THE BERKELEY ARCHITECTURAL HERITAGE ASSOCIATION
P.O. BOX 1137 MAIN POST OFFICE
BERKELEY, CALIFORNIA 94701
TEL. 510-841-2242 FAX. 510-841-7421

April 21, 2021

Via E-Mail and U.S. Mail

UC Berkeley, Physical & Environmental Planning
Attention: 2021 LRDP and Housing Projects #1 and #2 Draft EIR 300 A&E Building
Berkeley, CA 94720-1382

Re: BAHA Comments to 2021 Draft LRDP and Housing Projects #1 and #2 Draft EIR

Dear Mr. Briones:

This letter, attached exhibits, referenced materials[1] and sources, and Ms. Leila Moncharsh's comment letter dated today constitute Berkeley Architectural Heritage Association's (BAHA) comments to the draft Environmental Impact Report (DEIR) propounded by the University of California at Berkeley (UCB) on March 8, 2021, concerning a proposed draft Long Range Development Plan (LRDP) "Update" for UC Berkeley together with two specific demolition and construction projects (Project #1 and Project #2) that propose the destruction and/or endangerment of multiple landmarked buildings in Berkeley. BAHA reserves the right to supplement this letter in light of the fact that the Lead Agency and/or the University of California failed to respond to Ms. Moncharsh's[2] prior requests for information. BAHA respectfully requests that the Lead Agency address each comment below and answer each of the separately numbered questions.

By way of background, BAHA has over 1100 members; its mission is to document, protect, and preserve architecturally significant structures and landscapes in the City of Berkeley. Its members are drawn from a cross-section of the community and include individuals with relevant professional qualifications to assess the DEIR including architects, architectural historians, engineers, and building contractors, and UCB students, staff and faculty. **BAHA believes that the proposed projects will irreversibly and negatively impact important Berkeley architectural structures and historic landscapes. Because the projects are unnecessary and unmitigated, they must be re-considered.**

[1] These incorporated materials include the statements and evidence put forward by BAHA members, including members of the Board.
[2] Leila Moncharsh is a BAHA Board Member.

Executive Summary

BAHA's position is that the DEIR is legally insufficient, factually unsupported, and woefully inadequate to satisfy California's Environmental Quality Act (CEQA) and other applicable laws. The public has the right—a right that CEQA guarantees—to be provided a full and fair assessment of the environmental consequences of the Lead Agency's proposed projects. By mis-describing the projects and understating their actual environmental impacts, including their impacts on important cultural resources, the Lead Agency here (the UC Regents) deprives the public of the very information that CEQA was designed to compel it to provide.

The DEIR is based on two flawed premises set out in the draft LRDP: (1) that undergraduate enrollment at UCB must be increased dramatically and (2) that all of the proposed increased enrollment and commensurate construction must take place within the confines of the City of Berkeley. As a consequence of these two false premises, the Regents are attempting to foist unnecessary costs on Berkeley citizens and "redevelop" UCB's historic and cultural resources into unnecessary and architecturally undistinguished high-rises.

Flawed Premise #1: Increased Enrollment Is Necessary and Outside the Lead Agency's Control

As set forth in more detail below, no law, regulation, or demographic trend requires UCB to enroll more undergraduates. The evidence indicates that the UC System has more than adequate capacity to handle incoming resident high schoolers at the legally mandated level for the next decade and beyond. Indeed, the State Auditor recently found that the UC system has excess capacity; and other research has found that the UC system currently enrolls more resident undergraduates than legally mandated under the state Education Master Plan. Further, enrollment levels at individual campuses are entirely within the Lead Agency's control. While systemwide UC undergraduate enrollment is governed by the state Master Plan, enrollment at individual campuses such as UCB is hashed out in negotiations between chancellors and is ultimately decided by the UC Regents, which submits budget recommendations to the Governor, who in turn incorporates these recommendations into a larger executive budget package that is forwarded to the legislature for review and consideration. Therefore, the suggestion that the proposed enrollment increase is "imposed" on UCB is patently absurd.

Because nothing compels UCB to admit more students, the large, proposed increase in students is due to an entirely different consideration: money.[3] Non-resident student fees are significantly higher than those for residents[4] and are essentially unrestricted in terms of use. In response to overwhelming criticism of UC's preferential admission of non-residents[5] as a means

[3] A good summary of UCB's financial woes can be found at https://cshe.berkeley.edu/sites/default/files/publications/douglassbleemer.tipping_point_report.updated_2.19.19.pdf

[4] Current fees per semester are approximately $9200 for resident students and $24,000 for non-resident students. https://registrar.berkeley.edu/tuition-fees-residency/tuition-fees/fee-schedule

[5] California State Auditor, *University of California: Its Admissions and Financial Decisions Have Disadvantaged California Resident Students*, Report 2015-107 (March 2016), available at https://www.auditor.ca.gov/reports/2015-107/index.html

of raising money[6], legislation was recently passed that provides an upper limit on non-resident admissions—a limit that, for UCB, is expressed as a percentage of overall enrollment. Now the only way that UCB can generate higher fee income without raising tuition overall is to increase resident admissions dramatically so that it can likewise increase non-resident enrollments dramatically.

Although the Lead Agency claims that it needs to expand enrollment to accommodate more deserving California resident students and to create more diversity, those reasons are patently false. If UCB wanted to accommodate more California resident students or believed that many more California-resident students met UCB's strict entrance criteria, UCB can admit them now and into the future without increasing overall enrollment by reducing the number of non-resident students. Non-resident students now account for almost 25% of UCB enrolled students (not counting the various international exchange programs and similar "non-enrolled" categories).

There also is no evidence proffered (or available) that supports the DEIR's assertion that increasing the number of students will result in more diversity. The vast majority of non-resident international students currently and recently enrolled at UCB are primarily from a single country, and enrollment statistics demonstrate that this population is increasingly being drawn from wealthy families.[7] By contrast, the population of UCB's California resident students has become increasingly diverse during this same period. The inescapable conclusion is that admitting more qualified California-resident students will increase diversity in the student body, which is something that can be accomplished without increasing overall enrollment.

In addition, the overall proposed population increase—students, staff, faculty, and other UCB users—will far exceed the figures provided in the LRDP and discussed in the DEIR. The proposed population increase to 67,200 does not take into consideration the numbers of individuals who attend classes or otherwise access UCB facilities through various exchange and non-degree programs (such as UC Extension, the CCC cross-enrollment programs, and various international faculty and student exchanges) nor does it include the increasingly large number of persons who work for UCB as part of UCB's outsourcing contracts for, by way of example, janitorial services and grounds maintenance. It also does not address the likelihood that the projected 10,000 new users of the Berkeley Global Campus will want to live in and/or commute to UCB's Berkeley sites, including LBL and the Campus Park.

In sum, the dramatic enrollment increase proposed in the LRDP and defended in the DEIR both misrepresents the actual proposed increase to the overall UCB population and the true reasons behind it. By concealing these two things, the Lead Agency improperly conceals and thus limits public discourse over its plans to raise money in a way that is low cost to UCB but of a very high cost to the City of Berkeley and its taxpaying residents.[8] The Lead Agency's failure to address the

[6] UCB has admitted that it enrolled increasing numbers of non-resident students as a means of raising money. See, UCB Response to CA Auditor Report 2015-107, available at https://www.auditor.ca.gov/reports/2015-107/responses.html

[7] Current admissions statistics and demographic data are available on UCB's websites.

[8] If the Lead Agency wanted to diversify housing, for example, they would not propose limiting the housing opportunities in Project 1 to transfer students without requiring proof of financial need, as that population is overwhelmingly white. (Something that opens UCB to constitutional challenges and years of legal wrangling.)

true reasons for and the reasonableness of its intent to increase enrollment renders the DEIR legally insufficient and represents an abuse of discretion.

Flawed Premise #2: All Growth Must Happen Within the Confines of the City of Berkeley

The lead agency's second flawed premise is that the UC Regents' Long Range Development Plan can avoid including multiple geographic areas where UCB operates, UCB students live, UCB staff work, and UCB faculty teach. Many sites outside the area covered by the LRDP's constrained geographic project parameters are actively being used by UCB and/or are under development by UCB planners for future use. The Lead Agency has adopted separate LRDPs for multiple satellite UCB campuses and housing complexes including the Berkeley Global Campus (f/k/a Richmond Field Station) and Albany-Gil Tract (f/k/a University Village). It also has acquired the ground lease for and has begun plans to develop a large tract of land in South San Francisco at Moffett Field. Nothing in CEQA or the Education Code or any of the enabling regulations, provide a legal basis for the UC Regents to take such a segmented approach to presenting their long-range development plan for a single university. Further, California courts have uniformly rejected this segmented approach. The UCB campus, for planning purposes, thus includes UCB sites in Albany, Richmond, Oakland, Emeryville, and South San Francisco as well as satellite locations outside the Bay Area.

UC Regents Fail to Account for Actual Environmental Impacts or Properly Justify Destruction of Natural and Cultural Resources.

By concealing the actual proposed overall increase to the UCB population as well as ignoring satellite campuses and other areas where it currently operates and/or where the Lead Agency is actively pursuing housing, classroom and research development options, the Lead Agency not only failed to issue a legally sufficient LRDP and DEIR that would permit the public to assess its plan, but it also fails to identify, assess and discuss the environmental impacts of its projects in the DEIR. Among other things, the Lead Agency and the contractors that it employed to perform the analysis for the DEIR failed to accurately assess current baseline conditions or address the extent of the health and other impacts of the proposed projects.

For example, the DEIR contractor that examined the health effects of the proposed construction projects ignored health effects on the infants housed at UCB's own child development centers, many of which are close to proposed construction sites (indeed, the DEIR contractors appeared entirely unaware that these facilities existed). Because the cancer risks pose by this construction (as described in the HRA reports) are demonstrably significant for this vulnerable population the DEIR's conclusion that there will be no negative health effects is demonstrably incorrect and unsupported. Likewise, the DEIR fails to survey or even acknowledge the existing Natural Resources much less discuss the impacts on them. For example, Potters Creek runs from the Clark Kerr Campus and under People's Park. None of the reports or assessments provided in the DEIR identify this creek, address the impact on this creek, and/or discuss how the existence of water in this geographic area could intensify the environmental impacts on adjacent natural, historic and cultural resources (i.e., by amplifying the harm caused by pile driving near the historic resources adjacent to People's Park).

As for housing—which the Lead Agency claims is the primary driver for its proposed massive construction campaign—the Lead Agency has already taken steps (largely unaddressed in the LRDP or DEIR) to secure large amounts of housing within and outside the City of Berkeley, including using master leases for privately developed student dorms and agreements with Mills College to use its dorms to house UCB students. Indeed, UCB historically has housed and presently houses many students and faculty outside Berkeley proper and many more outside the walking-distance range of the Campus Park that the Lead Agency now deems necessitates large-scale development in or near the Campus Park.

For example, the Lead Agency recently announced plans to expand UCB's use of Mills College, effectively creating a separate Freshman college within a college—an arrangement that is not addressed, discussed or even hinted at in the LRDP and DEIR. Nor does UCB actually intend that all Freshmen remain in Berkeley for the first two years of their university student career. UCB initiated five years ago a separate program to divert incoming Freshmen to UCB's satellite campus in London, which UCB claims has been a tremendous success. The creation of a separate Freshman campus at Mills College is further evidence that UCB plans to have Freshman live and take classes outside Berkeley. The Lead Agency does not provide any evidence that its historic practice of housing some Freshmen outside Berkeley has been deleterious to those students' UCB experience. Moreover, increasing enrollment is hardly a sensible solution to either UCB or the Bay Area's housing shortage.

Nor are the "housing" plans the Lead Agency proposes narrowly addressed to solving the housing problem. Although billed as student housing projects, neither Project 1 nor Project 2 are exclusively devoted to student housing. Project 1—called the Helen Diller Anchor House—for example, offers non-dense student accommodations (exclusively for transfer students)[9] on top of several stories of commercial retail, office and recreational space.[10] UCB's prior plans for the Project 1 site contemplated the construction of a large building, which contained an equal number of housing units as the present proposal but preserved existing historic resources—namely, the rent-controlled Walnut Street Apartments and the UC Garage that are now slated for demolition. Given the large number of square feet devoted to commercial and other non-housing uses, the Lead Agency cannot justify the demolition of these historic and cultural resources as necessary to create housing. Instead, the Helen Diller Anchor House project should be seen for what it is: a plan to demolish a unique and landmarked garage and a historic rent-controlled apartment house in favor of privately financed vanity project on public land, the construction and operation of which will be financed by rents charged to new commercial tenants having nothing whatsoever to do with UCB.

BAHA's Focus: Unjustified Destruction of Important Cultural and Historic Resources

As a preservation group, BAHA is particularly concerned by the Lead Agency's proposal to demolish several landmarked historic properties, endanger others and fundamentally alter the city's unique neighborhoods. The structures that either will be demolished in the course of

[9] By designating the accommodations for transfer students, UCB has effectively put itself on a path towards multiple lawsuits given that the racial makeup of the transfer population is predominantly white and they are not requiring any demonstration of financial need to qualify for this housing.

[10] The Lead Agency has already signed an agreement that designates a particular commercial real estate agent at Baird and Warner to handle leasing this large commercial space.

executing these plans or that will undoubtedly be permanently harmed as a result of the projects or their construction include Bernard Maybeck's First Church of Christ Scientist; Smyth-Fernwald House, Berkeley's oldest residential building and the last remaining example of an Asian inspired interior by Julia Morgan; Anna Head School, which is not only landmarked as the first Shingle Style structure in the West, but was founded by a pioneering female educator and is the visual representation of an important cultural moment, namely the diversification of higher education to women—many of whom went on to study at UCB; the UC Garage, which is a unique, attractive, and landmarked commercial building designed by Berkeley architect Walter Ratcliff; the historic and rent-controlled Walnut Street apartments; multiple buildings on the Clark Kerr Campus.

Notably, the Lead Agency is proposing demolishing two key landmarked properties that are uniquely tied to prominent women feminist icons and two others that are the last or the last outstanding examples of key historic architectural innovations. By building multiple tall high-rises in low-rise residential neighborhoods including on People's Park and on the Oxford Tract, which are now open spaces, putting up new parking lots including under the historic landscaped grass crescent along Oxford, and constructing a sports complex for nationally televised beach volleyball competitions on the Clark Kerr Campus, the projects will fundamentally alter the nature and character of Berkeley's residential neighborhoods by diminishing green space, inserting large high-rise complexes out of character with the neighboring low-rise homes and dramatically increasing gridlock and studentification. Yet these impacts are given short shrift and the change of course that they represent is not even addressed.

By failing to address fully and fairly the significance of the proposed losses of landmarked properties and the true alternatives to demolishing them and others on the proverbial chopping block, the lead agency has improperly ignored its legal duties under CEQA in a thinly veiled attempt to avoid a full and fair public hearing of the impacts of its proposed projects. By way of example, UCB previously agreed to limit their buildings in City environs to 8 stories and preserve the character of the Clark Kerr Campus and People's Park. Notably when it first unveiled its latest "Project 2" plan for People's park, UCB committed to respecting the City's strict height limits. Now, with no explanation, UCB subsequently unveiled a 17-story tower with connected towers of similar massing for the site. The DEIR admits that these structures are wholly incompatible aesthetically with the surrounding neighborhood and that their construction will require destructive pile driving that "may" (read "will") damage multiple nearby unique and landmarked properties, including the Anna Head School Complex (which is within 60 feet of the anticipated pile driving) and Bernard Maybeck's First Church of Christ Scientist (FCCS), which is also clearly within the expected zone of harm.[11] Their proposed mitigation is to meet with the City, monitor the harm to adjacent resources (although not to cease construction if harm results), and then payout timely filed claims for damage. This mitigation plan is facially insufficient; moreover, there are multiple reasonable alternatives to Project 2 ignored by the Lead Agency. The following photos show buildings endangered by the Projects.

[11] Despite the importance of these two national landmarks, the DEIR provides no estimates as to (a) exactly where the pile driving will occur; (b) what the actual vibrations expected to be generated at each of the pile driving sites will be; and (c) the estimated impact this force and energy will have on the precious materials used in these structures (including hammered Belgian glass). The research is clear that harm can be expected to occur.

The LRDP and DEIR Must Be Revised and Reconceived

Before alterations of such permanence and magnitude are undertaken, a legally sufficient LRDP and DEIR must be propounded so that the public—including the citizens of Berkeley—can (a) understand the true scope and extent of the proposed projects and (b) properly assess their true costs and benefits. Because UC failed to adhere to its own policies and procedures in creating, drafting, and disseminating the LRDP and EIR, and because its proposal is drafted in such a way to violate both the letter and spirit of CEQA, UC is not entitled to any deference whatsoever concerning its plans to dramatically increase enrollment at the UCB campus and engage in an unprecedented construction spree that will push costs of absorbing and servicing this dramatically expanded population onto the City of Berkeley and Berkeley taxpayers and cause the destruction of multiple significant landmarked buildings. BAHA urges the Regents to consider integrating UCB's wonderful historic resources into the new planned structures.

In addition, the Lead Agency must fulfill its statutory duty to estimate the financial impacts of its projects on the City of Berkeley and provide assurance—by way of a specific financial commitment—to the City of Berkeley to prove that it can meet its legal reimbursement obligations. Either as part of the LRDP or simultaneously with it, the Lead Agency must (1) address the level of reimbursement they plan to pay the City of Berkeley to compensate it (and its citizens) for the economic burdens and consequences of their projects—particularly the enrollment and staff/faculty increases; and (2) provide evidence that the Lead Agency is prepared to make the necessary commitment (financial and otherwise) to protect the health and safety of City Residents and the UCB community.

BERKELEY PHYSICAL DESIGN FRAMEWORK

DOWNTOWN PROJECTS: GATEWAY BUILDING & UC GARAGE

This project would also be a third party partnership. Gateway is planned as a flexible office building, used primarily as relocation space for campus units displaced from buildings undergoing seismic renovation. However, despite this prosaic use, Gateway occupies a prime corner at the west entrance to campus, and high quality design is imperative. The adjacent historic UC Garage, now used for bus storage, would be renovated for a public-oriented use, such as the campus visitor center now housed in the drab lobby of University Hall.

Figure 12. View from north of Gateway Building with renovated UC Garage in foreground.

40

BACKGROUND

A. The Physical Location of UCB Operations

The first class (of twelve) UCB students graduated in 1873. Assembly of land for what is now the University of California, Berkeley campus began several years earlier in 1860 with the dedication of 160 acres of farmland between the north and south branches of Strawberry Creek.[12] The University itself was founded in 1867, following acquisition of an additional 320 acres of "college grounds" and the merger of the College of California with the State's land grant college system. As such, UCB qualifies as a Land Grant University.[13]

Today, UCB encompasses approximately 1,250 acres of land in and adjacent to Berkeley and over 3000 additional acres in several satellite campuses and other off-site locations. In addition, UCB leases property, including built-out properties to serve as student housing and academic space and undeveloped property to be developed for housing and research and academic uses in the future. Over the years, it has also spun off several institutions including the Lawrence Berkeley National Laboratories[14] (in Berkeley and Livermore) and its agricultural college, which became UC Davis. The last vestige of UCB's land-grant, agricultural origin is block-long plot located on Oxford Street North of Hearst, now called the Oxford Tract and the minimum devoted to agricultural purposes required for that status.[15]

With respect to its holdings in the City of Berkeley, UCB occupies the so-called Campus Park[16] (a/k/a Main Campus) as well as the Piedmont Avenue Corridor and the Hill Campus (which it shares with Lawrence Berkeley National Laboratory), and the Clark Kerr Campus. In addition, over the years the University has acquired, leased and been gifted various plots of land throughout

---

[12] Stadtman, Verne A. (1970). *The University of California*, *1868–1968*. New York: McGraw-Hill. pp. 7– 34; *Helfand, Harvey* (2002). *University of California, Berkeley: An Architectural Tour. New York: Princeton Architectural Press*. p. 4. ISBN 9781568982939; Cal. Stats., 17th sess., 1867–1868, ch. 244, § 7.

[13] A land-grant university is an institution of higher education in the United States designated by a state to receive the benefits of Morrill Acts of 1862 and 1890. *Collins, John Williams, O'Brien, Nancy P., EDS. (2003). The Greenwood Dictionary of Education. Westport, CT: Greenwood Publishing Group. p. 227. ISBN 0-89774-860-3.*

[14] The Lawrence Berkeley National Laboratory (LBNL) is a federally funded research and development center operated and managed by the University of California Regents under contract with the US Department of Energy (DOE). The research, service, and training work conducted at LBNL are within the University's mission. As the LBNL Management and Operating (M&O) contractor, the University is responsible for providing the intellectual leadership and management expertise necessary and appropriate to manage, operate, and staff the Laboratory; accomplishing the missions and activities assigned and funded by DOE to the Laboratory; administering the DOE UC Prime Contract; and providing University oversight of contract compliance and performance. "LBNL", as used within this document, refers to both the national federally funded research and development center named the Lawrence Berkeley National Laboratory and to the University of California in its role as the M&O contractor of the Lawrence Berkeley National Laboratory.

[15] That parcel is slated for large-scale development, although the DEIR does not consider the environmental impact of this planned development.

[16] The Campus Park was initially conceived by Fredrick Law Olmstead. *See Helfand, Harvey (2002). University of California, Berkeley: An Architectural Tour. New York: Princeton Architectural Press. p. 4. ISBN 9781568982939* The area referred to as "Campus Park" in the LRDP covers only a portion of UCB properties. The Campus Park lies entirely within the City of Berkeley and has as its entrance a semi-circular drive roughly at the top of University Avenue and is generally bounded by Oxford Street on the west, Hearst Avenue on the north, Bancroft Way on the south, and Piedmont Ave. to the East.

the city, with the greatest concentration on the Southside and in the downtown area, particularly along Oxford Street just south of the Campus Park.

Overtime, UCB leased and acquired property outside Berkeley to establish satellite campuses, including the Richmond Field Station (n/k/a Berkeley Global Campus), a 120-acre site along San Francisco Bay in Richmond, CA, and more recently 36 acres of Moffett Field just South of San Francisco Airport. It is also in the process of leasing sites in Emeryville for the School of Optometry. Even prior to the recent pandemic, UCB recognized the importance of expanding its on-line options.[17]

At the same time that it constructed academic facilities, UCB also built student residences, including traditional dorms, housing two or three students, per room, as well as less-dense, newer style complexes with apartment-style units. UCB acquired a large property in Albany where it erected University Village, a housing complex designed for students with families and graduate students. There is also Piedmont Hall that serves as a separate college and includes student housing for college members. In addition to UCB-supplied housing, UCB students can live in the various fraternities, sororities, co-operatives, apartment buildings, and private-rooms-to-let that dot the residential areas around campus.

UCB's construction of student housing, however, did not keep up with the dramatic increases of enrollment in recent years and the commensurate cut in capital funding. UCB began to rely on privately developed student residences to accommodate the increased housing needs. Under the leadership of former UC president Janet Napolitano, UCB began to once again construct student housing and lease student housing constructed by third parties. In addition, several private student housing developers jumped in to meet the need for even more housing by constructing several student-only buildings in Berkeley. A partial list of these and other non-UC owned options is provided below.

UCB's need/desire for raising money together with the constraints placed upon it as to how much it can charge in-state residents for tuition, lead it to accept out-of-state students in increasingly high numbers, which resulted in enrollment surging far above the levels approved in UCB's existing 2005-2020 LRDP and approved EIR. The result of this growth drive included multiple CEQA lawsuits, which are still proceeding today, as well as legislation limiting the enrollment of out-of-state residents to a set percentage of in-state resident students (just under 25%). More on this later.

As UCB enrollment continued to grow, UCB ran out of housing space and so entered into several creative solutions including leasing dorm rooms on the nearby Mills College Campus and pushing a study-abroad option for incoming Freshmen. As the *San Jose Mercury News* reported in 2016, "To meet soaring demand with limited space, UC Berkeley has pushed hundreds of students off campus, with freshmen studying in San Francisco — and even London — and other students living in dorms at neighboring universities."[18] Earlier this month, UCB announced the creation of a campus-within-a-campus for incoming Freshmen at Mills College. Freshmen will both be housed in Mills College dorms and take classes from UCB faculty in Mills College classrooms. UCB

[17] https://campustechnology.com/articles/2018/03/21/uc-berkeley-rolls-out-tech-for-accessible-course-content.aspx
[18] https://www.mercurynews.com/2016/12/12/uc-berkeley-squeezes-in-more-students- shifts- some-off-campus-to-meet-surging-enrollment/

maintains that it currently houses 96% of freshman and has secured additional large amounts of new housing via leases and new construction and donated buildings. Notably, the Pandemic of 2020-2021 forced UCB to move many of its classes to remote-only learning, essentially speeding up UCB's stated goal to increase and support remote learning.[19] It also provided students the opportunity to study from literally anywhere in the world.[20]

As this history indicates, UCB now has a sizeable presence outside the City of Berkeley. In addition to campuses in Richmond California (the Richmond Field Station), in Albany (the University Village), South San Francisco (Moffett Field)[21] and now Oakland (Mills College), UCB established a London campus in 2015[22] and is presently planning to move the School of Optometry to a satellite site in Emeryville. UCB students can also arrange to live and study at UC complexes in Washington, DC[23] and Sacramento.[24]

[19] https://technology.berkeley.edu/telecommuting

[20] https://www.nytimes.com/2020/08/28/style/college-collab-houses-coronavirus.html

[21] From September 2003 to July 2016, UC managed a contract valued at more than $330 million to establish and operate a University Affiliated Research Center (UARC). Since then and at the invitation of NASA, "the Berkeley campus is pursuing a possible development of a 36-acre parcel at Moffett Field, home of the NASA Ames Research Center. In the fall semester, a faculty steering group evaluated the academic opportunity for Berkeley at this Silicon Valley site and found the effort to have extraordinary potential. This spring, UC Berkeley negotiated the terms of a ground lease with NASA and built a public-private coalition that would finance construction at the site without deploying University funding. Despite substantial economic concerns from COVID-19, our development partners, with whom the campus will form a joint venture, view this project on a multi-decadal timescale and remain enthusiastic about the opportunity and their own capacity to execute the project even through an economic downturn. We will proceed cautiously, and with the confidence that UC Berkeley has and will continue to thrive even in the most challenging times." https://evcp.berkeley.edu/special-faculty-advisor-provost-moffett-field- director-aerospace-program-development-2020; and https://regents.universityofcalifornia.edu/regmeet/july19/f7.pdf According to the Daily Cal, "The new partnership [between UCB and NASA] would grant an allotted 1.4 million square feet and 36.2 acres for development, which could be used to host space for new laboratories and teaching spaces in collaboration with local industry as well as additional housing units." https://www.dailycal.org/2019/08/16/uc-berkeley-proposes-development-of-moffett-field-with-nasas-ames-research- center/

[22] http://globaledge.berkeley.edu/locations/london; https://accentglobal.com/program-samples/ freshmen-get-extra-edge/

[23] The UC Washington Center (UCDC) is a multi-campus residential, instructional and research center that provides students and faculty from the University of California with opportunities to study, research, work, and live within Washington's rich cultural, political and international heritage. The program is housed in an 11-story building in a lively neighborhood a short walk from the White House with room for more than 270 students. The Center is also home to several research units of the University of California including the Forum for Collaborative Research/University of California, Berkeley, Consortium of Universities for Global Health (CUGH), Student Press Law Center and the Inter-University Program for Latino Research (IUPLR) as well as the Office of Federal Governmental Relations, the University's liaison with Congress and the Federal government. See https://www.ucdc.edu/uc-washington-center-home; https://ucdc.berkeley.edu

[24] 24 UC Center Sacramento is the University of California's teaching, research and public-service site located one block from the State Capitol Building. Operated by UC Davis, UCCS offers a distinctive academic program in public policy to students from throughout the university's 10-campus system. The program provides students with an opportunity to study through seminars and internships in and around the state Capitol. Since its founding in 2004, UCCS has enrolled undergraduate students from every UC campus, many of whom now are engaged in policy careers with all levels of government or with organizations, associations and firms that work closely with government. UCB students may apply to enroll in UCCS. https://uccs.ucdavis.edu/about

B. UCB Natural, Historic, and Cultural Resources

The Lead Agency and UCB officials have recognized that the property that the UCB properties described above contain numerous natural, historic and/or cultural resources. These resources include old growth native redwood and live oak trees, rare specimen trees, endangered reptiles and birds, landmarked structures, important landscapes, and structures and spaces that have great cultural meaning. In addition, its natural landscapes include creeks and natural springs as well as other (man-made) water features including fountains and over-water bridges. From time to time, UCB has had these resources surveyed and/or assessed. Several of these are one-off or last remaining examples of a significant natural, historic or cultural resource. For example, the Symthe-Fernwald house in Berkeley, which is owned by UCB, is both the oldest remaining residence in the city of Berkeley and the only remaining example of an Asian-inspired interior designed by famed architect (and UCB graduate) Julia Morgan.

Over the years, previous UCB administrations and iterations of the Lead Agency put in place policies and guidance's designed to preserve and protect these unique resources. These include the Berkeley Physical Design Framework[25], New Century Plan[26], UCB Landscape Heritage Plan[27], UCB's Master Landscape Plan[28] and the design plan and best practices. These policies and protections, which are still in effect, are in addition to applicable federal and state laws and regulations that protect the environment and historic and cultural resources.[29] Notably, as part of its federal contracts, UCB must certify its compliance with, among other things, the National Historic Preservation Act of 1966, as amended (16 USC 470), E.O. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 USC Sec. 469a-1 et seq.).

C. Town and Gown: Berkeley as Host City

The City of Berkeley, comprised of approximately ten square miles, is home to a diverse population of about 120,000.[30] The City's economy is diverse and thriving overall, with certain sectors, such as retail sales, growing rapidly, while other sectors, such as manufacturing, declining.

Berkeley is currently one of the most densely populated cities in the state and affordable housing[31] and other consequences of an increased population such as air quality and climate change are perennial problems. Although the City is largely built out, it continues to experience infill for residential and commercial uses. To meet new state requirements to create 9000 housing units in the next 10 years, the City is working hard to push ahead expansive housing construction plans including permitting seven unit structures on single house lots. However, master leasing by UCB has removed many of the new units from the market and thus from the 9000-count. In short, as

[25] https://www.ucop.edu/design-services/_files/phdf/bk.pdf
[26] https://capitalstrategies.berkeley.edu/sites/default/files/pep_cpd_ncp.pdf
[27] https://capitalstrategies.berkeley.edu/sites/default/files/landscape-heritage-plan-ucberkeley.pdf
[28] https://capitalstrategies.berkeley.edu/sites/default/files/2004_-_landscape_master_plan.pdf
[29] Failure to adhere to these policies and guidances in creating new planned development, particularly where that failure is unexplained, is (in BAHA's view) per se unreasonable.
[30] https://worldpopulationreview.com/us-cities/berkeley-ca-population.
[31] Over the past two decades, lack of affordable housing and a host of other causes has resulted in a large homeless population in Berkeley and surrounding communities.

densely populated as the City itself is, Berkeley is poised to become even more dense over the next decade separate and apart from any enrollment increase and building boom by UCB.

While establishment of the University preceded the incorporation of the City, the City and the University grew up as interdependent institutions. As UCB expanded it acquired land via eminent domain, which displaced city residents. The construction of the football stadium in the 1920s displaced numerous families as did the establishment of the Sports Complex on the southwest corner of the present-day Campus Park, which required the demolition of three City blocks west of Bancroft below Dana Street in the years 1932-33. Cowell Hospital (since demolished) was built around the same time, displacing a small residential area along the Piedmont Corridor. The displacement of this neighborhood was continued by the construction of Boalt Hall (1949), Calvin Lab, and Wurster Hall, and by the acquisition of homes on the block of Piedmont Avenue west of Bancroft Way.

As Berkeley's largest land-owner and at times its largest employer, UCB is both integral to the City and a severe drain on its resources. One fundamental problem posed by UCB is its exemptions from both local property taxes/other assessments and from local planning and zoning controls. UCB may approve and develop expanded facilities without the City's review and approval. For its part, the City must accommodate development over which it has no control and provide public services, such as wastewater collection and fire protection, to an ever-growing UCB population and physical plant. By virtue of its non-tax paying status, the University is thus able to use the public infrastructure without having to pay the full cost or to balance competing needs. The state legislature addressed this economic strain by enacting Pub Ed Code 67504.

Another problem UCB poses is its relentless occupation of newly constructed housing via extended master leasing. While City residents appreciate that UCB wishes to secure housing for its students, they do not appreciate UCB's clear plans to consume close to all newly constructed housing units before they hit the local rental market, particularly in light of the fact that UCB is simultaneously expanding the student, faculty and staff population far beyond the figures previously vetted and approved in the 2005 EIR process or agreed to with the City.

Another problem that the University poses for City Government and City residents is environmental effects of its operations. Not only do University research labs handle very toxic substances and emit potentially hazardous waste that must be monitored carefully, construction, maintenance, and routine operations of classroom, administrative, and housing facilities generate particulate matter, solid and non-solid waste (including toxic waste) and consume ever greater amounts of energy. As the number of staff and faculty has increased over the past decades, so too the number of commuters (particularly those commuting by carbon emitting cars) has increased dramatically, causing poorer air quality, traffic and congestion, and (in some cases) dangerous road conditions.

The emergence of shared ride services such as Uber and Lyft, servicing the commuting needs of those working and studying on a campus with little parking, has contributed to these negative environmental effects.[32] The recent COVID 19 pandemic has highlighted UCB's challenges to

[32] https://tsrc.berkeley.edu/news/uber-and-lyft-have-made-san-francisco's-traffic-much-worse-study-says; https://advances.sciencemag.org/content/5/5/eaau2670

provide safe indoor air quality to staff, faculty, students and visitors within UCB's existing buildings.

The "town-gown" conflict and level of tension between the two entities has varied through the years, depending upon the building activity of the University and the relative economic health of the community. Proposition 13 tax limitations and an aging infrastructure have strained the City of Berkeley's capacity to provide public services and utilities and increased concerns about land uses that do not pay their own way through taxes and fees.

There has been growing sentiment amongst Berkeley residents that growth in the community should be balanced, and the quality of life in the residential neighborhoods, including those surrounding the campus, should be maintained or enhanced. Prior controversial UCB development projects aroused widespread community opposition as well as a perception that UCB was insensitive to neighborhood concerns. On November 8, 1988, Berkeley residents overwhelmingly passed the Public Agency Accountability ballot measure (i.e., Measure "N"). The ballot measure, which is advisory in nature, states that it shall be City policy that all public agencies should follow the City's planning and zoning laws and should pay taxes and fees to support their fair share of City services.[33]

Although UCB has never paid its fair share of City Services, it has agreed at various junctures to bear a portion of the infrastructure costs associated with is rampant expansion.[34] Notably, it agree- to payments have not increased with inflation or fully compensated the City for increased enrollment and faculty/staff increases.

With regards to the zoning laws, until the latest draft LRDP, UCB planners generally respected the City's building height restriction, and limited all new construction to 8 stories. In the latest iteration, however, the lead agency abandoned that cooperative stance and proposed constructing an over 16 story mixed use building on what is now People's Park (Project 2), that would create the tallest structure in Berkeley and, not incidentally, exceed the reach of the tallest Berkeley fire engine ladder.[35]

---

[33] The ballot measure was advisory in nature and stated that: 1) it shall be the City's policy that all land use plans, development and expansion by public agencies follow City laws, the City's General Plan and Zoning Ordinance, and the California Environmental Quality Act; and 2) the City Manager and elected representatives of the City of Berkeley shall use all available lawful means to ensure that public agencies pay taxes and fees, comparable to those paid by private citizens and businesses, to support their fair share of City services. The ballot measure was overwhelmingly approved by 74% of the voters on November 8, 1988 and was adopted by the City Council as Resolution No. 54,583-N.S. on November 29, 1988.

[34] According to the City of Berkeley website, in the 1980s and 1990s, "Other important developments in City-University planning included the University's contribution of funds to support the salary of a planning position within the City of Berkeley to assist in coordination and review efforts (1989-1991), development of a joint transportation planning program, donation of a fire engine to the City, and agreement to pay a service fee equivalent to property tax for any new off-campus student housing on property not currently owned by the University. In addition, the City and University have been working together on solutions to problems of homelessness in Berkeley." It appears that many of these commitments were aspirational only, and that UCB in fact did not fulfill its promises in this regard.

[35] While BAHA doubts that UCB planners expect students to fend for themselves in the event of a fire, their complete failure to acknowledge the life-safety issues posed by their large development is astonishing as is their failure to own their abandonment of their prior tacit agreement to adhere to the City's zoning restrictions on building height.

In October 1989, the Mayor of Berkeley and UCB's Chancellor entered into a Memorandum of Accord (MOA). The MOA provided in part that People's Park would be developed as City and University open space and put restrictions on UCB's development on the Clark Kerr Campus. The MOA is set to expire in 2032.

Notwithstanding its commitments in the MOA, UCB proceeded to plan to violate that agreement almost immediately. Among other things, UCB has developed numerous plans for construction on the Clark Kerr Campus – including demolition of landmarked structures and the construction of an outdoor sports exhibition facility that will draw large numbers of visitors to that Campus. Rather than create a dedicated, usable open space at People's Park, UCB permitted the area to become an open-air drug market much to the consternation of the City and neighbors, and now plan to construct the tallest building in Berkeley in that space.[36]

D. Enrollment Promises Broken.

Its MOU with the City of Berkeley is not the only written commitment UCB has routinely and cynically violated. The 1962 LRDP, 2005 LRDP and 2020 LRDP all provided purported enrollment projections and imposed caps – that is, upwards limits – on future enrollment during the LRDP period. For the past 50 or so years, UCB has repeatedly exceeded enrollment caps contained in its then-operative LRDPs and its side agreements with the City of Berkeley.

By 1974, campus enrollment had grown to over 29,100 students, about 6% over the enrollment of 27,500 planned for in the University's 1962 Long Range Development Plan. After the City adopted a Master Plan in 1977 and UCB recommitted to cap enrollment at 27,500. Nevertheless, UCB routinely exceeded that cap. UCB enrollment ranged from 29,102 in 1974, 29,525 in 1979, 30,494 in 1984, 31,364 in 1988, and thence to 29,640 in 1991-1992. Desperate to hold UCB to its stated cap, the City of Berkeley executed a Long-Range Development Plan Mitigation Implementation Agreement with UCB wherein UCB committed to reduce total enrollments to 29,450 by 2005. That enrollment reduction did not occur.

In 2005, consistent with the enrollment provisions of CEQA section 21080.09, The Regents adopted a Long-Range Development Plan (2020 LRDP) for UC Berkeley to achieve several objectives through the year 2020, including stabilizing enrollment. At that time, The Regents certified an Environmental Impact Report for the 2020 LRDP (2005 EIR) pursuant to CEQA. The 2020 LRDP projected that by the year 2020 student enrollment at UCB would increase by 1,650 students, and the 2005 EIR based its environmental impact analysis on this number. (AA 351-52.)

According to information the Regents made available in 2017, it appears that beginning in or about 2007, The Regents made informal, discretionary decisions to increase enrollment over and above the 1,650 additional students projected by the 2020 LRDP such that by the time this case was filed in April of 2018, the actual increase in student enrollment was 8,302 students. This represents a five-fold increase compared to the 1,650 enrollment increase projected in the 2020 LRDP and 2005 EIR. (AA 352.) These informal decisions were made without CEQA review and without

[36] In July 1990, UCB and the City adopted two other important agreements: (1) the LRDP Mitigation Implementation Agreement; and (2) the Cooperative Relations Agreement. The purpose of the Mitigation Implementation Agreement was to ensure that UCB actually implemented the mitigation measures proposed in the Environmental Impact Report on the then-existing LRDP.

regard to Education Code requirements concerning the effects of enrollment increases on the surrounding community.

These excess increases in student enrollment above the original projected increase of 1,650 students caused and continue to cause significant impacts on the environment and quality of life in the Berkeley community, including increased use of off-campus housing for and by UCB students, leading to increases in off-campus noise and trash, and increased burdens on the City of Berkeley's public safety services, including police, fire, ambulance, and Emergency Medical Technician services. (AA 352-54.)

The Regents initially complied with the directive in subdivision (b) of section 21080.09 by including the 2020 LRDP's original projected increase of 1,650 students in the 2005 EIR's analysis. (AA 351-54.) But after certifying the 2005 EIR for the 2020 LRDP, The Regents never conducted subsequent environmental review of the excess increase above 1,650 students that occurred between 2005 and 2018.

The 2020 LRDP adopted by the UC Regents in 2005 established a limited growth plan. Between 2006 and 2016, student enrollment increased by 15% for undergraduates and 7% for graduates, bringing the total student population to now over 42,000, far above the 2020 LRDP's projected enrollment figure and well beyond the population authorized as part of the CEQA EIR approval process in 2005.

After UCB exceeded the enrollment cap set out in the 2020 LRDP, the City filed suit arguing that by exceeding the enrollment cap, UCB had subverted the CEQA EIR process. The Court agreed with the City:

> The Legislature has recognized that both enrollment levels and physical development are related features of campus growth that must be mitigated under CEQA…… Thus, when a public **university** prepares an EIR for a development plan, section 21080.09 requires **universities** to *expand* the analysis to include a related feature of campus growth, future enrollment projections, which is entirely consistent with the traditional, broad definition of a **CEQA** CEQA project. (§ 21080.09, subd. (b).)

Save Berkeley's Neighborhoods v. Regents of University of California, 51 Cal. App. 5th 226, 239, 264 Cal. Rptr. 3d 864, 873, 2020 Cal. App. LEXIS 587, *16-17, 2020 WL 3547363. The Court stated unequivocally,

> When a **university** prepares an EIR for a development plan, section 21080.09, subdivision (b) requires the **university** to analyze "[e]nvironmental effects relating to changes in enrollment levels" in that EIR. . . Similarly, section 21080.09, subdivision (d), says that "[c]ompliance with this section" satisfies **CEQA** with respect to "enrollment plans … only after the environmental effects of those plans" have been both analyzed and addressed under **CEQA** together with a development plan. (§ 21080.09, subd. (d).) It does not say that subsequent changes to enrollment plans—with new or increased environmental effects that have *not* been analyzed and addressed—are exempt from **CEQA**. *Id.*

Notwithstanding this clear holding that is well-supported by the text and spirit of CEQA, UCB has propounded a DEIR that is woefully deficient insofar as it does not completely or properly analyze the environmental effects of proposed future enrollment increases much less the actual population increase encompassed by the proposed LRDP.

E. The DEIR

The DEIR purports to examine three projects:

- The proposed, draft LRDP "Update" which unveils plans to construct 16 new projects in the environs of the City of Berkeley and multiple additional construction and renovation projects to take place "on campus" (that is within the Campus Park and the adjacent Clark Kerr and Hill Campuses) all based on a projected increase in total population (students, directly employed staff, and faculty) to 67,200 (full time equivalent units, not individuals).
- Project #1, a 16-story[37] mixed use commercial, housing and class-room space on the block bordered by University, Oxford, Walnut and House (so-called Project 1); and
- Project #2, a mixed use 17-story mixed use high-rise and separate "supportive" housing structure on what is now known as People's Park.

The DEIR states that it considered the following categories of potential environmental impacts: (1) Aesthetics ; (2) Air Quality; (3) Biological Resources; (4) Cultural Resources; (5) Energy; (6) Geology and Soils; (7) Greenhouse Gas Emissions; (8) Hazards and Hazardous Materials; (9) Hydrology and Water Quality; (10) Land Use and Planning; (11) Noise; (12) Population and Housing; (13) Public Services; (14) Parks and Recreation; (15) Transportation; (16) Tribal Cultural Resources; (17) Utilities and Service Systems; and (18) Wildfire.

In actuality, the DEIR labels the environmental impact categories differently and variously. For example, Table 2-1, which purports to summarize the DEIR's findings includes a new category "Geology and Soil." The reports provided in the DEIR appendices add to this confusion. For example, Cultural Resources described and discussed in the EIR such as People's Park are evaluated as "Historic Resources" in the reports provided in the appendices. The reports relating to "cultural resources" in the DEIR appendices appear only to concern Tribal Cultural Resources and no other sorts of cultural resources.

As our comments below make clear, under whatever category impacted architectural and cultural resources such as the UC Garage, the Anna Head School and Maybeck's First Church of Christ Scientist fall, the loss to the public from raising or significantly damaging them (as predicted in the historical impact reports) cannot be found to be acceptable unmitigable losses, particularly where (as here) the buildings to be constructed will house a comparatively few students and instead will contain large commercial retail, office space and a (22,000 sq. foot!) health club as well as exclusive UCB non-housing areas, such as parking, event spaces, and a commuter lounge. Any eventual finding by the Lead Agency that the benefits of constructing the proposed architecturally

[37] Two of the stories will be underground.

undistinguished, mixed use high-rises (such as Projects 1 and 2) outweigh the value of these iconic landmarked structures is certainly unsupported by the evidence provided in the DEIR.

COVID-19 Notice

UCB and the Lead Agency have rejected numerous requests by BAHA and others for short extensions of time to permit the public the opportunity to evaluate and respond to the Lead Agency's DEIR. Due to the challenges posed by COVID-19 related closures – including closures of multiple UCB facilities including libraries and archives – and city, county, state, and even international restrictions, BAHA has been unable to obtain the type and extent of supporting evidence and documentation that it would normally have been able to collect during the standard CEQA response period. UCB's refusal to provide BAHA and the public additional time to respond under these extraordinary circumstances (extraordinary circumstances UCB has acknowledged repeatedly) was unreasonable and was compounded by UCB's own failure to respond to requests for documents and information regarding the DEIR and the Projects. Therefore, BAHA reserves the right to supplement these comments and make all appropriate arguments based on these circumstances and UCB's conduct.

COMMENTS AND QUESTIONS

As set forth below, the Lead Agency fails to satisfy the requirements of CEQA, the California Public Resource Code, the California Education Code, federal laws and regulaitons, and other applicable legal and regulatory requirements and has abused its discretion in the manner, means, and content of its DEIR and related documents. It has failed to provide substantial reliable evidence supporting its conclusion that (a) the Lead Agency is legally required to increase UCB student enrollment; (b) that its legally-required long range development plan for UCB can be segmented into multiple LRDPs and tiered EIRs that fail to account for and examine to totality of the proposed growth and its impact on the geographic areas where the growth will actually occur; and that (c) all of the proposed population growth must be absorbed by UCB in the City of Berkeley.

CEQA, which was passed by the California state legislature in 1970:

> aims to inform the public and government decision makers about the potential environmental effects of proposed activities. To facilitate this disclosure function, the Act requires the pertinent public agency to prepare an environmental impact report. This report must give decision makers what they need to take appropriate account of environmental consequences. The report is also a document of accountability. It must arm those outside the approval process with an accessible and empowering document. If people disagree with the proposed project, the report is to help them respond accordingly.[38]

Here the LRDP DEIR fails to satisfy the requirements of applicable law insofar as it fails to provide (1) complete project descriptions including the actual proposed population increase and the full scope of the projects planned for UCB (including at its satellite sites); (2) an accurate baseline environmental, population, and housing data; (3) accurate and complete statement(s) of objectives; (4) an adequate discussion of project alternatives; (5) an adequate discussion of available mitigation measures; (6) a complete and accurate discussion and evaluation of the environmental impacts of the Projects including the impact on Natural, Cultural and Historic Resources. The Regents also failed to follow procedures required under CEQA and their own procedures, including, by (1) segmenting and tiering the projects; (2) approving the acquisition of the Walnut Street apartments and termination the leases of existing tenants without following the proper procedures; (3) unlawfully and unreasonably withholding material information from the public; and (4) providing incomplete, inaccurate and/or unsupported data in connection with the DEIR.

BAHA also observes that UCB planners and other administrative staff appear to have failed to bring to the attention of the UC Regents – at least in the publicly available pre-meeting materials – the degree to which the proposed draft LRDP, Project 1 and Project 2 (a) deviate from the UC's operative planning documents including the New Century Plan, the Master Landscape Plan, the Historic Landscape Plan, the design guidelines and existing best practices document; and (b) repudiate years of joint planning with the City of Berkeley and written and tacit agreements with the City of Berkeley. That omission is unfortunate and, we suggest respectfully, may attribute to the failings of the DEIR.

---

[38] *Community for a Better Environment v. South Coast Air Quality Management Dist.*, 47 Cal. App. 5th, 588, 598 (citing *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3rd 376,392 (1988).

ENROLLMENT INCREASE
(IMPACT ON POPULATION)

1 The DEIR Fails to Satisfy CEQA EIR Requirements as to the Proposed Population Increase: Population-Specific Comments and Questions

1.1 The DEIR's Discussion

The Lead Agency is planning for UCB's overall population to increase dramatically. Specifically, in its Draft Proposed LRDP, the Lead Agency proposes the following increase in UCB population:

TABLE 2.1: Current Campus Population and LRDP Population Projections

Population Group	Current Population (2018-2019)	Potential Future LRDP Population	Net Change
Students	39,710	48,200	+ 8,490
Faculty and Staff	15,420	19,000	+ 3,580
TOTAL	**55,130**	**67,200**	**+ 12,070**

Note: The table does not include a visitors category, which is considered in the environmental analysis.

The Lead Agency claims that UCB is not a "growth" campus and that this increased enrollment is an insignificant 1% increase year over year.

