



Office of the City Manager

ACTION CALENDAR
May 19, 2009

To: Honorable Mayor and Members of the City Council
From: Phil Kamlarz, City Manager
Submitted By: Dan Marks, Director, Planning and Development
Subject: Downtown Area Plan

RECOMMENDATION

Provide direction to staff as to any modifications to the Planning Commission's recommended draft of the Downtown Area Plan, a public hearing for which is scheduled for June 2. At that time, staff hopes to get further direction from the Council. A third meeting is scheduled for DAP consideration and adoption on July 7. The General Plan amendments necessary to adopt the DAP are receiving final review from the Planning commission on May 13 and will be sent on to the Council for the June 2, 2009 meeting.

SUMMARY

On April 15, 2009, the Planning Commission finished its work on a draft Downtown Area Plan (DAP) and voted to recommend it to City Council with 7 Ayes (Stoloff, Pollack, Clarke, Eisen, Gurley, Novosel, Samuels) and 2 Noes (Poschman, Dacey).

The final draft consists of an Introduction and seven chapters: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streetscapes and Open Space, Housing and Community Health Services, and Economic Development. Each of these chapters includes a Strategic Statement, Goals, Policies and Actions (i.e., implementation measures).

The Draft DAP culminates 3 1/2 years of effort, beginning with the Downtown Area Plan Advisory Committee which held 100 meetings over two years and made its DAP recommendations for City Council consideration on November 30, 2007. For the subsequent 18 months, the Planning Commission conducted its own extensive process, using the DAPAC DAP as a foundation, adding implementation measures, removing redundancies, clarifying language and recommending modifications.

Planning Commission and DAPAC agreed on most points, such as: stressing sustainability, requiring projects with greater height to contribute greater community benefits, protecting historic resources, promoting architecture that respects Downtown's traditional character, making Downtown more livable through street and open space improvements, developing a comprehensive parking strategy, and promoting alternatives to the automobile. Planning Commission's recommendations differ with

DAPAC's on a few significant issues including: maximum building heights, support for short-term parking (such as for retail patrons), and accommodation of through traffic (while maintaining an emphasizing pedestrian environments).

Staff discusses these and other substantive differences and similarities between the DAPAC Plan and the Planning Commission Plan in the "Background" section below. . The Planning Commission's recommendations have been presented to Council under separate cover and the DAPAC's DAP is an attachment.

FISCAL IMPACTS OF RECOMMENDATION

No direct impacts. Upon adoption, the DAP has financial implications in regard to its recommended actions and implementation measures. Three implementing projects are about to be initiated and are largely funded through an MTC/ABAG Grant the City has received: a comprehensive Parking and Transportation Demand Management Program, a Street and Open Space Improvement Plan, and Zoning Ordinance revisions. The Parking Program and Improvement Plan will be accompanied by financing plans that will propose ways to fund community priorities.

CURRENT SITUATION AND ITS EFFECTS

The existing Downtown Plan was adopted in 1990 after six years of work. That particular planning effort occurred at a time when many residents felt the characteristics that made downtown a special place were at risk: classic older buildings had been replaced by suburban banks and fast food restaurants; and during the 1960s and 1970s buildings were built that lacked the character and quality of Downtown's historic buildings.

The 1990 Downtown Plan emphasizes the importance of protecting Downtown's traditional character. Cultural uses formed another cornerstone of the 1990 Plan. While Downtown's retail anchors were not saved, cultural uses were thought to be another way of maintaining Downtown as a regional destination (as has been realized, at least in part, by the Downtown's Arts District). The 1990 Plan also emphasized high-density housing as being critical to improving Downtown's vitality.

The 1990 Plan has not been enough to revitalize Downtown, as underlying economic limitations remained unaddressed. Retail vacancy rates remain high in the face of competition from regional retail centers, and the rate of residential construction, while significant, has not achieved the critical mass needed to support a healthy retail environment.

