APPENDIX A

NOP AND COMMENT LETTERS
NOTICE OF PREPARATION (NOP) OF A
DRAFT ENVIRONMENTAL IMPACT REPORT AND SCOPING SESSION
FOR THE 2201 DWIGHT WAY PROJECT

The City of Berkeley is preparing a Draft Environmental Impact Report (EIR) for the project identified below. An Initial Study has been prepared and is available at the City of Berkeley Planning and Development Department, Land Use Planning Division, 2120 Milvia Street, Berkeley, California or online at:

http://www.ci.berkeley.ca.us/Planning_and_Development/Land_Use_Division/Environmental_Impact_Analysis.aspx

The EIR will address the potential physical and environmental effects for the topics of visual resources, historical resources, and hazards and hazardous materials pursuant to the requirements of the California Environmental Quality Act (CEQA). The City of Berkeley staff invites you to comment on the proposed scope of the Draft EIR.

The City of Berkeley is the Lead Agency for the project and is the public agency with the greatest responsibility for either approving the project or carrying it out. This notice is being sent to Responsible Agencies and other interested parties. Responsible Agencies are those public agencies, besides the City of Berkeley, that also have a role in approving or carrying out the project. Responsible Agencies will need to use the EIR that is prepared when considering approvals related to the project. When the Draft EIR is published, it will be sent to all Responsible Agencies and to others who respond to this Notice of Preparation (NOP) or who otherwise indicate that they would like to receive a copy.

Please send any response you may have within 30 days from the date you receive this notice and before November 16, 2012. Response to this NOP and any additional questions or comments should be directed in writing to: Aaron Sage, Senior Planner, City of Berkeley, Planning and Development Department, Land Use Planning Division, 2120 Milvia Street, Berkeley, California 94704; (510) 981-7425 (phone); (510) 981-7420 (fax); asage@cityofberkeley.info (e-mail). Comments on the NOP must be received at the above mailing or email address on or before November 16, 2012. In addition, comments may be provided at the EIR Scoping Meeting. Comments should focus on discussing possible impacts on the physical environment, ways in which potential adverse effects might be minimized, and alternatives to the project in light of the EIR’s purpose to provide useful and accurate information about such factors.

EIR PUBLIC SCOPING HEARING
The City of Berkeley will conduct a public scoping session on
Monday, November 5, 2012, 6:00 p.m.
2118 Milvia Street, Berkeley, First Floor Conference Room
PROJECT TITLE: 2201 Dwight Way Project

PROJECT LOCATION: The approximately 0.62-acre rectangular project site is situated at the northeast corner of the intersection of Dwight Way and Fulton Street, at 2201 Dwight Way in the Southside area of the City of Berkeley. The site is located approximately four blocks south of the University of California, Berkeley campus and about six blocks southeast of the Downtown Berkeley BART station. Figure 1 depicts the site’s regional and local context.

The General Plan designation for the site is High Density Residential and the site is zoned Residential Southside District (R-S). The Assessor’s Parcel Number (APN) is 055-1889-014.

EXISTING CONDITIONS: The generally level project site is currently developed with a 20,500-square-foot commercial office building and a 25-stall surface parking lot. The building is one story with a mezzanine and is 20 feet tall. The existing structure was constructed in the late 1940’s and, in 1983, the building was converted from an automobile showroom and service center to its present use as office space. The building is currently fully occupied by 2201 Dwight Way, LLC, Dogwood Leasing, and Odin Wave. A masonry retaining wall is located along the northern property line and a portion of the eastern property line, where its maximum height reaches about 6 feet. Approximately 400 square feet of landscaping is included on the site and there are five street trees that border the site on Dwight Way and Fulton Street.

PROJECT SPONSOR: 2201 Dwight Way, LLC/Randall Miller

PROJECT DESCRIPTION: The proposed project would involve demolition of the existing building and surface parking lot and construction of 81 student-oriented rental apartment units (73 market-rate units and 8 very-low income units) in a five-story building (a maximum of 50 feet tall) over a sub-surface parking garage. The building would be divided into 18 distinct volumes intended to resemble separate buildings. A common area of approximately 1,500 square feet would be located on the ground floor. Total gross building area including the subterranean garage would be about 101,070 square feet. The proposed project would also provide approximately 8,714 square feet of common open space on-site.

