SUPPLEMENT TO ACTION ITEM #102
CERTIFICATION OF THE ENVIRONMENTAL IMPACT REPORT AND APPROVAL OF THE 2005-2020 LONG-RANGE DEVELOPMENT PLAN, SANTA CRUZ CAMPUS
(State Clearinghouse No. 2005012113)

September 19, 2006

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September 2006 Regents Item Supplement

- #102 CERTIFICATION OF THE ENVIRONMENTAL IMPACT REPORT AND APPROVAL OF THE 2005-2020 LONG-RANGE DEVELOPMENT PLAN, SANTA CRUZ CAMPUS (State Clearinghouse No. 2005012113)

Response to Comments Received After Publication of the Final EIR

After publication of the UCSC 2005 LRDP Final EIR on September 6, 2006, the University received six letters regarding the project; one from a public agency, two from organizations, and three from individuals, as follows:

Comment Number	Commenter	Date Received
Post-FEIR LA-1	City of Santa Cruz	September 15, 2006 (letter only; attachments received on September 18, 2006)
Post-FEIR ORG-1	William O. Davis, Coalition for Limiting University Expansion (CLUE), the Cave Gulch Neighborhood Association (CGNA)	September 18, 2006
Post-EIR-ORG-2	Lawyers for Clean Water (CLUE)	September 18, 2006
Post-FEIR I-1	David Eselius, private citizen	September 14, 2006
Post-FEIR-I-2	Dion L. Johnson II, private citizen	September 18, 2006
Post-FEIR-I-3	Simón Salinas, California State Assembly member	September 18, 2006

These comment letters and the University's written response are being provided to The Regents for consideration in certification of the Final Environmental Impact Report and approval of the 2005 Long Range Development Plan.

Comment Post-FEIR LA-1, from the City of Santa Cruz, suggests specific revisions to five mitigation measures identified in the Final EIR with regard to the control of storm water and water conservation. In response, the campus has proposed revisions to the five mitigation measures to address the City's proposals. The full text of these mitigation measures, as modified in response to the City's letter, are identified in Appendix A to this Regents Item Supplement.

The City also offered general recommendations regarding the implementation of traffic, housing and water conservation mitigation measures identified in the FEIR. Many of the City's suggestions are already addressed by the campus in mitigation measures proposed in the FEIR. Others, however, are infeasible or not within the scope of CEQA, as explained in the Regents Item Supplement.

Four of the remaining letters raise issues regarding the adequacy of the EIR's impact analysis. Two of these letters are from members of the public, and two are from the Coalition to Limit University Expansion, a Santa Cruz community group. The campus has reviewed each issue raised, and believes that no additional analysis is required, for the reasons explained in the Regents Item Supplement. The letter from Assembly Member Simón Salinas expresses support for the 2005 LRDP.

The campus recommends that The Regents adopt Regents Item #102 and its September 19 Supplement, conform the Findings and Mitigation Monitoring Program to reflect mitigation modifications reflected in the Supplement, and approve the FEIR and LRDP.

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September 15, 2006

Via overnight delivery

The Regents of the University of California
c/o Mary Jane Alpaugh
Office of the Secretary of the Regents
1111 Franklin Street, 12th Floor
Oakland, California 94607

Re: University of California, Santa Cruz 2005 LRDP; comments of the City of Santa Cruz on the Final EIR and proposed LRDP

Dear Regents of the University of California:

The University of California, Santa Cruz (the "University" or "UCSC") published the final version of its proposed 2005 Long Range Development Plan ("LRDP") and the Final Environmental Impact Report ("FEIR") for the 2005 LRDP on or about September 5, 2006. Although the amount of time UCSC has given the City of Santa Cruz (the "City") and the public to review the FEIR satisfies the minimal letter of the law under Public Resources Code section 21092.5, subdivision (a), the provision of such short notice to the responsible agency and entity most affected by the impacts of the LRDP is inconsistent with inter-agency comity and a good faith effort to resolve the substantial disagreements that remain unresolved between UCSC and the City. 1

The City was surprised and disappointed by the fact that UCSC forged ahead with the publication of the FEIR and the scheduling of the Regents' hearings, given that the City had informed consultants and counsel for UCSC in the last week of August that the City was working diligently to prepare a full response to revised draft mitigation measures that were faxed to the City on August 8th for consideration during discussions between UCSC and City representatives. We had understood from the last round of City-UCSC discussions in early-

to-mid August that UCSC intended to wait until November to submit its FEIR and proposed LRDP to the Regents. This now-accelerated schedule for the Regents' consideration of the 2005 LRDP and FEIR, accompanied by the City's receipt of UCSC's lawsuit challenging the City's ballot initiatives, filed on August 30th, leads us to conclude that UCSC has decided that further discussions between the City and UCSC are not likely to be productive. We sincerely hope that is not the case, as the City still desires to work cooperatively with UCSC to have the City's concerns about the significant impacts of growth addressed in a fashion that satisfies all parties.

The very short amount of time between the publication of the FEIR and the Regents' scheduled hearings on the FEIR and proposed LRDP has not afforded the City the time for an in-depth review of the substantial changes set forth in the voluminous FEIR. By this letter, the City respectfully requests that the UC Board of Regents delay its consideration of the LRDP and FEIR until the Regents' November meetings for the following reasons:

1. To determine the outcome of the City-wide vote on the UC growth ballot measures;
2. To allow the City adequate time to review the entire FEIR and the substantial changes from the Draft EIR contained therein; and
3. To allow continued discussions between UCSC and City staff regarding the 2005 LRDP, including consideration of the City's counter-proposals for mitigation, set forth herein.

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If the matter is not continued and the City reluctantly concludes that it must protect its interests by resorting to litigation, the City cannot be charged with a duty to exhaust its administrative remedies with respect to the adequacy of each and every response to comment or revision to the Draft EIR ("DEIR"). Therefore, the City reserves its right to challenge in court the adequacy of any and all responses to comments and revisions set forth in the FEIR. The same is true with respect to any and all findings and resolutions that may be adopted by the Regents, as we have not been provided copies of any such documents, and even if we received them now, time constraints would preclude any meaningful opportunity to review them and bring any comments to your attention should the matter not be continued.

With the hope that these latest steps by UCSC are not what they appear and do not signal an end to any further productive discussions about the scope of, and mitigation for, the significant impacts of the 2005 LRDP, the City presents the following comments on the revised mitigation measures contained in the FEIR. The City believes that the proposed measures represent a small step in the right direction, both legally and practically, to mitigate

the significant impacts of the 2005 LRDP on the City's residents and infrastructure, particularly in the areas of hydrology/water quality, traffic, housing, and water supplies. However, many of the City's earlier comments on, and criticisms of, the measures proposed in the Draft EIR ("DEIR") for the LRDP remain valid and unaddressed by the revisions in the FEIR. Therefore, the City incorporates by reference our January 11, 2006, letter (copy attached) in these comments. 1

As we recommended in those earlier comments, we reiterate here that a "phased" approach to growth is the legally compliant way to mitigate for many of the significant growth-related impacts identified in the LRDP DEIR. (*See, e.g.*, January 11, 2006, letter from James G. Moose regarding phasing for traffic and water supply infrastructure improvements, at pp. 4, 13, 18, 31.) The revised proposed mitigation measures, however, fail to include any such proposals for phasing future growth at UCSC, as we suggested. As a starting point for further City/University discussions, the City has developed the enclosed discussion of specific proposals for mitigation that should be implemented in a phased manner, pegged to specific thresholds of enrollment increases and time. The City's justification for requesting these measures is discussed further below. 2

The City's previous comments have been bolstered in the wake of the recent decision of the California Supreme Court in *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341. The state of the law under CEQA is absolutely clear – California's public colleges must pay local governments their "fair share" for mitigating, to the greatest extent possible, the off-site impacts – both project-specific and cumulative – of campus expansion projects. In this instance, UCSC's obligation, at a minimum, encompasses mitigation for the significant impacts to on- and off-campus water resources, public services and utilities, traffic, and housing. 3

Hydrology

Revised mitigation measure HYD-3D is an improvement over the vaguer version originally proposed in the DEIR. Like the original, however, it still impermissibly defers the development of specific mitigation to the future without setting any quantifiable performance standards to which UCSC shall be held when new development occurs, in violation of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA"). (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.) To correct this problem, the City Public Works Department proposes the following changes to the revised proposed measure: 4

The Campus shall require each new capital project to include design measures to ~~minimize, to the maximum extent practicable, the increase in the volume of storm water runoff discharged from the project site to sinkholes or natural drainage~~ store and meter the storm water runoff at the redevelopment rate for the 10-year recurring storm event as defined by the County of Santa Cruz intensity/duration curves. These design measures shall include features that maximize infiltration and dissipation of runoff, preferably near the area where new runoff is generated, and may include, but will not be limited to: vegetated swales, bioretention areas, infiltration trenches and basins, level spreaders, permeable pavement, minimizing directly connected impervious surfaces, storage and re-use of roof runoff, and green roofs. The features described above shall be designed to provide best management practice in reducing storm water pollution. Within one year following approval of the 2005 LRDP, the Campus shall provide a protocol for design consultants to use in demonstrating that measures to reduce runoff are included in the project design to the maximum extent practicable.

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Water Supplies

We note that the FEIR, compared with the Draft EIR, now contains a somewhat fuller discussion of the water supplies and projected demands in the future, as part of the responses to numerous comments UCSC received on this issue. The FEIR still suffers, however, from several fatal flaws, the most significant of which is the document's utter failure to acknowledge and squarely address the severe supply shortages that are documented to occur during drought conditions. The addition of *any* new students to an area that already faces drastic rationing measures during not-infrequent drought conditions is a significant impact, not just in 2020, but *today*. This flaw is compounded by the fact that the LRDP proposes to add significantly more students to the campus and City during the summer school session, when dry conditions are at their worst and the City's rationing measures will be at their most extreme.

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The primary water management problem presently facing the City is the lack of adequate water supply during periods of drought. (Integrated Water Plan Draft Environmental Impact Report ("IWP DEIR"), pg. 1-4.)[1] In crafting its LRDP, UCSC did not

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[1]/ The Integrated Water Plan, along with several other documents relevant to the City's water supply situation, are submitted herewith, though not attached hereto because of their size. These documents, as a matter of law, are now part of the Regent's record of

adequately consider the City's dire water supply situation if a drought occurs. Instead, the University based its findings in the LRDP on normal wet years and a speculative desalination plant that the City is only considering, has not yet approved, and is still subject to pending review by other agencies such as the California Coastal Commission. A long range development plan is similar to a local government's specific plan (*see* Gov. Code, § 65450 et seq.) in that an LRDP is a comprehensive plan that guides physical development such as the location of buildings, open space, circulation, and other land uses within a specific area. Because of the similarity with a specific plan, the LRDP should be held to the same standards under CEQA, and therefore must look in detail at growth-related issues such as water supply. 5 6

UCSC has failed to comply with CEQA in its half-hearted attempt to consider water supplies and its improper assumption that the City's water planning efforts have already anticipated the projected growth under the LRDP. Because the latter assumption is wrong, the EIR should have addressed the environmental impacts associated with the efforts that would be required to further augment the City's current water sources. Notably, the University has acknowledged that the City will need to secure a new source of water supply to meet demand, and that the City is currently evaluating the construction of a desalination plant as a possible source of additional supply. (DEIR, pp. 4.15-35—4.15-36.) The DEIR, however, includes *no* analysis of the potential impacts of constructing and using a desalination plant for LRDP demand, but rather improperly asserts that it is the City's burden to conduct that analysis at some point in the future. (*Ibid.*) In fact, the Final EIR for the City's IWP indicated that the LRDP EIR was the proper forum for studying the environmental effects, including increased water demands, of University growth. (IWP Final EIR, p. 2-8.) Case law is clear that the University cannot defer its obligation to look at water supply. 7

In *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, the Court of Appeal held that an EIR for a specific plan must identify potential sources of water to supply the needs of the project, and must analyze potential impacts of using those sources. (*Id.* at p. 205-206.) The Court of Appeal also rejected the notion that a program EIR for a such a plan could fail to properly analyze water supply impacts simply because of the "first tier" character of the document. The court added that "'tiering' is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan can be expected to cause." (*Id.* at p. 199.) "Indeed, the environmental consequences of supplying water to this project would appear to be one of the most

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proceedings for the LRDP. (See Pub. Resources Code, § 21167.6, subd. (e)(7).)

fundamental and general 'general matters' to be addressed in a first-tier EIR." (*Ibid.*) Here, however, the University has completely failed to identify a plausible water supply for drought conditions and to analyze the impacts of that supply.

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In the water reports[2] prepared by or for the City regarding its water supply, the same point resonates over and over – there is not enough water for a drought year. UCSC's failure to analyze the impacts of its long-term development in light of potential drought years renders the DEIR and FEIR legally deficient. The City has been actively considering possible new water supplies for over twenty years in order to address the problem of water shortages and to plan for future growth. (IWP DEIR, pg. 1-5.) A series of studies were undertaken to look at the water supply issue, including the Water Demand Investigation (Maddaus 1998), Water Conservation Plan (Fiske 2000), Water Curtailment Study (Fiske 2001), Alternative Water Supply Study (Carollo 2000), and the Evaluation of Regional Water Supply Alternatives (Carollo 2002). (IWP FEIR, pg. 2-2.) An important foundation for the IWP is water conservation; it is the goal of the IWP to "achieve the maximum practical water-use efficiency through conservation." (IWP DEIR, pg. 1-7.) A main reason for conservation is simply that "even in normal water conditions, three of the four major [water] sources are presently being utilized at maximum capacity for a significant portion of the year." (Adequacy of Municipal Water Supplies to Support Future Development in the City of Santa Cruz Water Service Area, March 2004 ("Adequacy Report"), pg. 10.)

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Through the IWP, the City analyzed several options for new water supplies, and after developing and refining evaluation criteria, identified two desalination strategies, one for a City-only desalination and the other a cooperative desalination. (IWP DEIR, pg. 1-6). The desalination plant UCSC relies upon for its conclusion of sufficient additional water in dry years is, at this point, purely speculative. The City has not made a decision regarding whether or not to go forward with the desalination option. (IWP DEIR, pg. 1-1, IWP, pg. D-2.) As stated above, the City has been actively looking for a water supply for twenty years. While the desalination plant may be an option, it is far from a certainty.

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[2]/ The water reports that are submitted along with this letter are: *2005 Urban Water Management Plan*, dated February 2006; *Adequacy of Municipal Water Supplies To Support Development In the City of Santa Cruz Water Service Area*, dated March 2004; *City of Santa Cruz Integrated Water Plan Draft Final Report*, dated June 2003; Draft Integrated Water Plan Program Environmental Impact Report, dated June 2005; and Integrated Water Plan Final Program Environmental Impact Report Response to Comments Document, dated October 2005.

Furthermore, if the desalination plant becomes a feasible option, it will take approximately five to ten years to construct. During that waiting period, when the desalination plant is in the "process of being designed, reviewed, approved, financed and constructed the City and its customers remain subject to this ever present risk of water shortage." (Adequacy Report, pg. 9.) Appendix D to the IWP, Implementation Issues Associated with IWP Resource Strategies, identifies the many hurdles involved in developing a new water supply through desalination. Among the factors to consider are permits, required agreements/partnerships, land acquisition/easements, project schedule, as well as drawing potential lawsuits from activists who are highly motivated to protect ocean water quality. Admittedly the largest hurdle will be obtaining approval from the California Coastal Commission. The California Coastal Commission has regulatory jurisdiction over any development proposed on tide and submerged lands, and on public works plans located in the coastal zone. (IWP, pg. D-2.) "The Coastal Commission would scrutinize the City's environmental impact report for consistency with the State Coastal Act and for adequacy with regard to a variety of potential coastal resource impacts, ranging from air quality to construction, energy use, noise, hazardous waste releases, impacts to the marine ecosystem, public access, and recreation. It would require the City to mitigate any significant impacts with appropriate measures or could potentially force the City to pursue another water supply strategy if it were shown to have fewer environmental impacts." (*Ibid.*) Also, in looking at cumulative impacts, the Coastal Commission "has expressed concerned (sic) with the proliferation of individual desalination plans in water-short communities along the coast." (*Ibid.*) For example, the City is aware that the Coastal Commission emphatically disfavors the filter-type ocean water intake system that is proposed for the plant (which is the only feasible system for this particular plant given the current state of the technology). The City would be taking a large risk to go forward with the desalination plant without knowing whether or not the Coastal Commission will actually permit the plant. Because of this uncertainty, "permitting is regarded as a major constraint to implementation for the . . . desalination strategies." (*Ibid.*)

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Furthermore, the University's failure to perceive the City as a "responsible agency"[3] with respect to future water service is a serious flaw in the DEIR and FEIR. The City, as the water supplier, is legally entitled to the analysis it demanded through the scoping process. Contrary to the apparent belief of University staff and consultants, who prepared the DEIR

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[3]/ As defined by statute, a responsible agency "is an agency, other than the lead agency, which has responsibility for carrying out or approving a project." (Pub. Resources Code, § 21069; see also CEQA Guidelines, § 15381.)

and FEIR with little regard for the City's scoping comments on water supply issues, CEQA gives responsible agencies a major role in determining the scope and content of EIRs. In particular, lead agencies *must* include in their EIRs information regarding the environmental impacts that are anticipated by responsible agencies as to matters within their expertise or jurisdiction. This obligation is evident from several provisions of CEQA and the CEQA Guidelines. To try to engage, as UCSC has in the FEIR, in a battle of the experts in determining water supply with the actual responsible agency that will supply the water is fruitless. As the responsible agency supplying water, it is the City's burden to understand what water supplies are available and what are not available. The University's disregard for the City's concerns as a responsible agency undermines a basic tenet of CEQA, which is that lead agencies must provide responsible governmental agencies and the public with the full picture of environmental impacts. (CEQA Guidelines, § 15003, subd. (c); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68.) 9

The DEIR and FEIR are completely inadequate in their analysis of potential water supply impacts. Although the DEIR and FEIR attempt to justify their lack of consideration for the potential environmental impacts of obtaining water supplies to accommodate University growth, the University's utter failure to account for such foreseeable environmental effects is a violation of CEQA that must be remedied before the University can lawfully approve the LRDP 10

Notwithstanding the fact that the analysis contained in the LRDP DEIR does not comply with CEQA because it fails to adequately identify the future sources of water to serve growth at the Campus during dry years and the impacts of acquiring and using existing or new supplies (*see e.g.*, attached letter from James G. Moose, dated January 11, 2006, pp. 26-32), the City nonetheless is somewhat encouraged by the accelerated commitments to slightly stronger water conservation efforts embodied in UCSC's revised proposed mitigation measures (UTIL-9A — 9-H). Conspicuously absent from the revised proposal, however, are any details about how UCSC intends to mitigate for its "fair share" of the off-campus water supply impacts associated with the substantial increase in off-campus demand caused by UCSC's growth. Instead, the University simply reiterates its noncommittal definition of "fair share," which it defines to mean simply that the University will negotiate with the City sometime in the future. (FEIR, p. 5-11.) 11

The City expects that any "fair share" calculations for such mitigation must reflect the actual marginal costs of such improvements attributable to University growth, and not some hypothetical calculations. As a "responsible agency" under CEQA, the City has the ultimate

authority over these issues, and UCSC's FEIR is deficient for its failure to adequately address the City's suggestions for mitigation set forth in its comments on the DEIR. (11)

As currently proposed, the desalination plant is intended to supplement the City's water supplies primarily during drought conditions. If increased University demands cause the City to have to construct and run the desalination plant during non-drought conditions, however, that water supply becomes significantly more expensive. As part of discussions about the University's "fair share," the City proposes staff-level meetings with University representatives to further develop a picture of the on- and off-campus demands and associated costs of the significant University growth envisioned under the proposed LRDP. The negotiations should be conducted, and more specific commitments made by UCSC, prior to the Regents' certification of the FEIR or approval of the LRDP. (12)

The University's obligation to recognize its requirement to pay its fair share for the desalination plant is particularly important in light of the LRDP's proposal to significantly increase summer enrollment. This proposal would increase summer water demands precisely during the time when water supplies are most strained; therefore, the University should not only commit to paying its fair share for the desalination facility, but should also focus particular attention on decreasing water demands during the summer months. (13)

There are three areas within the broad subject of water supplies for which the University needs to recognize the potentially significant impacts associated with growth under the LRDP and propose specific, effective mitigation:

1. <u>Water Demand Management</u>

   a. The University's first priority must be to conduct a comprehensive engineering audit of existing water management practices and equipment (similar to the Stanford University model performed by Maddaus and Associates), identifying progress in retrofitting existing buildings and facilities with water conserving fixtures, identifying any unmetered uses on campus and retrofitting them, and identifying any other opportunities to achieve more water conservation. (14)

   b. Translate the results of that audit into an engineering estimate of additional water savings that can be achieved in the current buildings and grounds, subtracting that amount from the projected demand from the growth proposed under the 2005 LRDP.

c. The University must commit to immediately begin an implementation program to retrofit existing buildings and grounds to accomplish the maximum water conservation that is practicable.

The revised mitigation measures UTIL-9A—9H are good first steps toward the City's goals on the subject of water demand; however, these measures should be strengthened further, as per the following comments. First, revised measure UTIL-9C proposes that the University would designate a staff person to be responsible for developing and implementing a water conservation program. The City applauds this step, but as currently worded, the revised measure is unclear about whether this person would be fully dedicated to this task, or whether existing staff would simply have this new assignment added to their existing workload, making it less likely that the program would be timely developed and implemented.

Second, revised measure UTIL-9B appears to have been weakened, as the originally proposed version in the DEIR specified that new technology would be installed not just in all new buildings, but also in existing buildings when fixtures need to be replaced. As revised, the measure calls for requiring new technologies only in new buildings. The measure should be revised still further to reinstate at the end of the last sentence, "and in existing buildings as the existing fixtures need to be replaced." 14

The final provision under revised measure UTIL-9A is to facilitate monitoring of water usage in all new development by installing meters on irrigation lines where one point of connection irrigates one acre or more. There simply will not be many new one-acre landscapes on campus, meaning that most irrigation will continue to be fed off mixed domestic meters. Not only is this idea poor water management (it is more difficult to detect common irrigation losses when they are combined on a mixed account), it is also inconsistent with the purpose of the engineering audit proposed under UTIL-9D, where one goal is to identify locations on campus where buildings and irrigation are on the same meter (presumably so that the University eventually can meter these uses separately). The City requires separate dedicated metering of any new landscaping over 5,000 square feet, as does AB 1881, which is very likely to be signed into law in the very near future. The University should adopt the same standard for any new irrigation.

Revised measure UTIL-9D calls for initiating a campus-wide engineering audit of water use within a year after LRDP approval. Again, while this is a positive step forward, the proposed language is open to interpretation, particularly with regard to prioritizing "feasible" improvements. The University's past experience with implementing its 1988

LRDP mitigation measures demonstrates that its definition of "feasible" is fairly flexible (i.e., UCSC has admitted its past failure to fully implement mitigation measures aimed at seismic risks, drainage and erosion control, housing, and water conservation, based on alleged fiscal and budget constraints, staff reduction and lack of funding). (UCSC's 2004 Mitigation Monitoring Program Report, pp. 3-7, 3-17, 3-25, and 3-76).) Similarly, the mechanism for recommending "top priority" measures for implementation is unclear. More detail should be provided regarding how specific measures will be prioritized. To the University's credit, the measure recommends implementation of "top priority" measures within five years, but the way the measure is currently worded poses a risk that the lower priority measures will languish indefinitely.

Additionally, the time frame for the entire measure is troubling in its potential for significant delay – it will take one year to even begin the study, and likely another year to conduct the audit, and only then will the University begin implementation if its budget permits. As the City requested in the scoping process, the audit should have been conducted up front, so that the DEIR could have recommended specific measures to be carried out over the life of the LRDP. At this late stage, at the very least, the primary goal of this program should be to quantify the water savings resulting from the "top priority" "feasible" measures, and then to reevaluate the University's 2020 projected water demand so that the City and the public have a better idea of UCSC's future water needs. 14

The City is pleased with the proposal under Measure UTIL-9F to convene periodically to revisit the water audit results, but five years is too long a stretch between progress reports, given the amount of time likely necessary to carry out updated studies and to implement new measures. The City recommends two to three years as a more effective and accountable interval.

The City is also very encouraged by proposed Measure UTIL-9H, the commitment to retrofit all plumbing fixtures in student housing in a specific time frame. However, the City proposes two further refinements to the proposed measure. First, the measure should specify which fixtures will be retrofitted; and second, it should be modified because the fixtures potentially encompassed under this measure appear to be excluded from the engineering audit, even though this area is where most of the University's real water savings are likely to be gained, since student housing represents the largest user category on campus. The University should include this measure under the audit proposal, should document the potential savings, and should factor into the overall water account the estimated savings from student housing retrofits when UCSC reevaluates projected campus water demands in 2020 following the audit.

2. Water Distribution Infrastructure

a. There are four City-owned treated water storage reservoirs serving the University:
   1. Bay Street Reservoir
   2. University Reservoir No. 2
   3. University Reservoir No. 4
   4. University Reservoir No. 5
   5. Any new reservoir required for fire storage requirements.

The first two reservoirs serve both the City and the University. The second two reservoirs serve the University's demand exclusively.

b. There are three current and at least one possible future pump stations serving the University:
   1. University Pump Station No. 2
   2. University Pump Station No. 4
   3. University Pump Station No. 6
   4. Possible future Bay Street Reservoir Booster Pump Station or any future pump station required for any new storage reservoir.