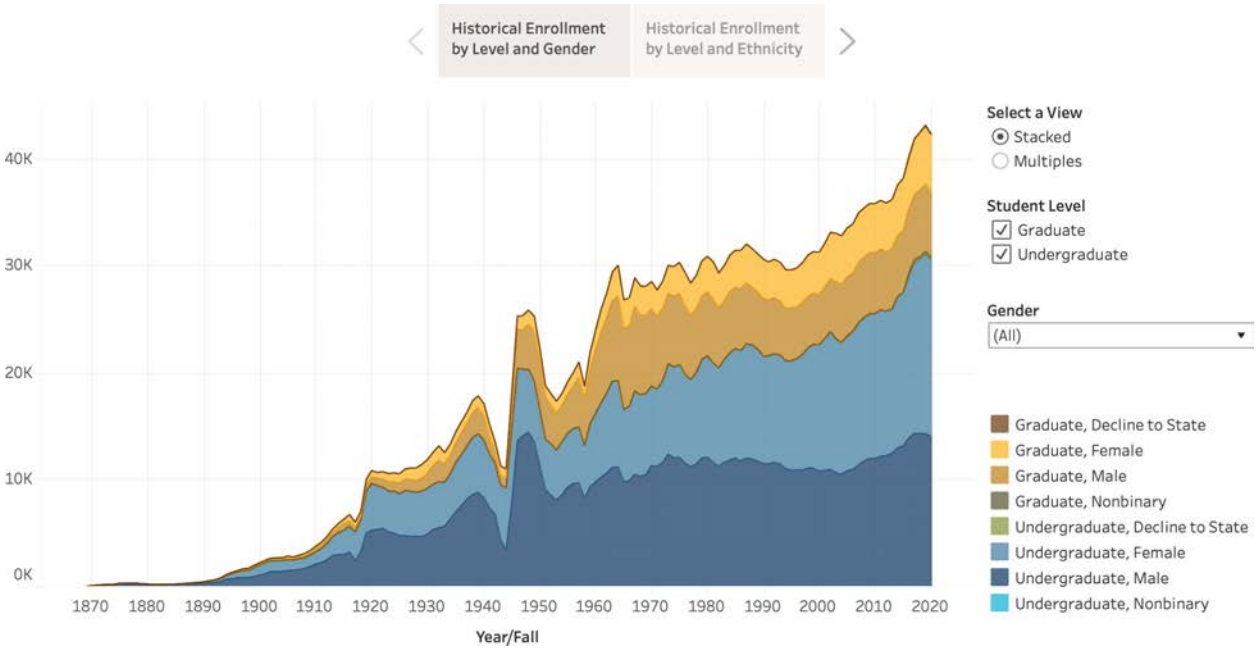
Although the Lead Agency attempts to downplay the proposed enrollment increase, make no mistake this increase is significant. The City of Berkeley currently has a total population of approximately 110,000-120,000 residents; therefore, the proposed increase would make UCB's population more than 50% of what Berkeley current resident population is now. Berkeley is already one of the most densely populated cities in the State. The practical result of this surge of new UCB "users" will be increased pollution, traffic, and competition for housing in Berkeley. City residents can quite literally expect to see gridlock.

It will also create problems for other areas from inevitable spill-over effect of this population increase coupled with the population increases proposed in UCB's LRDPs for its satellite locations. The Lead Agency has, however, not discussed the full environmental impacts of UCB's proposed enrollment and overall population increase to the City of Berkeley much less these other impacted areas.

Notably, the draft LRDP project does not cap UCB's future population; instead, it provides a "projection" for the future population. the population increase could be much more than currently being proposed, and if history is any guide, the population increase will be greater than proposed.

1.2 BAHA's Comments

UCB has, not unsurprisingly, grown quite a bit since 1870. The surprising thing is how dramatic this growth has been over the past few years. The following graphic is illustrative.



UCB's enrollment in the post-war decades up to 2000 held fairly steady around the 30,000 total student mark. Since then enrollment has grown year over year, reaching 42,437[39] this year. (Thus the baseline population mark is not 39,710 as set forth in the DEIR.) As the LRDP does not set a cap on total enrollment and has a history of blowing through projections and promised caps, it is quite likely that overall student enrollment could top 50,000 in the next LRDP period. Before such a momentous step is taken, one that will alter UCB and the City of Berkeley significantly and permanently, the public has a right to know accurate information and the basis for the Lead Agency's decision to make this population increase proposal now.

1.2.1 The DEIR Must Provide Baseline Enrollment Data and Solid Maximum Enrollment Figures

The law is well settled that, in the context of a CEQA review of a LRDP or other project based upon increased enrollment projections, the Lead Agency must evaluate and avoid or mitigate the off-campus environmental effects of the project,[40] including plans to increase enrollment.[41] With respect to proposed campus enrollment increases, the Lead Agency must conduct a CEQA review of the off-campus effects of such expanded enrollment in accord with CEQA section 21080.09.

---

[39] https://pages.github.berkeley.edu/OPA/our-berkeley/enroll-history.html

[40] *City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 966; *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 360.

[41] Education Code section 67504 specifies in pertinent part:
"The Legislature further finds and declares that the expansion of campus enrollment and facilities may negatively affect the surrounding environment. Consistent with the requirements of the California Environmental Quality Act (CEQA), it is the intent of the Legislature that the University of California sufficiently mitigate significant off-campus impacts related to campus growth and development." See also *Save Berkeley's Neighborhoods v. Regents of University of California*, 51 Cal. App. 5th 226, 239-241, 264 Cal. Rptr. 3d 864, 873-874, 2020 Cal. App. LEXIS 587, *15-19, 2020 WL 3547363.

In this case, the Lead Agency did not provide (a) a reliable and supported baseline population data; (b) a reliable projection for both the increase in student enrollment planned for the new LRDP period and the commensurate increase in staff, faculty and other UCB users. Accurate and sufficient date must be presented and presented in the DEIR itself (not buried in a small print table in the DEIR appendices). As one court explained:

> The data in an EIR must not only be sufficient in quantity, but it must also be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. '[I]nformation "scattered here and there in EIR appendices," or a report "buried in an appendix," is not a substitute for "a good faith reasoned analysis … ."[42]

Because reliable population data and sufficient information about the population increase was not made available to the public, the DEIR lacks sufficient information as well as discussion of or explanation for the proposed enrollment increase, much less a sufficient discussion of the environmental impacts that will be caused by the proposed or projected population increase.

A lead agency will be deemed to have abused its discretion under CEQA if its decisions are not supported by substantial evidence; its evidence cannot be deemed substantial if it is inaccurate, unreliable, or substantially incomplete.[43]

1.2.2 Lead Agency Has Unique Vantage Point and Extensive Access to Population Data

The UC Regents are unlike most CEQA proponents insofar as they have both detailed information about currently enrolled students and the ability to predict who their future "consumers" (i.e., students) will be. UCB tracks the race, ethnic background, secondary school history, residency and a variety of other data points for all of their students.

The Lead Agency also has the ability to predict the numbers of California resident high school students who will be graduating in any given year. As an over 150-year old institution, the University of California has deep experience both evaluating the number of California high school

---

[42] *Habitat & Watershed Caretakers v. City of Santa Cruz*, 213 Cal. App. 4th 1277, 1293, 152 Cal. Rptr. 3d 888, 902, 2013 Cal. App. LEXIS 128, *26-27 (citing *Vineyard, supra*, 40 Cal.4th at p. 442.)

[43] "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." ' " *In re Bay-Delta etc., supra*, 43 Cal.4th 1143, 1161–1162, quoting Laurel Heights I, supra, 47 Cal.3d at p. 392, quoting § 21168.5. Substantial evidence means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." CEQA Guidelines, § 15384, subd. (a). Substantial evidence does not include "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment … ." "(*Ibid*.) *California Oak Foundation v. Regents of University of California*, 188 Cal. App. 4th 227, 261-262, 115 Cal. Rptr. 3d 631, 657, 2010 Cal. App. LEXIS 1555, *53-54. Here, the Lead Agency has failed to supply adequate, much less substantial, evidence to support its decisions (1) that enrollment, staffing and faculty positions must be increased. (2) student housing is inadequate and must be constructed as part of mixed use projects on the identified housing opportunity sites not-withstanding the unmitigated impacts on and destruction of cultural and historic resources to make way for these mixed use projects and (3) that, except for the identified significant impacts to a handful of cultural/historic resources, there will be no significant environmental effects caused by the increased UCB population and proposed construction and demolition.

students who will graduate in a particular given year and likely population trends into the future. Perhaps more importantly, the California Department of Education (CADoE) conducts regular and detailed surveys of the population of California public schools from K-12. Based on this and other work by the CADoE and other agencies, the population of resident high school students who qualify for UC admission under the state's Master Education Plan can be predicted with a fair degree of accuracy quite a few years into the future.[44]

Although population of resident freshmen applicants to the UC System may vary year to year, the actual enrollment at a single institution can remain stable if the UC Regents so choose. While the State's Master Education Plan sets the overall minimum resident enrollment for the entire system, it is up to the UC Regents (aided by the chancellors and the Office of the President) to set the enrollments for each individual campus. Under the state Master Plan, no one campus is required to admit any specific number of resident students.

Because campus capacity is audited regularly (among other things to determine if new campuses need to be built), the Regents are in an excellent position to understand the overall capacity of the UC system and the capacity of each UC "campus." Through the work of campus planners and other professionals on staff, UC has a very good idea of the condition of its physical facilities, including classrooms and student housing.

The UC Regents, therefore, as a Lead Agency for CEQA is in a unique position; it is not like the typical real estate developer or even municipality facing a CEQA review for its development plans. This is because the UC Regents have a wealth of information at their disposal and consequently (a) can make a reasonably reliable estimate (with a reasonable margin for error) as to how many resident students they must admit to the UC system in any given year to satisfy the state's Master Plan and (b) alternatives, namely a number of different campuses to which the "must admit" resident students can be allocated or assigned. Because they can predict these "must admit" resident students and know the capacity of each campus, the UC Regents as lead agency also are in a position to decide – subject to the constraints of the new legislation – the number of non-resident students and additional resident students that it is prepared to admit and likewise allocate those students to the individual campuses that have capacity.

In a perfect world, the Regents would conduct their enrollment planning in this way – based upon projected resident student admissions with assessments of capacity. Unfortunately, this is not what has happened historically as noted above. Either due to poor planning or erroneous budget assumptions, the UC Regents have found themselves with repeated budget shortfalls such that they or UC administrators have attempted to raise funds by admitting large numbers of non-resident student, who are required to pay higher fees. This unfortunate circumstance coupled with the fact that not all UC campuses are equally attractive to out-of-state students has meant that UCB and other high-profile UC campuses have seen more than their fair share of new students.

While as a matter of history, the Lead Agency's missteps may be understandable, as a matter of CEQA compliance they are not. The Lead Agency must exhibit good faith in developing and proposing an LRDP that is both consistent with the letter and spirit of the relevant state statutes

[44] Patterns in community college qualified transfer admissions (a small segment of the overall UC student population) are also fairly predictable for basically the same reasons: historic trends and excellent available data.

and in evaluating it under CEQA. Here we are faced with one institution – UCB – for which the Lead Agency has proposed or is in the process of drafting multiple LRDPs none of which reference the others. That is unacceptable. Further, on the issue of enrollment growth, the reasonableness of that proposed growth and its review under CEQA can only be meaningfully assessed if the Lead Agency provides a complete picture as to (a) how many new people will be coming to the institution and (b) where all of these new students, staff and faculty will be living, working and commuting.

Here, in the proposed LRDP and DEIR the count is off and the "area" is erroneously defined. We address both of these failings in our comments below.

1.2.3 Use of FTE Underinclusive and Misleading

Although the Lead Agency has access to comprehensive population data, the student enrollment data that they provide in conjunction with the LRDP and the DEIR lack both reliable baseline statistics and total population predictions Notably, the figures provided in the above table (and throughout the LRDP and DEIR) are provided in "full time equivalents" (FTE) not absolute numbers of new users (i.e., students, staff and faculty). Because these figures are full time equivalent students/faculty/staff, not the actual number of individuals in each of those roles, the current and expected populations are actually much greater. For example, two students who attend UCB part time[45] – either by design or due to necessity -- may together represent only one FTE student, but will likely have twice the environmental impact (in terms of carbon emissions, waste generation et cetera) of a single individual. Those two non-FTE students will have to commute to campus if they do not live on campus; if they live on campus, they will need two (separate) beds and will generate the same waste and use the same resources as if they attended classes full time.

1.2.4 All Types of Students Not Covered

The DEIR also does not take into consideration – in its current enrollment statistics or its enrollment projections -- all student users of UCB. In addition to full-time enrolled students, UCB also hosts concurrent enrollment students, cross-enrolled CCC students[46] (including inter-

[45] While UC Policy requires that students be enrolled full-time, under certain circumstances students may be allowed by their college to enroll in a reduced course load. Approved undergraduate students may enroll for two courses or fewer per semester, or the equivalent as determined by their college. Approved graduate students may enroll for one-half or less of the regular course load stipulated in Academic Senate Regulation 702. https://registrar.berkeley.edu/tuition-fees-residency/tuition-fees; see also, e.g., https://nature.berkeley.edu/advising/undergraduate-student-status (discussing reduced course-loads to permit working et cetera); https://www.ucop.edu/operating-budget/fees-and-enrollments/other-fee-information/exemptions- reductions.html (discussing fees for part-time undergraduates and graduate students). The MBA program, for example, offers night and weekend programs. A participant in such a program may well have a different environmental impact – i.e., by commuting to campus regularly via car – than an undergraduate who lives in a student dorm. The Fung Institute for Engineering Leadership likewise offers 2, 3 and 4-year programs. https://funginstitute.berkeley.edu/programs-centers/full-time-program/program-design/part-time-option/

[46] California community college students have access to over 600 summer courses through Berkeley Summer Sessions, where they take key prerequisites or gateway courses to most majors at UC Berkeley, other UC campuses, and many four-year institutions. http://pathways.berkeley.edu/

segmental cross enrollment[47]), Osher Lifelong Learning Institute students, and high-school students, including high school commuters[48].

The DEIR neither addresses nor examines these campus users. It also fails to examine other categories of students and visitors, including participants in the International Student EAP Reciprocity programs[49] and the BGA Program.[50] While it is possible that these programs have de minimus impact on the actual campus population in a given year, absent detailed information about the nature and type of the individuals who study, work, or visit UCB, the impact of increasing any given population cannot adequately be examined.[51]

1.2.5 Reliable Faculty & Staff Population Figures Not Provided

Neither the LRDP nor the DEIR provide any information on the number of University employees and third-party contractors (i.e., the employees of third parties) who regularly work at or visit UCB sites. Notably, an audit of UC outsourcing practices as well as third-party reports, suggests that increasing numbers of outside contractors are being engaged to perform routine work on UC campuses.[52] Not only are these on-site contractors not counted in the LRDP and DEIR, but those documents also provide the employee statistics – namely the staff and faculty population baseline numbers and projections – as number of FTE, not individuals. As with the example of the students, two part time staff persons can (and likely will) generate twice as much in carbon emissions commuting to campus as one FTE staff person. The Lead Agency is obligated to provide reliable (supported) baseline figures as part of its DEIR (or if it has a basis to show that two individuals do

---

[47] Undergraduates who meet certain eligibility criteria *and* are enrolled at any campus of the California Community College, California State University, University of California systems may Enroll at UCB without formal admission for one course per academic term. https://registrar.berkeley.edu/registration/visitor-and-exchange-programs. No data concerning this category of students is provided in the DEIR.

[48] https://extension.berkeley.edu/international/academic/

[49] https://registrar.berkeley.edu/registration/visitor-and-exchange-programs

[50] BGA Discover is a short-term program allowing undergraduate and graduate students to take UC Berkeley courses and explore a variety of subjects based on their academic interests. https://extension.berkeley.edu/ international/academic/

[51] The DEIR likewise does not examine the number of semesters undergraduate and graduate students are on the Berkeley campus to complete a degree. According to the Academic Senate rules, "Except as otherwise provided in this section and SR 614, 35 (or 24 semester) of the final 45 (or 30 semester) units completed by each candidate for the bachelor's degree must be earned in residence in the college or school of the University of California in which the degree is to be taken." https://senate.universityofcalifornia.edu/bylaws- regulations/regulations/rpart3.html]

[52] https://afscme3299.org/documents/reports/Pioneering-Inequality_WhitePaper.pdf. According to the AFSCME white paper cited above, "The most recent data available shows UC spends $3.4 million on contracts with ABM annually for custodial and parking services." *Id.* 20. A state audit appears to have confirmed UC's wide-spread practice of outsourcing menial jobs. ; California State Auditor, "The University of California Office of the President Has Not Adequately Ensured Compliance With Its Employee Displacement and Services Contract Policies, Report 2016-125.1," pp. 38-30, August 2017, https:// www.auditor.ca.gov/pdfs/reports/2016-125.1.pdf. See also Danny Feingold, "Jerry Brown's University of California Perma-Temp Problem," Capital & Main, August 15, 2016, https://capitalandmain.com/jerry-browns-university-of- california-permatemp-problem-0910; Emily DeRuy, "Workers at some UC campuses say they don't earn fair wages," The Mercury News, October 23, 2017, http://www.mercurynews.com/2017/10/22/ workers-at-some-uc-campuses-say-they-dont-earn-fair- wages/; Emily Green, "UCSF hires 2 dozen janitors who complained, lost their jobs," SF Gate, September 01, 2016, https://www.sfgate.com/politics/article/UCSF-hires- 2-dozen-janitors-who-complained-lost-9194030.php; Sharon Zhen, "UC employees, students protest in support of contracted valet workers," Daily Bruin, July 31, 2017, http://dailybruin.com/?p=299690.

not generate more environmental impact than one FTE, provide the data or reports supporting that position).

1.2.6 Visitors and Other Users Not Accurately Captured

While the DEIR states that it addresses visitors and while it does include some data concerning deliveries made to campus, it does not expressly consider all categories of visitors to the UCB Campus Park, much less to the off-campus sites in Berkeley and elsewhere. The survey completed as part of the LRDP planning process indicates that many Berkeley and non-Berkeley residents visit the campus park regularly for a variety of academic, cultural and sporting events as well as business and leisure activities.[53] In addition, UCB routinely hosts international delegations[54] as well as researchers and students who want to undertake projects at UCB.[55] The plans for this segment of the UCB "population," although not consistent in terms of specific individual visitors, is capable of being estimated based on usage data. Rather than ignore these categories of visitors, the Lead Agency must provide information about them and predictions for how many visitors it expects as the enrollment and faculty/staff census increases.

The LRDP and DEIR fail to include multiple categories of other campus users[56] thereby further understating the full scope of that increased population and its environmental effects. For example, UCB operates an extension program.[57] That program is not addressed in the DEIR or the LRDP. Notably, UCB operates dedicated facilities to its extension program, and that program draws people to Berkeley to attend classes and other events on UCB property.[58] In addition, the Undergraduate Division of UCB serves the summer abroad program, Education Abroad Program,

---

[53] https://masterplan.berkeley.edu/sites/default/files/2020-05-19_lrdp_cmp_survey_findings_public_final_mc.pdf
[54] https://globalengagement.berkeley.edu/delegations-visitors/hosting-international-visitors
[55] https://globalengagement.berkeley.edu/delegations-visitors/visiting-scholars-researchers-postdocs
[56] For example, one UC Regents policy defines categories of campus users (so-called campus "affiliates") as follows:

1. "student" means any person who (a) is enrolled in or registered with an academic program of the University; (b) has completed the immediately preceding term, is not presently enrolled, and is eligible for re-enrollment; or (c) is on an approved educational leave or other approved leave status, or is on filing-fee status.
2. "official volunteer" means any person who is: (a) listed as an officer or a board member of the recognized campus alumni association, including its committees or related clubs; (b) listed as an officer or a board member of a support group formally recognized by the particular campus; or (c) formally registered through the relevant Campus Human Resources/Staff Personnel office and authorized to provide volunteer services on behalf of the University in campus facilities (e.g., hospitals, museums, etc.).
3. "employee" means any person who is listed in the campus payroll system, regardless of the percentage of time associated with the person's employment, including a staff retiree who has been recalled for University employment and other individuals to whom the University is contractually obligated to provide access to University property equivalent to that allowed to University employees.
4. "emeritus" means any person who holds the title of "emeritus" pursuant to Regents Standing Order 103.5 and section 120 of the University of California Academic Personnel Manual. https://policy.ucop.edu/doc/3000127/NonAffiliateRegs

[57] https://extension.berkeley.edu/static/studentservices/concurrent/
[58] https://diversity.berkeley.edu/sites/default/files/vcue_strategic_plan.pdf (discussing extension program as "undergraduate" program in diversity plan).

Global Internship Program, Summer Sessions and Fall Programs for Freshman.[59] Depending on where these programs are offered and/or students are diverted outside Berkeley to participate, the number of persons physically present on UCB property or in Berkeley could be impacted. Therefore, the impact on the environment from the proposed projects could be greater or lesser depending on the enrollment or participation in these programs.

1.2.7 Information on Location of Current and Future UCB Users Not Complete

As noted elsewhere in these comments, not all UCB students live and take classes in Berkeley. Some Freshmen study at UCB's London Campus; soon UCB Freshmen will be taking classes and living at Mills College. In addition, not all staff or faculty are assigned or primarily assigned to work at the Campus Park in Berkeley. As noted below, UCB operates facilities at several on and off campus sites, including sites outside Berkeley and some outside California. Without knowing where the UCB population lives, studies/works and commutes, it is impossible to undertake the required CEQA environmental assessment.

The Lead Agency also has announced, via its 2014 LRDP for the Berkeley Global Campus (f/k/a the Richmond Field Station), that it expects the population of that satellite campus to grow from 300 to 10,000. To determine whether these added students, faculty, and/or staff will have an impact on Berkeley – for example by driving from Richmond to the LBL through the Hill Campus – the public needs to know more about this new population.

1.2.8 Lead Agency Can and Should Commit to Cap on UCB Enrollment So EIR Process Can Proceed

As explained above, the Lead Agency can reliably predict the number of in-state, resident students the UC system as a whole will be required to admit well into the future and have control over to which campuses these future populations of students are assigned by assigning individual campuses enrollment goals. They also know how many students each campus can enroll based on available resources. Because they have this information and control, the Lead Agency has the ability to cap future enrollment at UCB at a set number of graduate and undergraduate students.

Absent a set maximum population, the CEQA EIR process is rendered meaningless. The law requires the Lead Agency to assess the impact of planned enrollment growth at a particular campus, effectively to perform a CEQA review of the enrollment increase. The purpose of a CEQA evaluation is to provide a full and fair vetting of information set out in a DEIR. If the enrollment or population numbers upon which the environmental impact assessment change dramatically, the impact may well be different and thus the approved EIR becomes a nullity. Further, the legislature has specifically found that, in regard to a proposed enrollment increase, that negative impacts are likely on the surrounding area and that, consequently a CEQA evaluation must take place and mitigation measures, if available, be adopted. Without reliable enrollment information, this required analysis cannot take place.

[59] See also, https://globalengagement.berkeley.edu/about/international-services-programs-institutes- cal/international -programs

Although it is non-binding in some respects – for example, it may propose building a building that never gets built due to funding reasons – the LRDP was intended to provide outer-limits to proposed growth and development. Thus, most UC LRDPs provide the maximum number of square feet that will be built for classrooms and similar maximums for research facilities. If the premise upon which these projections are made – population growth – is exceeded, then the facilities-needs will have been underestimated and the whole LRDP planning process and CEQA EIR evaluating process will have been rendered pointless.

Unfortunately, that is where we have found ourselves time and time again.: UCB engages in an expensive planning process to create a development plan that will be effectively obsolete by the time the buildings are built due to supposedly unexpected increases in enrollment. This pattern has repeated for the last few LRDPs and appears to be repeating here. Not only will the Lead Agency and UCB have wasted money and time creating these LRDP plans – including paying planners and architects and conducting surveys – they will have spent even more money having an environmental review conducted and then defended in court all to no purpose.

1.2.9 Given UCB's historic pattern of exceeding LRDP projected enrollments, the DEIR must evaluate the environmental impact of enrollment exceeding LRDP projections by similar margins

If the Lead Agency will not commit to a realistic cap, its LRDP and EIR should be deemed incomplete. Alternately, in light of UCB's over 30-year history of failing to abide by enrollment projected maximums, the DEIR should examine the environmental impact of the actual probable population increase – student enrollment plus attendant increases in staff, faculty and UCB visitors – rather than rely on impacts based upon stated projections. Since most recently UCB has exceeded enrollment projections by a set percentage, the DEIR should examine the environmental impact of the projected increased population inflated by that same percentage. Failure to examine the impact of the actual probable increased population renders the DEIR insufficient and unreliable under CEQA.

1.2.10 The increase in enrollment is not inevitable or legally required

UCB asserts in the LRDP and the DEIR that increased enrollment is a legal requirement. That position is legally and factually incorrect. No law, regulation, or demographic trend requires UCB to enroll more undergraduates. The evidence indicates that the UC System has more than adequate capacity to handle incoming resident high schoolers at the legally mandated level for the next decade and beyond. Indeed, the State Auditor recently found that the UC system has excess capacity; and other research has found that the UC system currently enrolls more resident undergraduates than legally mandated under the state Master Plan. Further, enrollment levels at individual campuses are entirely within the Lead Agency's control. While systemwide UC undergraduate enrollment is governed by the state Master Plan, enrollment at individual campuses such as UCB is hashed out in negotiations between chancellors and is ultimately decided by UC Regents, which submits budget recommendations to the Governor.

Because an enrollment and overall campus population increase will undoubtedly have a significant environmental impact, the Lead Agency should provide the true rationale – backed by statistics and data – for the proposed increase. If the reason for the increase is budgetary, as we suspect, that

objective should be stated openly. In any event, the project objective in the DEIR is inaccurate and incomplete and not supported by substantial evidence.[60]

1.2.11 Goals of Increased Diversity and More Resident Students Can Be Accomplished Without Increasing Overall Enrollment

Although the Lead Agency claims that it needs to expand enrollment to accommodate more deserving California resident students and to create more diversity, those reasons are patently false. If UCB wanted to accommodate more California resident students or believed that many more California-resident students met UCB's strict entrance criteria, UCB can admit them now and into the future without increasing overall enrollment by reducing the number of non-resident students. Non-resident students now account for almost 25% of UCB enrolled students (not counting the various international exchange programs and similar "non-enrolled" categories).

There also is no evidence proffered (or available) that supports the DEIR's assertion that increasing the number of students will result in more diversity. The vast majority of non-resident international students currently and recently enrolled at UCB are primarily from a single country, and enrollment statistics demonstrate that this population is increasingly being drawn from wealthy families. By contrast, the population of UCB's California resident students has become increasingly diverse during this same period. The inescapable conclusion is that admitting more qualified California-resident students will increase diversity in the student body, which is something that can be accomplished without increasing overall enrollment.

As noted above, a project's stated objectives must be supported by substantial evidence; here, there is no evidence, only conjecture. Moreover, given UCB and UC administrators actions and comments in the past regarding enrollment increases, it seems likely that the true purpose and objective of the proposed enrollment increase has not yet been disclosed, namely, to raise funds by increasing non-resident enrollment, which now is dependent on also raising resident enrollment.

1.2.12 Lead Agency Fails to Discuss Sufficiently for CEQA Purposes Environmental Impacts Directly Resulting from Population Increase; Instead, It Focuses on Impact of Increased Development

By and large, the DEIR focuses on the environmental impacts of building construction (construction activities, demolition of existing structures, and impacts from new buildings) rather than the impacts of the draft LRDP's large, proposed population increase. See DEIR Table 2-2 (only mentions "population" four times, namely AIR-1, POP-1, POP-5, POP-6). The lead agency does not explain its rationale for ignoring the impact the addition of so many people to an already densely populated area will have on, to mention only a few, volume of waste (including waste

[60] "The draft EIR's description of the project's objectives is not supported by substantial evidence. The CSA did not obligate the City to propose an SOI amendment, so the project, proposing an SOI amendment, was not mandated by the CSA. The draft EIR's identification of amendment of the SOI itself as the project's objective did not illuminate the *underlying purpose* of the project. Of course a proposed SOI amendment is aimed at approval of an SOI amendment, but the draft EIR's description of the project's objectives begs the question of why the City would seek an SOI amendment. Since the CSA did not obligate the City to propose an SOI amendment, the draft EIR's description of the project's objectives failed to illuminate the *underlying purpose* of the project but instead only described the *nature* of the project." *Habitat & Watershed Caretakers v. City of Santa Cruz*, 213 Cal. App. 4th 1277, 1300, 152 Cal. Rptr. 3d 888, 907, 2013 Cal. App. LEXIS 128, *42-43

collected by the City of Berkeley at non-UCB off-campus sites) and increased traffic and use of Parks and Nature Trails etc. Each type of impact should be considered in light of the population increase, not just the increased planned building.

1.2.13 Lead Agency Fails to Consider Reasonable Alternatives to Population Increase

Because it wrongly assumes and asserts that UCB's student enrollment must increase, the Lead Agency did not provide a reasonable alternative to the proposed large population increase. Pursuant to 14 CCR 15126.6, one of alternatives that should be considered is keeping the status quo. In this case, the status quo would be to keep UCB's population steady at the current enrollment number.[61] That option does not appear to have been discussed. (NB: lack of specific details and variances and inconsistencies between the DEIR's text, its tables, and its supporting appendices make it difficult to assess the specifics of the alternatives that were examined.)

While the statute does not require that all reasonable alternatives be considered, it does require that alternatives sufficient to contribute to the public debate over the proposed plans be provided. This is called the "rule of reason," which the statute describes as follows:

> The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

Here, one obvious and reasonable alternative to the enrollment increases and attendant staff and faculty hiring that UCB intends to impose in the comparatively small section of UCB's real estate --represented by the proposed LRDP geographic area (described below) --would be (a) to divert some of the students and faculty to other UCB satellite campuses such as the Berkeley Global Campus and/or Moffatt Field; and/or (b) to accommodate some students in the numerous alternate student housing available to UCB students at facilities outside the proposed LRDP area, including Mills College (which would seem to soon be able to offer all or almost all of its current dorm space to UCB students pursuant to existing arrangements with UCB), the University Village, and the Intersection buildings in Emeryville, all of which are discussed below. Moving the large number of new UCB students to areas outside the constrained LRDP area (which is discussed below) would be both a realistic alternative *and* a reasonably available mitigation measure. The DEIR's failure to consider this option is unreasonable in light of the availability of these other sites – particularly the immediate availability of student housing at Mills College—and consequently CEQA's requirements have not been satisfied.

Another alternative to increasing enrollment at UCB is to divert students to other UC institutions/campuses. If the Lead Agency has demographic data and projections showing that the

[61] DEIR's failure to provide baseline data on the environmental impact of the current student and "other affiliate" users on the "area" of Berkeley (and other satellite campuses where UCB operates) means that the evaluation of the status quo alternative(s) is incomplete and unreliable.

overall UC enrollment is required to increase (by operation of state's Master Education Plan) approximately 1% or more per year, then they have the ability to divert students to other UC campuses. Various evaluations conducted by, among others the State Auditor, have all concluded that there is sufficient capacity in the UC system to absorb several projected generations of California resident high school seniors. This capacity at other campuses makes diversion a reasonable alternative that was not considered by the Lead Agency.

A third, and equally reasonable alternative to increasing overall enrollment, is to decrease non-resident enrollment at UCB so that more in-state residents can enroll. In this way, an increased number of resident students could be accommodated while eliminating the impacts of a large overall population increase. That alternative was not studied.

These are but three examples of alternatives that were not explored and that under the rule of reason were both obvious and reasonable. Before issuing a its final EIR, these alternatives should be considered.

1.2.14 Meaningful Mitigation to Increased Population Not Addressed

Because the environmental effects are not accurately captured in the DEIR, the mitigation measures are likewise unsatisfactory and inadequate. Indeed, the primary mitigation measure appears to be essentially follow-sustainability-and-transportation-plans to reduce waste and emissions. As UCB has so far failed to meet the goals of its sustainability and transportation plans, the DEIR's proposal that mitigation will be provided by UCB reaching those goals (with a larger population) seems unreasonable.

The Lead Agency is legally required to evaluate and provide reasonable mitigation measures. As the court has explained:

> When enacting CEQA, the Legislature made clear its intention that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." (§ 21002.). Accordingly, public agencies are required by CEQA to prepare an EIR that, among other things, provides the public with "detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (§ 21061; see Guidelines, § 15003, subs. (b)–(e).) Where project alternatives or mitigation measures are not feasible, the EIR must set forth that there are overriding considerations that render the unmitigated effects outweighed by the project's benefits. (Guidelines, § 15093.) In this way, the public is adequately informed of the agency's reasoning in deciding that an environmentally significant action should either be approved or rejected and can thus hold the agency accountable for its decision.[62]

[62] *California Oak Foundation v. Regents of University of California*, 188 Cal. App. 4th 227, 260, 115 Cal. Rptr. 3d 631, 655-656, 2010 Cal. App. LEXIS 1555, *49-51 (citing (*Laurel Heights I, supra*, 47 Cal.3d at p. 392.)

1.2.15 UCB Will Receive Increased Federal Funding Based on Increased Population but Has Failed to Demonstrate Compliance with Applicable Federal Laws

As described further below, UCB receives significant federal funding directly and indirectly. One of the key categories of federal funds it receives is federal student financial aid. Some of this aid is used by UCB (and like institutions all around the country) to pay students' housing costs. As the relevant federal website explains:

> **Grants and Student Loans**
>
> Typically, the school first applies your grant or loan money toward your tuition, fees, and (if you live on campus) room and board. Any money left over is paid to you directly for other education expenses.
>
> If you get your loan money, but then you realize that you don't need the money after all, you may cancel all or part of your loan within 120 days of receiving it and no interest or fees will be charged.
>
> **Work-Study**
>
> Your school must pay you directly unless you request that the school
>
> - send your payments directly to your bank account or
> - use the money to pay for education-related charges (e.g., tuition, fees, room and board) on your student account.[63]

Records pertaining to Project 1 – including the MOU and operating agreements – make clear that the rental income from student housing will be used to support that building's on-going operation and maintenance. Currently 27% of UCB undergraduates are Pell Grant recipients[64] and many more receive other federal monies that are received by UCB to pay for their room and board. UCB's direct and indirect acceptance of federal funds will certainly continue during the next LRDP period. The capital budgeting, strategy and planning documents issued in connection with the projects and other UCB future plans make clear that this federal funding will be used to operate and maintain these new buildings including, specifically Project 1.

Because federal funding will be used to operate these projects, particularly the student housing projects, the Lead Agency is required to comply with federal statutory and regulatory requirements. These requirements include contemplating admitting more students receiving federal funding to pay for student housing. In short, the Lead Agency's DEIR must not only comply with CEQA, but it must also comply with the National Environmental Resources Act in its DEIR concerning its planned enrollment increase and consequent student housing building spree. Likewise, it must comply with the National Historic Preservation Act when its projects involve the demolition of national landmarks or national landmark eligible properties such as the

[63] https://studentaid.gov/complete-aid-process/receive-aid
[64] https://financialaid.berkeley.edu/types-of-aid-at-berkeley/grants/federal-pell-grant/

UC Garage and the Anna Head School. The Lead Agency should provide the necessary information, evidence, and discussion required to satisfy federal law in its final EIR.

1.3 BAHA's Questions

In conjunction with issuing its final EIR, the Lead Agency should answer the following questions (Note: "population increase" as used herein covers actual individuals, not FTE, and includes all categories of campus users including but not limited to students (undergraduate, graduate, enrolled, part-time, visiting, auditing); individuals who attend class via the UCB extension program or at other locations; individuals who attend UCB classes remotely; staff (employees, contractors, independent contractors, contractor employees) and faculty (part-time, full-time, and temporary, and teaching assistants (if not counted as graduate students) and visitors (including but not limited to visiting researchers, scholars, regular event ticket holders, and other regular facility users)):

Question 1.1.: For each of the years that the draft LRDP will be in effect, what is the projected number resident (California) high school graduates who must be granted admission to the University of California (all UC schools) pursuant to the minimum requirements of the State's Master Plan for Education?

Question 1.2: With respect to Your answer to the previous question, what if any steps have you taken to take into account any population shifts since the advent of the Covid-19 Pandemic (i.e., families with young families leaving the state)?

Question 1.3: For each of the years that the draft LRDP will be in effect, what is the capacity of other UC campuses (other than UCB) to admit the numbers of students listed in response to Question 1.1?

Question 1.4: Do the UC Regents believe that no other campuses in the UC System have or will have the capacity to absorb the number of students proposed to be allocated to UCB under the proposed UCB LRDP for the years covered by the LRDP period and in the numbers the LRDP predicts will be enrolled at UCB? If so, what is the basis for that belief?

Question 1.5: Is the proposed increase in enrollment at UCB proposed in the Draft LRDP "Update" in whole or in part based upon a need for increased student fee revenue? If so, please provide details including the projected amount of increased fee revenues and basis for the need for these funds.

Question 1.6: Does increased fee income from more students have any role in the Lead Agency's decision to increase enrollment at UCB? If so, please explain.

Question 1.7: In connection with the draft LRDP or DEIR, have you made any estimates or projections as to income from student fees during any of the years covered by the draft proposed LRDP? If so, please provide.

Question 1.8: How many currently enrolled UCB students received Pell Grant funding in the 2019-2020 and 2020-2021 school years (by percentage of total undergraduates and in absolute numbers)?

Question 1.9: How many currently enrolled UCB transfer students received Pell Grant or other federal student financial aid in the 2019-2020 and 2020-2021 school years (by percentage and in absolute numbers)?

Question 1.20: how much money does UCB project that it will receive from Pell Grants (including Pell Grant monies used to pay for UCB student housing) during the period covered by the draft LRDP?

Question 1.21: Does UCB collect rent or other income with respect to the student housing for which it has master leases? Are any of these monies Pell Grant funds?

Question 1.22: What is the current total population of UCB by category and status (FT; PT etc.)? Please provide detailed data including source of data, location, date of data, and category information.

Question 1:23: What is the current population of contract workers regularly working at UCB sites? Please provide source and date of data, work locations, and categories of workers. To the extent different individuals perform the tasks of one contract position (i.e., a daily janitor position rotated between three contract employees), please indicate that information in your responses.

Question 1.24: What is the total expected population increase contemplated with regard to UCB at all locations, by category and status (FT; PT etc.)?

Question 1.25: If UCB exceeds its enrollment projections in the period covered by the draft LRDP "Update" by the same margins that it has exceeded the projections of the existing 2020 LRDP, what will the total population increase, by category, be?

Question 1.26: With respect to your answer to the prior question, how does the increase of students (in absolute numbers) compare with the present population of Harvard College and Yale College?

Question 1.27: How many of the individuals referenced in response to the Question 1.25, will or are expected to commute distances of over than 2 miles on a regular basis? Please provide the source and basis of your estimated projection(s) and the expected travel distances by category and expected single-trip or round-trip mileage.

Question 1.28: How many individuals referenced in response to the Questions 1.25 and who are expected to commute distances of over 2 miles on a regular basis will be using GHG emitting vehicles (including a shared van, personal non-electric vehicles, campus provided buses or shuttles, and private ride services such as taxis, Uber or Lyft). Please provide the source of the data used and the basis of your projections.

Question 1.29: What is the projected VMT for the population covered by the prior question?

Question 1.30: Will the current AQI for the residential areas around UCB's Berkeley locations be impacted by additional GHG emissions produced by the contemplated population increase?

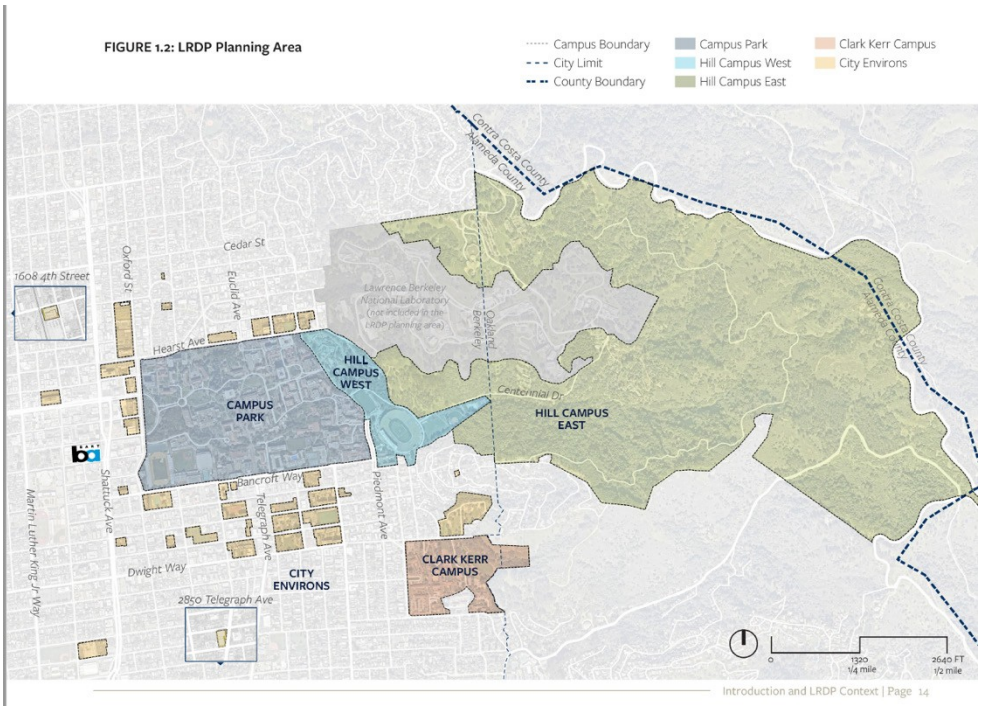
Question 1.31: If UCB exceeds its enrollment projections in the period covered by the draft LRDP "Update" by the same margins that it has exceeded the projections of the existing 2020 LRDP, how will the projections provided in response to the prior two questions differ? Please explain.

LRDP and DEIR GEOGRAPHIC AREA (LAND USE AND PROJECT SCOPE)

2 The Area Covered by the LRDP and DEIR Is Improperly Constricted and Erroneous Under CEQA: BAHA's Comments and Questions

2.1 DEIR's Discussion of Project Scope

The Lead Agency constrained the LRDP and DEIR[65] "project" to only a portion of UCB owned and/or controlled property. The area covered by the DEIR (and LRDP) is indicated below and includes the "Campus Park" and the contiguous Hill Campuses (Hill Campus West and Hill Campus East). It also includes the satellite Clark Kerr campus and so-called Campus Environs satellite sites. It does not include many properties owned and/or leased by UCB, including other satellite campuses and housing sites in the Bay Area such as the Berkeley Global Campus (f/k/a the Richmond Field Station), the Albany Gill Tract (f/k/a University Village), Moffett Field, and the new Freshman campus at Mills College. Similarly it includes some individual sites – i.e., single parcels, structures, or lots – such as People's Park, Anna Head School, and a large shared services building on 4th Street in West Berkeley but omits others such as the recently donated student housing buildings in Emeryville (f/k/a "the Intersection"). Strangely, the "Core Campus" is meaningfully different than that detailed in the New Century Plan[66], which took a



[65] The EIR Notice promulgated on or about April 2020, states:
"The planning area for the LRDP Update and associated EIR is shown in Attachment A, Figure 1 and includes properties owned by the UC Regents located within the City of Berkeley, as well as areas of the Hill Campus located within the City of Oakland and a portion of land located in unincorporated Contra Costa County. Specifically, the LRDP Update Planning Area includes the Campus Park, which is bounded by the hills to the east, Hearst Avenue to the north, Oxford Street to the west, and Bancroft Way to the south; the Hill Campus, which extends east from the Campus Park; campus environs north of the Campus Park to Ridge Road, west of the Campus Park to Shattuck Avenue, and south of the Campus Park to Dwight Way; the Clark Kerr Campus southeast of the Campus Park; and several satellite properties located within the City of Berkeley." https://files.ceqanet.opr.ca.gov/261038-2/attachment/83aRFnu5KQL0GKXuhAKdyeGlIDOwqtH9mr-xPb8AbfVnMxhjF8HU5PdZK4D94cp0mllHy70 3Ia1XB25S 9

[66] https://capitalstrategies.berkeley.edu/sites/default/files/pep_cpd_ncp.pdf

more expansive view of what constituted the core campus – including for example the Oxford Tract, the Blocks to the West of the Campus along Oxford and to the South beyond Bancroft.

The DEIR does acknowledge UCB owns considerable additional property: "UC Berkeley–owned properties outside of the EIR Study Area include the University Village in the city of Albany, the Richmond Field Station in the city of Richmond, and various properties lying entirely outside the city of Berkeley, including numerous research reserves, field stations, and experimental forests throughout California." It explains that it did not examine these properties because, "These areas are outside of the scope of the proposed LRDP Update because they are sufficiently distant from the Campus Park and its environs and, therefore, they are not evaluated in this EIR."

The DEIR divides up the LRDP area into zones and summarizes the total projected construction and development within these zones as follows:

TABLE 3-1 PROPOSED LRDP UPDATE BUILDOUT PROJECTIONS

	Building Square Footage							Students		
Zones	Total	Residential [a]	Academic Life [b]	Campus Life [c]	Parking	Beds	Parking Spaces [d]	Undergrads	Graduate	Faculty/ Staff
Existing Conditions 2018–19										
Campus Park	8,591,592	–	7,310,284	970,322	310,986	–	1,992	–	–	–
Hill Campus West	911,429	473,658	3,380	434,391	–	1,502	451	–	–	–
Hill Campus East	318,733	–	312,634	6,099	–	–	558	–	–	–
Clark Kerr Campus	452,434	305,913	75,704	70,817	–	1,000	277	–	–	–
City Environs Properties [e]	4,640769	1,248,715	2,193,899	452,641	745,514	6,518	3,062	–	–	–
Total	***14,914,957***	***2,028,286***	***9,895,901***	***1,934,270***	***1,056,500***	***9,020***	***6,340***	***29,932***	***9,776***	***15,421***
Horizon Year 2036–37										
Campus Park	11,205,131	–	9,246,588	1,457,044	501,500	–	2,023	–	–	–
Hill Campus West	933,429	473,658	3,380	456,391	–	1,502	366	–	–	–
Hill Campus East	511,233	–	505,134	6,099	–	–	558	–	–	–
Clark Kerr Campus	1,035,525	797,751	75,704	117,070	45,000	3,364	299	–	–	–
City Environs Properties [e]	9,325,888	4,580,919	2,349,684	804,205	1,591,080	15,885	5,316	–	–	–
Total	***23,011,206***	***5,852,328***	***12,180,489***	***2,840,809***	***2,137,580***	***20,751***	***8,562***	***35,000***	***13,200***	***19,000***
Net Change										
Campus Park	2,613,539	–	1,936,304	486,722	190,514	–	31	–	–	–
Hill Campus West	22,000	–	–	22,000	–	–	(85)	–	–	–
Hill Campus East	192,500	–	192,500	–	–	–	–	–	–	–
Clark Kerr Campus	583,091	491,838	–	46,253	45,000	2,364	22	–	–	–
City Environs Properties [e]	4,685,119	3,332,204	155,785	351,564	845,566	9,367	1,272	–	–	–
Total	***8,096,249***	***3,824,042***	***2,284,588***	***906,539***	***1,081,080***	***11,731***	***1,240***	***5,068***	***3,424***	***3,579***

Notes: This table excludes any UC Berkeley properties that are outside of the UC Berkeley LRDP Planning Area as shown on Figure 3-2, EIR Study Area.
a. Residential use includes faculty, student, and family housing. Includes the 16 beds on the Housing Project #1 site that are owned by UC Berkeley.
b. Academic Life use includes administrative, classrooms, labs and research space, offices, conference and study space, infrastructure/utility, and other miscellaneous spaces.
c. Campus Life use includes Intercollegiate Athletics, recreation, wellness space, assembly and exhibition facilities, dining facilities, and social spaces.
d. Parking space count includes both structured and surface parking.
e. The City Environs Properties include the proposed Housing Projects #1 and #2.
Source: University of California, Berkeley, and PlaceWorks, 2020.

The DEIR also acknowledges that in addition to these Proposed LRDP Update Buildout Projections, UCB is presently engaged in other construction and development projects on other UCB properties both inside and outside the draft LRDP/DEIR area. These "other" projects are reflected in this chart:

TABLE 5-3 PENDING UC BERKELEY PROJECTS

			Construction/ Implementation	
Campus Zone	Project Name	Description	Start	Finish
Outside of EIR Study Area (Albany)	Albany Village Grad Student Housing	Approximately 700 single bedrooms in apartments for graduate students in 6-story building with 275 parking spaces	September 2022	August 2024
City Environs Properties	Bakar BioEnginuity Hub Incubator Space	Full-service life science incubator with private labs, wet, and dry open lab benches for faculty and student start-up researchers; preserves Woo Hon Fai Hall	March 2020	July 2021
Clark Kerr Campus	Beach Volleyball	Development of the beach volleyball complex and partial demolition of Building 21, which is approximately 8,000 square feet	June 2022	December 2022
Hill Campus East	Centennial Drive Bridge Replacement	Replacement of structurally deficient bridge on Centennial Drive. New overcrossing and re-route of Centennial Bridge, in partnership with Lawrence Berkeley National Laboratory	November 2021	November 2023
Outside of EIR Study Area (Emeryville)	Intersection Graduate Student Housing + Commercial Space	105 graduate student units.	Underway	December 2020
Campus Park	Law Library Stack Conversion	145,000 square feet of newly usable space	Not yet determined	Not yet determined
Campus Park	Moffitt Library Center for Connected Learning	Renovation of three lower floors of the library	February 2022	July 2023
Campus Park	Moffitt Library Seismic Retrofit	Seismic corrections.	May 2021	January 2022
Outside of EIR Study Area (Emeryville)	Optometry Surgery Center @ Intersection	New combined community clinic and continuing education facility in an existing commercial building	Not yet determined	Not yet determined
Hill Campus West	Softball New Stadium	Demolition of all existing facilities and construction of an NCAA-compliant field with a 1,500-seat capacity	June 2021	June 2022
City Environs Properties	Upper Hearst	Faculty housing and Goldman School of Public Policy expansion	Not yet determined	Not yet determined
Campus Park	Weill Hall Neurohub	Renovation of several areas of Weill Hall (formerly LSA) to create the physical center of Weill Neurohub East	Not yet determined	Not yet determined
Hill Campus East	Wildland Vegetative Fuel Management Plan	Plan intended to provide guidance to implement projects that reduce wildfire risk	Summer 2021	Not yet determined

Source: University of California, Berkeley, 2020.

