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May 11, 2017

VIA EMAIL AND U.S. MAIL

Director of Campus Planning
Physical Planning and Construction
University of California
1156 High Street, Mailstop: PPDO
Santa Cruz, CA 95064
Attn: EIR Comment
email: eircomment@ucsc.edu

Re: Student Housing West
Comments on Draft Environmental Impact Report (SCH No. 2017092007)

Dear Director of Campus Planning:

This law firm represents the East Meadow Action Committee regarding the above referenced Draft Environmental Impact Report (DEIR), and we submit these comments on our client's behalf.

First and foremost, our client supports building on-campus housing for students attending the University of California, Santa Cruz (UCSC). However, our client, along with a vast number of alumni and members of the public, oppose building Family Student Housing on the iconic East Meadow, a gateway to the UCSC campus. Indeed, even the DEIR admits that the East Meadow is iconic: "Nonetheless, because of the iconic location and the fact that the meadow is a valued resource on the campus, the proposed development would result in a significant impact on visual character and quality of the project site." (DEIR, 4.1-33.) The DEIR even concludes that this impact is significant and unavoidable. "The screening provided by the landscaping will reduce the contrast between the buildings and the meadow but the project would still place development on this ***iconic gateway*** to the campus. The impact would be significant and unavoidable." (DEIR, 4.1-34 (emphasis added).) There are alternative locations for Family Student Housing and a child care facility that would not involve destruction of this iconic meadow. Destroying an iconic gateway to the campus diminishes the very experience of attending and visiting UCSC and will forever ruin the aesthetic appeal of UCSC. As an institution, UCSC certainly must recognize that its beauty is one of its selling points to prospective students and to its ranking as an institution of higher learning.

After careful review of the DEIR we have concluded that the document is woefully inadequate. The DEIR must be revised and released for a second round of public review.

Below, we provide specific itemized comments, each requiring a response pursuant to CEQA Guidelines § 15088(a).

1) This office submitted a Public Records Act request on March 27, 2018, requesting to ***inspect*** these documents. We did not request copies of these documents under Government Code section 6253(c), which allows the University time to respond to this request. We requested to inspect these documents as soon as possible. Government Code § 6253(a) provides that "Public records are open to inspection ***at all times*** during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided...." Instead, UCSC ignored our request to inspect these documents and treated the demand as a request for copies of these documents. UCSC provided a one-time, temporary access via an electronic link to a small subset of the records that this office requested. A May 3, 2018 email from Denise Dolezal, Information Practices Director, states as follows:

> Although the [California Public Records Act] permits the University to collect duplication fees at the rate of $0.20 per page for all records provided, aligned with the University's commitment to transparency and accountability and recognizing a high public interest in the University's growth planning process, we are waiving the $25.40 fees (127 pages at $.20 per page) that are otherwise legally required for lawful fulfillment of your requests. However, the University reserves the right to charge duplication fees in the future as appropriate.

The email further states that the documents provided "Our office will contact you when the next set of records is available for your access." We have not been provided further access to the documents we requested.

The unwillingness of UCSC to provide access to files that are readily available in a timely manner has hindered our ability to fully comment on the DEIR as we believe that many of the documents in UCSC's files are instructive to the comments we have provided below. By written correspondence on April 13, 2018, this office also requested an extension of the public review period on the DEIR. UCSC rejected that request. UCSC's byzantine process and response to our Public Records Act request must be remedied and we demand immediate access to all records as requested, as well an extension of time to provide further comment after we have been provided access to all public records requested.

2) The DEIR asserts that the environmental analysis in the DEIR is tiered from the UCSC 2005 LRDP EIR. The DEIR also states that

> A NOP was issued by the Campus in April 2017 for the preparation of an EIR for an LRDP Amendment to facilitate the development of housing on the west campus. That NOP is no longer pertinent to this EIR as an LRDP amendment is not needed for the implementation of the proposed project on the selected site on the west campus.

(DEIR, 1.0-5, fn. 4; see also DEIR, 2.0-8.) However, the LRDP is being amended to facilitate the development of Family Student Housing on the East Meadow. The DEIR also states that it is "a Supplement to the 2005 LRDP EIR with respect to 2005 LRDP growth impact related to water supply and population and housing." (DEIR, 1.0-5.) The DEIR must be clarified as to its purpose. It is not truly a tiered EIR if it is also intended to satisfy amendment of the LRDP and as a Supplement to the LRDP EIR.

3) As noted in the DEIR, the UC Santa Cruz Physical Design Framework states, "Maintain the continuity and visual 'sweep' of the meadow landscape across the lower campus, from the Pogonip east of the campus to Wilder Ranch State Park on the west." It also states, "Site development so as not to encroach on meadow open space." (DEIR, 4.1-10.) However, the DEIR never addresses the inconsistency of the project, particularly the development of the East Meadow, with these concepts. The DEIR must be revised and recirculated to address the consistency of the development with the Framework.