City-owned and operated transmission and distribution mains link all pump stations and reservoirs.

If it is determined by engineering analysis (initiated by the City and funded by the City and University according to proportionate share based on water demand) that infrastructure improvements (or new construction) for any of the above-mentioned facilities are required to deliver required volumes of water to the University campus, the University must reimburse the City for its proportionate share of the cost of such improvements based on water demand.

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3. Water Demand

Prior to concluding that all of the additional water demand required by the campus after conservation must be met by the City's desalination facility, the University must prepare a wastewater reclamation feasibility study/plan, including financial analysis, and must, to the extent practicable, implement that plan to offset outdoor water demands.

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As discussed above, the City's IWP calls for the additional supply that is needed to meet the University's LRDP build-out demand to be provided by a seawater desalination plant, but this plan is far from a certainty. In the event that the Coastal Commission does approve a desalination plant, the City will incur not only significant capital costs to construct this facility, but also increased operating costs to run this facility. The initial plant capacity of this facility is to be 2-1/2 million gallons per day.

The City will pay the marginal capacity cost of the construction of the first phase of the seawater desalination plant and the marginal capacity costs of future expansion of the seawater desalination plant at such time as system demands necessitate any such expansion. The University must pay the marginal capacity cost to operate the seawater desalination plant at such time as the University's increased water demands require its operation in order for the City to meet its total daily water demands.

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Traffic

The revised mitigation measures completely fail to address the significant adverse impacts of campus growth on City roadway segments and intersections. The City has previously provided UCSC with the City's traffic model for UCSC's use in projecting the scheduling of necessary improvements and discussion in its EIR, yet UCSC thus far has failed to engage in a good faith effort to study and address those impacts. Identification of off-campus traffic impacts requires a collaborative effort to address these issues, one in which the City has offered to engage. (Letter to John Barnes from James G. Moose, Jan. 11, 2006, p. 16.) The revised proposed mitigation measures reflect no such complementary effort on the part of UCSC. The City remains willing to collaborate with the University to develop the information that will be needed to obtain a reliable assessment of the traffic-related impacts of growth under the proposed LRDP.

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Any collaborative study strategy, if UCSC is willing to engage in one, should incorporate the following steps:

1. Work with the City to reach an agreement on a realistic forecast methodology for campus growth. Future trip generation estimates should be agreed upon and should be based on realistic assumptions. Estimating background growth is also critical to identifying the magnitude of future problems. Using the AMBAG Model with its present population and employment forecasts does not make sense. (See December 2, 2005, Letter from the Office of the Academic Senate commenting on the flaws in the LRDP DEIR, pp. 3-4.) As

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a minimum, the adjusted forecast that the City has incorporated into the AMBAG model will provide a more realistic background growth estimate.

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2. Once an acceptable campus and background growth model is developed, the City and UCSC will be able to identify mitigation measures for the impacted infrastructure.

3. The City and UCSC should agree on a circulation strategy to guide their decision-making processes (e.g., making Mission Street and Bay Street the principal corridor to campus). Alternate streets such as King Street, High Street, and Western Drive are also residential corridors to campus, but planning must assure that maintaining the livability of these streets is the top priority.

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4. The City and UCSC should develop measures to fully mitigate the traffic impacts identified and then decide whether or not to recommend them. Both entities should think creatively and not reject out of hand technically feasible projects simply because they may be controversial.

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5. The City and UCSC should develop an estimate of the demand for parking adjacent to the University and develop a comprehensive program to accommodate off-campus parking impacts. This problem was neither adequately identified nor quantified in the LRDP DEIR. One option might be for the University to implement a parking pricing program (e.g., including parking meters and designated spaces within the current residential permit parking areas) for the neighborhoods around the University to force the parking consumers (i.e., students/faculty/staff and University visitors) to bear the true market costs of parking, rather than shifting those costs to the residents of those areas.[4] Such a program would also generate revenue to maintain the streets in the program areas.

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6. The City is willing to revise its Traffic Impact Fee program to segregate projects that are deemed necessary for UCSC growth. The University's share

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[4]/ During the transit workers' strike a few years ago, there was a marked decrease in the residential parking congestion on the west side of the City, showing that the parking problem in those areas is predominantly University student-driven.

for these projects can be estimated as a proportion of the University growth over the total growth in traffic. Once these shares are calculated, the remaining costs can be attributed to new trips throughout the City. It is likely that the City impact fee will remain about the same as it is currently, and the University's fair share will be clearly identified. The City anticipates that, with full UCSC cooperation, the process to develop a comprehensive list for full growth impacts could take about three months. The attached memo, prepared by City Public Works Department staff, is the City's first attempt at quantifying the costs and University's fair share of the improvements that may be necessary. (August 28, 2006, Memo from Ron Marquez to Chris Schneider re: UCSC LRDP Mitigation, attached.) The list of improvements and costs set forth in the memo are by no means final; rather, the City offers it as a starting point for further discussions with the University. The City proposes to have a series of meetings with the University at the staff level to develop a more informed list of necessary improvements for handling University growth. (23)

7. The City is not convinced that a Bus Rapid Transit corridor on Bay Street would prove significantly effective in increasing transit ridership to the University. The routes along this corridor are already heavily utilized and the congestion along this corridor is minimal between the Mission Street and High Street intersections. The City's transit district recently prepared a policy document that urged capital investment in addition to route-specific fees. The City is willing to conduct meetings with University representatives at the staff-level to discuss the overlapping parking and transit issues, as well as alternative transit strategies. The City Council has repeatedly opined that the impacts to Westside neighborhoods cannot be mitigated exclusively by innovations that rely solely on the current street system to accommodate them. The Council believes that an alternative transportation system is the only way to fundamentally and meaningfully address this problem. The City remains willing to explore potential solutions with UCSC. (24)

8. The City is encouraged by the University's commitments to facilitating pedestrian and bicycle transportation as embodied in its proposed mitigation measures. The City would like to have staff-level meetings with University representatives to further coordinate planning for bikeway improvements on and off-campus. (25)

8. The University should commit to updating the City-wide traffic studies every five years as growth occurs under the LRDP, in order to determine whether the City's traffic needs continue to be met in the short term. (26)

Housing

As the City first noted in its comments on the DEIR, the University needs to revisit its policy of requiring on-campus housing to be economically self-sustaining. In particular, UCSC should revisit the mandatory meal plans. It is no secret in the community that this policy results in prices for on-campus housing with mandatory meal plans that are often far more expensive than many off-campus options, thereby thwarting the goal expressed in revised mitigation measure POP-3A of accommodating 50% of the undergraduates and 25% of the graduate students on-campus. Given the constraints on projected City housing stocks explained in the City's earlier comments, the City urges the University to increase its on-campus residency targets to 70% for undergraduates, 50% for graduate students, and 25% for new faculty and staff. Achieving these or even the University's more modest goals will require a critical reevaluation of the University's residential pricing policies, including more flexibility in meal plan and housing options. At a minimum, the City suggests that an examination of the University's existing policies should be included in the market analysis proposed in revised measure POP-3C. The City also urges the Regents to consider a measure limiting further enrollment growth to a maximum of 17,000 until an independent audit determines that the 70%-50%-25% goal has been met. (27)

Achieving even the 70%-50%-25% goal, however, will still require the construction of additional affordable off-campus housing for undergraduate and graduate students, faculty and staff. Therefore, UCSC should contribute to the City's costs of funding and/or constructing such housing. The City is more than willing to hold discussions with the relevant UCSC staff to work out the details of such program. (28)

The market analysis to be carried out under measure POP-3C should also take advantage of the existing GIS data the University has collected on the pattern of residential distribution of students and staff. Research for the analysis should also include consultations with other UC and CSU campuses across the state and the cities in which they are located. The cities of Berkeley, Davis, and San Luis Obispo have all dealt with the challenges of accommodating university growth and student housing demands in limited housing markets; therefore, UCSC should draw on these experiences. (29)

Finally, the University's historical and projected on-campus housing policies and deficiencies have caused and exacerbated the housing crisis and related services and operations off-campus in the City of Santa Cruz. 30

Specifically, city code enforcement and building staff have identified significant potentially illegal and unsafe housing conditions, particularly in the Westside of Santa Cruz adjacent to the UCSC campus, that appear to be caused by overcrowding of students who cannot afford or otherwise choose not to live on campus given the University's current on-campus housing policies and practices (e.g., mandatory meal plans for all dormitory residents). Appropriate mitigation for this problem that should have been studied in the FEIR and that warrant further consideration now include: 31

1. Comprehensive study of on and off campus housing demand and supply, conducted with the full involvement of the City of Santa Cruz, to identify existing and potential off-campus housing issues and solutions, with particular attention on illegal and unsafe housing conditions for students, faculty and staff.

2. UCSC funding of a City code enforcement officer and related costs to provide proactive enforcement of illegal and unsafe housing conditions on the Westside of Santa Cruz, or as otherwise identified as UCSC-associated.

Law enforcement has also been impacted by the historical and projected on-campus housing deficiencies. Limited steps have been taken to mitigate some of these issues through joint attention and response to the most egregious so-called "party houses." However, even these limited steps have not relieved the City of the University-caused impacts of increased calls and reporting that tracks with the University student calendar. UCSC's proposed extension and expansion of summer operations will further compound the City's law enforcement response, given the differing calls and services already required by the previously existing and growing summer tourism and visitor market in the City. 32

Further, as the University directly impacts transportation infrastructure needs, there is an equivalent impact on traffic enforcement needs on the same infrastructure. The University has neither studied nor mitigated these impacts to any acceptable or reasonable degree. 33

Parks and recreation is yet another significant City service that has been severely impacted by the University's historical and projected on-campus housing deficiencies. While 34

the University does provide extensive on-campus recreational facilities, it has provided very little support for, and no comprehensive consideration of, the increased park and recreational facilities needed due to the already high and rising proportion of UCSC students, faculty and staff that are living off-campus in the City due to the University's past and projected growth and on-campus housing policies and practices. 34

While extensive mitigation for all of these conditions, and others not yet identified, are appropriate and required, the necessary first step is for the University to thoroughly study all of these and related conditions to the satisfaction of, and with the active involvement of, the City of Santa Cruz. The immediate needs for provision of code enforcement and traffic enforcement funding are appropriate, given the health and safety issues involved. 35

* * * * * *

Conclusion

We reiterate for the purpose of making the record crystal clear that the constrained scope of this letter is due to the inadequate time provided by UCSC for a comprehensive review of the FEIR. The absence of discussion of additional, significant issues identified in the City's comments on the 2005 LRDP DEIR should not be interpreted to suggest that the concerns in those letters that are not repeated here have been satisfied. The City respectfully requests that the Regents continue the matter of certifying the FEIR and approving the LRDP until its November meetings in order to afford more time for the City and the public to digest the voluminous FEIR and to continue discussions between UCSC and City representatives on the several additional mitigation measures the City has proposed above. The last minute approval of a slightly lower enrollment target, an alternative that was not afforded nearly the same depth and detail of review as the originally proposed figure in the DEIR, is not an adequate substitute for the required meaningful effort to assess the actual effects – direct and indirect – of all of the growth that would be unleashed by the 2005 LRDP. 36

The City welcomes any opportunities for further discussion at the policy-making and staff levels. The City believes that many of its comments above could be satisfactorily addressed if the Regents provided for time for further discussions of these and other issues of mutual interest to the City and University. Even so, the City still maintains that, in order to comply with CEQA, UCSC must modify, augment, and recirculate the original Draft EIR. Only such a process can ensure adequate public input and fully informed decision-making. Still, a delayed decision on the current Final EIR, though no substitute for such an approach, is far preferable to approval of the LRDP at the September meeting of the Regents.

Sincerely,

/s/
Sabrina V. Teller

Enclosures
cc: (All without enclosures)
Kelly Drumm, Office of the General Counsel, University of California
John Barnes, UCSC Physical Planning and Construction
Mayor Cynthia Mathews, City of Santa Cruz
Richard Wilson, City Manager, City of Santa Cruz
Greg Larson, Director of Planning, City of Santa Cruz
John Barisone, City Attorney, City of Santa Cruz

Response to Post-FEIR Comment LA-1

Response to Comment Post-FEIR LA-1-1. Responses to comments on the Draft EIR (which was available for public review and comment 41 days longer than legally required) were made publicly available to commenting agencies on September 6, 2006, 13 days prior to the Regents meeting, which is a longer period than legally required. As the commenter notes, on August 8, 2006, the University also provided the City with drafts of revised mitigation measures on key topics raised by the City, containing revisions made by the Campus in response to City comments on the Draft EIR.

While the Final EIR is lengthy, Volumes I through III of the six-volume EIR consist of the Draft EIR as originally published in October 2005. Volumes V and VI contain copies of all of the written comments received during the public review period on the Draft EIR, and hearing transcripts of oral comments made at public meetings, as well as responses to these comments, including a seven-page response to the City's comments on the Draft EIR, as required by CEQA. All substantive changes to the Draft EIR, including those changes made in response to comments are described in Volume IV of the Final EIR, Chapter 2, Project Refinements (15 pages of text and a 24-page table of impact statements and mitigation measures); and Chapter 3, Changes to the Draft EIR Text (55 pages of track changes text and a track-changes version of the same table).

Delaying The Regents' consideration of the 2005 LRDP and FEIR to accommodate additional discussions with the City is not necessary. As discussed below, City/University discussions are ongoing. The schedule for The Regents consideration of the proposed 2005 LRDP and Final EIR has not been accelerated; in fact, almost a year has elapsed since publication of the Draft EIR.

The University welcomes any opportunities to discuss collaboration or unilateral initiatives that would maintain and enhance the welfare and livability of the City of Santa Cruz. Outside of the process prescribed by CEQA for the environmental review of the 2005 LRDP, the University has offered to explore and address issues that face the City in part as a result of the Campus's presence in the community. Prior to the publication of the Final EIR, the University arranged and held a series of meetings between University and City staff to discuss ways in which the City and the University can collaborate, both within and outside the CEQA process, to address issues related to University growth. To date, the University has met with the City on multiple other occasions to collaborate on projects that will improve the quality of the City's environs, including jointly undertaken transportation improvements and water supply projects. Two additional meetings are scheduled for in October. Please refer to Appendix B of this Response to Comment for a chronology of University outreach to the City Administration since March 2006.

Awaiting the results of the November election, at which the citizens of Santa Cruz will consider two initiative measures that, if passed, purport to constrain the City's ability to provide the campus with water despite the existing water supply contracts with the University, will not facilitate discussions. As a result, it is unlikely that deferring consideration of the 2005 LRDP until November would result in resolution of the points

at issue. Thus, while the University looks forward to further opportunities to discuss future collaborations with the City, there is no reason to delay The Regents' consideration of the 2005 LRDP.

Response to Comment Post-FEIR LA-1-2. The commenter suggests that enrollment growth should be phased in concert with the implementation of mitigation measures such that growth is timed with the City's implementation of off-campus traffic improvements and additional water supply sources (such as desalination) to reduce impacts to traffic, water supply and housing. The 2005 LRDP describes an overall program of potential development and student enrollment growth over the planning period. There are no set times by which enrollment increases must occur, but rather an enrollment envelope is established that the campus may or may not reach by the LRDP horizon year of 2020, depending on academic needs, student demand, and financial considerations. Because there is no established or mandated trajectory for student and campus growth, the 2005 LRDP is designed to monitor environmental conditions at regular intervals, identify potential impacts, and mitigate impacts as they occur.

To that end, the LRDP EIR includes mitigation measures tied to set intervals of time or population growth. For example, under LRDP Mitigation TRA-2A, the University has committed to monitor key intersections at intervals of three years or at milestones of each 1000-student increment of growth in enrollment (whichever comes first), in order to identify the need for improvements in a timely manner. Similarly, under the suite of mitigation measures identified under Mitigation UTIL-9, the University has committed, within one year of LRDP approval, to consult with the City on scoping, and to undertake an engineering audit, in part to prioritize water conservation measures, and to revisit this study at no greater than five-year intervals to ensure that appropriate conservation practices are implemented and updated. With respect to provision of housing, while it is not fiscally feasible for the University to build new housing in advance of demand (that is, in advance of the anticipated population growth), the University has committed, in mitigation measure LRDP POP-3A, to ensure that a sufficient number of beds is available on campus each year to accommodate demand at the levels stated in the LRDP housing goals. Further, the University has committed to work with the City and County to conduct a housing market analysis study and to update it at five-year intervals, in order to assist in timely planning for housing supply needs (LRDP Mitigation POP-3C).

In addition, the environmental analyses for each capital project undertaken under the LRDP to support enrollment growth will include identification of specific mitigation measures for each project, as well as any LRDP general mitigation measures that are triggered by the project. These mitigation measures would be implemented in conjunction with each specific project, which in turn may support on-campus population growth (some projects may be necessary to remedy existing infrastructure or space deficiencies to serve existing campus population).

All these measures serve to ensure that development of infrastructure and implementation of mitigation measures proceeds apace with University population growth under the 2005 LRDP. Please refer to Response to Comment LA-3-41 (Final EIR Volume V) for further

discussion of the suggestion that growth should be phased. On-campus housing issues are discussed in detail in Final EIR Master Response ALT-5. Phasing issues also are discussed in Final EIR Responses to Comments I-21-2 (infrastructure), OPA-2-7 (traffic), and Master Response UTIL-2 (water conservation). Several City and County comments are also referred to Response to Comment LA-3-41 in the Final EIR, Volume V.

Note that, as discussed in the City's comment, the City has been studying the desalination option for two decades. The phased approach suggested by the City would require the campus to wait until the City takes action, and thereby *de facto* would limit campus growth.

Response to Comment Post-FEIR LA-1-3. The 2005 LRDP EIR identifies the significant impacts of the proposed project with respect to water supply, utilities, traffic and housing, and acknowledges the University's obligation to pay its fair share of both the cost of infrastructures improvements needed in part due to University growth and the cost of mitigation of related off-campus environmental impacts. The *City of Marina* case, cited by the commenter, makes clear that such fair share payments are legitimate means of mitigating the significant adverse environmental effects of University projects. Please refer to Final EIR, Volume V, Master Response MIT-1.

Response to Comment Post-FEIR LA-1-4. LRDP Mitigation HYD-3C provides a quantifiable performance standard for storm water runoff rates that is equivalent to that proposed by the commenter. This performance standard for storm water runoff rates also is included in existing Campus Standards. LRDP Mitigation HYD-3C states:

> "Each new capital project proposed under the 2005 LRDP that creates new impervious surface shall include design measures to ensure that post-development peak flows from 2-, 5- and 10-year storms do not exceed the 2-, 5-, and 10-year pre-development peak flows and that post-development peak flows from a 25-year storm do not exceed the pre-development peak flow from a 10-year storm."

Since 1989, campus projects have been required to meet this standard. The standard may be met by storing and metering storm water runoff, as specified in the revision to HYD-3D proposed by the commenter. However, the "low impact development" measures identified in LRDP Mitigation HYD-3D that maximize infiltration and dissipation of runoff near the area where new runoff is generated, may also be used to reduce the rate of storm water flow, alone or in combination with facilities such as detention basins or vaults which provide storage and metering.

In recognition of the fact that increased volumes of storm water runoff can cause or exacerbate erosion conditions even if the peak flow rates are maintained at pre-development levels, LRDP Mitigation HYD-3D provides additional requirements for storm water drainage design to minimize increases in the volume of runoff discharged from development sites. The term "maximum extent practicable," which the commenter proposes to delete from Mitigation HYD-3D, is a technology-based standard established

by the Clean Water Act, which encompasses all measures that are technically and economically feasible and appropriate for the site.

As discussed in the Draft EIR (page 4.8-31), the Campus's Storm Water Management Program (SWMP) requires implementation of best management practices in the design of new development to address storm water pollution. To clarify that these practices will be incorporated into storm water design in conjunction with the Campus Standards identified above and the "low impact development" measures listed in LRDP Mitigation HYD-3D, the University proposes the following revision of LRDP Mitigation HYD-3D:

> The Campus shall require each new capital project to include design measures to minimize, to the maximum extent practicable, the increase in the volume of storm water runoff discharged from the project site to sinkholes or natural drainages. These design measures shall include features that maximize infiltration and dissipation of runoff, preferably near the area where new runoff is generated, and may include, but will not be limited to: vegetated swales, bioretention areas, infiltration trenches and basins, level spreaders, permeable pavement, minimizing directly connected impervious surfaces, storage and re-use of roof runoff, and green roofs. <u>The features described above shall be designed to provide best management practices in reducing storm water pollution.</u> Within one year following approval of the 2005 LRDP, the Campus shall provide a protocol for design consultants to use in demonstrating that measures to reduce runoff are included in the project design to the maximum extent practicable.

See Appendix A to this memo, which provides the full text of all of the mitigation modifications suggested by the campus in response to the City's suggestions. The Campus proposes to recommend these revised mitigation measures to The Regents for adoption in conjunction with the consideration of approval of the 2005 LRDP and LRDP EIR. These proposed changes will not decrease the effectiveness of the revised mitigation measures.

Response to Comment Post-FEIR LA-1-5. The 2005 LRDP EIR acknowledges that water shortages may occur in the water service area in the event of a drought, even under existing conditions. (See Draft EIR page 4.15-4 which summarizes the discussion of projected shortages under drought conditions from the IWP and other City documents related to water supply. Also see Draft EIR pages 4.15-35 and –36, which also discuss water supply under drought conditions). The Draft EIR, in LRDP Impact UTIL-9, identifies that University growth, in conjunction with other regional growth, will contribute to increased water demand during both normal and drought years, and that this could lead to a need to develop new water supplies, the development of which could result in environmental impacts. See pages 4-15-35 and –36 of the Draft EIR for a discussion of the impact. The impact of the 2005 LRDP on water supply was evaluated for the year 2020 in order to disclose the full impact of the growth envisioned under the 2005 LRDP.

The Campus has been very effective in conserving water, such that campus water demand increased only about 6.1 percent between 1987-88 and 2004-05 although enrollment increased by about 60 percent and the percentage of students housed on campus remained about the same during the same period. The volume of water demand projected by the University based on existing demand rates, and cited in the LRDP EIR, is substantially lower than anticipated by the City for the University in the City's own water demand projections (IWP, Table II-2, page II-10). Based on University and City data, the University's demand during the term of the 1988 LRDP has remained at about five percent of the overall annual demand in the service area, and the campus water use in 2005 (about 189.5 million gallons) is very close to what the campus water use was in 1987 (184.9 million gallons). Furthermore, the 2005 LRDP EIR mitigation program includes an extensive suite of water conservation, retrofit and design measures, as well as continuing collaborative studies with the City to identify additional effective measures to reduce water demand from the campus. With these measures, it is anticipated that Campus water demand will continue to be strictly controlled, and that the Campus will be effective in limiting the growth of water demand throughout the year.

The Draft EIR acknowledges that increased summer student population will contribute to increased water demand during the summer months of June through August in both normal water and drought years (Draft EIR pages 4.15-36 and –37). As explained in the Draft EIR, even with an increase in the number of summer students, the campus population during the summer will be substantially smaller than in the other three quarters. Furthermore, this increased campus summer water demand was taken into account in the analysis in the EIR of impacts on water supply. The LRDP Mitigation UTIL-9 measures will address agricultural and landscape uses, as well as campus residential uses, to ensure the most conservative and efficient use of water. In addition, as required by 2005 LRDP Mitigation UTIL-9I, the Campus will comply with City restrictions on water use in the event of a drought and will consider the use of existing on-campus wells for non-potable uses, if necessary.

Response to Comment Post-FEIR LA-1-6. See RTC FEIR LA-1-6, above. In addition, please refer to the Final 2005 LRDP EIR, Volume V, Master Response UTIL-1 (*Water Supply*), Master Response MIT-1 (*Fair Share and 54999 Obligations*) and Response to Comment LA-10-13 for further discussion of these issues in this comment.

The impact on water supply is evaluated in the 2005 LRDP EIR by comparing the projected cumulative demand (including that associated with the 2005 LRDP) to projected water supply in both normal water year and drought conditions. As discussed at length in the Final EIR (see pages 5-48 and -49 in Volume V), the projected 2020 demand (about 361 million gallons) for all UC Santa Cruz properties within the service area is less than the amount of water (408 million gallons) that is included for UC Santa Cruz in <u>all</u> of the City's water planning documents, including the IWP, which is the City's planning document to address water supply under drought conditions.

The water supply data used in the LRDP EIR was obtained from the City's own water supply data and cumulative water demand projections, as presented in the City's IWP (Gary Fiske and Associates 2003), IWP Programmatic EIR on the Integrated Water Project (IWP PEIR) (City of Santa Cruz 2005), Adequacy of Municipal Water Supplies to Support Future Development in the City of Santa Cruz Water Service Area prepared by Goddard (2004), Draft 2005 Urban Water Management Plan (January 2006), and other City sources (please refer to LRDP EIR, Volume II, Section 4.15, and Volume V, Master Response UTIL-1). All of the City's water planning documents, such as the 2000 and 2005 Urban Water Management Plans and the document prepared by Goddard and cited above, utilize water supply information based on average rainfall years; therefore, the University has appropriately evaluated the effect of its increased demand in conjunction with other service area demand for water by comparing the projected demand to the water supply projected by the City in normal water years.

