Berryman Path, creating an institutional appearance
19 inconsistent with the character of the surrounding neighborhood. (MM 4.8-2) The
20 revised site plan reduces the potential noise impacts on residential properties north of
21 the site by moving the parking area and driveway to the south side of Codornices
22 Creek and farther away from the northern property line. If noise monitoring shows
23 that the operations of Camp Kee Tov or the use of the play area create noise levels
24 that exceed City standards, changes in the operation to reduce noise levels to meet
25 City Noise Standards would eliminate the need for a barrier wall and reduce this
26 impact to a level that is less than significant. Rationale: Elimination of the wall or
27 thoughtful design that incorporates recommendations of the Design Review
28 Committee can mitigate adverse aesthetic impacts.

- 29 • Lighting. The installation of site lighting as proposed would result in lighting visible
30 to surrounding properties, creating possible spill, and resulting in an institutional
31 appearance, inconsistent with the character of the surrounding neighborhood. (MM
32 4.8-3) The mitigation will reduce this significant impact to a level that is less than
33 significant. Rationale: Changes to the selection and placement of fixtures can mitigate
34 adverse aesthetic impacts.

35 IMPACTS WHICH ARE NOT SIGNIFICANT

36 1. Agricultural Resources

37 The project would have **no impact** on agricultural resources in the community.

38 2. Hazards and Hazardous Materials

1 Project impacts regarding hazards and hazardous materials would be **less than**
2 **significant.**

3 3. Mineral Resources

4 The project would have **no impact** on the availability of or extraction of mineral
5 resources in the community.

6 4. Population and Housing

7 Because the project would not induce growth, would not construct housing or extend
8 urban services, and would not generate the need for replacement housing, the impact on
9 housing and population is **less than significant.**

10 5. Public Services and Utilities

11 The project would not substantially increase demand for public services and utilities
12 and, therefore, its impact on public services and utilities is **less than significant.**

13 ALTERNATIVES

14 Alternative 1: No Project “A”

15 **Description:** The existing sanctuary is reopened, and the school which could be constructed under
16 the existing CUP at the Oxford Street site would be built and operated as permitted under the CUP.

17 **Finding:** This alternative would not achieve the project objectives to provide facilities to meet the
18 needs of the congregation, and does not fulfill the basic definition of a project objective as
19 contained in Section 15126.6(a) of the CEQA Guidelines, which provides that alternatives should
20 be examined “which would feasibly attain most of the basic objectives of the proposed project.”

21 **Reasons for Rejecting this Alternative:** This alternative would not meet the project proponent’s
22 objectives for the proposed project, since it would not include the development of facilities large
23 enough to accommodate attendance by the congregation at religious services at times of peak
24 attendance (the “high holy days” of the Jewish faith). This alternative is examined as required by
25 CEQA Section 15126.6(e), even though it would not achieve the project objectives.

26 Alternative 2: No Project “B”

27 **Description:** The project site would be subdivided and houses constructed in conformance with
28 the Berkeley General Plan and zoning standards.

29 **Finding:** This alternative would not achieve the project objectives, and does not fulfill the basic
30 definition of a project objective as contained in Section 15126.6(a) of the CEQA Guidelines,
31 which provides that alternatives should be examined “which would feasibly attain most of the
32 basic objectives of the proposed project.”

1 **Reasons for Rejecting this Alternative:** This alternative would not meet the project proponent’s
2 objectives for the proposed project, since it would not include the development of facilities large
3 enough to accommodate attendance by the congregation at religious services at times of peak
4 attendance (the “high holy days” of the Jewish faith). This alternative is examined as required by
5 CEQA Section 15126.6(e), even though it would not achieve the project objectives.

6 Alternative 3: Underground Parking

7 **Description:** All project-related parking is placed in an underground lot below the proposed
8 synagogue/religious school building.

9 **Finding:** This alternative would increase traffic impacts on Oxford Street because there would be
10 only one driveway. Because the proposed project will not have any parking-related impacts and
11 the garage would not increase the number of on-site parking spaces, there would no change in
12 parking impacts. The garage would result in a slightly reduced volume of stormwater run-off from
13 the site, would eliminate some urban runoff pollution, and would eliminate noise impacts related to
14 the proposed above-ground parking lot while potentially causing other noise impacts.

