

November 1, 2018

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 Project
Comments on Revised 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 Revised Draft Environmental Impact Report (RDEIR), 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, UCSC donors and members of the public, oppose building Family Student Housing on the iconic East Meadow, a gateway to the UCSC campus. Indeed, even the RDEIR 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." (Draft Environmental Impact Report (DEIR) 4.1-33; RDEIR 4.1-2, 4.8-13.) The 2005 LRDP designates the East Meadow as a scenic resource. (See e.g., RDEIR 4.8-13.) The RDEIR even concludes that this impact is significant and unavoidable. "Hagar site development would alter iconic views as seen upon entering the campus as well as from viewpoints on the central campus looking out to the city and the ocean." (RDEIR 4.1-2.) The impact of development of the East Meadow would be significant and unavoidable. (RDEIR 4.1-27.)

Despite the circulation of the RDEIR, we still believe that there are alternative locations for Family Student Housing and a child care facility that would not involve destruction of this iconic East 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. Nonetheless, it

appears from the RDEIR that UCSC is impervious to the sentiment of its alumni, donors and the public and would destroy the East Meadow. Indeed, the use of modular buildings is a stick in the eye to all those who value and cherish the iconic meadow. The alternatives are rigged in a manner that ensures that there is no other choice but to destroy the meadow, and sets up a scenario where the flimsy argument that temporary inconvenience and potential cost makes developing Family Student Housing in another location appear infeasible. Such invented infeasibility is obvious to all those who read the RDEIR. The notion that 140 units for families somehow stands in the way of UCSC's ability to avoid significant and unavoidable visual impacts associated with development of the East Meadow is preposterous. This is particularly true since the average occupancy of Family Student Housing is 87 units. (RDEIR 3.0-23.) Indeed, the RDEIR rejects an Infill/Distributive Infill Housing Alternative for the broader Project because it would provide no more than 600 beds. (RDEIR 5.0-15.) However, Family Student Housing is less than 600 beds. Moreover, it is clear from the history of this Project that development of the East Meadow was not an issue for UCSC until the chosen P3 developer, Capstone, proposed building in the East Meadow.

After careful review of the RDEIR we have concluded that the document is still woefully inadequate. The RDEIR must be revised and released for another round of public review. Below, we provide specific itemized comments, each requiring a response pursuant to CEQA Guidelines § 15088(a).

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

An 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.

(RDEIR, 1.0-6, fn. 5; see also RDEIR, 2.0-14, fn. 1.) However, the LRDP is being amended to facilitate development of Family Student Housing on the East Meadow. The RDEIR 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." (RDEIR, 1.0-2, 1.0-6.) The RDEIR's approach is contrary to law. 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. The LRDP EIR is inadequate as a tiered EIR.

2) As noted in the RDEIR, 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." (RDEIR, 4.1-11.) The RDEIR admits that development in the East Meadow conflicts with the Physical Design

Framework. (RDEIR 4.1-25.) The proposed Project violates the Physical Design Framework by proposing development in the East Meadow. UCSC is clearly not adhering to the principles in the Physical Design Framework.

3) The RDEIR concludes that all that is necessary as a mitigation for a 17.1-acre loss of purple needlegrass grassland, a sensitive natural community, is that the "Campus shall mitigate by (1) permanently protecting approximately 17.1 acres of existing purple needlegrass grassland within the campus or (2) by restoring purple needlegrass grassland at a ratio of at least 1:1." (RDEIR 4.3-34.) This analysis is flawed. Setting aside for protection other already existing sensitive natural communities does not mitigate for the loss of a natural community in another location. Under such logic, sensitive natural communities can easily be lost under the guise of preservation of leftover habitats. Second, this mitigation does not address the cumulative impacts associated with the loss of the sensitive natural community.

4) The RDEIR concludes that the cumulative impacts on biological resources, including the impacts on purple needlegrass, are less than significant based on the analysis in the LRDP EIR.

[A]s stated in the project-level impact analysis ... the proposed project would implement all applicable mitigation measures from the 2005 LRDP EIR as well as additional project-specific mitigation measures as necessary, and therefore with mitigation, would not result in new or greater impacts than previously analyzed in the 2005 LRDP EIR.

(RDEIR 4.3-57.) There are several problems with this analysis. First, the LRDP EIR did not address the additional loss of coastal prairie and purple needlegrass. Indeed, the LRDP EIR stated that because the East Meadow was not going to be developed, there would not be certain impacts associated with other development on the campus. For instance, the LRDP EIR concludes that:

The proposed project involves the potential development and/or disturbance of approximately 98 acres of grassland habitat such as the Great Meadow (roughly 90 acres) and the East Meadow (roughly 80 acres), both of which would remain largely undisturbed. Therefore, the loss of foraging habitat potentially used by special status birds would be considered less-than-significant.