With respect to drought years, the University acknowledges in LRDP Impact UTIL-9 that as demand for water in the city's service area grows with population growth, the supply problems in drought years will worsen, requiring more frequent and more severe curtailment, and that campus growth under the 2005 LRDP would contribute to increased demand for water in drought years and to the need for a new supply source for drought conditions (Draft EIR pages 4.15-35 and –36). The 2005 LRDP EIR analysis does not base its significance conclusion on the construction of the City's envisioned desalination plant. On the contrary, the LRDP EIR identifies the water supply impact as significant and unavoidable, because the development of a new water supply source could result in significant unavoidable impacts. Based on the City's projections of cumulative water demand in the water service area (including the University), the City's IWP PEIR determines that additional water supply would be needed under drought conditions, and identifies a desalination plant as the preferred alternative source of supply. The LRDP EIR (Volume II, Section 4.15) explicitly recognizes that the University would be obligated to pay its fair share of improvements for which it contributes demand, including a future desalination plant, if built by the City, and for mitigation of the environmental effects of the development of those improvements. Furthermore, the University will implement LRDP Mitigations UTIL-9A through 9H, which would minimize water use in normal and drought years, and also LRDP Mitigation UTIL-I specifically under drought conditions. Please also see Response to Comment LA-1-5, above, which explains that even though the Campus has grown between 1987 and 2005 both in terms of population and facilities, the water usage has increased by a very small amount and the campus's water usage continues to constitute about five percent of the service area water use.

Please see Response to Comment LA-1-5 above regarding the City's water supply data that the University used to conduct the impact analysis. The Final EIR does not state that the campus's growth is already anticipated in the City's water planning efforts, but that the campus's growth under the Final Draft 2005 LRDP is consistent with the City's water supply planning efforts. This is because the water demand associated with the campus does not exceed the amount of water for UC Santa Cruz identified in the City's water plans. In addition, the City Water Department staff has concluded that the campus's water projections are high, and that the actual 2020 water demand will likely be lower.

Response to Comment Post-FEIR LA-1-7. The LRDP is a comprehensive plan that guides physical development such as the location of buildings, open space, circulation, and other land uses. An LRDP identifies the physical development needed to achieve academic goals. There is no legal mandate for a Campus to prepare a Long Range Development Plan. However, it is desirable that each campus to have an approved LRDP in place, as this facilitates subsequent approvals for siting of individual buildings or projects (Standing Order of the Regents, 100.4(aa) and 100.4(ff)). In the absence of an approved LRDP, each project must be approved individually by The Regents.

An LRDP in many respects is analogous in function to a General Plan, (See Government Code Section 65300, *et seq.*). An LRDP, like a General Plan, includes planning principles and objectives to guide long-term physical development within its jurisdiction. Campuses prepare LRDPs based on their academic goals and the projected number of students for an established future date. The LRDP indicates how a campus will accommodate the student population and the faculty and staff required to support it. The Campus's LRDP plans for land use, landscape and open space, circulation and transportation and utilities for the lands within its jurisdiction, and includes a land use map, and plans, policies and objectives for each of the land use categories. Specifically, the General Plan is required to address land use, agricultural resources, circulation and transit, housing, open space, noise, natural resources, and safety issues. These are among the issues that are addressed in an LRDP, although, as a campus planning document, the LRDP naturally is more focuses on those elements that are pertinent to the University program and mission.

By contrast, a Specific Plan is prepared by a city or county to guide the systematic implementation of an adopted General Plan. (See Government Code section 65450, *et seq.)*. The *Stanislaus* case referred to by the commenter involved a Specific Plan, not an LRDP or a General Plan. More importantly, unlike the Specific Plan at issue in the *Stanislaus* case, proposed growth under the 2005 LRDP is based on identified water sources, and the impacts of increased Campus use of those water sources on water supply has been fully analyzed in the LRDP EIR. See Final 2005 LRDP EIR, Volume II, Section 4.15 (Utilities); Volume V, Master Response UTIL-1 (*Water Supply*); and Responses to Comment LA-3-3, LA 10-14, and Response to Comment Post-FEIR LA-1-6, which sets forth the EIR's analysis of water supply impacts.

The City's IWP PEIR identifies a desalination plant as the preferred supply solution to increase water supply in the service area. Because no specific desalination project has yet been proposed, the City's EIR analyzes only generic environmental impacts of development of a desalination plant, as no specific project has yet been proposed. The specific environmental effects of development and operation of a particular desalination plant cannot be analyzed until a specific site has been proposed and proposed project designed, as discussed in Responses to Comments LA-3-3 and LA-10-14 in Volume V of the Final 2005 LRDP EIR. The City, in cooperation with the University, is presently in the process of obtaining a permit to operate a short-term desalination pilot plant project at the University's Marine Science Campus, using the University's existing sea water intake. The City, as the lead agency, has determined that the construction and operation of the

pilot project is categorically exempt from CEQA analysis. If the pilot project is permitted, and if it is successful, the University assumes that the City will select a specific project site and propose and design a full-scale desalination plant.

As noted above, the University recognizes its obligation under Government Code Section 54999 to pay its fair share of the costs of development of such a future project should it be needed in part to serve University's needs, and also to pay its fair share of the cost of mitigating the environmental impacts of such development. It is anticipated that the environmental impacts of development due to ground disturbance (such as impacts to paleontological, cultural and biological resources, and geologic and hydrologic resources); air quality, traffic and noise impacts related to excavation, hauling and construction; and potential biological and hydrological effects from project operation. The specific impacts would depend in large part on the project site selected. The LRDP EIR identifies that the development of a new water supply likely would result in significant environmental impacts, as discussed in Responses to Comments Master Response UTIL-1 and LA-10-13, Final EIR, Volume V. The 2005 LRDP EIR did not identify Government Code Section 54999 fair share payments for utility infrastructure improvements and related environmental mitigation costs as a CEQA mitigation measure, because the University is legally obligated to make such payments by statute.

Response to Comment Post-FEIR LA-1-8. The Campus has long recognized the issue of shortage in the regional water supply and the particular impact of our seasonal climate and drought conditions. In recognition of these conditions, the Campus has routinely included water conservation design and operational measures in its development, including development under the 1988 LRDP. The Campus has been so effective in its conservation practices that its water demand represents only five percent of the demand in the City's water supply area, and water demand on campus has grown at a markedly slower rate than campus population or development, as detailed in Response to Comment Post-FEIR LA-1-5. The 2005 LRDP EIR identifies a suite of water conservation measures, LRDP Mitigations UTIL-9A through UTIL-9I, designed to further diminish the rate of water demand from the campus. Measures to curtail Campus water use in the event of a drought, and potentially to use groundwater wells on campus as a supplemental water source are included in this suite.

As noted above, the 2005 LRDP EIR does not conclude that there would be sufficient water in dry years but, on the contrary, identifies a cumulatively significant and unavoidable water supply impact to which the Campus demand contributes under cumulative conditions and as an impact of development under the LRDP. The City's IWP PEIR also determined that there is a need for a new water supply source to serve its service area under drought conditions, and identified a desalination plant as the preferred water supply option. The University recognizes that there is no expectation of immediate development of a new water supply source, and that there will be many permitting and environmental requirements to be satisfied before a desalination plant can be built. As repeatedly noted throughout the 2005 LRDP EIR, the University recognizes its obligations to pay a fair share of infrastructure development and mitigation costs. Please

refer to Master Response MIT-1 (*Fair Share and Government Code Section 54999 Obligations*), Final EIR Volume V.

Response to Comment Post-FEIR LA-1-9. Responsible agencies are "public agencies other than the lead agency which have discretionary approval power over the project." (CEQA Guidelines Section 15381.) The City does not have discretionary approval power over the 2005 LRDP, and the City's role as water supplier does not make the City a responsible agency because the City is obligated to provide water to the Campus, and thus has no discretion to approve or deny such supply. The City will have discretionary authority over future water supply improvements, such as the proposed desalination plant, and will be the lead agency for such projects.

Whether or not the City is a responsible agency, however, the University has afforded the City every opportunity to take part in the process of developing and reviewing the 2005 LRDP EIR, and the City has taken full advantage of that opportunity, including participating in the scoping process. The City has submitted comments at every stage of the EIR process, and the University has responded to all such comment, both by explaining the EIR's analysis and, in some instances, by revising mitigation measures to meet the City's concerns. As described in Response to Comments FEIR LA-1-5 and LA-1-7, the EIR analyzes the impact of LRDP implementation on the City's water supply, proposed mitigation measures to reduce this impact, concluded that it nevertheless would be significant and unavoidable, and committed the University to contribute its fair share towards the implementation of any proposal by the City to secure an alternate water supply source to serve cumulative water demand, including the University's portion. This analysis will be available to the City as it plans for future water management and development. Accordingly, the University has fulfilled its obligations under CEQA.

Response to Comment Post-FEIR LA-1-10. Please refer to Responses to Comments Post-FEIR LA-1-6 and LA-1-7, above.

Response to Comment Post-FEIR LA-1-11. As discussed in the LRDP Final EIR Volume V, Master Response MIT-1, Government Code Section 54999, *et seq.* and CEQA impose a legal requirement for the University to pay its fair share costs for public utility improvements, which would include a desalination plant, should the City develop such a facility as a solution to the need for a new source of water supply. Consistent with these legal requirements, the University has committed to negotiate its fair share contribution towards any such infrastructure improvements. CEQA does not require the University to specify the details of how its fair share contribution will be determined, and given that a specific water supply improvement has not been approved by the City, it would be inappropriate to do so at this time given that a specific desalination plant (or other future water improvement), and the costs of such a project are not known at this time. At such time as a desalination plant is proposed for approval, the University and the it will be able accurately to determine what proportional share of the improvement is attributable to University demand in the context of then-current total system demand for the facility. The mitigations proposed in the Draft EIR with respect to water conservation were revised in the Final EIR in response to comments from the City and others, as

shown in Final EIR, Volume IV, Chapter 3, revisions to Table 2-1. See also Response to Comment Post-FEIR LA-1-14, below, wherein Campus modifications of other mitigation measures in response to additional suggestions raised by the City in its September 15, 2006 letter to The Regents are discussed. See Appendix A, attached hereto, for the full text of the proposed revisions to these mitigation measures.

Response to Comment Post-FEIR LA-1-12. As stated by the commenter, if a desalination plant were constructed in the future, and if it became necessary to run the plant during non-drought conditions, the overall operational costs of running the plant would be expected to increase. At this time, however, no plant has been approved or constructed, and a need to operate any such improvement in non-drought conditions has not been identified. Operational costs are not a subject of fair share mitigation under Government Code Section 54999. As is normal practice, it is expected that increased operational costs would be shared proportionally among all users in the form of increased service and supply rates. The University, like other users of water, pays for water that it uses, through utility rates.

As the commenter notes, and as acknowledged in the IWP PEIR, a new water source is needed at present to meet cumulative demand during drought conditions, of which the University's demand constitutes about five percent. A new source of water is needed to supply existing demand in the water service area during drought conditions, regardless of University growth.

Response to Comment Post-FEIR LA-1-13. As noted in Response to Comment Post-FEIR-LA-1-8, above, the 2005 LRDP EIR includes a suite of water conservation measures, described under LRDP Mitigation UTIL-9, to address summer water use (particularly with respect to landscaping, which has the highest water demand in summer), and drought period water conservation and alternative supply. Also, please refer to Response to Comment LA-10-13 in the Final 2005 LRDP EIR Volume V. Further, the Campus has modified these mitigation measures in response to additional suggestions raised by the City in its September 15, 2006 letter to The Regents. See Appendix A, attached hereto.

Response to Comment Post-FEIR LA-1-14. The commenter makes a number of suggestions for modifications to LRDP Mitigations UTIL-9A through UTIL-9H as presented in the Final EIR. These suggestions are discussed individually below:

1) The commenter suggests that under UTIL-9C, the staff member who would be responsible for developing and implementing a water conservation program for student residences, dining halls and student affairs facilities should be fully dedicated to this task. The University does not believe that it is necessary at this time to require that a full-time staff position be devoted to water conservation. The task may effectively be carried out in conjunction with other responsibilities, including other conservation programs, for example. The designated staff member also would have opportunities to employ student interns to assist in carrying out ongoing programs. The campus has therefore determined not to include the City's suggested modification.

2) The commenter requests that LRDP Mitigation UTIL-9B be revised to re-insert text that originally appeared in the Draft EIR specifying that the new technology be installed in existing buildings when fixtures need to be replaced. This text was inadvertently deleted during revision of the mitigation measure. The mitigation will be revised to re-insert the deleted text:

> "As new technologies become available, the Campus shall continue to conduct pilot programs for high-efficiency plumbing fixtures including, but not limited to, dual-flush toilets. If a piloted technology proves to be successfully (i.e., the high-efficiency fixtures are effective in water savings and do not require more frequent or expensive maintenance than the existing standard), the Campus shall revise its standards to require use of the fixtures in all new buildings and in existing buildings as existing fixtures need to be replaced."

3) The commenter requests that the final provision under LRDP Mitigation UTIL-9A should be revised to require dedicated separate metering of any new landscaping over 5,000 square feet (sf), rather than 1 acre. Under current Campus Standards, meters are required for all irrigation points of connection, with the exception of certain small projects where, for example, isolated planter boxes are manually watered. The commenter's proposed revision is consistent with this standard and the University therefore proposes to modify the last bullet item under LRDP Mitigation UTIL-9A as follows:

> "To facilitate monitoring of water usage in all new development, the Campus shall: (1) install separate meters on water lines for individual buildings and (2) install meters on irrigation lines where one point of connection irrigates ~~1 acre~~ 5,000 square feet or more."

4) The commenter requests that LRDP Mitigations UTIL-D and UTIL-9F be modified to: a) include more detail regarding how specific measures identified during the engineering water audit would be prioritized, b) ensure that lower priority measures not be deferred indefinitely, c) include a quantification of the water savings that would be achieved through implementing the "top priority" measures and to re-evaluate the University's projected 2020 water demand, and d) decrease the interval between updates of the water audit to two or three years. Also in reference to the water audit, the commenter also requests that LRDP Mitigation UTIL-H be revised to specify which fixtures will be retrofitted and that the estimated savings from student housing retrofits be included in the water audit. The University proposes to modify LRDP Mitigation UTIL-9D to provide the following clarification: the engineering water audit would include a comparison of various measures based on the amount of water savings per dollar expended (similar to the Stanford University model cited by the commenter), and the highest priority measures would be those that would save the largest amount of water per dollar expended; to ensure that lower priority measures not be tabled indefinitely, these measures will be re-evaluated in subsequent updates of the water audit; the audit will include an engineering

estimate of the additional water savings that would be achieved through implementation of the "high priority" measures and a re-evaluation of the University's projected 2020 water demand.

The University considers five years a reasonable time interval, at least initially, for updates to the water audit. The initial audit may take up to two years to complete, and some of the high priority measures identified in the initial audit could take several years to implement. Also, it is unlikely that campus water use patterns would change enough in two or three years to warrant a comprehensive update of the engineering audit. The University proposes to revise LRDP Mitigation UTIL-9F to state that the Campus shall update the audit at intervals of no more than five years. In addition, the University proposes to revise the monitoring and reporting procedures for LRDP Mitigations UTIL-9E and UTIL-9F (Table 4-1, page 4-71, Volume IV of the Final EIR) to require that the University prepare an annual progress report on implementation and effectiveness of the recommendations of the water audit or the water audit update. The Campus would provide the progress report to the City and would include it in the Campus's Annual Mitigation Monitoring Report.

The University did not include an evaluation of the estimated savings to be achieved from student housing retrofits in the list of items to be included in the engineering water audit under LRDP Mitigation UTIL-9E for the following reasons: 1) the Campus has already identified retrofits of plumbing fixtures in student housing as a high priority measure that will undoubtedly provide significant water savings; and 2) over the past year, the Campus has informally conducted counts of plumbing fixtures that have not been retrofitted and identified their locations. However, to ensure that the estimated savings from this measure are reported to the City and taken into account in the re-evaluation of projected campus water demand, the Campus proposes to revise LRDP Mitigation UTIL-9D by adding an additional bulleted item:

> "An inventory of plumbing fixtures in student housing that do not meet the current standards for water efficiency."

Appendix A of this document includes the full text of mitigation measures revised in response to these comments, and also revisions to the proposed Mitigation Monitoring Program. These revisions provide additional clarification or implementation detail, but do not alter the effectiveness of the measures as presented in the Final EIR. The Campus proposes to recommend to The Regents the adoption of these measures in conjunction with its consideration of the approval of the proposed 2005 LRDP and LRDP EIR. These proposed changes will not decrease the effectiveness of the revised mitigation measures.

Response to Comment Post-FEIR LA-1-15. As discussed in the LRDP EIR Volume V, Master Response MIT-1 and throughout the EIR, the University recognizes its obligations under Government Code Section 54999 to make fair share payments for utility infrastructure. The University previously signed a Memorandum of Understanding with the City regarding anticipated improvements to University Pump Stations 2, 4 and 6, consistent with these fair share obligations, and has paid its fair share of improvements

that were constructed. Please refer to Response to Comment SA-4-2, in Volume V of the Final EIR.

Response to Comment Post-FEIR LA-1-16. LRDP Mitigation UTIL-9G, as presented in the Final EIR Volume IV, Table 2-1, requires the Campus to initiate a feasibility study for the use of reclaimed water within two years of LRDP approval, including plans for the use of reclaimed water in new development as effective and feasible, and an implementation schedule.

Response to Comment Post-FEIR LA-1-17. Please refer to Response to Comments FEIR LA-1-12 and -15, above, regarding the University's fair share obligations. The University's water demand represents only about 7.8 percent of the demand in the water service area in 2020; thus, changes in the capacity or operational practices of a future, proposed desalination plant would not be due solely to the University demand. Furthermore, any conjecture about the operation of any such future plant at this time is speculative. Note that the IWP PEIR does not attribute the need for additional water supply to "the University's build-out demand" as stated by the commenter, but rather to the cumulative future water demand in the service area. The LRDP EIR discloses that the 2005 LRDP would contribute to that demand under cumulative conditions.

Response to Comment Post-FEIR LA-1-18. For the 2005 Draft LRDP EIR, traffic was modeled using AMBAG's most current traffic model, as requested by the County of Santa Cruz in a scoping letter. The use of the AMBAG model was appropriate, because the AMBAG model is region-based and thus captures more geographically-widespread traffic that may be associated with the Campus. The City's traffic model is a "list" model, which addresses projects planned or envisioned in the short term, and for that reason is not the appropriate model for long term projections such as those needed for the LRDP analysis.

The City requested during scoping that the University consult with the City regarding traffic analysis. The University's traffic consultant held discussions with the City's traffic engineer and the City's traffic consultant prior to conducting the traffic analysis, and obtained the City's intersection geometry data and near term land use projections. The City's traffic impact standards of significance also were discussed at that time. The Draft EIR used the City's traffic impact standards of significance and the same methodologies as are used in City traffic studies to identify intersection impacts.

The Draft EIR identified impacts that would result from growth under the LRDP in a cumulative context, at 11 off-campus intersections in the City of Santa Cruz. As a result of the Campus's revision of the LRDP to reflect the environmentally superior Reduced Enrollment Alternative, the Final EIR revised the number of significantly affected intersections to 10 intersections that would operate at an unacceptable level. The Draft and Final EIR also identified improvements (the majority of which has previously been identified by the City) that would mitigate impacts at the identified intersections. The University has no authority to schedule or implement those improvements; therefore, the project level analyses presented in Volume III of the Draft EIR used the City's list of

planned and funded capital projects to ascertain which of the intersection improvements could be assumed. These procedures are consistent with the City's approach in its own environmental documents.

Response to Comment Post-FEIR LA-1-19. The University is confident that it has used the appropriate data and model to forecast campus traffic growth. The commenter suggests that the growth assumptions are "unrealistic". Without more information, no further response to this comment is possible.

The LRDP EIR analysis was based on the best traffic model available at the time the analysis was conducted. The AMBAG model was newly issued at the time of the Draft EIR analysis. In the AMBAG model cycle, adjustments typically are made over time to more closely reflect changing actual circumstances in the region. The University is not aware of an "adjusted forecast" that the City has incorporated into the model to reflect current projections, and no such adjusted forecast was available at the time the LRDP traffic analysis was performed, and the City did not indicate that any such adjusted forecast was available in its comments on the Draft EIR or in any of the University staff's meetings and discussions with City staff (See Attachment B.). If AMBAG has accepted the City's adjusted forecast, the Campus will work with the City in analyzing future projects at such time as project-level traffic analyses are conducted to ensure that this (or the most appropriate) revised model is used as the basis of project level and cumulative analyses.

The mitigation measures identified in the LRDP EIR are appropriate to address the identified intersection impacts. At the time that the City proposes to carry out improvements to an identified intersection, the University will negotiate with the City to determine its fair share of the cost of that improvement, as discussed in the LRDP EIR, Volume V, Master Response MIT-1.

Response to Comment Post-FEIR LA-1-20. While the designation of official traffic routes on City streets is not within the jurisdiction of the University, as discussed in Response to Comment Post-FEIR LA-1-2, the University welcomes any opportunity to discuss collaboration or unilateral initiatives that would maintain and enhance the welfare and livability of the City of Santa Cruz, including areas along principal access corridors to the campus. LRDP Mitigation TRA-2A is designed to minimize vehicular traffic increases on routes to the campus. Please refer to Appendix B of this Response to Comment document for a chronology of University outreach to the City Administration since March 2006.

Response to Comment Post-FEIR LA-1-21. Please refer to Response to Comment Post-FEIR LA-1-19, above.

Response to Comment Post-FEIR LA-1-22. It is the assessment of the Campus that any measures that facilitate parking on campus also are likely to result in additional traffic in the campus area. The University recognizes that restrictions placed on on-campus parking, including parking fees, locational restrictions, and the prohibition against

residential freshman and sophomore resident students parking cars on campus, may result in demand for parking adjacent to the campus. These restrictions are part of the Campus's transportation demand management (TDM) program, which is a major element in the overall effort to minimize automobile trips to the campus. The campus will continue to refine the TDM program and introduce new measures as they become feasible and are warranted. For example, this fall, the Campus intends to introduce Carshare for all campus affiliates and at UC Santa Cruz sites off campus that can be used by the general public. The Campus has presented its Carshare proposal to the Downtown Commission and City staff and hopes the City will collaborate in expanding Carshare opportunities.

The University has no authority with respect to the City's neighborhood parking policies. City restrictions for on-street parking by non-residents has been effective in minimizing parking demand in the streets near the University. It is within the authority of the City to designate for-fee or metered parking spaces on neighborhood streets near the campus.

Response to Comment Post-FEIR LA-1-23. The University supports the proposed revision of the City's Traffic Impact Fee. If the City's revised fee program links the fee to the University's fair share of impacts at specific intersections, and if the fees are committed to those specific improvements needed to mitigate the significant impacts of the 2005 LRDP, payment of such a fee would be consistent with the University's fair share commitment and would likely mitigate the impacts from projects developed under the 2005 LRDP. (Please note that the University has not received the attachments to the City's letter, including the memorandum from Ron Marquez referred to in the comment, and is therefore unable to respond to the City's specific fair share proposal.) The University and City staff met regarding traffic concerns on August 9, 2006. The University and the City have agreed to follow up with further meetings on this topic. In addition, UCOP General Counsel met with City staff on September 19, 2005, explicitly to discuss the University's fair share commitments and the City's Traffic Impact Fee. As discussed in Response to Comment Post-FEIR LA-1-2, the University welcomes any opportunities to discuss joint collaboration or unilateral initiatives that would maintain and enhance the welfare and livability of the City of Santa Cruz. Please refer to Appendix B of this Response to Comment for a chronology of University outreach to the City Administration since March 2006.

Response to Comment Post-FEIR LA-1-24. Potential BRT improvements are discussed in the 2005 LRDP EIR in Volume II, Section 4.14. It is acknowledged that capital investments may be necessary in order to achieve the BRT goals. LRDP Mitigation TRA-2A was modified in the Final EIR to include BRT improvements in the list of potential TDM measures. Funding potentially could be negotiated through mechanisms such as contract per trip basis currently in effect, as discussed in Response to Comment LA-4-2 in Volume V of the Final EIR.

TDM and BRT improvements are discussed in the Draft EIR, as means of reducing traffic through the City of Santa Cruz. Draft EIR, Section 4.14, also discusses the traffic benefits of development of an Eastern Access to the campus. The Draft EIR further recognizes that, under a prior agreement with the City, the University will not unilaterally

pursue such an access. However, the University is amenable to reconsidering an Eastern Access if the City wishes to consider the benefits in traffic reduction through Westside neighborhoods from development of such a route. As discussed in Response to Comment Post-FEIR LA-1-2, the University welcomes any opportunities to discuss collaboration or unilateral initiatives that are environmentally and economically feasible, and that would maintain and enhance the welfare and livability of the City of Santa Cruz. Please refer to Appendix B of this Response to Comment, which documents the chronology of University outreach to the City Administration since March 2006.

Response to Comment Post-FEIR LA-1-25. The University will continue to work to identify and implement solutions that improve bicycle access to and around the campus. As discussed in Response to Comment Post-FEIR LA-1-2, the University welcomes any opportunities to discuss joint collaborations or unilateral initiatives that would maintain and enhance the welfare of and livability of the City of Santa Cruz. Please refer to Appendix B of this Response to Comment, a chronology of University outreach to the City Administration since March 2006.