Needless to say, collectively the draft LRDP projects and the Table 5-3 "other" UCB projects constitute a large amount of construction and development. In addition to the construction captured in these two tables, as explained below, UCB has even more property currently being used regularly by UCB students, staff and faculty (Mills College, the London campus) and even more under development and/or lease.

2.2 BAHA's Comments

The DEIR's explanation that all of UCB's property was not included in the DEIR is unpersuasive. The first claim – that this "other" property is outside the LRDP area -- of course begs the question as to why these other properties – together with numerous leased properties in Berkeley and Mills College in Oakland – were not included in the LRDP as they are used and will be used by UCB students who also study at and commute to Campus Park. It is also worth noting that according to google maps, the (included) 4th Street Shared Services building is 3.8 miles from UCB's Sather Gate while the Intersection apartment building in Emeryville (not included) is 3.6 miles from Sather Gate.

Clearly something other than distance motivated the exclusion of these numerous other properties. Because the failure to include these other properties is unreasonable and the proffered explanation patently erroneous, the Lead Agency's decision to limit the draft Proposed LRDP Update area and the DEIR study area so as to exclude important satellite campuses and sites is unsupported and unsupportable under both the CA Public Education Code/Public Resources Code and CEQA. By

failing to describe all plans to develop UCB properties in these documents and to discuss how the projects in the different geographic areas are related to those for the proposed LRDP area, both the LRDP and the DEIR fail to fulfill their legally required purposes. The Lead Agency should rectify these omissions in its final EIR.

Significantly, BAHA is **NOT** proposing that the satellite campuses that are the subject of separate LRDPs need to be re-presented as separate projects for full CEQA evaluation in this DEIR – although that may have been the most prudent way for the Lead Agency to proceed. What we are saying is that to discuss the impacts of the proposed population increase and construction projects properly as required under CEQA, the Lead Agency must provide in its LRDP a full and complete picture of all of the UCB properties and discuss all of those under active planning and development or identified for development and/or demolition. Among other things, the public needs to know how many of the new students, staff and faculty will working in various UCB locations so that it can assess the amount of commuting that will be occurring as well as the distances being covered in these commutes.

A perfect example of how integral this missing information is to the assessment of the DEIR is the recent announcement that UCB was establishing a campus-within-a-campus at Mills College for Freshmen. Because no specific details were provided in the press reports or releases and the Mills College plan was not even hinted at in the LRDP, the public is left wondering how many students will be housed and taught at the Mills College Campus and what, if any, impact this change will have on the purported acuity of the UCB student housing shortage.

Indeed, the DEIR effectively acknowledges the incompleteness of the LRDP's Land Use Planning Discussion:

> The potential areas [for development or redevelopment] . . . provide a menu of possible options that UC Berkeley has to accommodate potential growth and changes. . . . [P]otential future development would be primarily focused on intensive and strategic use of existing UC Berkeley–owned land through determinations of where UC Berkeley can remodel, relocate, densify, or expand current facilities. UC Berkeley may acquire and/or develop additional properties during the EIR buildout horizon that implements the proposed LRDP Update to meet UC Berkeley's physical space needs. While such additional acquisition and/or development would be focused on adjacency or proximity to existing UC Berkeley properties like those shown in Tables 3-2, 3-3, and 3-4, some sites could potentially be located further away.

An accurate, stable and finite project description is the "*sine qua non* of an informative and legally sufficient EIR."[67] The term "project" is broadly construed to ensure that environmental review under CEQA includes all components of the activity that may harm the environment, to avoid "the fallacy of division," which is "overlooking [a project's] cumulative impact by separately focusing on isolated parts of the whole."[68] Environmental considerations may not be submerged by chopping a single CEQA project into smaller parts for piecemeal assessment.[69] Rather, "the whole of an action" or the entire activity for which the approvals are being sought must be considered by

[67] *County of Inyo, supra*, 71 Cal.App.3d at 192-193.
[68] *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1144.
[69] *Bozung v. Local Agency Formation* Com. (1975) 13 Cal.3d 263, 283-284.

the agency. (Guidelines § 15378(a), (c).) Also, EIRs must evaluate the environmental impacts of reasonably foreseeable future activities associated with the project where these activities may contribute to significant environmental effects.[70] Here, the Lead Agency clearly did not properly define the geographic scope of the LRDP and the projects in the DEIR. Further, as noted in the prior section, the DEIR's discussion of the Projects' "cumulative" impact with the Table 5-3 projects is incomplete and not adequately supported.

2.2.1 Satellite Campuses and Sites Should Have Been Included and (at the Very Minimum) Discussed

Public statements made by the Chancellor and other UC officials make clear the University's intent to use and develop these "other" properties as integral parts of UCB.[71]

Under the circumstances, it was unreasonable for the Lead Agency to fail to discuss these locations in the LRDP and DEIR in a meaningful way.

While it makes reference to some of UCB's pending projects outside and inside the LRDP area, none of them are meaningfully discussed. For example, it provides summary table 5-3. Although it is helpful to know that, for example, that there are numerous student housing projects already underway, it is incomplete. Moreover, the fact that the LRDP provides purported baseline student housing numbers and housing projections without reference to these new substantial housing resources is problematic. The public will have no idea – without comparing this table, the draft LRDP and the planning documents for the other housing sites – how many units/beds will actually be created and how any new housing complex proposed in the projects will actually reduce housing

[70] Laurel Heights I, supra, 47 Cal.3d at 395-396.

[71] https://www.dailycal.org/2018/05/14/chancellor-carol-christ-announces-campus-will-build-sites-listed-housing-task-force-report/

needs. It is also hard to discuss the size of the projects – particularly Project 1 and 2 – to evaluate whether smaller, less impactful structures could be constructed.

Moreover, the construction proposed by the LRDP and the construction being undertaken in the same geographic area as part of the projects listed in Table 5-3 could have substantial cumulative negative environmental impacts that are not adequately discussed in any DEIR or EIR. The DEIR basically concludes that cumulative impacts are not material. However, that conclusion is not supported. As discussed below, the wildlife vegetative fuel management plan that is set to take place beginning in Summer 2021 will have great impacts on UCB's natural resources – natural resources within the proposed LRDP area in the Hill Campus. The failure to include details about the expected impacts of this other project means that the cumulative impacts of this draft LRDP plan and the existing fuel management LRDP are not examined, as they must be under CEQA.

UCB is required by statute to provide a complete long range development plan for each campus. As used in the statute, which was enacted before satellite campuses were as prevalent as they are today, a "campus" means a single institutional member of the UC System, such as UC Santa Cruz, UC Irvine, or UC Berkeley. The legislature clearly contemplated that each university unit encompassed more than just the main campus[72] and intended that the general planning document – the long-range development plan – cover all plans being undertaken by a given UC university for its property, including so-called off-site locations and branch campuses. See CA Pub Ed. Sec. 94819 ("Branch campus" means a site other than the main campus or a satellite location.")

The "project" in an EIR must encompass all actions that the Lead Agency plans to undertake:

> [A]n EIR must consider the "whole" of an action. "'Project' means *the whole of an action*, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: [¶] (1) An activity directly undertaken by *any* public agency … ." (Cal. Code Regs., tit. 14, div. 6, ch. 3 (CEQA Guidelines), § 15378, subd. (a), italics added.) Here, while *the* City's decision was whether to propose an SOI amendment, the "whole" of the action included the Regents' request for extraterritorial services and LAFCO's decision on both the proposal and the request. Thus, the EIR was required to consider all of these actions.[73]

Because an LRDP for a university is intended to be comprehensive and forward-looking, an EIR for such a comprehensive plan must be based on complete information about the Lead Agency's plan, not select glimpses of it. After all:

> The purpose of an environmental impact report is to provide public agencies *and the public in general* with detailed information about the effect which a proposed project is likely to

[72] CA Pub Ed. Code. Sec. 94849 (""Main campus" means the institution's sole or primary teaching location."). See also sec. 94862 (""Satellite location" means an auxiliary classroom or teaching site within 50 miles of the branch or main location.") and sec. 94865 (""Site" means a main or branch campus or satellite location.")

[73] *Habitat & Watershed Caretakers v. City of Santa Cruz*, 213 Cal. App. 4th 1277, 1297, 152 Cal. Rptr. 3d 888, 905, 2013 Cal. App. LEXIS 128, *36-37

> have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.

CA Pub. Resources Code § 21061 (italics added). The Regents took this comprehensive approach in their LRDP for UC San Diego, which included satellite areas, including this wording in the project's geographic description:

> Several non-continuous properties are also included in the campus LRDP, including the La Jolla del Sol housing complex (12 acres), surrounding beach properties consisting of the Audrey Geisel House and an adjacent coastal canyon and beachfront parcel (25.8 acres), the Gliderport, the Torrey Pines Center, and recently acquired Torrey Pines Court (41 acres).[74]

That earlier approach – to include plans for all relevant campuses of a single university institution – was the correct approach and should have been followed by the Lead Agency here. The Lead Agency's failure to include existing and expected sites where UCB students are expected to study (i.e., where classrooms are present or will be built) and/or live, violates the letter and spirit of CA Ed. Code, the CA Public Resource Code and is not reasonable under the circumstances under CEQA[75] and other governing laws:

Related projects currently under environmental review unequivocally qualify as probable future projects to be considered in a cumulative analysis. In addition, even projects anticipated beyond the near future should be analyzed for their cumulative effect.[76]

Courts have made clear that "[r]esponsibility for a project cannot be avoided merely by limiting the title or description of the project" or dividing it into two parts.[77] As the court in the West Davis Community Association case against the UC Regents held, "Respondent [the UC Regents] has violated Public Resources Code section 21083, the guidelines and the case law by dividing the UCD campus project into two separate projects with separate EIR's".[78]

---

[74] https://www.ucop.edu/operating-budget/_files/legreports/17-18/ucsd_lrdpeirlegreports_080818.pdf

[75] In *Whitman* v. *Board of Supervisors* (1979) 88 Cal. App. 3d 397 [151 Cal. Rptr. 866], an EIR was prepared regarding an application for a conditional use permit to drill a single exploratory oil and gas well in an area which embraced limited gas and oil operations, but was adjacent to a major oil field. The project site was also a wildlife habitat. (*Id* . at pp. 402-403.) The court held that the EIR was deficient because it did not make adequate reference to other existing or planned drilling in the area (*Id* . at p. 411) or to "the environmental impacts associated with an oil pipeline contemplated as an addition to the project." (*Id* . at p. 414); *San Franciscans for Reasonable Growth* v. *City and County of San Francisco* (1984) 151 Cal. App. 3d 61 [198 Cal. Rptr. 634], held that certain EIR's for the construction of high-rise office buildings in downtown San Francisco were deficient because they did not discuss other proposed buildings in the downtown area.

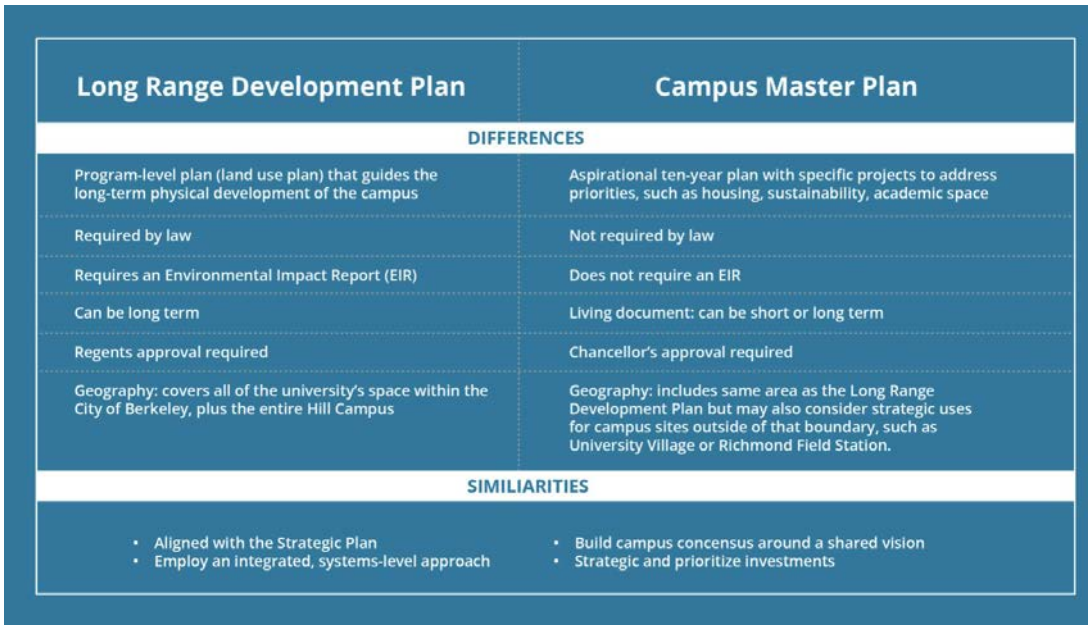
[76] *West Davis Community Ass'n v. Regents of University of California*, 235 Cal. App. 3d 1033, 1041, 1 Cal. Rptr. 2d 275, 279, 1991 Cal. App. LEXIS 1277, *12, 91 Cal. Daily Op. Service 8810, 91 Daily Journal DAR 13590 (citing *Citizens Assn. for Sensible Development of Bishop Area* v. *County of Inyo* , *supra* , 172 Cal. App. 3d at p. 168;)

[77] *Rural Landowners Assn.* v. *City Council* (1983) 143 Cal. App. 3d 1013, 1025 [192 Cal. Rptr. 325]; see also *West Davis Community Ass'n v. Regents of University of California*, 235 Cal. App. 3d 1033, 1041, 1 Cal. Rptr. 2d 275, 279, 1991 Cal. App. LEXIS 1277, *12-13, 91 Cal. Daily Op. Service 8810, 91 Daily Journal DAR 13590

[78] *West Davis Community Ass'n v. Regents of University of California*, 235 Cal. App. 3d 1033, 1043, 1 Cal. Rptr. 2d 275, 281, 1991 Cal. App. LEXIS 1277, *17-18, 91 Cal. Daily Op. Service 8810, 91 Daily Journal DAR 13590

Addressing development at UCB across several LRDPs and DEIRs/EIRs also has the practical effect of failing to provide a comprehensive picture for UCB's future expansion and development and diverting attention from the collective environmental consequences of the overall plan. For example, the Lead Agency's 2014 LRDP for the Berkeley Global Campus planned for the current site of the Richmond Field Station contemplates increasing site users from 300 to 10,000 but makes no provision for housing these additional users on the Richmond site. Because the Draft Proposed LRDP most recently proposed makes mention of these planned for 10,000 new users of the nearby BGC, no document (much less a comprehensive planning document) has examined where these new users will be housed. As many of the current uses of the RFS live in and commute from Berkeley, it is reasonable to suppose that many of these new 10,000 users will seek housing there as well effectively increasing the estimated population growth figures supplied by the Lead Agency in its latest draft UCB LRDP by 10,000.

Nor can the Lead Agency avoid properly defining the LRDP project scope by creating a separate parallel document – the Campus Master Plan – that is separate from and not subject to CEQA requirements. The image below purports to describe the differences between these two planning documents.



By essentially creating a parallel planning documents – namely, the UCB Master Campus Plan, the BGC/RFS LRDP, and the various "plans" described below -- the Lead Agency seeks to avoid scrutiny of the full scope of its plans for UCB and frustrate the very reasons behind CEQA. Put another way, the Lead Agency, which is legally obligated to propound a **complete** Long-Range Development Plan, has failed to do so.

Because it does not examine a complete, unified and comprehensive LRDP for UCB, the DEIR here fails to examine the actual environmental impacts of the Lead Agency's plans. Indeed, it is even hard to ascertain the "area" under proper examination for the DEIR given that the Lead Agency fails to provide sufficient information as to where it expects the increased population growth and facility construction to take place. For example, if 5000 students will be housed outside

Berkeley, in new housing in Emeryville, Albany and/or Moffett Field, the impacts of the increased populations will be felt in those "areas" not Berkeley, and the calculation of need (or acuity of need) for housing in Berkeley, will be different than if those 5000 students had to be housed in this city. Moreover, the DEIR fails to address much less capture the actual expected environmental impacts of the commuting between the planned-for UCB satellite campuses in the Bay Area.

By failing to include or describe ***all*** reasonably foreseeable projects including those that have been budgeted-for and/or that have separate DEIRs pending or in draft, the LRDP is incomplete under CEQA and thus the DEIR is likewise legally and factually incomplete. Absent the complete development plan, it is impossible to assess – as required under CEQA – the purported necessity for destroying Cultural and Historic Resources and the cumulative impact of the proposed construction projects and enrollment increases.

2.2.2 Impossible to Assess Student Housing Needs Properly Under CEQA Without Complete Picture of Student Housing (Impact on Housing)

As part of the LRDP process, UCB has thrown out conflicting figures as to the proportion of undergraduates that live in UCB housing. The 2017 Housing Task Force Report set the figure at 22%, a graphic based on 2016-2017 enrollment place the figure at 30%. None of these figures was accurate; all are underinclusive. The more specific housing data provided in the Draft LRDP (see table below) and discussed in the DEIR are likewise inaccurate and misleading.[79]

TABLE 2.2: LRDP Development Program

Program Type	Current Program (2018-19)	Net New Campus Program	Potential Future Total Program
Campus Space (GSF)	11,830,170	+2,552,000	14,382,170
Housing (Beds)[1]	9,020	+11,730	20,750
Parking (Spaces)	6,340	+1,240	7,580

1. This table includes UC Berkeley housing, as well as the existing 16 non-university beds at the 1921 Walnut Street site. It does not include housing or beds outside of the LRDP Planning Area, some affiliate housing, or housing that UC Berkeley provides through a master lease agreement.

As always, the small print is key. The Lead Agency did not include master leased housing, "affiliate housing," and housing or beds outside the LRDP Planning area. These are significant omissions. In addition to the housing already provided at off-site locations such as University Village and UC's London Freshman program, UCB has obtained master leases for multiple student housing sites in the city of Berkeley. The Lead Agency should provide, before issuing a final EIR, a complete list of current UCB housing options, including master leased housing, "affiliate housing" and off-campus sits such as Mills College and the London campus. It should also include all plans for all housing that it is planning to build or that reasonably can be projected to be built in the period covered by the draft LRDP.

[79] The Draft Housing Task Force reports sets the figure at 22% of undergraduates. x https://evcp.berkeley.edu/sites/default/files/housing_master_plan_task_force_final_draft_january_2017.pdf; a report issued in connection with the LRDP stated 23%.https://capitalstrategies.berkeley.edu/sites/default/files/vc_200213_peoples_park_open_house_8.5x11_flier_fin al01.pdf

In addition, UCB undergraduates can rent dorm rooms on the Mills College Campus in Oakland, CA. None of these arrangements are addressed in the LRDP or the DEIR. That omission potentially serves to exaggerate the housing stock currently available to UCB students as described by the Lead Agency. Neither the LRDP nor the DEIR describe the number of available residential spaces at this location in Oakland or provide any details as to the duration or nature of this residency option.

The Lead Agency's failure to incorporate information about the Mills College dorm space is particularly noteworthy as it apparently has been in discussions with the Board of Mills College to acquire the entire campus and, although those discussions have reportedly broken down, UCB has obtained permission to operate a new campus-within-a-campus for Freshmen at Mills College, thus greatly expanding classroom and housing options for incoming UCB Freshmen. Again, the details of these plans – including the number of students who can be accommodated at that location, the duration of the agreement with Mills College, et cetera – are nowhere provided in the LRDP or DEIR. Given that students currently have and will have in at least the next few years, the options to live and take classes from UCB faculty on the Mills College Campus, it was unreasonable for the Lead Agency not to include information about those plans in the LRDP or at least assess them in the DEIR.

In addition to Mills College, UCB routinely houses some students in residences in other cities. For example, UCB offers "Berkeley Global Edge" for incoming freshman. According to collateral linked to UCB's website, UCB has offered incoming Freshmen the opportunity to spend their first semester at a UCB-affiliate campus in London since 2015. As that website explains,

> In 2015 Berkeley had a good problem — more students accepted offers of admission than could be enrolled right away. Instead of making some admitted freshmen wait until spring semester to begin, UC Berkeley offered them a London option. The pilot program was so successful it has become a regular offering called Berkeley Global Edge. Coursework is developed in collaboration with Berkeley academic departments and Accent London faculty, and carefully chosen to meet first-year curricular requirements while reflecting the unique cultural context and academic resources of the host-city.[80]

Likewise, UCB permits UCB students to live and study at UC Campuses in Washington, D.C. and Sacramento. Nowhere in the LRDP or the DEIR is there data provided as to how many students historically take advantage of these off-campus alternatives and what the Lead Agency projects for usage in the future.

As noted above, in recent years UCB has devoted the majority of its capital expenditures on constructing and rehabilitating academic facilities rather than student housing, preferring to allow private developers to construct student housing at off-campus locations.[81] As a consequence, there

[80] http://globaledge.berkeley.edu/locations/london; https://accentglobal.com/program-samples/freshmen-get-extra-edge/

[81] Unfortunately, the quality of some of the privately developed off-campus student housing in Berkeley has been substantially below standards (and building code), which has resulted in several unfortunate deaths. (https://www.berkeleyside.com/2017/01/25/site-fatal-balcony-collapse-rebranded-now-k-street-flats-not-library-gardens; https://www.berkeleyside.com/tag/2020-kittredge-st; https://www.berkeleyside.com/2015/11/13/berkeley-balcony-collapse-contractor-used-inferior-wood-and-owner-ignored-signs-of-rot-including-mushrooms-sprouting-

was a surge in building of large privately funded and operated student housing buildings in Berkeley together with the conversion of older multi-unit buildings to advertised off-campus options. Here is an example of how these private developments describe themselves:

> Our Triples are now available for the Fall semester for $850. Sign up in advance with our Early Bird Prices and secure them at $795!
>
> Located just two blocks from the UC Berkeley campus in Berkeley's vibrant Telegraph neighborhood, Telegraph Commons provides fully-furnished private or shared dorm rooms for students. The Building offers community kitchens, spacious bathrooms, washer and dryers, and study lounges on each floor. Utilities and high-speed, fiber-optical internet are included.
>
> Triple rooms provide the best housing value near the UC Berkeley Campus. It is one of the most affordable option for students looking to find something relatively cost effect, located just minutes' walk from UCB, all while still enjoying the many benefits a dormitory has to offer. Each person in a triple gets their own twin-sized bed, desk, desk chair and closet. The room also includes a mini-fridge and features lofted beds.
>
> Telegraph Commons is surrounded by all of the things that make Berkeley great including a wide variety of restaurants, local parks, great shopping and, of course, the Cal campus.[82]

UCB also has executed ground leases for "affiliated properties" and made arrangements with third-parties such as Mills College to make dorm rooms at other nearby facilities available to UCB Students. UCB advertises many of these options – including multiple large private student housing buildings -- on its "CalRents" platform.[83] UCB also offers "Berkeley Home Match," which matches students with elderly local residents who can offer housing in exchange for assistance.[84] Presumably, UCB can provide both the current number of beds and (based on past history and future planning) how many such beds will be available during the draft LRDP period.

By failing to include these reliable off-campus options of which it is not only aware, but eagerly promotes, UCB understates actual reliable student housing options significantly in the DEIR. The table below sets out some of these off-campus housing options that should have been discussed in the DEIR and for which it should have provided information.

---

from-the-surface-lawsuits-allege; https://www.berkeleyside.com/2016/02/10/402-berkeley-buildings-found-to-need-fixes-after-launch-of-inspection-program-spurred-by-balcony-collapse.

[82] https://sgrealestate.appfolio.com/listings/detail/7ea577a4-9ad1-43c9-8f3b-efad5d71883e

[83] https://och.berkeley.edu

[84] https://retirement.berkeley.edu/services/berkeley-home-match

Table of Dependable or Advertised Other Student Housing Options

Name	Notes
Varsity Berkeley	https://www.peakcampus.com; https://och.berkeley.edu/property/search?uid=1253306
K Street Flats	https://www.peakcampus.com
Mills College	https://housing.berkeley.edu/undergraduate-students
Parker Apartments	https://www.parkerberkeley.com/#
Hillside Village Apartments	https://www.hillsidevillageberkeley.com/floorplans.aspx
Telegraph Commons Apartments	https://www.telegraphcommons.com
Bachenheimer Apartments	https://www.bachenheimeraptsca.com
Berkeley Central	https://www.berkeleycentral.com
The Granada	https://www.rentbtberkeley.com
The Cambridge	https://www.rentbtberkeley.com
The Highlands	https://www.rentbtberkeley.com
2520 College	https://www.rentbtberkeley.com
2552 Parker	https://www.rentbtberkeley.com
Sterling Addison	https://www.sterlinghousing.com/berkeley-ca
Sterling Allston	https://www.sterlinghousing.com/berkeley-ca
Sterling Haste	https://www.sterlinghousing.com/berkeley-ca
Sterling Jefferson	https://www.sterlinghousing.com/berkeley-ca
Sterling Oxford	https://www.sterlinghousing.com/berkeley-ca
Sterling University Ave.	https://www.sterlinghousing.com/berkeley-ca
1951 Shattuck	Under construction
2433 Telegraph	Under construction
Modera Acheson Commons	Under construction
Blackwell Hall	https://housing.berkeley.edu/blackwell-hall
Garden Village Apartments	https://housing.berkeley.edu/garden-village
New Sequoia Apartments	https://housing.berkeley.edu/new-sequoia-apartments
Panoramic Berkeley	https://housing.berkeley.edu/panoramic-berkeley
Shattuck Studios	https://housing.berkeley.edu/shattuck-studios
Enclave Apartments	https://housing.berkeley.edu/enclave
UCB Fraternities and Sororities	https://lead.berkeley.edu/about-calgreeks/; http://berkeleyheritage.com/eastbay_then-now/greeks.html
Other Cal Rents Options	https://och.berkeley.edu
2335 Warring	https://och.berkeley.edu/property/search?uid=1594288; https://tbgpm.com
1770 La Loma	https://tbgpm.com
2434 Piedmont	https://tbgpm.com
Other properties operated by The Berkeley Group	https://tbgpm.com; https://och.berkeley.edu/property/search?uid=1594288;
International House	https://ihouse.berkeley.edu/resident-life/apply-live-here
Berkeley Student Cooperatives	https://www.bsc.coop
Bowles Hall	https://www.bowleshall.org
Berkeley Home Match	https://retirement.berkeley.edu/services/berkeley-home-match

The failure to include the available and planned-for extra-Berkeley housing options could potentially skew the calculation of need for further student housing resources and the nature of those resources. Before the final EIR is presented, the Lead Agency should provide a complete list of these student housing options and include the number of beds offered in each. It should also indicate in a comprehensive way how many beds are available in each housing category including UCB-supplied, so that the public can understand the basis for the Lead Agency's repeated but as

yet unsupported housing statistics. Absent a true count of all student beds already dependably available to UCB students, the Lead Agency's expected determination that construction of additional student housing, including Projects 1 and 2, must proceed despite unmitigable significant environmental impacts cannot be meaningfully discussed nor will it be supported by sufficient evidence.

2.2.3 Impossible to Assess Proposed New Student Housing Without Understanding of Rental Price Points

In addition, affordability is not addressed in the LRDP or DEIR. Notably, the LRDP does not include in its housing objectives or goals the construction of *affordable* housing. Instead, as the DEIR notes, its housing goal is: "Goal 1.2: Improve the existing housing stock and construct new student beds and faculty housing units in support of the Chancellor's Housing Initiative." The cost of housing is a major driver governing whether students choose to live off campus or on-campus. UC has recognized that off-campus housing options are often cheaper for students than on-campus options as the below charts below indicate.[85]

Figure 4. Estimated average costs for resident UC undergraduates 2020–21

	Living on campus	Living off campus
Tuition and fees	$14,000	$14,000
Books and supplies	1,200	1,200
Health insurance allowance/fee	2,600	2,600
Room and board	16,300	12,800
Personal/transportation	2,000	2,600
TOTAL	$36,100	$33,200

The recent survey of UCB students and faculty undertaken as part of the LRDP process found that the overwhelming number of respondents viewed cost rather than proximity to campus as the key measure of attractive housing.[86] UC has acknowledged in its recent student needs study that much of its planned on-campus housing development is not the traditional no-frills, cramped dorm rooms and consequently off-campus options will likely remain cheaper:

> The University is working rapidly to expand on-campus student housing options across the system. Those housing costs will likely be higher than what many students currently pay for substandard or overcrowded units in the off-campus housing market. Each campus determines its own on-campus housing rates. On-campus housing includes many amenities and utilities for which rentals would otherwise charge a premium. Furthermore, housing must pay for itself in the big picture; that includes the cost to build and sustain the units,

[85] https://regents.universityofcalifornia.edu/regmeet/nov20/s1attach.pdf
[86] https://masterplan.berkeley.edu/sites/default/files/2020-05-18_lrdp_cmp_survey_findings-housing_final_tg.pdf

salaries for staff who maintain the units and care for the student residents, and costs associated with future maintenance and safety standards.[87]

These "low cost" options for UCB students include various co-op housing opportunities that accept applications for first generation and low-income minority students; Rochdale Village, which is well known and offers a very affordable housing deal with rent costs as low as 250 dollars; Casa Joaquin Murrieta is an independent non-profit organization who has a long history since the 1970's to house predominantly Chicano students. Regarding this last option, it not only offers affordable housing, but also include a leadership enriched experience with workshops for students to polish their professional skills and provides basic food supplies.[88]

Because they do not provide detailed schematics of the projects or estimated rental costs, it is impossible to know who will likely be using all of this newly constructed housing. The only exception is the Helen Diller Anchor House (Project 1) which is dedicated to transfer students, a majority white population, regardless of need. Further, by failing to provide information concerning the expected rents of the proposed student housing projects, it is impossible to assess exactly how luxurious and upscale these new options are. If they contain the same amenities as the high-end student rental housing, then it is fair to say that the projects violate the draft LRDP's stated goals, including: "Goal 5.1: Ensure the highest and best use of campus land to serve UC Berkeley's mission," and "Goal 5.2: Plan every new project – including renovations, additions, and new construction – to support optimal investment of resources, meet space needs, address deferred maintenance, and reduce seismic risk." Put simply, if the student housing shortage is as acute as the Lead Agency says it is, particularly amongst disadvantaged students, then the highest and best use of land would favor the construction of more dense, lower-cost housing. Because cost is the primary driver, that housing need not – as the draft LRDP contemplates – be in the most expensive and dense real estate, namely near the campus park. While we are not allowed to, as part of the CEQA process, substitute our judgement for that of the UC Regents, it is entirely appropriate to comment on the inconsistency between the LDRP goal and the LDRP plan and the disingenuousness of the proffered reason for embarking on such large-scale and impactful housing projects (namely that they are really to provide more housing, not raise more money; and to serve disadvantaged and/other diverse student populations).

2.2.4 Need Idea of Size of New Apartment and Other Units

So that the public can examine the reasonableness of its Projects, the Lead Agency should supply unit and room sizes and features. While not all planning is complete, UCB and/or the Lead Agency should be able to supply the estimates or size assumptions that were used to develop the total figures supplied in the tables describing the size of each project and/or (with respect to the LRDP) its component housing parts.

[87] https://regents.universityofcalifornia.edu/regmeet/nov20/s1attach.pdf

[88] Many transfer students, for example, have demonstrated cost consciousness. Currently the sixth floor of Maximino Martinez Commons is now exclusively reserved to house transfers, including a transfer specialist RA.

2.2.5 Impossible to Assess Environmental Harm to "Area" Under CEQA When New Users May Be Elsewhere

It seems almost too obvious to mention, but when the public is informed that there will be almost 8500 students added but are not provided with information as to where those students will primarily be studying and, if they are not living within walking distance of those facilities, how they will get to and from their residences to the places of instruction, it is quite impossible to conclude that (a) Berkeley is the only "area" impacted by the increased enrollment or (b) assess the degree of impact the increased student population will have in Berkeley. By way of example, the students who will be living, taking classes and studying at Mills College under the newly announced Freshmen college-within-a-college program may have no impact at all on the environment in Berkeley but may have an impact on the Mills College area. Likewise, if the 10,000 new users of the Berkeley Global Campus will be commuting back and forth to LBL on a regular basis, they will have an environmental impact on Berkeley not captured in either the DEIR or any DEIR/EIR associated with the BGC project.

2.2.6 Cumulative Effects Cannot Be Property Assessed by Segmented Approach

Given the failure to provide complete and comprehensive information concerning the three projects (including specifically Projects 1 and 2), the DEIR fails to satisfy the requirements of CEQA and assorted implementing regulations, including but not limited to understating the cumulative impact of the proposed projects and mis-describing or failing to properly describe legitimate, reasonable alternatives.

Likewise, the DEIR fails to discuss sufficiently the cumulative effects of these three projects in light of the other pending projects listed in Table 5-3 (shown above). The DEIR claims that the environmental impacts of the Projects have been considered together with the environmental effects of the projects listed in Table 5-3. DEIR at 5.14. The conclusion is hardly surprising: the cumulative impacts of the Projects and the Table 5-3 projects are likely to occur. *Id.* As to noise, the DEIR's conclusion as to its "cumulative" analysis is directed only to traffic noise and are limited to the following statement: "Noise: The traffic noise levels are based on cumulative traffic conditions that take into account cumulative development in the region." *Id.* There is no discussion in the DEIR of the cumulative impact of construction noise and vibrations from all of these projects (those in the draft LRDP and presented on Table 5-3) on sensitive populations. The observation as to the "cumulative" effect on housing is equally opaque and evasive: "Population and Housing: Impacts from cumulative growth are considered in the context of their consistency with regional growth projections." Needless to say, as noted below that conclusion is hardly sufficient to satisfy the requirements of a fulsome CEQA review. The cumulative impacts of the collective projects being undertaken by UCB, namely those mentioned in the draft LRDP, Projects 1 and 2, described in Table 5-2, and described herein should be addressed in any final EIR.

2.2.7 Specific Sites Outside Berkeley that Should Have Been Considered in LRDP and DEIR

2.2.7.1 Moffett Field

The Lead Agency's failure to include its plans for Moffett Field illuminates the degree to which the draft proposed LRDP and DEIR fail to incorporate the true geographic reach of UCB's development plans and opportunities, thereby undermining the legitimacy of the LRDP and DEIR.

From September 2003 to July 2016, UC managed a contract valued at more than $330 million to establish and operate a University Affiliated Research Center (UARC). In 2020, UCB announced that:

> the Berkeley campus is pursuing a possible development of a 36-acre parcel at Moffett Field, home of the NASA Ames Research Center. In the fall semester, a faculty steering group evaluated the academic opportunity for Berkeley at this Silicon Valley site and found the effort to have extraordinary potential. This spring, UC Berkeley negotiated the terms of a ground lease with NASA and built a public-private coalition that would finance construction at the site without deploying University funding. Despite substantial economic concerns from COVID-19, our development partners, with whom the campus will form a joint venture, view this project on a multi-decadal timescale and remain enthusiastic about the opportunity and their own capacity to execute the project even through an economic downturn.[89]

According to the Daily Cal, "The new partnership [between UCB and NASA] would grant an allotted 1.4 million square feet and 36.2 acres for development, which could be used to host

[89] https://evcp.berkeley.edu/special-faculty-advisor-provost-moffett-field-director-aerospace-program-development-2020 ; and https://regents.universityofcalifornia.edu/regmeet/july19/f7.pdf

Space for new laboratories and teaching spaces in collaboration with local industry as well as additional housing units."[90]

[90] https://www.dailycal.org/2019/08/16/uc-berkeley-proposes-development-of-moffett-field-with-nasas-ames-research-center/; see also, https://www.dailycal.org/2019/09/01/uc-berkeley-chancellor-talks-housing-diversity-ranking-for-upcoming-year/ (Chancellor discusses plans for Moffett Field).

Further details of this project were provided by UC's president in her 2019 summary of the plan to the Capital Strategies Committee of the UC Regents:

> The project is located at the NASA Ames Research Center (NASA Ames) adjacent to the cities of Mountain View and Sunnyvale, California. UC Berkeley would take the lead role to explore and realize the potential for the sustainable and strategic development of approximately 1.4 million square feet for research and development, academic, clinical, housing, and retail uses, on up to 36.2 acres of land ground leased from NASA (Project). To accomplish this, UC Berkeley will coordinate the programming of the site and partner with a master developer, selected through a competitive process, to manage construction and secure capital investment to pay for the Project.

https://regents.universityofcalifornia.edu/regmeet/july19/f7.pdf. Specifically, UC's President described the details of this project to the Regents' Capital Strategies Committee as follows:

> ***Research & Development Industry Park***
>
> Approximately 500,000 to 800,000 gross square feet (GSF) are envisioned to be dedicated to research and development and incubator uses by private industry partners with mission alignment to NASA and UC Berkeley.
>
> ***Academic Space***
>
> 100,000 to 300,000 GSF of laboratory, teaching, and research space serving multiple programs at UC Berkeley and other UC campuses, including University Extension, engineering, business, law, executive education, and live-in experiential learning.
>
> ***Housing***
>
> Approximately 200 multi-family units programmed to service undergraduate and graduate students, faculty, staff, and industry partner employees.
>
> ***Medical Office***
>
> Approximately 100,000 GSF of medical/clinical uses by UCSF and potentially UC Berkeley Optometry.
>
> ***Short-Term Stay and Conference Center***
>
> Approximately 75,000 GSF of short-term lodging for visiting advisors, professors, and industry partner employees plus conference space to facilitate events, panel discussions, and presentation of research findings.
>
> ***Retail and Public Spaces***
>
> 10,000 to 50,000 GSF of ground floor retail and public space dedicated to amenities and community-serving storefronts.

Developer Selection Process

The Project will utilize a competitive developer selection process in order to identify a master developer with the highest likelihood of successfully executing the site planning, site infrastructure development, tenanting the planned spaces, and securing the capital necessary to develop the Project. The selected master developer will possess appropriate financial capacity, development capability, and historical project track record to execute an undertaking of this magnitude and complexity. UC Berkeley and the master developer may subsequently conduct competitive selection processes to identify sub-developers to construct the vertical improvements based on tenanting opportunities. The Project is subject to an accelerated timeline as NASA's lease authority expires on December 31, 2019. Following that date, barring extensions, NASA does not have the statutory authority to enter into a ground lease at the site.

Ownership and Financing Structure

While details of the ownership and financing structure will be worked out as discussions with the master developer occur, the University will likely enter into a joint venture with the master developer in order to ground lease land owned by NASA, either as a whole development or as individual parcels. The joint venture will plan and construct site infrastructure, and potentially improvements, using developer-sourced equity and debt. Ownership of site improvements will reside with the joint venture for the duration of the ground lease or ground leases. The campus will have programmatic and/or governance controls. Following site development, the joint venture may sell or assign its leased fee interest to sub-developers, who will build and own the vertical assets for the duration of the sub-ground lease. The campus will have financial obligations limited to University-occupied space. The campus anticipates returning to the Regents for joint venture, business terms, and preliminary land use and design presentation in fall of 2019. Additional Regental approval will be sought in accordance with CEQA later in the development process.

Anticipated Project Schedule and Future Actions

Key Milestones
Master Developer Selection Process Summer 2019
Business Terms Presented to Regents Fall 2019
California Environmental Quality Act (CEQA) Completed Design Presented to Regents Spring 2022
Commencement of Construction Spring/Summer 2022 Project Completion To be Determined

https://regents.universityofcalifornia.edu/regmeet/july19/f7.pdf

In October 2020, UCB announced that it was executing a ground lease for the project -- "36 acres of land owned by the Federal government and managed by NASA to develop up to 1.4 million

sq.ft. of commercial, educational, residential, and ancillary lodging and retail."[91] The announcement was made under the "common sense exception" to CEQA. While the signing of the ground lease itself may have been CEQA exempt, the fact that UCB had proceeded as far as executing a ground lease, hiring a project manager, creating a schedule for future development and propounding an individual DEIR, and dedicating funds to the project necessitated including it in the LRDP. After all, UCB undertook almost the exact same steps for project that are included in the LRDP!

The Lead Agency offers no explanation in its LRDP why it circumscribed the definition of the Project to limit the geographic reach of the LRDP in the manner proposed. Given that the Lead Agency is contemplating developing, among other things, 100,000 to 300,000 GSF of laboratory, teaching, and research space serving primarily UC Berkeley together with 200 multi-family units programmed to service UCB undergraduate and graduate students, faculty, staff, it is hard to see how excluding this development project from the DEIR is reasonable. Indeed, the acuity of the need to demolish national landmarks in Berkeley to build classrooms, commercial space, and housing can only be properly assessed by evaluating the available alternatives including the very real alternative offered by Moffett Field. If, for some reason, UCB students, faculty and staff will not be permitted to utilize the planned development at Moffett Field, that decision too must be fully explained and justified given the magnitude of the proposed demolition and construction slated to occur in Berkeley under the proposed LRDP.

By leaving out significant areas accessible to UCB for development and planning purposes, the Lead Agency improperly constrains the analysis and information provided in the DEIR. This omission must be corrected in the Final EIR.

2.2.7.2 Berkeley Global Campus (f/k/a Richmond Field Station)

Another parcel of land owned and utilized presently by UCB that was inexplicably and wrongfully omitted by the Lead Agency in the LRDP and DEIR was the Richmond Field Station (RFS). This parcel comprises approximately 150 acres in a primarily industrial area in Richmond, CA. The property is comprised of upland areas and offshore areas. The offshore area consists of an inner and outer portion of the Western Stege Marsh. The outer portion of the Western Stege Marsh is located south of the East Bay Regional Parks District (EBRPD) Bay Trail and includes approximately 60 acres of tidal mud flat, marsh, and open water. The upland area is located north of the Western Stege Marsh and occupies approximately 90 acres. Interstate 580 bounds RFS to the north.

[91] https://files.ceqanet.opr.ca.gov/265740-2/attachment/mHjiVCR5PjK- aMdeUFKVHYQD6qG_RfCQTh3BIBRK_2wdFOMqAy9xjPAsp_YkLu1lGCi7m-Mj4VOHUQYG0

UCB currently uses RFS to house UCB offices and research facilities. According to 2008 report prepared by the California Department of Public Health, approximately 400 people work in different departments at RFS, consisting of academics, researchers, laboratory staff, students, maintenance workers, security staff, and administrative staff.[92] Approximately 50 people work at the EPA laboratory.[93]

Because of past industrial and research uses, the RFS was deemed contaminated and extensive studies and remediation efforts were undertaken beginning roughly in the 1990s up to the present day.[94] The California Department of Public Health concluded in 2008 that walking on the ground

[92] ttps://rfs-env.berkeley.edu/sites/default/files/publications/2010.3.17.rfscdphpharevisedfin.pdf
[93] *Id.*
[94] https://rfs-env.berkeley.edu/sites/default/files/2018.07.02.rfsworkingattherichmondfieldstation.pdf (overview of history of site)

at RFS would not pose a health danger.[95] UCB has continued to clean up and monitor the site for carcinogens.[96]

In 2014, after almost 15 years of clean-up efforts had been underway and further remediation plans developed,[97] UC Berkeley Chancellor Nicholas Dirks developed plans for the Berkeley Global Campus at Richmond Bay (BGC). His vision was to create a global campus and "living laboratory" in partnership with other great universities from around the world, as well as with private industry and the local Richmond community.

In May 2014, the Lead Agency approved a separate LRDP for the RFS for use primarily to supplement and enhance LBL[98], and Chancellor Dirks unveiled the plan to the Academic Senate in October. As described in the 2014 LRDP:

> The achievement of the scientific and community visions for the Richmond Bay Campus will result in growth of research programs, population, and occupied space. **The average daily population at the campus is projected to grow from 300 in 2013 to 10,000 by 2050.**

This population increase of 9,700 represents an average annual growth rate of 9.9 percent over that time period. The on-site population will include research scientists, faculty, and staff from LBNL and UC Berkeley as well as other public and private entities; graduate and post-doctoral students; undergraduate students and interns; administrative staff; and operational staff.

---

[95] *Id.*

[96] https://rfs-env.berkeley.edu; https://rfs-env.berkeley.edu/remediation/documents

[97] https://capitalstrategies.berkeley.edu/sites/default/files/pep_final_rbc_lrdp_complete.pdf (describing environmental clean-up and remediation plans)

[98] https://capitalstrategies.berkeley.edu/sites/default/files/pep_final_rbc_lrdp_complete.pdf;5 https://rfs- env.berkeley .edu/sites/default/files/2018.07.02.rfsworkingattherichmondfieldstation.pdf; see also https://globalengagement.berkeley.edu..

The projected net increase in occupied building area at the Richmond Bay Campus is 4,350,000 gross square feet (gsf), from 1,050,000 gsf in 2013 to 5,400,000 gsf in 2050. This net growth projection accounts for the demolition of 750,000 gsf of building space that is unsafe or beyond its useful life. The projected annual space growth rate of 4.5% is lower than the projected population growth rate due to the greater amount of underutilized existing space which will be recapitalized or replaced with facilities which support a denser population.[99]

UCB's planning for the site has proceeded as far as detailed designs for the site[100] and in July 2019, the UC Regents Capital Strategies Committee recommended to the Regents that they approve a sewer plan for the BGC for the RFS.

[99] https://capitalstrategies.berkeley.edu/sites/default/files/pep_final_rbc_lrdp_complete.pdf

[100] https://www.integralgroup.com/projects/uc-berkeley-global-campus-richmond-bay-infrastructure-master-plan/; https://www.berkeleyside.com/2010/09/16/lawrence-berkeley-lab-seeks-second-campus; https://richmondstandard.com/beyond-richmond/2015/04/09/new-york-firm-shop-wins-design-ideas-exercise-for- the-berkeley-global-campus-at-richmond-bay/; https://afscme3299.org/media/news/uc-berkeley-envisions-global- campus-in-richmond/; https://www.californiagoldenblogs.com/2014/11/10/7185453/uc-berkeley-aquatic-center- haas-pavilion-global-campus-richmond-bay-lower-sproul-photos; https://enviroinstitute.org/portfolio/berkeley- global-campus-at-richmond-bay/; https://richmondconfidential.org/2012/01/23/richmond-field-station-will-be- second-site-for-lawrence-berkeley-national-labs/; https://meetingoftheminds.org/the-berkeley-global-campus-vision- and-partnership-in-richmond-14077


Rendering: Kevin Daly Architects

Although the 2014 LRDP for the RFS has not yet proceeded to the construction stage, plans to develop the RFS are still very much alive. As noted, the sewer plan was forwarded for approval in 2018 and the Regents added a library storage component to the RFS LRDP that year as well.[101] UCB has from time to time, issued press releases that make it clear that RFS is actively under consideration for re-development[102] although news reports also suggest that these some of these plans have been put on hold.[103] In addition, more recently, UCB's Housing Task Force identified the RFS as a prime candidate for further development for student housing.[104]

Not only does failure to include UCB's complete portfolio of properties render the LRDP incomplete, but failure also to include this property in particular is unreasonable as it represents a reasonable alternative to constructing a 17-story tower on People's park and a large commercial and mixed-use project (Project 1) that will displace multiple families living in rent-controlled units and demolish three landmarked or landmarked qualified properties.

2.2.7.3 Albany-Gill Tract (f/k/a University Village)

For a considerable period, UCB has housed married students and faculty at a facility originally called University Village and now is known as the Albany-Gill Tract. This Tract has been the subject of multiple development plans over the past 20 or so years and was identified recently by UCB's Housing Task Force as a prime location for future housing development. The Lead Agency propounded a "master plan" for the Tract in 2004; and issued a separate EIR for that "plan." Despite these significant planning steps, the tract is not mentioned or described in the draft LRDP.

[101] https://regents.universityofcalifornia.edu/minutes/2018/board%203.15.pdf;https://regents.Universityofcalifornia.edu/regmeet/mar18/f6.pdf
[102] https://vcresearch.berkeley.edu/news/lab-picks-richmond-field-station-second-campus
[103] https://www.berkeleyside.com/2016/08/26/uc-berkeley-suspends-plans-for-richmond-global-campus
[104] https://www.dailycal.org/2017/04/17/campus-task-force-releases-potential-student-housing-survey/

Notwithstanding its size, relation to UCB (i.e., it houses current faculty and students), and the repeated plans to develop it, the Lead Agency does not include it in the LRDP or the DEIR pertaining to the Projects. The failure to include the Albany-Gill Tract from the DEIR is unreasonable given the proximity of that plot to UCB, its current use for student and faculty housing, and the fact that UCB's own Housing Task Force identified it as a good location for future housing development. Among other things, its omissions make it appear (wrongly) that the Lead Agency has fewer alternate locations for housing than it in fact has and that its need for housing at the locations of Projects 1 and 2 is more acute than it in fact is.

2.2.7.4 UC Berkeley Changemaker -Oakland New Freshman Campus in Oakland

UCB has long offered UCB students the option to rent dorm space at Mills College. In April 2021 UCB and Mills College's president announced that UCB was opening a new Freshman campus at Mills College, which earlier this year announced that it was going to cease operations.[105] This program is dubbed "UC Berkeley Changemaker -Oakland."[106] According to its website, this new program, which effectively creates a UCB satellite campus-with-a- campus at Mills College, will be available to 200 UCB freshmen in the Fall.

According to this website, this new campus/program will allow UCB freshmen participants to:

- Enroll in a focused set of courses in Oakland with an option to take an additional course on the main UC Berkeley campus.