(LRDP EIR 4.4-57.) Now, however, the East Meadow will be disturbed, calling into question the legitimacy of the LRDP EIR's original analysis. Second, the RDEIR incorrectly assumes that simply because there are project-specific mitigation measures, there are no cumulative impacts.

"'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 RDEIR relies on the LRDP EIR which never addressed the loss of an additional 17.1 acres of purple needlegrass at the Hagar site, and the RDEIR erroneously assumes, contrary to law, that the project mitigations take care of a cumulative problem. However, coastal prairie and purple needlegrass are sensitive species and the loss of these 17.1 acres of purple needlegrass, 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 RDEIR’s analysis is fatally flawed. The RDEIR must be revised accordingly to include an analysis of the cumulative loss of purple needlegrass grassland.

5) The RDEIR has a similar problem with respect to cumulative impact analysis regarding hydrology and water quality. (RDEIR 4.5-19, 4.7-45.) The RDEIR 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 RDEIR to rely on the LRDP EIR for these purposes. The RDEIR must include a cumulative impact analysis as it relates to development of the Hagar site instead of glossing over the impact by making a conclusory and bald statement that the impacts are insignificant without any analysis whatsoever.

6) The RDEIR improperly rejects evaluation of alternatives based on increased costs. The RDEIR concludes that infrastructure costs and time to develop certain alternatives, including the Heller Site and North Campus Development Alternative, renders these alternatives infeasible. (RDEIR 5.0.)

“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 an alternative purportedly may cost more or cause more time to build does not render it infeasible.

This is also relevant to the alternatives that are evaluated, but clearly set up by UCSC to be discarded as infeasible based on costs and time delays, or for not meeting the Project Objectives. For instance, the Reduced Project Alternative, with its reduced number of beds, takes less time to build than the proposed project. (RDEIR 5.0-30, 5.0-31.) However, the RDEIR then criticizes the Alternative as not meeting the Project Objectives. UCSC is setting up straw alternatives that can then be justified for rejection due to flimsy arguments of infeasibility or because they do not meet Project Objectives. However, this is contrary to law.

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.

7) 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.” (RDEIR, 2.0-4.) 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, and because the RDEIR takes great pains to say that families cannot be located off-campus for an interim period while housing is being built on campus under the other alternatives. 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.) The RDEIR 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 RDEIR’s analysis.

When agencies have excluded consideration of, or dismissed a project alternative on the basis of such a narrow project description, the courts have found such a position untenable. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 735-737. In *Kings County Farm Bureau*, the court found that the agency’s preordained contractual arrangement cannot be the basis to exclude consideration of alternatives.

An environmentally superior alternative cannot be deemed infeasible absent evidence the additional costs or lost profits are so severe the project would become impractical. (*Citizens of Goleta Valley v. Board of Supervisors* [(1988)] 197 Cal.App.3d [1167,] 1181.) Nor can an agency avoid an objective consideration of an alternative simply because, prior to commencing CEQA review, an applicant made substantial investments in the hope of gaining approval for a particular alternative. (*Laurel Heights Improvement Assn. v. Regents of University of California* [(1988)] 47 Cal.3d [376,] 425.)

Since CEQA charges the agency, not the applicant, with the task of determining whether alternatives are feasible, the circumstances that led the applicant in the planning stage to select the project for which approval is sought and to reject alternatives cannot be determinative of their feasibility. ...

“The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.” [Citation]. Otherwise, CEQA’s mandate to consider alternatives would be meaningless. ...

Kings County Farm Bureau v. City of Hanford, supra, 221 Cal. App. 3d at 737. Unfortunately, this is exactly what we expect the findings of infeasibility provided to the Regents will do here.

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.

8) 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 RDEIR 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 RDEIR proposes Alternative 2, a Reduced Project Alternative, that does

not achieve the University’s objectives of providing sufficient and affordable on-campus housing under the UC President’s Housing Initiative; providing housing in a timely manner as related to the Settlement Agreement; relieving overcrowding; replacing housing that has deteriorated; 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.

(RDEIR, 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 allegedly comply with the Settlement Agreement. Thus, another replacement alternative, such as the Heller Site and North Campus Development Alternative, must be considered the environmentally superior alternative. It is clear that the Reduced Project Alternative was placed in the DEIR to ensure that the Environmentally Superior Alternative was dismissed.