Access to the garage would be via a one-way driveway ramp at the site’s southeast corner at Dwight Way and egress would be via a one-way driveway ramp at the site’s northwest corner at Fulton Street. The garage would include 49 vehicle stalls (two of which would be ADA-compliant spaces), 4 motorcycle/moped stalls, and 27 bicycle stalls. An additional 28 bicycle stalls would be provided at ground level for a total of 55 on-site bicycle stalls.

The proposed project site plan is depicted in Figure 2 and Figure 3 shows proposed building elevations on the east and south.

REQUESTED APPROVALS: Per the Berkeley Municipal Code and State Density Bonus Law, it is anticipated that the proposed project would require the following discretionary approvals:

Berkeley Municipal Code (BMC):

- Use Permit for establishment of multi-family dwelling units in the R-S District (BMC Section 23D.48.030);
- Use Permit for demolition of the existing commercial building (BMC Section 23C.08.050.A)
• Administrative Use Permit for installation of elevator mechanical equipment reaching 54 feet in height and protruding beyond the height of the roofline (BMC Section 23D.04.020.C)

• Encroachment Permit to allow window shades to project into public right-of-way (BMC Chapter 16.18)

Waivers/Modifications Under State Density Bonus Law (Govt. Code Section 65915(e)):

• Increase in maximum building height from three stories (35 feet) to four stories (45 feet) (BMC Section 23D.48.070.C.2);

• Reduction of front setback requirement from 10 feet to 0 feet (BMC Section 23D.48.070.E);

• Reduction of street side setback requirement from 6, 8, or 10 feet (depending on story) to 0 feet (not otherwise allowed under BMC); and

• Reduction of rear yard setback requirement from 10 or 17 feet (depending on story) to 10 feet (not otherwise allowed under BMC).

In addition to the various permits and waivers requested above, the applicant is the following incentives/concessions pursuant to Density Bonus Law:

1) Allow two dwelling units that would otherwise be located on the ground floor of the base project to be located on the fifth floor, thereby expanding the building envelope by approximately 1,500 square feet. The purpose of this concession is to allow the 1,500-square-foot indoor common area on the first floor of the building without reducing the number of dwelling units in the project.

2) Allow a reduction in vehicle parking requirements from 70 spaces to 49 spaces, primarily to avoid the need for additional excavation and construction of a second below-grade garage level.

PROBABLE ENVIRONMENTAL EFFECTS: City staff has completed an Initial Study for the proposed project and has made an initial determination that the significant effects of the proposed project would be limited to visual resources, historical resources, and hazards and hazardous materials. All other issue topics are examined in the Initial Study and potential impacts would be reduced to a less-than-significant level with implementation of the recommended mitigation measures.

The Draft EIR will also examine a reasonable range of alternatives to the project, including the CEQA-mandated No Project Alternative and other potential alternatives that may be capable of reducing or avoiding potential environmental effects.

Signature: Aaron Sage, AICP Senior Planner

Date of Distribution: October 18, 2012

Attachments: Figure 1: Project Vicinity and Regional Location Map
               Figure 2: Proposed Site Plan
               Figure 3: Proposed Building Elevations
Hi Aaron,

Thanks. I did not submit any communications during the deliberations; I was not aware of the issue then. However, the city has the ability to remedy and modify its actions at any time. If the city has a flawed policy, or took an action which is illegal under California law, the city can decide to remedy that, for example, by downzoning properties that were illegally upzoned, or which were upzoned in violation of DAP or Southside Plan policies, or which were misclassified, etc. It's a choice the city has, and I would expect that a forward-thinking city like Berkeley would choose to do right by its citizens by remedying actions that violate stated city policy, even if official comment periods have passed.

I hope the city will not take the position that "You didn't catch us in time; too bad." That would be very cynical, non-transparent, and arguably non-democratic. In any case, deliberations of project proposals where permits need to be granted seem to be ideal times for the city to remedy any violations upon which the permits would rely, e.g., the city should remedy flawed, misclassified, or illegal zoning changes when a project is before the city asking for permits which rely on the questionable zoning changes, such as is the case with 2201 Dwight, 2024 Durant, and 2025 Channing. At any rate, with certain upzonings of R-4 to C-DMU, the city in fact did not sufficiently disclose these upzonings in the DAP, even though it repeatedly trumpeted downzonings of R-4 to R-3, which arguably is obfuscation, if not intentional misleading, which deprived citizens of Berkeley to comment on and argue against the upzoning, since the upzonings were not apparent in the DAP. I will definitely argue this point.