[105] https://www.mills.edu/news/news-stories/uc-berkeley-changemaker-oakland-program.php
[106] https://changemaker.berkeley.edu/oakland

- Live in a comfortable single-occupancy room on the pastoral campus of Mills College in Oakland; most students will not have a roommate.
- Take advantage of full board on the Mills College campus, plus receive additional meal points on the Berkeley campus.
- Fulfill breadth requirements for the College of Letters and Science and Rausser College of Natural Resources.
- Take classes with smaller groups of students and develop strong relationships with your instructors.
- Join a close-knit and diverse community of only 200 students—think of this as a small liberal-arts college experience within a larger UC campus.
- Receive dedicated academic advising.
- Participate in co-curricular events that highlight arts, culture, activism, history and innovation in the City of Oakland.
- Choose an internship that brings your changemaker project to life.

UCB is promoting this option to freshman via its website:

This innovative residential program takes place on the Mills College campus, located in the heart of Oakland. You'll live and learn there.

Situated on 135 beautiful acres—one of the country's largest liberal-arts campuses in an urban setting—you can pass eucalyptus-lined streams and lush greenery as you head to class or grab a coffee with a new friend.

Imagine what your first year can look like!

Mills Campus comprises 135 acres. Housing is guaranteed. Its student housing options, which as noted have been available to UCB students for quite some time, include traditional residence hall dorms, student apartments, and cooperative housing. Below are photographs of some of the on-campus student housing:

The UCB classes will be small: "In our smaller classes, you'll develop closer relationships with instructors and faculty. You'll gain the confidence to succeed at Berkeley. Finally, the Berkeley Changemaker theme is woven throughout the curriculum, and you'll have plenty of opportunities to explore the links between the classroom and the world beyond." Notably, the draft proposed LRDP and DEIR discuss the need for increased housing as driven by the need to offer incoming freshmen the opportunity to live in UCB campus housing for two years. The Lead Agency even cites studies to suggest that freshmen receive greater benefits living off campus than on. This argument rings hollow given the new Oakland satellite program and campus (and its London Freshman option discussed elsewhere in these comments).

Because the recent announcement of the creation of a satellite campus in Oakland at the Mills College campus site has apparently been in the works for a significant period, the Lead Agency should have included information about it in both the LRDP and the DEIR. Indeed, it is entirely possible that the housing needs addressed by both Projects 1 and 2 are now unnecessary or comparatively less acute, such that the plans for these projects can be materially altered so as to protect the Cultural and historic resources that otherwise would be destroyed. This new campus/program should be discussed in the final EIR and use of Mills College dorms examined to see if the size of Projects 1 and 2 can be reduced in such a way as to minimize the impact on historic and cultural resources.

2.2.7.5 Emeryville Developments

The DEIR Table T 5-3 show two current projects underway in Emeryville, one a housing project the other not. In April 2020, it was reported that two housing developments (called the "Intersection") in Emeryville were being donated to UCB for student housing.[107] These buildings are approximately 3.6 miles from Campus Park. According to the Daily Cal, UCB has decided to

[107] https://www.mercurynews.com/2020/04/27/emeryville-105-unit-apartment-twice-torched-by-arsonists-to-be-donated-to-uc-berkeley-for-student-housing/

use the new housing (depicted below) for graduate students.[108] This would seem at odds with DEIR Table 5-3, which reflects the opposite uses for these two sites.

According to recently released UCB documents, UCB plans to lease and build out property located in Emeryville, CA, for its school of optometry. This plan includes approximately 104 housing units with accommodation for 149 students and apartments for an unspecified number of graduate students as well as 25,000 GSF space for an Optometry Surgery Center, all within approximately 25,000 GSF. Between $2-3.5 Million has already been allocated to this project. It is unclear whether the donation of the "Intersection" property and the plans for the Optometry Center and residence are related. Either way, the Lead Agency should include this project in the final EIR.

2.2.8 Individual College Master Plans

Adding to the public's confusion as to exactly what UCB is planning, now individual colleges have gotten on the planning bandwagon. These individual college masterplans are not discussed in the DEIR. For example, in 2020, UCB's College of Engineering issued its own "Master Plan," complete with land use assessments and projections.[109] As explained on that college's website:

> After an in-depth study that included extensive feedback and discussions with community members and stakeholders, Berkeley Engineering laid out its vision for its future facilities and public spaces in an ambitious master plan. The 2020 Facilities Master Plan will guide

[108] https://www.dailycal.org/2020/02/11/graduate-student-housing-on-border-of-emeryville-oakland-to-be-donated-to-uc-berkeley-upon-completion/
[109] https://engineering.berkeley.edu/wp-content/uploads/2020/06/COEMasterPlan2020-1.pdf

the college in renewing and reinvigorating its physical environment to meet the needs of our growing engineering community and evolving instructional and research programs.

This rendering, looking north, shows the new engineering complex.

Included in the plan's vision, created by architectural design firm Payette, are more welcoming and interactive spaces for learning and discovery. Research facilities will promote collaboration across disciplines. Seismic issues will be addressed. And the open architectural design will foster an inclusive culture that celebrates and leverages diversity to fully unlock our individual and collective potential to benefit society.

The new master plan builds on the 2002 Facilities Master Plan by synthesizing the college's strategic growth projections and programmatic space needs into a framework of flexible planning. This combines building, land-use and landscape design principles to guide capital investment and implementation, while allowing for versatility to meet future programmatic needs.

"Our goal is to create modern spaces for discovery, creativity and innovation," said Tsu-Jae King Liu, dean of engineering. "The master plan provides a roadmap for transforming our neighborhood

Why an individual UCB college is undertaking its own examination of space and classroom needs at the same time as UCB is itself undertaking an LRDP examination is confusing. It is unclear the extent to which the planners involved in the LRDP were involved in and aware of the college's research and plan and, more importantly, whether those plans are evaluated (as they should be) in the DEIR, which must address the environmental impacts of all reasonably anticipated

construction projects. Further, to the extent that College planners evaluated survey responses, that data should have been considered and included with the DEIR.[110]

2.2.9 The DEIR Should All Planned UCB Construction in Berkeley Including Identified Housing Opportunity Sites

Substantial evidence suggests that UCB is undertaking a large number of construction projects that this DEIR does not consider. The Chancellor has announced UCB's intention to build on all of the sites identified by UCB's recent housing task force.[111] It was unreasonable for the Lead Agency not to include these planned-for projects under the circumstances, particularly because the failure to do so necessarily affected the accuracy of CEQA's cumulative impact analysis. It will also allow the public to judge the reasonableness of the Lead Agency's expected conclusion that the demolition of cultural resources is justified by the acute need for additional housing (despite the fact that these new buildings do not offer dense student housing), The two primary housing projects that were not discussed in the DEIR but should have been are the Oxford Tract and the Upper Hearst Development Project.

2.2.9.1 Oxford Tract

UCB plans to develop the remaining areas of the Oxford Tract currently being used for agricultural purposes by constructing a massive 1,145,000 square foot student housing and parking complex.[112] The Housing Task Force Draft report identified the Oxford Tract as a good candidate for development for student housing. Plans to develop it for housing appear to be moving forward as Chancellor Christ issued a letter to impacted faculty announcing in no uncertain terms on that the Oxford Tract would be developed for student housing. See Appendix (letters). UCB actually provides a development timeline for that project. It is specifically listed on Figure 3 of the Heath Assessment Report (DEIR App B at 1029).

[110] See, e.g., the survey results shown in slides at https://engineering.berkeley.edu/wp- content/uploads/files/docs/FacilitiesMasterPlanSurveyResults.pdf

[111] https://www.dailycal.org/2018/05/14/chancellor-carol-christ-announces-campus-will-build-sites-listed-housing-task-force-report/

[112] https://www.berkeleyside.com/2018/04/05/should-uc-berkeleys-oxford-tract-be-developed-for-student-housing

The project is expected to be massive – including approximately 3000 student beds and a large underground parking facility. Notwithstanding that prior efforts to develop that parcel have met with strong University and community opposition, the Lead Agency does not present the plan to develop the site. Rather than set out the details that are underway for the site, the Lead Agency merely lists it as a "possible" site for future development, although as noted previously, plans are beyond the theoretical stage. For example, one report detailing UCB projects for 2019-2021 noted budget allocation pertaining to the Oxford Tract to "Relocate greenhouse and insectary from Oxford Tract to create housing development site."[113]

2.2.9.2 The Upper Hearst Development Project

UCB has solid and developed plans to construct two buildings – a large housing complex and an Academic building – on what is now parking on the corner of LaLoma Avenue and Hearst Avenue. This project – called variously the Upper Hearst Development Project has been thusly described[114]:

> two separate buildings – an academic building and a residential building on top of a rebuilt parking structure – that would be built concurrently by the project developer. The residential building would be up to six-stories constructed on top of a three-story partially subterranean parking structure where the Upper Hearst parking structure and adjacent at-grade Ridge parking lot are now located on La Loma Avenue between Hearst Avenue and Ridge Road. The residential component would consist of up to 150 residential units in a mixture of studio and one- and two-bedroom apartments for campus. The project would reduce the total number of parking spaces on-site from 346 to approximately 175. The

[113] https://www.ucop.edu/capital-planning/resources/berkeley-project-summaries-campus-v.2.pdf

[114] https://files.ceqanet.opr.ca.gov/142694-30/attachment/Eu8O4CXda3t4PjCcPK-K_01iFAHGnu_EM4nB9R_DPXDKR9EpvacTXewhItHrcI55Ys01PlZsTHMASqyb0

building, including the residential units and parking, would be approximately 220,000 gross square feet.

A separate academic building would be constructed immediately east of the existing GSPP building located at 2607 Hearst Avenue. The approximately 37,000 gross square feet of office, classroom, and event space in the academic building would serve several GSPP programs. The academic building would be four stories in height over one subterranean level. The fourth level would provide access to a rooftop terrace and include an event space with a seating capacity of 300 that could accommodate up to 450 people at maximum capacity.[115]

This project appears on DEIR Table 5-3 as a pending project with no date of completion indicated.

A separate LRDP update and DEIR/EIR were prepared for the project but it has stalled due to litigation, including an action brought by the City of Berkeley. It has, however, indicated in maps/figures/exhibits to its draft LRDP, that it has designated this plot for future construction of student housing. The latest illustration of the project released to the public is below; an earlier drawing is shown above.

[115] *Id.*

Given that extensive planning has already occurred for this site and that future construction is planned there, it is unreasonable not to provide additional details as to the nature, scope and even scale of the proposed development.

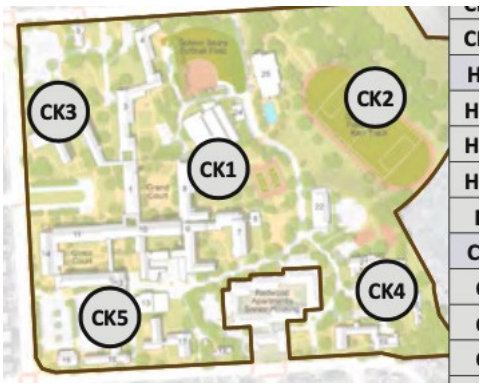
As previously pointed out, the rationale for Projects 1 and 2 and reasonableness of the mitigation proposed for them in the DEIR is largely justified by the Lead Agency on UCB's acute need for additional student housing. If a large number of student housing units are slated to be built during the LRDP period on other non-landmarked locations, the necessity for Projects 1 and 2 would certainly seem to be diminished and their scale – which would necessarily affect their environmental impact – could be substantially reduced as part of the proposed mitigation.

2.2.10 DEIR Should Have Discussed All Planned Development on Clark Kerr Campus

The DEIR discloses that the Lead Agency is planning to conduct extensive demolition and construction on the Clark Kerr Campus. At present, the Clark Kerr Campus is a lovely area characterized by mature landscaping, wide open spaces and low-slung buildings, many of which are landmarked or otherwise culturally and historically important. UCB's past efforts to develop the property met with strong City and neighborhood resistance and ultimately resulted in a written agreement that remains in effect until 2032.

It appears, based on the disclosures in the DEIR, that UCB intends to construct approximately 500,000 square feet of new building space on that campus. (DEIR Table T-3). This new construction will include student housing, parking, and "campus life" facilities. *Id.* Parking will be dramatically increased to over 45,000 sq. feet, which of course suggests increased traffic in an already notorious bad-traffic area (there are frequently bottlenecks around Clark-Kerr's perimeter).

The Lead Agency appears to have divided the planned work in to five mini projects (shown below). Within the Clark Kerr campus the greatest amount of new development will take place in a quadrant it refers to as the "central area," where the current buildings amount to just under 60,000 square feet and the planned construction, when completed will come in at just under 350,000 feet. Essentially increasing the overall building size by a factor of 6. (This central area is denoted by CK1 on the map below, which is excerpted from DEIR Figure 3.3.)



The area denoted as CK2 is reported (in the DEIR) to presently have structures just under 20,000 sq. feet; once developed, the new buildings will have 40,000 sq. feet of "campus life" space. The area denoted as CK3 currently has 1757 sq feet of built space; with the new development the total amount of space constructed will be 53,000 sq feet. CK 4 currently has 17,226 sq feet of building space; once developed according to the LRDP, it will have 200,000 sq feet. Finally, CK5 – the area where UCB presently operates a child development center for infants and small children – 42,106 sq feet of building space will be transformed into 234,000 sq feet through demolition and new construction. Although billed as a "residential" project, the total number of new student beds will be just 2,364 (or one bed for every 212 new square feet of new space).

UCB's agreement with the City of Berkeley and others concerning construction on this property is still in place and will be so until 2032. The DEIR reports the "Horizon Year" of 2036-37 for completion of this massive demolition and construction project on the Clark Kerr Campus.

Therefore, it is reasonable to expect that all of this massive construction work will take place in a very concentrated timeframe, which will have the added problem of concentrating the environmental impacts of these multiple mini projects on the single campus and, assuming the child development center remains, within close proximity to a population (namely infants) that are highly sensitive to noise, vibrations, dust and other toxins that surround construction sites such as these.

BAHA is concerned that the Lead Agency is trying to conceal its plans for converting the picturesque, bucolic campus dotted with landmarks into a characterless cluster of high-rises and parking structures. Our concerns are heighted by the fact that the within a few months of issuing the draft LRDP, the Lead Agency proposed a separate LRDP for a construction and demolition project at the Clark Kerr Campus. That earlier LRDP covered construction of a beach volleyball complex in one area of that campus and demolition of a landmarked structure in another. Significantly, neither of these LRDPs meaningfully discusses the other.

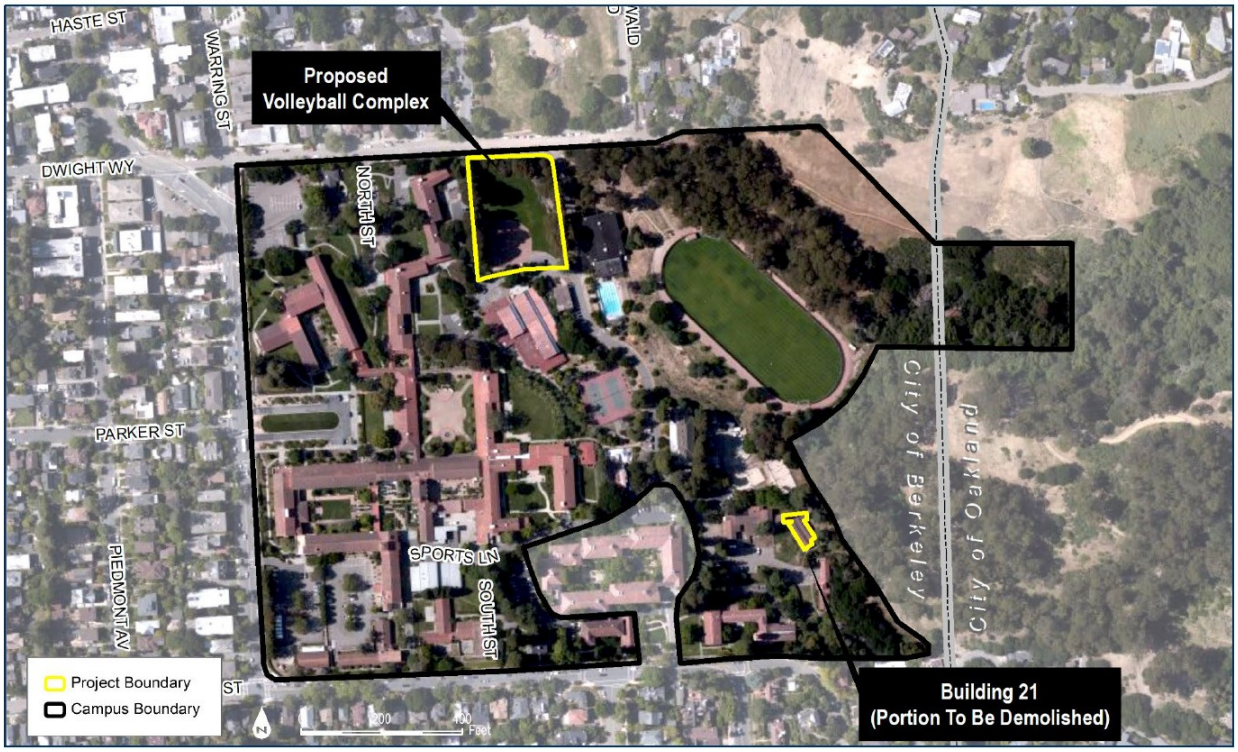
Essentially, the Lead Agency is improperly segmenting their comprehensive plan for the Clark Kerr Campus – a plan that they know is likely to be very controversial – by presenting it in small pieces. That approach is both beneath an agency of such renown and in direct violation of the provisions of the California Education Code and CEQA, which proscribe just this sort of segmentation.

It is also in direct violation of Regent's policy. UC Regents Policy 8103 provides in pertinent part,

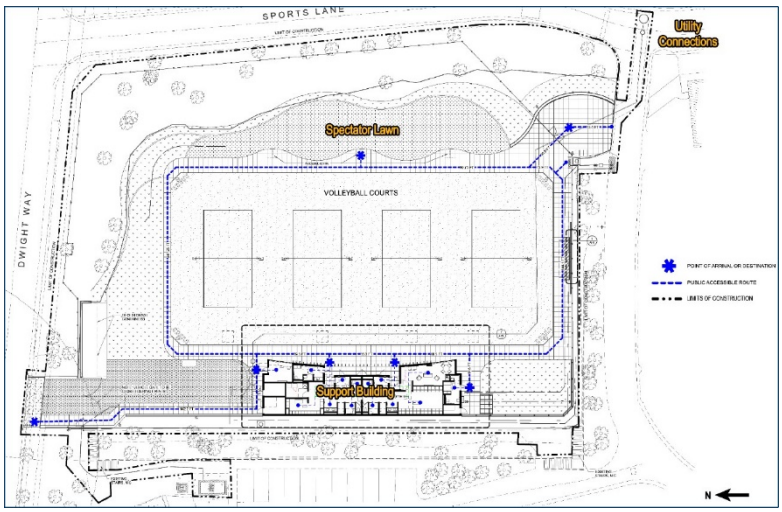
> A project cannot be divided into separate phases for independent consideration. Phased work includes, but is not limited to, using the same contractor to perform similar modifications on multiple buildings, performing multiple projects over a period of years on the same building, constructing multiple buildings in a complex or separating work into several projects."[116]

In this case, separating a single plan into separate phases is precisely what the Lead Agency has proposed. Moreover, in the Volleyball Complex LRDP, it included the plan to demolish a landmarked structure in a completely unrelated part of the campus. The diagrams below show the planned complex and the location of it in relation to the building that the Lead Agency seeks to demolish.

[116] https://regents.universityofcalifornia.edu/governance/policies/8103.html



It is clear from the annotated arial photograph above that the proposed volleyball complex, which is at the North end of the Clark Kerr Campus, is nowhere near the historic structure (Building 21), which is almost literally the opposite end of the site. Because both the construction and the proposed demolition projects are part of a phased plan to re-develop the Clark Kerr Campus, they should have been included in the draft LRDP for UCB, not addressed piecemeal in a separate LRDP and DEIR.



Indeed, the approach of segmenting out the demolition of Building 21 had the inevitable effect of concealing the extent of the Lead Agency's planned demolition of historic and cultural resources on that site and impeding the public's ability to assess the cumulative impact of the proposed demolition of Building 21 with all of the other soon-to-be-demolished buildings. In sum, both the

plan for the sports complex and the plan to demolish Building 21 should not have been presented as a separate LRDP with a separate EIR.

Before it finalizes the EIR for the LRDP project, the Lead Agency should discuss the sports complex plan and all the demolition plans for that campus in detail. The Lead Agency's failure to provide details of its additional construction plans for the Clark Kerr Campus site – which is obliquely referenced in its diagrams of potential future housing development sites – renders the LRDP and the DEIR legally insufficient. Table 3.2 in the Draft LRDP indicates that the Clark Kerr campus is a "high priority" student housing site, and the map on page 40 of that document outlines the entire Clark Kerr Campus as a potential building area.

2.2.11 DEIR Does Not Provide Reasonable Alternatives to Proposed Projects

BAHA's comments about the DEIR's lack of reasonable alternatives applies equally to the context of the massive development surge that is only partly designed to create more student beds. One option is to densify both the existing on-campus housing and to create smaller, denser student housing facilities along the lines of the traditional dorm. Smaller denser housing could yield more beds with a smaller impact on Natural and Cultural and Historic Resources than the proposed projects. Another reasonable alternative is to reduce or eliminate the proposed enrollment increase and thereby reduce the need for such a large number of big construction projects.

The other reasonable alternative discussed throughout this set of comments is to use all available UCB property, not artificially restrict the geographic area available for "redevelopment" and new construction. Further, in discussing these alternatives, the DEIR should include a discussion of both existing, reliable off-campus student housing (such as Mills College) and future plans relating to all such off-campus in the future. For example, it makes no sense to ignore available dorm room capacity at Mills College, which has rented its dorms to UCB students in the past and clearly is prepared to do so in the future. While a Lead Agency is only required to consider "reasonable"' alternatives to the proposed projects, it must those that *are* reasonable.

Another entirely viable alternative is to reduce the size and thus environmental impacts of the proposed student housing is to eliminate commercial areas and luxury features such as work out areas, convenience stores, and commuter/gathering spaces in Projects 1 and 2 and to reduce room sizes in all new student housing units. By removing the extraneous non-housing uses and maximizing the number of housing units that can be built into a student residence (in a dorm room, not apartment configuration), UCB could accommodate more students at a cheaper price, which ultimately is what students generally want[117] and UCB needs. UCB should consider reducing the height and changing the configuration of the Project 2 Buildings so as to reduce the significant impacts on nearby historic and cultural resources while offering the maximum number of student housing units in buildings that are, by height and mass, more suited to the area. The existing recently-constructed student residences on the Anna Head site are – from a height and massing standpoint – more appropriate to the scale of the surrounding neighborhood and would have the

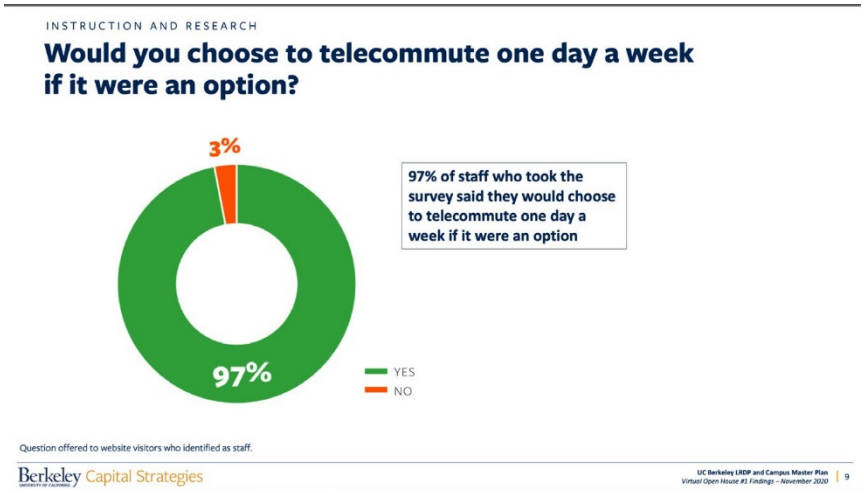
[117] Ike, Nnenna, et al. "Tertiary Students' Housing Priorities: Finding Home Away from Home." *Canadian Journal of Urban Research*, vol. 29, no. 1, 2020, pp. 55–69 (students place a higher value on affordability than luxury amenities such as workout rooms).

advantage of avoiding the deep pile driving that will harm surrounding historic and cultural resources.

Likewise, the footprint of the Project 1 Anchor House should be altered. Notably, when first presented to the Lead Agency, UCB planners assumed that the Anchor House could be built without acquiring the Walnut Street Apartments. UCB should revert to the original residential design that preserved both the Walnut Street apartment building and converted the University Garage into a visitor center and/or student café and meeting area. If the luxury amenity and commercial areas are removed and the housing units made more compact, the same number of students can be housed in a smaller, less massive structure.

Ideally, vacant land, such as the parcel at the North-East Corner of Hearst and Oxford, which is now being used as a parking lot, could be used to construct additional student housing, which would alleviate the need for so many giant buildings that necessitate the destruction of historic resources and are out of scale with the surrounding neighborhoods.

Finally, in light of UCB's recent experience with remote learning during the COVID pandemic, the surveys of UCB students that indicate a preference in remote learning/telecommuting options, and UCBs own recent planning documents that call for expanding remote learning, the failure to consider this option in any meaningful way was unreasonable. As noted in the graphic below, the overwhelming majority of UCB survey respondents indicated an interest in telecommuting. The emphasis on telecommuting (which for students translates to remote learning) in the Master Plan was enthusiastically endorsed by the LRDP survey respondents who overwhelmingly supported increasing telecommuting:[118]



Failure to consider alternate locations, this reasonable option, will render the Lead Agency's decision to proceed on Projects 1 and 2 unreasonable, unsupported, and non-compliant with CEQA.

[118] https://masterplan.berkeley.edu/sites/default/files/2020-11-30_lrdp_cmp_virtual_open_house_summary.pdf

2.2.12 Lead Agency's Rationale for Increasing Freshman Housing Is Unsupported

In the LRDP and related sections of the DEIR, the Lead Agency maintains that it has concluded that all Freshmen should be provided on-campus or near-campus (that is, Berkeley campus) housing. The basis for this conclusion is not provided. Further, that conclusion would seem directly at odds with UCB's programs to direct Freshman to the London campus and, more recently, the Mills College Campus.

Indeed, the Lead Agency has failed to provide actual statistics as to how many incoming Freshman actually require housing – given that, historically, the second largest segment of incoming students live in Alameda County, which suggests that at least some of them may have the option of living at home and some historically have chosen to do so for financial or other reasons.

BAHA finds it odd that, rather than focus on economically challenged students, the Lead Agency has focused on supplying Freshman housing regardless of need and securing comparatively high-end, expensive housing via ground leases and public-private partnerships rather than devote its resources to supporting the neediest students, regardless of their class year.

2.3 Authority for Proposition that UCB Does Not Have to Comply With Local Zoning and Other Ordinances

In the draft Proposed LRDP and the DEIR, the Lead Agency states in most emphatic terms that UCB is empowered to make plans for its use of its real property assets – including real estate it owns and leases in the LRDP area – without regard to local development and other restrictions by virtue of UCB's special status under the state constitution.[119] That "special status," however, is not as unrestricted as the Lead Agency claims.[120] The DEIR fails to demonstrate--through any evidence much less sufficient evidence--that UCB qualifies for these exemptions; moreover, the DEIR shows that, in respect to Projects 1 and 2, it does not.

First, the law is well-settled that to qualify for exemption from local zoning and similar restrictions such as local taxes, fees and rent control restrictions, the state university entity must be executing a project with an academic purpose.[121] The Lead Agency apparently presumes in the DEIR that

---

[119] For example, this special status is what permits UCB, allegedly, to avoid the City's rent control and zoning ordinances. The DEIR presumes and in some cases explicitly states that UCB does not have to abide by such City restrictions.

[120] In *City of Los Angeles v. A.E.C. Los Angeles* (1973) 33 Cal.App.3d 933, the Court of Appeal upheld the application of city business taxes to a state contractor, calculated on the basis of the gross receipts the contractor had obtained from the state. The court in A.E.C. Los Angeles explained that while "local ordinances may not impose a regulatory scheme upon private persons which operates to impinge upon the sovereign power of the state … revenue measures of general application imposing a nondiscriminatory tax upon persons doing business in a state regulated activity or with the state, do not so impinge." (*Id*. at p. 940, citations omitted.) This is so, the court explained, even when the economic burden can be passed on to a "higher governmental unit," thus indirectly affecting its operations. (*Ibid*.) With respect to Project 1, a private entity is designing the Project 1 building and paying for its construction. Although it is donating this building to UCB (as described in its agreements with UC included in the appendix), this private entity is subject to the City's regulatory scheme, including its zoning restrictions.

[121] *City and County of San Francisco v. Regents of University of California*, 7 Cal. 5th 536;

all of its Projects serve an academic purpose because they are being proposed by an academic institution, and the DEIR says as much.[122]

That presumption, however, is unsupported as both a matter of law and a matter of fact. As a matter of law, California courts have previously rebuffed California university efforts to avoid local restrictions in their operation of non-academic buildings such as public parking lots and other property for non-academic purposes.[123] For example, in *Board of Trustees v. City of Los Angeles* (*Board of Trustees*)[124] , the court upheld a municipal permitting requirement as applied to a circus held on CSU property.[125] The court noted the ordinance would affect CSU "only in whatever manner enforcement might affect the revenue production" of the property, which was insufficient to bar the tax under preemption or sovereign immunity principles.[126] In *Oakland Raiders v. City of Berkeley* (*Oakland Raiders*),[127] the court upheld a city gross receipts tax on the Oakland Raiders for professional football games played in California Memorial Stadium at the University of California, Berkeley. The court acknowledged "the University of California is not subject to local regulations with regard to its use or management of the property held by the Regents in public trust."[128] Nonetheless, the court concluded, "[a] tax upon the operation of a business by a lessee of publicly owned property constitutes a tax upon the privilege of performing the business rather than a tax upon the property."[129] More recently in a case involving CSU and UC's refusal to collect city parking taxes in connection with their operation of parking facilities on university property, the California Supreme Court rejected the idea that UC/CSU was entirely exempt from local regulation:

> To the extent CSU or the other universities argue San Francisco's parking tax is impliedly preempted because it imposes an economic burden that threatens interference with the universities' performance of their assigned duties, we have already explained that the law is to the contrary; indirect economic consequences alone are insufficient to invalidate a nondiscriminatory municipal tax on third parties doing business with the state or its agencies.[130]

In that case, *City and County of San Francisco v. Regents of the University of California*, the Supreme Court reasoned that the UC Regents' power is not unlimited: "Here, too, we conclude that the constitutional task before us calls for a sensitive balancing of constitutional interests, rather than a simple invocation of constitutional rank."[131] The Court explained that situations like the presented in the DEIR call for a "pragmatic balancing and factual context in the preemption analysis.[132] Ultimately, the Court held that UC and CSU did not have a blanket exemption by

---

[122] DEIR chapter 3, *passim*
[123] *City and County of San Francisco v. Regents of University of California*, 7 Cal. 5th 536; *Board of Trustees v. City of Los Angeles* (1975) 49 Cal.App.3d 45; *Oakland Raiders v. City of Berkeley* (1976) 65 Cal.App.3d 623 [137 Cal. Rptr. 648] (Oakland Raiders),
[124] *Board of Trustees v. City of Los Angeles* (1975) 49 Cal.App.3d 45.
[125] The UC and CSU systems are covered by the same constitutional and legal provisions relevant here.
[126] *Id.* at p. 49.
[127] *Oakland Raiders v. City of Berkeley* (1976) 65 Cal.App.3d 623 [137 Cal. Rptr. 648] (Oakland Raiders)
[128] *Id.* at p. 626.
[129] *Id.* at p. 627.
[130] *City and County of San Francisco v. Regents of University of California,* 7 Cal. 5th 536, 550.
[131] *Id.*
[132] *Id.*

virtue of the state constitution from following local laws and had to follow the local tax collection requirements:

> For these reasons, we conclude that San Francisco's parking tax collection requirement, as applied to the state universities, does not violate principles of state sovereignty embodied in the California Constitution. The universities maintain the autonomy to manage their property as they wish, and the universities have failed to demonstrate that the minimal burden associated with collecting and remitting the parking tax poses a risk of substantial interference with their ability to carry out their governmental functions. We must, in any event, recall that it is ultimately the people of the State of California who are its "highest sovereign power." (*Oakland Paving Co. v. Hilton* (1886) 69 Cal. 479, 514 [11 P. 3].) The universities exercise those powers granted to them by the people of this state, just as the charter cities exercise those powers granted to them by the people.[133]

These decisions have coincided, not surprisingly, with the UC system's attempts to mine its real estate assets by turning them into money making operations in competition with the private sector.[134] From them, has arisen the litmus test of whether the university has an academic purpose for a given action, project, or refusal to abide by a local requirement.[135] If it does, then the action/project has constitutional exemption; if not, it does not. Thus, to the extent, the proposed project is not for an academic purpose, UCB is not exempt as a matter of law.

As a matter of "fact," the DEIR is clear that neither the structures planned in Project 1 nor those in Project 2 have any academic function. Among other things, the Lead Agency repeatedly and explicitly described these projects as "student housing" projects. The tables in the DEIR list their uses as "residential." The "fine print" in the DEIR for these projects – which are really, in common real estate parlance, real estate "deals" – show that in fact both projects contain sizable commercial components that are intended to be let to the public and, in the case of Project 2, to serve a public purpose to house members of the public and provide space for them to receive special services. Further, in these comments we have demonstrated that by erecting Projects 1 and 2, UCB is essentially joining the fray of commercial developers that have flooded the City of Berkeley to make money serving the increased demand (a demand UCB has caused) for student housing replete with luxury and other amenities. Indeed, even a quick perusal of the websites listed above in the table for the private student housing buildings in Berkeley shows that the schematics and descriptions of Projects 1 and 2 are close in nature and kind to these private developments. Make

---

[133] *Id.* at 559. See also, *Regents of the University of California v. Superior Court,* 17 Cal. 3d 533, 537 (1976) ("investment decisions are not so closely related to its educational decisions at to cloak the former with immunity even if the latter are immune.")

[134] Note, "Autonomy and Accountability: The University of California and the State Constitution," 38 Hastings L. J. 927, 928 (1987)

[135] See *Regents of the University of California v. City of Santa Monica*, 77 Cal.App. 3d 130 (1978) (no need to follow local zoning requirements as planned building was for educational purpose); 72 Ops. Cal. Atty. Gen. 119 (1989) (university pharmacy must follow state pharmacy regulations); 56 Ops. Cal. Atty. Gen. 210, 121 (1985) (University not exempt from zoning when transfer property to private developer). Cf. *City of Malibu v. Santa Monica Mountains Conservancy*, 98 Cal. App. 4th 1379 (2002) (state entity not exempt from local ordinances even though activity and use was to raise money to maintain state property); See authorities cited in https://opr.ca.gov/docs/complete_pzd_2011.pdf; An excellent explanation of the history of the conflict and relevant case law is set forth in, Caitlin M. Scully, "Autonomy and Accountability: The University of California and the State Constitution," 38 Hastings L. J. 5 (1987);

no mistake, the student housing in these Projects is not the low-cost, no frills dorms of old. Project 1 contains substantial commercial space – space that UCB has indicated may/will be rented for a public health club, mini mall or mart, and commercial office use. The project also contains a demonstration kitchen and scullery (!!) and a large event space, which may be open to public use and/or attendance. The paperwork for Project 1, which is provided in the Appendix to this letter, clearly shows that it is framed as a typical real estate deal. These agreements even specify the name of the agent and real estate brokerage company who is to let the commercial space in the building! Project 2 likewise contains commercial space dedicated to a grocery or similar commercial retail operation and other non-academic uses. In sum, the Lead Agency cannot cloak Projects 1 and 2 as academic projects merely because they are being undertaken by an academic institution, when the specifics set forth in the DEIR and other documents clearly show that they are not primarily (or even incidentally) going to be used for an academic purpose.[136] BAHA consequently comments that the Projects, particularly both Projects 1 and 2, fail to conform to applicable local and state restrictions including, but not limited to, zoning ordinances, height restrictions, building codes, and City's rent control ordinance.

Second, UCB (and the UC System on behalf of UCB) acquired many of the Project sites through eminent domain, the Morrill Act, other similar statutes and acts, and expenditure of state resources. It has also received state monies in connection with its operation, which it has expended on these properties. Each type of acquisition and expenditure carries with it some restrictions on use even if that restriction is merely that the use will be by the state entity that is acquiring the property within the scope of its state mandate. The sheer scope of the projects proposed in the draft LRDP and the lack of clarity in the DEIR[137] make it difficult to assess UCB's compliance with the numerous restrictions applicable to each individual "redevelopment" site and the funding that it has earmarked for each construction project.

Nevertheless, two examples are illustrative. The Oxford Tract is the last area within the draft LRDP area – as described in the DEIR – that we understand is associated with UCB's status as a land grant university. As noted elsewhere in this letter, the draft LRDP, the DEIR and multiple public statements by UC administrators make clear that UCB intends to convert the tract's current agricultural use to build student housing and parking. As part of the CEQA EIR process, the public has a right to know – and the Lead Agency should explain – whether UCB legally can convert the use of this tract in this way given the relevant history of this parcel, UCB's acceptance of land grant funds and property, and UCB's acceptance of state funding in connection with its operations. Among other things, how can the public be expected to provide intelligent comments under CEQA on Project 1, which is within a block of the Oxford Tract, if it does not know the likelihood that upwards of 3000 more students will be living in the nearby, soon-to-be-constructed Oxford Tract housing, clogging the roads with cars and contributing to noise, foot traffic and pollution in the

[136] That UCB is mining its real estate assets should not be in doubt. In addition to the numerous items included in the appendix, the minutes of the meetings of the UC Regents, the UC and campus budgets, and various public and private studies concerning the funding of UC's operations demonstrate this. Due to the restrictions on this process and the difficulty accessing original source materials during COVID-19 closures and restrictions, BAHA has not been able to provide all of the evidence supporting its legal and factual positions herewith, but is prepared to do so when these restrictions are lifted (if the Lead Agency dispute them).

[137] For example, it is unclear if UCB is planning to "redevelop" (i.e., demolish) Anna Head School for student housing (as proposed by UCB's Housing Task Force and UCB planners describing the LDRP draft to the public and City officials) or as set out in the DEIR for a combination of academic, campus life and parking.

already dense area? Because the projects are necessarily tied together by purpose, location and timing, the Lead Agency had an obligation to discuss in the DEIR the likelihood that it legally can convert the Oxford Tract to a non-agricultural use.[138]

Similarly, the Anna Head School and Edwards Stadium sites were apparently acquired (as indicated in the DEIR and these comments) at least in part by the state's exercise of eminent domain and related expenditure of funds.[139] These legal processes happened so many years ago that the specifics are buried in UCB archives and public records made inaccessible due to pandemic and other restrictions. BAHA assumes, however, that by proceeding in condemnation (or through the threat of exercising its powers of condemnation) the Lead Agency, UCB or other relevant state actor made representations as to the future uses of those properties. Without access to these materials BAHA cannot now definitively prove (with court-filed documents or other documentary evidence) that these stated uses were not luxury student accommodations with commercial real estate components, but believes that such can be presumed based on both the circumstances at the time, the acquisitions themselves, and the decades of subsequent use of the sites, which was for athletic (in the case of Edwards Stadium) and academic (in the case of the Anna Head School). Whether UCB can now convert both sites to student housing and commercial/retail uses[140] will depend on those long-ago representations. The DEIR does not discuss much less demonstrate by sufficient evidence[141] that the contemplated future uses set forth in the DEIR for these sites are consistent with the legal restrictions imposed by the manner of their original acquisition.

Likewise, the DEIR does not discuss or explain the basis upon which UCB recently acquired the 1921 Walnut property, moved to evict its existing tenants, and effectively gave a non-public entity rights to demolish, construct and operate new buildings on that UCB property in conjunction with Project 1 without complying first with CEQA and other applicable state and local laws, the Lead Agency's own procedures, and the scope of powers to expend UC funds and enter agreements delegated to the relevant parties. Put simply, as described by the DEIR, UCB put the proverbial cart-before-the-horse. Its acquisition of the 1921 Walnut property, eviction of its tenants and execution of the agreements contained in our Appendices each constitute substantial steps that required that the CEQA EIR process be complete, which it was not. The cost of the acquisition likely also triggered other policies and procedures of the UC Regents, including monetary caps on its delegation of authority to UC administrators.[142] Insofar as the DEIR documents this sequence

[138] Notably, when a BAHA member sought access to UCB archives to research the restrictions on this and other parcels, she was informed that the archives (including those normally available to the public at Bancroft Library) were not accessible due to COVID-19 related restrictions. That member is prepared to executed a sworn declaration to this effect and provide documentation if necessary to prove this fact.

[139] *Id.* To the extent the Anna Head School was acquired through another means such as a forced sale upon threat of eminent domain or out-right purchase through expenditure of state (UCB or UC) funds, restrictions would still apply to use of the property. It could not, for example, have been made available to a non-UCB affiliated third-party for their own exclusive use and enjoyment. As to the Edwards Stadium site and nearby UCB-owned parcels, existing private residences and businesses were demolished to make way for the new sports complex and related structures.

[140] UCB Alumni have been led to believe that Edwards Stadium is slated to be converted to student housing with a large commercial retail component. Such a plan would be consistent with both Projects 1 and 2, and UCB's stated plans to make student housing "pay for itself."

[141] In the DEIR the Lead Agency makes only the breezy statement (without citation or explanation) that it has the absolute unrestricted right to do what it wants with its property.

[142] This is where UCB's pandemic-related failure to produce requested documents is so pernicious. The propriety of expenditure of UC funds for the acquisition of property – such as the 1921 Apartments for Project 1 – can only be examined for compliance with (and conformity to) UC Regent's policies relating to real estate acquisitions and

of events, it demonstrates that the Lead Agency failed to comply with CEQA in connection with Project 1.

BAHA, therefore, comments that the DEIR has failed to satisfy the requirements of CEQA. It further respectfully requests that (a) the Lead Agency provide additional evidence to support its statements in the DEIR that the Projects are entitled to the claimed exemptions, including exemptions from City's zoning, building, and rent control ordinances as to the Projects (particularly Projects 1 and 2); (b) discuss the specifics as to how UCB or other relevant state educational institution obtained the sites now sought to be developed or redeveloped, including any affirmative representations made by UCB or other state actor as to the use planned for that site; and (c) UCB provide BAHA and other members of the public access to the relevant materials concerning these sites and the circumstances of their acquisition and subsequent use. Finally, we ask that the Lead Agency's response to the BAHA's comments be made specific to the individual comments made in this section and address as to each proposed redevelopment/development encompassed by the Projects and DEIR, the specifics as to any purported academic use, including evidence thereof.

2.4 BAHA's Questions

In conjunction with issuing its final EIR, the Lead Agency should answer the following questions (Note: UCB as referred to herein includes all properties and sites owned or leased by UCB or a UC entity for the use of UCB students or to which UCB students, faculty, staff or researchers have access by virtue of an agreement between the property owner or operator and the Lead Agency or one of its constituent parts such as UCB; "you" and "your" refers to the Lead Agency and any of their agents or designees including UCB planning staff):

Question 2.1: How many student housing units are currently available to UCB students at each UCB provided housing locations? Please identify each residence location by address and number of units.

Question 2.2: To the extent not provided in response to the previous question, please provide data identifying how many UCB students presently live-in student housing for which UCB has secured ground leases. Please identify each residence location by address and number of units.

Question 2.3: To the extent not provided in response to the prior question, please provide data identifying how many UCB students are expected to live in additional student housing for which UCB either has a lease presently, is in negotiations to obtain a lease, or has plans to lease and where no students are living presently. For each such property, please provide the name, expected move in date(s), number of housing units, and location.

Question 2.4: To the extent not provided in response to the prior questions, please provide data identifying how many Mills College dorm rooms are available presently to UCB

operations and the scope of delegation of powers and duties (i.e., level of purchasing authority) if those documents are produced. They were asked for but not produced, thereby limiting our (and other members of the public's) ability to comment fully on the proposed Projects.

students and please also provide data as to how many UCB students presently live-in dorms at Mills College.

Question 2.5: To the extent not provided in response to prior questions, please provide data identifying how many Mills College dorm rooms will be available to UCB students (either by students' direct arrangement with Mills College or under the auspices of any agreements between Mills College and UCB) during the term of the proposed LRDP.

Question: 2.6 If the number of UCB students projected to reside in dorms on the Mills College campus during the term of the LRDP is not identical to the number(s) provided in response to Question 2.5, please provide projected figures and explain why they are different from those in response to that prior question.

Question 2.7: Please describe and provide all relevant documentation of any agreements with Mills College concerning the use of Mills College facilities (including classrooms and/or dorm facilities).

Question 2.8: Where are currently available UCB student housing facilities located? Please include the property address and number of total units and beds, the maximum number of students who can be housed at that location, the size of the units, and the cost (if any) for accommodation in that building?

Question 2:9: For each location identified in response to the prior question, please provide the nature of the arrangement (i.e., ownership, master lease etc.) and, for properties not owned outright, what is the expected duration of the lease or other arrangement, and the renewal period provided for in any written agreement pertaining thereto.

> **Question 2.9.1: How many master leases have been entered to secure housing for UCB undergraduate students and/or graduate students?**
>
> **Question 2.9.2: How many master leases have been entered to secure housing for UCB faculty or staff?**
>
> **Question 2.9.3: How many master leases for student housing are currently in the process of being negotiated?**
>
> **Question 2.9.3: How many master leases for faculty and/or staff housing are currently in the process of being negotiated?**
>
> **Question 2.9.4: Does UCB have plans to secure more student housing via the master leasing process other than what has already been identified in response to the prior questions?**

Question 2:10: What is the current census of students living in UCB housing in the LRDP area as defined in the LRDP and DEIR?

Question: 2.11: What is the current census of students living in UCB housing outside the LRDP area as it is presently defined in the LRDP and DEIR?

Question 2.12: What steps, if any, have been taken to evaluate the properties identified as CE 1 through 15 on LRDP figure 3.3 for future development? What is the nature of that planned development?

Question 2.13: For each property identified in response to the prior question, what steps have been taken, what consultants, if any, have been engaged to evaluate the property, any buildings thereon, or potential development of the site? Please provide contractor(s) name(s) and dates of service and any draft or final work product prepared by any such consultants.

Question 2.14: For each site identified on LRDP Figure 3.3 with a CE prefix (i.e., CE 1-16), how many student housing units currently exist on the site and how many housing units are anticipated to be added or developed on that site?

Question 2.15: For each site identified on the LRDP Figure 3.3 with a CE prefix, what is the primary use of the site presently and what UCB departments, units, or other groups occupy space there?

Question 2.16: What steps, if any, have been taken to evaluate the properties identified with a CK preface on LRDP figure 3.3 for future development?

Question 2.17: For each property identified in response to the prior question, what steps have been taken, what consultants, if any, have been engaged to evaluate the property, any buildings thereon, or potential development of the site? Please provide contractor(s) name(s) and dates of service and any draft or final work product prepared by any such consultants.

Question 2.18: For each site identified on LRDP Figure 3.3 with a CK prefix (i.e., CK1), how many student housing units currently exist on the site and how many housing units are anticipated to be added or developed on that site?

Question 2.19: For each site identified on the LRDP Figure 3.3 with a CK prefix, what is the primary use of the site presently and what UCB departments, units, or other groups occupy space there?

Question 2.20: What are the total number of anticipated housing units that UCB plans for the Clark Kerr Campus?

Question 2.21: What is the current status of planning for the leased Moffett Field property?

Question 2.21: What, if any, UCB activity is conducted or located at Moffett Field currently?

Question 2.22: What is the planning timeline for the Moffett Field site?

Question 2.23: How many housing units is UCB considering or does UCB anticipate developing at Moffett Field and for what categories of UCB affiliates (i.e., graduate students, faculty etc.)?

Question 2.24: What is the current status of the Berkeley Global Campus Project?

Question 2.25: What is the timeline for the development at the Berkeley Global Complex (a/k/a the Richmond Field Station)?

Question 2.26: Does UCB anticipate housing any of the estimated 10,000 new users of the Berkeley Global Campus and, if so, where will they house them?

Question 2.27: Will any of the faculty or staff that are anticipated being hired as part of the proposed Draft LRDP work primarily at the Berkeley Global Campus?

Question 2.28: Does UCB expect that any of the faculty, staff, or students affiliated with the Berkeley Global Campus will commute on a regular basis to Berkeley? If so, how many and how often?

Question 2.29: What is the current status of the University Village (a/k/a Albany Gill Tract) project?

Question 2.30: What is the timeline for the planned development at University Village?

Question 2.31: Is the current plan for additional housing at University Village still in line with the number of housing units provided for in the LRDP (or amended LRDP) previously propounded for that project?

Question 2.32: What is the current status of the Upper Hearst Development Project?

Question 2.33: What is the timeline for developing and/or executing on the Upper Hearst Developing Project?

Question 2.34: if the Upper Hearst Development Project is proceeding, how many housing units (by student beds and separate) will be created?

Question 2.35: What is the current status of the Oxford Tract Project? Question 2.36: What is the timeline for developing the Oxford Tract?

Question 2.37: What steps to date have been taken towards developing the Oxford Tract?

Question 2.38: How many students will be housed in that new project and what will the anticipated room size be?

Question 2.39: What monies has UCB received from the state that supports its purported continued exemption from local zoning and other laws as asserted in DEIR Section 3? Please provide an accounting or details concerning the last 5 years of such payment or monie.

Question 2.40: What reports, memos or other documents support your contention that UCB is exempt from local zoning and other regulations and ordinances? If you have such materials, please provide them.