15 **Reasons for Rejecting this Alternative:** This alternative was rejected for the following reasons:

16 The additional cost of providing underground parking would be approximately \$1-million, making
17 this alternative beyond the financial means of the application. Per CEQA Section 15126.6(f)(1),
18 “economic viability” is “among the factors that may be taken into account when addressing the
19 feasibility of alternatives.”

20 Traffic from the proposed project would be concentrated at the Oxford Street entrance to the
21 parking garage, increasing traffic on Oxford and potentially increasing noise levels for homes
22 directly across the street from the garage entrance.

23 Because it would not include a cross-site access drive, this alternative would not provide the
24 opportunity for convenient off-street drop-off and pickup for religious and school activities.

25 While this alternative would address potential noise and stormwater pollution impacts, these
26 impacts can be effectively mitigated to levels of less than significant through other, less expensive
27 mitigation measures, as discussed in the environmental impact report.

28 BE IT FURTHER RESOLVED that the Berkeley City Council hereby finds as follows:

29 1) Based on the recitals above, the City Council finds that the Final EIR has been
30 completed in compliance with the requirements of the California Environmental
31 Quality Act (CEQA).

32 2) The Final EIR (including three addenda) was presented to the City Council, and that
33 the Final EIR was reviewed by the City Council and its information considered
34 prior to taking action on the proposed project; and

35 3) The Final EIR reflects the City's independent judgment and analysis.

1 BE IT FURTHER RESOLVED, that the Berkeley City Council makes the following finding
2 regarding Religious Assembly Use, under BMC Section 23d.16.030.

3 In compliance with BMC Section 23B.32.040 regarding findings for issuance of a use permit, the
4 City Council finds that the construction, establishment, maintenance and operation of the religious
5 assembly use, under the circumstances of this particular case existing at the time at which the
6 application is granted, will not be detrimental to the health, safety, peace, morals, comfort of
7 general welfare of persons residing or working in the area or neighborhood of the proposed use or
8 be detrimental or injurious to property and improvements of the adjacent properties, the
9 surrounding area or neighborhood or to the general welfare of the City for the following reasons:

10 1. **The proposed project is consistent with applicable purposes of the R-1 (H) Zoning**
11 **District** (Single Family Residential-Hillside District), where the site is located, including
12 the following:

13 A. The R-1 District's Purposes:

14 i) *Recognize and protect the existing pattern of development in the low density,*
15 *single family residential areas of the City in accordance with the Master Plan.*

16 As discussed in the January 11, 2001 Staff Report to the ZAB, the scale of the
17 development (its floor area compared to its lot area or FAR), by being
18 significantly less than the average of the adjoining neighborhood's FAR, is
19 consistent with the development of this single-family neighborhood. The floor
20 area and coverage in the revised plan approved by the Council reduces both the
21 floor area and coverage.

22 The project is also consistent with the policies of the 1977 Berkeley Master Plan
23 as stated in the Staff Report to the ZAB dated November 9, 2000 and in the ZAB
24 Staff Reports of January 11, 2001 and February 8, 2001 regarding implementation
25 of the City's parking policies and the determination of the parking requirement.

26 The purposes of the R-1 District also include:

27 i) *Make available housing for persons who desire detached housing*
28 *accommodations and a relatively large amount of Usable Open Space*

29 This purpose is not applicable to a religious assembly use that otherwise
30 complies with the objectives and standards of the district.

31 ii) *Protect adjacent properties from unreasonable obstruction of light and air*

32 As discussed elsewhere in these findings, the project does not cause
33 significant impacts due to shadowing of the adjacent residential properties.
34 Further, the project meets or exceeds the minimum zoning district standards
35 including: required yards and has significantly less lot coverage than the
36 maximum allowed.

1 iii) *Permit the construction of community facilities such as places for religious*
2 *assembly, schools, parks and libraries, which are designed to serve the local*
3 *population when such will not be detrimental to the immediate neighborhood.*

4 This project is found to serve the local population because 78% of its
5 congregants live within Berkeley and adjacent areas of Albany and the
6 Congregation’s existing synagogue has been located approximately two
7 blocks from the project site for over fifty years. This point is addressed in the
8 November 9, 2000 Staff Report to the ZAB. Furthermore, the Project’s
9 potentially significant environmental impacts have all been mitigated to
10 insignificant levels and its possible adverse effects will be controlled through
11 the imposition of proposed conditions.