The 1990 Plan could also not anticipate a spectrum of new concerns. Environmental sustainability and global climate change had not emerged as issues. In addition, the place-making potential of well-designed streets and buildings was poorly understood

and received little emphasis. Finally, the 1990 Downtown Plan did not anticipate the growing role of the University in shaping the future of Downtown.

A new Downtown Area Plan effort was initiated in 2005 as a result of a settlement of a dispute between the University of California and the City of Berkeley regarding the University's Long Range Development Plan (LRDP). The University's LRDP called for 800,000 square feet of new development in and adjacent to Downtown. The City and University recognized that the future of Downtown was of mutual concern, and that fostering a healthy, sustainable, livable, and vibrant Downtown was in the interests of both the City and the University. The City and University agreed to foster Downtown revitalization by working together to develop a new Downtown Area Plan that would address community goals while shaping the University's development plans.

The public process for developing the DAP has continued for the past 42 months, beginning in October 2006 with the appointment of the 21 member Downtown Area Plan Advisory Committee (DAPAC). DAPAC held 50 meetings and 50 subcommittee meetings over the course of two years, as well as 4 public workshops and other forms of public outreach. DAPAC completed and adopted a draft Downtown Area Plan in November 2007, and presented these recommendations to City Council the following month.

Beginning in early 2008, the Planning Commission began developing its recommendations for the Downtown Area Plan. Using the DAPAC Plan as a foundation, the Planning Commission considered an array of measures for implementing the Plan, and sharpened policy language to eliminate redundancies and ambiguities. The Planning Commission also conducted its own analysis of some issues, including an economic study evaluating the feasibility of buildings of different heights. Planning Commission also set key assumptions for the DAP Environmental Impact Report, and considered the EIR's analysis during its process.

The Planning Commission's recommendations are consistent with DAPAC's in most ways, however important differences exist. Similarities and differences are highlighted in the following section.

BACKGROUND

The Planning Commission-recommended DAP carries forward the themes identified by the DAPAC:

- Sustainability. Sustainability is the primary theme of the DAP. Downtown is expected to be a model of sustainable development. Sustainability has a wide range of meanings, but in an urban context it means promoting green

construction and reuse of buildings, developing "green" infrastructure (e.g., through landscaping that filters urban runoff), encouraging alternatives to the car, and housing more people in the Downtown where car use can be expected to be far less than most other Bay Area locations.

- Higher intensity. Both plans allow for a higher intensity of land use and more housing as a tool for revitalization. Both want more people living in Downtown. Both plans propose increasing allowable building heights over what is presently allowed and over a larger area. As will be discussed later, the two plans differ with regard to what building heights and how many taller buildings are needed to achieve that goal.
- Protect historic resources. Consensus was reached that historic resources are to be preserved and protected, but that new high quality development should also be encouraged. New development needs to be respectful of nearby historic resources, but can have its own style and should not mimic the buildings of the past.
- Pedestrian is prime. Downtown Berkeley was built for pedestrians with buildings built to the edge of the sidewalk, and storefronts creating an interesting and enjoyable streetscape. Retaining Downtown's Main Street character is a strong consistent theme. Transportation improvements should give priority to enhancing pedestrian environments.
- Protecting residential neighborhoods. While the DAP calls for greater intensity in the Downtown commercial areas, it also recommends reducing the development pressures on the adjacent residential neighborhoods (that are in the Downtown Area) by reducing the permitted intensity of development in areas presently zoned R-4. Downtown's adjacent neighborhoods have many older and potentially historic buildings and provide a substantial amount of relatively affordable housing.
- Encourage alternatives to the automobile. There was wide agreement that the emphasis in regard to Downtown access should be on transit, bicycles and pedestrians. There was some disagreement between the DAPAC and the Planning Commission as to how much the automobile should be accommodated, as discussed below. But there was wide agreement that the City must better manage parking to make it more efficient.
- University development. As was hoped when the plan began, DAPAC, the Planning Commission and the University identified uses and physical characteristics that will benefit the Downtown while meeting University needs. The DAP encourages University museums, cultural uses, health clinics, visitor facilities, and retail in the Downtown. University development is also expected to

play a vital role in bringing activity and continuous storefronts to underused portions of Shattuck Avenue and University Avenue. The University participated in the development of these provisions.