IMPACTS ON CULTURAL, TRIBAL, AND HISTORIC RESOURCES

3 DEIR Omits Impacted Cultural & Historic Resources, Misdescribes Resources It Does Identify, Improperly Minimizes Impacts on Cultural Resources, and Provides Legally Insufficient Alternatives and Minimization Proposals

3.1 DEIR Discussion

The DEIR discusses that collectively the proposed "redevelopment" set out in the Projects will result in the demolition of over 45 buildings that have been landmarked or could be landmarked as well as potentially severe damage to other landmarked structures such as Bernard Maybeck's First Church of Christ Scientist due to the scope and nature of planned nearby construction.



Some of these cultural and historic resources will be destroyed or possibly severely damaged in executing Projects 1 and 2, including (to be demolished) Walter Ratcliff's UC Garage and the Walnut Street Apartments (1921 Walnut)[143] and (possibly severely damaged) Maybeck's First Church of Christ Scientist. Of course, when Project 2 is completed People's Park will be severely impacted insofar as it will no longer exist. As part of its discussion of the draft proposed LRDP, the DEIR provides a map (Figure 3.3) and tables (Table 3-2, 5.4-8, 5.4-9) showing the existing buildings that the university has selected for "redevelopment." According to the notes accompanying Table 3-2, ""Redevelopment" projects would involve the demolition of existing structure and construction of new structures." The list is lengthy and includes such iconic (and landmarked) UCB structures as the Hearst Mining Building, the Greek Theater, and Edwards Stadium; and recognizable ones such as the Cesar Chavez Center and Cory Hall. Two UCB properties associated with early female UCB graduates, the Anna Head School and Smyth-Fernwald house, are also on that list.


[143] To learn more about this building and the people UCB has evicted from their rent controlled apartments visit https://www.save1921walnut.org/about

OTHER BUILDINGS ON THE LRDP DEMOLITION LIST

Edwards Stadium: Named for Colonel George C. Edwards, one of the "Twelve Apostles" from Cal's first graduating class of 1873, who became a math professor the following year and remained at Berkeley for the next four decades. The 22,000-seat stadium is home field for Cal's soccer and track and field teams, and has witnessed dozens of world and American records, including history's first 15 foot pole vault. Added to the National Register of Historic Places in 1993.

Hearst Mining Memorial Building: Designed by John Galen Howard and financed by Phoebe Apperson Hearst as a memorial to her husband George, "a plain honest man and good miner," silver tycoon, and U.S. senator. The building underwent a massive restoration, completed in 2002, that included cutting-edge seismic retrofitting to protect the building in the event of a major earthquake. In addition to its meticulously restored vaulted entrance gallery, elegant, sculptured windows, and grand marble staircase, the building houses new laboratories for advanced experiments in computation, ceramics, metals, and polymers, as well as facilities to develop nanoscale and superconducting materials. Added to the National Register of Historic Places in 1982.

The Cesar E. Chavez Student Center:
Named in honor of the charismatic founding president of the farm workers' union. The building was once mainly a dining commons and lounge, but in 1990 it was renovated to house various student services.

Cory Hall: Named for Clarence L. Cory, dean of the College of Mechanics and a faculty member for almost 40 years, Cory had a fifth floor added in 1985, the exterior of which features a computer chip-inspired design motif. The building houses a state-of-the-art electronic micro- fabrication facility and labs devoted to integrated circuits, lasers, and robotics. Cory has the dubious distinction of being the only site bombed twice by "Unabomber" Theodore Kaczynski in the 1980s.

TABLE 5.4-8 DESIGNATED HISTORIC RESOURCES IDENTIFIED AS POTENTIAL AREAS OF REDEVELOPMENT OR RENOVATION

Site ID [a]	Name	Project Type	Historic Status
CP15	Edwards Stadium	Redevelopment	National Register listed, City of Berkeley Landmark
CP17	Haas Pavilion Addition [b]	Redevelopment	City of Berkeley Landmark
CP19	Hearst Mining Memorial Building [b]	Redevelopment	National Register listed, City of Berkeley Landmark
CP31	Wellman Courtyard	Redevelopment	Wellman Hall is listed on the National Register and is a City of Berkeley Landmark; designation may include Wellman Courtyard
HW3	Greek Theatre [b]	Redevelopment	National Register listed, City of Berkeley Landmark
CK1	Clark Kerr – Central	Redevelopment	Site overlaps with National Register District
CK2	Clark Kerr – Hillside	Redevelopment	Site overlaps with National Register District
CK3	Clark Kerr – NW	Redevelopment	Site overlaps with National Register District
CK4	Clark Kerr - SE	Redevelopment	Site overlaps with National Register District
CK5	Clark Kerr – SW	Redevelopment	Site overlaps with National Register District
CE5	Anna Head Complex [b]	Redevelopment	National Register listed, City of Berkeley Landmark
CE13	Housing Project #1	Redevelopment	Site includes City of Berkeley Landmark
CE14	Housing Project #2	Redevelopment	Site includes City of Berkeley Landmark
CP-a	Durant Hall	Renovation	National Register listed, City of Berkeley Landmark
CP-c	Hearst Memorial Gym	Renovation	National Register listed, City of Berkeley Landmark
CP-d	Hilgard Hall	Renovation	National Register listed, City of Berkeley Landmark
CP-g	North Gate Hall	Renovation	National Register listed, City of Berkeley Landmark
CP-i	Sather Tower	Renovation	National Register listed, City of Berkeley Landmark
CP-j	Senior Hall	Renovation	National Register listed, City of Berkeley Landmark
CP-k	South Hall	Renovation	National Register listed, City of Berkeley Landmark
CP-m	University House	Renovation	National Register listed, City of Berkeley Landmark
CP-n	Wellman Hall	Renovation	National Register listed, City of Berkeley Landmark
CE-c	Unit 1 High-Rises/Residence Hall 1	Renovation	City of Berkeley Landmark
CE-d	Unit 2 High-Rises/Residence Hall 2	Renovation	City of Berkeley Landmark

Notes.
a. Site IDs are shown on Figure 3-3, Potential Areas of New Development and Redevelopment, and Figure 3-4, Potential Areas of Renovation, in Chapter 3, Project Description, of this Draft EIR.
b. These potential areas of redevelopment could also include additions and/or renovations.
Source: Architectural Resources Group, November 2020. Historical Resources Technical Report, Long Range Development Plan Update, University of California, Berkeley

TABLE 5.4-9 ELIGIBLE RESOURCES IDENTIFIED AS POTENTIAL REDEVELOPMENT OR RENOVATION PROJECTS

Site ID [a]	Name	Project Type	Historic Status
CP6	Alumni House	Redevelopment	National Register eligible
CP8	Cesar E. Chavez Student Center	Redevelopment	National Register eligible
CP13	Donner Lab	Redevelopment	National Register eligible
CP27	Piedmont Site [b]	Redevelopment	All five buildings found National Register eligible
CP30	Stephens Hall [b]	Redevelopment	National Register eligible
CE13	Unit 3	Redevelopment	Local Landmark eligible
CP-h	Old Art Gallery	Renovation	National Register eligible
CP-o	Zellerbach Hall	Renovation	National Register eligible
HW-c	Stern Hall	Renovation	National Register eligible
CE-1	Smyth-Fernwald (includes Batchelder/Smyth House)	Renovation	California Register eligible

Notes.
a. Site IDs are shown on Figure 3-3, Potential Areas of New Development and Redevelopment, and Figure 3-4, Potential Areas of Renovation, in Chapter 3, Project Description, of this Draft EIR.
b. These potential areas of redevelopment could also include additions and/or renovations.
Sources: Architectural Resources Group, November 2020. Historical Resources Technical Report, Long Range Development Plan Update, University of California, Berkeley; Page & Turnbull, 2020, Old Art Gallery, University of California, Berkeley, Historic Resource Evaluation.

TABLE 5.4-10 POTENTIALLY ELIGIBLE RESOURCES IDENTIFIED AS POTENTIAL REDEVELOPMENT OR RENOVATION PROJECTS

Site ID [a]	Name	Project Type	Historic Status
CP7	Bechtel Addition [b]	Redevelopment	Likely eligible
CP12	Davis Hall	Redevelopment	Likely eligible
CP20	Hesse/O'Brien Halls	Redevelopment	Hesse: Potentially eligible O'Brien: Not eligible
CP22	Anthropology and Art Practice	Redevelopment	Potentially eligible
CP23	Lewis Hall [b]	Redevelopment	Likely eligible
CP26	Morgan Hall	Redevelopment	Potentially eligible
CP32	Barker Hall	Redevelopment	Potentially eligible
CE4	2111 Bancroft Way	Redevelopment	Potentially eligible
CE8	Channing/Bowditch	Redevelopment	2334 Bowditch: Not eligible 2515 Channing Way: City of Berkeley Structure of Merit Other addresses: Not evaluated
CP-l	Sproul Hall	Renovation	Likely eligible
CE-a	Etcheverry Hall	Renovation	Likely eligible
HW-a	Haas Clubhouse	Renovation	Likely eligible

Notes.
a. Site IDs are shown on Figure 3-3, Potential Areas of New Development and Redevelopment, and Figure 3-4, Potential Areas of Renovation, in Chapter 3, Project Description, of this Draft EIR.
b. These potential areas of redevelopment could also include additions and/or renovations.
Source: Architectural Resources Group, November 2020. Historical Resources Technical Report, Long Range Development Plan Update, University of California, Berkeley

If you tally all of the resources listed above, the total comes to 45 structures; however, these lists are not complete as some entries such as "Housing Project #1" (CE 13) will actually result in the demolition of at least two possibly three landmarked or landmark eligible structures. Project #2 and the Clark Kerr Campus entries similarly cover multiple landmarked structures. BAHA estimates that at least 50 landmarked or landmarked eligible properties have been selected for demolition as part of the Projects.

Not surprisingly, the DEIR concludes as to the LRDP project that it will have significant impacts on cultural and historic resources:

> CUL-1.1: Future development under the proposed LRDP Update S has the potential to permanently impact historic resources by demolishing or renovating historic buildings in a manner that is not in conformance with the Secretary of the Interior's Standards for Rehabilitation.

The first proposed mitigation measure (CUL 1.1a) is the preparation of a report: "[E]engage the services of a professional meeting the Secretary of the Interior's Professional Qualification Standards in Architectural History to complete a historic resource assessment, overseen by the UC Berkeley Physical & Environmental Planning Office," and if the plans are not in conformance with the Secretary of the Interior's Standards for Rehabilitation, the professional shall make recommendations on how to modify the project to bring it into conformity. **Significantly, the DEIR does not commit UCB to follow the professional architectural historian's recommendations.**

The second proposed mitigation measure (CUL 1.1b) is to prepare another report, namely a Historic American Building Survey Level II documentation, but only in cases of substantial adverse changes.

The third proposed mitigation measure (CUL 1.1c) is to offer BAHA and organizations like it scavenging and salvage rights for a period of 30 days in cases where "character defining features" will be removed (which is a nice way of saying the historic building will be demolished). No explanation is provided as to why only 30 days is provided to accomplish potentially planning for and moving a historic building.

The fourth proposed mitigation measure (CUL 1.1d) is to create a pretty picture, namely a "memorial" to the demolished structure or landscape. This measure appears to be a nod to appeasing protesters of the People's Park project.

As discussed below in the comments section, the DEIR also provides mitigation measures in connection with Projects #1 and #2.

Tribal cultural resources, which according to the DEIR may also be impacted, are at least accorded a few more steps in the process of removing and/or destroying them. As the DEIR provides scant information about the likelihood of any such tribal cultural resources being found anywhere within the project areas, it is impossible to assess the adequacy of the mitigation measures, which again are merely procedural protections that offer stakeholders the limited ability to "claim" the physical resources before they are destroyed but offer no protection to sacred sites themselves.

3.2 BAHA Comments

Pursuant to CEQA the Lead Agency must identify all potentially impacted Cultural and Historic Resources. Although it admits that several historic landmarked structures will be significantly impacted by the Projects – including through outright demolition --the Lead Agency (a) fails to identify all impacted cultural and historic resources; (b) mis-categorizes or mis-describes others; (c) offers conflicting information, data and proposed mitigation measures; (d) fails to consider

minor alterations to the Projects that would preserve 100% of the resource without reducing the desired number of student housing units; and (e) proposes ludicrously inadequate mitigation measures. These failures must be corrected before the final EIR is issued.

It is worth noting at the outset that there is some inconsistency with terminology in the UCB materials. In the DEIR, "Cultural Resources" is the section used to describe structures and areas of historic as well as cultural significance and "archeological resources" is the phrase used to refer to historic Native American sites; however, in the Appendices of the DEIR, the phrase "cultural resources" appears to stand in for archeological or Native American resources, and "historic resources" is the phrase that is applied to structures and landscapes of architectural, historic, artistic or other cultural importance.

3.2.1 What Does "Redevelopment" Mean

According to the DEIR, the "redevelopment" as used in the LRDP (and the DEIR) means demolishing existing structures and building new ones in their place: "potential areas of redevelopment are identified on sites where the existing structure would be demolished and a new structure(s) would be constructed in its place." The structures identified for redevelopment are shown on this map:

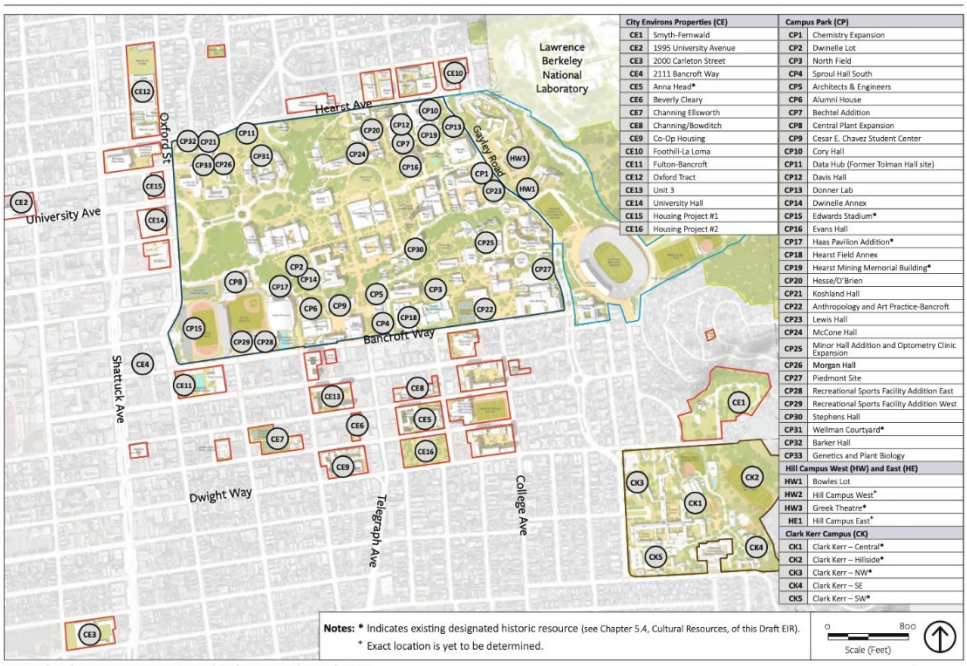


Figure 3-3
Potential Areas of New Development and Redevelopment

The accompanying table (Table 3-2) showing the "redevelopment" properties lists their current size (in square feet) and the estimated size of the replacement structure. There is something strange about these "redevelopment" plans.

Three of the buildings identified as being candidates for redevelopment are particularly Iconic UCB structures-- the Hearst Mining Building, Edwards Stadium, and the Greek Theater—and a

fourth, the Anna Head School, is a unique Berkeley Landmark that is owned by UCB and is in the so-called City Environs. What exactly is planned for these "redevelopment" candidates is unclear.

According to DEIR Table 3-2, the current size of the Hearst Mining Building (shown above left) is 141,461 sq. feet, and it is to be replaced by a building of 144,461. This makes no sense. UCB spent $90 million retrofitting the building in 2002.[144] It is hard to believe that the Lead Agency is really contemplating demolishing a building that was just seismically retrofitted and constructing another in its stead for a mere gain of 3000 feet. This suggests that perhaps UCB is going to create an addition of some kind to the building, not really tear it down. The Greek Theater likewise is slated for "redevelopment" (a/k/a demolition) for a similarly small square foot gain: from its current 11,910 sq. feet to 15,000. Again, such a small increase in space suggests an addition, rather than a full-scale demolition. The proposed new uses for these two sites are identical to the old.

Edwards Stadium and the Anna Head School are similarly designated as "redevelopment" sites, but Table 3-2 seems to tell a different tale. Edwards Stadium is listed as currently 59,326 sq. feet with the replacement structure listed at 281,000 sq. feet. The current use is "campus life, parking"; the future use is "academic life, campus life." This different use and size suggest that complete demolition may well be the fate of Edwards Stadium. Anna Head School seems to have a similar fate. Although the site's present and future uses are identical ("academic life, campus life, and parking" according to Table 3-2), the size differential is considerable: from the present 27,531 to 210,000.[145]

It seems clear that, although "redevelopment" is defined in the LRDP and DEIR as involving the complete demolition of the existing building, that may not be true in some cases (e.g., the Hearst Mining Building and the Greek Theater), but is true in others (Edward Stadium and the Anna Head School). The Lead Agency should clear up this apparent discrepancy. If the Lead Agency indeed does plan to demolish all four of these landmarked and iconic structures, it should state that plainly so that the cumulative impact of losing these cultural and historic resources can be adequately assessed.

---

[144] https://www.berkeley.edu/news/media/releases/2002/09/hearstfacts.html; https://www.berkeley.edu/news/berkeleyan/2002/01/16_herst.html

[145] Notably when the "redevelopment" map was shown to the City of Berkeley, see DEIR App. P. 220, it reflected that student housing was going to be the future use of the Anna Head site (likely to make demolition seem more palatable).

3.2.2 The DEIR Contains No Comprehensive Historic, Tribal or Cultural Resource Survey

Although the DEIR contains a map and list of many of the historic structures in the LRDP area, it does not provide a complete listing or a true resource survey. The last comprehensive campus survey of historic resources that UCB has made publicly available was completed in 1978[146] and did not address UCB properties outside the "core campus." The Lead Agency apparently engaged Page & Turnbull to create a new survey, which they issued in September 2020[147]; however, that survey has apparently not been made publicly available given that it is not accessible via the UCB website nor is it part of the appendices to the DEIR.

In addition, there is no map, table or survey showing likely potential locations of Tribal Resources or potentially sacred sites. This is important information in assessing the adequacy of the DEIR's discussion of them and proposed mitigation measures.

There are also other historic resources that may be of historic and archeological importance. For example, the DEIR does not address the historic resources that may be under People's Park. According to some information in the DEIR, namely 19th Century surveys and maps, such as those for People's Park, there will be relics from Berkeley in the 1870s and possibly earlier on that site. Likewise the site of Edwards Stadium was erected in an area where other early Berkeley buildings stood before being demolished to make way for the stadium. A survey of potentially impacted historic (archeology) resources should be undertaken as well as a discussion of them and a mitigation plan proposed. The DEIR should correct these deficiencies before issuing the final EIR.

3.2.3 The DEIR and Historic Resources Technical Report For the Draft LRDP Are Based Upon Incomplete and Incorrect Information.

Architectural Resources Inc. drafted a Historic Resources Technical Report (HRTR) (DEIR Appendix F1) for the LRDP Project based upon only a partial review of the draft LRDP (namely, only chapter 3) and separate HRTR reports for the other two projects, Projects #1 and #2. See DEIR App. F1 at 1 (describing scope and methodology). Unfortunately, Architectural Resources Inc. never examined records in any of the other local repositories of relevant collections concerning the impacted historic structures and landscapes (including, strangely, UCB's own College of Environmental Design Archives). It apparently relied heavily on an earlier assessment prepared by Page & Turnbull[148] dating from September 2020, which (although reference and relied on) has not been made available to BAHA or apparently to the public.

---

[146] https://capitalstrategies.berkeley.edu/sites/default/files/campushistoricresourcessurvey_1978.pdf

[147] Page & Turnbull, Inc. "University of California, Berkeley Long Range Development Plan and Campus Master Plan, Physical Campus Analysis: Historic Resource Assessment." Prepared for the University of California, Berkeley, September 18, 2020. This resource is referenced in the Architectural Group Inc.'s HRTRs, but a google search and UCB website search did not produce the report. The report should have previously been produced to BAHA pursuant to its prior document requests in connection with these Projects.

[148] BAHA often encounters assessments prepared by Page & Turnbull, as that firm is often engaged by developers and property owners who wish to demolish or substantially alter historic or landmarked properties in the City of Berkeley. On occasion and when deserved, BAHA has mentioned Page & Turnbull's work favorably. As Page & Turnbull Principal Tom Duferrena stated, Page & Turnbull "wasn't necessarily seen as a preservation firm, but people … saw it as a solid design firm " https://page-turnbull.com/wp-content/uploads/PageTurnbullOralHistory_small.pdf

The DEIR does reach the conclusion that multiple cultural and historic resources will be seriously impacted if the plans in the draft LRDP are accomplished:

> CUL-1.1: Future development under the proposed LRDP Update S has the potential to permanently impact historic resources by demolishing or renovating historic buildings in a manner that is not in conformance with the Secretary of the Interior's Standards for Rehabilitation.

As stated above, the DEIR and LRDP are less than clear on exactly what is planned for such sites as the Greek Theater and the Hearst Mining Building. Without further specifics, it is impossible to discuss the proposed LRDP's individual and cumulative impacts on historic resources or evaluate in any meaningful way the DEIR's proposed mitigation measures.

In addition, the HRTR for the LRDP Project does not address the impact of the increased enrollment on UCB's historic and cultural resources. In particular, the proposed increased UCB population and construction and operation of multiple new, large buildings could contribute to GHG and other increased pollution that could impact these resources.[149] Further, the noise and vibration analyses are meaningfully deficient as noted below.[150] Those omissions should be cured before the final EIR is published.

3.2.4 Impacted Resources Omitted or Misdescribed

The DEIR fails to provide a complete and accurate list of the historic and/or cultural resources that will be impacted by the projects. Regarding accuracy and completeness, the DIER and related HRTRs fail to recognize all of the City of Berkeley's Landmark Designations and omit impacted resources on the City's list of landmarks. There are other misdescriptions and errors. In addition, the DEIR's discussions concerning historic and cultural resources fails to include Building 21 on the Clark Kerr campus and other historic and cultural resources that UC's chancellor has made clear will be demolished.[151]

By way of example, the following resources are within the vicinity of Project 1 but are not mentioned in the HRTR:

---

[149] See, Park, Sharon C. "Sustaining Historic Properties in an Era of Climate Change." *APT Bulletin: The Journal of Preservation Technology*, vol. 49, no. 2-3, 2018, pp. 35–44; Brandt, Mark Thompson, and Cory Rouillard. "Climate Chaos and Heritage-Conservation Values: The Urgency for Action." *APT Bulletin: The Journal of Preservation Technology*, vol. 51, no. 1, 2020, pp. 37–48

[150] *Town of Atherton v. Cal. High-Speed Rail Auth.*, 2015 Cal. Super. LEXIS 22985; *May v. City of Milpitas*, 217 Cal. App. 4th 1307, 159 Cal. Rptr. 3d 310, 2013 Cal. App. LEXIS 557, 2013 WL 3725156 (discussing vibration analysis in CEQA EIR context).

[151] https://www.dailycal.org/2018/05/14/chancellor-carol-christ-announces-campus-will-build-sites-listed-housing-task-force-report/

ARCHITECT	TYPE OF LNDMK	NO.	STREET	YR.	NAME
Bertz_ Earle	SHRI AND COB Landmark	1987	Shattuck Avenue	1925	U.S. Realty Company Building
Plachek_ James W.	SHRI AND COB Landmark	2125	University Avenue	1921	Acheson Building
Mohr_ George L.	SHRI AND COB Landmark	2131	University Avenue	1908	Acheson Physicians' Building
Plachek_ James W.	SHRI AND COB Landmark	2139	University Avenue	1915	Sill's Grocery
Anderson_ George	SHRI AND COB Landmark	2154	University Avenue	1911	stores
Ratcliff Jr._ Walter	SHRI AND COB Landmark	1952	Oxford Street	1930	Richfield Oil station
Mohr_ George L.	SHRI AND COB Landmark	1907	Walnut Street	1909	Heywood Apartment Building
	SHRI AND COB Landmark	1925	Walnut Street		
Thomas_John_Hudson	COB Landmark	2136	University Ave	1915	stores

The DEIR also lacks a comprehensive cultural, tribal and historic resource survey, although one was apparently completed last year by Page & Turnbull. That survey should be provided to the public together with any other similar surveys. As it stands, the DEIR not only fails to identify all impacted cultural, tribal, and historic resources, it provides little to no information on the existing conditions at these buildings. Such assessments can now be made not only by visual inspection or costly studies, but through the use of computer technology and modeling.[152]

These errors and omissions, which are evident on even a cursory review of original source materials cited herein and, in these comments, should be corrected before the final EIR is completed. BAHA has numerous relevant files as does UCB in its archives and libraries. In addition, there are numerous websites that can be used to correct the DEIR's errors and omissions.[153]

3.2.5 No Discussion of Impacted Landscapes

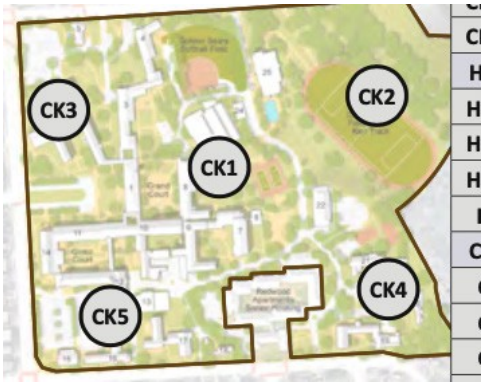
The DEIR provides no analysis or data whatsoever as to impacts on historic landscapes other than People's Park (Project #2). Given the number and size of the buildings proposed in the draft LRDP the impact on historic landscape resources should be addressed. Among other things, walking patterns and foot traffic may increase or decrease in the landscapes depending on the placements of these new structures and their relationship to other new structures.

[152] See, generally, Pearce, Bill. "Taking Technology to the Past." The Military Engineer, vol. 109, no. 711, 2017, pp. 56– 58 (discussing new, cost effective assessment methods for historic resources).

[153] UC Campus Historic Resources that have been designated as City of Berkeley Landmarks can be found here: http://berkeleyheritage.com/berkeley_landmarks/campus.html
Off Campus UC Historic Resources that have been designated as City of Berkeley Landmarks can be found here: http://berkeleyheritage.com/berkeley_landmarks/off-campus.html
Local landmarks can be found here:
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_LPC/COB_Landmarks_updated%20April%202015.pdf
A map may be found here: https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_LPC/COB_LM_update_20160927.pdf

3.2.6 Cumulative Impact on Clark Kerr Campus Ignored

Clark Kerr Campus is home to many landmarked and landmark eligible structures and landscapes. For example, Building 21, which UCB plans to demolish and the DEIR does not discuss, is identified as a contributor to the National Register of Historic Places-listed California School for the Deaf and Blind Historic District, the recordation and designation of which dates to 1982.[154] As the resource is listed on the National Register, it is also listed on the California Register of Historical Resources. Additionally, the CKC campus is a designated City of Berkeley Landmark (Asylum for the Deaf, Dumb and Blind, Landmark #42, 1981).



The DEIR discusses that, pursuant to the draft LRDP additional buildings on that campus will be demolished; however, it does not list the individual buildings. See DEIR Table 5.4-8 (shown above). Instead, as discussed elsewhere in these comments, the DEIR refers only generally to sections of the Campus (reflected in the sector map above). Without more precise information such as building number or name, it is impossible to assess properly the cumulative impact of the planned demolitions on Cultural and Historic Resources.

The DEIR also fails to discuss the proposed demolition that is already underway on that campus. The Lead Agency proposed in August 2020 to demolish a portion of Building 21 rather than retrofit it. This proposal was made in connection with an LRDP issued concerning the construction of a sports complex that is to be used primarily by students of one gender only. By issuing a separate notice of preparation of DEIR in regard to this project and not including the proposed demolition and construction in the draft LRDP or this DEIR, the Lead Agency failed to provide complete information as to the cultural resources designated for demolition during the LRDP period; that failure was unreasonable and impacted the reliability of any assessment of cumulative effect set forth in the DEIR. (Another impact not discussed in the DEIR is the impact on land use planning – loss of open space --and Natural Resources of the totality of the plans for the Clark Kerr campus.)

Any final EIR for these Projects should discuss, in a focused and comprehensive manner, the Lead Agency's vision for the Clark Kerr Campus and specifically identify the structures it intends to or

[154] Support for this section can be found at: https://files.ceqanet.opr.ca.gov/263738-2/attachment/WG93bQIeuVr7wwikF6SsCWP_d57OMRr7YO8hVs52IMtP3hkcwy84lM7e5fmg3_lWUkvDFMaLJydUfA0T0

may demolish, the open spaces and natural habitats that will be built upon, and the expected total population (not just those in new buildings) that it expects will be housed on this campus.

3.2.7 The loss of unique resources important to Women's History (Smyth-Fernwald House & Anna Head School)

One of the significant cumulative impacts of the draft LRDP is the impact it will have on historic and cultural resources concerning women's fight for equality, particularly in education. The Smyth-Fernwald is not only the oldest house in Berkeley it features interiors designed by the pioneering female architect (and UCB graduate) Julia Morgan. This interior is the only known remaining residential interior by Julia Morgan done in this Oriental style. More information about Smyth-Fernwald House is provided in the appendix.

Figure 41: Smyth House living room mantle detail, 2010.

Figure 42: Smyth House living room interior, looking east, 2010.

Julia Morgan was certainly one of the earliest UCB female architecture graduates. Her work and career are legendary.

Less well-known but possibly more directly impactful on women's rights, was Anna Head. Also a graduate of UCB, Anna Head established a school for girls (as it was then called) that broke barriers for women. Not only did her school have the largest women's gymnasium of any school on the West Coast, it was an early feeder school for UCB and one of its earliest sources of diversity. The website savingplaces.org (part of the National Trust for Historic Preservation)[155] stated this:

> Berkeley, home to several universities, is known worldwide as an educational hub. However, many tourists and California natives alike have forgotten the influential history of one institution: The Anna Head School for Girls. The original campus for the Anna Head School, now owned by the University of California, was built from 1892 to 1927, and during that period the school broke barriers in American architecture and girls' education.

[155] https://savingplaces.org/stories/anna-head-school-for-girls-influenced-generations-of-womenand-american-architecture#.YHzhiy1h0dU

Anna Head was born in 1857, the daughter of a lawyer and a school headmistress. After Anna's mother retired, Anna created her own school run from a private home in 1888. A news report from the *Berkeley Daily Herald* featured Head's school on August 4, 1892:

> "Four years ago, Miss Anna Head opened in Berkeley a small school located at Channing Way and Dana Streets in Berkeley for girls. The work was begun under difficulties, because the aim of its founders was to conduct it on principles that were in advance of the methods then in common use, and parents were shy of new experiments. The effort was to establish a school that would do away with the useless routine work that cumbers so much of the ordinary teaching and replace it with what was best in the German and Eastern systems."

Anna Head's approach to teaching and building was anything but ordinary. One particularly remarkable aspect of her curriculum was its connection to nature. The campus was built in a rural, sprawling environment to offer students everyday interactions with countryside flora and fauna—unusual for an era when girls most often learned domestic skills and scripture in school.

The young women at the academy studied natural science and engaged in physical activities such as horseback riding. In the same *Daily Herald* news report referenced above, journalists describe the main school building, Channing Hall, as "rather a quaint old English county house or private mansion" than a typical schoolhouse. The article notes that the entire third floor was devoted to the most complete "gymnasium of any other girl's school on the [West] Coast." Channing Hall's interior had a natural wooden finish, and classrooms faced the south to receive plentiful sunlight.

Nearly as old as Berkeley itself, the first campus building was finished a mere fourteen years after the town was incorporated, and while the school began as a private institution for wealthy white women, it evolved over time to serve all students. To this day, this institution remains a valuable landmark for the Bay Area's history and culture, even as several of the buildings face an uncertain future. . . .

The school's impressive preservation and social development demonstrates how schools play an important role in their community's history. This Shingle-style campus blended into the landscape and encouraged Bay Area architects to move from a Victorian to the American, nature-influenced buildings now iconic in California. **The Anna Head School for Girls influenced thousands of female scholars and designers to question the norm. These Berkeley buildings, forgotten by many, still stand as a testament to the shifting history of girl's education and architecture in the United States. And behind this campus, Anna Head reminds us that one woman can have a resounding impact on histor**y.[156]

The DEIR makes no mention of the fact that multiple unique cultural and historic resources evidencing women's progress towards equal rights and particularly equal education would be lost if the draft LRDP is adopted. Before the final EIR is issued, an HRTR should be prepared

[156] *Id.*

considering the cumulative impact of demolishing these two buildings particularly as to other remaining structures associated with female pioneers of that generation and associated with UCB.

3.2.8 Project 1 Comments

3.2.8.1 Both the DEIR and the HRTR for Project 1 do not fully or fairly describe the Historic Status and significance of the Buildings Slated for Demolition

Full information about the cultural and historic resources on the Project 1 site is available on the BAHA website.[157] On page 36 of Appendix F2 of the DEIR, the authors note the building's original service station and garage functions are relatively commonplace. That conclusion could not be more ill-informed. The UC Garage is one of the few remaining service stations from the early 20th Century in Berkeley. Moreover, it was a station built by and for the University. We would also consider its active development, ownership and use by the University (even having University as part of its name), over its entire existence, a clear association with an institution important to local and California history, at least.

Although it claims that the UC Garage is "common place," the DEIR does not provide any examples of other such structures from the same period, much less structures designed by Walter Ratcliff and containing the unique characteristics of this building, such as the window frames and placement. These unique characteristics are not featured on the commonplace service station, now or then.

While the UC Garage does not speak to larger trends in service station proliferation in Berkeley, California (or the United States during the interwar period), it does reflect something else of more import: the overarching development patterns of the University of California in the first part of the twentieth century. In fact, UCB developed the garage as part of an effort to cooperate with the City of Berkeley and local businesses by creating an unusually handsome and well-designed structure to serve an important, if mundane, function. This cooperation with the City and architectural leadership was an admirable tradition that UCB started in the last century that has, unfortunately, been broken by more recent UCB leadership including the one that proposed Project 1.

On page 37, the authors state The University Garage's period of significance is 1930, the year it was constructed. To settle on that single original year, rather than its many decades of active service to the University is beyond inadequate and fails to address the significance of design, designer and owner/user.

On page 38, the authors state the building is not directly associated with a person or persons of historical significance, despite quoting numerous articles and sources pointing to the significance of owner Heywood and builder Mohr. George Mohr is associate with a number of landmarks. They were and are significant persons in the history and development of the City of Berkeley.

Further, the authors state that "city directories and census data from the early twentieth century indicate that most of the building's inhabitants were short-term residents, none of whom are known to have made any significant contributions to local, California, or national history during their

[157] http://berkeleyheritage.com/berkeley_landmarks/university_garage.html

period of residence," yet you list none and do not show how you made any meaningful effort to support this statement. Such persons were an essential and necessary part of the development of the City of Berkeley and significance cannot be reserved only for owners and the famous.

The authors state that "the former dwelling exhibits a few elements characteristic to the Classical Revival style." We would ask you to define how many elements are required to make them significant and argue that those that are present are meaningful and intact and sufficiently significant. We also STRONGLY criticize your statement that the building is a "former dwelling" as it has been an occupied and active development for its entire 111 year existence.

Regarding your evaluation of 1925 Walnut Street, you apply an unfair standard of First Bay Tradition in its highest sense, a standard this building never set out to meet and does not need to. It is the last survivor of many such structures here and this must be acknowledged.

Finally, the authors state "While the 1978 California HRI form completed for the property identified the building as one of 'the last vestiges of Berkeley's residential character in the downtown environment,' a large concentration of residential development may be found along Hearst Avenue, two blocks northwest of the property." The authors fail to support this in the document in any way and to provide that mixed and not so close block as their example indicates just how decimated the residential character downtown has become.

3.2.8.2 HRTR for Project 1 Is Incomplete

On page 25 of Appendix F2, footnote 62 states "N.B., no city directories for Alameda County or Berkeley are available for the years 1893 through 1902." However, BAHA has directories for all of those years, supporting their availability in at least one place. The authors also state in several places of not finding any significant events or persons associated, yet there is no evidence that such an effort was made.

3.2.8.3 Realistic Alternatives to Demolishing the UC Garage and the Walnut Street Apartments Are Not Considered or Discussed

Prior reports and studies by the University, supported by the community and other stakeholders provide attractive and practical designs that support increased housing along with the preservation of historic structures. The extremely negative feedback on the planned building should have resulted in serious reconsideration, yet this was apparently ignored.

When the Berkeley Physical Design Framework was issued and adopted, UCB planners had a distinct and positive vision for the Project 1 site. They called it the Gateway project and envisioned restoring and updating the landmarked UC Garage for public use – likely as a café or visitors center -- with a taller structure wrapping around it to accommodate other university uses.

DOWNTOWN PROJECTS: GATEWAY BUILDING & UC GARAGE

This project would also be a third party partnership. Gateway is planned as a flexible office building, used primarily as relocation space for campus units displaced from buildings undergoing seismic renovation. However, despite this prosaic use, Gateway occupies a prime corner at the west entrance to campus, and high quality design is imperative. The adjacent historic UC Garage, now used for bus storage, would be renovated for a public-oriented use, such as the campus visitor center now housed in the drab lobby of University Hall.

Figure 12. View from north of Gateway Building with renovated UC Garage in foreground.

Since its landmark designation in 1981, the University has had four decades to consider solutions that did not involve destruction of the Garage, yet it seems they took the time to fail to care for or honor this unique and historic structure. The many photos provided in the document show this unfortunately common practice by the University of California and those charged with caring for it.

One way that UCB could easily reduce the profile of the Project 1 building is to remove the "amenity" and non-housing related uses. The table below from the DEIR reflects proposed space use:

TABLE 3-6 HOUSING PROJECT #1 PROPOSED DEVELOPMENT

	Land Use	Number	Population	Employees	Gross Square Footage
Residential	Apartments	244	770 students [a]	-	235,000
	Beds	770			
	Amenities [b]	-	-	-	43,000
	Open Space/Rooftop Garden	-	-	-	24,000
	Housekeeping/ Maintenance/ Housing Services Offices	-	-	8 [c]	10,000
Subtotal of Residential Gross Square Footage					*312,000*
Campus Life	Fitness	-	-	-	8,000
	Commuter Lounge	-	-	-	1,500
	Events Center	-	-	-	6,500 [d]
	Restrooms	-	-	-	4,000
Subtotal of Campus Life Gross Square Footage					*20,000*
Public and Non–UC Berkeley	Commercial Suites [e]	8	-	38 [f]	17,000 [g]
Subtotal of Public and Non–UC Berkeley Gross Square Footage					*17,000*
Parking	Employee Parking Spaces	21	-	-	10,000
	Long-Term Bicycle Parking	250	-	-	4,200
Subtotal of Gross Square Footage					*14,200*
Miscellaneous [h]	-	-	-	-	162,800
		Grand Totals	**770**	**46**	**526,000**
Pervious/Impervious Surfaces					**Square Feet**
Pervious Surfaces (landscaped areas)					1,905
Impervious Surfaces (building footprints and hardscapes)					38,210

Notes: Building specifications evaluated in this Draft EIR are approximate for the purposes of evaluating the project and are subject to insignificant changes as final plans evolve (CEQA Guidelines Section 15003).
a. Assumes one student per bed.
b. Amenities include uses such as a library/study space, teaching kitchen and scullery, dorm lounge, a living room area, and other similar uses.
c. Assumes 6 housekeeping/maintenance staff and 2 housing services staff on-site daily.
d. 5,800-gross-square-foot (GSF) event center space + 700 GSF event center back of house = 6,500 GSF
e. The commercial space that could be used for UC Berkeley or leased to non–UC Berkeley vendors for a variety of uses depending on the tenant and what the market will bear, including, but not limited to, office, research, maker space, retail, cultural institution, education, or medical.
f. 17,000 GSF commercial/ 450 square feet per employee =37.8 employees.
g. 15,500 GSF commercial space + 1,500 square feet commercial back of house = 17,000 GSF total commercial space.
h. Miscellaneous uses account for circulation, heating, ventilation, and air conditioning, loading docks, flexible basement storage, and other utility infrastructure.
Source: BDE Architecture (project applicant), December 2020.

The fine print for note (b) states "Amenities include uses such as library/study space, teaching kitchen and scullery, dorm lounge, living room area, and other similar uses." According to this chart the building will include an 8,000 sq foot student gym (which presumably is different than the 22,000 sq feet referenced elsewhere in the DEIR for a public health club), a 6,500 sq. foot event space (which is in addition to the 6000 sq foot Mezzanine described elsewhere in the DEIR that can also be used for events), almost 15,000 sq feet of parking, a 1500 sq foot "commuter lounge" (which is apparently different from the dorm lounge and living room area listed under amenities), 162,800 sq feet for building operations (duct work etc.). and 17,000 sq feet of commercial office/retail space. (As the descriptions in this table are inconsistent with other descriptions of Project 1, the final EIR should reconcile these differences.)

What leaps off the page is that Anchor house will only have 244 student "apartments." That makes it comparable to any number of smaller, lower apartment-style student dorms and privately owned student housing buildings. By removing the extraneous amenities, commercial space, extra

lounges, demonstration kitchen (with scullery) and event space, the area required for operational features could likewise be reduced significantly. In sum, the structure could be made significantly smaller while accommodating the same number of students in what will be comparatively large (almost 1000 foot dorm rooms). A smaller structure in turn could obviate the need for demolishing the historic and cultural resources. Moreover, removing all or some of the amenities would not alter the LRDP's stated objective of increasing housing. This alternative is reasonable and should be considered in the Final EIR.

3.2.8.4 The Recommended Mitigation Measures for Project 1 are Insufficient

The Lead Agency's mitigation measure is to take photographs of the land marked structures and give organizations such as BAHA 30 days to haul away whatever relics they can from the Project 1 structures. There is no suggestion that the distinctive windows and stonework be incorporated into the new structure (either on the exterior or interior or even on the 22,000 square foot roof deck). While the mitigation measures proposed may be sufficient for projects with no realistic or viable alternatives, we see this project having multiple realistic, viable and sufficient alternatives for which few, if any, mitigation measures would even need consideration.

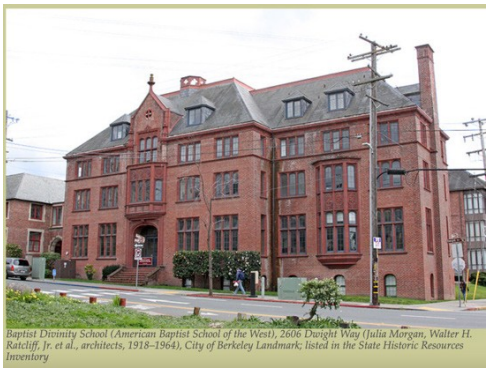
3.2.9 Project 2 Comments

Project 2 is planned for the People's Park site, which is a historic and cultural resource recognized in the DEIR. The surrounding area primarily residential with several notable academic buildings and houses of worship. These resources are typified by those in the photos below.[158] Further information about the neighborhood can be found on the BAHA website.

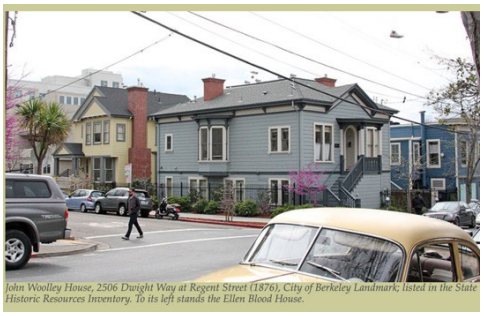
Lucinda Reames House No. 1, 2503 Regent Street (A. Dodge Coplin, architect, 1902–1903), City of Berkeley Landmark, Structure of Merit; listed in the State Historic Resources Inventory

Four landmarks on the east side of Regent Street. Standing opposite the Blood House and the Woolley House are four houses built between 1901 and 1903, each designated a City of Berkeley Landmark, Structure of Merit. Lucinda Reames House No. 1, 2503 Regent Street (A. Dodge Coplin, architect, 1902–1903); Lucinda Reames House No. 2, 2509 Regent Street (A. Dodge Coplin, architect, 1903); William Wilkinson House, 2511 Regent Street (A. Dodge Coplin, architect, 1903); Mary J. Berg House, 2517 Regent Street (William Garfield May, builder, 1901).

[158] Photos courtesy of Daniella Thompson and BAHA.



Baptist Divinity School (American Baptist School of the West), 2606 Dwight Way (Julia Morgan, Walter H. Ratcliff, Jr. et al., architects, 1918–1964), City of Berkeley Landmark; listed in the State Historic Resources Inventory



John Woolley House, 2506 Dwight Way at Regent Street (1876), City of Berkeley Landmark; listed in the State Historic Resources Inventory. To its left stands the Ellen Blood House.

Ten resources in all are identified as impacted adjacent historic resources in the HRTR prepared by the Architectural Resources Group.[159]

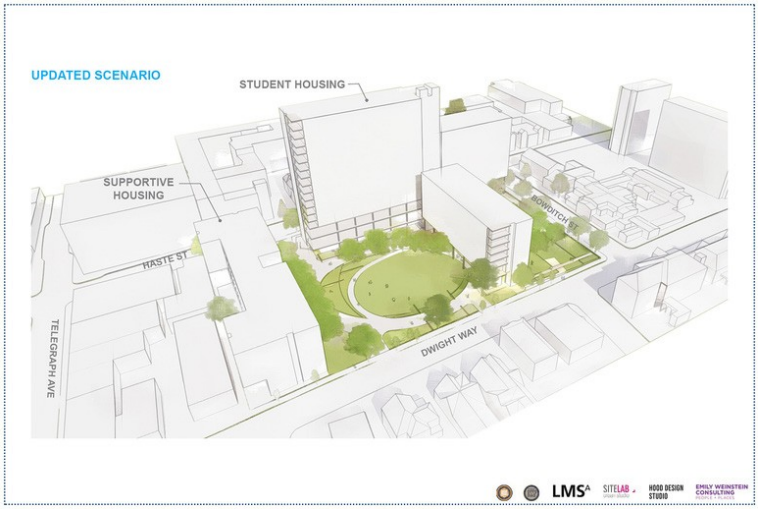
Architectural Resources Group (ARG) did a moderately good job of researching and documenting the history of People's Park but a woefully inadequate job of researching and assessing the adjacent historic and cultural resources. None of the items listed in the bibliography, for example, include any materials on Bernard Maybeck, Maybeck's First Church of Christ Scientist, or the Anna Head School Complex. The ready accessibility of both these structures and the documentation detailing their original construction make the failure to examine these sources particularly disappointing. The inadequacies of research, analysis, and documentation concerning the CEQA-related Cultural and Historic Impacts of Project #2 are particularly severe and troubling; each must be addressed before the plans for People's Park are finalized and certainly before any subsequent EIR is issued.

Because People's Park will be obliterated, it is no surprise that ARG found that "Impact 1" of Project 2 will be to "severely impact" People's Park. ARG's "Impact 2" concerns the impacts on adjacent historic structures including Bernard Maybeck's First Church of Christ Scientist (FCCS). HRTR Proj. 2 at 51. Because the potential harm to these adjacent structures is less obvious and their condition is virtually unknown, ARG waffles.

With respect to the ten potentially impacted cultural and historic resources near the Project 2 site. ARG concludes that all ten "may be" significantly impacted by Project 2 once completed, but ARG hesitates to make a definitive determination as to the nature or degree of impact, apparently on the grounds that Project 2 plans have not yet been finalized. This attempt to kick the can down the road is unavailing in the CEQA context, particularly where, as here, the proposed Project 2 structures will clearly dwarf all of the surrounding historic structures.

Given the data provided in the DEIR, some of which is excerpted below, ARG should, in connection with the issuance of the final EIR provide a more solid prediction of the potential for sever damages to the adjacent resources. The final EIR should also include drawings or diagrams showing the scale and context of Project 2 in the neighborhood so the EIR's discussion of aesthetics (and the Lead Agency's presumptive decision to disregard these impacts) can be fully evaluated.

[159] DEIR 5.4.30.



3.2.9.1 Missing Shadow Study

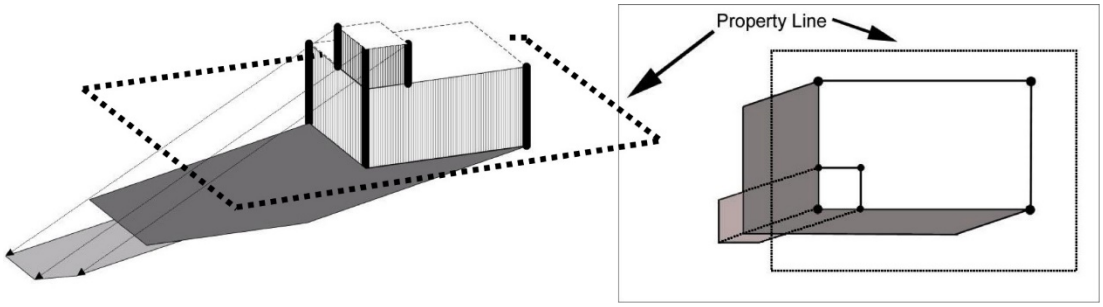
When initially previewed to the community, UCB planners represented that Project 2 would not have any building over 12 stories and that it would be designed to avoid shadowing adjacent buildings. When unveiled, the project was 17-stories. While the DEIR claims that the building was designed to minimize shadows, it provides no support such as a shadow study. Given the size of the Project 2 buildings (including one that is 17 stories tall) shading is a serious concern.