Respectfully,

Stephen Stine
RE: 2201 Dwight Way Initial Study

To whom it may concern:

These comments represent my best attempt under limited circumstances and resources to comment on the initial study for 2201 Dwight Way. As proposed, there is a significant level of concern with the project: specifically with regard to parking, height, and setbacks. I have yet to meet a neighbor, resident or owner, within 500 feet of the property who is not adamantly opposed to the project as it is proposed. More specifically, I have communicated with all owners and residents on the west side of Fulton and the south side of Dwight, all directly across the street from this project. All of these residents and owners oppose the project and have communicated their support to take any measures necessary to oppose the project as proposed unless the issues of parking, height and setbacks are addressed. I sincerely hope that the project sponsor and those considering approval of this project would give more weight to the welfare of the tax paying citizens and residents located directly adjacent to the property over those parties who may approve the project but will not have to deal with the negative impacts. I look forward to seeing a very thorough EIR when it’s available.

Sincerely,

Nathan D George
2201 Blake Street

p.1: R-S Zoning designation:

From BMC 23D.48.020C, the purposes of the R-S Districts are to “protect the adjacent properties from unreasonable obstruction of light and air”. Shadow studies obtained from the Project Sponsor show significant impacts on nearly all neighboring properties, including the historic landmark properties across the street on Fulton. In particular, the Winter Solstice before sunset shows an impact on parcels at least 2 lots over to the northwest of the subject property. The existing image is insufficient to measure the full impact of the proposed project on parcel located further than shown.

Furthermore, the landscaping along the west for the historical landmarks on Fulton, along with the wisteria in front of the apartments at 2185 Dwight, provides an aesthetically pleasing street view. Since “unreasonable” in the aforementioned BMC reference can be subject to arguments,
it would be constructive to include more concrete data showing the existing and proposed sunlight exposure for the Winter solstice, Spring equinox, and Summer solstice to determine the impact the building will have on the ability to maintain this vegetation. Even two hours after sunrise, the proposed project shows significant shadows to the west. None of this impact is addressed properly in the existing report.

p.64 under the Policy UD-32 Shadows summary states that “the project has been designed to limit impacts on solar access and limit detrimental shadows, to the extent feasible.” Nothing could be farther from the truth! The very project design with its inverted height distribution maximizes the solar impact on adjacent structures and sidewalk by maximizing its proposed height directly on the property line. There are no street-side setbacks and the maximum 5-story structures are on the perimeter rather than the interior.

p.16 of the “2201 DWIGHT WAY PROJECT INITIAL STUDY” document:

Regarding Aesthetics, p.16 states that “building heights within a few blocks of the site reach up to six stories”. This statement is misleading in this context. This should be addressed specifically to state how many buildings are 4, 5 and 6 stories, as well as their location. Given this information, it would be clear that this building would dominate the immediate vicinity and the much smaller 1 to 3 story buildings around it. Furthermore, Figure 6 should be corrected where there are several inaccuracies – highlights for landmark buildings, etc.. For the 6 properties indicated “Tall building (4+ stories)”, each building should be labeled with its existing height from grade and elevation changes from the subject property. Since the subject property is proposing 5 stories of over 50 feet maximum, it should be made clear exactly how much taller it will be to the surrounding properties as well as its relation in height and location to the other “tall buildings”.