12B. The H District’s Purposes:

13 i) *Implement the Master Plan's policies regarding Hillside Development;*

14 ii) *Protect the character of Berkeley's hill districts and their immediate environs;*

15 The project will satisfy these purposes because it maintains the open character
16 of the site with a building that occupies less than 25 percent of the lot area;
17 the project’s improvements and landscaping will enhance the existing
18 conditions of Codornices Creek; and, the project is retaining and protecting
19 the native Oak trees along its northern property line.

20 iii) *Give reasonable protection to views yet allow appropriate development of all*
21 *property*

22 The project will not significantly affect the existing views across the site from
23 adjoining properties because the existing views are minimal due to the site’s
24 existing tree cover and the long distance views available to properties in the
25 vicinity are limited due to the area’s relatively low elevation.

26 iv) *Allow modifications in standard yard and height requirements when justified*
27 *because of steep topography, irregular lot pattern, unusual street conditions,*
28 *or other special aspects of the Hillside District area.*

29 The project does not propose any modifications to building standards due to
30 topography, lot pattern, or other conditions related to special aspects of the
31 Hillside Overlay District regulations. The Applicant is seeking approval to
32 allow the building’s average height to be 35 feet, as permitted in any
33 residential district, either within or outside the Hillside Overlay District,
34 subject to the approval of a Use Permit.

35 2. **The proposed use is compatible with the existing neighborhood.** One purpose of the R-
36 1 district in Berkeley is to “[p]ermit the construction of community facilities such as places
37 for religious assembly, schools, parks and libraries which are designed to serve the local
38 population when such will not be detrimental to the immediate neighborhood.” BMC

1 Section 23D.16.020.D. In addition, the 1977 Master Plan seeks to “[p]reserve the character
2 of lower density residential areas. . . and their complementary churches, schools and
3 parks.” (Policy 1.10) The Applicant’s proposed use is consistent with these purposes and
4 goals.

5 **A. The Applicant is a local institution that serves a predominantly local population.**

6 The Applicant has been a part of the Berkeley community for more than 50 years since
7 the establishment of the existing synagogue approximately two blocks from the project
8 site in the 1940’s. Fully 35% of its member families live within one mile of the 1301
9 Oxford Street site, 46% live in the 94707 and 94708 Zip Code areas and 86% live
10 within three miles of the site. (Congregation Beth El, “Supplemental Submission To
11 Zoning Adjustments Board of the City of Berkeley,” Jan. 19, 2001 [hereinafter “Supp.
12 Submission I”], Tab 1; FEIR Summary, pp. 3-4; SR, 1/11/01.)

13 **B. The Applicant’s continued presence and operation in the neighborhood will**
14 **impose no material additional burdens on, and will offer a number of benefits to,**
15 **the immediate neighborhood, adjacent property and the City of Berkeley at large.**

16 i) The Applicant has been located at Arch and Vine Streets, approximately 1,200 feet
17 from 1301 Oxford Street, for more than 50 years. It is, therefore, currently situated
18 in the same neighborhood within which it seeks to relocate. Along with many other
19 neighborhood institutions, the Applicant has been an important part of and has
20 contributed to the rich and varied fabric of this part of Berkeley since the 1940’s.
21 Along with other neighborhood institutions, the Applicant contributes to the sense
22 of “place” that helps to define Berkeley’s character. (Supp. Submission I, Tab 1;
23 FEIR Summary, p.1; EIR, pp 4.1-2 and 4.1-4.)

24 ii) The Applicant has for many years been an integral part of the Berkeley faith
25 community and provides valuable social and educational services to the entire
26 City. It will be better able to continue these programs at the new site, since it had
27 outgrown its existing facility. (Congregation Beth El Power Point Presentation,
28 Jan. 25, 2001 and related testimony [hereinafter “Power Point Presentation”].)