- Streetscapes and open space. Everyone stressed the importance of enhancing the Downtown environment by widening sidewalks, adding vegetation and trees, and creating new parks and plazas. The Plan suggests that improvements are needed to make Downtown more livable for its residents and attractive for its visitors.
- Financing improvements. There was consensus that the City needs to commit resources to Downtown improvements, and that money generated by Downtown should, to the extent feasible, stay Downtown. Fees on development and an option to pay for off-site parking and/or open space rather than meet on-site requirements could help pay for a variety of public benefits. The plan recommends that taller buildings should make greater contributions towards public benefits. The plan also recommends that on-street parking rates be significantly increased and that some of the revenue be earmarked for Downtown improvements. The plan recognizes that high parking costs need to be offset with Downtown amenities to keep Downtown an attractive retail location. It similarly recommends earmarking a portion of hotel transient occupancy taxes generated Downtown for Downtown improvements. A full spectrum of potential revenue sources and community priorities for expenditures will be addressed as part of financing plans for the ABAG/MTC-funded Parking and Transportation Demand Management Program, and Street and Open Space Improvement Plan.

Issues

While there was and continues to be wide agreement about the goals for Downtown, DAPAC and the Planning Commission recommendations have some significant differences, highlighted below.

Building Height

It was clear from early in the DAP process that the most contentious issue would be whether taller buildings would be permitted in Downtown. Under the current Downtown Plan, the tallest buildings permitted are 65 feet generally. The current Downtown Plan also provides a height bonus for cultural uses of up to 89 feet, which has only factored in the Gaia building (built to 89-feet) and the Arpeggio project (which was also granted additional height for affordable housing and will reach 117 feet).

Of note, DAPAC and Planning Commission broadly supported: expanding the Core Area with a generally allowed maximum of 85 feet (after State Density Bonus provisions are applied), and allowing two 225-foot hotel projects. But DAPAC was split when it considered building heights in an expanded Core Area. By the narrowest margin,

DAPAC voted 11-10-0 to allow four buildings at 120 feet and four more buildings at 100 feet, above a generally allowed height of 85 feet.

In a preceding vote of 10-11-0, the DAPAC minority supported an alternative proposal to make height recommendations contingent upon an economic study on the feasibility of different buildings heights; DAPAC had received information that construction costs associated with building code requirements may make certain building heights "infeasible." A letter from eleven former DAPAC members was delivered to City Council with the DAPAC Plan and reiterated concern that DAPAC recommended heights might be infeasible and could deprive Downtown of the density ". . . essential to achieve the Committee's other objectives that call for greenhouse gas emission reductions, environmental sustainability, more open space, affordable housing, economic vitality, better public transportation, job development and better community services."

For the DAPAC majority, building height was a community character issue. Concerns were heard on the detrimental affect that taller buildings would have on Downtown's aesthetics, solar access, historic resources and general historic character. As one DAPAC member put it: the City should demand heights that fit into our community - and let the development community figure out how to build it.

Despite this point of view, Planning Commission's first recommendation on the DAP was to conduct the feasibility assessment suggested by the DAPAC minority. The City Council approved funding for the study, which found that for residential mixed-use projects certain building heights were infeasible under typical conditions. Construction costs rise significantly above 75 feet because the building must be built with steel or concrete rather than wood, and because additional life/safety requirements apply. For tall buildings to be feasible, higher construction costs need to be offset by revenue from additional dwelling units and the higher rent/prices associated with views (see figures below).

Comments on the feasibility study noted that: demand for housing is cyclical, material costs change over time, and that any feasibility study is a snapshot in time. In addition, it was noted that there were two projects built or under construction in Downtown at supposedly infeasible heights. However, it is also true that underlying code requirements rarely change and the significant cost premium between wood frame and concrete/steel construction will continue. The feasibility study noted that there are efficiencies gained with large sites that are not easily assembled in Downtown, and that sites purchased some time ago may have been at a relatively low price, affecting the economics of those two particular projects.