The study continues: “The proposed project could reduce existing scenic views within the vicinity of the site, including view of the Berkeley Hills looking east and views looking west towards the San Francisco Bay”. Let me be VERY clear, just as the future EIR should be, this project would unequivocally eliminate multiple views from almost all of the surrounding properties.

p.18 with regard to solar access should address the significant impact the project will have on public sidewalks. There will be no “sunny side of the street” on Fulton for morning commutes. This is clearly eliminated well beyond 2 hours past sunrise, as indicated by the shadow studies.

p.12 of the “2201 DWIGHT WAY PROJECT INITIAL STUDY” document:

Under “West” properties description, 2424 Fulton Street is a duplex, not a triplex. 2426 Fulton is a triplex, not a 5-unit building as indicated. These inaccuracies give the impression that density
is higher than in reality. An aerial map indicating number of units for each neighboring parcel would also be helpful. No neighboring property comes even close to having 81 units. In fact, most of them are 1-4 SFR or small multifamily (less than 10 units). The EIR should include a heat map showing density of existing adjacent properties of population per acre along with the proposed density of 266 residents for 0.62 acres.

p.8 of the “2201 DWIGHT WAY PROJECT INITIAL STUDY” document:

In paragraph 2, the project describes the “base project” in terms of number of units when describing the increase under the state density bonus. However, the composition of these 60 units is not outlined. What would be the total square feet of the base project? What are the two “incentives or concessions” being used? And how much do they increase the occupancy by number of bedrooms and not just number of units?

Paragraph 3 states that “double occupancy” would not be permitted. How does the Project Sponsor plan to ensure this guarantee? Will there be monitoring to make sure double occupancy does not happen?

p.9 of the “2201 DWIGHT WAY PROJECT INITIAL STUDY” document:

For 266 on-site residents, there will only be 49 parking spaces, only 4 motorcycle stalls, and 55 bicycle stalls. Reductions under BMC 23E.28.140 require “that the reduction will not substantially reduce the availability of on-street parking in the vicinity of the use”. Again, the EIR should consider not only that 70 spots are required based on number of units, but that these units are much larger (52 4-bedroom) than the typical unit.

In the parking study outlined starting on p.101, most of the available spaces counted in the analysis were west of Fulton on Dwight Way, which are metered spots. Students typically do not park in these metered spots even when they are free after 6pm; the reason being that they can leave their cars in a neighborhood from 5pm one day to 10am the next day without having to move. Also, the parking meters are monitored much more closely than the neighborhood spots, increasing chances of getting a ticket. Furthermore, the Café opening next month at 2120 Dwight Way had parking waived for its use based on the same spots on Dwight being available. A similar argument is being made by the project in Design review at 2107 Dwight seeking a parking reduction. Lastly, the soft-story building with 9 units at 2537 Fulton is under construction and reduced 3 parking spots due to the soft-story allowance. This will increase neighborhood parking demand on Fulton south of Dwight.

The metered spots do not fall within the typical traffic pattern of the subject property and should not be counted towards vacant spots when seeking the parking reduction. Nor do the spots on Fulton south of Dwight or Blake due to the traffic barriers in those directions. Fulton access
between Dwight and Blake is only permitted when traveling west on Dwight from Shattuck. Additionally, the proposed project will eliminate a parking spot on Dwight east of Fulton (F on Fig 13) which had ZERO available spaces at either times measured.

Consideration should be given towards the collective and simultaneous request of parking reductions by new projects directly in the vicinity of these metered parking spots on Dwight Way. A new parking study should be conducted after the Café at 2120 Dwight has been open and should not allow counting the metered spots on Dwight Way.

p. 106 of parking study:

The report assumes a 5% vehicle ownership rate based on a transportation survey by University housing staff for University housing. However, most students using University housing are Freshmen and Sophomores, whereas there is a much high vehicle ownership for upperclassmen and graduate students.

The last paragraph on p.106 also suggests that “the absence of a ready supply of parking spaces, and the RPP restrictions noted above…may induce drivers to shift to other modes of travel”. The most likely alternative mode of travel would by bicycles for students in this proximity to campus; buses do not provide sufficient frequency and walking to north campus is over 30 minutes uphill. Therefore, the 55 bicycle spaces are NOT adequate for 266 students. Furthermore, those that have cars would not use them for campus transit and would likely have a bicycle as well. The study should address these “available alternatives” specifically and how the project will mitigate these affects, providing data as to how the 55 bicycle stalls will be sufficient.

p.86 of Transportation/Traffic:

Eastbound on Dwight Way is quite the thoroughfare sometimes as shown by the traffic study where over 900 cars pass the proposed garage entrance just east of Fulton. The transportation study only addresses the impact on the Fulton/Dwight intersection without discussing the impact of having just one lane available while cars enter the new proposed entrance to the property. The project and study should consider having both the entrance and exit on the Fulton side where there is significantly less vehicle traffic. This would also prevent them from eliminating an on-street parking spot on Dwight. The transportation study should also be redone to consider the flow impact on reducing Dwight to one lane. If there is any backup congestion waiting for residents to enter the driveway, the oncoming traffic making left turns from Fulton in the left lane will have little time to react and may cause accidents changing lanes to avoid the left lane congestion. The transportation study again fails to address any of these scenarios.