4) As the DEIR admits, purple needlegrass is a sensitive natural community. (DEIR, 4.3-11, 4.3-19.) The DEIR states that since

> previously adopted mitigation measures are already being carried out as part of the implementation of the 2005 LRDP, they are included in, and they are a part of the proposed project, and will not be readopted. Implementation of these mitigation measures is assumed as part of the proposed project impact analysis.

(DEIR, 4.3-26.) The DEIR then lists the LRDP EIR Mitigation Measures. These include "The Campus shall avoid removal of coastal prairie through redesign of proposed development areas and road alignments where possible." Further, "The Campus shall mitigate for unavoidable losses of coastal prairie by restoring coastal prairie at a 3:1 ratio." (DEIR, 4.3-27.)

Purple needlegrass is coastal prairie habitat. (DEIR 4.3-8.) Development of the Hagar site does not avoid removal of coastal prairie, and it could be avoided by developing the housing at an alternative location. Second, the ratio of restoration falls short of the promised mitigation in the LRDP. The DEIR calls for only a 1:1 ratio of restoration of this habitat. The DEIR fails to analyze the adequacy of this lower ratio of mitigation and the inconsistency with the LRDP EIR. The DEIR must be revised to include analysis of these shortcomings of the proposed project.

5) The DEIR concludes that the cumulative impacts on biological resources, including the impacts on purple needlegrass and coastal prairie, are insignificant based on the analysis in the LRDP EIR.

> As stated in the impact analysis … the proposed project would implement applicable mitigation measures from the 2005 LRDP EIR as well as additional project-specific

> mitigation measure as necessary, and therefore would not result in new or greater impacts than previously analyzed in the 2005 LRDP EIR.

There are several problems with this analysis. First, the LRDP EIR did not address the additional loss of coastal prairie and purple needlegrass. Second, as shown above, the mitigation ratios fall short of what was required in the LRDP EIR. And third, the DEIR assumes that simply because there are project-specific mitigation measures, that there is not a cumulative impact.

"'Cumulative impacts' refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." 14 Cal. Code Regs. §15355. "The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." 14 Cal. Code Regs. §15355, subd. (b). "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." *Id.* "[A]n agency may not ... [treat] a project as an isolated 'single shot' venture in the face of persuasive evidence that it is but one of several substantially similar operations, each of which will have the same polluting effect in the same area." *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408 (citation omitted). "An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable." 14 Cal. Code Regs. §15064, subd. (h)(1). The Guidelines define "cumulatively considerable" as when "the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." *Id.* In other words, "the need for an EIR turns on the impacts of *both* the project under review and relevant past, present, and future projects." *Communities for a Better Environment v. California Resources Agency, supra,* 103 Cal.App.4th at 119 (citing Pub. Resource Code §21083; 14 Cal. Code Regs. § 15355) (overruled on other grounds in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1109).

Here, the DEIR relies on the LRDP EIR which never addressed the loss of an additional 15 acres of purple needlegrass at the Hagar site, and the DEIR assumes that the project mitigations take care of a cumulative problem. However, coastal prairie and purple needlegrass are sensitive species and the loss of these 15 acres, along with the continued loss of this habitat elsewhere, results in potentially significant impacts.

> [T]he significance of an activity depends upon the setting. (Guidelines § 15064, subd. (b)). The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.

Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 718. The whole point of the cumulative impact analysis is to look at those impacts in conjunction with other developments to determine whether the impacts are cumulatively significant. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." CEQA Guidelines § 15355. The DEIR's analysis is fatally flawed. The DEIR must be revised accordingly to include an analysis of the cumulative loss of coastal prairie and purple needlegrass.

6) The DEIR has a similar problem with respect to hydrology and water quality. The DEIR again relies on the LRDP EIR's conclusions with respect to cumulative impacts associated with off-site runoff and water quality. But, the LRDP EIR never analyzed the impacts associated with development of the Hagar site. Thus, it is erroneous for the DEIR to rely on the LRDP EIR for these purposes. The DEIR must include a cumulative impact analysis as it relates to development of the Hagar site.

7) The DEIR improperly rejects evaluation of alternatives based on increased costs. The DEIR concludes that infrastructure costs and time to develop the Heller Site and North Campus Development Alternative renders it infeasible. (DEIR, 5.0-11.)