Chart 1: Residential Project Feasibility using “Pessimistic” Assumptions, Strategic Economics, July 2008. (A “residual land value” of zero represents a typical breakeven point for developers.)

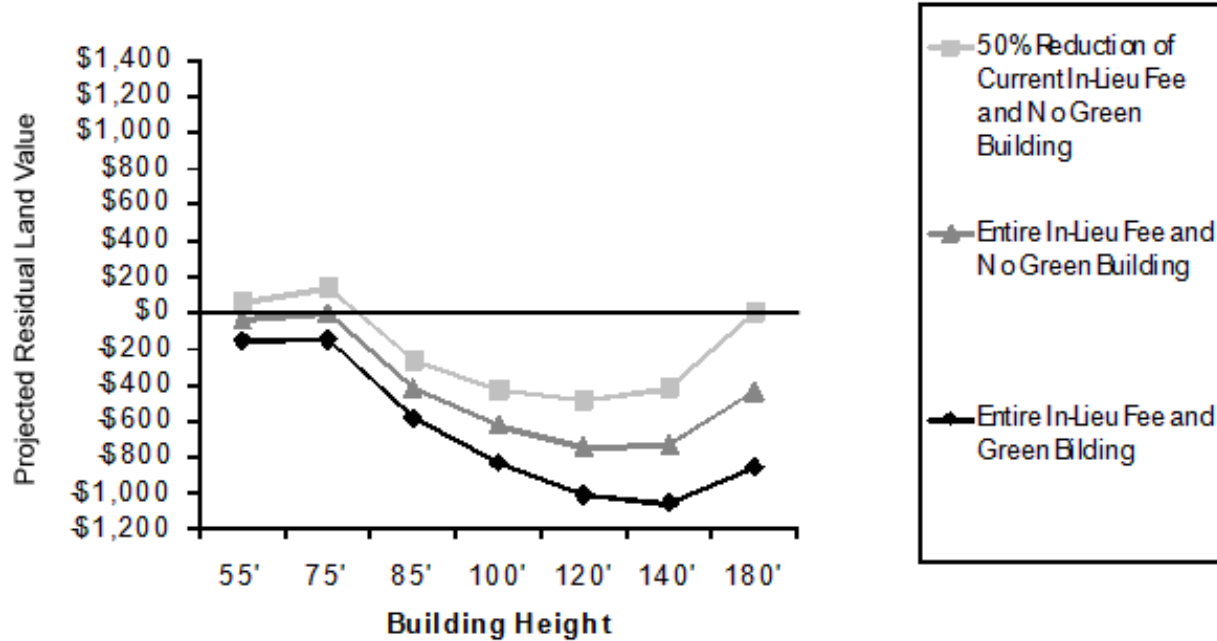
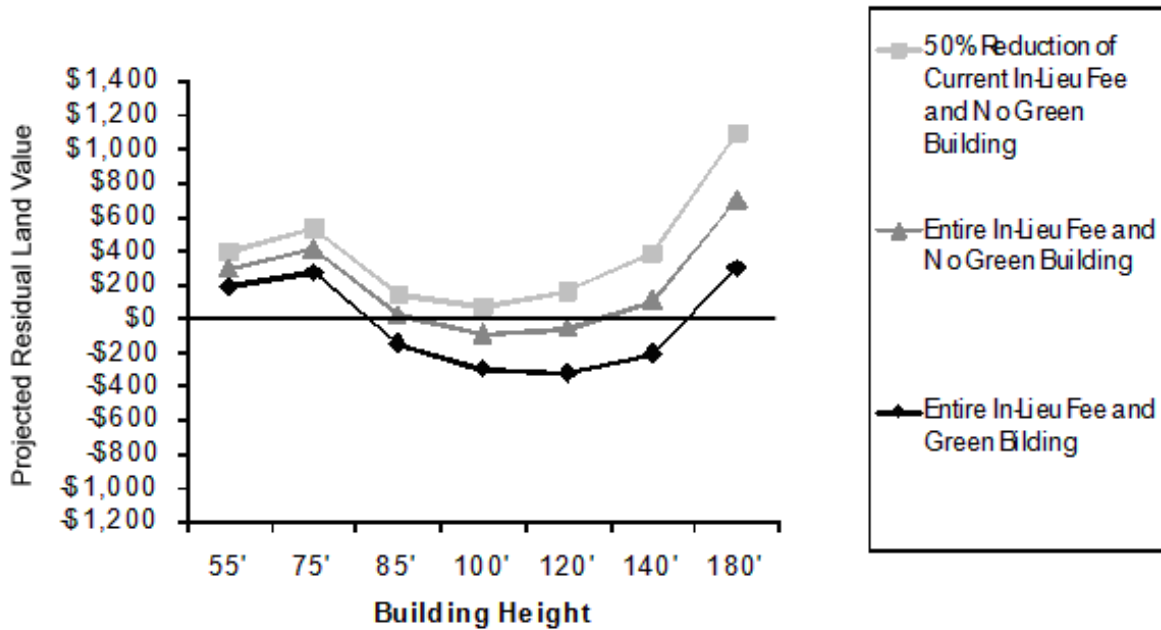