Alternatively, it appears that having the entrance on Fulton and the exit on Dwight would eliminate the impact on congestion at the Fulton & Dwight intersection and significantly reduce
backups on Dwight limiting traffic to one lane while waiting to pull into the driveway. This option should be considered under the EIR.

Demolition of existing structure:

I have been privy to several other development proposals of this lot over the past several years, all which included keeping the existing structure. This option does not appear to be considered here. The city should refer to the Buddhist center at Durant & Fulton which maintained the similar existing structure while adding residential units with more appropriate setbacks. For more details on this issue, see below:

p.34 of the "2201 DWIGHT WAY PROJECT INITIAL STUDY" document:

"The project site contains a late 1940s single-story Moderne-style commercial building. The building is not a registered City Landmark or Structure of Merit. However, since the building is over 50 years old, it could be determined to be eligible for the California Register of Historical Resources (California Register) if the other required criteria are met...

Interestingly, San Francisco is examining its policy on modern/mid-century modern buildings. The Project sponsor should make the argument that this 1940s commercial building is NOT a unique example from this time period?


San Francisco Modern Architecture and Landscape Design


Prepared by
Mary Brown, Preservation Planner
San Francisco City and County
Planning Department

"Buildings and landscapes of Modern design provide a direct link to past values, tastes, and ideologies. Such resources are often overlooked or under-appreciated by the public and/or decision-makers due to changing tastes and aesthetics related to architectural styles. In San Francisco, a wide spectrum of styles are included under the umbrella term of “Modernism” including early Streamline Moderne storefronts, concrete Brutalist office towers, and the ubiquitous, cheaply constructed “Contractor Modern” houses found in tract developments. In addition, San Francisco features the work of master architects associated with the Bay Tradition school of regional Modern design as well as architects associated with early development of the International style. Many consider the San Francisco Bay Area to be the hearth of Modern
landscape design and San Francisco features influential public and private landscapes designed by master landscape architects."

... 

"Modern context statements
Existing context statements focused on Modernism, Recent Past, and Midcentury design were reviewed including context statements for Riverside, San Diego, Fresno, and Pasadena. Relevant National Register

Multiple Property Documentation Forms include “Historic Residential Suburbs in the United States, 1830-1960,” “Modernism in Architecture, Landscape Architecture, Design and Art in Bartholomew County, Indiana, 1942-1999,” and the “Collier Heights Historic District.” In addition, the Planning Department reviewed the National Trust’s survey and documentation of Modern buildings in New Canaan, Connecticut."

California Preservation Foundation
http://www.californiapreservation.org
cpf@californiapreservation.org
http://www.docomomo-noca.org/advocacy.php#contact-scrim
info@docomomo-noca.org

p. 63 of the of the "2201 DWIGHT WAY PROJECT INITIAL STUDY" document, it asks if the plan is in

"b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?"

It also mentions that:

"The Southside planning area is generally defined as the area bounded by Dwight Way on the south, Bancroft Way on the north, Prospect Street on the east, and Fulton Street on the west. The project site is located near the southwest edge of the planning area and is located within the Plan’s Residential High Density Subarea. This subarea is located close to the UC Berkeley campus and Telegraph Avenue and is generally characterized by existing higher density housing and dormitories. A major purpose of the Residential High Density Subarea is to encourage the development of new housing that serves a variety of housing needs, is compatible with the height
and bulk of existing buildings, and complements the existing architectural character of this subarea.