29 iii) The Applicant’s membership has been stable at about 600 families for at least 10
30 years. As a result, the neighborhood is likely to experience little change in impacts
31 caused by its activities. Considered over the course of the year, these impacts are
32 episodic and the type to be expected of religious assembly uses. Use of the
33 facilities tends to spike at various times during the week and then drop off
34 dramatically. The Applicant’s facilities have been, and will continued to be, used
35 primarily by children attending the various educational programs provided by the
36 Applicant. Children under the age of 16 do not drive. Excluding staff, on typical
37 weekdays, very few adults utilize the Applicant’s facilities. Even on Fridays and
38 Saturdays, the days of heaviest adult usage, there are rarely more than 150 people
39 on site at any one time and the facilities are usually empty by 10 p.m. (FEIR

1 Summary, p.2; Supp. Submission I, Tab 3; Supplemental Submission, Feb. 8, 2001
2 [hereinafter “Supp. Submission II”].)

3 iv) To the extent that the Applicant’s activities may combine with the activities of
4 other institutions (such as Live Oak Park or the Berkeley-Richmond JCC) to
5 impose any burden on the surrounding neighborhood, any such burden already
6 exists and the Applicant’s relocation to 1301 Oxford Street will not materially add
7 to it. In fact, the proposed use at the new site offers advantages over the existing
8 site that should result in net benefits to the surrounding neighborhood. For
9 example, as stipulated in Condition 15, the Applicant has agreed to cooperate with
10 Live Oak Park, the Himalayan Fair and the Berkeley Art Center to avoid
11 duplication of major events to the extent possible, so as to minimize the traffic and
12 parking impacts on the neighborhood. In addition, the new site will have as many
13 as 30 more off-street parking spaces than the Applicant’s existing site only a
14 couple of blocks away and will have an off-street drive for pick-up and drop-off of
15 passengers that will take buses and cars off the streets, thereby improving safety
16 and traffic circulation. Moreover, the Applicant has agreed that, in order to
17 minimize the impact of its use on the neighborhood, it will not permit non-
18 congregants to rent or license its facilities and it will place restrictions on the hours
19 of use (Conditions 3 and 4). (Supp. Submission I, Tabs 1, 3 and 4; Congregation
20 Beth El, Power Point Presentation, Jan. 25, 2001; FEIR Summary, p. 8; EIR, p.3.0-
21 12; “Memorandum from Congregation Beth El to City of Berkeley,” Feb. 22, 2001
22 [hereinafter “2/22/01 Memo”], p.3.)

23 **3. The design of the project is compatible with the residential neighborhood.**

24 **A. The scale (i.e. size and bulk) of the project is compatible with and fits within the**
25 **surrounding residential neighborhood context.**

26 i) The Applicant’s proposed structure will have a floor area of 31,350 square feet and
27 will cover only 23% of the 1301 Oxford Street site, although the Zoning Ordinance
28 permits lot coverage of up to forty percent (40%) of the lot area. (BMC Section
29 23D.16.070.E) In contrast, the average lot coverage for homes in the surrounding
30 area is 28%. Moreover, the average lot coverage of 30 religious institutions in
31 Berkeley is 50% and, in some cases, lot coverage exceeds 90%.

32 ii) One purpose of the Single Family Residential Districts regulations is to “recognize
33 and protect the existing pattern of development in the low density, single family
34 residential areas of the City in accordance with the Master Plan.” (BMC Section
35 23D.16.020). The proposed design of the building is consistent with this purpose.
36 The project’s Floor Area Ratio is roughly 34% compared with an average of 46%
37 for the surrounding residential development. The project’s street frontage along
38 Oxford Street is only 11.6% and only 45% along Spruce, compared with 63% for
39 the surrounding residential development. Because the lot slopes to the east and
40 much of the building will be substantially set back along Spruce, the building will

1 appear to have even less street frontage. (Power Point Presentation; Supp.
2 Submission I, Tab 2; 2/22/01 Memo, p.1; SR, 1/11/01.)

3 **B. The proposed building's design and building materials are consistent with the**
4 **architectural styles in the neighborhood and the City generally.** The design has the
5 effect of minimizing the building mass along both Spruce and Oxford Streets and of
6 increasing the architectural vocabulary to provide the feel of different structures and
7 uses. In addition, the building has a residential appearance, especially on Oxford Street
8 where its profile and bays are consistent with the residential buildings nearby. On
9 Spruce Street, the height of the tallest element, the sanctuary, is similar to that of the
10 closest residence immediately to the south. To the east (uphill) side of Spruce Street,
11 the houses are substantially higher than the portions of the building along Spruce Street,
12 the sanctuary and social hall.