Chart 2: Residential Project Feasibility using “Optimistic” Assumptions, Strategic Economics, July 2008. (A “residual land value” of zero represents a typical breakeven point for developers.)



The feasibility study found, as might be expected, that buildings under 75 feet are barely feasible within a market cycle of roughly 7 years. Over the same time period buildings of 180 feet (the same height as the Wells Fargo Building) might be feasible if the market becomes strong, but might not be feasible if the market remains weak. Development fees and green building requirements will also affect feasibility.

Planning Commission recommended several building height provisions that are similar to DAPAC's, but significant differences also exist. Planning Commission's and DAPAC's height recommendations -- as well as current rules -- are summarized on the following page. Planning Commission's building height recommendations are depicted in the figure below the table.

COMPARISON OF MAXIMUM ALLOWABLE BUILDING HEIGHTS

Land Use Designation (1)	Current Rules (1990 Plan + Zoning)		DAPAC Recommendation		Planning Commission Recommendation	
	Generally Allowed	Taller Exceptions	Generally Allowed	Allowed With Use Permit for Increased Height (2)	Generally Allowed	Allowed With Use Permit for Increased Height (2)
Core Area / Downtown District	65'	89' with Cultural Bonus and/or higher with State Density Bonus for affordable housing	n/a	85' Generally 100' for UC Taller Exceptions 4 @ 100' 4 @ 120' 2 hotels @ 225'	65'	85' Generally 100' for UC Taller Exceptions 6 @ 120' 4 @ 180' 2 hotels @ 225'
Corridor-Buffer	35'-40' 1990 Plan, C-1 & C-SA	higher with State Density Bonus	n/a	65'	50'	65'
Residential Zoning	R-4 + R-2A		R-3 + R-2A		R-3 + R-2A	

(1) Intended for general comparison. Extent of land use areas and nomenclature is somewhat inconsistent.