Response to Comment Post-FEIR LA-1-26. The purpose of mitigation, under CEQA, is to minimize the significant adverse effects of a proposed project. (See, e.g., CEQA Guidelines Section 15126.4.) It is not necessary, for the purposes of mitigating the significant environmental effects of growth under the 2005 LRDP, for the University to conduct regular City-wide traffic studies. However, the University will continue to update traffic counts at intersections identified in the LRDP EIR, will share this information with the City, as discussed in Response to Comment Post-FEIR LA-1-2, and will model project traffic for potentially affected intersections in each project-level CEQA analysis.

Response to Comment Post-FEIR LA-1-27. The requirement for University housing to be economically self-sustaining is a policy of The Regents of the University of California. As stated in the University of California Administrative Plan (UCOP 2004: 1-2)[1], "rates and fees charged to occupants shall be sufficient to cover all expenses of such operations, including debt service and related requirements, equipment replacement, maintenance, and as necessary and appropriate, equity contributions for future project." Absent this policy, student housing would have to be subsidized by tax monies. With respect to the effect of meal plans on the cost of on-campus housing, note that meal plans are not mandatory for all University housing: meal plans are optional for residents of the Village, Graduate Student housing, University Town Center, Family Student Housing, and the RV Park. Housing cost issues, and other factors that enter into students' decisions whether to reside on-campus are discussed in detail in the Final EIR, Volume V, Master Response ALT-5, *Increased On-Campus Housing.* This response also explains why higher housing goals are not feasible. The Campus has made a commitment, in revised LRDP Mitigation POP-3A, to ensure that adequate housing stock is available annually to house students at the LRDP goal levels. The University will collaborate with the City to

[1] UCOP. 2004. University of California Housing System Administrative Plan. Prepare by Financial Planning and Analysis. Office of the President. June, 2004.

determine the appropriate scope and goals of the market analysis to which the University commits in revised LRDP Mitigation POP-3C.

Response to Comment Post-FEIR LA-1-28. The University has committed $50,000 toward a jointly-funded Feasibility Analysis for City/University Housing Development, City of Santa Cruz, California. The study will assess the feasibility of privately-developed housing for the City work force, and of University-affiliated housing. It was intended that the study be prepared under contract with the City to simplify the procurement process. The City has placed the release of the Request for Proposals for the project on hold since fall 2005.

Through implementation of 2005 LRDP Mitigation POP-3B, the University would study potential ways to work with local agencies and other large employers to provide mechanisms for making more affordable housing available to University affiliates and other community members. As discussed in Response to Comment Post-FEIR LA-1-2, the University welcomes any opportunities to discuss joint collaboration or unilateral initiatives that would maintain and enhance the welfare and livability of the City of Santa Cruz. Please refer to Appendix B of this Response to Comment, which documents the chronology of University outreach to the City Administration since March 2006.

Response to Comment Post-FEIR LA-1-29. The Campus welcomes the City's suggestions regarding data sources for the joint market analysis that will be conducted under LRDP Mitigation POP-3C. These will be taken into consideration when the Campus consults with the City and County to determine the appropriate scope of the proposed study.

Response to Comment Post-FEIR LA-1-30. Please refer to Response to Comment Post-FEIR-LA-1-27. In addition, note that the environmental effects of increased University-affiliated population are taken into account in the analysis in each pertinent resource area in Volume II of the EIR, in particular with respect to traffic (Section 4.14), utilities (water supply) (Section 4.15), public services (Section 4.12), population and housing (Section 4.11), and recreation (Section 4.13).

Response to Comment Post-FEIR LA-1-31. The Campus welcomes the City's suggestions regarding topics to be addressed for the joint housing market analysis that will be conducted under LRDP Mitigation POP-3C. The City's thoughts about potential illegal and unsafe housing conditions will be a topic for discussion when the Campus consults with the City and County to determine the appropriate scope of the proposed analysis.

It is not within the University's authority to enforce City building and housing codes in Westside neighborhoods. However, the University will explore issues of code violations with the City to ensure that University students are not living in or contributing to unsafe conditions outside of the CEQA environmental review process. As discussed in Response to Comment Post-FEIR LA-1-2, the University welcomes any opportunities to discuss collaboration or unilateral initiatives that would maintain and enhance the welfare and

livability of the City of Santa Cruz. Please refer to Appendix B of this Response to Comment, which documents the chronology of University outreach to the City Administration since March 2006.

Response to Comment Post-FEIR LA-1-32. The Campus has several on-going programs to address the issue of student behavior in city neighborhoods. The Campus will continue to explore enforcement issues with the City, outside of the CEQA environmental review process. As discussed in Response to Comment Post-FEIR LA-1-2, the University welcomes any opportunities to discuss joint collaborations or unilateral initiatives that would maintain and enhance the welfare of and livability of the City of Santa Cruz. Please refer to Appendix B of this Response to Comment for a chronology of University outreach to the City Administration since March 2006.

Response to Comment Post-FEIR LA-1-33. The 2005 LRDP EIR considered the effects of University growth on the demand for increased public services (Volume II, Section 4.12). Increased demand for public services is not an environmental impact unless the increased demand results in the need for new facilities, the construction of which may result in environmental impacts. The Campus is willing to consider additional measures to address this issue, outside of the CEQA environmental review process. As discussed in Response to Comment Post-FEIR LA-1-2, the University welcomes any opportunities to discuss joint collaboration or unilateral initiatives that would maintain and enhance the welfare and livability of the City of Santa Cruz. Please refer to Appendix B of this Response to Comment for a chronology of University outreach to the City Administration since March 2006.

Response to Comment Post-FEIR LA-1-34. The potential increase in demand for park and recreation facilities is considered in the LRDP EIR, Section 4.12, Recreation. As explained above, increased demand for facilities is not, in itself, an environmental impact, except insofar as it results in substantial deterioration of existing facilities, or in the development of new parks, the construction of which could result in environmental impacts. The EIR concludes that demand is unlikely to be exceed the supply of recreational facilities and recreational areas and that, further, there are few if any locations available in the west side for the construction of a new park. The one site for a potential park, on Shaffer Road, has been extensively disturbed, and the potential for significant environmental impacts at this site should it be developed as a park, appears to be slight. It therefore was concluded that the impact of population growth on recreational facilities was less than significant.

Response to Comment Post-FEIR LA-1-35. Please refer to responses to Comments FEIR LA-1-31 through -34, above.

Response to Comment Post-FEIR LA-1-36. The University has fulfilled its CEQA obligation in its preparation of the FEIR, and none of the conditions requiring recirculation is present. All feasible mitigation measures that would minimize the significant environmental effects of the originally proposed LRDP are proposed to be adopted by The Regents and incorporated into the Project, and the Environmentally

Superior Alternative is now proposed for approval. Revisions to the LRDP made through the incorporation of the Environmentally Superior Alternative and in response to comments will not create new impacts, or cause a substantial increase in the severity of previously identified impacts. In fact, the revisions will reduce the impacts identified in the Draft EIR that would have been caused by implementation of the LRDP as originally proposed. The public and public agencies have been afforded ample opportunity to review the environmental document. Further, the Campus has incorporated extensive input from many agencies and individuals in the Final EIR in order to improve the clarity and effectiveness of a number of mitigation measures. As discussed in Response to Comment Post-FEIR LA-1-2, the University welcomes any opportunities to discuss joint collaborations or unilateral initiatives that would maintain and enhance the welfare of and livability of the City of Santa Cruz. The Campus has initiated and participated in a number of meetings with City staff to discuss areas of mutual concern during nearly 11 months of preparation of the Final EIR. Please refer to Appendix B of this response to comment for a chronology of University outreach to the City Administration since March 2006.

With respect to the analysis and proposed adoption of the Reduced Enrollment Growth Alternative, note that CEQA requires the Draft EIR to identify alternatives to a proposed project that will reduce the environmental impacts of the proposed project. CEQA does not require that alternatives be analyzed at the same level of detail as the proposed project. CEQA instructs The Regents, as the lead agency, to adopt an alternative to a proposed project if it substantially lessens the project's significant environmental effects unless specific economic, social, or other conditions make implementation of the alternative infeasible. Because the Campus now proposes that The Regents approve the environmentally superior Reduced Enrollment Growth Alternative, the 2005 LRDP Final EIR includes additional analysis of that alternative (see Volume IV, Chapter 2, *Project Refinements*). The additional analysis of the alternative does not identify any new or substantially more significant environmental impacts. The 2005 LRDP EIR fully analyzed the direct and indirect impacts of the Final Draft 2005 LRDP.

Post-FEIR Comment Letter ORG-1

LAWYERS FOR CLEAN WATER

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18 September 2006

Re: Comments on FEIR for UCSC LRDP

Dear Regents and Mr. Barnes,

On behalf of the Committee to Limit University Expansion ("CLUE"), thank you for the opportunity to comment on the Final Environmental Impact Report ("FEIR" or "EIR"). Unfortunately, this opportunity is extremely circumscribed. On Monday, September 11, CLUE was notified that the Final EIR had been published and that hearings on the FEIR would be held the 19th and 20th of September 2006. Thus, CLUE was provided 7 days to review the voluminous FEIR that provides environmental review for projects on the campus that will extend for decades. Therefore CLUE requests that the Regents continue the hearing on the FEIR to allow CLUE to provide detailed comments on the document.

Comments CLUE has been able to develop since 11 September are set out below.

I. UCSC May Not Rely on Compliance with Permits to Mitigate Impacts When UCSC Asserts That Those Permits Do Not Apply to the Campus

A. The FEIR Relies on Three NPDES Permits to Mitigate Receiving Water Impacts

The FEIR relies in its text, and in response to comments, on compliance with National Pollutant Discharge Elimination System ("NPDES") permits issued pursuant to

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the Federal Clean Water Act ("CWA") to mitigate the impacts from University expansion as set out in the Long Range Development Plan ("LRDP"). For example, Impacts HYD-2, HYD-3, and Water Quality Impacts from Increased Impervious Surfaces (no impact number, but discussed at 4.8-31 through 34) rely on mitigations HYD-2A, HYD-2B, HYD-3B, all of which are based on compliance with California's General Construction Permit, NPDES General Permit No. CAS00002, State Water Resources Control Board Order No. 99-08-DWQ (hereinafter "Construction Permit"), or elements of that permit. In response to comments by the California Coastal Commission (Volume V, Section 5.3) the FEIR relies on the Storm Water Pollution Prevention Plan ("SWPPP") developed pursuant to the Construction Permit, and the Storm Water Management Plan ("SWMP") to be developed when UCSC obtains coverage under the Phase II MS4 permit issued by the Regional Water Quality Control Board ("RWQCB"), to mitigate the impacts from pollution runoff associated with the project identified by the Commission. The FEIR is the most explicit in its reliance on NPDES permits for mitigation in its response to CLUE's comments. *See* Vol. V, Chapter 5.3, Response to ORG-8.

B. UCSC Believes the Clean Water Act, and the NPDES Permits, Do Not Apply to its Activities

Despite this reliance by the FEIR on compliance with the terms and requirements of the three NPDES permits that apply (or will apply) to the campus and the LRDP to mitigate the impacts of the project, UCSC is currently taking the position in Federal District Court that the Clean Water Act does not apply to any of the activities or receiving waters on the campus, and that *it need not comply with Federal Law or its NPDES permits for its activities.*

On April 21, 2006 CLUE filed the complaint in Federal District Court, Civil Case No.: C 06-02753 CRB, alleging violations of the Construction and Industrial Permit by UCSC for construction and industrial activities that failed to comply with the requirements of the permits, and which discharged pollutants to Waters of the United States. In response to CLUE's citizen enforcement action, UCSC filed a motion to dismiss the action, attached hereto as Exhibit 1. In that motion, UCSC argues that under the recent US Supreme Court decision, *Rapanos v. United States,* 126 S.Ct 2208, 2006 (June 19, 2006), none of the waters on the campus, including area creeks, arroyos, and ponds, as well as the underground karst system that carries stormwater from the campus to groundwater as well as to off campus creeks, rivers, and the Pacific Ocean, are Waters of the United States subject to regulation under the Federal Clean Water Act. *See* Exhibit 1 at pp. 8-9. Despite the absurdity of this position, as demonstrated by the Declaration of Dr. Richard Horner, attached hereto as Exhibit 2, and the Declaration of Dr. Jack Wittman, attached hereto as Exhibit 3, UCSC argues that it need not comply with the requirements of the Construction and Industrial permits on campus because they do not apply to UCSC, and therefore CLUE's action must be dismissed. Exhibit 1, at 10. This same argument applies equally to the MS4 permit that UCSC is in the process of obtaining coverage under, and the SWMP resulting from that permit.

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Thus, UCSC is taking directly contradictory positions in different forums to avoid protecting the environment on the campus—first that the impacts of the projects in the LRDP will be mitigated by compliance with NPDES permits (the State CEQA process), and second that those NPDES permits are not binding on UCSC (Federal District Court) and that UCSC has no obligation to comply with them.

C. CEQA Requires That Mitigation Measures Be Fully Enforceable

Under CEQA, measures to mitigate impacts must be "fully enforceable through permit conditions, agreements, or other legally binding instruments." *See* CEQA Guidelines, § 15126.4, subd. (a)(2); *Federation of Hillside and Canyons Associations v. City of Los Angeles* (2000), 83 Cal.App. 4th 1252, 1260-1261 (agency must ensure mitigation actually will be implemented). There is no question that UCSC does not believe that the permits it relies on for mitigation of impacts in the FEIR are enforceable—in fact it is currently litigating in Federal Court on the basis that they are not. Therefore, the FEIR cannot rely on those mitigation measures.

The FEIR attempts to rationalize this blatant hypocrisy in new language added since the draft EIR, stating:

> The NPDES permit program does not apply where storm water does not discharge to federal jurisdictional waters. However, because the Campus is committed to developing SWPPPs and implementing BMPs for all construction sites one acre or more in area regardless of federal jurisdiction. Vol. III, Chapter 3, p. 3-27.

While it is correct that mitigation measures can be incorporated into project designs for public projects, the "commitment" described in the changes to the FEIR is nowhere articulated in the FEIR, let alone included as an enforceable requirement. No analysis of the requirements of the applicable permits is included in the FEIR. Reflecting the last minute addition of language in an effort to "fix" this central inconsistency, the FEIR consistently refers and defers to the NPDES permits without explaining what the requirements of those permit are, or making those requirements binding upon UCSC. UCSC cannot have it both ways—the CWA cannot both be inapplicable to the campus, while at the same time ensuring that the PRDP projects' impacts to receiving waters will be completely mitigated. So long as UCSC continues to take the position that the CWA does not apply to UCSC, the FEIR cannot simply defer to permits issued under the CWA, and must set forth in detail, in a fully enforceable form, the mitigation to the impacts identified. Once these mitigation measures are identified, the EIR must be re-circulated for public comment.

II. The FEIR Improperly Defers Consideration of Impacts of and Mitigation For the Project

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In its reliance on the SWMP to be developed and implemented under the MS4 Permit for the campus to mitigate impacts from the project, UCSC depends on a document that has not yet been developed, nor approved by the RWQCB. The SWMP attached by UCSC is a draft, subject to comment by RWQCB staff and the public, approval by the RWQCB in a public hearing, appeal to the SWRCB, and potentially a Writ challenge in Superior Court. UCSC cannot rely on a speculative document whose contents will only be known in the future to mitigate impacts identified in the FEIR, because the FEIR cannot analyze, the public cannot consider, and the decision maker cannot review, a document that will be produced in the future. Reliance upon a document that is to be prepared and finalized in the future after FEIR approval is improper under CEQA. *See Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d. 296, 306-314 (county approving an EIR could not properly assume that other agencies would formulate means to avoid potentially significant impacts associated with soil stability, erosion, and flooding); *Oro Fino Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 884-885 (court disapproved of mitigation measures requiring post-approval formulation of a reclamation plan, erosion control plan, dust plan, and a fire plan; "the CEQA process demands that mitigation measures be timely set forth, that environmental information be complete and relevant, and that environmental decisions be made in an accountable arena"). This improper deferral of analysis renders the FEIR inadequate. Once the SWMP is finalized, the EIR must consider its contents, and the EIR must be re-circulated to allow consideration of that analysis.

Please call our San Francisco office with questions about any of the above.

Sincerely yours,

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Martin McCarthy
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COALITION TO LIMIT UNIVERSITY EXPANSION, an unincorporated association,

Plaintiff,

vs.

GEORGE BLUMENTHAL, Acting Chancellor, University of California, Santa Cruz, in his official capacity; and DEVCON CONSTRUCTION, INC. a California corporation,

Defendants.

Case No. C 06 2753 CRB

ACTING CHANCELLOR GEORGE BLUMENTHAL'S NOTICE OF MOTION AND MOTION TO DISMISS CLUE'S COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES

Date: September 15, 2006
Time: 10:00 a.m.
Courtroom: 8, 19th Floor
Judge: Hon. Charles R. Breyer

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NOTICE OF MOTION AND MOTION

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE THAT, at 10:00 a.m. on September 15, 2006, or as soon thereafter as the matter may be heard, Defendant George Blumenthal, Acting Chancellor, University of California, Santa Cruz ("the Chancellor"), in the United States District Court for the Northern District of California, Courtroom 8, 19th Floor, located at 450 Golden Gate Avenue, San Francisco, CA 94102, the Honorable Charles R. Breyer presiding, will move the Court to dismiss the Complaint in this action, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, on the grounds that Plaintiff has failed to state facts establishing subject matter jurisdiction or a claim upon which relief can be granted.

This motion is based upon this Notice, the accompanying Memorandum of Points and Authorities, the Request for Judicial Notice and the accompanying documents filed in support of the motion, all the pleadings, files and records filed in this action, and upon such matters and argument as may be presented to the Court at the hearing of this motion.

Respectfully submitted,

DATED: August 4, 2006

FARELLA BRAUN & MARTEL LLP

By: /s/
Christopher Locke

Attorneys for Defendant
GEORGE BLUMENTHAL, ACTING CHANCELLOR, UNIVERSITY OF CALIFORNIA, SANTA CRUZ

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STATEMENT OF ISSUES TO BE DECIDED

The issues to be decided on this motion are whether the allegations in the Complaint, if true, when reviewed in conjunction with judicially noticeable facts, support Plaintiff's claims that the Chancellor has discharged storm water in violation of the Clean Water Act. Specifically, the Court must determine whether:

1. Plaintiff failed to allege facts demonstrating a discharge to "waters of the U.S." – a jurisdictional prerequisite for any claim under the Clean Water Act;

2. Plaintiff failed to provide adequate Notice of its claims under the Clean Water Act – a jurisdictional prerequisite for any claim under the Clean Water Act;

3. The Sixth, Seventh and Eighth Causes of Action should be dismissed as to the Cogeneration Plant on the University of California, Santa Cruz ("UCSC") campus because this facility is not regulated under the Industrial General Permit;

4. The Second, Third and Fourth Causes of Action should be dismissed as to the Humanities and Social Sciences Building and McHenry Library construction sites on the UCSC campus because any alleged violations of the Clean Water Act at those sites are "wholly past," thus denying the Court subject matter jurisdiction to adjudicate such claims; and

5. The Sixth, Seventh and Eighth Causes of Action should be dismissed as to the Fleet Services facility at the UCSC campus because the allegations in the Complaint fail to state a claim upon which relief can be granted.

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff Coalition to Limit University Expansion ("CLUE") is candid in its name, public statements and some of its Complaint allegations that its mission is to halt development at the University of California, Santa Cruz ("UCSC") campus. It has engaged in land use litigation and political lobbying in seeking to accomplish its ends.

CLUE's latest strategy employs the "citizen suit" provisions of the federal Clean Water Act to claim violations of storm water management requirements at construction sites and other facilities at the UCSC campus. The claims are filed against George Blumenthal,[1] Acting Chancellor of University of California, Santa Cruz ("Chancellor"), and Devcon Construction, Inc., ("Devcon") a contractor for the University.

CLUE's Complaint alleges that the Chancellor and Devcon have discharged storm water from areas of the UCSC campus in violation of the Industrial General Permit and Construction General Permit issued by the California State Water Resources Control Board. However, as we demonstrate below, CLUE's Complaint is fatally flawed and should be dismissed.

As a threshold matter, CLUE has failed to allege facts sufficient to establish that storm water from the UCSC campus discharges to "waters of the United States" – a prerequisite for any claim under the Clean Water Act. The United States Supreme Court's recent decision in *Rapanos v. United States*, 126 S.Ct. 2208, 2006 WL 1667087 (June 19, 2006), held that ephemeral storm drainages, such as those upon which CLUE bases its claims, do not constitute or provide a cognizable hydrologic connection to "waters of the United States." Accordingly, CLUE has failed to state a claim under the Clean Water Act. Furthermore, because CLUE's sixty-day Notice focuses on alleged discharges to ephemeral storm drainages that are not "waters of the United States," CLUE has failed to provide sufficient Notice of alleged violations.

In addition to this absence of requisite jurisdiction, CLUE's allegations as to certain violations suffer from fundamental legal flaws. For example, CLUE faults the Chancellor for failing to secure coverage under the Industrial General Permit for the Cogeneration Plant.

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[1] The Complaint was originally filed against former Chancellor Denice D. Denton, who is now deceased. George Blumenthal is now the Acting Chancellor. Pursuant to Federal Rule of Civil Procedure 25(d)(1), Acting Chancellor Blumenthal is automatically substituted as defendant in place of former Chancellor Denton in this action.

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However, as a matter of law, the Cogeneration Plant is not among the categories of facilities regulated by the Industrial General Permit.

CLUE's claims regarding alleged storm water violations at the Humanities & Social Sciences and McHenry Library construction sites are equally invalid as a matter of law. The Clean Water Act does not allow plaintiffs to pursue citizen suit claims for wholly past violations, only for ongoing violations. During CLUE's sixty-day Notice period and prior to the filing of the Complaint, the Regional Water Quality Control Board for the Central Coast Region determined that the University had fully addressed concerns and was in compliance with the Construction General Permit at these sites. Accordingly, any violations alleged in the Complaint, which the Chancellor denies, are wholly past.

Finally, CLUE asserts claims regarding alleged industrial activities at the Fleet Services facility. However, the allegations in CLUE's Notice and Complaint concerning alleged painting activities at the Fleet Services facility are in fact operations conducted at the Paint Shop, which discharges to a sanitary sewer under a permit from the City of Santa Cruz and is not regulated by the Industrial General Permit.

For these reasons and those that follow, CLUE's Complaint is insufficient as a matter of law and should be dismissed.

II. STATUTORY BACKGROUND

The Clean Water Act prohibits the "discharge of any pollutant" into "navigable waters" without a valid permit, known as a National Pollutant Discharge Elimination System ("NPDES") permit. 33 U.S.C. §§ 1311(a), 1342. A "discharge of a pollutant" is defined as "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12)(A). The term "navigable waters" is defined as "waters of the United States," which is then further interpreted in EPA regulations. 33 U.S.C. § 1362(7); 40 C.F.R. 122. The Clean Water Act regulates both traditional point source discharges (such as outfalls and pipes) and "storm water" point source discharges.

The California State Water Resources Control Board ("SWRCB") – acting through the individual Regional Water Quality Control Boards – has been delegated the responsibility to issue

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NPDES permits to dischargers located in California. Cal. Water Code, Chap. 5.5, §§ 13370-13789. The SWRCB has adopted general permits for storm water discharges from industrial activities and from construction activities through which dischargers may obtain Clean Water Act permit coverage. *See* National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 97-03-DWQ ("Industrial General Permit") and General Permit No. CAS000002, State Water Resources Control Board Water Quality Order No. 99-08-DWQ ("Construction General Permit").[2] The Industrial General Permit applies to certain listed industrial activities. Industrial General Permit, Attachment 1. The Construction General Permit applies to all construction projects which result in land disturbance in excess of one acre, as well as projects under one acre that are part of a "larger plan of development." Construction General Permit, ¶ 1.

To obtain coverage under either the Industrial or Construction General Permits, a discharger must submit a written Notice of Intent ("NOI") to the SWRCB and pay an annual fee. Industrial General Permit, ¶ 3; Construction General Permit, ¶ 4. Once it submits a valid NOI, a discharger must comply with the terms of the permit.

Under both the Construction and Industrial General Permits, permittees must develop a Storm Water Pollution Prevention Plan ("SWPPP"), implement Best Management Practices ("BMPs") which control and abate the discharge of pollutants in storm water, and monitor storm water discharges in accordance with the SWPPP and terms of the General Permits. Both permits establish discharge limitations. Storm water discharges may not cause or contribute to exceedances of water quality standards, cause nuisance, or adversely impact human health or the environment. Construction General Permit, A.3, B.1, B.2; Industrial General Permit, A.2, C.1, C.2.

Compliance with the Construction and Industrial General Permits is achieved by implementing, maintaining and supplementing BMPs that manage storm water discharges. There

[2] For the convenience of the Court, copies of the Construction General Permit and the Industrial General Permit are attached as Exhibits A and B, respectively, to the Chancellor's Request for Judicial Notice, filed herewith.

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are no specific numeric effluent limitations required for compliance. The Construction General Permit specifically states that:

> "[i]t is not feasible at this time to establish numeric effluent limitations for pollutants in storm water discharges from construction activities. Instead, the provisions of this General Permit require implementation of Best Management Practices (BMPs) to control and abate the discharge of pollutants in storm water discharges."

Construction General Permit, at 2. The Fact Sheet for the Construction General Permit further provides: "[T]he effluent limitations contained in this General Permit are narrative and include the requirement to implement appropriate BMPs . . . The narrative effluent limitations constitute compliance with the requirements of the CWA." Fact Sheet For Water Quality Order 99-08-DWQ at 4-5.