> "The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project." (*Uphold Our Heritage v. Town of Woodside* [(2007)] 147 Cal.App. 4th [587,] 599 [(review denied)]; see *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181 ...) Thus, when the cost of an alternative exceeds the cost of the proposed project, "it is the magnitude of the difference that will determine the feasibility of this alternative." (*Uphold Our Heritage v. Town of Woodside, supra*, at p. 599.)

Center for Biological Diversity v. County of San Bernardino (2010) 185 Cal. App. 4th 866, 883. *See also, Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089. *Uphold Our Heritage* held that "[t]he willingness of the applicant to accept a feasible alternative, however, is no more relevant than the financial ability of the applicant to complete the alternative. To define feasible as appellants suggest would render CEQA meaningless." *Uphold Our Heritage v. Town of Woodside, supra*, 147 Cal.App.4th at 602. The fact that the alternative purportedly may cost more or cause more time to build does not render it infeasible. With respect to the time to build, Alternative 2 with its reduced number of beds takes less time to build than the proposed project. (DEIR, 5.0-20.) But, this does not then render the proposed project infeasible. The Heller Site and North Campus Alternative must be evaluated to avoid the significant and unavoidable impact associated with building in the East Meadow.

> "Even as to alternatives that are rejected, however, the 'EIR must explain why each suggested alternative either does not satisfy the goals of the proposed project, does not offer substantial environmental advantages or cannot be accomplished.'" (*Id.* at p. 1458;

> see Cal. Code Regs., tit. 14, § 15091, subd. (c) [when agency finds alternatives are infeasible it must "describe the specific reasons for rejecting" them].)

Center for Biological Diversity v. County of San Bernardino, supra, 185 Cal. App. 4th at 883; *Preservation Action Council v. City of San Jose* (2006) 141 Cal. App. 4th 1336, 1354.

> [A] reduced development alternative could have fully satisfied all of the other objectives identified by the City. We reject the City's claim that the FEIR could omit consideration of a reduced development alternative simply because such an alternative would not fully satisfy each and every one of the City's objectives.

Watsonville Pilots Assn. v. City of Watsonville, supra, 183 Cal.App.4th at 1088. Simply because an alternative did not satisfy every single objective of the proposed project is not a reason to reject its consideration.

8) The project objectives were defined too narrowly. For instance, the objectives include "Develop new housing while minimizing displacement impacts on students with families," and "Provide a childcare facility to serve both students and employees in a location that maximizes its accessibility to families living on and off campus." (DEIR, 3.0-7.) While minimizing displacement impacts is a noble goal, it intentionally limits long-term desirability for short-term gain. Indeed, the LRDP EIR considered long-term goals to be more important.

> The Family Student Housing Redevelopment Project would temporarily (for about 2 years) remove about 100 units on the campus. However, this housing would be replaced with twice the number of housing units over a period of about two years … . Because the affected housing would be replaced, there would be no long-term impact relative to displacement of housing.

(LRDP EIR, 4.11-14.) Moreover, a childcare facility that is located close to families living on campus will be convenient for employees and students that live on campus. To say that the location must also be convenient to off campus families is a ruse, particularly since those living off-campus travel to campus for school and work. Indeed, the LRDP EIR stated that "West side campus locations, in proximity to existing facilities including recreation and child care, would continue to be preferred for family student housing." (LRDP EIR, 2-23.) Moreover, the current plan separates general graduate housing that will be located at the Heller site from family student housing. However, the LRDP EIR said it was better to locate them both within the same location. "The majority of [graduate student] housing would be apartment-style. If possible, this housing, as many graduate students have families and would require family-related services." (LRDP EIR, 3-23.) As discussed below, the DEIR has set up straw alternatives so that the proposed project is favored and ultimately chosen. The objectives are so narrowly tailored that viable alternatives become "infeasible" in the DEIR's analysis.

> The purpose of an EIR is not to identify alleged alternatives that meet few if any of the project's objectives so that these alleged alternatives may be readily eliminated. Since the purpose of an alternatives analysis is to allow the decision maker to determine whether there is an environmentally superior alternative that will meet most of the project's objectives, the key to the selection of the range of alternatives is to identify alternatives that meet most of the project's objectives but have a reduced level of environmental impacts.

Watsonville Pilots Assn. v. City of Watsonville, supra, 183 Cal.App.4th at 1089.

9) The DEIR does not set forth a reasonable range of alternatives. CEQA requires that the Regents be given the ability to make a reasoned choice among the alternatives. *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750-751.

> The core of an EIR is the mitigation and alternatives sections. The Legislature has declared it the policy of the State to "consider alternatives to proposed actions affecting the environment." ... . [I]t is the policy of the state 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 ... .

Preservation Action Council v. City of San Jose, supra, 141 Cal. App. 4th at 1350-1351.

> "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." (CEQA Guidelines, § 15126.6, subd. (a).)