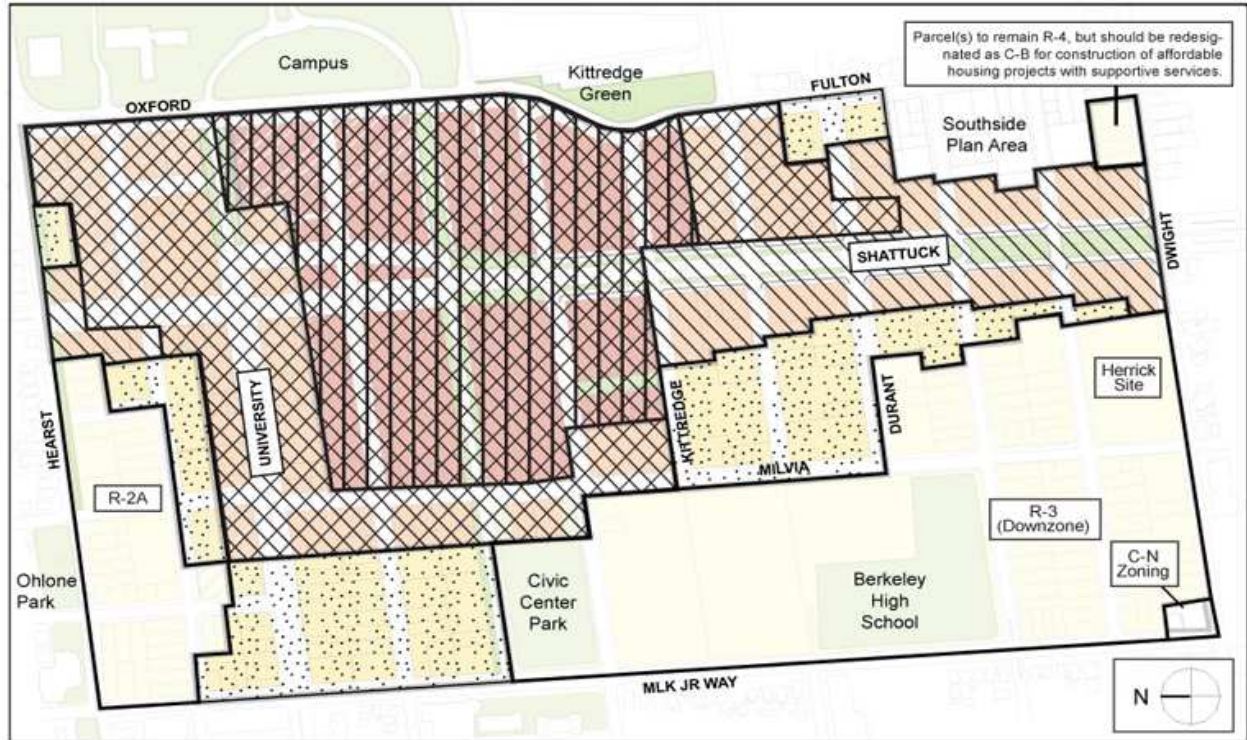
(2) Would include additional dwelling units required by State Density Bonus for affordable housing.

Planning Commission’s Allowable Building Heights Diagram

**FIGURE LU-1:
Allowable
Building Heights**

-  65' MAXIMUM GENERALLY ALLOWED (85' with special use permit)
-  UP TO 6 120' EXCEPTIONS ALLOWED (with special use permit)
-  UP TO 4 180' EXCEPTIONS ALLOWED (with special use permit)
-  UP TO 2 225' HOTELS (with special use permit)
-  50' MAXIMUM GENERALLY ALLOWED (65' with special use permit)
-  R-2A & R-3 (refer to Zoning Code)

NOTES
Stepbacks apply where abutting residential-only areas exist.
UC Projects not subject to Use Permit and may be built to 100 feet in Core Area and Downtown District.
See Table LU-1: Allowable Building Heights for detailed height allowance information.



Similar Planning Commission and DAPAC recommendations include:

- With a use permit for additional height, generally allow buildings up to 85 feet across a comparable geographic area north of Durant, and understand that the University can go up to 100 feet on land that it owns in the same area.
- Allow a limited number of buildings of up to 120 feet within roughly the same area. (Even though 120-foot buildings appear to be infeasible, Planning Commissioners thought that the residential market might adjust and that office buildings might be feasible.) Note that Planning Commission called for six 120-foot buildings, whereas DAPAC called for four 120-foot buildings and four 100-foot buildings
- Permit two hotels of up to 225 feet, but note that DAPAC’s recommendation would allow these hotels across a larger area than Planning Commission’s recommendation which limit the tallest buildings to within two blocks of BART.