The effects of shading by one building upon another can be either positive or negative depending upon the site-specific circumstances of the properties involved. A potential benefit of shading for adjacent structures may be a cooling effect gained during warm weather. Negative consequences of shading include the loss of natural light for passive or active solar energy applications or the loss of warming influences during cool weather. Factors influencing the relative impact of shadow effects are site-specific and include differences in terrain elevation between involved properties, the height and bulk of structures, the time of year, the duration of shading in a day, and the sensitivity of adjacent land uses to loss of sunlight.

Shadows cast by structures vary in length and direction throughout the day and from season to season. Shadow lengths increase during the "low sun" or winter season and are longest on December 21-22, the winter solstice. The winter solstice, therefore, represents the worst-case shadow condition and the potential for loss of access to sunlight that a project could cause is greatest. Shadow lengths are shortest on June 21-22, the summer solstice. Shadow lengths on the spring and fall equinoxes, March 20-21 and September 22-23 respectively, would fall midway between the summer and winter extremes.

Shadows are cast to the west by objects during the morning hours when the sun is coming up on the horizon in the east. During late morning and early afternoon the shadows of objects move northerly and by late afternoon they are cast easterly in response to the apparent movement of the sun across the sky from east to west. Shadows cast in winter are longer, and those at the winter solstice the longest. It is instructive, therefore, to map the daily shadow pattern cast by a proposed building on December 21st because it is illustrative of the "worst case" impacts a proposed structure may have upon nearby sensitive land uses.

The diagram below (excerpted from the City of Berkeley's shade study guidance document[160]) illustrates how shade from a tall building can cast shadows beyond the perimeter of the developed property.



Of the total amount of the sun's energy available during a daylight period, approximately 85% of it reaches the earth between 9:00 a.m. and 3:00 p.m. The California Energy Commission defines this time period as the useable solar sky-space.[15] Useable sky-space, at the winter solstice, is that portion of the sky lying between the position of the sun (i.e., sun angle or azimuth) when it is 45 degrees to either side of true south—the portion of the sky covered or traversed by the sun between 9:00 a.m. and 3:00 p.m. For either an active or passive solar energy system to work it is not necessary for it to be exposed to sunlight from sunrise to sunset.

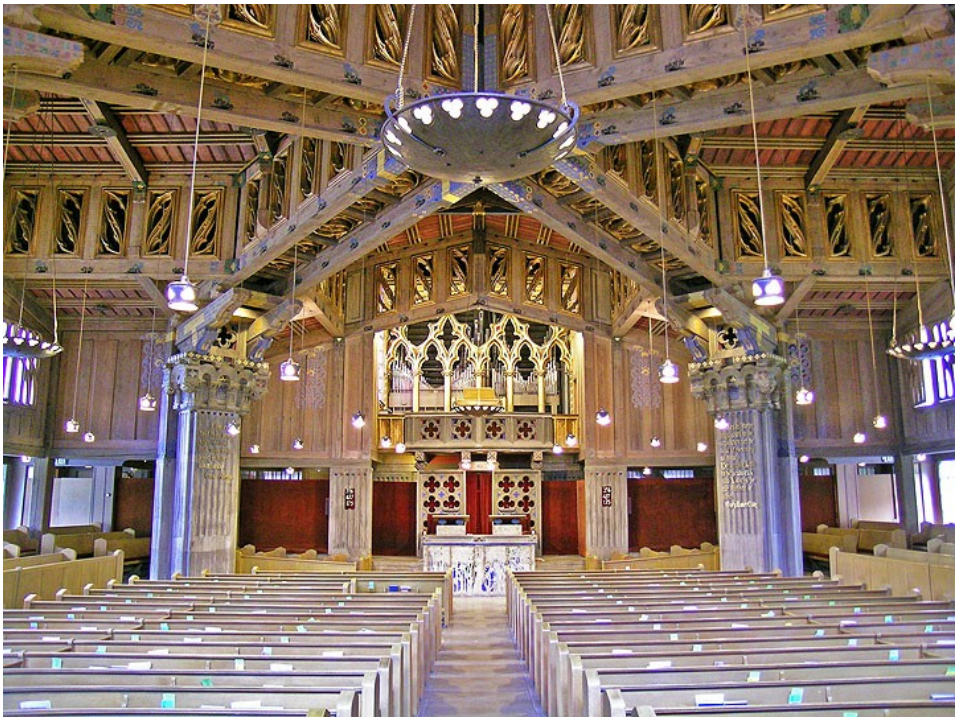
Land uses are considered sensitive when sunlight is important to function, physical comfort, or the conduct of commerce. Facilities and operations identified as potentially sensitive to the loss of sunlight include routinely usable outdoor spaces associated with residential, recreational, or institutional (e.g., schools or convalescent homes) land uses; commercial uses such as pedestrian-oriented outdoor spaces or restaurants with outdoor eating areas; nurseries; and existing solar energy collectors.

In this case, the DEIR does not provide or evaluate any specifics regarding the impact of the proposed construction and landscaping on the Project 2 site with regards to shading on adjacent buildings including historic and cultural resources. The materials do not include a baseline shade study or an as-built shade study reflecting shade pattering from planned buildings and landscaping, which we understand will include numerous trees and presumably light fixtures and similar hardscape features. Notably several of the nearby structures contain shadow sensitive features and have shadow sensitive uses.

[160] https://www.cityofberkeley.info/uploadedFiles/Online_Service_Center/Planning/Guideline%20III.A.7%20Shadow%20Study%20Instructions.pdf

First Church of Christ, Scientist, 2619 Dwight Way (Bernard Maybeck, architect, 1910), National Historic Landmark; City of Berkeley Landmark

For example, Maybeck's First Church of Christ Scientist (photo above) features on its West and South exterior a magnificent old wisteria that is one of its most well-known characteristics. The special wavy industrial glass that Maybeck used for the Church's windows that sit behind the wisteria currently appear as if purple stained glass during daylight when the wisteria is in bloom (see photo below). Cutting off daylight to the wisteria and the windows behind it would significantly impact that structure.



BAHA is particularly concerned about the impact of shading on the FCCS wisteria and the wisteria on other nearby buildings. Wisteria is a long-lived vining plant with cascades of blue to purple flowers that look spectacular hanging from a pergola or archway in spring and early summer. As

wisteria is a sun-loving vine[161], a suitably qualified arborist familiar with wisteria should be provided the shadow study so that their opinion can be added to the EIR discussion. The final EIR should include a shadow study that examines whether the new construction will cast shadows over adjacent historic and cultural resources.[162]

3.2.9.2 Aesthetic Impact & Proposed Mitigation

As Architectural Resources Group acknowledges, design-related impacts can arise where, as here, the new project design is "sufficiently incompatible with one or more nearby historic resources that the new project would compromise those resources' integrity of setting." *Id.* At 50. Specifically, the consultants note that the adjacent buildings, including historic and cultural resources, are all two to four stories in height whereas Project #2 as proposed consists of massive buildings including one that, as currently conceived, is 16 stories tall. *Id.* 51. As such, the current design would not be in keeping with the Secretary of the Interior's Rehabilitation Standard No. 9, which specifies in pertinent part, "The new work . . . shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment."[163] Put in simple terms: the structures as proposed in Project 2 would dwarf and shadow those historic properties adjacent to them; **the Project 2 Towers are just too tall.**

Notably, Architectural Resources gives absolutely no consideration to the other aspect of Interior Secretary's Standard No. 9, namely that "new construction shall not destroy historic materials that characterize the [historic] property." Here, as described further below, the tall towers that will comprise Project 2 will invariably shadow the FCCS and other of the adjacent 10 historic resources thereby necessarily impacting the materials – including imported textured Belgian glass and historic landscape features (such as the wisteria covered arbor at the FCCS) that characterize these properties. The HRTR's failure to address these additional significant impacts is a material failure that must be addressed before the EIR is finalized as noted above.

The two mitigation measures proposed by Architectural Resources Inc. are woefully inadequate. In full, they read as follows:

> Mitigation Measure 2a. UC Berkeley will make informational presentations regarding Housing Project #2 to the Berkeley Planning Commission and, if relevant, the Berkeley Landmarks Preservation Commission for comment prior to design development review by the UC Berkeley Design Review Committee.
>
> Mitigation Measure 2b. Prior to approval of final design plans for Housing Project #2, the university shall retain an architect meeting the National Park Service Professional Qualifications Standards for historic architecture to review plans for the proposed student housing and supportive housing buildings. The historic architect shall provide input and refinements to the design team regarding fenestration patterns, entry design, and the palette

[161] See, e.g., https://www.almanac.com/plant/wisteria. If this fact is disputed, BAHA is happy to provide further reference materials and sources for its statement.
[162] https://capitalstrategies.berkeley.edu/peoples-park-housing-open-house-3#part3
[163] W.B. Morton, Anne E. Grimmer, and Kay D. Weeks, *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings* (Washington, D.C: U.S. Department of the Interior, National Park Service, Cultural Resources, Preservation Assistance Division, 1992)

of exterior materials to improve compatibility with neighboring historical resources, and to enhance compliance with the Secretary of the Interior's Standards and the City of Berkeley Southside Design Guidelines.

Although implementation of Mitigation Measures 2a and 2b could improve the compatibility of the proposed project with neighboring historic buildings, Housing Project #2 would still have significant impact on historical resources, due to the demolition of People's Park.[164]

Needless to say, meeting with the City will not overcome the design aspects of Project #2 that will dwarf, shadow, and destroy important materials and aspects of the adjacent historic properties. Likewise, adding "fenestration patterns" and "improving entry design" will have no impact whatsoever on those significant and negative impacts.

The mitigation for the completed buildings that should have been proposed is (a) buildings of a lower height, possibly of the same square footage, but spread out over the entire lot; and (b) staggering or varying the heights such that shadows are not cast on adjacent properties.[165] While there is necessarily sentiment favoring keeping some open space in this historic area, the trade-off between removing some of the preserved open space and not destroying the Maybeck's iconic First Church of Christ Scientist is clear and should have been proposed.

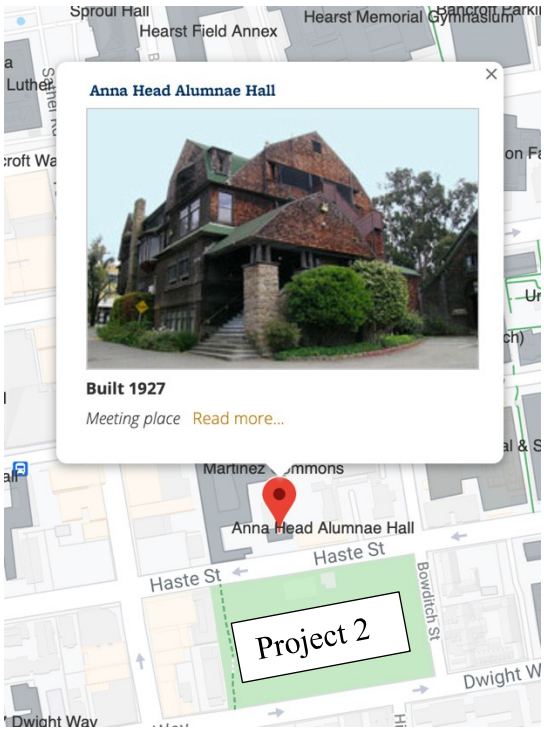
Nowhere in the DEIR or the HRTR does anyone address the likelihood that nothing will grow underneath the proposed elevated tower along Bowditch and that creation of a one or two story elevation facing West to East will in all likelihood create a wind-tunnel effect directed right to Maybeck's masterpiece. BAHA believes it likely that trash will be blown onto the façade of that church as a result of the present design. BAHA respectfully requests that the final EIR address each of these concerns.

3.2.9.3 Physical Damage & Proposed Mitigation

According to the DEIR and the HRTR prepared by ARG, construction at the Project 2 site will be disruptive and potentially harmful to the physical structures surrounding the project. The maps below illustrate the close proximity of numerous landmarked structures. Four structures -- the Anna Head School, Maybeck's FCCS, the Casa Bonita Apartments and the People's Bicentennial Mural – are identified as being within 200 feet of the proposed pile driving.[166]

[164] HRTR Proj. 2 at 52-53.
[165] For a more detailed discussion of the evaluation of how a new building can be integrated into a historic setting, see Hu, Yun, et al. "USING QUANTITATIVE ANALYSIS TO ASSESS THE APPROPRIATENESS OF INFILL BUILDINGS IN HISTORIC SETTINGS." Journal of Architectural and Planning Research, vol. 34, no. 2, 2017, pp. 91– 113.
[166] See HRTR Table 10-1.

Figure 6. Aerial photograph showing historical properties in the immediate vicinity of People's Park (Google Earth 2019, amended by ARG).



Although not apparently made available to ARG, other DEIR data indicates that this pile driving will take place on site for at least 20 days.[167]

ARG's discussion of the degree to which this pile driving and other planned construction at the Project 2 site is incomplete and does not take into consideration the data provided in the DEIR. As to the impact of construction work at People's Park on the 10 adjacent historic resources, Architectural Resources Group concludes that pile driving the 70 to 100 feet necessary to construct such tall buildings "could compromise the structural stability" of "several nearby resources." But they wrap up with the strange conclusion that, but for the pile-driving, the adjacent properties will not be impacted.

> [P]ile driving is proposed in constructing the student housing building, which has the potential to create ground borne vibrations beneath multiple historical resources in the vicinity. The proposed project entails demolition of the existing structures on the site as

[167] DEIR App. at 881

> well as excavation to a maximum depth of approximately 4 feet below grade to accommodate building foundations and between 70 to 100 feet below grade for the required piles. Because no historical resources immediately abut either the buildings to be demolished or the buildings to be constructed, no construction-related impacts to nearby historic buildings, **beyond those associated with the use of pile driving**, are anticipated.[168]

Needless to say, that is a significant qualification on the no-impact assessment! As noted below, nothing is mentioned by ARG about potential impacts to the constituent parts of these buildings – including stone fireplaces, brick chimneys, brick foundations, glass, and other particularly fragile constituent – and historically important – parts. One soils engineer consulted who was consulted in connection with providing DEIR comments opined that, if a historic building had brick foundations and/or stone fireplace/chimney and is within 60' of pile driving he would be concerned.[169]

DEIR Information on Pile Driving Vibrations

In the DEIR materials, the Lead Agency provides some estimates as to the vibrations caused by typical equipment at a presumably typical site:

TABLE 5.11-19 REFERENCE VIBRATION LEVELS FOR CONSTRUCTION EQUIPMENT

Equipment	Approximate Vibration Level at 25 feet, PPV in/sec [a]	Approximate Vibration Level at 25 feet, VdB re 1 micro-in/sec [b]
Pile Driver, Impact (Upper Range)	1.518	112
Pile Driver, Impact (Typical)	0.644	104
Pile Driver, Sonic (Upper Range)	0.734	105
Pile Driver, Sonic (Typical)	0.170	93
Vibratory Roller	0.210	94
Large Bulldozer	0.089	87
Caisson Drilling	0.089	87
Loaded Trucks	0.076	86
Jackhammer	0.035	79
Small Bulldozer	0.003	58

Notes:
a. Peak Particle Velocity (PPV) = The peak rate of speed at which soil particles move (e.g., inches per second) due to ground vibration.
b. Vibration Decibel (VdB) = A unitless measure of vibration, expressed on a logarithmic scale and with respect to a defined reference vibration velocity. In the U.S., the standard reference velocity is one microinch per second ($1x10^{-6}$ in/sec).
Source: Federal Transit Administration, 2018, Transit Noise and Vibration Impact Assessment.

As noted previously, it provides at least one estimate that pile driving at the site will take place over a period of 20 days. It does not, however, discuss how vibrations of this magnitude over a 20 day period for 8 hours per day (a figure based on estimated emissions from the pile driving equipment) will impact the individual historic and cultural resources in close proximity to this construction work.

[168] HRTR Proj 2 at 53.
[169] As noted above, BAHA was not able to engage relevant experts and obtain written reports before the due date of these comments to support its positions due to the COVID-19 Pandemic and related disruptions and shut-downs. However, we expect to provide them as soon as we are able.

The effect of vibrations from pile driving on nearby structures has been the study of numerous academic papers and research studies, so the necessary information is not hard to come by.[170] One publication explained the phenomenon thusly:

> It is convenient to visualize the wave motion at the surface of the earth as being similar to the ripples produced on a smooth surface of water when a stone is thrown in. The wavelength of the earth waves from pile driving is approximately 200 ft; this is the distance from the crest of one wave to the crest of the succeeding wave. Structures supported on the surface ride such waves in the same manner as a cork or box floating on the ripples of the water. Deeply embedded structures respond to a lesser degree in proportion to the orbital diameter of the earth particle motion which decreases exponentially with depth. For example, a structure embedded 200 ft below the surface would receive virtually no vibration. One at 100 ft would receive 1/32nd of the vibration experienced by a point on the surface. Regardless of depth, the magnitude of vibration intensity varies with the amount of energy transmitted to the soil, the physical properties of the soil, and the distance that the wave has traveled from the source.[171]

Another scholar also explained the phenomenon well:

> Dynamic loads force piles to vibrate and penetrate into the ground and trigger elastic waves which propagate in the soil medium and induce elastic soil displacements and vibrations at various levels depending on the intensity of propagated waves. The structural responses to ground vibrations depend on soil-structure interaction. Ground vibrations can produce direct vibration effects on structures and trigger resonant structural vibrations of adjacent and remote structures.[172]

These authorities and many others make clear that the depth (and condition) of a given structure's underground support (i.e., foundation) is a necessary data point as are the structure's distance from the pile driver (i.e., wave source) and the type of soil in and around the pile-driver and the historic structure.

Depth of Foundations

Because the impact of vibrations on a structure depends on how far the structure is imbedded in the earth (see illustration above), that information should have been provided (and examined and discussed) by ARG, but it was not. BAHA has also not been able to locate in the thousands of pages of the appendix or the over 900 page DEIR.

Given closures due to the COVID-19 Pandemic, BAHA had no access to plans for the school (or those of other impacted structures) due to the closing of reference facilities (including BAHA's own archive). Presumably, as Page & Turnbull was able to complete a historic survey of campus

---

[170] See, e.g., https://scholarsmine.mst.edu/cgi/viewcontent.cgi?article=3215&context=icchge; Abdel-Rahman, SM, "Vibration associated with pile driving and its effects on nearby historical structures" (Jan. 2011) available at: https://www.researchgate.net/publication/259800514_Vibration_associated_with_pile_driving_and_its_effects_on_nearby_historical_structures; http://www.diva-portal.org/smash/get/diva2:1300262/FULLTEXT01.pdf;

[171] See John F. Wiss, "Damage Effects of Pile Driving."

[172] https://vulcanhammernet.files.wordpress.com/2017/01/the-necessity-of-condition-surveys.pdf

properties, UCB granted access to some for purposes of the CEQA EIR process. Information about foundation conditions and depth of those foundations should have been provided because, absent that information, providing an expert report is challenging.

Distance from pile driving

As one academic researcher on the impact of vibrations on historic structures explained,

> When driving a pile into the soil, compression (P-waves) and shear waves (S- waves) are generated at the pile tip expanding spherically through the soil, as shown in Fig. 1.3. As the body waves expand outward from the pile they are reflected and/or refracted at the soil surface. The initial wave motions at the surface consist of P and S waves followed somewhat later by surface Rayleigh waves.
>
> Close to the pile, ground motions from the body waves are significant in comparison to the Rayleigh waves. However, they decay rapidly and at larger distances from the pile, the Rayleigh waves become dominant.
>
> As structures are located at some distance from the point of piling Rayleigh waves are of primary concern.[173]

This concept is illustrated in the diagram below:

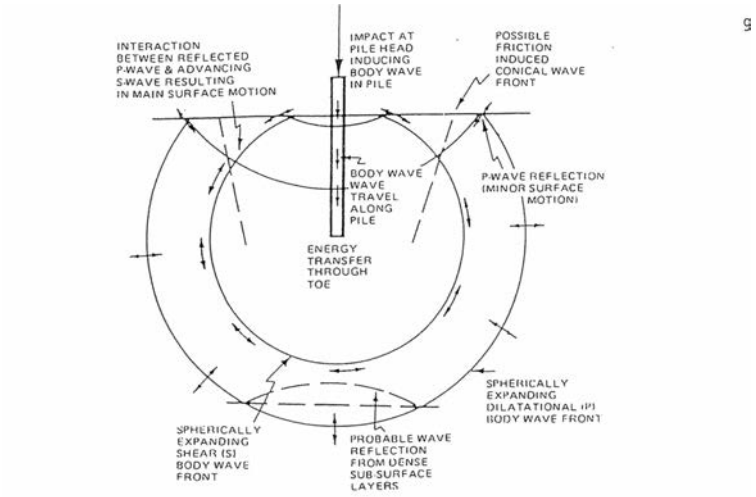


Fig. 1.5. Wave propagation near to a driven pile; arrows indicate the direction of particle motion (from Attewell and Farmer, 1973).

According to ARG, the only historic and cultural resources in the zone of harm from the pile diving are those 200 feet away from the site where the pile driving is taking place: "This 200-foot radius is the threshold typically used for monitoring vibration impacts from pile-driving."[174] ARG

[173] http://www.diva-portal.org/smash/get/diva2:1300262/FULLTEXT01.pdf
[174] HRTR Proj. 2 at 53.

provides no authority that important proposition.[175] Also because no survey of the relevant properties have been provided to the public (although at least one was shown ARG), it impossible to determine the condition of the nearby historic and cultural resources to determine if the 200-foot radius "rule of thumb" that applies to average buildings, would apply to the older and likely more fragile resources here.

Notably, neither ARG nor the DEIR indicate on a map or graph where on the Project 2 property the pile driving is expected to take place. Moreover, it is unclear why ARG reached the conclusion that the pile driving would take place in only one particular place on the site rather than several. Their single-site assumption is evident in the fact that they provide only a single distance measure in their charts and discussions as to the historic and cultural resources' proximity to the energy/vibration source (i.e., pile driving).

Soil and Soil Condition

In addition to depth of a structure's foundation and distance from pile-driving site, to perform a proper analysis of potential severity of impact, the soil must be considered. The following table illustrates the different wave propagation (described as material damping) of common soil types.

[175] While some sources agree that the wavelength of earth waves from pile driving is approximately 200 feet, the DEIR should provide more definite authority for its proposition and evidence that the conditions at the site are such that the 200 foot figure is supported in light of the unique site conditions.

Table 2.1. Coefficient of Material Damping (Theissen & Wood, 1982)

Investigator	Soil type	Material Damping Coef $(meter^{-1})$
Forssblad (1965)	Silty gravelly sand	0.1312
Richart (1962)	Compact granualr fill	0.0197
Woods (1967)	Silty fine sand	0.2624
Barkan (1962)	Saturated fine grain sand	0.0984
	Saturated fine grain sand in frozen state	0.0590
	Saturated sand with laminae of peat and organic silt	0.0394
	Clayey sand, clay with some sand and silt above water level	0.0394
	Marly chalk	0.0984
	Saturated clay with sand	0.0394-0.1181
Dalmatov et al (1980)	Sand and silts	0.02624-0.361
Clough & Chameau (1980)	Sand fill over bay mud	0.0492-0.1970
	Dune sand	0.0264-0.0656
Peng (1972)	Soft Bangkok clay	0.2591-0.4395

As this table illustrates and other academic research makes clear, geologic and soil condition at the relevant site influence the degree to which vibrations carry to nearby structures. Bedrock for example conducts vibrations less readily than water or water-logged soil. Moist soil and areas containing creeks are conditions that enhance vibration's passage through an area and can potentially amplify the transmission and impact the nature of harm to adjacent structures.

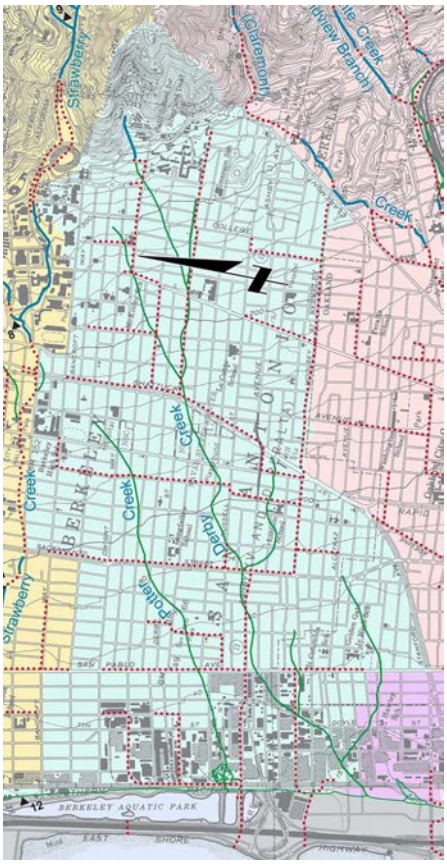
The nature of the soil and geology does not appear to have been considered by Architectural Resources Group. According to their stated scope of review and list of materials considered, ARG did not review or consider the geological and seismic data other DEIR contractors collected much less request such data relevant to the proposed projects.

Perhaps even more important, ARG and these other appears to have been unaware that Potters Creek runs through the impacted Project 2 area as these maps clearly show. Indeed a term search of both the DEIR and its appendices turned up no references to Potters Creek.

Map of Berkeley creeks (3).

Data provided in other areas of the DEIR suggests that at least the drafters of the DEIR were aware of the presence of water in the area. See for example the projections set out in Table 5.11-18 as to noise and Table 5.11-19. In addition the DEIR includes the cryptic comment:

> Jurisdictional wetlands and unvegetated other waters on the Campus Park are limited to the North and South Forks of Strawberry Creek (see Figure 5.3-4, National Wetlands Inventory Map). Most of these creek segments lack emergent wetland vegetation, although some wetland indicator species occur in the channel bottom along some reaches. Modifications at or below the ordinary high water along the creeks is regulated by the USACE, and any alternation to the bed or banks of the channels requires authorization from the CDFW and RWQCB. No seeps, springs, or seasonal wetlands occur within the remainder of the Campus Park.



DEIR 5.3.16. Elsewhere it notes, "The sites for Housing Projects #1 and #2 are currently developed with urban uses and regulated waters are absent." *Id.* at 5.3.31. Of course, "regulated waters" does not encompass all water features such as culverted creeks and the like.

Notably UCB's current construction best practices provide, "CBP GEO-1-b: Site-specific geotechnical studies will be conducted under the supervision of a California Registered Engineering Geologist or licensed geotechnical engineer and UC Berkeley will

incorporate recommendations for geotechnical hazard prevention and abatement into project design." BAHA can find no evidence that this was done and, if it was done, the results were shared with ARG. As noted below, the limited vibration data that is provided has not source, date or context.

DEIR Impact Data and Discussion are Inconsistent and Unsupported

The Lead Agency's conclusions concerning the Project 2's impacts on adjacent historic and cultural resources –namely that only a few buildings were in the zone of harm and that the effects could be sufficiently mitigation by the proposed mitigation measures -- were unsupported and in fact contradicted by other of its own reports and data. As stated elsewhere in the DEIR:

> Vibration Damage
>
> As shown in Table 5.11-19, Reference Vibration Levels for Construction Equipment, vibration generated by construction equipment has the potential to be significant because it can exceed the thresholds of significance for architectural damage (e.g., 0.12 in/sec PPV for fragile or historical resources, 0.2 in/sec PPV for nonengineered timber and masonry buildings, and 0.3 in/sec PPV for engineered concrete and masonry).[16] Construction details and specific equipment for future projects that implement the proposed LRDP Update, other than Housing Projects #1 and #2 . . ., are not known at this time, but may cause vibration impacts if equipment is close enough to sensitive receptors. As such, this would be a potentially significant impact.

Notably the DEIR's vibration assessment as to Project 2 – which finds significant impact – contains different data -- as to distance from vibration source etc., number of resources impacted etc.—than the ARG reports.

> Housing Project #2
>
> Vibration Damage
>
> As described under impact discussion NOI-1, preliminary construction estimates for Housing Project #2 were prepared for the purpose of evaluating the project under CEQA. While the site plans are preliminary for the purposes of CEQA, this analysis conservatively assumes that pile driving would be required for Housing Project #2 because it has the greatest potential for vibration damage, as demonstrated in Table 5.11-19, Reference Vibration Levels for Construction Equipment. In addition, Housing Project #2 would include a larger area for grading and surface paving. Therefore, this discussion is organized by pile driving, paving, and grading activities since they have the greatest potential to cause vibration impacts.
>
> Pile Driving
>
> Housing Project #2 may require pile driving for the building support columns of the student housing and, affordable and supportive housing buildings; however, pile driving at the affordable and supportive housing is less likely given this building is proposed to be five stories above ground. This analysis assumes that piles would be driven at the foundation

columns of these two buildings. The upper range of vibration levels generated by impact pile drivers is 1.518 in/sec PPV at a distance of 25 feet.

The nearest nonhistorical structure to the foundation columns is 55 feet to the west (residences) of the affordable and supportive housing building, and the nearest historic building to the foundation columns is 75 feet to the north (Anna Head Alumnae Hall) of the student housing building. Table 5.11-22, Vibration Levels for Impact Pile Driving Activity: Housing Project #2, shows the estimated vibration levels at the nearest receptors. As shown in Table 5.11-22, construction vibration would exceed the construction vibration 0.2 in/sec PPV threshold for nearby non-historical and exceed the 0.12 in/sec PPV threshold for nearby historical structures. Accordingly, building damage from construction vibration is considered *potentially significant*, if pile driving is required.

TABLE 5.11-22 VIBRATION LEVELS FOR IMPACT PILE DRIVING ACTIVITY: HOUSING PROJECT #2

Reference Levels	Distance in feet	PPV (in/sec)	Greater Than 0.20 in/sec PPV and Potentially Significant?	Greater Than 0.12 in/sec PPV and Potentially Significant?
FTA Reference	25	1.518	NA	NA
Nearest Sensitive Receptors [a]				
Anna Head Alumnae Hall and residences to the north [b, c]	75	0.292	Yes	Yes
Vedanta Society to the east [b]	93	0.212	NA	Yes
First Church of Christ, Scientist to the east [b]	100	0.190	NA	Yes
Residential structures to the south	225	0.056	No	NA
First Baptist Church to the south [b]	250	0.048	NA	No
Residential structure to the west	55	0.465	Yes	NA

Notes: NA = not appliable, PPV (in/sec) = inches per second peak particle velocity. See Appendix J, Noise Data, of this Draft EIR.
a. Distance measured from the nearest proposed foundation column to sensitive receptor (structure).
b. Nearest sensitive receptors in this direction are historical buildings and a vibration threshold of 0.12 in/sec is applicable.
c. The distance to Anna Head Alumnae Hall is approximately the same or less than the nearest nonhistorical structure where 0.20 in/sec PPV threshold applies.
Source: Federal Transit Administration (FTA), 2018, Transit Noise and Vibration Impact Assessment.

This chart indicates that the Anna Head School is 75 feet from the point of reference, versus ARG's 60 feet. The supporting authority for this chart appears in the DEIR appendices under the title, "Construction Noise and Vibration Calculations." No identifying information is provided as to the name, qualifications or source for the data or the dates and basis for the information. The data as to the impact of vibrations at the Project 2 site is particularly barebones, and we are provided no key or explanation:

Project: People's Park Architectural Damage

Pile Driving Analysis	FTA Reference PPV 25	SR to North, ft 75	SR to East, ft 93	SR to East, ft 100	SR to South, ft 225	SR to South, ft 250	SR to West, ft 55
Pile Driving (impact upp	1.518	0.292	0.212	0.190	0.056	0.0480	0.465

Grading	FTA Reference PPV 25	SR to North, ft 50	SR to East, ft 95	SR to South, ft 50	SR to West, ft 10
Large Bulldozer	0.089	0.031	0.012	0.031	0.352
Small Bulldozer	0.003	0.001	0.000	0.001	0.012

Screening Distances

Equipment Type	FTA Reference PPV 25	Distance at which 0.20 in/sec PPC	PPV Output per Equipment	Distance at which 0.12 in/sec PPC	PPV Output per Equipment
Vibratory Roller	1.52	97	0.20	136	0.12
Hoe Ram	0.202	25	0.20	25	0.20
Large Bulldozer	0.21	26	0.20	37	0.12
Loaded Trucks	0.089	15	0.19	15	0.19
Large Bulldozer	0.089	15	0.19	21	0.12

Project: People's Park Vibration Annoyance Calcs

Pile Driving	FTA Reference VdB	VdB N	VdB E	VdB S	VdB W	Screening distances
feet	*25*	*67*	*85*	*230*	*55*	*520*
Impact Pile Driver	112	99	96	83	102	72

Paving	FTA Reference VdB	VdB N	VdB E	VdB S	VdB W	Screening distances
feet	*25*	*160*	*500*	*230*	*10*	*240*
Vibratory Roller	94	70	55	65	106	65

Grading	FTA Reference VdB	VdB N	VdB E	VdB S	VdB W	Screening distances
feet	*25*	*180*	*270*	*180*	*230*	*140*
Large Bulldozer	87	61	56	61	58	65
Small Bulldozer	58	32	27	32	29	36

Screening Distances

Pile Driving	FTA Reference VdB, ft	Screening Distance, ft	VdB	Screening Distance, ft	VdB
	25	--	*for 72 VdB*	*for 65 VdB*	--
Pile Driving	112	520	72	890	65
Vibratory Roller	94	140	72	240	65
Caisson Drilling	87	80	72	140	65
Large Builldozer	87	80	72	140	65

Project: People's Park Construction Noise Calcs

Pile Driving	RCNM Reference	dBA Lmax N	dBA Lmax E	dBA Lmax S	dBA Lmax W	Screening distances	Screening distances
feet	*50*	*67*	*85*	*230*	*55*	*1000*	*3000*
Impact Pile Driver	101	98	96	88	100	75	65

Paving	RCNM Reference	dBA Lmax N	dBA Lmax E	dBA Lmax S	dBA Lmax W	Screening distances	Screening distances
feet	*50*	*160*	*500*	*230*	*50*	*150*	*480*
Vibratory Roller	85	75	65	72	85	75	65

Grading	RCNM Reference	dBA Lmax N	dBA Lmax E	dBA Lmax S	dBA Lmax W	Screening distances	Screening distances
feet	*50*	*180*	*270*	*180*	*230*	*230*	*480*
Grader	85	74	70	74	72	72	65

Because the DEIR also did not contain a full site analysis of the four cultural resources identified by ARG as potentially significantly impacted by these vibrations--although the proximity of them to the pile driving would seem to trigger the requirement that they do so—we are provided no information about the foundation of each building and condition of each building's constituent parts. As noted above, the depth of structures is a key element in analyzing the degree to which they will be impacted by the pile driving (and other) vibrations. The fact that UCB controls the

relevant areas and has unique access to potentially impacted buildings such as the Anna Head School makes this lack of information all the more striking and disappointing.

Based on these sources, more information about the conditions at the proposed site (soil make up etc.) and the surrounding historic resources is necessary to make any supported conclusion about potential damage and assess appropriate mitigation measures. As this data is readily available to the Lead Agency, the failure to provide it and consider it is unreasonable. Neither the DEIR nor any of the reports appended to it contain the necessary information to make the proper risk/damage assessments -- such as depth of nearby structures, the physical properties of the soil at the site, and the exact locations where all of the pile driving will occur, and the type of construction equipment expected to be used (i.e., the amount of energy/force expected to be generated by the exact equipment to be used).

Before the EIR is finalized, these omissions should be rectified. BAHA is in the process of having the limited available data in the DEIR evaluated by qualified professionals, but as noted above, have not been able to do so given the difficulties of conducting research and communications during the COVID-19 Pandemic.

Mitigation Measures for Vibration Are Inadequate

The "mitigation measures" proposed by Architectural Resources Group are essentially nothing more than monitoring existing cracks and paying owners money for any damages sustained if they file a timely claim. These mitigation measures are facially inadequate. It is quite clear that neither American Resource Group nor the Lead Agency has conducted any complete and meaningful assessment of the potentially impacted features at each resource[176] or the location and degree of likely vibrations that will be caused by the expected pile driving.

More mitigation measures relating to vibrations are also proposed in connection with construction "noise" impacts in the DEIR, but those too are insufficient to mitigation potential damage to the unique historic and cultural resources involved here. The DEIR proposes, as to noise impacts, first screening for potential damage "to see if activity/equipment is within the vibration screening distances that could cause building damage/human annoyance or sensitive equipment disturbance." (From the Architectural Resource Group reports, it is already evident this potential for damage exists.) Second, if the activity/equipment is within the vibration screening distance such that it could cause damage, "UC Berkeley shall consider whether alternative methods/equipment are available and shall verify that the alternative method/equipment is shown on the construction plans prior to the beginning of construction." The DEIR presents a menu of potential available construction altering mitigation measures and requires UCB to consider them **but does not commit UCB to implement any of them or set a standard to by which the measures should be evaluated (i.e., cost, delay, degree of mitigation etc.).**

Even where UCB decides that the construction contractor should use alternate methods or equipment, the only thing they are required to do is note this on the plans; UCB is not required to ensure that the contractors follow the "alternate method/equipment," determine whether the

[176] An approach to such an assessment can be viewed at https://www.apti.org/assets/Committees/technicalcommittees/documentation/2019/Issue%201_APT%20BIM%20Newsletter.pdf

contractor can perform the alternate method or use the alternate equipment (or even that such alternate equipment is available). UCB is also free to pay the contractor who fails to use the mitigation measures and has no requirement to verify compliance with the alternate method/equipment requirement. The DEIR also makes clear that UCB may, if after considering alternate methods/equipment, decide that such mitigation measures are "not feasible," in which case, and only in which case, UCB will implement a construction vibration monitoring program. (NB: The DEIR does not provide any way to evaluate what "feasibility" means in these circumstances.) Notably, the mitigation measures that the DEIR proposes fall below those set forth in UCB's existing construction-related "Continuing Best Practices."[177]

There appears to be an unresolved inconsistency between the DEIR's monitoring mitigation recommendations in the Architectural Resources Group (ARG) reports and the vibration monitoring program described in relation to noise impacts.[178] Specifically, ARG's recommendation is limited to only a few buildings that are identified as being within 200 feet of the pile driving. As noted above, ARG's report does not make clear where it anticipates that pile driving to occur and that it apparently mistakenly believes that it would occur at only one location - hence the single measurement from the single "pile driving site" to the individual historic and cultural resources. Further ARG's vibration mitigation program proposal is not the same as that set forth as to noise. Among other things, ARG indicates recommends this mitigation program be conducted only as to a limited number of sites without first performing the Step 1 and Step 2 assessments contained in the vibration-related noise mitigation measure proposal. (Certainly ARG's report does not meet the noise mitigation section's description of Steps 1 and 2 for vibration-related noise mitigation evaluation and recommendations.). With respect to vibration-related noise mitigation, the monitoring is not to take place unless the Step 2 evaluation results in a finding of lack of feasibility.

The bottom line to all of this is (a) ARG did not know enough or do enough to evaluate the condition of the historic resources, where the pile driving would occur relative to the various cultural and historic resources, and the potential for damage to occur to them; (b) these failings are not cured by the mitigation measures proposed as to noise, because these mitigation measures are worthless and would permit UCB to recommend "other equipment" or "other methods" for example but not require them to ensure that these recommendations are followed on site or monitor vibration impacts on historic and cultural resources.

BAHA is particularly concerned about the impact of so much deep pile driving (70-100 feet conducted over a period of 20 days) insofar as it has the potential to cause severe irreversible damage to not only each resource's foundation of nearby buildings, but also on their unique t component parts such as original glass windows (including the FCC's unique imported wavy glass),[179] exterior shingling, and original wooden arbors that characterize at least two of these

[177] See DEIR appendices at page 367 (CBP NOI-4-a).
[178] They also appear to use a different distance to pile driving measure (200 feet in one case; 50 in the other).
[179] For resources specifically addressing the vulnerability and mitigation measures relating to glass, see Koga, Dean, et al. "Protecting Stained-Glass Windows from Vibrations Caused by Construction Operations." *APT Bulletin: The Journal of Preservation Technology*, vol. 51, no. 4, 2020, pp. 6–12. *JSTOR*, www.jstor.org/stable/26970187. Accessed 8 Apr. 2021; Fisher, Charles E., III, ed. *The Window Handbook: Successful Strategies for Rehabilitating Windows in Historic Buildings*. Washington, D.C.: National Park Service and Georgia Institute of Technology. 1986. Rev. 1990; Fisher, Charles E., III, Deborah Slaton, and Rebecca A. Shiffer, eds. *Window Rehabilitation Guide for Historic*

nearby structures.[180] Again, BAHA is in the process of obtaining professional opinions to respond to the cursory analysis put forward in the DEIR but has been impeded by the difficulty of gathering relevant data and obtaining the services of relevant professionals during COVID-19 and the refusal of UCB to accord it a short extension. BAHA will provide this expert opinion as soon as it can under these unique and challenging circumstances.[181]

Based on the data provided in the DEIR alone, BAHA's comment is that the analysis in the Noise Impact section should have been provided to ARG and a more detailed and sites specific vibration analysis performed as to all project sites particularly the Project 2 site. The information contained in the DEIR is more than sufficient to require the Step 1 assessment required as to noise impacts (NO-1) be performed before the EIR is issued so that the adequacy of any further proposed mitigation measures can be assessed by the public.

3.2.9.4 The Anna Head School Is Worth Saving

Put in stark form, if UC Berkeley chooses to do so, it will drive piles close to the landmarked Anna Head School in such a way as to permanently and unalterably damage that property such that its subsequent demolition is all but a foregone conclusion. UCB has already sought to remove the current occupant of the main Anna Head School building, deferred all maintenance and restoration, and proposed a replacement 200,000 sq. foot building for the property is a clear indication that this outcome is a virtual expectation.

Buildings. Washington, D.C.: Historic Preservation Education Foundation/National Park Service, 1997; *Heinz, Thomas A. Lloyd Wright Glass Art.* Academy Editions, Ernst & Sohn, 1994; Heinz, Thomas A. "Use & Repair of Zinc Cames in Art-Glass Windows." *Old House Journal*, (September/October 1989), pp. 35-38; Lee, Lawrence, George Seddon and Francis Stephans. *Stained Glass.* New York: Crown Publishers, 1976; Lloyd, John Gilbert. *Stained Glass in America.* Jenkintown, PA: Foundation Books, 1963; Stained Glass Association of America. *SGAA Reference & Technical Manual*, Second Edition Lee's Summit, MO: The Stained Glass Association of America, 1992; Wilson, H. Weber. *Great Glass in American Architecture: Decorative Windows and Doors Before 1920.* New York: E. P. Dutton, 1986; https://www.nps.gov/tps/how-to-preserve/preservedocs/preservation-briefs/33Preserve-Brief-StainedGlass.pdf; Moazami, Kamran, and Ron Slade. "Structural Engineering: Engineering Tall in Historic Cities: The Shard." *CTBUH Journal*, no. 2, 2013, pp. 44–49. *JSTOR*, www.jstor.org/stable/24192602. Accessed 8 Apr. 2021.

[180] For information and resources concerning vibrations on glass and other historic materials, see Rainer, J. H. "Effect of Vibrations on Historic Buildings: An Overview." *Bulletin of the Association for Preservation Technology*, vol. 14, no. 1, 1982, pp. 2–10. *JSTOR*, www.jstor.org/stable/1494019. Accessed 8 Apr. 2021; Sedovic, Walter. "Assessing the Effect of Vibration on Historic Buildings." *Bulletin of the Association for Preservation Technology*, vol. 16, no. 3/4, 1984, pp. 53–61. *JSTOR*, www.jstor.org/stable/1494039. Accessed 8 Apr. 2021; Johnson, Arne P., and W. Robert Hannen. "Vibration Limits for Historic Buildings and Art Collections." *APT Bulletin: The Journal of Preservation Technology*, vol. 46, no. 2/3, 2015, pp. 66–74. *JSTOR*, www.jstor.org/stable/43556454. Accessed 8 Apr. 2021; Searls, Carolyn L., et al. "A Mausoleum on Shaky Ground: De La Montanya Mausoleum, Cypress Lawn, Colma, California." *APT Bulletin: The Journal of Preservation Technology*, vol. 36, no. 2/3, 2005, pp. 13–19. *JSTOR*, www.jstor.org/stable/40004700. Accessed 8 Apr. 2021; Rudenko, Douglas, et al. "A Blueprint for Managing Construction-Vibration Risk at Museums." *APT Bulletin: The Journal of Preservation Technology*, vol. 51, no. 4, 2020, pp. 37–44. *JSTOR*, www.jstor.org/stable/26970191. Accessed 8 Apr. 2021; Wei, W. (Bill), and Esther Dondorp. "Testing to Determine Allowable Vibration Limits at a Natural-History Museum in the Netherlands." *APT Bulletin: The Journal of Preservation Technology*, vol. 51, no. 4, 2020, pp. 19–26. *JSTOR*, www.jstor.org/stable/26970189. Accessed 8 Apr. 2021.

[181] BAHA's own records were effectively unavailable to it for long periods due to City mandatory closures and similar county and state orders to shelter in place.

Indeed in light of the fact that the Lead Agency proposes replacing the Anna Head School with a mixed-use non-housing building, the UCB planners may well have decided that making demolition a foregone conclusion was a wise course of action. Pile driving near the unwanted (but landmarked) building would effectively kill two birds with one stone: it would permit the construction of the tallest building in Berkeley and all but guarantee that the Anna Head School will not survive because its foundation or structure would become so damaged that it could not be salvaged. This course avoids having the Lead Agency make an uncomfortable finding under CEQA, namely that the benefits of constructing a new 200,000 square foot academic building[182] outweigh preserving this unique and important landmark, which is so significant to architectural history, UCB's early diversity, the development of progressive education, and women's fight for equality.

That Anna Head School Complex (AHS Complex) is an important national landmark and a beloved Berkeley structure cannot be in doubt.[183] Channing Hall, part of the complex, is the first Shingle Style building in a city that soon became known for innovative architecture in this mode. According to one source, the Anna Head School's "Shingle-style campus blended into the landscape and encouraged Bay Area architects to move from a Victorian to the American, nature-influenced buildings now iconic in California." That same writer went onto describe the structure:

> The Anna Head School incorporated the Queen Anne style, yet each building was covered in unfinished redwood shingles to create the illusion that the structures blended into the landscape. Known as Shingle style, this uniquely American architecture was built completely from wood, which creates a sense that the building was carved from a tree or belongs in nature. Channing Hall was the very first shingle structure in Berkeley.
>
> To execute this impressive school complex, Miss Head hired her second cousin, Soule Edgar Fisher. Fisher died of tuberculosis after working for five years as an architect, but Channing Hall established him as a prodigy. After Fisher's death, the famous architect Walter H. Ratcliff Jr. took over designing the Anna Head School for Girls. He approached the school with his signature style—eclectic, comfortable, and an appreciation for the outdoors. The campus became one of the largest collections of Shingle-style architecture in the area, and the school marked the end of Victorian design in Berkeley as Bay Area architects adopted other styles.
>
> Paul Chapman, a local historian and a previous principal of what is now known as the Head-Royce school, says that the architecture "helped start the arts and crafts movement in the Bay Area. The campus is beautiful. The shingles evoke the redwood groves that were common here."

In addition, as described in one of the previous comments, the creation and operation of the Anna Head School in and of itself and in terms of its close proximity to UCB represented a watershed moment in the movement to provide equal education to women and diversify UCB's student body. Thus, the Anna Head School is not just important to the women who attended on that campus;

[182] The DEIR shows the future use in Table 3-2 clearly as Academic Life and Campus Life, not residential. Disappointingly UCB planners, when making presentations to the City of Berkeley and the public, provided a map showing the property's future use would be residential. DEIR App. at 220 (BAHA letter).
[183] https://annaheadschool.org (providing background on the institution).

instead, it is one of the last a remaining symbols of how women's fight for an equal right to education was lived and how UCB came to be the diverse institution that it is today.

As that same writer for the National Historic Preservation Trust wrote:

> The school's impressive preservation and social development demonstrates how schools play an important role in their community's history The Anna Head School for Girls influenced thousands of female scholars and designers to question the norm. These Berkeley buildings, forgotten by many, still stand as a testament to the shifting history of girl's education and architecture in the United States. And behind this campus, Anna Head reminds us that one woman can have a resounding impact on history.

CEQA gives the public a right to know and assess the choices UCB and the Lead Agency are making with respect to the Anna Head School. Even though the Lead Agency[184] may be prepared to sacrifice that school and other resources to this project, it should explain its calculus in an open an honest way – CEQA requires this. This honest discussion should be added to the final EIR.

3.2.10 Tribal Cultural Resources

The land upon which UCB is situated was previously occupied by Native Americans. Unfortunately, the reports relating to whatever work the Lead Agency did to survey potentially impacted resources and discuss impacts and mitigation measures are not being released to the public. The unavailability of the relevant reports and dearth of discussion of these resources and potential impacts to them makes public comment almost impossible. The degree of concealment also seems excessive under the circumstance as it includes a 2020 survey of historic resources by Page and Turnbull, which necessarily encompasses more than Tribal Cultural Resources, that although relied upon by the contractors who evaluated Projects 1 and 2, was not made available (even in partially redacted form) to the public.[185]

Based on what is set out in the DEIR, it appears that the Lead Agency is only paying lip-service the existence of Tribal Cultural Resources and has not performed a meaningful archeological assessment of the sites most likely to contain these artifacts or develop appropriate mitigation measures to ensure their protection during construction of the 500,000 sq feet of new building that is planned to occur in the LRDP area. Indeed, the DEIR does not provide any assurance that the Lead Agency's mitigation measures are sufficient. Having an archeologist "on hand' as deep pile driving occurs on sites such as People's Park or the Clark Kerr Campus to be on the lookout for tribal artifacts seems hardly sufficient to constitute true realistic mitigation measures.