13 In addition, the palate of materials for the building is wood and stucco, which is
14 consistent with the materials used in the immediate neighborhood and, indeed,
15 throughout the residential neighborhoods in Berkeley. In particular, the eaves on
16 portions of the building are reminiscent of the type of eaves used on homes designed by
17 Berkeley's finest architects. The gable form of roof and the roof ridgeline along the
18 middle of the building give the impression of a variety of roof forms, a lower roof
19 profile, and a residential scale and appearance along the Oxford Street frontage in
20 particular.

21 Because the Applicant proposes to retain most of the existing mature trees and the
22 building's open configuration, the character of the plan is more typical of residential
23 than institutional use. (FEIR Summary, p. 5; Supp. Submission I, Tab 2; 2/22/01
24 Memo, p.1; SR, 1/11/01; Revised Site/Roof Plan and Floor Plans, submitted Feb. 22,
25 2001 and March 8, 2001.)

26 **C. The proposed building will not interfere with light or air available to adjacent**
27 **properties.** Another goal of R-1 districts is to "protect adjacent properties from
28 unreasonable obstruction of light and air." (BMC Section 23D.16.020). The project
29 satisfies this goal. The location on the site will not obstruct light or air to any other
30 property. The closest buildings will be the two residences to the south, neither of which
31 will be shaded. The height of the Sanctuary and the house are comparable. The school
32 wing of the proposed project will be well removed from the nearest property on Oxford
33 Street. The roofline and windows will give the school building a residential feel, no
34 different from the perspective of the adjacent Oxford Street residence than if the school
35 building were actually a residence. (EIR, pp. 3.0-27 through 3.0-29; Revised Site/Roof
36 Plan and Floor Plans, submitted Feb. 22, 2001 and March 8, 2001.)

37 4. **Parking**

38 **A. Determination of the project's parking requirement.** Berkeley Zoning Ordinance
39 Section 23D.16.080 (Parking -- Number of Spaces) provides that "Other Uses requiring
40 Use Permits, including, but not limited to, Child Care Centers, Clubs, Lodges, and
41 community centers, shall provide the number of Off-street Parking Spaces determined

1 by the Board, based of [sic] the amount of traffic generated by the particular Use and
2 comparable with specified standards for other Uses." Therefore, based on the
3 information provided in the January 2, 2001 Staff Report, the Zoning Adjustments
4 Board determined the parking requirement for this religious assembly use to be one on-
5 site parking space for each eight seats in the sanctuary, the building's principal public
6 assembly area. Based on the proposed sanctuary seating of 250, 31 parking spaces are
7 required.

8 **B. The project's potential parking impacts will not be detrimental to the adjoining**
9 **residential properties because:**

10 i) The principal daily use of the property will be a religious day school, which has a
11 low demand for parking that can be met on the site;

12 ii) The available parking on the site (31 non-tandem spaces as modified by Condition
13 A.5) and adjacent to the site's frontages (approximately twenty spaces), would
14 meet the facility's typical maximum weekly needs;

15 iii) As conditioned, pursuant to the mediated agreement between Congregation Beth
16 El and the coalition of neighbors and environmental groups, the Applicant will
17 develop and implement a Parking Management Plan to ameliorate the potential
18 effects of its larger religious services and social events. The Plan, which will be
19 developed and completed with input from neighbors and the City's Traffic
20 Engineer, shall employ techniques such as on-site valet parking, satellite parking,
21 parking limits on certain streets adjacent or proximate to the site, directed parking,
22 and similar methods reduce detriment to the neighborhood.

23 **5. The revised site and parking plan would create no new impacts or increase the**
24 **severity of previously identified impacts. Previously identified impacts can be**
25 **reduced to less than significant levels by previously proposed mitigation measures.**

26 The revised parking scheme, as shown on the revised permit drawing (A2.0 SITE PLAN /
27 ROOF PLAN, Supplement #11: 8/24/2001), has moved the project's parking from the
28 location shown on earlier drawings, which was closer to the residential dwellings just to the
29 north of the property, to areas south of Codornices Creek including a parking area on the
30 west end of the project site. The Third Addendum to the FEIR found that the relocation of
31 the parking area will result in a change as to which adjacent dwelling units may be effected
32 by the project's noise levels but also found that the revised plan would not increase the
33 significance of the noise impact. The Addendum also found that the mitigation measures
34 that were previously proposed would mitigate potential noise impacts to a less than
35 significant level.