Reading the Southside plan's description of R-S (Residential High Density Subarea) and R-3 (Residential Medium Density) and looking at the map on page 9, it's absolutely clear that 2201 should be part of the R-3 neighborhood--it's farther from campus than the other high density subarea properties, etc. On page 9, Map IN-1 clearly shows how 2201 Dwight is now a peninsula of less restrictive R-S zoning, when it was always previously R-4 like the surrounding neighborhood on all four sides. This is in direct contradiction of the plan itself, violating the policies of the Southside plan by classifying 2201 as R-S and not as R-3. If you look at the old zoning compared with the new zoning maps, the surrounding properties on three sides were downzoned from R-4 to R-3. 2201 Dwight is now a partial island and a total peninsula of less restrictive zoning in a sea of more restrictive R-3 zoning, for no compelling public policy that is as specific as the policy of downzoning R-4 to R-3 to protect the residential-only neighborhood from development pressures. Upzoning 2201 Dwight from R-4 to R-S in this manner constitutes spot zoning, illegal under California law.

2201 is clearly as far as you can get in the Southside area from the University of California campus and Telegraph Avenue and is and adjacent to the neighboring lower density residential neighborhoods outside the Southside area, so directly contradicts the description of the R-S high density subarea:

"The Residential High Density Subarea is located close to the University of California campus and Telegraph Avenue and is generally characterized by existing higher density housing and dormitories. The Residential Medium Density Subarea is generally located at the eastern and southern edges of the Southside area farthest from the campus and adjacent to the neighboring lower density residential neighborhoods outside the Southside area."

Here's another description where it's clear 2201 fits more in line with the R-3 area than with the R-S area; it's clearly not "located in close proximity to the University of California" compared with the R-S section, it's as far as you can get from UC in the southside area; and, we should look into this, but it seems to be closer to buildings that are "predominantly medium density residential in use and character including areas of fraternities, sororities, smaller residential buildings, and single family homes" than to buildings that are "predominately high density residential in use and character and located in close proximity to the University of California"

S

"A. Land Use Sub areas in the Southside
The Land Use and Housing Element divides the Southside into four sub areas in order to assign land use policies based on the distinct character of each area. The sub areas are:
- A Residential Medium Density Sub area (R-3) applying to areas that are predominantly medium density residential in use and character including areas of fraternities, sororities, smaller residential buildings, and single family homes;
- A Residential High Density Sub area (R-S) applying to areas that are predominately high density residential in use and character and located in close proximity to the University of California

http://www.ci.berkeley.ca.us/Planning_and_Development/Home/Southside_Plan_Land_Use_and_Housing_Element.aspx

2201 Dwight is clearly surrounded on three sides, 75% by ex-R-4, now-R-3 area properties, which are characterized by buildings that are classified as "predominantly medium density residential in use and character including areas of fraternities, sororities, smaller residential buildings, and single family homes," So how could the argument be made that it is actually surrounded by buildings that are "predominately high density residential in use and character"? And to the west it used to be R-4 too, so it was and probably still is actually 100% surrounded by buildings that are "predominantly medium density residential in use and character including areas of fraternities, sororities, smaller residential buildings, and single family homes."

Furthermore, the property at 2185 Dwight which was classified to R-S is relatively new and only 2 stories.

RESIDENTIAL (R-S AND R-3) SUBAREAS
"The Residential High Density Subarea is located close to the University of California campus and Telegraph Avenue and is generally characterized by existing higher density housing and dormitories. The Residential Medium Density Subarea is generally located at the eastern and southern edges of the Southside area farthest from the campus and adjacent to the neighboring lower density residential neighborhoods outside the Southside area."

http://www.ci.berkeley.ca.us/southsideplan/
http://www.ci.berkeley.ca.us/uploadedFiles/Planning_%28new_site_map_walk-through%29/Level_3_-_General/Southside%20Plan_adopted%20with%20changes%209-27-11.pdf
Aaron Sage, AICP, Senior Planner
Planning and Development Department
Land Use Planning Division
2120 Milvia Street
Berkeley, CA 94704

Re: Initial Study/Environmental Checklist for 2201 Dwight Way Project

Dear Mr. Sage,

I have read the Initial Study for the 2201 Dwight Way Project. The following issues are among my concerns about the project.

Aesthetics

The project is too tall and massive for the surrounding neighborhood, which is rich in historic resources. The Initial Study Checklist claims that there is no impact to scenic resources. But in fact, the project would block the view of either historic resources or the Berkeley hills from just about every direction.