[184] BAHA further submits that the Lead Agency's failure to provide a more fulsome analysis and the September 2020 Page & Turnbull Survey are acts of affirmative concealment. As a consequence, any court considering this matter in some subsequent proceeding is entitled to presume that significant damage and irreversible damage **will** occur at Anna Head School.

[185] Notably UCB has made public other Page & Turnbull reports and similar reports by other entities. Many of these reports are available on the UC Capital Strategies website.

3.2.11 DEIR Does Not Adequately Assess Cumulative Impacts of the LRDP Projects on Historic and Cultural Resources

Although the DEIR does not explicitly identify historic resources such as Anna Head School and the FCC as being permanently and irreversibly damaged, the thin information provided indicates clearly that these two resources will be impacted in addition to the specific sites and structures identified in Projects 1 and 2. In addition, UCB has announced plans to demolish a structure on Clark Kerr Campus and apparently slated the Smyth-Fernwald house to fall into disrepair. At a minimum, the DEIR concerning these Projects should address the cumulative impacts of the destruction of the entire cohort of historic and cultural resources, not just cherry-pick a few.

3.2.12 Lead Agency Fails to Provide Reasonable Alternatives to Projects

As discussed elsewhere, the DEIR provides no meaningful alternatives to the massive enrollment increases and large scale development proposed in the draft LRDP in part due to the fact that the Lead Agency limited the geographic scope to only a few UCB properties. Regardless of whether the Lead Agency chooses to enlarge the geographic scope of the LRDP, the Lead Agency is obligated to consider alternate locations on UCB property for the new buildings that the draft LRDP proposes to be constructed. In the Final EIR, the Lead Agency should examine building some or all of the proposed new buildings on these alternate sites.

Capping student enrollment at current enrollment levels would likewise reduce the need to build more and bigger buildings. If student housing demands persist even at current enrollment levels, then the Lead Agency should consider building smaller denser residence halls rather than large mixed use buildings that require demolition of historic resources. In the past there have been plans to integrate historic resources such as the UC Garage into new developments. Similar options should be explored.

3.3 The Lead Agency Fails to Follow the NHPA Despite Receiving Federal Funding and Certification of NHPA Compliance

The Lead Agency is obligated to follow federal laws and regulations relating to historic and natural resources given the amount and nature of its federal funding; the DEIR fails to demonstrate compliance with those authorities; hence it must be substantially revised. These applicable laws – including the National Historic Preservation Act (NHPA) as well as other federal requirements such as the National Environmental Protection Act – are triggered if the proposed project is funded with or will be operated or maintained through federal funding. With respect to operational funding, the rule is essentially a but for test (i.e., but for the federal funding, the project would not be undertaken). The materials BAHA has obtained from UCB[186] and other public materials show that, as to Project 1 (the Helen Diller Anchor House), student rents are budgeted to cover (in whole or in part) operation of that building once constructed. The fact that a large portion of these rental housing payments will come directly or indirectly from the federal government is likewise clear.

Federal Pell Grants and other federal grant and loan programs are used by a large proportion of UCB students to pay their housing expenses. Reportedly 27% of UCB undergraduates receive Pell

[186] The documents include various agreements and MOUs provided herewith in the Appendix to this Letter.

Grants, which cover payments for their housing.[187] This Pell Grant funding is important because both Projects 1 and 2 and many of the developments outlined in the LRDP, DEIR and associated materials, evidence the Lead Agency's intent to construct significantly more student housing as part of these projects. Because the operation and maintenance of these projects will be funded (at least in part) using Pell Grant funds, federal requirements are triggered. Perhaps not surprisingly UCB is currently aggressively lobbying Congress to increase Pell Grant monies so that it will receive even more student housing money from the federal government.[188]

There is, of course, some irony in the fact that UCB is marketing their Projects as housing projects, given that their student housing operations are partially funded by federal Pell Grants and other federal student financial aid. UCB cannot, however, argue that these projects are exempt from Federal EIR and related requirements because UCB also receives significant federal funding for research, to operate and maintain its academic and research facilities, and through rental payments (i.e., for LBL facilities). By way of example, in March 2020, UCB was allocated over $30 million under the Higher Education Emergency Relief Fund, part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.[189] According to UCB's CARES Act Report, "Of the funding we received, 50% will be directed to emergency financial aid grants for student cost of attendance, food, housing, course materials, technology, health care, and childcare. The other 50% will be directed to the institution to defray operational expenses related to the impact of COVID-19." UCB explained the use of its portion of the allocation thusly:

> Of the $30,440,627 allocated to UC Berkeley as part of the CARES Act, $15,220,313 was awarded to the institution to defray operational expenses related to the impact of COVID-19. From the $15,220,313 of the institutional portion, on a cash basis of accounting, $15,220,313 was spent through the period ending December 31, 2020.

Previously, UC's Office of the President acknowledged to a committee of the UC Regents in 2017 the significance of federal funding for research:

> Federal funds are the University's single most important source of support for its research, accounting for nearly 50 percent of all University research funding and totaling nearly $2.9 billion in fiscal year 2016. UC attracts nearly ten percent of all federal funds spent on research at American universities … …. Federal agency research funding supports basic and applied research, graduate student fellowships, and contributes to operations and maintenance of facilities.[190]

The two tables from this report summarize the basic historic facts well:

---

[187] https://edsource.org/2021/california-educators-want-congress-to-double-the-maximum-pell-grant-award/650710; https://www.ucop.edu/federal-governmental-relations/_files/Advocacy/Federal-Research/Fact_Sheet_Federal_Financial_Aid.pdf; see also https://www.kqed.org/news/11849485/were-fragile-uc-berkeley-officials-battle-budget-woes (UCB CFO describes housing as revenue generating and self-sustaining).Notably a more recent UCB blog post sets the percentage as 30%. https://blogs.berkeley.edu/2020/03/12/why-does-uc-berkeley-need-6-billion/

[188] https://edsource.org/2021/california-educators-want-congress-to-double-the-maximum-pell-grant-award/650710

[189] https://www.berkeley.edu/about/cares-act-report. UCB has also received significant FEMA funding to retrofit various buildings. https://www.berkeley.edu/news/media/releases/98legacy/10-20-1998a.html

[190] https://regents.universityofcalifornia.edu/regmeet/may17/p4.pdf

Table 1. External awards by sponsor, FY 2015-16 ($ millions)

SPONSOR	2015-16
Federal	3,326
State	448
Other gov't*	154
Business	800
Non-profit	762
Academia**	528
TOTAL	**6,017**

** Other government includes local governments, agricultural market order boards and foreign governments.*
***Academia includes the categories of higher education, DOE labs, campuses and UCOP.*

Table 2. Federal agency funding, FY 2015-16 ($ millions)

AGENCY	2015-16
NIH	1,946
Other HHS	122
NSF	472
Defense	279
Energy	108
Education	41
Commerce (incl. NOAA)	46
Agriculture	52
NASA	77
Interior	18
Other Agencies	165
Total	**3,326**

These statistics are in line with the findings of the so-called UC Tipping Point Report, which found that "The University of California received more funding from the federal government for scientific research—not including other sources of federal funding such as Pell Grants and funding for non-scientific research—than it received in California educational appropriations in every year since 2010."[191] In addition, UCB used FEMA funding to conduct a review of seismic readiness that resulted in some of the projects covered in the draft proposed LRDP and DEIR.[192] Presumably federal grants and other funding will be used to fund at least some of the proposed new faculty,

[191] https://cshe.berkeley.edu/sites/default/files/publications/douglassbleemer.tipping_point_report.updated_2.19.19.pdf
https://cshe.berkeley.edu/sites/default/files/publications/douglassbleemer.tipping_point_report.updated_2.19.19.pdf
[192] https://www.berkeley.edu/administration/facilities/safer/findings.html

staff and graduate student positions that are covered by the draft LRDP population increase proposal.

Given that several of the landmarked properties identified for demolition appear on the National Registry of Historic Properties and that UCB receives significant federal funding upon which the proposed projects depend, the Lead Agency is required to follow the National Historic Preservation Act (NHPA) as well as other federal requirements such as the National Environmental Protection Act, including in connection with the preparation of this DEIR. UCB receives federal funding in many different ways, including via research grants, lease payments, operational funding (such as CARES Act funding), and student financial aid that is paid over to UCB for tuition and housing.

Pursuant to the NHPA, any major federal action, including those that could impact structures or landscapes on the National Historic Registry, is subject to review under the NHPA and compliance with its related enabling regulations. 42 USC 4332. Any federal project that could have significant effect on quality of human environment must be considered "major" for purposes of 42 USCS § 4332, so that no independent consideration is required for question of whether project is "major."[193]

The phrase "major federal action" and "federal project" includes federal funding under certain circumstances. *Id.* It is irrelevant that particular project may be neither federally financed nor constructed under auspices of federal agency since key factor is that without federal approval project could not commence; thus, federal action has as much effect upon environment as federal funding would have had.[194]

To determine whether action is or is not "major federal action" within meaning of 42 USCS § 4332(C), courts consider the following factors: (1) whether project is federal or non-federal; (2) whether project receives significant federal funding; and (3) when project is undertaken by non-federal actor, whether federal agency must undertake "affirmative conduct" before non-federal actor may act; no single factor of these three is dispositive.[195] Typically, a project is considered

---

[193] *Citizens for Responsible Area Growth (CRAG) v. Adams*, 477 F. Supp. 994, 15 Av. Cas. (CCH) ¶18022, 14 Env't Rep. Cas. (BNA) 1562, 10 Envtl. L. Rep. 20143, 1979 U.S. Dist. LEXIS 10220 (D.N.H. 1979), vacated, 680 F.2d 835, 12 Envtl. L. Rep. 21025, 1982 U.S. App. LEXIS 18953 (1st Cir. 1982).

[194] *Sierra Club v. Morton*, 400 F. Supp. 610, 7 Env't Rep. Cas. (BNA) 2153, 6 Envtl. L. Rep. 20047, 1975 U.S. Dist. LEXIS 11258 (N.D. Cal. 1975), aff'd in part and rev'd in part, 610 F.2d 581, 13 Env't Rep. Cas. (BNA) 1984, 9 Envtl. L. Rep. 20772, 1979 U.S. App. LEXIS 10827 (9th Cir. 1979). Statutory term "major federal actions" must be assessed with view to overall, cumulative impact of action proposed, related federal actions and projects in area, and further actions contemplated; minor federal actions can be "cumulatively considerable" when one or more agencies over period of years puts into project individually minor but collectively major resources, when one decision involving limited amount of money is precedent for action in much larger cases or represents decision in principle about future courses of action, or when several government agencies individually make decisions about partial aspects of major action; also, "federal action" includes not only action undertaken by agency itself, but also any action permitted or approved by agency. *Sierra Club v. Morton*, 514 F.2d 856, 169 U.S. App. D.C. 20, 7 Env't Rep. Cas. (BNA) 1977, 5 Envtl. L. Rep. 20463, 1975 U.S. App. LEXIS 14205 (D.C. Cir. 1975), rev'd, 427 U.S. 390, 96 S. Ct. 2718, 49 L. Ed. 2d 576, 8 Env't Rep. Cas. (BNA) 2169, 6 Envtl. L. Rep. 20532, 1976 U.S. LEXIS 131 (1976).

[195] *Mineral Policy Ctr. v. Norton*, 292 F. Supp. 2d 30, 2003 U.S. Dist. LEXIS 21011 (D.D.C. 2003); see also, *Friends of Earth, Inc. v. Coleman*, 518 F.2d 323, 8 Env't Rep. Cas. (BNA) 1617, 5 Envtl. L. Rep. 20428, 1975 U.S. App. LEXIS 14506 (9th Cir. 1975).

major federal action under 42 USCS § 4332(C) when it is funded with federal money.[196] Given that the student housing buildings proposed in the Projects will be maintained and operated through federal funding and some of the academic and research buildings (particularly those on Moffett Field, which was leased from NASA) may also be, it is BAHA's position that a rebuttable presumption exists that these Projects constitute federal and major federal actions. If the Lead Agency wants to avoid compliance with these federal requirements, it must demonstrate in the Final EIR that federal funding will not be used or relied on in their operation and maintenance (or, of course, construction).

Absent such a showing, the final EIR will need to conform to all applicable federal requirements including those of the National Historic Preservation Act (NHPA). Section 106 of the NHPA provides that the head of any federal agency having jurisdiction over a federally assisted undertaking, shall, prior to approval of the expenditure of funds or issuance of a license, take into account the effect of the undertaking on any site or object included in or eligible for inclusion in the National Register and shall provide the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to the undertaking. See 16 U.S.C. § 470f. The Advisory Council has established regulations for federal agencies in regard to compliance with Section 106. See 36 CFR Part 800 (1987). The process established by the regulations is designed to accommodate historic preservation concerns and the needs of federal undertakings, principally through consultation among the Agency Official, the State Historic Preservation Officer (SHPO), the Advisory Council and other interested persons, to provide efficient identification and adequate consideration of historic properties. § 800.1(b)[197]. Compliance with these steps will need to be documented in the Final EIR.

Moreover, the Lead Agency should not try to evade its legal responsibilities by rejecting federal funding or segmenting its projects such as was done in relation to UCB's recent LRDP pertaining to vegetation removal on the Hill Campus. Courts have taken a dim view of such activities. Likewise, segmentation is not a way to avoid federal compliance. Preserve Endangered Areas of *Cobb's History v. United States Army Corps of Eng'rs*, 87 F.3d 1242, 10 Fla. L. Weekly Fed. C 105, 43 Env't (Agency cannot evade its responsibilities under NEPA by artificially dividing major federal action into smaller components, each without significant impact.)

3.4 Cultural, Tribal and Historic Resource Impact Questions

In conjunction with issuing its final EIR, the Lead Agency should answer the following questions (Note: UCB as referred to herein includes all properties and sites owned or leased by UCB or a UC entity for the use of UCB students or to which UCB students, faculty, staff or researchers have access by virtue of an agreement between the property owner or operator and the Lead Agency or one of its constituent parts such as UCB):

Question 3.1: Have any resource Surveys or assessments been performed relative to any of the Historic and Cultural Resources in the draft Proposed LRDP Update Project since 2000? If so, please provide.

[196] *Mineral Policy Ctr. v. Norton*, 292 F. Supp. 2d 30, 2003 U.S. Dist. LEXIS 21011 (D.D.C. 2003).
[197] *Attakai v. United States*, 746 F. Supp. 1395, 1405, 1990 U.S. Dist. LEXIS 11775, *24-25, 21 ELR 20433

Question 3:2: Does any master survey, list, or document containing a list of all Historic and Cultural Resources for structures the draft proposed LRDP Update Area exist? If so, please provide it.

Question 3.3: What if any federal funding has been used to maintain any of the Cultural and Historic Resources listed for "Redevelopment" in the DEIR and accompanying materials including but not limited to ?

Question 3.4: What if any federal funding has been accessed or used by UCB's planning department and/or staff during the last 5 years?

Question 3.5: Has the UCB planning department received federal funding of any kind in connection with the Projects, whether directly or indirectly or relating to any site identified in the DEIR as a potential for new development, redevelopment, or renovation?

Question 3.6: What is your best projection of the number of students who will be resident in Project 1 (Helen Diller Anchor House) who will be recipients of federal student financial aid, including but not limited to Pell Grants?

Question 3.7: Do the budgets or budget assumptions for the operation and maintenance of the Project 1 Helen Diller Anchor House include revenue from income associated with rents, housing payments for the student housing?

Question 3.8: If the answer to Question 3.7 is yes, how much (by absolute number or percentage) do you anticipate will come directly or indirectly from the federal government?

Question 3.9: If the answer to Question is no, please provide details as to the alternate source of operating and maintenance revenues?

Question 3.10: Are any of the lenders in connection with Projects 1 and 2 federally insured? If so, which ones.

Question 3.11: What is the purpose of the demonstration kitchen in the Helen Diller Anchor House?

Question 3.12: How many events are expected to be hosted in the Helen Diller Anchor House over the period of a year?

Question 3.13: How is the event space in the Helen Diller Anchor house going to be operated and what types of events do you anticipate being held there?

Question 3.14: Please clarify as to each Project 1 and Project 2 the exact dimensions of the student living units.

Question 3.15: Please clarify as to Project 1 and Project 2 how much space has been allocated for UC Offices or other administrative use?

Question 3.16: Please clarify as to Project 1 and Project 2 how much space has been allocated to commercial or third-party rental?

Question 3.17: Please clarify as to Project 1 and Project 2 the anticipated or proposed uses of the space referenced in Question 3.16.

Question 3.18: Please clarify as to Project 1 and Project 2 the exact location that pile driving is expected to occur and for each of those locations, please provide the distance to the historic and/or cultural resources identified by the Architectural Resource Group Inc.?

Question 3.19: Please clarify as to Projects 1 and 2 what type of pile driving equipment is expected to be used on each site, the number of days pile driving will occur at each site, and the maximum vibrations expected from each site of the pile driving to the nearest two identified cultural or historic resources?

Question 3.20: Please clarify at to Project 2, whether any examination or survey has been done at or of any of the historic and cultural resources identified in the DEIR?

Question 3.21: Have any inspections or surveys been performed as to the Anna Head school, particularly with regard to the foundation?

Question 3.22: Have any inspections or surveys been performed as to the Anna Head school other than the Architectural Resource Group, Inc. HRTR? If so, please provide it/them.

Question 3.23: Has any assessment been made with regard to the Anna Head School's ability to withstand the vibrations that are anticipated to be caused by the pile driving to be conducted in connection with the Project 2?

Question 3.24: What stone and masonry elements are present in, on or under the Anna Head school?

Question 3.25: Please describe the 200,000 sq foot building that you anticipate will (or may) be built on the Anna Head School site per the DEIR and provide any schematics or possible designs that have been made.

Question 3.26: As to the new building referenced in Question 3.25 (to potentially be constructed on the Anna Head School property), where on the site will that building be located and what structures, if any, would need to be demolished?

Question 3.27: What is the current status of plans for the original Anna Head School?

Question 3.28: Have any estimates been obtained to renovate (or studies made on the cost to renovate) the Anna Head school? If so, please provide all such estimates/studies?

Question 3.29: What monies have been allocated over the past 10 years to repairing and preserving the Anna Head School in general and Channing Hall in particular ?

Question 3.30: What monies have been expended over the past 10 years to repair and preserve the Anna Head School in general and the Channing Hall in particular?

Question 3.31: What is the present condition of Channing Hall (Building C) on the Anna Head campus? What is the basis for your assessment?

Question 3.32: What is the present condition of the Gables (Building B) on the Anna Head campus? What is the basis for your assessment?

Question 3.33: What is the present condition of the Cottage (Building E) on the Anna Head campus? What is the basis for your assessment?

Question 3.34: What is the present condition of the Pool/Gymnasium (Building F) on the Anna Head campus? What is the basis for your assessment?

Question 3.35: What is the present condition of the Study Hall (Building D) on the Anna Head campus? What is the basis for your assessment?

Question 3.36: What is the present condition of Alumnae Hall (Building A) on the Anna Head campus? What is the basis for your assessment?

Question 3.37: What, if any, fundraising efforts have been undertaken by You or anyone connected with or employed by UCB to any affiliated entity or institute to raise money to preserve any part of the Anna Head school or to bring any of is buildings into ADA compliance? If these fund raising efforts ceased, why did they cease?

Question 3.38: Have any inspections or surveys been performed by You or any of your contractors as to Bernard Maybeck's the First Church of Christ Scientist, particularly with regard to the foundation? If so, please provide them.

Question 3.39: Have any inspections or surveys been performed by You or any of your contractors as to those features of Bernard Maybeck's the First Church of Christ Scientist that may be vulnerable to damage from the pile driving associated with the construction of Project 2? If so, please provide them.

Question 3.40: What mitigation measures, if any, do you propose to take to protect that the glass windows and related features of Bernard Maybeck's the First Church of Christ Scientist during the construction of Project 2?

Question 3.41: What if any shadow study or other evaluation have Your or your contractors made on the impact of shade and shadowing to Bernard Maybeck's the First Church of Christ Scientist?

Question 3.42: What mitigation measures, if any, do you propose to take to mitigate any shade or shadowing on Bernard Maybeck's the First Church of Christ Scientist during the construction?

Question 3.43: What if any assessments have you made as to the effectiveness of the proposed mitigation measures identified in response to Question 3.43?

Question 3.44: Please provide answers to questions 3.38 through 3.43 as to each Anna Head School Building, the Casa Bonita Apartments, and People's Bicentennial Mural.

Question 3.45: As to each of the cultural and/or historic resources identified in the DEIR for redevelopment, (a) what are the current plans for redevelopment? (b) will the entire existing structure be demolished?; (c) what new construction (or addition, if any) will be made to that site?; (d) what is the estimated decision and planning timeline?

Question 3.46: Was any federal funding used to retrofit, repair, maintain or operate the Hearst Mining Building? If so, please describe.

Question 3.47: Has any federal funding been used to retrofit, repair, maintain or operate the Greek Theater? If so, please describe.

Question 3.48: As the cultural and/or historic resources identified in the DEIR for redevelopment, which if any were originally constructed with private donations, gifts or grants?

Question 3.49: As to each resource identified in response to Question 3.48, do the terms of that gift, donation or funding restrict in any way Your or UCB's rights or ability to alter or demolish that structure? If the answer is yes as to any resource, please provide further details about the nature and enforceability of the restriction.

Question 3.50: Do You have any opinion from any expert in any field the pile driving that will be conducted as part of the Project 2 construction will not harm the Anna Head School? If so, please provide.

Question 3.51: Do You have any opinion from any expert in any field the pile driving that will be conducted as part of the Project 2 construction will not harm the First Church of Christ Scientist or any of its constituent parts? If so, please provide.

Question 3.52: Do You have any opinion from any expert in any field the pile driving that will be conducted as part of the Project 2 construction will not harm the Casa Bonita apartments? If so, please provide.

Question 3.53: Do You have any opinion from any expert in any field the pile driving that will be conducted as part of the Project 2 construction will not harm the People's Bicentennial Mural? If so, please provide.

Question 3.54: Have you ever obtained an estimate for or explored the feasibility of moving any of the historic or cultural resources identified in the DEIR as designated for "Redevelopment," including but not limited to the UC Garage, the Smyth-Fernwald House, and the Anna Head School? If so, please provide.

Question 3.55: Which buildings specifically, other than Building 21, on the Clark Kerr Campus have been identified as potential redevelopment sites (i.e., to be demolished or substantially altered)?

Question 3.56: What is the status of development plans for the Clark Kerr Campus? Have any drawings or schematics been prepared (other than for the volleyball sports complex)?

Question 3.57: What is the status of the redevelopment of the Smyth-Fernwald house and property?

Question 3.58: Have you explored the possibility of moving UCB administrative staff and/or administrative offices or departments to commercial office structures outside of Berkeley either to lower costs and/or to free up space that could be converted to other uses such as student housing?

Question 3.59: Have you considered converting University Hall into student housing? If not, why not? If so, what was the nature of the discussion and decision?

Question 3.60: Have you considered converting any existing UCB property in Berkeley into student housing? If not, why not? If so, what was the nature of the discussion and decision?

4 ADDITIONAL BAHA COMMENTS ON THE DEIR

4.1 The DEIR Erroneously Fails to Assess the Aesthetic Impacts of the Proposed Projects

The Lead Agency's DEIR did not directly and comprehensively address the projects aesthetic impacts as required by CEQA. Given that the Lead Agency has effectively conceded that its construction projects will have aesthetic impacts on the affected areas, the failure to describe these impacts in detail and provide alternatives and mitigation measures must be cured before the final EIR is issued.

4.2 DEIR's Stated Basis for PRC 21099 Exemption is Erroneous

The DEIR does not evaluate in any comprehensive way the aesthetics of the Projects or propose suitable mitigation measures. It should have done so. Addressing mitigation measures first, providing presentations and information to the City of Berkeley and the public is not a mitigation measure (as suggested by ARG in its HRTF), it is required pursuant to CEQA.

The April 7, 2020 Notice for the EIR for the LRDP "Update" stated that the DEIR would evaluate all three projects' effects on Aesthetics: "The EIR for the LRDP Update will evaluate the probable environmental effects, including cumulative effects, of the proposed project, in the following environmental issue areas . . . Aesthetics . . ."[198] Elsewhere in that April 2020 Notice, specifically Attachment B, the Lead Agency indicates that it is **not** required to consider the aesthetic impact because the Projects are not near a scenic highway:

> The planning area is not on or within the viewshed of a State scenic highway. Regional access to UC Berkeley is provided by Interstate Highways 80 and 580, and State Routes 24 and 13. None is a designated or presently eligible scenic route. Therefore, no impact would occur under this criterion and this issue will not be discussed in the EIR.[199]

Interstate Highway 580 (official designation number 40) and State Route 24, however, are in fact designated scenic highways in part and eligible scenic highways in other locations.[200] Mills College, which is part of UCB's actual long term development plan (although erroneously not included in the draft LRDP or discussed in the DEIR), is in close proximity to 580. Other UCB property likewise is either visible from those highways or accessible from them. In addition, portions of the stated LRDP area – including the Hill Campus – clearly do not qualify as an "urban" infill area or "transit priority" area.

Further, in its DEIR Notice pertaining to the sports complex project at Clark Kerr Campus, the Lead Agency acknowledges that any EIR pertaining to that development must address its Aesthetic

[198]https://files.ceqanet.opr.ca.gov/261038-2/attachment/83aRFnu5KQL0GKXuhAKdyeGlIDOwqtH9mr-3Ia1XB25S9xPb8AbfVnMxhjF8HU5PdZK4D94cp0mllHy70
[199]https://files.ceqanet.opr.ca.gov/261038-2/attachment/83aRFnu5KQL0GKXuhAKdyeGlIDOwqtH9mr-3Ia1XB25S9xPb8AbfVnMxhjF8HU5PdZK4D94cp0mllHy70
[200]https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=2e921695c43643b1aaf7000dfcc19983 (accessed on April 6, 2021).

impacts, and in fact did address them in that project's LRDP. Although this draft LRDP proposes more development (and more significant development) on the Clark Kerr Campus[201], the Lead Agency takes the position in the DEIR that Aesthetic impact need not be addressed. Those positions cannot be reconciled.

Because the LRDP Project in particular includes areas outside those exempted from Aesthetic impact evaluation pursuant to Public Resources Code Section 21099[202] -- including the Hill Campus and other areas—the DEIR should have addressed the following questions with respect to each Project, that is does the project:

1. Have substantial adverse effect on a scenic vista?

2. Does it substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from a publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

3. Create a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area?

BAHA suspects that the Lead Agency's desire to avoid examination of the Aesthetic impacts of its Projects has less to do with the actual proximity of scenic highways or applicability of Public Resources Code Section 21099 than a desire to avoid confronting the severely negative aesthetic impacts of its proposed projects, including the architecturally undistinguished and massive Anchor House (Project #1) designed by a firm apparently not engaged or controlled by the Lead Agency and the equally hideous and massive 17-story skyscraper on the People's Park site, both of which dwarf neighboring properties and will cast shade over landscapes and other elements. BAHA salutes ARG for acknowledging that in its current conception, Project 2 will have a substantial impact on the aesthetics of the area.

[201] "Additional student and faculty housing is under consideration for the Clark Kerr Campus in order to meet the university's housing goals, along with student life facilities to support both existing and new housing facilities." https://files.ceqanet.opr.ca.gov/261038-2/attachment/83aRFnu5KQL0GKXuhAKdyeGlIDOwqtH9mr-3Ia1XB25S9xPb8AbfVnMxhjF8HU5PdZK4D94cp0mllHy70

[202] On September 2013, the Governor signed into law Senate Bill (SB) 743, which instituted changes to the California Environmental Quality Act (CEQA) when evaluating environmental impacts to projects located in areas served by transit. While the thrust of SB 743 addressed a major overhaul on how transportation impacts are evaluated under CEQA, it also limited the extent to which aesthetics and parking are defined as impacts under CEQA. Specifically, Section 21099 (d)(1) of the Public Resources Code (PRC) states that a project's aesthetic and parking impacts shall not be considered a significant impact on the environment if: 1. The project is a residential, mixed-use residential, or employment center project, and 2. The project is located on an infill site within a transit priority area. Section 21099 (a) of the PRC defines "Infill site" as a lot located within an urban area that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban; and "Transit priority area," as an area within one-half mile of a major transit stop that is existing or planned.

Because the Lead Agency was correct in its position as to the sports complex, it must address the Aesthetic impacts of the three projects – as correctly and completely defined – in its final EIR. The DEIR's failure to consider Aesthetic impacts renders it insufficient under CEQA.

4.3 Because the Lead Agency Described Some of the Aesthetic Impacts of the Projects, It Must Provide a Complete Analysis in the EIR

As described above, the DEIR does describe some potential aesthetic impacts. For example, Architectural Resources Group, Inc., discussed the aesthetic impact of placing a 17-story structure in a neighborhood where no building was over four stories. Further, the Tables 2-1 and 2.6.2 provide summaries of the DEIR's findings and recommended mitigation measures as to the aesthetic impacts of the Projects. Therefore, the DEIR must address those impacts in a comprehensive manner and provide specific, realistic mitigation measures (something other than to provide a slide show to City officials).

4.4 The Failure to Address Aesthetic Impacts Must Be Cured in Final EIR

The Final EIR should discuss the aesthetic impacts of the projects, provide recommendations for mitigation supported by evidence.

4.5 In Designs of Projects 1 and 2, Lead Agency Did Not Satisfy Existing Best Practices and Improperly Rewrote Best Practices Without Demonstrating CEQA Compliance

The DEIR fails to demonstrate that the Projects are consistent with UCB's best practices. UCB's continuing best practices provides:

> CBP AES-1-f: Each individual project built in the City Environs under the 2020 LRDP would be assessed to determine whether it could pose potential significant aesthetic impacts not anticipated in the 2020 LRDP, and if so, the project would be subject to further evaluation under CEQA.

In conjunction with the issuance of the DEIR and LRDP, UCB proposed to change its best practices language to exempt the Projects from the applicability of this requirement:

> UC Berkeley will assess each individual project built in the City Environs Properties to determine whether it could pose potential significant aesthetic impacts not anticipated in the LRDP, for projects that are not exempt from aesthetics analysis pursuant to Public Resources Code Section 21099. If the project could pose potential significant aesthetic impacts as noted above, the project would be subject to further evaluation under the California Environmental Quality Act.

The revised language is characterized in the Appendix B attachment as "proposed." It remains unclear whether the relevant approvals were given for this dramatic change of course. This proposed language notably removes reference to a particular LRDP and inserts an exemption under 21099, without reference how applicability of that exemption will be determined. As here, the proposed 2021 LRDP plan area – as articulated by the Lead Agency -- includes areas that are not exempt under PRC 21099.

Likewise, UCB unilaterally changed its stated policy to abide by the City of Berkeley's building height restriction. The existing continuing best practices states as follows:

> CBP AES-1-g: To the extent feasible, university housing projects in the 2020 LRDP Housing Zone would not have a greater number of stories nor have setback dimensions less than could be permitted for a project under the relevant city zoning ordinance as of July 2003.[203]

In conjunction with the issuance of the DEIR, UCB proposed to remove this requirement with the following explanation:

> [Removed. The proposed LRDP Update does not establish a Housing Zone. For coordination purposes, UC Berkeley may consider aspects of local policies and regulations for the communities surrounding the UC Berkeley campus when it is appropriate and feasible.][204]

The Lead Agency should provide further information an analysis to satisfy its obligations relating to Aesthetic Impacts under CEQA and its Best Practices, or a more credible and substantiated basis as to why all aspects of the Projects are deserving of an exemption under 21099.

IMPACTS ON NATURAL (BIOLOGICAL) RESOURCES

4.6 General Comments Relating to Natural Resources Impacts

UCB properties include a myriad of natural resources and significant geographic features that together form an important habitat for flora and fauna, many of which are on the endangered species list. The so-called Hill Campus alone is replete with these resources as prior EIRs concerning the area have documented extensively. Notwithstanding this prior work, the DEIR is devoid of any meaningful discussion of the existing conditions in that area, which has recently undergone a radical wildfire management vegetation program that included removal of many trees and considerable amounts of brush and other vegetation.

Indeed, the Natural Resources data provided in connection with the DEIR is a scant 12 pages long. (DEIR Appendix E). Notably neither the DEIR nor its appendices include a complete or accurate tree survey or a nesting bird survey, or detailed assessment of trees and other natural features that will be removed or disrupted by the planned construction. For example, Appendix E provides a list "special-status species known or suspected from the nine United States Geological Survey (USGS) quadrangles encompassing and surrounding the LRDP EIR Study Area." (DEIR App. 1365). However, from Tables E-1, it is clear that no actual plant surveying was performed, and the drafters were merely relying on what species ***might*** be present in select LRDP areas based on the aforementioned geological survey (which apparently, they relied on to assess soil and other suitability for the various species). Table E-2 at least appears to detail species "known" historically to have been present at locations within the LRDP-impacted areas, but again no live assessment or survey of wildlife was undertaken. Further, the historic data cited in Appendix E does not include (among other things) recent reliable surveys of wildlife and birds at UCB, such as the

[203] 179 DEIR Appendix B.
[204] 180 *Id.*

report prepared by then UCB student Allison Shultz[205] in 2007. Likewise, there is no discussion of the CDFW's recommended bird-related mitigation measures such as hooded lighting or nest buffers.

4.7 DEIR Should Provide Additional Baseline Information Regarding Trees

UCB is well-known for its growth live oaks and redwoods. Campus Park, the Hill Campuses, and Clark Kerr are among the UCB sites where these and other species of trees are visible and understandably beloved. The Lead Agency previously adopted two planning documents – the UCB Master Landscape Plan and the UC Berkeley Historic Landscape Plan[206]-- that were designed to enhance and protect the campus landscaped and environments of which these trees are a part.

The draft LDRP and Projects #1 and #2 will (if executed) result many existing trees being removed, significantly shaded, or otherwise negatively impacted. Such proposed projects include the construction of a parking structure under the UCB's iconic crescent driveway at Oxford and University (the true gateway to the Campus Park), the creation of a solar field in the Hill Campuses, the removal of existing trees on the Project #2 site (People's Park), and the removal of specimen trees adjacent to many of the historic structures on campus designated for demolition including the Anna Head School, the Smyth-Fernwald House, the Hearst Mining Building, and Edwards Field, to name only a few.

Notwithstanding the clear plan to remove large numbers of trees within the project areas, the DEIR contains no comprehensive baseline data on the number of trees in that area. This data is commonly compiled in a so-called Tree Survey. There is none and that lack must be rectified before the final EIR is propounded. The nature and scale of the proposed projects alone require that such a survey must be undertaken. The trees shown below at the Smyth-Fernwald House Property are examples of trees that and plants that likely would be removed if the house is demolished as anticipated in DEIR Table 3-2.

[205] https://news.berkeley.edu/2012/07/23/campus-still-a-great-place-for-birds-despite-century-of-changes/; and https://doi.org/10.1525/cond.2012.110029

[206] Both documents and related materials are available on the UC Capital Strategies website. https://capitalstrategies.berkeley.edu/sites/default/files/2004_-_landscape_master_plan.pdf

Figure LAEC-4: Wisteria on the Smyth House, 2010.

Figure LAEC-5: Norfolk Island pine on the south side of the Smyth House, 2010.

Figure LAEC-6: Coastal tea tree on the west side of the Smyth House, 2010.

Figure LAEC-7: Vegetation atop the western boundary wall is varied, 2010.

Figure LAEC-8: Mature valley oak on Dwight Way, 2010.

Information must be provided, and a discussion presented, as to how many trees the Lead Agency will expect to be removed and/or damaged by the projects. To comply with CEQA, the Lead Agency is required to make a reasonable and good faith effort to identify natural resources likely to be impacted by the projects and discuss the likely impacts to them from the proposed projects.

Anticipating that the Lead Agency will respond that such details will be addressed in future DEIR "updates" or LRDP "amendments," we note two salient facts: (1) the Lead Agency has already designated specific sites for construction and (2) identified the amount of square footage and at least in some cases (including Projects 1 and 2), where the footprint of the new buildings likely will be on the site. As a consequence, the Lead Agency knows and must disclose which trees on the project sites likely will need to be removed and/or will be shaded if the contemplated projects proceed.

The law is clear that, in a CEQA review, a lead agency cannot avoid discussing the reasonably predictable impacts of its proposed projects by staggering the release of its plan into separate, staged LRDPs and DEIRs. Not only would such actions violate CEQA and other laws, but it would also violate the UC Regents CEQA compliance policies. Among other things the cumulative

impacts of the loss of trees must be studied as part of the CEQA review and as part of UCB planning documents.[207] Absent these basic reports including tree surveys, any decision by the Lead Agency to proceed with the projects would necessarily not comply with CEQA and not be supported by substantive evidence.

4.8 No Habitat Survey as Recommended by California Department of Fish and Wildlife and as Required by CEQA

In response to the Lead Agency's April 7, 2020 notice, the California Department of Fish and Wildlife (CDFW) made the following initial comments:

> CDFW recommends that the draft EIR analyze all potential impacts to sensitive habitat types (e.g., grassland, riparian, wetland, forested and brush) and special-status species that could be present at each Project location. The 2020 draft LRDP EIR identified several special-status species that are known to or suspected to occur at Hill Campus including, but not limited to, the state and federally threatened Alameda whipsnake (*Masticophis laterlis euryxanthus*) and the federally threatened and state species of special concern California red-legged frog (*Rana draytonii*). Please be advised the Fish and Game Commission recently accepted the mountain lion (*Felis concolor*) Central Coast North Evolutionarily Significant Unit as a state candidate for listing as threatened. CDFW recommends avoiding impacts to areas that provide habitat for sensitive species.
>
> Trees are present within the Project boundary and in adjacent residential areas. Both native and non-native trees provide nesting habitat for birds. CDFW recommends that the following measures be included in the draft EIR:
>
> 1. Nesting Bird Surveys: If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), CDFW recommends that a qualified biologist conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically, the following but may differ even within species: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys should be conducted at the appropriate times of day and during appropriate nesting times.
>
> 2. Active Nest Buffers: If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, an appropriate buffer between the nest and active construction should be established. The buffer should be clearly marked

[207] Notably, the Lead Agency acted to avoid compliance with the National Environmental Protection Act when it rejected federal funding in connection with its proposed last proposed LRDP amendment for the Hill Campus. That action was unlawful. Waiver of federal aid by state is not ground for disclaiming federal nature of project where it appears that purpose is to avoid compliance with federal statutory environmental requirements. *Sierra Club v. Volpe*, 351 F. Supp. 1002, 4 Env't Rep. Cas. (BNA) 1802, 4 Env't Rep. Cas. (BNA) 1804, 2 Envtl. L. Rep. 20760, 1972 U.S. Dist. LEXIS 10813 (N.D. Cal. 1972).

and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist should conduct baseline monitoring of the nest to characterize "normal" bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist should monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g. defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman should have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.

3. Hooded Lighting: Project lighting to be installed should be hooded or shielded to direct light downwards and to minimize the spillage of light outwards into adjacent areas where trees are present . . . .

The CDFW also recommended that the following measures be included in the draft EIR:

1. Habitat Assessment: A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its immediate vicinity supports freshwater stream, wetland, and/or riparian communities. This survey should include, but not be limited to, Strawberry Creek or streams, and drainages. The assessment should include recommended stream buffers and setbacks.

2. Wetland Delineation: CDFW recommends a formal wetland delineation be conducted by a qualified biologist prior to Project construction to determine the location and extent of wetlands and riparian habitat present. Please note that, while there is overlap, State and Federal definitions of wetlands, as well as which activities require Notification pursuant to Fish and Game Code § 1602, differ. Therefore, CDFW further recommends that the delineation identify both State and Federal wetlands as well as which activities may require Notification to comply with Fish and Game Code.

3. Notification of Lake or Streambed Alteration: Fish and Game Code §1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake: (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. CDFW is required to comply with CEQA in the issuance of an LSA Agreement

It does not appear that the Lead Agency undertook this evaluation as to the entire area covered by the LRDP as proposed (i.e., as geographically constrained by the Lead Agency, not to include all UCB property or projects), and it certainly did not do so for all of the property owned, leased or controlled by UCB upon which the Lead Agency plans construction and development. The Richmond Field Station, for example, is one area that contains wetland, as does the Hill Campus. Likewise, the failure to provide details as to the other contemplated development on the Clark Kerr

Campus, the Hill Campus, and the so-called Campus Park makes it impossible to determine what if any trees, landscapes or natural habitats will be impacted.

The CDFW also noted in its initial comments that, "CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]." It is not evident it this information was provided as required.

4.9 Provide Updated Surveys for Plants, Animals and Birds

The Lead Agency recently propounded an LRDP and EIR for the Hill Campus directed at vegetation Management. Neither the draft proposed LRDP nor the DEIR describe the status of that vegetation management project. Further, there is no information provided as to the actual impacts on the remaining Natural Resources. Among other things, the failure to identify a project of this magnitude impacting Natural Resources within the same LRDP area renders any evaluation of cumulative effect erroneous (in fact, no such assessment was provided). Those omissions must be cured before the Final EIR is promulgated.

The Final DEIR should include updated surveys of plants, animals, birds and wildlife habitats, particularly as to the Hill Campus East and other areas where UCB's wildfire mitigation efforts have been underway. These activities were so extensive that they may have significantly altered existing natural conditions in the Project Area.

4.10 Creation of Solar Fields

According to the DEIR, UCB may be planning to install a solar farm (called a solar array) on the Hill Campus:

> "Solar Array in the Hill Campus: As a result of recent annual PG&E PSPS program events that limit electrical supply to the Campus Park for several hours or even days, UC Berkeley could develop a large PV solar installation on the Hill Campus East to increase electrical power resilience to the Campus Park. The solar PV project would be a battery energy storage system to control how and when PV-generated electricity is used."

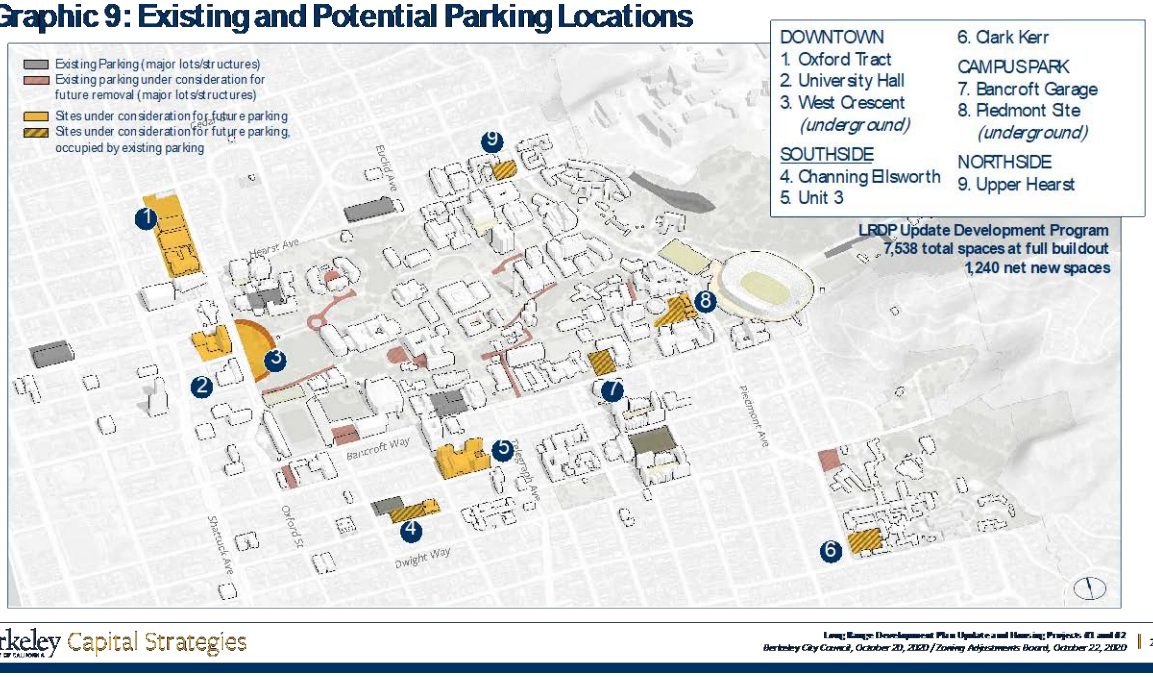
This statement is quite difficult to interpret. First, the LRDP map contains essentially three Hill Campuses: Hill Campus West (where the Greek Theater is); Hill Campus East (where the Botanical Gardens are); and LBL. This statement does not indicate where in that over 800 acre area the solar panels would be placed. Secondly, it is unclear how far along these plans may be. More information is needed so that there can be an assessment as to the potential environmental impact of placing these panels in the last remaining wild area of the campus, which is home to many mammals and reptiles as well as, of course, many trees and species of plants.

4.11 Planned Parking Facility at Oxford-University Crescent Should be Discussed

In addition to other planned housing and academic facility construction, the LRDP Project definition and DEIR fail to include contemplated construction of additional parking facilities. The most stunning example of this under-inclusiveness is the Lead Agency's failure to discuss and describe its plans to develop a large underground parking structure at the "West Crescent," which

quite literally forms the entrance of the UCB Campus Park at the Northside of the Intersection of University Avenue and Oxford.

Graphic 9: Existing and Potential Parking Locations



That site not only qualifies as a historic landscape, but it is also one of the most recognizable areas of the main campus and is home to numerous old growth trees.

Plans for this site and planned parking facility should be clarified. Further, the impacts to existing natural resources should be discussed in the final EIR.

4.12 Final EIR should clarify pipe replacement and other digging projects

The DEIR describes several different projects that will involve significant digging in and around the Campus Park and other areas. These projects include the laying of pipes and other conduits in connection with a new energy system to replace the existing system; significant upgrades to existing pipes some of which have been disturbed by tree roots or otherwise deteriorated, and the undergrounding of electric and other cables and wires. The impact of these construction activities on the natural resources should be addressed in the Final EIR.

4.13 Final EIR should address Potter's Creek and nature of any underground culvert.

The only creek mentioned in the DEIR is Strawberry Creek. The final EIR should identify all creeks in the Projects areas and discuss what if any impact the projects will have on them.

4.14 Shade studies should be conducted for both Projects 1 and 2

As mentioned above, the DEIR is bereft of any shade and shadow studies. This lack is particularly problematic for Projects 1 and 2 given the proposed height of their buildings. Notably the Project

2 site has numerous existing tall trees. According to some planning documents, the intention is to leave at least some of these trees in place. Likewise, Project 1 is directly across the street from mature trees that sit to its East and South. Without providing a shade survey, the Lead Agency cannot conclude – as it apparently has – that the natural resources on or near the Project 1 and 2 sites that will remain after construction of the proposed buildings will not be significantly impacted by the shade and shadows caused by this new construction.

That conclusion is wholly unsupported. Moreover, it is likely never to be supported by any future shade study. Where a proposed building will cast shadow on the tops of the trees in the summer, it will reduce the trees' capacity for the vital function of photosynthesis. Further, numerous research studies on the impact of tall buildings on nearby trees illustrate the negative impact they have on both the trees and the quality of life in adjacent neighborhoods.[208]

Tall building shade is unyielding and indiscriminate by its nature, with an impact that is both longer lasting, and spread over a larger area. Unlike trees that allow the sun's heat into a greenspace in the winter and cooler shoulder seasons, *tall building shade* will block the sun year-round. Overshadowed portions of greenspaces become undesirable to users during colder seasons, decreasing the overall amenity of these spaces. Unlike the fixed shadows of *tall building shade*, the *human scale shade* created by trees is seasonally variable and is critical to create comfortable urban greenspaces affording UVR protection. Thus, shading from these buildings will likely have long-term negative impact on the health of nearby trees and likewise impact people's use of and enjoyment of adjacent buildings and open spaces.

The final EIR should discuss the shade cast by the buildings to be constructed in Projects 1 and 2 and recommend mitigation measures.

4.15 Impact of new construction on Bird Nesting Not Examined

The projects are going to result in the cutting down of numerous trees and demolition of existing structures, consequently areas used by birds for nesting will be destroyed. The final EIR should discuss the bird nesting that may be impacted by these Projects.

4.16 Solar Field Needs to be further described

As noted above, the DEIR mentions that one energy option in the draft LRDP is the construction of a solar field in the Hill Campus area. Although we understand those plans are in the conceptual stage, the final EIR should consider the proposed Projects' impact on the natural environment in light of the cumulative effect of the on-going vegetation management program in the Hill Campus East area and the potential solar field. Specifically, the final EIR should identify areas where not impacts on natural resources are planned (such as, we believe, the areas of the Hill Campus East in Contra Costa County). This information would assist the pubic on assessing the overall impact of the Projects on Natural Resources.

[208] See, e.g., Forest and Field Landscape Architecture Inc. (2018) *On Shade and Shadow: a case study on the impacts of overshadowing by tall buildings on Toronto's greenspaces* / A report prepared for the Shade Policy Committee / Ultraviolet Radiation Working Group of the Toronto Cancer Prevention Coalition, Toronto, Ontario.

Energy

4.17 Planned Construction of Alternate Energy Not Adequately Discussed

The DEIR and its appendices present multiple potential options for replacing UCB's existing energy plant. Each scenario would require the laying of pipes or other features underground throughout the Campus Park as noted above. One of these options involves natural gas (which will also be used in Project 2). The final EIR should discuss the natural gas-option and its viability if the City of Berkeley decides, as it is expected to do, to cease natural gas delivery in the City.

Air Quality

4.18 Insufficient support for "no substantial impact" conclusion in light of severe potential health risks

The DEIR concludes that neither Project #1 nor Project #2 will have a substantial impact on air quality. That conclusion is erroneous and not based on substantial evidence (and is inconsistent with the evidence presented). As to the larger Draft LRDP Project, the DEIR correctly concludes that the LRDP project will have significant impact on air quality[209], but it incorrectly concludes that there are no reasonable alternatives to the project and that project's impacts are unmitigable.