After many hours of debate, Planning Commission's height recommendations differed from DAPAC's in two major ways:

- Buildings up to 85 feet be allowed (with a use permit for additional height) between Durant and Dwight, whereas DAPAC recommended a generally allowed maximum of 65 feet.
- Four buildings of up to 180 feet be allowed in a Core Area focused on BART, whereas DAPAC had no provisions for buildings of similar height. (Planning Commission's Core Area is identical to the Core Area in the 1990 Downtown Plan, except that it extends to Oxford, and extends one half block north and south near Oxford.)

The Planning Commission felt that, aside from building height, the specific building envelope requirements should occur during the development of the Zoning Ordinance that implements the DAP, such as requirements for lot coverage, on-site open space and floor area ratios. (Development of new Zoning provisions has been funded in part by the ABAG/MTC grant previously mentioned.)

Both Planning Commission and DAPAC agreed that taller buildings should contribute more in the way of economic and environmental benefits, in recognition of impacts from the building itself and the greater numbers of people it will bring to Downtown. DAPAC proposed highly prescriptive policies, requiring that taller buildings provide additional open space, more affordable housing, etc. The Planning Commission agreed with the need for taller buildings to provide increased benefits to the community, but its policies are less prescriptive in order, to avoid rigid requirements that could make development infeasible. Planning Commission calls for the creation of two options: 1) a menu of developer contributions/public benefits that, if met, would reduce discretionary review; and 2) developers propose their own menu of benefits with a higher level of discretionary review and findings by the ZAB that the benefits would be reasonably equivalent to option 1 (see Land Use Policy LU-8.2).

Street Circulation and Parking

The DAPAC's view was that Downtown should be a destination, not a throughway heading to other places. In general, the DAPAC viewed the automobile as an evil that should not be encouraged. To devote more street space to pedestrians, open space, bikes and transit, the DAPAC thought that travel lanes on Shattuck and Oxford should be eliminated. The DAPAC policies also called for parking to be minimized and better managed so that it was efficiently used, and so that those needing parking could find it easily. The street network should first serve pedestrians, bicycles and transit (and perhaps some new open space), and the automobile should be secondary.

The Planning Commission felt that while the impacts of the automobile were significant and should be minimized, the automobile (in one shape or another) is here to stay and

needs to be accommodated in two respects. First, while parking for commuters should be strongly discouraged, providing shorter term parking for patrons of stores, restaurants and cultural venues needs to be adequate and convenient. Second, while traffic should be slow Downtown, Planning Commission thought that the street network should reasonably accommodate the automobile traffic expected, and rejected DAPAC's recommendation to reduce Oxford Street and Shattuck Avenue to one through-lane in each direction.

Planning Commission and DAPAC recommendations on Access differ in other important ways. DAPAC included explicit support for Bus Rapid Transit (i.e., dedicated bus lanes and platform improvements) in the Downtown Area, whereas Planning Commission supported transit enhancements but did not take a position on BRT on the ground that it is a citywide issue.

Planning Commission and DAPAC also had different perspectives on the creation of a "Center Street Plaza" on Center between Shattuck and Oxford. In a narrow 11-10-0 vote early in its process, DAPAC voted to close Center Street to traffic to produce a pedestrian-only space (except for deliveries and emergency vehicles). Subsequent to this vote, merchants and other concerned community members expressed concern over the functionality of this proposal and its impact on abutting businesses. As a consequence, Planning Commission recommended the creation of a pedestrian-friendly space but was silent on whether to close the street to auto traffic -- in anticipation of more extensive public process.

DAPAC and Planning Commission both recommended consideration of putting two-way through-traffic on the west side of Shattuck Square to allow the east side of Shattuck Square area to be a more pedestrian-oriented environment. Further analysis of this and other Shattuck Square options will occur during the development of the MTC/ABAG-funded Street and Open Space Improvement Plan.