Similarly, the Industrial General Permit states that implementation of BMPs constitutes compliance with the Permit:

> "it is not feasible at this time to establish numeric effluent limitations. . . Therefore, this General Permit allows the facility operator to implement best management practices (BMPs) to comply with the requirements of this General Permit."

Industrial General Permit at VIII, ¶ 4.

Pursuant to these standards, if turbidity or other materials carried in storm water from a regulated site exceed a benchmark, permittees must "reevaluate the effectiveness of their BMPs and develop, when appropriate, additional BMPs." Fact Sheet to Construction General Permit (Sampling and Analysis), at 2.12.1; *see also* Industrial General Permit, C.3 (facility operators will not be in violation so long as they implement appropriate BMPs and follow specified procedures). Thus, failure to evaluate and implement additional BMPs may constitute a violation of a General Permit, but exceedance of a benchmark does not.

III. ARGUMENT

A. Legal Standard

The Chancellor moves to dismiss CLUE's Complaint under Fed. R. Civ. Proc. 12(b)(1) for failure to establish subject matter jurisdiction under the Clean Water Act, and further moves to

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dismiss portions of the Complaint under Fed. R. Civ. Proc. 12(b)(6) pertaining to the Cogeneration Plant, the Humanities & Social Sciences facility, the McHenry Library and the Fleet Services facility on the grounds that the Complaint fails to state Clean Water Act claims.

In resolving a Motion to Dismiss under Fed. R. Civ. Proc. 12, the Court must determine whether the facts alleged in the Complaint, if true, entitle plaintiff to the requested remedy. Dismissal is proper when there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988). The Court must assume the truth of all well-pleaded factual allegations and construe them in the light most favorable to the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337 (9th Cir. 1996). However, "[l]egal conclusions need not be taken as true merely because they are cast in the form of factual allegations." *In re Silicon Graphics Inc. Sec. Litig.*, 970 F. Supp. 746, 751 (N.D. Cal. 1997) (citing *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)); *Robertson v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987). In fact, "conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim." *Epstein v. Washington Energy Co.*, 83 F.3d 1136, 1139-1140 (9th Cir. 1996) (dismissal affirmed because plaintiff's claim consisted of unwarranted inferences); Schwarzer *et al.*, *Cal. Practice Guide: Federal Civil Procedure Before Trial*, § 9:221 (2006).

Ordinarily, a court may only look at the face of a complaint to decide a motion to dismiss. *Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002). However, as set forth in the Chancellor's Request for Judicial Notice, the contents of documents referenced in the Complaint, as well as records and reports of administrative agencies, such as the State Water Resources Control Board, the Central Coast Regional Water Quality Control Board, and the Monterey Bay Unified Air Pollution Control District, and other information and documents that are not reasonably in dispute or otherwise properly subject to judicial notice may be considered in deciding a motion to dismiss. *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998). The Court may take judicial notice of such information and documents and need not accept as true

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allegations in the Complaint that contradict facts judicially noticed by the Court. *Mullis v. U.S. Bank Ct.*, 828 F.2d 1385, 1388 (9th Cir. 1987).

B. CLUE Has Failed to Allege Sufficient Facts Establishing Discharges to "Waters of the United States"

The federal Clean Water Act provides the statutory authority for the Construction General Permit and the Industrial General Permit, which are administered by the SWRCB and Regional Water Quality Control Boards for the regulation of storm water that may carry pollutants that impact the quality of "waters of the United States." 33 U.S.C. §§ 1251; 1362(7). Likewise, CLUE's citizen suit is predicated on the federal Clean Water Act and therefore is jurisdictionally dependant on the alleged discharge being to "water of the United States." 33 U.S.C. §§ 1362(7), 1365. CLUE has failed to allege facts sufficient to establish that storm water from the sites at issue at the UCSC campus discharge to "waters of the United States," subject to the Clean Water Act.

The definition and extent of "waters of the United States" has been a controversial and frequently litigated subject. In the past, the Ninth Circuit has interpreted the phrase broadly to include all traditionally navigable waters and all tributaries, including intermittent streams, drainage ditches, subsurface groundwater flows and other contrivances that show some hydrologic connection to navigable waters. *See, e.g., Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 526, 533-34 (9th Cir. 2001).

In response to rulings broadly interpreting jurisdiction, the United States Supreme Court made it clear five years ago that isolated waters that have no connection to traditional navigable waters are not "waters of the United States." *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159, 121 S.Ct. 675 (2001) ("*SWANCC*"). The Supreme Court recently provided further direction, issuing a highly anticipated ruling on the scope of "waters of the United States," *Rapanos v. United States*, 126 S.Ct. 2208, 2006 WL 1667087 (June 19, 2006) ("*Rapanos*").[3] Following *Rapanos*, there can be no question that the broad interpretations adopted by the Ninth Circuit and some other appellate courts are invalid.

[3] A copy of Supreme Court's recent opinion in *Rapanos* is attached for the convenience of the Court.

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The *Rapanos* case evaluated the United States Army Corps of Engineers' determination that certain wetlands were regulable as "waters of the United States."[4] The issue in *Rapanos*, as described by Justice Scalia, was "whether four Michigan wetlands, which lie near ditches or man-made drains that eventually empty into traditional navigable waters, constitute 'waters of the United States' within the meaning of the Act." *Id.* at 2219. A majority of the Court, including a four-Justice plurality opinion and a separate concurrence by Justice Kennedy, reversed and remanded the Sixth Circuit's holding that the wetlands were "waters of the United States."

The plurality opinion held that the phrase "waters of the United States" unambiguously excludes channels and drainages that only sometimes host ephemeral flows of water, even if they have a hydrologic connection to traditional navigable waters. *Rapanos*, at 2219-2221, 2224. Rather, "waters of the United States" means:

> only those relatively permanent, standing or continuously flowing bodies of water forming geographic features that are described in ordinary parlance as streams, oceans, rivers [and] lake. The phrase does not include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall.

Id. at 2225 (internal quotations and citations omitted). The plurality acknowledged that flows need not be "continuous" under all circumstances, such as drought. However, the plurality explained that "common sense and common usage" distinguish between a "seasonal river" that flows continuously for periods of months each year and is, therefore a "water of the United States," and the short-lived, fitful flows of a "wash," which is not a "water of the United States." *Id.* at 2221, n. 5.

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[4] *Rapanos* evaluated and rejected the definition of "waters of the United States" as utilized by the Army Corps of Engineers for wetlands regulations under the Clean Water Act. That definition of "waters of the United States" is identical to the definition employed by the EPA for purposes of the NPDES program. *Compare* 33 C.F.R. § 328.3(a); 40 C.F.R. § 122.2; *United States v. Adam Bros. Farming, Inc.*, 369 F.Supp.2d 1166, 1169, n.3 (C.D.Cal. 2003) (EPA and Corps interpretations of "waters of the United States" are "identical in all relevant respects"). There is no principled reason for applying a different definition for "waters of the United States" for one aspect of the Clean Water Act but not another. Accordingly, the Supreme Court's *Rapanos* analysis is equally applicable to the scope of "waters of the United States" as applied to this and other NPDES Clean Water Act cases. *See Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 526, 528 (9th Cir. 2001) (applying the Supreme Court's analysis of "waters of the United States" in *SWANCC*, a wetlands case, to scope of "waters of the United States" under the NPDES program); *Northern California River Watch v. City of Healdsburg*, 2004 WL 201502 *9 (N.D.Cal. 2004) (Alsup, J.) ("Since the Act authorizes both the NPDES regulations and the [wetlands] regulations, their jurisdictional scope should be the same. Therefore, it is proper to use the Corps' definition in this NPDES case.").

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Justice Kennedy filed a separate concurrence in which he too rejected the notion that the mere presence of a hydrologic connection to downstream navigable waters is sufficient to cause a wetland to be a "water of the United States" *Id.* at 2250. Rather, Justice Kennedy required a case-by-case analysis of whether there exists a "significant nexus" to a navigable water such that the upgradient drainages "are likely to play an important role in the integrity of an aquatic system comprising navigable waters as traditionally understood." *Id.* at 2248-2249. That is, in order to qualify as a "water of the United States," the upgradient drainage must "significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as navigable." *Id.* at 2248. If the effect on water quality is "speculative or insubstantial," the upgradient drainage is not a "water of the United States" regulated by the Clean Water Act, even under Justice Kennedy's formulation. *Id.*

Although CLUE's Complaint makes general allegations of storm water discharge to "Receiving Waters," the "San Lorenzo River," "Monterey Bay" and the "Pacific Ocean," among other water bodies, the specific allegations admit the absence of any hydrologic connection that is continuous or significantly affects "waters of the United States." Instead, the Complaint alleges that storm water runoff from the UCSC campus discharges to "campus storm drains, area groundwater, and area surface waters," that "the natural subsurface karst drainage allows the transfer of storm water between watersheds, and eventually discharges to area receiving waters via creeks, ponds or springs," and that "man-made storm drains, and multiple natural surface and subsurface watersheds drain the campus" Complaint, at ¶¶ 7, 35.

In point of fact, all of the UCSC sites at issue in the CLUE Complaint discharge to hillsides or sinkholes where storm water percolates into the soil and subsurface drainages; none discharges to a surface water, much less a jurisdictional "water of the United States."

Thus, CLUE's Complaint alleges facts wholly inconsistent with a jurisdictional hydrologic connection to "waters of the United States" under the *Rapanos* plurality opinion or Justice Kennedy's "significant nexus" formulation. In fact, the Complaint treats all alleged storm water drainage as equivalent, whether the discharge is to a storm drain, to groundwater, or to a hillside. In this manner, the Complaint is devoid of allegations that UCSC storm water drainages

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have permanent and continuous hydrologic connection to, or "significantly affect," navigable "waters of the United States." Instead, CLUE relies on the mistaken (and now impermissible) implication that the storm water drainage to any "Receiving Waters" constitutes a hydrologic connection to downgradient "waters of the United States" and, therefore, provides jurisdiction for a Clean Water Act citizen suit.[5] *See* Complaint at ¶ 35.

As stated above, *Rapanos* expressly rejected such a premise. Five Justices held that a seasonal drainage is not transformed into a "water of the United States" merely because it provides an intermittent or ephemeral hydrologic connection to traditional navigable waters. Under this holding, storm drains, swales, channels, and subsurface drainages on the UCSC campus identified in the Complaint do not qualify as "waters of the United States" simply by allowing the flow of seasonal rain water. Indeed, the plurality held that including "directional sheet flow" associated with storm runoff within the definition of "waters of the United States" strained the scope of the phrase "beyond parody." *Rapanos*, at 2220; *see also City of Shore Acres v. Waterworth*, 420 F.3d 440, 446 (5th Cir. 2005) (the existence of sheet flow to a "water of the United States" is insufficient to confer jurisdictional status to the upgradient "water").

Nor can CLUE establish jurisdiction through generalized assertions that alleged discharges to subsurface karst formations "eventually" reach downgradient "waters of the United States." *See Rice v. Harken Exploration Co.*, 250 F.3d 264, 270-272 (5th Cir. 2001) (even before *Rapanos*, holding that "discharges onto dry land, some of which eventually reaches groundwater and some of the latter of which still later may reach navigable waters" is not a discharge to "waters of the United States").

At most, CLUE's allegations (if assumed *arguendo* to be true) establish that storm water runoff at UCSC discharges to "channels that periodically provide drainage for rainfall," which is

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[5] CLUE's allegations stating or implying discharge to jurisdictional waters are devoid of factual basis. Storm water runoff from the Humanities & Social Sciences construction site discharges to landscaped areas remote from any channel or creek identified in the Complaint. Storm water from the McHenry Library construction site discharges to a natural landscaped area similarly isolated from any surface water that could qualify as a "water of the United States." Storm water from the Fleet Services facility drains to an oil/water separator before discharging to a hillside that drains to the storm water system on Glenn Coolidge Drive, remote from any jurisdictional water. There is no discharge to any surface water, let alone a surface water that meets the *Rapanos* criteria for "waters of the United States." *See* Fleet Services SWPPP, Request for Judicial Notice, Exhibit I, at 17.

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insufficient to confer federal Clean Water Act jurisdiction. *See Rapanos*, at 2224. Because CLUE has failed to allege facts supporting the essential and jurisdictional element of a discharge to "waters of the United States," CLUE's Clean Water Act citizen suit must be dismissed in its entirety.

C. Subject Matter Jurisdiction Is Lacking Because CLUE's Sixty-Day Notice Is Inadequate.

For the same reasons set forth above, CLUE's failure to differentiate between "receiving waters" and "waters of the United States" renders CLUE's sixty-day Notice inadequate as a matter of law under *Rapanos*.

The citizen suit provision of the Clean Water Act requires a plaintiff to give sixty days' notice of the alleged violations to EPA, the State and the alleged violator before filing a lawsuit. 33 U.S.C. § 1365(b). This notice provision is mandatory, and failure to give proper notice deprives the court of subject matter jurisdiction and requires dismissal. *Hallstrom v. Tillamook County*, 493 U.S. 20, 31-33, *reh'g denied*, 493 U.S. 1037 (1989); *Washington Trout v. McCain Foods, Inc.*, 45 F.3d 1351, 1352 (9th Cir. 1995) (applying *Hallstrom*, a RCRA case, to CWA citizen suit notices). In *Washington Trout*, the Ninth Circuit explicitly adopted a "strict construction" standard for such notices. *Id.*

As contemplated by Section 1365(b), citizen suit notices are further governed by an EPA regulation which prescribes the contents of a notice:

> Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.

40 C.F.R. § 135.3(a) (emphasis added).

As the Supreme Court has stated, "the purpose of notice to the alleged violator is to give it an opportunity to bring itself into complete compliance with the [Clean Water] Act and thus likewise render unnecessary a citizen suit." *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay*

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Foundation, Inc., 484 U.S. 49, 60 (1987). If the notice is not sufficiently precise, the recipient is denied the opportunity to address the alleged violation.

CLUE's Notice fails to provide the requisite specificity. The Notice identifies alleged "Receiving Waters" of storm water from the UCSC campus, including the San Lorenzo River and Monterey Bay. However, the Notice equates all features on the UCSC campus, including "campus storm drains," "area surface waters," and "area groundwater," as "Receiving Waters," and further claims that all "Receiving Waters" are "waters of the United States." Request for Judicial Notice, Exhibit C, at 2.

As explained above, the *Rapanos* decision establishes that features such as storm drains, "area surface waters," subsurface drainage and groundwater flows are not jurisdictional waters subject to the Clean Water Act. Therefore, by including virtually every movement of storm water on the UCSC campus as a discharge to a "Receiving Water," the Notice provides no identification of discernible locations where impermissible discharges to jurisdictional waters may have occurred. As best the Chancellor can tell, CLUE contends that any discharge of storm water at any location on the entirety of the UCSC campus constitutes a violation of the Clean Water Act.

This form of Notice was insufficient under *Hallstrom* and *Washington Trout*, and it is clearly impermissible following *Rapanos*. *See also, California Sportfishing Protection Alliance v. City of West Sacramento*, 905 F. Supp. 792, 799 (E.D. Cal. 1995) (a Notice is insufficient if it only "generally orients the agency or violator as to the type of violation" – rather, "the recipient must be able to determine. . . 'the activity alleged to constitute a violation, the location of the 'alleged violation,'. . . ."). Accordingly, the Court should dismiss the Complaint based on the insufficiency of CLUE's Notice of the nature, extent and location of discharges resulting in the alleged violations.

D. <u>The Cogeneration Plant Is Not Subject To The Industrial General Permit.</u>

The Court should also dismiss those portions of CLUE's Sixth, Seventh and Eighth Causes of Action related to the Cogeneration Plant because CLUE's allegations, when viewed together with judicially noticed facts, fail to establish that the Cogeneration Plant is subject to the Industrial General Permit.

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CLUE claims that the Chancellor has failed to obtain coverage under the Industrial General Permit for the Cogeneration Plant and has failed to operate the Cogeneration Plant in accordance with the requirements of the Industrial General Permit. Complaint, ¶¶ 62-72,123-150. However, the Industrial General Permit only applies to certain types of industrial operations. With respect to power facilities such as the Cogeneration Plant, Industrial General Permit coverage is limited to "Steam Generating Facilities," defined as any facility that "generates steam for electric power through combustion of coal, oil, wood, etc." Industrial General Permit at 43, Attachment 1 (Request for Judicial Notice, Exhibit B).

CLUE's Complaint does not allege that the Cogeneration Plant "generate[s] steam for electric power." Rather, the Complaint alleges only that "[i]nformation available to CLUE indicates" that the Cogeneration Plant operations include "maintenance at the heat plant, central heating system, central condensing system, and monitoring and operating the campus high voltage grid and building management systems." Complaint, ¶ 65.

CLUE's Complaint allegations could not be amended in good faith to cure this deficiency. The Cogeneration Plant does not "generate steam for electric power;" instead, it operates by internal combustion. *See* Request for Judicial Notice, Exhibit D. Without associated steam generation for electric power, operation of such power plants are not regulated under the Industrial General Permit. *See* Industrial General Permit at 43, Attachment 1 (Request for Judicial Notice, Exhibit B).

Thus, CLUE has not alleged and cannot allege the requisite facts establishing that the Cogeneration Plant is a Steam Generating Facility subject to the Industrial General Permit. Accordingly, the Court should dismiss CLUE's Sixth, Seventh and Eighth Causes of Action related as to the Cogeneration Plant.

E. <u>There are No Continuing Violations for Citizen Suit Jurisdiction</u>

There is no jurisdiction for CLUE's citizen suit claims in the Second, Third and Fourth Causes of Action, alleging violations of the Construction General Permit at the Humanities & Social Sciences facility and McHenry Library construction sites, because any alleged violations that may have occurred at those sites in the past -- which the Chancellor expressly denies -- have

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been remedied and are thus "wholly past." Accordingly, the Court should grant Defendant's Motion to Dismiss as to those claims.

The Clean Water Act does not confer jurisdiction on federal courts to adjudicate citizen suits for "wholly past violations." Instead, only violations that are continuing at the time the Complaint is filed provide jurisdiction for citizen suit claims. 33 U.S.C. § 1365; *Gwaltney of Smithfield, Ltd v. Chesapeake Bay Foundation*, 484 U.S. 49, 108 S.Ct. 376, 98 L.Ed.2d 306 (1987). At trial, a citizen suit plaintiff must prove ongoing violations either by (1) proving violations that continue on or after the date the complaint is filed, or (2) adducing evidence from which a reasonable trier of fact could find a continuing likelihood of a recurrence of intermittent or sporadic violations. *Sierra Club v. Union Oil Co. of California*, 853 F.2d 667, 671 (9th Cir. 1988). To survive a motion to dismiss, a citizen suit plaintiff must assert good faith allegations that such on-going violations exist. *Id.* CLUE's own Complaint allegations fail to meet this minimal standard.

CLUE claims that the Chancellor is in violation of the Construction General Permit at both the Humanities & Social Sciences facility and McHenry Library construction sites by "discharging pollutants to Receiving Waters" (Complaint, ¶ 57), by "not properly developing, implementing and/or maintaining BMPs" (Complaint, ¶ 59), by not developing adequate Storm Water Pollution Prevention Plans (Complaint, ¶ 60), and by failing to develop and implement adequate monitoring plans (Complaint, ¶ 61). Without specificity, or any distinction between construction sites, the Complaint makes the conclusory legal assertion that these violations are continuing. Complaint, ¶¶ 83, 87, 97. Such conclusory allegations are insufficient.

Moreover, judicially noticeable reports and correspondence with the Regional Water Quality Control Board for the Central Coast Region ("Regional Board") contradict CLUE's conclusory legal characterizations regarding ongoing violations.

During the extreme storms and record rainfall of the past winter season, the Regional Board inspected the Humanities & Social Sciences and McHenry Library construction sites. Although the Regional Board found substantial compliance with erosion control and storm water management requirements, it directed the University and Devcon to adopt, correct or modify

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certain measures at these sites through the issuance of a Notice of Violation on March 15, 2006 ("NOV"). *See* Request for Judicial Notice, Exhibit E.

The NOV described the Regional Board's observations during inspection of the sites on February 8, 2006 and March 3, 2006. With respect to the Humanities site, the NOV stated that "[o]verall, an effective combination of erosion and sediment controls had been implemented at the site. However, Water Board staff observed some areas of minor concern and some improper installation of Best Management Practices." NOV at 1. With respect to the McHenry Library site, the Regional Board observed the need for several corrective actions, but also noted improvements by the March 3 inspection, reporting: "[t]his site had many improvements from the previous inspection on February 8 but was still relying on sediment control to contain storm water runoff from active and non-active slopes." NOV at 2-3.

The University, together with Devcon, took immediate action to address all remaining measures identified by the Regional Board. On April 13, 2006, the University submitted a written summary of its corrective actions in response to the Regional Board's NOV. *See* Request for Judicial Notice, Exhibit F. At the Humanities & Social Sciences facility, the University and Devcon enhanced erosion control and storm water management, added protection to storm drain inlets and outlets and isolated construction materials to avoid potential contact with storm water, among other erosion control and storm water management measures. *Id.* at 1-2. In addition, the University and Devcon confirmed that a large detention vault installed during construction would remain in place to provide continued storm water management post-construction. *Id.* Similarly, the University and Devcon enhanced erosion control measures at the McHenry Library site by covering all exposed slopes with plastic sheeting during storm events and by installing fiber rolls, silt protection at storm drain inlets and outlets, and replacing sand bags with gravel bags. *Id.* at 2. The University and Devcon also amended the SWPPPs for both the Humanities & Social Sciences facility and the McHenry Library site, and conducted supplemental training of personnel responsible for storm water management and permit compliance. *Id.* at 3-4.

In response to these efforts by the University and Devcon, the Regional Board concluded, and confirmed in writing on May 26, 2006, that the corrective action taken and documented as of

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April 13, 2006, fully resolved the issues raised in the NOV and that no further action was necessary to achieve storm water compliance at these sites. See Request for Judicial Notice, Exhibit G.

Accordingly, CLUE's conclusory legal allegations of ongoing violations are superseded by the Regional Board's acknowledgement that storm water issues raised in the NOV were fully resolved by corrective actions taken by the University and Devcon as of April 13, 2006, and no alleged violations were continuing at either the Humanities & Social Sciences site or the McHenry Library site.

Thus, even if the Court were to assume the truth of CLUE's factual allegations, such "facts" would at most prove that past violations had occurred. However, when contradicted by official, written confirmation of resolution by the principal oversight agency, such allegations do not and cannot support a good faith claim for ongoing violations. Under *Gwaltney*, the Court lacks jurisdiction to adjudicate CLUE's claims for wholly past violations.

The Court should dismiss the Second, Third and Fourth causes of action regarding General Permit compliance at the Humanities & Social Sciences and McHenry Library construction sites.

F. CLUE Fails To State Cognizable Claims Regarding Fleet Services.

The Court should also dismiss those portions of CLUE's Sixth, Seventh and Eighth Causes of Action related to the Fleet Services facility, UCSC's campus motor pool. CLUE acknowledges that the Chancellor has obtained coverage under the Industrial General Permit and has submitted a SWPPP, implemented BMPs, conducted monitoring and submitted annual reports to the Regional Board for Fleet Services, but nonetheless makes general allegations that these storm water management measures and reports are inadequate. Complaint, ¶¶ 62-70, 124. According to CLUE's sixty-day notice letter, the gravamen of CLUE's claims is that the Chancellor's staff allegedly conduct painting and vehicle maintenance outdoors at Fleet Services, exposing storm water to pollutants. *See* Request for Judicial Notice, Exhibit C, at 10.

CLUE's assertions have no factual basis. Contrary to CLUE's claims, for example, all vehicle painting other than minor "touch-ups" is conducted off campus at a commercial vehicle

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paint shop. The campus Paint Shop is adjacent to but separate from the Fleet Services facility (or "Garage") and performs non-vehicle painting activities. Request for Judicial Notice, Exhibit H. It is not covered by the SWPPP for the Fleet Services facility. *See* Request for Judicial Notice, Exhibit I. Wastewater from the area designated for paint cleanup activities at the Paint Shop drains to the sanitary sewer, pursuant to a permit issued by the City of Santa Cruz, not to a storm drain. Such discharges to a sanitary sewer are not within the coverage of the Industrial General Permit (Fact Sheet For Water Quality Order 97-03-DWQ at VI, Request for Judicial Notice, Exhibit B), nor are they at issue in CLUE's Clean Water Act citizen suit Notice or Complaint. *See* Request for Judicial Notice, Exhibit C. CLUE's claims regarding alleged discharges from alleged painting activities at the Fleet Services facility are without factual support and fail as a matter of law.

Furthermore, the SWPPP and BMPs for the Fleet Services facility are more than adequate for storm water management under the Industrial General Permit and include water quality protection by a state of the art oil/water/floating material separator before discharge to a hillside that drains as sheet flow to Glenn Coolidge Drive. *See* Fleet Services SWPPP, Request for Judicial Notice, Exhibit I, at 17. Storm drains along Glenn Coolidge Drive downgradient from Fleet Services are connected to the City's storm water system.

Even before *Rapanos*, courts have upheld a finding that overland sheet flow provides an insufficient hydrologic nexus for Clean Water Act jurisdiction. *City of Shoreacres, et al., v. U.S. Army Corps of Engineers*, 420 F.3d at 446. Such drainage is clearly insufficient following *Rapanos*.