Specifically, the DEIR found, among other things that (1) "Construction activities associated with potential future development projects accommodated under the proposed LRDP Update could expose nearby receptors to substantial concentrations of toxic air contaminants"' and (2) "Construction activities associated with the proposed LRDP Update could generate fugitive dust and construction equipment exhaust that exceed the Bay Area Air Quality Management District average daily construction thresholds." The Mitigation Measures that it proposes to address the projected significant increase in air toxins is to have a Health Risk Assessment (HRA) prepared in accordance with the latest standards and to implement the mitigation measures outlined in the HRA.

As discussed below, the flaws in the HRA for Project #2 demonstrate the inadequacy of that proposed mitigation. Not only does the Project 2 HRA fail to identify key child-care sites (including ones operated by UCB!), but it also reaches entirely the wrong conclusion based on the scientific evidence it considers, namely that the expected toxins do not fall in the danger zone for the nearby population, when in fact that population includes infants at UCB's own childcare centers that fall into the particularly sensitive class of receptors for whom the cancer risk is unacceptably high. Put bluntly, the Project #2 HRA proves the rule, "Junk in; Junk out."

The measure proposed to mitigate the fugitive dust and exhaust caused by construction – the other significant air quality impact – is likewise insufficient. The DEIR merely proposes that less polluting equipment be used in the construction, however, it poses no controls over implementing this measure nor does it demonstrate (through a sufficiently supported HRA) that the measure will be sufficient to eliminate health risks (or reduce them to an acceptable level). The observation as to the Project #2 HRA holds true here. Indeed, that HRA clearly concludes that toxic emissions will be produced during the course of construction, provides data demonstrating that the health

[209] DEIR Table 2-1.

risks are unacceptable for sensitive individuals (such as the infants in UCB's care) and provides insufficient evidence that telling contractors to use less emitting equipment is sufficient to reduce the health risks or bring them into acceptable levels.

Indeed, given that UCB has a legal and ethical obligation, by virtue of its operation of multiple child development centers in Berkeley, to comply with the strictest health standards imposed on the operators of childcare centers. The HRAs provided as part of the DEIR omit UCB's childcare centers (and other locations of sensitive receptors such as hospitals and cancer centers), and they are nowhere mentioned in the DEIR. The parents of the children entrusted to UCB's childcare centers have every right to appalled.

The final EIR should remedy these errors and present a discussion of air quality and attendant health risks based on solid data and accurate information.

4.19 "Baseline" of 2017 and 2018 For Air Quality Unexplained

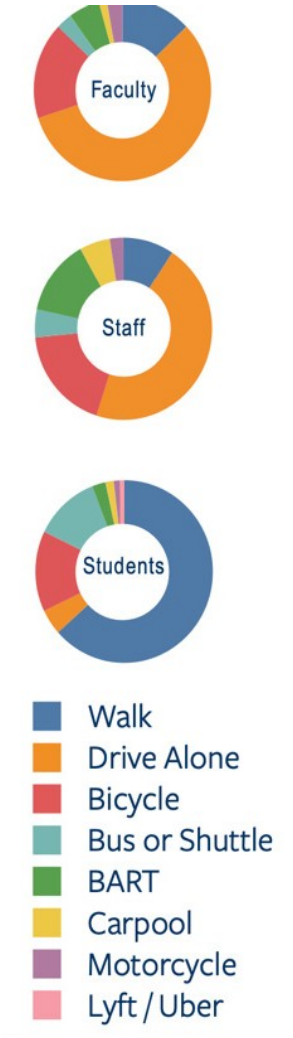
According to data provided to the California Air Resources Board in 2019 (the last year for which data was available as of the drafting of this letter), UCB had 131,671 metric tons of CO2e in detectable emissions. That data was verified by Ruby Canyon Environmental Inc. Rather than analyze the most recent environmental statistics, the Lead Agency relies on data from 2017 with no explanation. The consultants extrapolate from the 2017 a campus FTE student and faculty/staff population at 2018-19[210] and 2036-37 levels. This disconnect is unexplained.

As noted previously, using FTE figures rather than actual user population figures renders the studies incomplete. Further, emissions based upon populations from a different year than the baseline year would not seem reasonable under the circumstances.

4.20 VMT and Alameda County Data are Incomplete Measures and Data Sets Under the Circumstances

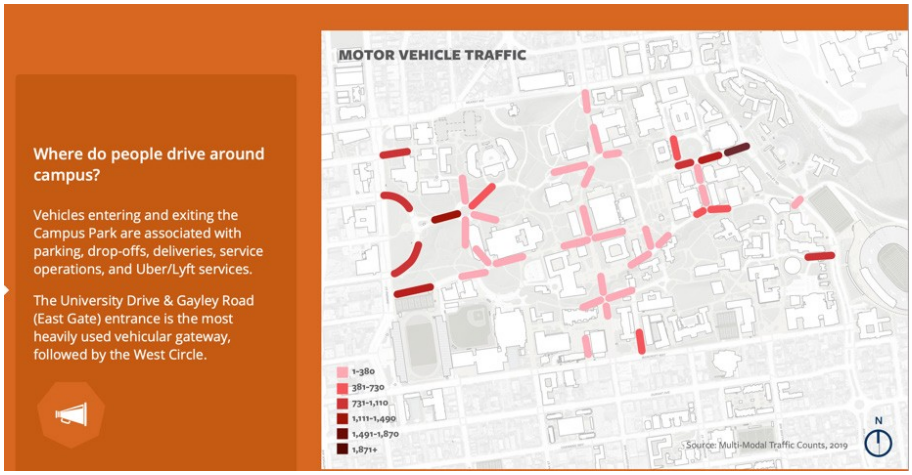
While Vehicle Miles Traveled (VMT) is a common method of estimating potential impacts on air quality, the unique population at UCB and changes in modern travel patterns makes reliance on this measure inadequate under the circumstances. Likewise, the reliance on VMT data for Alameda County to conclude that impacts on transportation and air quality will not be significant is unjustifiable, particularly as UCB's own faculty has studied the impact of modern modes of transportation extensively.

[210] According to the LRDP, "The LRDP Update planning assumption for the campus population is 48,200 students and 19,000 faculty and staff in the 2036-37 academic year compared to 39,300 students and 15,400 faculty and staff in the 2018-19 academic year."



4.21 Increased Use of Shared Ride Services by Larger Population Not Considered

Among other things, the DEIR and reports provided in the DEIR Appendices do not address or consider the increased reliance on shared ride services (including "Transportation Network Companies" (TNC) such as Uber and Lyft) generally in the Bay Area and by UCB students in particular.[211] Share ride service increases have been observed to create additional traffic[212] and are believed to increase air pollution, particularly, as Uber/Lyft drivers drive around or idle their vehicles between rides.[213] UCB is aware of the prevalence of these TNCs and have even drafted rules and regulations governing their use on campus.[214] In addition, as UCB is aware, UC students use other shared services such ZipCar and Gig, and the ubiquitous scooters that litter sidewalks and campus.[215]



[211] https://www.reddit.com/r/berkeley/comments/8telp3/uber_vs_lyft_which_is_better_in_berkeley/ (reporting that "lots" of UCB students use TNCs.

[212] Gregory D. Erhardt, Sneha Roy, Drew Cooper, Bhargava Sana, Mei Chen, Joe Castiglione, "Do Transportation Network Companies Decrease or Increase Congestion?" Science Advances 08 MAY 2019 (Transportation network companies (TNCs), such as Uber and Lyft, are the major driver of increasing traffic congestion in San Francisco), available at https://advances.sciencemag.org/content/5/5/eaau2670; Rayle, Lisa Dai, Danielle Chan, Nelson et al. , "Just A Better Taxi? A Survey-Based Comparison of Taxis, Transit, and Ridesourcing Services in San Francisco," 2016, available at https://escholarship.org/uc/item/60v8r346; https://steps.ucdavis.edu/new-research-ride-hailing-impacts-travel-behavior/; https://abc7.com/southern-california-traffic-socal-la-uber/5311465/

[213] https://www.ucsusa.org/resources/ride-hailing-climate-risks; https://its.berkeley.edu/news/ride-hailing-isn't-really-green; https://www.citylab.com/environment/2020/02/uber-lyft-pollution-data-carbon-emissions-ride-hailing-study/607063/; https://www.latimes.com/environment/story/2020-03-07/uber-lyft-ride-hailing-air-pollution-greenhouse-gas-emissions; https://mndaily.com/205400/news/nation/researchers-examine-uber-s-environmental-impact/; https://sustainability.wustl.edu/uc-berkeley-and-nrdc-begin-uber-impact-study/

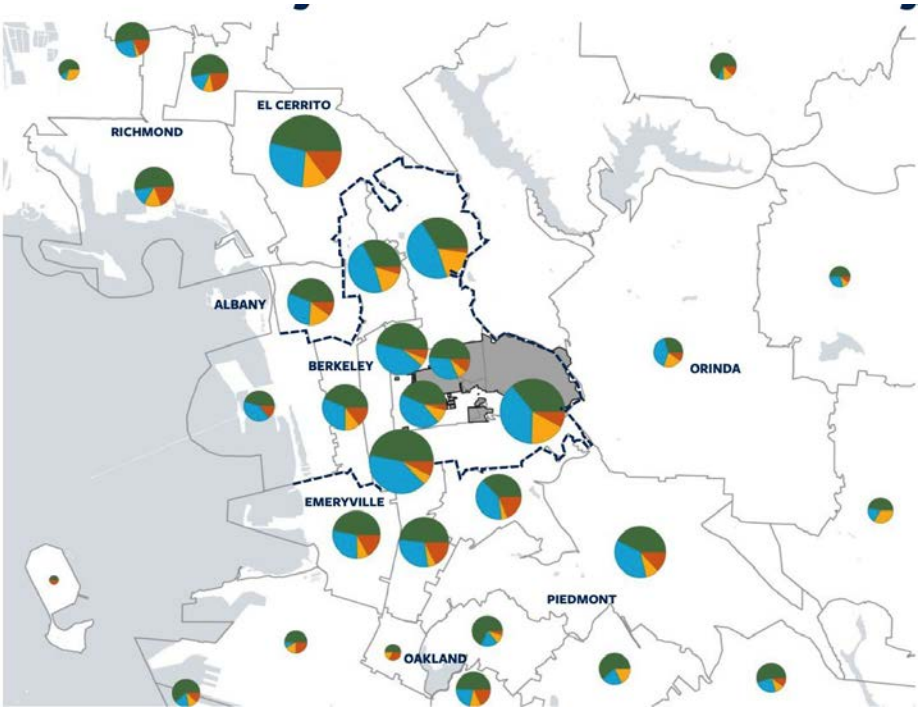
[214] https://pt.berkeley.edu/transportation-mobility/getting-around-campus/tnc-pick-drop-zones

[215] https://pt.berkeley.edu/carshare

It is not reasonable to fail to address the impact the increase in proposed UCB population will have on TNC usage and the attendant environmental effects of that increased usage.

4.22 Survey Shows Many Students & Faculty Commute from Outside Alameda County

The DEIR relies on VMT statistics for the average Alameda County commuter; however, the Lead Agency provides no evidence to support the reasonableness of using these statistics. Indeed, given that the Lead Agency admits that many students, faculty and staff are required to live far from Berkeley, often outside Alameda County, Alameda County statistics would not seem particularly reliable. As this diagram released by UCB as part of its LRDP related student and faculty housing survey shows, a large number of UC commuters live and commute from outside Alameda county.



Not only does UCB's own survey support the proposition that existing UCB commuters are not limited to Alameda County, several news stories and other reports substantiate that increasing numbers of UCB students, faculty and staff commute to Berkeley from farther distances than ever before.[216]

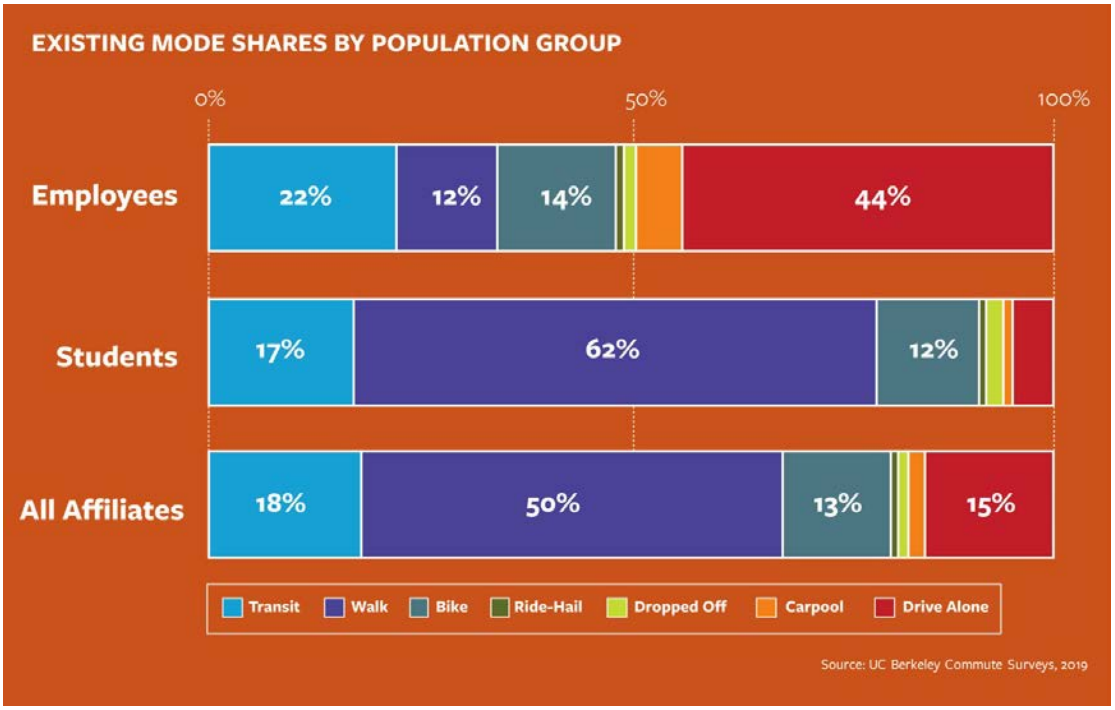
[216] See, e.g., https://www.dailycal.org/2019/02/28/why-im-commuting-instead-of-living-on-campus/; https://www.reddit.com/r/berkeley/comments/1wak95/commuting_to_berkeley/ (anecdotal accounts of commuting to UCB); https://www.universityofcalifornia.edu/news/5458/uc-among-best-public-commuter-colleges-new- rankings (UCB touts ranking as top commuter school); https://www.mercurynews.com/2016/12/12/uc-berkeley- squeezes-in-more-students-shifts-some-off-campus-to-meet-surging-enrollment/

4.23 Previous Public Transport Data No Longer Reliable; Should Be Updated

Likewise, the pandemic has negatively impacted commuters' willingness to use public transportation.[217] One media source reported an 80% decline in the public's use of public transport.[218] While it is too soon to tell if this anti-public transit trend will continue once the Pandemic is under control, the consultant reports and other information that the Lead Agency presented in the DEIR concerning transportation and attendant air quality should be re-evaluated in light of more up to date traffic and commute patterning.

4.24 Other Evidence Undermines Accuracy of DEIR Assessment and Data Measure

A survey conducted by UCB's College of Engineering provides some real-world data into how UCB faculty and staff commute to UCB (or at least the Engineering college).[219] campus-wide survey[220] showed the following:



Significantly this survey showed 44% of employees commuting to UCB as a single passenger in a car. Given that employees are more likely than students to live farther away from campus, this single occupancy vehicle statistic suggests that the largest number of long-distance commuters are

[217] See, e.g., https://abc7news.com/public-transit-coronavirus-san-francisco-financial-district-how-bad-is- commute-in-sf-post-pandemic/10441948/; https://www.bart.gov/schedules/crowding-charts (reporting on BART usage – historic); https://www.kqed.org/news/11824758/how-coronavirus-is-affecting-public-transit-and-what- that-means-for-you; https://www.kqed.org/news/11824758/how-coronavirus-is-affecting-public-transit-and- what-that-means-for-you; https://www.sanjoseinside.com/news/bay-area-public-transit-agencies-struggle-to- survive-the-economic-toll-of-the-covid-19-pandemic/.

[218] https://www.wbur.org/hereandnow/2020/08/28/san-franciscos-public-transit-coronavirus

[219] https://engineering.berkeley.edu/wp-content/uploads/files/docs/FacilitiesMasterPlanSurveyResults.pdf

[220] http://projects.sasaki.com/uc-berkeley-virtual/#CP_header

using the dirtiest mode of transport. Because actual data of actual UCB users was available to the Lead Agency, it should have relied on that data rather than substitute dated statistics for Alameda County residents generally.

Unlike other regular-business commuters, UCB commuters can seldom rely on nearby parking and so often have to drive around to find available parking. These elevated parking-searching emissions will certainly increase with UCB's intentional and planned removal of campus parking options. Indeed, the DEIR seems to assume that with fewer parking spaces, commuters with stop using cars to commute. They fail, however, to present any supporting data. The final EIR should rectify this omission.

4.25 Impact of the Total Actual Projected Population Increase on Air Quality Not Discussed

Because the projected population increase has not been accurately captured by using FTE figures rather than actual users and actual data on how actual campus users commute to and use UCB sites has not been presented or considered, the DEIR fails to document the reasonably foreseeable environmental impact of the true population increase contemplated by the LRDP Project.

GHG

4.26 DEIR's Findings as to GHG and Alternatives Should be Reconsidered

More people, means more GHG emissions. It is quite simple. By increasing UCB's population, the Lead Agency will be increasing GHG emissions notwithstanding its climate friendly policies and aspirational goals (none of which it has been able to meet to date). Increases in staff – of whom 40% presently commute to UCB in single passenger vehicles – invariably means more GHG. In addition to increased local commutes, an increased number of non-resident students will invariably mean more long-haul airplane flights if the future non-resident student makeup follows the trends of the least 10 or so years.

Based on cross-fingers, the DEIR concludes that neither Project #1 nor Project #2 will have a substantial impact on GHG emissions. The DEIR concludes as to the LRDP project, that it will have an impact, but that impact will not be significant if the proposed mitigation measures are implemented. Specifically, the DEIR notes in a section entitled "Areas of Controversy," that "Pollution from construction activities and operation of future development and increased GHG emissions." It also concludes, "GHG-2: GHG emissions resulting from the proposed LRDP Update could exceed the UCOP and UC Berkeley carbon neutrality goals derived from the State's long-term climate change goals under EO B-55-18." The proposed mitigation measures are to purchase carbon offsets, to monitor emissions, and to take some steps to reduce GHG emissions. Notably reliable data and estimates of the impact of the proposed GHG emission reduction steps are not provided.

The DEIR's conclusions need to be substantially supported, and they are not with respect to GHG. Further, the Lead Agency and UCB's separately stated goals of reducing GHG are not well-served by the DEIR not discussing remote learning options for students and increased telecommuting for faculty and administrative staff as alternatives to the massive building initiative proposed. The overall increase of parking will increase vehicle traffic in and around the Campus Park. The

additional new parking on the Clark Kerr Campus and under the Campus Park crescent at the top of University Avenue will not only increase traffic in those high traffic areas they will result in slower commutes and bottlenecks, which contribute to increased GHG emissions.

4.27 DEIR Should Use UCB's Superior GHG Data

Because UCB has unique access to various GHG indicator data – by virtue of its expansive research and testing in and around campus such as the BEACON program—it is not reasonable for it to rely on generalized regional data. BEACO$_2$N (the Berkeley Atmospheric CO_2 Observation Network) is an ever-growing network of two dozen air quality monitoring "nodes" deployed on school rooftops and other sites of interest around the Oakland metropolitan area. Each "node" contains low-cost commercial instruments that sense CO_2, CO, NOx, O_3, particulate matter, and various meteorological variables and beams the data wirelessly to a free, publicly accessible website. By monitoring these species at a wide variety of closely spaced locations, BEACO$_2$N gathers information about pollution patterns, sources, and sinks in higher spatial resolution that ever before, helping to improve global atmospheric models and air quality management policies alike. BAHA respectfully suggest that this data (and others like it) should be examined as part of the CEQA process to establish baseline information about current GHG indicator levels and make better projections as to the impact of the proposed population increase and large scale construction.

4.28 DEIR Should Propose More Realistic Mitigation Measures than Unrealized Aspirational Goals

Trusting future technologies that may (or not) be adopted is not a mitigation measure. Neither is purchasing carbon offset credits. The residents of Berkeley will be breathing dirtier air, including more particulate matter, if the city undergoes the surge of new residents the draft LRDP proposes. The final EIR should consider more realistic GHG impact mitigation proposals and should discuss the slowing increased enrollment and hiring until the mitigation measures are fully adopted.

Noise

4.29 Noise is Going to Be a Worse Problem Than Predicted in the DEIR

As to Noise, the DEIR makes essentially uniform conclusions for the three projects: (1) "Noise from construction equipment could expose sensitive receptors to noise that exceeds the thresholds of significance"; and (2) "Construction could result in excessive ground borne vibration to nearby sensitive receptors." The DEIR states that all projects will have significant unmitigable noise impacts. Table 2-1.

BAHA agrees that all of the projects will have significant noise impacts. There are measures to mitigate increased noise; however, the efficacy of those will depend on a full and reliable evaluation of the existing baseline noise and vibration levels together with a prediction of future noise levels based on an accurate estimate of the increased projected population.

Unfortunately, the DEIR does not provide reliable, supported baseline statistics for noise at any of the project sites. It does not address any of the ambient noise likely to be caused by the proposed increase in UCB population or the cumulative effect of the addition of people and cars together with multiple large construction projects that will take place (possibly all at once) in a densely

populated area close to infant day care centers and hospitals. The significant problem with the studies and discussions in the DEIR is that they rely on inaccurate future enrollment predictions. Two part-time students talking will make more noise than one full time student talking; therefore, the noise studies should be based on a more complete projection of the actual population increase and the actual likely vehicular traffic at the noisiest times of the day. In particular, University and Oxford is a busy area. Student, faculty and staff pass by the area on their way to BART. There are peak hours. The final EIR should consider the increased traffic noise at peak travel times due to vehicles pulling in and out of the new planned parking structure under the Oxford/University UCB crescent area and combine that with noise from an event at the Pacific Film Archive and an event at the Helen Diller Anchor House. Such a scenario is entirely realistic and should be discussed.

4.30 The Health Risk Assessments As to Noise Are Insufficient

The HRAs performed in conjunction with the EIR do not adequately address the health impacts of the significant noise/vibration impacts caused by project construction identified in the DEIR. For example, construction of Project #2 involves pile driving at the site for approximately 20 days, according to data provided in a DEIR report, and "may" harm nearby structures severely such that UCB may have to payout damage claims to their owners. Given that some of the individuals in the area of the Project #2 are infants in the care of UCB at UCB-run child development centers, the lack of a formal HRA assessment is significant and disappointing. Any subsequent finding by the Lead Agency that the advantages of the projects outweigh their negative impacts will necessarily be based on insufficient evidence as the health risks have not been evaluated. The final EIR should cure these errors.

Further, before a final EIR or decision to proceed with all of the projects, most notably Project #2, the baseline noise data should be collected from the sites as currently configured; the identification of sensitive receptors must be redone so as to include all sensitive receptor locations near the sites; precise projections the expected (unmitigated) noise and vibrations from the actual planned construction (including the aforementioned 20 days of pile driving at People's Park), and a careful appropriately certified HRA directed specifically to noise and vibration health risks.

4.31 Mitigation Measures for Noise Should be Revisited and Improved

The DEIR provides only a half-hearted attempt to propose three mitigation scenarios, none of which are particularly addressed to the construction anticipated at Projects 1 and 2. The failure to consider the degree to which the various mitigation scenarios will mitigate actual expected conditions at the Project #2 site (much less establish an appropriate baseline of current conditions) renders this aspect of the DEIR in adequate and unsupported under CEQA.

4.32 Placeline's HRAs Contain Errors and Are Insufficient

The Health Risk Assessment (HRA) report prepared by Placeline states that it, "considers the health impact to off-site residents (adults and children in the nearby residences), off- site workers, and sensitive receptors (i.e., day cares, schools, hospitals, senior living)."[221] The HRA contains

[221] Placeline HRA at 1.

numerous errors and material omissions.[222] Not all health impacts are covered in the HRAs, including (for example) the health effects of increased noise, climate change generally, the loss of open space and natural environments and related topics.[223] Rather than detail each error – which is unnecessary at this juncture – a few examples are illustrative.

4.32.1 Sensitive Receptors Inaccurately Documented

Among other things it is underinclusive in terms of the locations of sensitive receptors. First it ignores sensitive receptors operated on the UCB Clark Kerr Campus, notably UCB's Early Childhood Education Program toddler program (in Clark Kerr Building 5) and the Preschool Center (in Clark Kerr Building 15). Second, it fails to consider the totality of off-campus receptors. For instance, on HRA Figure 2, which purports to document all Off-Campus Sensitive Receptor Locations, the HRA fails to document several qualifying locations including (but not limited to) Herrick Hospital at 2001 Dwight Way, which (among other things) operates the Summit Cancer Center at that location, UCB's own CDCs at 2339 Haste Street and 2427 Dwight Way (which is approximately one block from Project 2), the King Child Development Center (at 1939 Ward Street). No explanation is given for these material omissions, the totality of which understates the nature and degree of the sensitive population.

Given the magnitude of the planned construction on People's park and Clark Kerr Campus – including demolition of Building 20 (which given its age could contain asbestos and other carcinogens) -- it is unreasonable not to evaluate the health risk posed to the children enrolled at UCB's childcare centers, both during and after construction. As operator of these CDC facilities, UCB is certainly legally obligated to ensure the health and safety of the children in their care by, among other things, fully and fairly estimating the impact of toxins in the air released or otherwise reasonably caused by their construction activities. If UCB has separately studied the impact on this vulnerable population, that documentation is no included here; moreover, it is not unreasonable to expect that the Lead Agency would provide it as part of the EIR process.

4.32.2 HRA Misses Key Emitters

In addition to these material omissions regarding sensitive receptor locations, the HRA fails to include all of the existing and planned pollution emitters. For example, the HRA inexplicably, omits LBL from its geographic scope although then LBL sits within the area specifically described in the LRDP. While LBL may report its emission data separately, its emissions are clearly

[222] A discussion of best practices and the proper scope of health risk assessments are available from numerous sources including, for example, Scott-Samuel, Alex. "Health Impact Assessment: Theory into Practice." *Journal of Epidemiology and Community Health* (1979-), vol. 52, no. 11, 1998, pp. 704–705; Fehr, Rainer, et al. "Quantitative Health Impact Assessment: Taking Stock and Moving Forward." *Journal of Epidemiology and Community Health* (1979-), vol. 66, no. 12, 2012, pp. 1088–1091; and McCarthy, M., et al. "A Health Impact Assessment Model for Environmental Changes Attributable to Development Projects." *Journal of Epidemiology and Community Health* (1979-), vol. 56, no. 8, 2002, pp. 611–616; see also https://www.pewtrusts.org/-/media/assets/2019/03/do-health-impact-assessments-promote-healthier- decision-making.pdf.

[223] See Jackson R, Dannenberg A, Frumkin H. Health and the Built Environment: 10 Years After. Am J Public Health. 2013 September; 103(9):1542–44; World Health Organization. Preventing disease through healthy environments. Geneva, Switzerland: WHO, 2006; Kinney PL, Noji E, Lee CY. Disaster preparedness. In: Frumkin H, editor. Environmental health, from global to local. 1st edition. San Francisco: Jossey-Bass; 2005; Climate change, air quality, and human health. Am J Prev Med. 2008 Nov;35(5):459-67.

attributable to UC and should be included in the HRA analysis, particularly as to the cumulative effects of the planned-for increased enrollment and faculty/staff hiring. Moreover, LBL information is provided in the DEIR in connection with the hazardous waste discussion, therefore, it's emissions should have been considered in the HRA.

Strangely, the HRA includes very dated (2007) LBL air quality data in Table 4 (Cumulative Health Risks) comparing it to the LRDP update as if the LRDP update area did not in fact including the LBL or was impacted by LBL emissions. Indeed, failure to consider the spread of current and projected emissions from LBL is a fundamental error in the report.

4.32.3 CANCER RISKS ARE UNDERSTATED

Failing to include all existing sensitive receptors (both on and off campus) and reasonably foreseeable emitters necessarily impacts the risk analysis insofar as the HRA states that:

> there are thresholds of significance for cumulative impacts defined as the aggregate total of all past, present, and foreseeable future sources within a 1,00 0-foot radius of a source or receptor, plus the contribution from the project, exceeds the following:
>
> Excess cancer risk of more than 100 in a million
> Non-cancer hazard index (chronic or acute) greater than 10 Average annual $PM_{2.5}$
>
> concentration of greater than 0.8 $\mu g/m^3$

HRA page 15. If receptors are omitted, then the 1000-foot radius analysis would be incomplete; this would likewise be true if existing or reasonably foreseeable emitters are omitted. The impact of missing these key locations is even clearer when you consider Figure 5 of the HRA, which identifies the areas where the excess cancer risk from existing emission sources exceeds one chance per million, and Figure 6, which identifies areas that likewise will have this risk level if the Projects proceed.

Because several sensitive receptor locations are omitted from the study area, the apparent conclusion that the sensitive location denoted by a purple star on Figure 6 is actually the Maximum Exposed Sensitive Receptor is necessarily unreliable. Other, better modeling could easily and reasonably be performed.[224] Further, Berkeley is unusual insofar as it has its own Public Health Department, which (if it had been consulted) could have provided additional health information resources and data regarding the resident population.[225]

---

[224] Nuckols, John R., et al. "Using Geographic Information Systems for Exposure Assessment in Environmental Epidemiology Studies." *Environmental Health Perspectives*, vol. 112, no. 9, 2004, pp. 1007–1015.

[225] See examples of available City of Berkeley resident population health information and data at https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/health-status-summary-report-2018.pdf; https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Level_3_-_Public_Health/2018-health-status-report-berkeley.pdf; see also Bhatia, Rajiv, and Aaron Wernham. "Integrating Human Health into Environmental Impact Assessment: An Unrealized Opportunity for Environmental Health and Justice." *Environmental Health Perspectives*, vol. 116, no. 8, 2008, pp. 991–1000 (recommending a collaborative approach).

Finally, the HRA also does not consider the emission projects contained in the DEIR-attached reports that purportedly capture expected increases in emission attributable to increased vehicle travel and construction activity.

4.32.4 Health Risks of Construction Noise and Vibrations Not Assessed

The report does not address the consequences of increased noise, including construction noise[226], on nearby sensitive human receptors, namely the infants and others mentioned above adjacent to the various Project sites. That noise will be considerable as acknowledge elsewhere in the DEIR. OSHA establishes limits on duration and impact that should have been considered both as to the LRDP Project and the other two projects. The extra sensitivity of sensitive receptors should also be considered in the final EIR.

4.33 The HRAs for the Projects fail to address health risks for Berkeley's Homeless

Berkeley is home to a large, and unfortunately growing, homeless population. Some of those homeless will be displaced by the Projects. This displacement will have health impacts. Further, the DEIR states in several places that People's Park is not residential (i.e., does not contain residences). In fact it does; quite a few. There are also many homeless in and around that project. An HRA should be conducted and discussed in the final EIR relative to the displaced and remaining homeless population near the Project 2 site.

In addition, because they spend most of their time living on or adjacent to public spaces and/or streets, the homeless are unfortunately exposed 24/7 to a host of airborne and other pollutants. None of the health impact data provided in the HRAs or elsewhere in the DEIR materials, evaluates, quantifies, or discusses the health impacts on this vulnerable population.

4.34 AHA's Comments on Placeline's HRA's for Projects #1 and #2

Like its HRA for the LRDP discussed above in section 6.4, Placeline's HRAs for Projects #1 and #2 (DEIR Appendix D2 and D3 respectively) are similarly flawed insofar as they fail include all relevant locations containing sensitive populations. This omission includes most strikingly as to Project #2, the failure to include UCB's nearby CDC at 2427 Dwight Way, which is approximately one block from Project 2 and which houses infants as well as toddlers. As noted in the relevant HRA, "The calculated risk for infants from third trimester to age 2 is multiplied by a factor of 10 to account for early life exposure and uncertainty in child versus adult exposure impacts (OEHHA, 2015)." 1210 (HRA Proj. #2 at 2)

As with the HRA discussed above, the HRA related to Project #2 contains some odd, unsupported assumptions. For example, as to the Childstone Children's Center, which is identified in the HRA as containing sensitive receptors, the report notes that, "For student receptors at the Cornerstone Children's Center, which is a year-round school for infants, toddlers, and preschool-aged children, an EF of 0.68 is used to represent 250 days per year for students (OEHHA, 2004)." (HRA Proj. 2 at 4)The report also notes that the length of construction is expected to be 333 workdays. *Id.* Given the Cornerstone Children's Center year-round operation and days that would coincide with all 333

[226] Because Construction noise is addressed in Placeline's HRAs, its assessments must be accurate.

workdays for the project, the assumption of exposure only occurring on 250 days seems unfounded and erroneous, particularly given the young age of the children.

Notably, Placeline found that the cancer risk posed for the MEIR created by Project 2 construction-related emissions on the vulnerable population (pregnant women and infants up to age 2) "was calculated to be 12.3 in a million, which would exceed the 10 in a million significance threshold." *Id*. 7. Although the Childstone Children's Center serves infants (as does UCB's nearby CDC), Placeline inexplicably did not apply the required multiplier of 10, and consequently concluded that the sensitive receptors at the Childstone Children did exceed the 10 per million threshold. *Id.* That conclusion was unsupported and is unsupportable. As a consequence, the HRA's evaluation of mitigation measures was incomplete and insufficient.

Likewise, the HRAs do not consider or address the health impacts of noise generated by the contemplated construction including the deep pile driving necessary for both projects. As noted, OSHA has established exposure standards that could serve as a benchmark for such an assessment and certainly there are other easily accessible resources that could be used to aid this important evaluation.

4.35 Public Safety Implications of Proposed Projects: Impeded Evacuation Routes

The Lead Agency is tasked with ensuring the health and welfare of all of the students, faculty and staff at UCB. Among other things, they are required to ensure safe evacuation in event of a fire or other natural disaster. Although the DEIR's wildfire assessment concluded that, once completed, the projects would not impede the safe flow of traffic such that evacuation routes would be impeded, it did note that during the construction phase of the projects, the evacuation routes would be partially blocked and thus safe evacuations could be compromised.

Given the scope and duration of the Projects and the other construction projects not considered in the DEIR, building will be going on in the City of Berkeley for a very long time. For example, it appears that within a four block stretch of Oxford, multiple large construction projects may be going on at once or at least successively – construction of the Helen Diller Anchor House, of housing on the Oxford Tract property, a parking structure under the crescent at University and Oxford, and the demolition and construction at Edwards Stadium.

The final EIR should address the complications and dangers posed by having successive (or simultaneous) projects such as these to evacuation and other emergency planning.

4.36 Public Safety: heightened wildfire risk

The DEIR discussion of the impact of the Projects on the wildfire risk makes this chilling statement:

> As discussed in Chapter 5, Environmental Analysis, of this Draft EIR, the cumulative setting includes growth within the EIR Study Area in combination with development in the rest of the cities of Berkeley and Oakland that are within or near lands in the SRA or in a Very High FHSZ… … [T] he proposed LRDP Update would result in significant and unavoidable impacts where it would potentially expose project occupants to pollutant concentrations from a wildfire or uncontrolled spread of a wildfire due to slope, prevailing

winds, or other factors; require the installation or maintenance of associated infrastructure that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment; or expose people or structures to significant risks including downslope landslides as a result of postfire slope instability, as described under impact discussions WF-2, WF-3, and WF-4, respectively. These impacts are associated with potential future development and infrastructure projects in the Hill Campus East.

More information and discussion should be provided in the final EIR about this heightened wildfire risk. The final EIR should also examine the impact of this heightened danger on air quality and GHG emissions.

4.37 Public Safety: Fire Department Ladders

The DEIR's discussion about Wildfire Impacts includes a short assessment of available fire-fighting resources. The DEIR does not discuss whether existing resources will be sufficient in light of the projects. The final EIR should address this.

Among other things, one of the buildings on Project 2 exceeds the height of the tallest Berkeley Fire Department Ladder. Rather than abide by UCB's historic (and written) practice of honoring the City's building height restriction or follow the Berkeley Physical Design Framework, UCB planners have ventured into uncharted territory and not examined the consequences to life and health posed by their "bold" construction plans. Nothing in the information provided in the DEIR, its exhibits, or the few pages of documents provided to BAHA in response to its requests for records suggests that anyone (much less UCB design professionals) informed the Lead Agency that the proposed height of Project 2 could pose a hazard to student residents or that it far exceeded City building height requirements and exceeded the tallest fire truck servicing the area. Neither UCB nor the Lead Agency have prepared or proposed any sum to be paid to the city to mitigate this danger (i.e., pay for a new ladder truck). CA Pub Ed Code Sec. 67504. UCB planners should bring this matter to the attention of the Lead Agency. The final EIR should propose appropriate mitigation measures.

4.38 Public Safety: Adequacy of Healthcare Resources and Facilities

One thing that the recent pandemic has taught us is the value of a having sufficient hospital beds to service a population in a crisis. The DEIR fails to examine the potential impact of the population increase on the availability of healthcare resources on the adjacent health systems. Given that the nearby Alta Bates Medical Center currently operates the only Emergency Room (ER) in the City and that ER is slated to close in the near future, consideration should be paid to the impact increasing the City population by as many new residents and workers on the availability of acute healthcare services.[227]

4.39 Public Safety: Crime

Relying on recent crime statistics from the UCB campus police and the City of Berkeley Police department, the final EIR should discuss the impact on crime that will be posed by the projects

[227] It is reasonable to assume that UCB maintains statistics on the number of its students admitted to an ER on an annual basis.

particularly the increased UCB population and increased studentification of Berkeley neighborhoods (i.e., whether crime is expected to increase, what crimes are most prevalent et cetera).

4.40 DEIR's Transportation Discussion is Unrealistic

The DEIR misses the boat entirely on traffic and transportation. The DEIR's discussion to the effect that a dramatic increase in UCB population will not yield more traffic and congestion and strain already strained public transportation systems is unrealistic. It is based on the presumption that individuals in the future will not act as selfishly and expediently as they do today. The DEIR presumes that because there will be fewer parking places on campus property, fewer UCB students, staff and faculty will drive to work. While that is nice in theory, it is not how things work in the real world. If the Lead Agency wants us to accept this myth, then they should provide studies that show that reduction in parking spaces in an urban area where people commute long distances from areas not covered by public transportation is effective at reducing traffic.

4.41 Bike Safety is a big concern

The DEIR notes under "Areas of Controversy," that Pedestrian and bicycle safety, and impacts from motorized and nonmotorized vehicle interface will be areas of controversy. While BAHA thinks that increase traffic will be of greater controversy, the DEIR should also discuss the impact the increased population will have on bike safety.

4.42 Proposed Demolition of Structures on Minor Hall Site Must Be Carefully Studied for Potential Radioactive Waste

UCB has long been a known producer of toxic and hazardous waste and has its share of contaminated areas within its environs. As the DEIR acknowledges:

> Due to the age of the UC Berkeley campus, LBP, ACMs, polychlorinated biphenyls (PCBs), and mercury are present in many buildings. In addition, in buildings currently or formerly used as laboratories, building materials, such as floor and wall surfaces, sink traps, and drain piping, can be contaminated by spills, aerosol releases, or drain disposal of radioactive or chemical hazardous materials. The use of radioactive material in UC Berkeley buildings for many decades has created the potential for radioactive material contamination in certain UC Berkeley buildings due to legacy use. PCBs may also be present in fluorescent light ballasts and some building materials. If proper procedures are not followed, workers can be exposed through inhalation or ingestion of lead dust, asbestos particles, PCBs, mercury vapor, or other contaminants when building materials are disturbed or made friable by drilling, sanding, or other destructive processes. Such activities could also release contaminants into the natural environment.

After reviewing the DEIR, BAHA's primary concern regarding hazardous waste concerns the possibility that radioactive waste materials could be uncovered during the extensive redevelopment program proposed by the draft LRDP. In the 1930s Lawrence was recruited to UCB, he initially occupied space in LeConte Hall. He then moved his research lab to an adjacent building that was renamed the Radiation Laboratory and later the "old" Rad Lab. In addition to the "old" Rad Lab, the Physics Department also used the Emergency Classroom Building (now Minor Hall), which

was also the site of secret atomic research during World War II. That building was re-purposed after the war for the School of Optometry.

Portions of the existing Minor Hall Building have been designated for "redevelopment" a/k/a demolition. This plan would seem consistent with press reports that UCB plans to move the school of Optometry to a site in Emeryville. If indeed that is the plan under development, further study will need to take place to determine what ,if any, radioactive or otherwise hazardous materials remain at (and under) Minor Hall.

Radioactive waste produced by radiation experiments at UCB had negative health impacts on some of the people who worked on them. It does not appear, based on the discussions in the DEIR, that UCB knows where waste from Minor Hall was discarded. The final EIR should discuss the Lead Agency's specific plans for Minor Hall and its overall approach to its future assessment of risks posed by performing demolition and construction on that site.

4.43 Construction at Other Sites Also a Radiation Concern

In addition to demolition at Minor Hall, the DEIR notes that the draft LRDP also proposes renovation to take place at Etcheverry Hall.

Between 1966 and 1987, Etcheverry Hall housed the Berkeley Research Reactor, which was an active research nuclear reactor.[228] On 16 September 1985, a fuel cladding failure resulted in "unusually high concentrations of radioisotopes [...] in the reactor-room air" following the restart of the reactor after a long maintenance shutdown.[229] After the passing of the Nuclear Free Berkeley Act in 1986 by the city of Berkeley[9] which allows the city to levy fines for nuclear weapons-related activity and to boycott companies involved in the United States nuclear infrastructure. A university physics professor, Charles Shwartz, raised an official charge against the university, questioning whether specific research conducted on the reactor violated the university rules against classified nuclear research as it was done test effects of radiation on components of the Trident II missile. The research in question were titled "Radiation effect on electronic components" and "electric components testing" and were being done for a group of military contractors such as TRW, Hughes Aircraft, Lockheed and more.[230]

It is unclear what renovation work the draft LRDP "Update" contemplates occurring at Etcheverry Hall. A 2014 University President document shows that various mechanical upgrades were being made to the building with gift funds of over $27 Million.[231] A 2016 report indicated that various upgrades were being made at the site including addition of a café and graduate student eating area.[232]

---

[228] UC Berkeley College of Engineering. "*Engineering buildings give up their secrets*". Archived from *the original* on 15 July 2010. Retrieved 27 July 2014.
[229] Fleming, Julianna (12 June 2017). "V&A Café brings dining and collaboration to Etcheverry". Berkeley Engineering. Retrieved 30 March 2018.
[230] "Etcheverry Hall Renovation" (PDF). University of California, Office of the President. 2013. Retrieved 30 March 2018
[231] https://www.ucop.edu/capital-planning/_files/capital/201323/bk-etcheverry-hall-renovation.pdf
[232] https://ieor.berkeley.edu/etcheverry-renovations-update/

Given that money is apparently already available for this Etcheverry work, the final EIR should address the nature and scope of that work, and the approach to assessing the potential risk of human health hazards in connection with it.

4.44 Final EIR Should Address Potential For Increase In Move-Out Debris

UCB is well aware that at the end of the school year, as they are vacating their dorms, apartments, and co-ops, UCB students leave quite a bit of debris on city curbs for the City of Berkeley garbage trucks to pick up. (BAHA is happy to provide evidence of this well-established historic fact, if the Lead Agency challenges it.) The final EIR should discuss this phenomenon, the types of solid waste that accumulates in this way annual and estimate how much it will increase with the increased enrollment proposed by the draft LRDP. Mitigation measures, particularly as to discarded mattresses and furniture, should be recommended.

4.45 Lead Agency Needs to Show Evidence of Plan to Comply with CA Pub Ed Code 67504

Pursuant to CA Pub Ed Code Sec. 67504[233], the Lead Agency is required to conduct an assessment of costs associated with increased enrollment and development as to their impact on the relevant host municipality (here, Berkeley) and then propose, pay and report fair share payments. Neither the DEIR nor the LRDP provides any assessment of the fiscal impacts on the City of Berkeley. Further, the Lead Agency has not provided a proposed fair share payment to be made to the City

[233] (a)(1) The Legislature finds and declares that based on academic goals and projected enrollment levels, each University of California campus and medical center periodically develops a Long Range Development Plan (LRDP) that guides its physical development, including land use designations, the location of buildings, and infrastructure systems, for an established time horizon.

(2) In order to ensure greater legislative oversight over the process used by the University of California to prepare and implement each plan, including the accompanying Environmental Impact Report (EIR), at the time draft LRDPs and draft LRDP EIRs are submitted for public review, the university is requested to provide the Legislature with summaries of the draft LRDPs and LRDP EIRs to the Joint Legislative Budget Committee. The summaries shall also be available on the university Internet Web site.

(b)(1) The Legislature further finds and declares that the expansion of campus enrollment and facilities may negatively affect the surrounding environment. Consistent with the requirements of the California Environmental Quality Act (CEQA), it is the intent of the Legislature that the University of California sufficiently mitigate significant off-campus impacts related to campus growth and development.

(2) On or before March 1 of each year from 2010 to 2012, inclusive, the University of California is requested to report for each campus on the status of implementation, including the implementation dates where applicable, of mitigation measures for significant off-campus impacts identified consistent with the requirements of CEQA, including those that require fair share payments to local agencies. The report shall identify the status of fair share mitigation agreements with and payments to local agencies for mitigation of off-campus impacts that are required in certified EIRs. The report should also list any monetary or equivalent in-kind payments to local agencies made by the campuses for the mitigation of off-campus impacts that do not involve fair share language in CEQA documents and that have been implemented under other arrangements. For those significant off-campus impacts that have been triggered but have not been sufficiently mitigated, the university shall report on the additional steps that are being taken to reach a resolution.

or assigned any valuation to the Projects' impact on the City. That failure should be addressed and corrected by the Lead Agency.

4.46 BAHA's Comments on Proposed Changes to Best Practices Policy and Procedure

The Lead Agency should discuss the context for the proposed revisions to UCB's "Continuing Best Practices," (CBP) and in particular which UCB entity is empowered to revise the CBP. If the proposed CBP have not yet been adopted, the Lead Agency should explain the time frame and process for doing so.

5 BAHA'S REMAINING QUESTIONS

In conjunction with issuing its final EIR, BAHA respectfully requests that the Lead Agency answer the following questions (Note: UCB as referred to herein includes all properties and sites owned or leased by UCB or a UC entity for the use of UCB students or to which UCB students, faculty, staff or researchers have access by virtue of an agreement between the property owner or operator and the Lead Agency or one of its constituent parts such as UCB; the terms "You" and "Your" are defined as noted above):

Question 5.1: What do You estimate the costs to the City of Berkeley to be from the Projects?

Question 5.2: Will UCB's acquisition of the Walnut Apartments deprive the City of Berkeley of revenue in anyway? If so, what is the anticipated loss over the period covered by the draft LRDP?

Question 5.3: How much of the total square footage of the proposed construction (including, newly constructed buildings, redeveloped properties, and renovated structures) will be accessible to the public?

Question 5.4: How much of the total square footage of the proposed construction (including, newly constructed buildings, redeveloped properties, and renovated structures) will have limited or restricted access?

Question 5.5: Will the Projects result in the loss of open space? If so, how much.

Question 5.6: Please identify the amounts that UCB has paid the City of Berkeley over the past 24 months pursuant to written agreements or statute to reimburse the City for costs associated with burdens UCB imposes on the City, including City Services. Please provide a detailed line-item or category breakdown by year for the basis of the payments including the population or enrollment figures used to calculate such payment(s).

Question 5.7: Please identify the amounts (by year) that UCB expects to pay the City of Berkeley pursuant to written agreements or statute to reimburse the City for costs associated with burdens UCB imposes on the City, including City Services for each year covered by the draft LRDP. Please provide a detailed line-item or category breakdown by year for the basis of the payments including the population or enrollment figures used to calculate such payment(s).

Question 5.8: How many draft LRDPs, EIRs, and DEIRs are there presently relating to UCB (i.e., concerning UCB property, sites where UCB faculty, staff or students will work, study or be housed)? Please provide a detailed list.

Question 5.9: Please identify how many of the current population of regular contract workers commute to UCB other than by foot. Please provide detailed data including source and date of data, location, transportation modes, and estimated distances.

Question 5:10: How many UCB associated individuals (including all students regardless of enrollment status, faculty, UCB employed staff, UCB contract staff) presently commute distances of over 2 miles on a regular basis use GHG emitting vehicles (including a shared van, personal non-electric vehicles, campus provided buses or shuttles, and private ride services such as taxis, Uber or Lyft)? Please provide the source of the data used and the basis of the conclusions/estimates.

Question 5:11: Please provide answers to the same questions posed in the prior question as to the projected UCB population (all associated individuals as defined above) if the population is increased as much as projected in the draft LRDP Update?

CONCLUSION

As noted previously, BAHA has prepared these comments under unusual and difficult circumstances without access to important materials or the ability to secure expert opinions in the short time allocated and in light of COVID-19 Pandemic Restrictions. These challenges include, unfortunately, UCB's refusal to respond to legitimate document requests or otherwise make their materials (including archived materials) available for review, and the Lead Agency's refusal to agree to our request for a short extension within which to respond to the DEIR.

For the aforementioned reasons, the Lead Agency must redraft the DEIR and re-circulate it for public comment. Thank you for considering our submission.

The Berkeley Architectural Heritage Association

By:

Carrie B. Olson, President of the Board