9) Does University Staff intend to recommend, and provide a draft resolution implementing a recommendation, that the Regents find infeasible Alternative 3 (Heller Site Development Only), Alternative 4 (Heller Site and North Remote Site Development), Alternative 5 (Heller Site and East Campus Infill Development), Alternative 6 (Heller, East Campus Infill, and Delaware Site Development), and Alternative 7 (Heller, East Campus Infill, and North Remote Site Development) for not meeting “the objective of developing new housing while minimizing displacement impacts on students with families?”

10) Alternatives that avoid building at Hagar reduce the aesthetic impacts of a significant and unavoidable impact of developing in the East Meadow. These alternatives cannot be rejected simply because they do not meet all the project objectives. 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 (2006) 39 Cal. 4th 341, 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. A 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.

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.)

11) The California Supreme Court has stated that the alternatives and mitigation sections are “the core” of an EIR. *Citizens of Goleta Valley v. Board of Supervisors, supra*, 52 Cal.3d at 564; *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029; *Preservation Action Council v. City of San Jose, supra*, 141 Cal.App.4th at 1350. Public Resources Code Section 21002 states:

The legislature finds and declares that it 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... .

Public Resources Code Section 21002.1(b) states that “[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” Public Resources Code Section 21002.1(b).

Public Resources Code Section 21081 encapsulates these mandates as follows:

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

In short, UCSC must adopt feasible alternatives to a project when there are significant and unavoidable impacts unless it is infeasible to do so. Only when the alternatives are infeasible may the Regents adopt a Statement of Overriding Considerations finding that the benefits of the project outweigh the significant effects on the environment. This reading of CEQA's requirement to adopt feasible alternatives is supported by caselaw. *City of Marina* (2006) 39 Cal. 4th 341, 368-369; see also *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 108, fn.18.

Including mitigations and alternatives are substantive mandates, not mere perfunctory informational requirements which the Regents can ignore by simply finding that the benefits outweigh the harm.

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.) Subdivision (b) of section 21081, which "codifies an 'override' requirement and comes

into play where the lead agency has issued an infeasibility finding under section 21081(a)(3)” (*County of San Diego v. Grossmont-Cuyamaca Community College District, supra*, 141 Cal.App.4th at p. 100), allows the lead agency to approve the project if it “finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment” (§ 21081).

Uphold Our Heritage v. Town of Woodside (2007) 147 Cal.App. 4th 587, 597-598 (review denied).

Here, the RDEIR misapprehends the requirement under CEQA regarding a Statement of Overriding Considerations. The RDEIR states that “This ‘Statement of Overriding Considerations’ would be incorporated into the Findings and would provide the specific reasons why the benefits of implementing the proposed project outweigh the significant avoidable environmental effects that would result from its implementation.” (RDEIR 1.0-8; see also, 4.8-14.) UCSC conflates two concepts. The Regents cannot simply balance the Project against the environmental harm. It must first find that alternatives that reduce significant impacts are infeasible.

12) The RDEIR concludes that the Project “would leave the vast majority of the East Meadow undisturbed.” (RDEIR 4.8-12.) This is untrue. When the Project included development of only 15 acres under the DEIR, the DEIR concluded that the Project “would alter approximately 20 percent of the East Meadow.” (DEIR 4.8-10.) Now that the Project includes development of 17.1 acres, the Project would develop over 21 percent of the East Meadow (17.1 acres / 80 acres = 21.375 percent.)

13) The RDEIR fallaciously concludes while the rest of the East Meadow is not protected from future development, that “any future proposal for development would require evaluation of the potential adverse impacts on scenic vistas and scenic resources as part of the CEQA process. It is not foreseeable that there will be a change in the land use designation under the current LRDP.” (RDEIR 4.8-17.) First, the CEQA process is not protecting the East Meadow from development. UCSC has determined that the visual impact to the East Meadow is significant and unavoidable. Yet, it is clear that UCSC is setting the stage for a Statement of Overriding Considerations by finding all alternatives infeasible or that they do not meet the narrow project objectives. Thus, CEQA review will not protect the East Meadow in the future any more than it is protecting the East Meadow from this Project. Second, the LRDP’s lifespan is 2005 through 2020. There is really not much life left to the current LRDP. Therefore, to state that further development of the East Meadow is not foreseeable under the current LRDP is a ruse.