The applicants have claimed that a smaller project would not be profitable. But applicants for projects in Berkeley always claim that only the largest project they can get away with will be profitable. Yet most projects that have been completed recently in Berkeley are, or have been, in some state of financial failure. At least two projects have sold for less than the cost to build them – the Arpeggio project sold for approximately 30% less than it cost to build. In those cases, the owners who purchased the projects at a discount after foreclosure might profit, but the owners who constructed the projects certainly did not.

Given this trend, I cannot understand why anyone would want to construct a large housing project in Berkeley at this time. If the applicants really want to own a big ugly building, why not wait for the very likely opportunity to purchase one when it gets sold at the builder’s loss? There are at least three five-story housing boxes under construction now that might be available at a discount within a year or two.

Continuing to construct massive, view-blocking five-story projects of uncertain and unlikely viability leads to a devastating cumulative impact to the community. For example, one five-story project in West Berkeley that has shown signs of financial distress is in negotiations to be sold to a religious group with the intention of removing the building from the property tax rolls. Berkeley already has a larger percentage of its property off the property tax rolls than probably any other city in California. Isn’t the reason our city officials are encouraging the endless construction of five-story housing projects because they want the property tax revenue?

Hazards and Hazardous Materials

The Initial Study describes the two former underground storage tanks (USTs) at the site and a 2003 subsurface investigation of the area. On pages 49-50, the Initial Study says that groundwater results suggested that contamination was present related to the USTs,
but that case closure occurred in part because “the project site and hydraulically
downgradient properties to the west-southwest would likely continue to be
commercial.” The claim that these properties are commercial is incorrect. I believe that
every structure to the west of the project on the north side of Dwight is residential, all
the way down to Shattuck. On the south side of Dwight are at least two partly-
residential structures and a shelter for women.

It should be noted that there is at least one water well in the immediate vicinity and to
the west of the project. Historic records indicate that other wells may exist in the
immediate vicinity of the project, including to the southwest of the project.

On page 52, the Initial Study says that Dwight Way is a designated Emergency Access
and Evacuation Route on the City’s General Plan Hazardous Hill Area, Fire Station
Locations, and Evacuation Routes Map. It then states that the project would not “alter
the roadway in any way; therefore, it is not expected that the proposed project would
impair the ability of Dwight Way to function as an emergency evacuation route.”

Of course the project wouldn’t alter the roadway, but it would alter the traffic on that
roadway substantially. Emergency access can only occur when the roadway is not
clogged with stalled automobiles or trucks. Where will the moving trucks park when
residents are moving in and out? Where will the Fedex trucks park while dropping off
the packages for hundreds of residents?

The plan for this project’s parking lot access places the entrance to the parking lot on
Dwight, which is one-way going east, and places the exit on Fulton, which is one-way
going south with a barrier at Dwight Way. Thus every time one enters or exits the
parking lot, the already heavily traveled corner of Dwight and Fulton would be have to
be used. Placing the entrance on Fulton and the exit on Dwight would minimize the
traffic at this corner. Why was the parking lot entrance/exit plan that is most
detrimental to the neighbors chosen by the applicants?

Noise

I think that the design of the project is entirely inappropriate for housing that might be
occupied by a large number of UC students. Unfortunately, our once-great institution
of higher education, of which I am an alumna and the daughter and sister of alumnae,
has become a party school. The parties generally begin late at night and continue for
hours. By midnight, partiers are often standing in the street and on any available
balcony or deck – literally screaming. This has become normal behavior for UC
Berkeley students.

The impact of noise to the surrounding neighbors from the project’s balconies and
“catwalks” during late night parties should be investigated. The decibel levels of party-
related screaming that would reach neighboring properties from the balconies and
catwalks should be determined. Then the applicant should develop a more suitable
design, by eliminating these detrimental design elements.

Population and Housing

The Initial Study checklist curiously claims, in answer to the question whether the
project would induce substantial population growth in an area, that the impact would
be less than significant. Unless the project is a complete failure and never becomes fully
occupied (this is not outside the realm of possibility, but certainly is not what the applicants are seeking) – of course the project will induce substantial population growth in the area.

The applicants have claimed that they would not permit double occupancy of the bedrooms. But I do not believe that the applicants are allowed by state and federal laws to enforce such limitations. I also doubt that the applicants can limit the project to students, as that would tend to discriminate against children. With many four-bedroom apartments, this project is one of the few in town with units of sufficient size for large families.