Therefore, based on CLUE's Complaint allegations and judicially noticeable facts, there is insufficient hydrologic connection to waters of the United States to provide jurisdiction for the Clean Water Act claims relating to Fleet Services, and CLUE's allegations concerning painting activities and inadequate compliance measures and documentation are without factual merit. For these reasons, CLUE's claims regarding alleged violations of the Industrial General Permit at Fleet Services should be dismissed.

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IV. CONCLUSION

For the foregoing reasons, the Chancellor's Motion to Dismiss the Complaint should be granted.

Respectfully submitted,

DATED: August 4, 2006

FARELLA BRAUN & MARTEL LLP

By: /s/
Christopher Locke

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COALITION TO LIMIT
UNIVERSITY EXPANSION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COALITION TO LIMIT UNIVERSITY EXPANSION, an unincorporated association,

Plaintiff,

v.

GEORGE BLUMENTHAL, Acting Chancellor, University of California, Santa Cruz, in his official capacity; and DEVCON CONSTRUCTION, INC. a California corporation,

Defendants.

Civil Case No. C 06-2753 CRB

DECLARATION OF DR. RICHARD R. HORNER IN OPPOSITION TO UNIVERSITY OF CALIFORNIA, SANTA CRUZ MOTION TO DISMISS AND DEVCON'S JOINDER IN CO-DEFENDANT BLUMENTHAL'S MOTION TO DISMISS COMPLAINT

Date: September 15, 2006
Time: 10:00 a.m.
Courtroom: 8, 19th Floor
Judge: Hon. Charles R. Breyer

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I, Richard R. Horner, declare and say:

1. My name is Richard R. Horner and my address is 230 NW 55th Street, Seattle, Washington 98107. The facts stated herein are based on my own personal knowledge, and, if called upon as a witness, I could and would testify competently thereto.

I. PROFESSIONAL BACKGROUND

2. I have 40 years of professional experience, 37 teaching at the college and university level. For the last 29 years I have specialized in research, teaching, and consulting in the area of urban storm water runoff and surface water management. I was graduated with the Ph.D. in Civil and Environmental Engineering by the University of Washington in 1978, following two Mechanical Engineering degrees from the University of Pennsylvania. For 12 years beginning in 1981 I was a full-time research professor in the University of Washington's Department of Civil and Environmental Engineering. I now serve half time in that position and have adjunct appointments in two additional departments. While my research and teaching continue at a somewhat reduced level, I spend the remainder of my time in private consulting through a sole proprietorship. A true and correct copy of my *curriculum vitae* is attached hereto as Exhibit A.

3. My research, teaching, and consulting embrace all aspects of stormwater management, including determination of pollutant sources; their transport and fate in the environment; physical, chemical, and ecological impacts; and solutions to these problems through better structural and non-structural management practices. One substantial area within the stormwater management field involving all of these considerations is the understanding of aquatic resource problems caused by runoff from sites of soil disturbance, such as construction projects, and how best to avoid or minimize these problems. Another area in which I have considerable experience is the capability of stormwater management best management practices ("BMPs"), both conventional and more recent "low-impact development" types, installed to control the quantity and quality of runoff from urban areas.

4. I have conducted numerous research investigations and consulting projects on these subjects. Serving as a principal or co-principal investigator on more than 40 research studies, my work has produced two books, approximately 30 papers in the peer-reviewed literature, and over 20 reviewed papers in conference proceedings. I have also authored or co-authored more than 75

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scientific or technical reports. In addition to graduate and undergraduate teaching, I have taught many continuing education short courses to professionals in practice. My consulting clients include federal, state, and local government agencies; citizens' environmental groups; and private firms that work for these entities, primarily in Washington, California, British Columbia, and Oregon but in some instances elsewhere in the nation.

5. I have been active in the area of construction site stormwater management for approximately 20 years. During that time I have: (1) performed research on the performance of certain BMPs intended to prevent soil erosion or interdict sediment transport, (2) functioned as an independent mediator on a sensitive road construction project, (3) served on a technical advisory committee for a very large research project of this type, (4) taught numerous courses on the subject, and (5) inspected many construction sites myself.

6. My research relating to the performance of BMPs pertained to the effectiveness of soil-covering mulches and blankets in preventing erosion, and of silt fences and sedimentation ponds in stopping the transport of sediments entrained in runoff beyond the construction site.

7. As the independent mediator for a sensitive road construction project, my responsibility was to reconcile and make judgments and recommendations based on the information coming from the contractor, the sponsoring city road agency, the city's environmental inspectors, independent consultants, and my own observations.

8. As a member of the technical advisory committee for the very large road construction research project, I had an oversight role on behalf of the plaintiffs for a federal court-ordered study sponsored by the California Department of Transportation ("Caltrans") as defendant. This study measured the effectiveness of 16 mulches and blankets and certain soil preparation techniques.

9. The courses I have taught consist of continuing education courses on construction site pollution control, ranging from a half day to six days in length, on more than 30 separate occasions, to consultants, regulators, and contractors. Presently, I am teaching an on-line course on environmental regulations in the graduate-level construction engineering program at the University of Washington.

10. I have very substantial familiarity and experience with California and its environment and the status of stormwater management in the State. My involvement began in 1993, when I

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reviewed fulfillment of the stormwater National Pollutant Discharge Elimination System permit requirements, including construction site requirements, by many of the Los Angeles County co-permittees and Caltrans. Documented non-compliance led to four lawsuits concluded with settlement agreements (Los Angeles County and three cities) and one lawsuit prosecuted in federal court that led to a permanent injunction (Caltrans). In each case, and later under a consent decree in a separate Caltrans case in San Diego, I was appointed by the overseeing federal court judges to represent the plaintiffs in monitoring implementation of the orders. I worked with Los Angeles County's consultants to develop the county's broad-based stormwater program, prominently featuring construction site management. Annually, for eleven successive years, I have visited Caltrans' construction sites to inspect their compliance with injunction and consent decree terms.

11. In addition, I have evaluated the stormwater programs in Orange, Riverside, San Bernardino, Santa Barbara, San Luis Obispo, and Monterey Counties and been involved in extensive discussions with Orange County leading to upgrading its program. At the recommendation of San Diego Baykeeper, I have been a consultant on stormwater issues to the City of San Diego, the San Diego Unified Port District, and the San Diego County Airport Authority.

II. IMPACTS OF STORMWATER RUNOFF FROM DEVELOPED AREAS ON AQUATIC RESOURCES

12. Pollution carried by stormwater during rain events has been identified as the largest source of contamination to surface waters in California and the Nation. The U.S. Environmental Protection Agency and the State Water Resources Control Board have designated over 679 surface water bodies in the State of California as impaired under section 303(d) of the Clean Water Act; i.e., of not meeting State water quality standards and unable to support beneficial uses such as fish habitat and water contact recreation. For the overwhelming majority of water bodies listed as impaired, storm water runoff is cited as the primary source of the pollutants causing the impairment.

13. Stormwater runoff negatively affects aquatic resources through alterations of both water quantity and water quality. Surfaces hardened and otherwise modified during development generate more surface runoff, where once much of the rainfall stayed on or in vegetation and organic litter dropped from plants on the ground, infiltrated the soil, or evaporated. Increased surface runoff raises

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the volume of water flowing in streams and the rate at which it flows. Flowing water performs work on stream channels, eroding them, increasing sediment transport, removing bank vegetation, and disturbing aquatic life habitats. Activities on developed land add many pollutants to the flow, with a wide array of negative effects on aquatic life and humans who use or come in contact with contaminated water.

14. Stormwater runoff negatively affects aquatic resources during the construction of developments, as well as throughout their entire period of occupancy and use after construction. Measurements have demonstrated that a construction site without effective erosion prevention and sediment control can discharge hundreds to several thousand times as much sediment loading over an equivalent period as the same site in undisturbed condition, or even the same site once it is restabilized, occupied, and functioning as a finished urban area. Therefore, one year of poorly managed construction can create a sediment burden on the aquatic environment equal to that from the undeveloped or finally stabilized site over many centuries. Sediments themselves negatively impact water resources and aquatic life in many ways, such as filling fish spawning gravels and rearing pools, abrading fish gills and other sensitive tissues, reducing light necessary for photosynthesis in water and vision for fish to conduct their life functions, transporting many other pollutants, and clogging structures relied upon by human users of the resource. Attempts at sustaining the health of aquatic ecosystems are futile if the construction sites in their watersheds are not managed correctly.

15. A videotape titled "Keeping Soil on Construction Sites: Best Management Practices," cooperatively produced by the Ohio Department of Natural Resources and the Ohio Homebuilders Association, notes that unprotected soil routinely loses through erosion about one-quarter inch in a year, which amounts to 33 cubic yards per acre (roughly 75 tons/acre), or two very large truck loads. Steeper areas or more erosive soils may lose up to 3 inches a year, about 400 cubic yards per acre (approximately 900 tons/acre). These large eroded soil quantities carry with them phosphorus and nitrogen native to the soil and the vegetation it supported. These nutrients cause excessive growths of undesirable algae that have their own list of environmental impacts. Among others, they are poorer food for aquatic organisms than the algae they replaced and reduce dissolved oxygen when they die and decay.

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16. Construction sites deliver many pollutants besides sediment to receiving waters through poorly controlled construction materials, processes, vehicle operations, and waste products. Depending on the nature of the construction, these contaminants can include toxic petroleum products, solvents, heavy metals, pesticides, and paints; concrete and stucco, which disrupt the acid-base balance in waters; and fertilizers, which add to the nutrient burden.

17. Industrial pollutant sources represent a special category of permanent stormwater management governed by a general permit. Relevant to this case, vehicle service facilities are included in this category. Such facilities have the potential to emit numerous pollutants originating from the vehicles themselves, materials and processes associated with their servicing, and wastes produced in these activities. A common pollution source in these facilities is gasoline or Diesel spillage during fueling. Vehicles parked outside, especially large trucks and buses, often leak oil and other fluids. Performing servicing outside further exposes the environment to these fluids, as well as metallic fragments from part wear (e.g., copper in brake linings). Improperly stored and handled materials and wastes can spill or leak and enter drainage systems.

III. HYDROGEOPHYSICAL SETTING OF THE UNIVERSITY OF CALIFORNIA AT SANTA CRUZ

18. I visited the campus of the University of California at Santa Cruz ("UCSC") on August 17, 2006 to observe the flow paths and patterns of runoff generated by rainfall events in relation to the university's built environment, with specific interest in the area covered by its general industrial stormwater permit (Fleet Services) and its active construction projects.

19. I was guided in planning my campus reconnaissance by watershed delineations and descriptions provided by the Draft Environmental Impact Report for the 2005-2020 Long Range Development Plan ("DEIR"). A true and correct copy of relevant excerpts of the DEIR are attached hereto as Exhibit B. Exhibit B includes the specific excerpt from the DEIR that assisted my planning (Section 4.8.1.3, Campus Surface Water Resources, and Figures 4.8-1 and 2).

20. Stormwater runoff generated on the campus drains through and off the campus via four major watersheds and several smaller catchments. The two largest watersheds with substantial campus activity are Moore Creek and Jordan Gulch. Some built portions also flow into the San Lorenzo River-

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Pogonip Creek system via a number of gullies. Cave Gulch/Wilder Creek is a fourth large drainage but is currently little affected by the built environment. Each major watershed consists of several subwatersheds that converge into a main stem. All of these hydrologic systems exist in karst geology, in which some or even all surface runoff enters the subterranean zone via passages through solution cavities in the marble geologic material, which generically are called sinkholes.

IV. CONDITION OF UCSC WATERSHEDS

21. The Stormwater & Drainage Master Plan ("SDMP") drafted by Balance Hydrologic, Inc. and Kennedy/Jenks Consultants (2004) examined the campus watersheds, reported conditions existing in them, analyzed causes and implications of these conditions, and drew conclusions and made recommendations accordingly. The DEIR also summarizes key points from the SDMP.

22. The SDMP starkly describes a series of severe environmental problems existing in the three watersheds most influenced by the developed campus. A true and correct copy of relevant excerpts of the SDMP are attached hereto as Exhibit C (detailing the severe environmental problems on the campus) and Exhibit D (the second and third page of the Executive Summary ("ES")). The problems and their identified causes are similar in the three large watersheds most affected by campus development. The catalogue of problems includes active knickpoints (abrupt changes in the longitudinal profile of channels as a step or ramp propagating upstream over time), dramatic channel incision (down-cutting) and widening, slope failures, and highly sedimented sinkholes. *See* Exhibit C, p. 21-49.

23. In attributing the causes of these problems, the SDMP authors repeatedly cited hydrographic modification as a result of campus development, by which they mean increased peak flow rates and volumes generated by stormwater runoff from impervious and otherwise modified land surfaces. *See* Exhibit C, p. 21-49. Higher peak flow rates increase the shear stress on channels, and greater volumes extend elevated shear stress over longer periods, causing channel banks and beds to erode and release sediments that subsequently deposit in and clog sinkholes or pass downstream to receiving waters.

23. The advanced nature of these problems, their consequences, and what must be done to alleviate them are abundantly illustrated by the SDMP's statement that:

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> Accelerated drainage and erosion problems need to be addressed now to ensure continued protection of the campus' natural landscape. Channel incision is occurring so rapidly that even small storm events such as occur every winter ... have induced up to 18 inches of channel incision in vulnerable segments. The ecological integrity of campus watersheds will be irrevocable altered if such rates continue.

Exhibit D, at ES-2.

Although UCSC's own consultants made this unconditional pronouncement approximately two years ago, the university has made no move to heed its call. As my testimony to follow demonstrates, UCSC has continued the same poor practices that led to the virtual crisis situation described in the SDMP.

24. Considering this host of problems, the authors drew several conclusions in no uncertain terms. Most pertinently, they observed that channel erosion is so severe that it is a limiting factor to stormwater conveyance and hence further development. Exhibit D, at ES-2. Furthermore, sedimentation of sinkholes is limiting their capacity to continue delivering runoff to the subsurface karst system, also a limiting factor to future development. *Id.* In fact, four important sinkholes are at or already exceeding their capacity for inflow. *Id.* at 3. Spillover of runoff that once went into sinkholes is creating increased discharges downstream, with the attendant channel erosion, vegetation destruction, and sediment transport in new locations. *Id.* at 2. The authors' opinion is that existing detention systems and erosion control measures have not been effective in stemming these problems. *Id.* at 3. The report recommends curtailing development entirely or requiring zero net runoff increase in the East Fork of Moore Creek catchment, including the Baskin, Science Hill, and Kresge subwatersheds, because of the exceptionally severe problems there. *Id.* at 3.

25. It is my opinion that current construction and the design of stormwater management facilities for recent campus developments largely retain the poor practices described in the SDMP. It is my further opinion that, unless both construction and permanent stormwater management practices improve very significantly, continuing campus expansion will exacerbate the already recognized, serious problems.

V. OBSERVATIONS OF WATER AND POLLUTANT GENERATION AND MOVEMENT IN CERTAIN DEVELOPED AREAS OF THE USCS CAMPUS

A. Moore Creek Watershed

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26. During my field tour on August 17, 2006 I took particular interest in the East Fork of Moore Creek, the severe problems of which were highlighted in the SDMP. I observed the drainage pattern from the Physical Sciences Building. In a notice of violation ("NOV") issued on March 15, 2006, the Central Coast Regional Water Quality Control Board ("RWQCB") expressed concern with post-construction erosion and sediment control from a slope on the southwest portion of the site and into the Science Hill tributary. This site was also the subject of a 2005 NOV during construction, citing a poorly covered dirt stockpile, a silt fence needing replacement, cement bags not properly stored, fiber rolls not properly installed, and a clogged construction exit rock pad.

27. I found this slope in question now to have approximately 70 percent vegetative cover on one portion and mulch on another. The RWQCB concerns have thus been somewhat alleviated, but lack of full, permanent stabilization still presents erosion and sediment transport potential. Heavy winter rains could still erode soil and entrain mulch and deliver sediment into the downstream sinkhole, to which I traced the flow. Therefore, the Physical Sciences Building is still a potential source of sediments to an important sinkhole in the degraded East Fork Moore Creek reach.

28. In the same sinkhole I saw a corrugated metal pipe that carries runoff from a drain inlet in the laboratory loading dock area. This area is used to deliver laboratory supplies and take away waste. I observed two dumpsters in the drainage path to the inlet. These dumpsters are poorly located. Even if dumping hazardous or otherwise toxic waste there is officially prohibited, individuals may still do so and could spill the waste in such a way that it would enter the drain inlet. It could do so notwithstanding the presence of an inlet cover to be used in the event of a spill, which a violating individual may not choose to use. Therefore, the loading dock is a potential source of toxic pollutants to the sinkhole and the East Fork of Moore Creek.

29. I saw where the East and Middle Forks drain into the East Dam, behind which is a sinkhole. I observed the West Fork of Moore Creek upstream of where it enters West Dam, at a point where an incised channel approximately 10 ft deep has cut through an unused dirt road. It is quite apparent from this incision that the West Fork flows through that area at times. There is a pipe in place to drain the West Dam into the Arboretum Dam. The East Dam has no pipe but would ultimately drain to the Arboretum Dam too, when it overflows. The Arboretum Dam, in turn, discharges via a culvert

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into a depression adjacent to Empire Grade road and then through another culvert under the road and into the main stem of Moore Creek off UCSC property.

30. On the opposite side of Empire Grade, Moore Creek was flowing on August 17, in the driest period of the year. I followed the creek at available access points from there to the Pacific Ocean. I visited Antonelli Pond, into which Moore Creek flows, and observed flow just downstream from its outlet culvert under the adjacent street. I saw the channel as it enters the lagoon in Natural Bridges State Park. The lagoon held water. It was not flowing into the ocean on that day, but it was apparent to me that high flows would easily pass over or through the natural sand berm on the beach. Therefore, stormwater flow and pollutants generated on the UCSC campus have surface connectivity to Moore Creek, Antonelli Pond, the state park lagoon, and the Pacific Ocean. Of course, the sinkholes and subsurface karst system are also exposed to this stormwater and its contaminants.

B. Jordan Gulch

31. The Humanities Building sits at a drainage divide with the majority of the area draining to the Jordan Gulch watershed and the remainder into the San Lorenzo-Pogonip system (please see the discussion under that heading).

32. The plaintiffs in this action took samples of construction site runoff at two places on December 1, 2005, "East and West Humanities" and one on December 30, 2005 "Humanities West" in the Jordan Gulch portion of the Humanities site. A true and correct copy of the laboratory analysis results are attached hereto as Exhibit E. These samples were elevated in total suspended solids ("TSS"), a measure of sediments entrained in the flow and other pollutants. East Humanities had the highest TSS measured in any sample on the two dates (960 mg/L). The two West Humanities samples registered 370 and 150 mg/L. All of these results indicate a construction site with poor erosion and sediment control.

33. The RWQCB included the Humanities site in the 2006 NOV and noted eight problems needing action. These problems involved bare slopes subject to flow passing over them, poor sediment controls, and general site housekeeping. The same problems existed on August 17, 2006. I saw a completely bare steep slope and dirt in the roads around the site. These conditions would violate the

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construction stormwater permit without question during the wet season and indicate the continuing lack of care with preventing the generation and transport of sediments at UCSC construction sites.

34. The Jordan Gulch portion of the Humanities site, including the bare steep slope, drains into campus roads that discharge to a canyon, near the head of which is a large sinkhole (there is also a small sinkhole immediately adjacent to the building). These sinkholes are in the direct path of runoff from the construction site, and the sediments it carries.

35. The McHenry Library addition is another construction site in the Jordan Gulch watershed. The plaintiffs sampled its runoff on December 30, 2005 and found TSS at 220 mg/L, an elevated value also indicating lack of good erosion and sediment control.

36. The RWQCB cited the McHenry Library site in its March 2006 NOV as well, noting 12 diverse problems. Serious problems on this list included fundamental deficiencies in the stormwater pollution prevention plan to guide erosion control, sediment control, non-stormwater control, and waste disposal; slopes without temporary erosion control; and no washout areas for concrete and paint.

37. The McHenry Library construction site drains mainly into a sinkhole immediately below it. Runoff goes both through a very small sediment trap and as sheet flow through a silt fence at the base of the slope facing the sinkhole. On August 17, 2006 that slope, extending the full width of the construction site, was bare. From my experience, the silt fence alone would not be enough protection to prevent release of sediments, especially relatively fine ones. The lack of temporary erosion control would violate the permit, at least during the wet season, and shows continuing lack of the best care here, just as at the Humanities Building.

38. Tributaries from the Humanities Building, McHenry Library, and other developed locations converge and lead to a final sinkhole near Glenn Coolidge Road. There is currently no evidence of a channel issuing from that sinkhole and conveying surface flow off the campus. However, the high peak flows and volumes and the sediments created by the development severely affect the system of channels and sinkholes leading to this point, with the consequences documented in the SDMP.

39. There is one part of the campus within the Jordan Gulch watershed that does convey surface flow off campus. The general Fleet Services area is at a drainage divide between Jordan Gulch

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and the San Lorenzo-Pogonip watershed. The existing buildings and activities around them drain toward the Jordan Gulch side, and the truck parking area (and adjacent active Emergency Response Center construction site) flow toward the San Lorenzo (please refer to that section for a discussion of the latter drainage).

40. The Fleet Services area within the Jordan Gulch watershed is the location for all service on university vehicles. There is an uncovered fueling area fully exposed to rainfall and runoff. Whereas maintenance of relatively small vehicles occurs inside, larger vehicles cannot fit in the garage and are maintained outside, a substandard practice that creates the opportunity for substantial exposure of petroleum and metal contaminants to rainfall and runoff. An outdoor painting area is another pollutant source.

41. UCSC claims in its motion to dismiss that the Fleet Services area has "state of the art oil/water/floating material separator." *See* UCSC's Motion to Dismiss CLUE's Complaint and supporting Memorandum of Points and Authorities, p. 16:14. The phrasing suggests a single separator but is not completely clear in this regard. Under its permit the university's SWPPP must include all BMPs. The only devices recorded in the SWPPP that could in any way fit this description are two similarly constructed "containment vaults" (numbers 1 and 2). These vaults amount to what are generally termed in the stormwater management field spill-control oil/water separators. Such a device is in no way state of the art. In fact, it is the most elementary kind of separator, consisting of a manhole-covered chamber with a turned-down elbow to allow water to discharge while lighter oil floats above the exit point. It is capable only of detaining oil, generally resulting from a spill, for a short time until it can be removed. Unlike more advanced baffled and coalescing plate separators, the spill-control separator has limited ability to effect actual separation of oil thoroughly mixed with water. Also, unless floating oil is removed soon after entering, and UCSC's SWPPP does not require frequent removal of oil, subsequent flow will likely lead to discharge anyway in later storms.

42. The Jordan Gulch portion of Fleet Services has several drain inlets from which flow collects at a point and is discharged down the slope over Glenn Coolidge Road. Drain inlets along the road enter the municipal storm sewer system. Therefore, that part of Fleet Services can and probably does contribute to the municipal system during storm events.

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C. **San Lorenzo-Pogonip Watershed**

43. I observed that the northern portion of the Humanities construction site flows into a steep, deep canyon leading toward the San Lorenzo River. This canyon was identified by the SDMP as Gully G, which was characterized as being deeply incised with numerous channel bank failures caused by stormwater runoff from impervious surfaces. The San Lorenzo River is on the 303(d) list under the Clean Water Act as impaired by sediments, nitrogen, and pathogens. The sample collected there on December 1, 2005 had elevated values of 190 mg TSS/L and 2.2 mg/L Kjeldahl nitrogen, the latter tied with one other sample as the highest value recorded among all samples taken in December 2005.

44. The trash truck parking area near Fleet Services and the adjacent new Emergency Response Center now under construction drain onto a slope over karst within the San Lorenzo watershed. On August 17, 2006 the construction site was poorly controlled, especially in an area with several soil stockpiles. The stockpiles had incomplete and torn covers extensively exposing them to wind erosion, even without rain. The site gives every sign that the University, and Devcon, has not taken the lessons from NOVs at other recent construction sites and exercised due care in preventing the mobilization of sediments from its construction sites.

45. I observed one other sediment source in the San Lorenzo-Pogonip watershed, the remote staging and soil stockpiling area serving the major campus construction sites. Stockpiles were uncovered and I saw dirt extending from the vehicle exit point out into the adjacent parking lot. The plaintiffs collected storm water samples at this location on five occasions during the 2005-2006 winter. Two readings were very elevated in TSS, at 800 and 890 mg/L; and the remainder also registered high values of 280, 150, and 100 mg/L. I traced the drainage from this lot to a sinkhole. Therefore, this construction-related staging area is a further contributor of sediment to the karst environment.

VI. CONCLUSIONS

46. The developed UCSC campus has a record thoroughly documented in the SDMP of producing elevated stormwater runoff quantities that have greatly altered flow channels in the Moore Creek, Jordan Gulch, and San Lorenzo-Pogonip watersheds through erosive processes. Also documented is transport of sediments, originating largely with that erosion, to sinkholes leading into the subsurface karst. Some sinkholes have lost some or even much of their capacity to admit water,

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passing it on downstream to do more damage. Neither the SDMP or I have observed effective measures to reverse this trend. I have seen construction practices on campus that, quite the contrary, advance it by adding to the sediment loading. I believe that, without the institution of effective construction and permanent stormwater management practices, the complex of channel erosion problems seen now will worsen where it exists now and will extend downstream as assimilative capacity continues to drop in the upper karst system.