36 Relocation of the parking area will have a positive impact because the parking area will not
37 be located beneath the drip lines of the site's Coast live oak trees. Any possible impacts to
38 the Monkey Puzzle tree that may result from moving the parking area can be reduced to
39 less than significant levels by the same mitigation measures previously identified for
40 protecting the oak trees. Further, because the parking and roadway areas are no longer
41 located above the culverted section of Codornices Creek this revised location would

1 increase the feasibility of daylighting the culverted portions of Codornices Creek should
2 the Applicant or another future property owner voluntarily choose to do so at some time in
3 the future.

4 6. **Traffic impacts are not significant.** The additional traffic potentially generated by the
5 project—as mitigated—is not, according to the project’s Final Environmental Impact
6 Report, anticipated to cause significant congestion at local intersections, at the project’s
7 entryways, or along the fronting roadways. (See Impacts 4.2-1 and 4.2-3).

8 7. **Removal of Cypress Trees not significant.** As the result of mediation between the project
9 sponsors and a group of neighborhood and environmental parties, the Applicant agreed to
10 remove certain trees on the property. These are the large cypress trees located within a row
11 along the project's southern property line and adjacent to the single family house at the
12 eastern end of the property (1314 Spruce Street). In their 1998 report on the property, the
13 LPC’s subcommittee recommended that this row of Cypress trees (among other elements
14 of the site) should be preserved. These recommendations notwithstanding, the proposed
15 removal of several of these trees, is found to not be detrimental for the following reasons:

16 A. The owner of the adjoining single-family dwelling has asserted that these trees "are
17 growing onto [his] property, causing an encroachment, damaging [his] roof and rain
18 gutters, damaging [his] drain and water pipes, and undermining the foundation of [his]
19 home." (Letter to the Berkeley City Council from Daniel McLoughlin, 1314 Spruce
20 Street, dated April 30, 2001.)

21 B. The only trees protected by the City of Berkeley regulations and ordinances are the
22 Coastal Live Oaks that are the subject of Ordinance-N.S. 6550.

23 C. The Berkeley Design Review Committee recommended that trees, other than the site's
24 oaks and Monkey Puzzle tree, "be evaluated as to their viability to contribute to a
25 cohesive design." (Condition H.4) and did not specifically identify the cypress trees for
26 retention.

27 D. These trees are not a "Listed" or a "Special Status" species of plant which is identified
28 as being endangered or are otherwise protected. (Congregation Beth El Synagogue and
29 School DEIR Table 4.6-A)

30 8. **Alterations to Oxford Street entry gate not detrimental.** Proposed changes to the site
31 plan based on the mediated agreement will require alterations to the existing Oxford Street
32 property entry. In order to insure that buses can safely enter the project site the entry gate
33 must be widened. The LPC identified retention of this gate as desirable. The alteration of
34 the entry will not be detrimental for the following reasons:

35 A. Based on the FEIR, the entry gate and Oxford Street wall do not date from the Byrne
36 era and do not constitute historic resources as defined by the California Environment
37 Quality Act (CEQA); and,

38 B. To the extent that the gate, although dating from a later period, does contribute to the
39 aesthetic quality of the site, potential detriment will be avoided by imposing a condition

1 of approval requiring the design of the alteration to be consistent with the character of
2 the existing walls (Condition 8).

3 BE IT FURTHER RESOLVED, that the Berkeley City Council makes the following findings
4 regarding the Use Permit for demolition of non-residential buildings pursuant to the requirements
5 of BMC Sections 23B.32.040 and 23C.08.050.

6 In compliance with BMC Section 23B.32.040 regarding findings for issuance of a use permit, the
7 City Council finds that the demolition of two non-residential buildings greater than 300 square feet
8 in area, under the circumstances of this particular case existing at the time at which the application
9 is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare
10 of persons residing or working in the area or neighborhood of the proposed use or be detrimental
11 or injurious to property and improvements of the adjacent properties, the surrounding area or
12 neighborhood or to the general welfare of the City for the following reasons:

- 13 1. The demolition will not be detrimental to the commercial needs and public interest of the
14 affected neighborhood because the use of the property is not changing. The demolition
15 concerns a main structure and several accessory structures previously used for a religious
16 assembly use; the project would replace those buildings with another building for religious
17 assembly use.
- 18 2. The demolition of the two non-residential structures on the project site, that are greater
19 than forty-years old and subject to approval of a Use Permit, would be consistent with the
20 provisions of the Landmark Preservation Ordinance. Neither structure satisfies the criteria
21 for consideration as a City of Berkeley landmark pursuant to BMC Chapter 3.24.110
22 (Landmarks Preservation Ordinance) due to their architectural merit, cultural value,
23 educational value, or historic value based on the following findings:
 - 24 A. When, at their November 19, 1990 meeting, the LPC moved to reaffirm the
25 subject site's historic significance, their motion cited the remaining resources,
26 including the trees, open creek bed, and a fence as examples and remnants of a
27 past era but did not identify the existing buildings as resources worthy of
28 preservation.
 - 29 B. Based on substantial information in the record, the project's FEIR found that
30 the property, including the subject structures, was not an historic resource
31 meeting the criteria for listing on the California Register of Historical
32 Resources and, therefore, the project would not have any significant
33 environmental impact on an historical resource. (FEIR Section 4.7.5 and
34 Appendix B: Review of Historic Resources, Revised September 2000)
 - 35 C. The proposed demolition permit was forwarded to the LPC for review and
36 comment as required by BMC Section 23C.08.050.C; however, the LPC did
37 not send any comments to the Zoning Adjustments Board regarding this
38 proposal.

- 1 3. If any asbestos were to be found in the structures to be demolished, mitigations proposed
2 in the project's Final Environmental Impact Report would reduce the potential threat to
3 human health to less than significant levels; (Mitigation Measure 4.4-2)
- 4 4. There is no information in the record, including environmental review documents and oral
5 and written testimony regarding this permit, to show that the proposed demolition would
6 cause detriment.
- 7 5. As required by the Berkeley Zoning Ordinance for the demolition of a non-residential
8 building (BMC Section 23C.08.050), it is found that the demolition is required to allow a
9 new building of the same use type.

10 BE IT FURTHER RESOLVED, that the Berkeley City Council makes the following finding
11 regarding an Administrative Use Permit to allow main buildings to exceed 28 feet in average
12 height, under BMC Section 23D.16.070 C.

13 In compliance with BMC Section 23B.32.040, the City Council finds that the construction,
14 establishment, maintenance and operation of the religious assembly use with portions of its roof
15 being at 35 feet, under the circumstances of this particular case existing at the time at which the
16 application is granted, will not be detrimental to the health, safety, peace, morals, comfort of
17 general welfare of persons residing or working in the area or neighborhood of the proposed use or
18 be detrimental or injurious to property and improvements of the adjacent properties, the
19 surrounding area or neighborhood or to the general welfare of the City for the following reasons:

- 20 1. The additional seven feet of average building-height allowed pursuant to this Use Permit
21 will not cast significant shadows on adjoining properties because the proposed structure
22 would be located to the north of potentially affected adjacent dwellings; significant
23 shadows would only be cast on adjoining streets or the subject property.
- 24 2. The additional height will not significantly block the long distance views of nearby
25 residential properties, if such views exist, because such views would now be obstructed by
26 the site's trees.
- 27 3. The proposed additional height will not affect the privacy of adjoining properties since the
28 portions of the building with the additional height would not contain habitable areas to
29 provide otherwise unavailable view points; said portions are either architectural features or
30 shield mechanical spaces.

31 BE IT FURTHER RESOLVED, that the Berkeley City Council makes the following finding
32 regarding a Use Permit to allow automobile parking within required yards abutting a street (BMC
33 Section 23D.12.080.C).

34 In compliance with BMC Section 23B.32.040, the City Council finds that the placement of
35 automobile parking spaces within required yards abutting streets, under the circumstances of this
36 particular case existing at the time at which the application is granted, will not be detrimental to
37 the health, safety, peace, morals, comfort of general welfare of persons residing or working in the
38 area or neighborhood of the proposed use or be detrimental or injurious to property and
39 improvements of the adjacent properties, the surrounding area or neighborhood or to the general
40 welfare of the City because:

- 1 1. The width of the proposed parking areas will occupy a relatively small proportion of the
2 property's street frontage (15% of the Oxford Street and 23% of the Spruce Street
3 frontages); and,

- 4 2. The proposed screening of these parking spaces will minimize their visibility from the
5 public right-of-way and will be consistent with the neighborhood's single-family
6 residential character.

7 Approved as to form:

8
9 _____

10 City Attorney