Watsonville Pilots Assn. v. City of Watsonville, supra, 183 Cal.App.4th at 1086.

> CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose. ...

Preservation Action Council v. City of San Jose, supra, 141 Cal. App. 4th at 1350-1351 (emphasis added).

The DEIR has created an artificial construct and sets up rejection of alternatives simply because they are not desired, not because they were **truly infeasible**. *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal. 4th 341, 368-369. Here, the DEIR proposes Alternative 2, a reduced density alternative, that does

> not achieve the University's objectives of providing a number of beds to meet the terms of the Settlement Agreement, supporting development of sufficient and affordable, on-campus student housing under the UC President's Housing Initiative; and locating undergraduate housing on campus in order to facilitate convenient access to classrooms and other learning environments; student services; and campus amenities such as retail, restaurants and fitness facilities.

(DEIR, 5.0-26.) This alternative predictably will be dismissed by the Regents (no doubt based on a staff recommendation) as not meeting the project objectives or being legally infeasible because it does not comply with the Settlement Agreement. Thus, another replacement alternative, such as Heller Site and North Campus Development Alternative as discussed above, must be considered. This is particularly true since the DEIR considers the infeasible reduced density alternative to be the environmentally superior alternative. (DEIR, 5.0-42.)

10) Does UCSC intend to recommend that the Regents find infeasible Alternative 3, the Heller Site Development Only Alternative, for not meeting "the objective of developing new housing while minimizing displacement impacts on students with families?" (DEIR, 5.0-31.) This Alternative reduces the aesthetic impacts of a significant and unavoidable impact of developing in the East Meadow. This alternative cannot be rejected simply because it does not meet all the project objectives save one. As stated above,

> [A] reduced development alternative could have fully satisfied all of the other objectives identified by the City. We reject the City's claim that the FEIR could omit consideration of a reduced development alternative simply because such an alternative would not fully satisfy each and every one of the City's objectives.

Watsonville Pilots Assn. v. City of Watsonville, supra, 183 Cal.App.4th at 1088.

The California Supreme Court stated that CEQA requires agencies to adopt feasible alternatives when there are unavoidable impacts of a proposed project.

> CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, **unless the measures necessary to mitigate those effects are truly infeasible**. Such a rule, even were it not wholly inconsistent with the relevant

> statute (id., § 21081, subd. (b)), would tend to displace the fundamental obligation of "[e]ach public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so" (id., § 21002.1, subd. (b)).

City of Marina v. Board of Trustees of California State University, supra, 39 Cal. 4th at 368-369 (emphasis added); see also *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 98, 108, fn.18. Employing mitigations and alternatives are substantive mandates, not mere perfunctory informational requirements which UCSC can ignore by simply finding that the benefits outweigh the harm. The Court of Appeal echoed the holding of the Supreme Court:

> Further, the Legislature has also declared it to be the policy of the state "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.) "Our Supreme Court has described the alternatives and mitigation sections as 'the core' of an EIR." (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.) In furtherance of this policy, section 21081, subdivision (a), "contains a 'substantive mandate' requiring public agencies to refrain from approving projects with significant environmental effects if 'there are feasible alternatives or mitigation measures' that can substantially lessen or avoid those effects." (*County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 98, italics omitted; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134.)

Uphold Our Heritage v. Town of Woodside (2007) 147 Cal.App. 4th 587, 597-598 (review denied); *Center for Biological Diversity v. County of San Bernardino, supra,* 185 Cal. App. 4th at 883.

Thus, Alternative 3 is a viable alternative that reduces a significant and unavoidable impact.

Finally, as discussed above, the LRDP EIR considered long-term goals to be more important than short term inconvenience when it considered reconstruction of family student housing at the Heller site. "The Family Student Housing Redevelopment Project would temporarily (for about 2 years) remove about 100 units on the campus. However, this housing would be replaced with twice the number of housing units over a period of about two years . . . . Because the affected housing would be replaced, there would be no long-term impact relative to displacement of housing." (LRDP EIR, 4.11-14.)

For the foregoing reasons, the DEIR must be substantially revised and recirculated for public review and comment. The DEIR is inadequate with respect to the proposed project and the changes necessary to make it adequate are substantial.

Pursuant to Public Resources Code § 21167(f), we are requesting that UCSC forward a Notice of Determination to us when the Project is approved. That section provides:

> If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 prior to the date on which the agency approves or determines to carry out the project, then not later than five days from the date of the agency's action, the public agency shall deposit a written copy of the notice addressed to that person in the United States mail, first class postage prepaid.

Thank you for your consideration of these comments. I look forward to UCSC's written responses.

Very truly yours,
WITTWER PARKIN LLP

William P. Parkin

cc: client