47. Not only is UCSC degrading its own environment, but it also connects on the surface to off-site aquatic resources in certain ways. The campus watershed in poorest condition, Moore Creek, is piped into the main stem of that creek, which flows through a city green belt, state park, and coastal lagoon into the Pacific Ocean. Some parts of the built campus, including a current construction project with substandard practices, drain into eroding gullies and from there to Pogonip Creek and water quality-impaired San Lorenzo River. Much of the Fleet Services has access to the municipal storm sewer system. Beyond these surface connections are those beneath the ground via the karst, described in the Declaration of Dr. Jack Wittman.

I declare the foregoing under penalty of perjury.

DATED this 25th day of August 2006 at Seattle, WA.

/s/ Richard R. Horner
Richard R. Horner, Ph.D.

I hereby attest that I have on file all holograph signatures for any signatures indicated by a "conformed" signature (/S/) within this efiled document.

/s/ Daniel Cooper
Daniel Cooper
Lawyers for Clean Water, Inc.
Attorney for CLUE

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Jack Wittman

SUMMARY OF QUALIFICATIONS

Groundwater Flow Modeling

Watershed Modeling

Groundwater / Surface Water Interaction

Contaminant Transport Modeling

Groundwater Quality

Aquifer Yield Investigation

Water Supply Protection and Planning

Dr. Jack Wittman is a nationally recognized groundwater scientist and modeler. Dr. Wittman has modeled groundwater flow, surface – groundwater interactions, surface water flows, and contaminant transport with most of the tools that exist in the commercial and research domains. His primary technical skill is in the area of modeling the interaction of surface water and groundwater and evaluating the risks of contamination to downstream water users. Over the past decade Dr. Wittman has published research reports, technical guidance documents, and journal articles. Dr. Wittman has advised Federal, State, Tribal, and local governments, as well as consulting to the largest water utilities in the world. He has been asked to explain contamination risks to utility regulators and managers. Most recently Dr. Wittman has been working to guide the use of environmental process modeling in regulatory and natural resource damage assessments.

Dr. Wittman is a regular consultant to the Electric Power Research Institute and was part of a team that developed new modeling codes for the U.S. Environmental Protection Agency. Dr. Wittman developed new insights into contaminant risk by using numerical experiments (one, two, and three-dimensional flow and transport models) to test the sensitivity of a solute pulse release to variation in release characteristics. These new tools and metrics have been used to define the risk of contamination from environmental releases based on the chemical and toxicological characteristics of the contaminant.

Jack is registered as a Certified Ground Water Professional (CGWP) by the National Groundwater Association (NGWA) and has been appointed by the Indiana governor to the State TMDL guidance committee and he is currently a member of the NGWA's certification committee. Jack is on the ASTM Committee D18 on Soil and Rock, the AWWA Research Foundation technical review committee, and is a member of the American Water Works Association's Water Utility Council. Dr. Wittman has helped hundreds of community water supply systems evaluate and protect their source of supply.

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EDUCATION

2000 Ph.D. Environmental Science, SPEA-Indiana University, Bloomington, IN
1987 M.S. Watershed Science, Utah State University, Logan, UT
1978 B.S. Environmental Studies, Utah State University, Logan, UT

PROFESSIONAL HISTORY

1994 – present President, Wittman Hydro Planning Associates, Bloomington, IN
1995 – 1998 Senior Research Scientist, Center for Urban Policy, Indianapolis, IN
1990 – 1995 Research Hydrologist, Indiana University, Bloomington, IN
1988 – 1990 Consulting Hydrologist, Yakima, WA
1986 – 1988 Tech. Program Mgr., Yakama Indian Nation, Toppenish, WA
1985 – 1986 Associate Director, High Level Nuclear Waste Office, Salt Lake City, UT
1984 – 1985 Mine Reclamation Hydrologist, Div Oil Gas and Mining, Salt Lake City, UT

SELECTED PUBLICATIONS

Articles

Wilsnack, M., V. Kelson, and J. Wittman. 2005. An Application of the Analytic Element Method in Modeling Florida Everglades Hydrology. Journal of American Water Resources Association, Volume 41, No.1, pp. 67 – 76, Feb. 2005.

Lindsey, G., J. Wittman, and M. Rummel. Using indices in environmental planning: Evaluating policies for wellfield protection. Journal of Environmental Planning and Management, 40(6) 685-703, 1997.

Wittman, J., Haitjema, H.M. and L. Studebaker. Recycling input data during analytic element modeling near Indianapolis, Indiana. Journal of the American Water Resources Association. 33(1) 47-54, 1997.

Technical Reports

"A Tool for Assessing Contamination Risk in Wellhead Protection Areas". J. Wittman and B. Hensel. EPRI, Palo Alto, CA: 2000. EPRI Report 1000790.

"Contaminant source inventory of the Indianapolis Water Company wellhead protection areas". J. Wittman and J. Rubleske. Final report to the Indianapolis Water Company. 1998.

"Alluvial Aquifer Response to a Flood Pulse; Using Transient Boundary Conditions in a Local Screening Model". J. Wittman, J. Mundell, and J. Berndt. Contract Report to ATC, Inc. 1995.

"Capture Zone Delineation for the White River, Webb, and Sugar Creek Wellfields". J. Wittman, WHPA, Inc. Final report to the Indiana American Water Company.

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"Evaluation of Risks of Potential Contaminants in Well Field Protection Areas". J. Wittman and J. Mundell. Report for Marion County Wellfield Technical Committee, Center for Urban Policy and the Envir. Report #97-E02. 1997.

"Capture Zone Delineation for the Municipal Well Fields, Columbus, Indiana". H.M. Haitjema, V. Kelson and J. Wittman for SIECO, Inc., Columbus IN, October 21, 1996.

"WhAEM: Program Documentation for the Wellhead Analytic Element Model". H.M. Haitjema, J. Wittman, V. Kelson, N. Bauch. U.S. EPA document EPA/600/R-94/210. 1994.

"The Problem of Groundwater Contamination in Indiana". J. Wittman. Invited speaker at the Indiana Realtors Association Meeting. September, 1998.

"Well Field Protection in Indiana" J. Wittman. Invited speaker at the annual meeting of the Indiana Association of Planners. September, 1998.

"Use of Geologic Mapping in Groundwater Flow Modeling". J. Wittman. Invited panel member at the Great Lakes Geologic Mapping Forum. Indianapolis, IN. March 1997.

"Uncertainty in Capture Zone Delineation". Presentation to members of the Indianapolis City-County Council. December 1996.

"Hydrogeology of the Fall Creek Aquifer". Field trip / presentation for the Indiana Academy of Science Spring Meeting. April 1995.

Design and evaluation of high capacity ground water supplies: Considering the potential for riverbank filtration" P. Johnson and J. Wittman. Presented at the NGWA Midwest Focus Conference Chicago, IL, April, 2002.

"Management and Analysis of Ground-Water Elevation and Water Quality Data in the Electric Power Industry" K. Ladwig, B. Hensel, J. Wittman, and V. Kelson. Presented at the NGWA Association of Ground Water Scientists and Engineers Annual Meeting. December 2001.

"A New Tool for Organizing and Managing Hydrogeologic Data," J. Wittman and V. Kelson. Presented at the MODFLOW 2001 and Other Odesseys conference. September 2001.

"Potential Effects of Climate Change on Groundwater Availability," J Wittman and H.M. Haitjema. Presented at the American Water Resources Association Specialty Conference on Potential Consequences of Climate Variability and Change to Water Resources of the United States. Atlanta, Ga. ISBN 1-882132-45-9. May 1999.

"Evaluating the Risks of Potential Contaminants in Well Field Protection". J. Wittman. Presented at the 2nd Symposium on the Hydrogeology of Washington State. Olympia, WA. August 1997.

"Comprehensive Well Field Modeling for Marion County, Indiana" J. Wittman, H.M Haitjema, and G. Lindsey. Presented at the International Conference on Analytically Based Method of Groundwater modeling. Nunspeet, The Netherlands. April 1997.

"Evaluating the Risks of Chemical Compounds". J. Wittman. Presented at the Indiana

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Water Resources Association Fall Metting and Symposium, Lafayette, IN. December 1996."Towards a State-Wide Groundwater Modeling Plan". J. Wittman. Presented at the Indiana Water Resources Association Symposium. Spring Mill State Park, Mitchell, IN. June 1994.

"Climate Change Impacts on Groundwater Availability: An Application of Supra-Regional Groundwater Flow Modeling". J. Wittman and H.M. Haitjema. Presented at the International Association of Hydrological Sciences Fall Meeting, Orlando, FL. 1993.

"Capture Zone Modeling near Columbus, Indiana". J Wittman and H.M. Haitjema. Presented at the Indiana Water Resources Association Symposium. Indianapolis, IN. June 1992.

Current Professional Association Memberships

Indiana Water Resources Association, President Elect, 2001

American Water Works Association, Member, Indiana Section and Water Utility Council Member

Indiana Rural Water Association Member

ASTM Member, Section D18 (Soil & Rock) Subcommittee Member

National Ground Water Association Member, Certification Committee

American Geophysical Union Member

Certifications

National Ground Water Association, Association of Ground Water Scientists and Engineers, Certified Ground Water Professional (#3015475)

PROFESSIONAL EXPERIENCE (general descriptions of experience)

Assessment of the Impact of Irrigated Agriculture on Shallow Aquifer Groundwater Quality, Toppenish Creek Basin, Washington. Designed and subsequently obtained funding for a comprehensive basin-wide groundwater quality investigation to determine the risks of contamination to the alluvial, lahar, and basalt aquifers in the Yakima Fold Belt. Developed sampling plan, collected over 500 samples from home-owner wells, considered the effects of crop type, irrigation depth, soil type and well depth on the measured water quality at any location. The investigation determined that Nitrate concentrations were indicators of particular crop types. This was more pronounced when these crops were grown on particular soil types. Irrigation and agricultural practices were causing a deterioration of local groundwater and stream water quality. This work was presented at an international conference.

Technical Review and Critique of Nuclear Waste Repository Site Selection, Salt Lake City, Utah and Toppenish, Washington. Directed interdisciplinary teams of

scientists and engineers (staff and contractor) in the evaluation of environmental impact documents prepared by the U.S. Department of Energy (USDOE). The repository siting process was primarily regulated by the U.S. Nuclear Regulatory Commission (NRC) but included technical contributions from all of the national laboratories and multinational engineering contractors. I was responsible for the review of two of the nine proposed deep geologic repository sites that were under consideration by the USDOE, including the Hanford Nuclear Reservation and Davis Canyon, Utah. The review required consideration of socioeconomic impacts, toxicological risk assessment and exposure modeling, radioactive isotope transport modeling, quality assurance processes, performance assessment analysis, transportation risk impact assessment, and multi-generational exposure modeling.

Regional Groundwater Model for Tribal Water Resource Management, Toppenish Creek Basin, Washington. Developed a regional, multiple-aquifer, groundwater model for the Toppenish Creek Basin that was designed for water management as a part of a Bureau of Reclamation Grant. This project required the translation of regional geologic data into a regional groundwater flow model. One example application of this model was an analysis of the practicality of shallow aquifer storage reuse. This regional modeling project regularly illustrated the value of understanding regional water balance in water rights contests.

Supra-Regional Groundwater Modeling for National Water Management, RIZA, Lelystadt, Netherlands. Developed new techniques for testing and analytically validating a new, variable-density, multilayer, groundwater flow model – MVAEM (Strack, 1994). Compared analytic solutions for idealized aquifer geometeries to model results and then checked these two simulations against 3-dimensional salinity data from monitoring wells located on small islands in the "new lands" area. Developed methods for extracting subdomains of the national model, NAGROM, for use in local water supply and water resource development. Modeled highly engineered hydrologic landscapes using new techniques at the national laboratory for managing inland water resources.

Developed Model to Design Land Forms that Maximize Snow Accumulation and Runoff, Kemmerer, Wyoming. Developed a snow accumulation and melt model based on empirical formulas adapted for predicting drift depth and shape based on measurement made along drift fences by the Department of Transportation. Used small watershed analysis of runoff that employs initial conditions, soil curve numbers, slope and aspect, to develop a transient (daily) snow accumulation melt, and runoff prediction that was used to predict pit fill rates that were used in developing a coal surface mine reclamation plan.

Supra-Regional Groundwater Modeling to Assess the Impacts of Climate Change on Regional Bedrock Aquifers in the Midwest, This work was funded by the U.S. Department of Energy's National Institute for the Global Environmental Change, Bloomington, Indiana. Used analytic element groundwater modeling technique, coupled with a set of one and two-dimensional numerical models, to investigate how long-term reductions in regional recharge could affect stream flow and groundwater availability in

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the regional Silurian-Devonian limestone bedrock aquifer in Indiana and Ohio and the overlying unconsolidated aquifers.

Evaluation of the Impact of Discrete Openings on Groundwater Flow in Till Aquifers, Center for Earth and Environmental Sciences, Indianapolis, Indiana. This project had the objective of determining the potential effect of distrete openings in semi-layered till aquifers on groundwater flow and transport. It is not clear which conceptual model is appropriate for these unconsolidated glacial aquifer systems. The fact that there is limited data available to describe the extent of aquifer zones within till prompted the use of stochastic modeling techniques. This work showed that openings are important to predicting contaminant transport in aquifers. The conceptual model used in the predictions alters the residence time distribution but not the water budget. The implications of flow through these discrete pathways on residence times and contaminant transport are extreme. This project identified the scale at which local openings alter flow paths that can be responsible for contaminant plume dispersion.

Developed Residence Time Map for Wellhead Protection Areas, Community Water Supply Well Field, Columbus, Indiana. Developed an alternate approach to delineating wellhead protection areas that used 3-dimensional groundwater particle tracking to delineate the time-of-travel contributing recharge chronograph that mapped the predicted time for water to move from the water table to a very high capacity well field. The wellhead protection effort included an analysis of the potential risks posed by two neighboring contaminated sites. The results showed that some of the water on the opposite bank of the River was likely contributing to one of the wells in the well field. This information was used to develop a more effective groundwater quality sampling strategy and the modeling was used as support for the first wellhead protection plans developed in the state.

Users Manual for USEPA's new wellhead protection code, W*h*AEM, the Wellhead Analytic Element Model. (EPA/600/R-94/210). Managed the research and development project for a multiple university research team. Wrote all of the users guides and documentation for the W*h*AEM model. The new capture zone delineation code was co-developed by a group at the University of Minnesota while the mapping and preprocessor tools were developed at Indiana University. This new code was developed to improve upon more simple methods that were being used by applying analytic element models (these use distributed singularities) to define boundary conditions for flow in an aquifer and to a well. This was one component of the USEPA's support for sophisticated, yet practical tools for identifying the appropriate protection areas around wells. Our team was primarily responsible for developing the preprocessor code, linking to the results that were produced by the solution engine developed at the University of Minnesota, and developing tutorials and documentation for the user community: http://yosemite.epa.gov/water/owrccatalog.nsf/065ca07e299b464685256ce50075c11a/fa43190a39dd23d585256db10064c4cc!OpenDocument

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Develop Tool for Assessing Groundwater Contamination Risks, Electric Power Research Insititute (EPRI), Palo Alto, California. This research used unsaturated and saturated flow and transport models to determine how the risks of water supply contamination are dependent on the geology of the site, the properties of the chemical, and characteristics of the release. Used numerical experiments (one, two, and three-dimensional flow and transport models) to test the sensitivity of a solute pulse release to variation in release characteristics. This work has applications to a variety of problems including corrective action planning and analysis, source water protection and wellhead protection. This work was funded by EPRI and a consortium of power companies, local businesses, state agencies, and a city planning department. In addition to the EPRI report publication (EPRI Report 1000790), Dr. Wittman was one of the co-authors of an award-winning paper that describes that application of this work to community planning in the Journal of Environmental Planning and Management.

Greenway Impacts - Consequences of Increasing River Stage on Groundwater Levels Along the White River, Indianapolis, Indiana. Principle hydrologist on a project to determine the consequences of a redevelopment proposal that would raise the height of two dams in the central reach of the White River in Indianapolis on groundwater levels in the alluvial aquifer. The analysis used a technique analogous to telescopic mesh refinement to locally refine a regional 2-D analytic element model with a more detailed, 3-D multiple aquifer MODFLOW model. This approach was designed to capture the three-dimensional effects of mapped clay layers as well as the large municipal well fields of the city. The report included consideration of the effects of flood flows through this reach on transient groundwater levels. Developed and applied improved techniques for data preparation and model calibration.

Developed New Tool for Managing Statewide Hydrogeologic Data - *EnviroViewer*, Bloomington, Indiana. Designed a new tool to manage and view public data as a part of data democratization project. Timed to coincide with the state wellhead protection program, this tool is a simple mapping tool that allows the user to zoom-in on any area of the state, locate home-owner wells, high capacity wells, and regulated facilities. Data viewer includes cross-section tools, tabular exports, spatial referencing and other organizational and modeling support.

Expert Witness – TCE PCE Release, Plume Migration, Monitoring, Impacts and Exposure, Martinsville, Indiana. Expert witness in a civil suit in a case between the PRP of a closed dry cleaner that reportedly released solvents into the soil over a 5-year period. The consequences of this spill were seen in the contamination of one of the wells in the city's well field. This work required the use of state environmental management program data, development of groundwater flow models and independent water quality sampling of the community water wells to determine the likely history of the migration of contaminants from the spill location towards the community drinking water supply. This project was designed to produce recommendations of alternative treatment technologies, monitoring requirements, alternative well sites, and ultimately, the assignment of responsibility to the parties involved.

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Counsel for Plaintiff
COALITION TO LIMIT
UNIVERSITY EXPANSION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COALITION TO LIMIT UNIVERSITY EXPANSION, an unincorporated association, Plaintiff, v. GEORGE BLUMENTHAL, Acting Chancellor, University of California, Santa Cruz, in his official capacity; and DEVCON CONSTRUCTION, INC. a California corporation, Defendants.	Civil Case No.: C 06-02753 CRB **DECLARATION OF DR. JOHN WITTMAN IN OPPOSITION TO THE UNIVERSITY OF CALIFORNIA, SANTA CRUZ'S MOTION TO DISMISS AND DEVCON'S JOINDER IN CO-DEFENDANT BLUMENTHAL'S MOTION TO DISMISS COMPLAINT** Date: September 15, 2006 Time: 10:00 AM Courtroom: 8, 19th Floor Judge: The Honorable Charles R. Breyer

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I, Jack Wittman, declare and say:

My name is John F. (Jack) Wittman and my address is 5355 Shadow Wood Dr., Bloomington, Indiana 47404. The facts stated herein are based on my own personal knowledge, and if called upon as a witness, I could and would testify to the truth of the matters asserted.

I. PROFESSIONAL BACKGROUND

1. I have 25 years professional experience working as a consultant to local, state, and tribal governments, cities, municipal water utilities, and engineering firms on matters related to surface water and groundwater hydrology. Over the past 4 years I have been a member of the Monroe County, Indiana Drainage Board where I help make decisions about requirements for the design of drainage systems in new residential, commercial and industrial developments located in the county.

2. I graduated with a Ph.D. in Environmental Science from Indiana University's School of Public and Environmental Affairs in 2000, following a M.S. Degree in Watershed Science and a B.S. in Environmental Studies from the School of Natural Resources at Utah State University in Logan, Utah.

3. I am now the president of Wittman Hydro Planning Associates, Incorporated – a water resource engineering firm located in Bloomington, Indiana.

4. My research and professional work primarily focuses on the problem of protecting and developing water supply aquifers and predicting the effects of land development on water quality. My master's thesis research was on the effects of land disturbance in arid basins on runoff and infiltration. My Ph.D. research focused on the problem of using groundwater flow models to evaluate the risks of contamination to water supply wells. One of the areas where my consulting work overlapped with my research was in evaluating the risks that different facilities may pose to down-gradient wells. Recently I have focused my research on the interaction of surface water and groundwater.

5. Over the past 2 years, I have been the President of the County Drainage Board. In that capacity, I am responsible for the evaluation of proposed development and the application of the county "Karst Ordinance." Monroe County is one of the many areas of South-Central Indiana where karst land forms are common. This particular landscape has several distinct characteristics that make it more sensitive to development than other, non-karst areas. The karst drainage systems in our county, like

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those in other areas, are characterized by interior drainage to sink holes where water from storms and drainage from the watershed moves directly into the limestone aquifer, rather than to a stream. The Monroe County Karst Ordinance (Chapter 829, attached hereto as Exhibit B) reflects our general understanding that drainage into local sinkholes will directly end up in the karst aquifer, local springs, and streams without significant natural attenuation.

6. Over the past two years, the local Drainage Board has been responsible for implementing the state's new stormwater quality rule that is designed to protect stream water quality from the effects of stormwater flows. In my position as the Board president, I have lead the effort to develop techniques for implementing the state's new rule.

7. I was appointed by the Indiana Governor's office to the Total Maximum Daily Load (TMDL) advisory group where I helped establish a framework for prioritizing the implementation of the TMDL program in the state. In addition to developing watershed models for particular watershed, I evaluated stormwater quality data from various parts of the United States to consider the how best to protect waterways from the risk of non-point source pollution.

8. Over the past 15 years, I have conducted investigations and developed groundwater models in all of the regional carbonate rock aquifers in the United States where permeability is often associated with subsurface dissolution features. This includes regional and local groundwater flow models in Indiana, Kentucky, Ohio, Missouri, Florida, and Iowa.

9. I am a member of the National Ground Water Association's Association of Ground Water Scientists and Engineers and have been a Certified Ground Water Professional (CGWP# 3015475) for approximately 10 years.

10. I have been a member of a peer review group for the American Water Works Association (AWWA) Research Foundation that was asked to oversee research and development of a new karst aquifer flow model by the Dessert Research Institute for application to the Edwards Aquifer in San Antonio, Texas. This model was being used to estimate the hydraulics of the aquifer system including the residence time of water in the system.

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11. My doctoral research included the investigation of so-called "discreet flow systems" in aquifers. These were considered to be representative of fractures in bedrock (linear features), dissolution features in carbonate rock (karst), openings in clay layers in unconsolidated aquifers.

II. STORMWATER RUNOFF RECHARGES A KARST AQUIFER

12. In order to prepare this declaration I personally read the following documents:

- Section 4.6 "Geology, Soils, and Seismicity" of the Draft Environmental Impact Report for the Long Range Development Plan prepared by University of California at Santa Cruz (2005)
- Section 4.8 "Hydrology and Water Quality" of the Draft Environmental Impact Report for the Long Range Development Plan prepared by University of California at Santa Cruz (2005)
- "Stormwater & Drainage Master Plan for the University of California at Santa Cruz" prepared by Kennedy/Jenk Consultants and Balance Hydrologics (2005)
- "Geology and Geologic Hazards, Santa Cruz Campus, University of California" prepared by G.E. Weber and Associates (1993)
- "Results of a groundwater tracing study, University of California at Santa Cruz" prepared by Ozark Underground Laboratory (1992)
- Acting Chancellor George Blumenthal and Devcon Construction's motion to dismiss filed in the Northern District of California on August 4, 2006.

13. Karst drainage systems form where the bedrock dissolves and the runoff from an area is routed into closed basins. In these areas runoff moves to an interior depression where the overland flow from the surrounding land flow to basins where it exits to the subsurface as aquifer recharge. While karst is common in areas where the bedrock can be dissolved and is near the land surface, in California there are few mapped karst landscapes.

14. In most locations the characteristics and connectivity of a karst system will determine how long it takes for water to move from the recharging location to discharge at a spring or a seep. Because a karst landscape is a subsurface system of interconnected solution cavities and (sometimes) caves, the aquifers that exist in these areas can have substantial storage that may buffer the pulses of precipitation that enter as recharge. However, because the water is moving in what amount to pipes of

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unknown dimension, one of the best ways to observe their effect is to investigate the time it takes for recharge to move from one sink hole to nearby springs or streams. By doing these "dye trace studies" hydrogeologists can infer some of the most important hydraulic properties of the underground pipes that move water from sinkholes to springs.

15. In effect, the karst pipes and dissolution features are a short-circuit for water to move from the recharge area to the discharge location. While stormwater recharge can exit the aquifer into streams in a matter of months or years in a classic porous media (sand and gravel) aquifer, in the conditions that exist near the proposed development sites on the UCSC campus, dye trace investigations have shown that the water that enters some of the sinkholes may exit into the local streams in a matter of days.

16. In Indiana, where there are many broad areas that have karst drainage patterns, the risk of aquifer contamination restricts land use and forces the use of buffer zones to pre-treat discharges to karst (*see* Exhibit B, Karst Ordinance).

17. The Draft Environmental Impact Report for the Long Range Development Plan (EIR) indicates that near the UCSC campus this aquifer is used as a source of fresh water. Based on dye trace investigations reported in the EIR, any recharge into the aquifer will move rapidly through the conduits and solution features and, because the flow in the system is more like pipe flow than porous media flow, the system does not have a natural cleaning mechanism for contaminants.

18. Because karst features capture overland flow before it reaches the nearby streams and move it through a system of cavities below the ground, undeveloped karst landscapes have generally lower runoff rates than non-karst areas. In this way the karst system acts as a subsurface detention system for stormwater runoff, buffering the flood pulse and reducing flood peaks.

19. Where karst features are plugged by sediment or engineered materials, the runoff from the area (which had been lower than the non-karst areas) increases dramatically, causing excessive erosion and sedimentation. This loss of karst storage will increase the frequency and intensity of flooding in these areas and consequently stream bank erosion can become a problem that can destabilize stream channels that drain the area.