The EIR modeled the impacts of the changes recommended by the DAPAC (with the exception of the reduction of lanes on Oxford), so that the City Council would have the option of approving the more significant changes recommended by the DAPAC, should it so choose. The DEIR also assumed that BRT would be constructed with a "center-running" configuration, as has been proposed by AC Transit

Other Differences

DAPAC members and Planning Commissioners can probably identify many more differences between DAPAC and Planning Commission recommendations. Without cataloguing them all, staff notes the following other issues for consideration:

- **Strict Requirements versus Flexibility.** In some instances, Planning Commission adopted "softer" language than DAPAC, out of concern that unintended negative consequences could result from narrow requirements and metrics. By using

stronger language, DAPAC members sought to ensure that development contribute an array of specific public benefits. Planning Commission was concerned that, cumulatively, strict provisions could make development infeasible and that specific requirements need additional study before being enacted as part of future Zoning provisions and/or procedures.

- Herrick Campus. The DAPAC recommended that a comprehensive study of city health care needs to be a condition for converting the Herrick site to non-medical uses, and a strong preference for retaining community-health related facilities on the site. The Planning Commission maintained these concepts, but made evaluation of health care needs an area-wide concern that is not specific to, nor a precondition for, modifications to the Herrick site. The Planning Commission version also provides incentives for Alta Bates/Sutter to retain health-related facilities, and rejects DAPAC's directive language that seemed to require it (see Land Use Policy LU-7.1).
- Noise. Both DAPAC and Planning Commission call for review and revision of the City's Noise Ordinance to be more appropriate to Downtown's mixed-use urban environment, but DAPAC's language can be read as wanting to make decibel standards more strict.
- Overlap with Southside Plan Area. As initially drawn, the Southside Plan area and Downtown Area overlapped. Planning Commission recommended that the Downtown Area Plan apply to parcels that are commercially zoned or might be suitable for mixed-use development, and that the Southside Plan apply to over parcels that will remain residential. The attached maps show areas that the Planning Commission recommends be subject to the Southside Plan relative to those areas under the DAP.

EIR

A Final Downtown Area Plan Environmental Impact Report (FEIR) was completed and issued on April 14, 2009. While the Planning Commission had the benefit of the Draft EIR analysis prior to making its recommendation to Council, it did not yet have sufficient time to consider the Response to Comments contained in the FEIR. The Planning Commission is reviewing the FEIR and making its recommendation on its adequacy on May 13. The Draft EIR and Final EIR can be viewed at:

<http://www.ci.berkeley.ca.us/ContentDisplay.aspx?id=33630> .

Study Areas

The Planning Commission was asked to establish the parameters for the EIR analysis in early 2008. When the Planning Commission began a more careful consideration of land use policies in early 2009, some Planning Commissioners felt that they had erred in the boundaries of the area where taller buildings might be permitted, which it

established for analytical purposes in the DEIR. Staff told the Commissioners that if wholesale changes were made to boundaries for taller buildings, the DEIR would have to be modified and recirculated – adding at least three additional months to the EIR process and requiring additional funding. The Commission decided, instead, to modify boundaries only where taller buildings would not generate the possibility of new significant negative impacts – and would therefore not affect the adequacy of the EIR. (The FEIR describes where boundaries were revised and possible effects.)

For areas where Planning Commissioners were interested in extending the boundary for taller buildings – but where the impact of taller buildings might be significant -- the Commission has made a separate recommendation to Council to fund additional CEQA analysis of these "Study Areas," and to direct the Commission to consider future amendments to the DAP. The Study Area recommendation by Planning Commission is presented in a separate report.

RATIONALE FOR RECOMMENDATION

The City Council meeting on May 19 is intended to familiarize the Council with the Plan and to receive some initial comments from Councilmembers. A public hearing is scheduled on June 2 after which the Council can provide direction to staff to modify the plan prior to considering adoption. The meeting on June 2 will also consider General Plan Amendments needed for DAP/General Plan consistency. A third meeting is scheduled for July 7 for Council action.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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ATTACHMENTS

The Planning Commission's Recommended Downtown Area Plan has been sent under separate cover, also available at:

www.ci.berkeley.ca.us/uploadedFiles/Planning_and_Development/Level_3_-_DAP/DAP2009.pdf

Attachment 1: Plan recommended by DAPAC.