The Federal Fair Housing Act prohibits restrictions on occupancy which discriminate on the basis of familial status. In particular, occupancy restrictions cannot be an excuse to discriminate against families with children. And in California, the Department of Fair Employment and Housing regards “two persons per bedroom plus one” as a guideline for occupancy standards. A more restrictive policy might be found to be discriminatory.

The 2201 Dwight project will contain 29 two-bedroom and 52 four-bedroom units. The “two persons per bedroom plus one” guideline would allow five persons in a two-bedroom apartment and nine persons in a four-bedroom apartment. Unless there is some reason that state and federal laws and guidelines do not apply to this project, far more than 266 residents could potentially inhabit the project.

Transportation/traffic

See above, the last two paragraphs under Hazards and Hazardous Materials

Mandatory findings of significance

The project has many detrimental impacts that are cumulatively considerable. It should be reduced in height and size, and should be redesigned to be less detrimental to the surrounding neighborhood.

Sincerely,

Gale Garcia
Dear Aaron:

This is to comment on the NOP (Notice of Preparation) for an EIR on the proposed development at 2201 Dwight Way.

The "Requested Approvals" section has several problems:

. Part of it says, "Increase in maximum building height from three stories (35 feet) to [seemingly just] four stories (45 feet)." A later portion does say that a Density Bonus Law incentive/concession is requested to "$\text{allow two [sic]}$ dwelling units...to be located on the fifth floor, thereby expanding the building envelope by approximately 1500 square feet." But that seems to mean that the 1500 square feet describes the overall project's ONLY fifth-story element. And this reading appears to be supported--at least if the overall development would have JUST ONE indoor common area--by the ensuing statement that "[t]he purpose of this concession is to allow the 1500 square foot indoor common area on the first floor of the building without reducing the number of dwelling units in the project." This is all quite unclear and misleading. And it evidently contradicts the project graphics (in the NOD or the Initial Study) that seem to show at least half of the overall project's 18 "distinct volumes" as being five stories high.

. As I've partly implied above, clarification is needed as to whether or not the overall project would have just a single indoor common area. One reason why I wonder about it is that the NOP's "south elevation" drawing seem to indicate "storefront glazing" (maybe a feature of a common area) on the first stories of TWO building volumes.

. There's no mention at all of needing relief from Section 23D.48.070.E's required BUILDING SEPARATION standards, such as the requirement for adjacent buildings' fourth stories to be 20 feet away from each other. The NOP pretends that the project would create only a single building and asserts that the development's 18 "distinct volumes" would merely "resemble" separate buildings. But it's very arguable that those 18 volumes would BE separate buildings for purposes of Section 23D.48.070.E.

A future first-time visitor to the completed project could readily describe it as a tight cluster of 18 "buildings." More basically, the types of REASONS for 23D.48.070.E's building separation standards--including concerns about sun access, noise, privacy, and fire safety--are also pertinent regarding this project's 18 distinct above-ground volumes.

. Though I haven't made precise measurements on the NOD's site plan, I wonder whether the project would involve waiving any of Section 23D.48.070.F's LOT COVERAGE limits. For example, that subsection appears to say that on corner lots, building coverage at the third-story level must not exceed 65 percent.

The NOD indicates that the EIR will address the topics of visual resources, historical resources, and hazards and hazardous materials. But it's arguable that it should also address the topic of LAND USE AND PLANNING. The project would involve waiving or severely straining various zoning standards and/or land use/urban design policies that HAVE been adopted at least partly to prevent ENVIRONMENTAL effects.

For instance, the General Plan's Policy UD-24 says, "Regulate new construction and alterations to ensure that they are [please note:] truly compatible with and, where feasible, reinforce the desirable design characteristics of the [please note:] particular area they are in."

Instead, the current project would radically depart in character from the particular residentially zoned surrounding area. At its pivotal location within this area, it would confront both Dwight and Fulton with multiple flat-roofed, five-story prisms going right out to the street line. For comparison, nearly all nearby residentially zoned buildings are set back from their abutting streets.

Even if the EIR doesn't classify impacts like that under a "land use and planning" category, they nonetheless should be thoroughly addressed somewhere within it.

Sincerely,

John S. English