14) The RDEIR concludes that the Ranch View Terrace Phase 2 site is not available for a temporary location for Family Student Housing. (RDEIR 5.0-24.) However, elsewhere in the RDEIR it is stated that “Although the Campus is in the early stages of planning for development of new employee housing, potentially utilizing the Ranch View Terrace Phase 2 site, the number

and types of units and the local have not been determined. Therefore, construction schedule for a potential project at the Ranch View Terrace Phase 2 site is not known at this time and it is highly unlikely that that project would be constructed in the 2019-20, the same time as the project construction at the Hagar site.” (RDEIR 4.11-54.) Why then is the Ranch View Terrace Phase 2 site unavailable for temporary housing while the existing Family Student Housing facilities are demolished and rebuilt at Heller or an alternative location? Please explain in detail the timeline for Phase 2 of Ranch View Terrace.

15) Adding to the obstacles placed on the Alternatives, the RDEIR contrives extra parking to further constrain development and inflate costs for development of parking structures. For instance, the Reduced Project Alternative proposes 462 parking spaces compared to 427 for the proposed Project. (RDEIR 5.0-17.) If the Alternative reduces the number of beds, why then does it need more parking? Similarly, parking is increased to 489 spaces for the Heller Site and East Campus Infill Development Alternative, and 529 spaces for the Heller, East Campus Infill, and North Remote Site Development Alternative. (RDEIR 5.0-18.)

16) The RDEIR states that for certain alternatives, that there will be delays due to additional design, the need for timberland conversion permits, or the need for a Coastal Development Permit. Again, it appears that UCSC is setting up barriers to meaningful consideration of these alternatives. If the need for additional design or permits was a proper means for discounting alternatives, then a lead agency would never have to choose an alternative that avoids significant environmental impacts. As noted above, the alternatives analysis, and consideration of alternatives that avoid or lessen significant environmental impacts, is not a perfunctory exercise.

17) How long would additional design take for Heller Site and North Remote Development, the Heller Site and East Campus Infill Development, Heller, East Campus Infill, and Delaware Site Development, and Heller, East Campus Infill and North Remote Site Development alternatives?

18) How long would it take to get a timberland conversion permit?

19) How long would it take to get a Coastal Development Permit?

20) Since a 2004 study found that there are infill sites available around Rachel Carson and Oakes Colleges for 400 beds (RDEIR 5.0-15.), why is Family Student Housing not feasible at these locations as an alternative to building in the East Meadow?

21) The RDEIR states that the Heller Site Development Only Alternative “would increase the severity of the project’s significant and unavoidable impact associated with construction of high-rise buildings, resulting in changes in views from Porter Knoll and the West Entrance” This is because the building under this alternative would be seven to 10 stories high

“compared to the maximum building elevation of seven stories under the proposed project.” (RDEIR 5.0-32.) The RDEIR continues,

It would also increase the project’s less than significant impacts on visual character and light and glare at the Heller site as several of the undergraduate housing buildings would be taller, compared to the proposed project, resulting in great building mass, reflective surfaces, and glazing and thereby a greater change in the visual character of the site and more light and glare.

(RDEIR 5.0-32.)

The DEIR said something completely different when the Project itself was seven to 10 stories high.

The project site is visible from a limited segment of Empire Grade Road near the West Entrance. However, the site is already developed and does not contain any visual elements that would be considered scenic resources such as scenic trees, rock outcroppings, and historic buildings. As noted above, the view from the West Entrance would change, however it would not be considered an adverse impact to a scenic resource. The impact would be less than significant.

(DEIR 4.1-25, 4.1-30.) The DEIR also noted that “By employing appropriate lighting design standards and minimizing the quantity of reflective material used in new construction, the proposed buildings’ light and glare impact would be reduced to a less-than-significant level.” (DERI 4.1-34.) Similar mitigations are employed in the RDEIR for the proposed Project resulting in a less-than-significant impact for light and glare. (RDEIR 4.1-30.) However, the Heller Site Development Only Alternative apparently will not employ mitigations that reduce glare, proving again that UCSC is not interested in providing true alternatives that would avoid development in the iconic East Meadow.

We recognize that the RDEIR now considers the proposed Project to have significant impacts associated with development at the Heller site. However, it is noteworthy that the RDEIR appears to equate that the impact of higher buildings at the Heller site to be on par with the impacts of developing the Hagar site. Therefore, predictably, we expect UCSC to argue that there is no difference between developing the Hagar site and choosing the Heller Site Development Only Alternative. Of course, this is not true. Even under the proposed Project there will be significant visual impacts. And, protection of the undeveloped East Meadow by not building on the Hagar site offers environmental advantages over redeveloping an existing housing site with slightly larger buildings than the proposed Project. This is particularly true since the development proposed at Heller is already very tall.

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For the foregoing reasons, the RDEIR must be substantially revised and recirculated for public review and comment. The RDEIR 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,
WITWER PARKIN LLP



William P. Parkin

cc: client