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20. Because they get their recharge through openings in the land surface, karst aquifers are the most vulnerable to surface contamination of all aquifer types in the country.

IV. UCSC's PROPOSED DEVELOPMENT WILL DIRECTLY CONTAMINATE SURFACE WATER AND GROUNDWATER

21. The construction of new buildings and additional pavement will increase the fraction of precipitation that runs off the ground into the storm water drainage system. While karst landscapes generally have a lower runoff rate than non-karst landscapes, the increase in runoff after development is greater in karst areas.

22. According to the proponent's EIR, current plans call for this additional runoff water to be routed into existing sinkholes where it will recharge the karst aquifer. As described in the supporting documentation, these karst features are "rapidly evolving" and "dynamic." (Kennedy/Jenks, 2004). The additional runoff water from the proposed development will cause two important changes in the system: 1) the time of concentration - an indicator of the time it takes for the peak flow to occur after any given storm - will decrease because there will be a more extensive network of channels to move water into the drainage system, and 2) during construction of the new buildings much of the additional runoff will be from bare ground and will be carrying high concentrations of suspended sediment.

23. Based on the proponent's own reports, this suspended sediment, along with the other contaminants that are carried into the drainage system, will deteriorate water quality in the local karst aquifer.

24. The EIR indicates that the contaminants that are in the new stormwater runoff will not be attenuated before the runoff flows into sinkholes. Further, based on the estimates of sedimentation in the EIR, the karst system itself may be filled by additional material carried into the sinkholes by storm flow and thereby reduce the storage capacity of the karst system.

25. These changes will alter the behavior of the stormwater response in the area and the hydraulics of the aquifer – stream interaction.

26. Based on data provided in the Stormwater and Drainage Master Plan (Kennedy/Jenks 2004) the new development on the campus will create increased erosion and plugging of some of the sinkholes that drain the proposed expansion area. This addition of sediment to the karst system will

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reduce the storage in the solution cavities in the system and decrease the time it takes for water to move from the sinkhole entrance to the discharge at the springs and seeps. In effect, unlike a surface detention basin, the karst system will fill with sediment but will not be available for maintenance or cleaning. The development impacts will decrease the stormwater conveyance properties of the karst so that overland flow will increase at the surface because of the reduction in stormwater conveyance in karst. In this way, the sedimentation of the karst system aquifer will directly impact surface waters.

V. UCSC'S DYE STUDY DEMONSTRATES A HYDROLOGICAL CONNECTION TO DOWNSTREAM NAVIGABLE WATERS

27. In 1993, the University of California at Santa Cruz commissioned a dye trace study to determine the hydraulic connection via the karst system of the water in UCSC's drinking water well to the neighboring springs and seeps. The work was done by Ozark Underground Laboratory in Protem, Missouri. The investigators visited the area to discharge dye in known concentrations into area sink holes, then they recorded the arrival of the dye in the drinking water well and in local springs and seeps. The objective was to determine how the system of dissolution features in the marble was connected to determine whether pumping the well would cause reductions in the flows to any particular springs or seeps.

28. The results of the report showed the following:

- pumping the well would not decrease the flow of any single spring by the amount of water pumped
- the karst aquifer has highly variable connectivity and hydraulic properties
- dye that enters one sink hole may exit at many springs or seeps

29. What this means for the purposes of the current proposed development is that the karst aquifer under the UCSC campus is not easily characterized, but it is known that water moves at rates of hundreds of feet per day from entrance to exit and, unlike flow in porous media aquifers, water quality is not improved by flow through the dissolution features in the subsurface.

30. Based on my professional experience and the results of the dye trace study it is clear that water that discharge to any of the sink holes in the proposed campus expansion area would discharge to

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downstream surface waters (streams and creeks). Consequently, it is my opinion that the threats to the streams from the proposed expansion are serious and must be taken into account. Unlike flow in non-karst aquifers, this system will be seriously affected by sedimentation and pollution that is likely to be injected through the sinkholes. My judgment is supported by the results of the dye trace investigation as well as the interpretation of the system described in the Stormwater and Drainage Master Plan (2004). I declare the foregoing under penalty of perjury.

Executed this 25th day of August 2006 in Bloomington, Indiana.

/s/ Jack Wittman

By: _____
Jack Wittman, Ph.D.

I hereby attest that I have on file all holograph signatures for any signatures indicated by a "conformed" signature (/S/) within this efiled document.

/s/ Daniel Cooper_____
Daniel Cooper
Lawyers for Clean Water, Inc.
Attorney for CLUE

Response to Post-FEIR Comment Letter ORG-1

The letter received on September 18, 2006 from Lawyers for Clean Water on behalf of Coalition to Limit University Expansion (CLUE), makes three points, summarized below and followed by the University's response:

1) CLUE asserts that despite inclusion of Final EIR Mitigation Measures HYD-2A, HYD-2B and HYD-3, which rely on compliance with National Pollutant Discharge Elimination System (NPDES) permits issued pursuant to the Federal Clean Water Act as a basis for reducing storm water impacts that may otherwise be considered significant, the University has taken a contradictory position in defending against litigation pending in federal court filed by CLUE, thereby undermining the EIR conclusion. Specifically, CLUE asserts (ORG-1 comment letter, page 2) that the University has taken the position that "the Clean Water Act does not apply to any of the activities or receiving waters on the campus, and that it need not comply with Federal Law or its NPDES permits for its activities."

CLUE has overstated the University's legal position in the federal litigation. In a motion to dismiss CLUE's federal lawsuit, the University has argued, in part, that the Clean Water Act does not apply to some campus areas, and thus for these areas, NPDES permit are not required. The University has not taken the position that it need not comply with federal law or NPDES permit requirements, where applicable. To the contrary, the University complies with the federal NPDES permit requirements for all construction sites larger that one acre (sites less than one acre are not subject to NPDES permits), has responded to requests from the NPDES permitting agency, the California Regional Water Quality Control Board (Regional Board), for additional erosion control and storm water management measures for projects subject to NPDES requirements, and has stated its intention to continue to comply fully with all requirements of the Regional Board. Furthermore, the University has submitted a Storm Water Management Plan, as required by the Regional Board, that covers the entire campus (i.e., it includes no limitations based on project location, size or acreage), even though the inclusion of such small sites is not required by state law. It would not be practicable for the University to maintain standards for design and construction procedures that apply only to selected portions of the campus.

As noted by the commenter, the Final EIR states that the University is committed to implementing aspects of the NPDES permit program, such as the adoption of construction site controls known as Storm Water Pollution Prevention Plans, for all projects regardless of federal jurisdiction. In finalizing the EIR, however, the University inadvertently omitted the corresponding revision to LRDP Mitigation HYD-2A. The University proposes to revise that mitigation to read:

"For all construction projects less than one acre in area, *and for projects larger than one acre that do not drain to waters of the U.S.*, the Campus shall continue to require the use of construction site controls and best management practices in compliance with the campus draft Storm Water Management Program, the campus Erosion Control Standards,

and the Site Requirements for Erosion Control and Drainage in the Campus Standards Handbook."

2) Again erroneously assuming that the Campus maintains that it is not subject to the Clean Water Act, CLUE asserts that the EIR mitigation commitment to developing Storm Water Pollution Prevention Programs and implementing best management practices as required by the NPDES permit program for all construction sites regardless of federal jurisdiction is an unenforceable mitigation measure.

While aspects of mitigation measures HYD-2 and HYD-3 represent the voluntary adoption of some NPDES standards in situations where they might not otherwise be legally required, like all other mitigations in the Final EIR, they are proposed for adoption and incorporation into the project and are included in the Mitigation Monitoring Report to ensure compliance during implementation of the 2005 LRDP. By incorporating aspects of the NPDES permit program as a mitigation requirement, the campus has identified a performance standard to which all projects during implementation of the LRDP must comply. Thus, to the extent these measures are not required by federal law, the campus' incorporation of these requirements is enforceable as CEQA mitigation measures.

3) Lastly, the commenter contends that the Final EIR's reliance on the Campus's Storm Water Management Plan, which is in draft form, is improper under CEQA.

The Campus has been developing the SWMP concurrently with preparation of the 2005 LRDP EIR. The Campus did not consider it practicable to include as EIR mitigations a separate set of storm water management standards that would serve the same purpose as the SWMP but that would not necessarily be consistent with the final SWMP. The Campus currently implements the SWMP in its draft form and will continue to do so as it proceeds through the regulatory and public review and approval process.

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18 September 2006

UC Board of Regents
1111 Franklin Street, 12th Floor
Oakland, California 94607
regentsoffice@ucop.edu
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Re: Comments on proposed FEIR for UCSC LRDP

Dear Regents and Committee on Grounds and Buildings:

These comments addressing the proposed Final Environmental Impact Report (FEIR) for the Santa Cruz Campus Long Range Development Plan (LRDP) are submitted on behalf of the Coalition for Limiting University Expansion (CLUE), the Cave Gulch Neighborhood Association (CGNA), and their members.

To begin with, I want to thank you for the opportunity to comment on the proposed FEIR. By way of introduction, I was fortunate to attend UCSC as a Regents Scholar when the Santa Cruz campus first opened in 1965. The founding faculty and administration were inspired and inspiring, with an overriding attention to academic excellence and a quality educational experience. The academic experience was imbued with the pursuit of intellectual integrity and honesty as grounding principles of whatever particular academic path we might choose to pursue – even the law.

At that time there was already a rift between University and community which continues to this day, a "town and gown" split. My concern is that this rift be mended whenever or wherever possible. I believe that the presentation of the proposed FEIR and LRDP is an occasion for attempting to mend that rift. I am committed to pursue that goal to the possible maximum extent.

Prior to the presentation of the LRDP and FEIR and continuing since, local citizens and the greater Santa Cruz area community have provided many comments critical of and questioning the University's growth patterns, lack of adequate environmental documentation and enforcement, and disregard of the community's concerns about the impacts of University expansion. CLUE and CGNA provided comments on the proposed LRDP and the Draft Environmental Impact Report (DEIR) and, after reviewing the FEIR, wish to hereby reiterate those previous comments for the kinds of reasons set forth herein.

Because of the community's frustration, disappointment, and confusion after reviewing the responses to comments in the FEIR, CLUE and CGNA have asked that I provide, on their behalf, additional summary comments prior to the Regents' consideration of the proposed FEIR. These comments are necessary because of the failure of the responses to comments in the FEIR and the FEIR itself, in the community's opinion, to address the many serious issues and questions raised by CLUE and CGNA and the greater Santa Cruz community.

These comments are offered, however negative or caustic they may appear, in the interest of communicating accurately the frustrations,

disappointments, concerns, and questions the community has had and still has in regards to the general topic of University growth and more specifically the LRDP, DEIR, and now this FEIR. They are meant not to halt or prevent any meaningful dialogue but to lay a foundation for frank, honest, and good faith discussion with the local campus administration, the systemwide administration, and you, the Board of Regents and Governor's office.

What is disturbing about this proposed FEIR is that it appears to be grounded in neither the intellectual honesty nor the quality of academic integrity which so illuminated the campus when it opened and while I attended. Now having spent more than 20 years reviewing and dealing with CEQA, NEPA, and other environmental documents, reviews, assessments, project applications, etc., I find that this FEIR would fit in somewhere on the spectrum of an academic C to B- grade, at best. That is merely because of the amount of effort that went into it, were that a grading criterion. A more appropriate disposition is that this FEIR be characterized as a document to be returned to the drafters for rewriting and reconsideration by the Regents at a later time. It should not receive a pass.

This FEIR is incomplete and inadequate under the environmental protection laws, federal and state (e.g. CEQA; NEPA; coastal protection acts; endangered species acts; habitat, wetland and water quality protection acts; forest practices acts; traffic and fire safety laws; and regulations promulgated pursuant to those laws). This FEIR is bad as a precedent for future planning documents. CLUE and CGNA believe it is damaging to the academic quality or standards of the institution itself to engage in this kind

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of project advocacy. The document fails to clearly explain or to adequately respond to significant environmental and other community issues.

The document excels at the rhetorical and otherwise "normal" or "to be expected" project proponent's obfuscation of significant potential, actual, immediate and cumulative effects. In other words, it appears to be an expensive and well orchestrated attempt to pull the wool over the eyes of the community, students, faculty and staff of the University, and other government and regulatory agencies, including the courts. This is the kind of behavior expected of a private developer or industry lobbying for a project: assuaging doubts and guaranteeing results, all the while knowing that the project will have innumerable and even inestimable direct and cumulative impacts on an entire community and geographic region in the unbridled pursuit of the proverbial bottom line. It is not what one expects of a leading academic institution and public trust agency.

For example, *and I emphasize this point in the hope that it will receive your careful consideration*, this FEIR promises that future projects will receive adequate project reviews, as each comes on line. For all of the paternalistic sounding promises, this FEIR is, at least in this instance, honest enough (for obvious reasons of reserving a future right to do precisely nothing to fulfill its promises) to slip in a straightforward disclaimer of the necessity of ever performing any such reviews:

> [N]o additional environmental documentation would be required for projects within the scope of the 2005 LRDP if: (1) no new significant effects would result from the proposed project, (2) all significant effects have been adequately addressed in the 2005 LRDP EIR, and (3) no new mitigation measures would be required to address the

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impacts of the project." (FEIR at I-5 cited in response to SA-7-7 and 7-9.)

In effect, like the unresponsive or irresponsible student, the University defers its presently incomplete homework assignments to another day, another quarter, and another year through unenforceable promises to do that work if it ever has the time or interest. All the while, the University secures itself an almost airtight way out of ever doing the research, evaluation, and reporting assignments that are presently due, declaring that, in its own opinion and at its sole discretion, the present voluminous, though inadequate and incomplete, tome is sufficient to grant itself a passing grade on the next project review down the line.

As examples of this "do it later, if I feel like it" methodology, this FEIR fails to address phasing or tiering of various identified future projects (e.g. see comments at SA-5-9 and LA-10, p. 3-4). At least, the University, like the errant student, could provide some minimal level of scheduling by which future conduct might be measured. Instead, this FEIR simply fails to provide a quantitative or enforceable basis for any later tiering of those projects which are either the LRDP's expressly identified goals or necessary adjunct projects to its generally proposed expansion (like community infrastructure development; filling the campus soils with grout; digging new wells on campus; building roads, bridges, and waste treatment and storage facilities; or any of the other multitude of projects necessarily adjunct to any new housing, research, or other administrative project).

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The impermissible deferral of environmental reviews is compounded because this FEIR fails to quantitatively or otherwise adequately identify the significant environmental effects that either the (1) overall project (increased growth) or (2) any specific project can cause, e.g. failing to identify in a quantitative or meaningful qualitative manner what the expected adverse effects of the LRDP will be in regards to the timing and creation of adequate water supplies; the timing of and issues involved with Local Agency Formation Commission (LAFCO) approvals and reviews (which LAFCO asserts the University must do, see LA-5, and the University asserts it must not do, see LA-5-1); or wetland-watershed delineations and protections under the federal and state laws.

The deficiencies are then further compounded by the failure to properly and clearly identify mitigations for the significant effects that are discussed. For example, this FEIR asserts that its mitigations include following regulations to avoid significant adverse effects; e.g. the Clean Water Act to avoid degrading water quality. What this FEIR does not clearly tell the public is that the University is presently engaged in a law suit in federal court where it denies that such regulations apply to its projects (see comments by CLUE regarding the Clean Water Act violation case now pending in the federal district court and the related court record, Civil Case No.: C 06-02753 CRB filed April 21, 2006).

It is like an environmental three card monte or shell game. You watch all the projects move around and in the end the pea or the trump card can be wherever you think it isn't or is at the whim of the shuffler. Meanwhile the community cannot determine what the scope and nature of the potential

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effects are or what the specific mitigations or alternatives mean in reality for either (1) the entire project LRDP or (2) any specific project proposed along with or pursuant to the LRDP.

The University simply avoids detailed quantitative descriptions of negative effects and mitigations or a complete alternatives analysis by repeatedly referring to university wide overriding directives to achieve increased enrollment, increased staffing, and increased building and construction activity (e.g. see requirements for environmental reviews pursuant to CEQA Public Resources Code 21000 et seq., particularly 21002, 21100; and CEQA Guidelines 15002, 15021, 15082, 15096, 15124, 15126.2-.6, 15130, 15091, 15358). This FEIR, as a consequence therefore, fails to properly discuss a no project or diminished project alternative. Having declared by administrative fiat the existence of overriding directives, there are then no clear findings of overriding concerns which articulately explain either the "concerns" or the "overriden."

What the Regents and the public must be informed about, in order to really understand the inherent problems in this FEIR, is the significance of the CEQA option to approve a project or future projects pursuant to this FEIR via findings of "overriding concerns." This FEIR does not clearly describe that approval mechanism for future projects pursuant to this FEIR. The "overriding concerns" approval option for any future projects is left like a dangling threat, which is healthy and alive at the heart of this FEIR, allowing the local campus to approve projects even though the negative effects are significant, unmitigated, unknown, or unaddressed in this FEIR. That is a threat of project approvals without any significant further review

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that is aimed directly at the environment and the community who will have to endure the negative effects of those projects.

This FEIR does not fully inform the public, as required by CEQA, of this future project approval process or mechanism. CLUE and CGNA do not believe that this FEIR and the University's planning process and reviews have made it clear that in the future the local campus may approve any number of incremental projects under the LRDP's deficient environmental effects analyses by simply declaring that overriding concerns dictate that the project go forward. The public is not fully informed of that entirely real and implicitly reserved power. That is in addition to the above identified express disclaimer that the University will not do any further reviews where, at its own and sole discretion, there are no new significant effects (other than those defined in this FEIR), or the mitigations identified in this FEIR are considered adequate. In other words, the University has written itself a diploma, without ever having to pass the required courses and certification processes. That is what CLUE, CGNA and the greater community are so afraid of, angry about, and disappointed by.

The potential for local campus approvals of future projects by means of exemptions, negative declarations, and findings of overriding considerations, also means that this FEIR may be the last time, given the press of other business, that the Regents will ever have any real opportunity to directly enforce environmental and academic planning standards for review of performance under this FEIR on the local campus.

In this vein, it is particularly troubling that this FEIR is not only a self-proclaimed "programmatic" document, it is the project EIR for three

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specific projects. For example, the 2300 Delaware Project has been expanded in this FEIR, from its initially approved use as a maintenance equipment storage area, to include a hazardous, toxic, and radioactive materials storage and research facility in Building C. That building and the 2300 Delaware Project are in and near a recreational area, wetlands, and a residential neighborhood. The expansion to include the hazardous, toxic, and radioactive materials storage and research use was only addressed in the LRDP and FEIR, as recently as October, 2005 (see Volume III Draft EIR, October 2005).

More importantly, the University did not apply for a Coastal Permit in developing its plans for Building C, which is in the Coastal Zone, at the same time it submitted the Coastal Long Range Development Plan (CLRDP) for the Marine Sciences facilities directly adjacent to the 2300 Delaware Project. Because the University owns the 2300 Delaware Project site, it falls out of City and County Zoning and Planning Ordinances and into Coastal Commission jurisdiction, as indicated by the Coastal Commission comments. Therefore, at this time, the Regents are the only effective reviewing authority for this specific University project since the University did not include the project in its CLRDP.

In this FEIR there are no clear or specific quantitative, or even clearly described qualitative, descriptions of (1) that proposed hazardous, toxic, and radioactive materials storage and use or (2) the increased usage by over 700 persons rather than a maintenance staff of under 100, sufficient for members of the public to determine what the immediate or cumulative effects of that facility are or will be – on either the adjacent residential neighborhood,

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recreation area and park, the natural environment, including the Monarch Butterfly habitat, or the wetlands in the adjacent Marine Sciences facilities. The purpose of CEQA is to provide clear project descriptions so that the public may be fully informed of potential or certain adverse effects. That this FEIR has not done.

As pointed out above and by CLUE in its previous comments, the 2300 Delaware Project is next door to another University facility expansion project, the "Terrace Point" project in the Marine Sciences facilities' CLRDP. The FEIR fails to adequately respond to or is simply wrong in its perfunctory dismissal of criticisms regarding (1) the "piecemealing" of the Terrace Point CLRDP and 2300 Delaware projects and (2) the larger issue of the failure to adequately address each of these projects in both the campus FEIR now before you and the CLRDP presently under review by the Coastal Commission. Such piecemealing of projects violates CEQA and the Coastal Act's standards of review and prevents a clear and fully informed consideration of the projects by government agencies, the Regents themselves, and the Santa Cruz community and greater public.

The University's responses to CLUE's comments regarding the Marine Sciences facilities (ORG-7-4, 5) are thoroughly misleading. In responding to CLUE, the University merely refers to a previous response to the Sierra Club's comments (ORG-1-1, Volume 5). The response to the Sierra Club does not resolve the issues raised in CLUE's or the Sierra Club's comments.

This FEIR merely sidesteps the issues raised by CLUE and the Sierra Club. It dismisses the comments by referring to a Table 4.0-1 at Chapter 4 of Volume I of the DEIR/FEIR. That table and the accompanying section of

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the DEIR have not been expanded or changed in the FEIR to reflect any serious evaluation of CLUE's, the Sierra Club's, and other community or agency comments, including those of the Coastal Commission (SA-5), AMBAG (LA-12), CalTrans (SA-2,9), Santa Cruz Regional Transportation Commission (LA-4), and Santa Cruz Metropolitan Transit District (LA-7), regarding the immediate or cumulative effects of the Marine Science facilities project(s) and the 2300 Delaware project LRDP. Nor do the University's responses to comments provide any substantial evidence as to why the Marine Sciences facilities CLRDP should not have been addressed in and by the campus FEIR and the "main" campus LRDP.

The University's response to CLUE's and the Sierra Club's comments, at ORG-1-1 and ORG-7-4, 5, merely states without any persuasive legal authority that because the University has discretion to implement either of the proposed LRDPs, those for (1) the Marine Sciences facility and related projects and (2) the main campus and 2300 Delaware related projects, that it need not consider both in a cumulative impact analysis of either. That is not what CEQA Guidelines 15165 and 15168 mandate. It is this kind of self-serving rationalizing that has and will continue to cause the University to be sued, even by – or maybe especially by – its own graduates turned barristers.

Pursuant to CEQA Guideline 15165, even if the two LRDPs are to be separately promulgated, they would each have to comment upon the cumulative effects of the 2300 Delaware and Marine Sciences facilities (including the University's Terrace Point expansion project). That latter project is identified by the University in its response to comments as being

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adequately discussed in this FEIR by a one line reference in a table that merely lists many other projects which will occur in the entire Santa Cruz region, see Table 4.0-1. And, that Table is included not to describe biological, geological, water and wastewater quality, lighting, noise, hazardous waste and radioactive materials handling and disposal issues in an urban community, or other significant environmental issues such as recreational and biological resource concerns in the project area, but to specifically address traffic loading and patterns; which traffic loading and mitigation requirements it also fails to address adequately.

Other than the one line reference to the Terrace Point Project in this FEIR at Table 4.0-1, the University has pointed to no other substantial evidence that the Marine Sciences facility, including the Terrace Point Project, was included in any cumulative impact analysis in this FEIR for the LRDP or the EIR for the 2300 Delaware Project. The University, in this FEIR, points to no cumulative effects analysis of the Marine Sciences facility and its separate and project specific CLRDP in the FEIR for the "main campus" LRDP.

It is interesting to note that the 2300 Delaware Project was piecemealed into the "main campus" FEIR, when in reality that Project is immediately adjacent to the Marine Sciences facilities and is also subject to Coastal Act review, as are the Marine Sciences facilities. Why? Perhaps because by excluding the 2300 Delaware Project from the Marine Sciences CLRDP, the University can create the appearance that the University needs additional, separate development of marine/coastal related projects within the Marine Sciences facility footprint – something for which it might not

obtain approval from the Coastal Commission if it were made patently clear to the Coastal Commission that the University has chosen to devote the 2300 Delaware Project to non-coastal related activities.

Regarding the issue of the bifurcated process and projects, the Coastal Commission suggests the University may choose to submit the LRDP to the Coastal Commission for review. In characterizing the LRDP's FEIR as inadequate under the California Coastal Act, the Commission states, at SA-5-16:

> [T]he LRDP will have to be substantially revised according to the requirements of the Coastal Act and California Code of Regulations. Such revisions would include more detailed development criteria and review procedures."

The University responds, as it does to LAFCO with a simple denial: "the University will not seek approval of the 2005 LRDP from the Coastal Commission." (SA-5-16.)

Community members have complained and commented about similar piecemealing and inadequate or non-existent detailed development criteria and review procedures, for example, comments regarding the failure to adequately address historic and cultural resources in this FEIR. Those include the limestone mining history and resources, yet this FEIR specifically finds that there are no mineral resource effects of the LRDP and entirely omits any review of those matters (p. 4-1 FEIR). Historical sites and district considerations are simply deferred in a manner which leaves readers scratching their heads because the delineation of any sites and district are left to an incomplete historical review, identified as incomplete in

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this FEIR; and, in any case, the preservation of historic resources is subject to the caveat that the University may just have to tear down or destroy any such resources if they get in the way of any particular individual future project.

The University has again sidestepped or ducked the issue of impacts to any specific historic resource by confessing that there may be a lot of impacts. But, because no specific enforceable mitigation measures are in place to eliminate or minimize those impacts (other than the perpetually proposed deferred effects analyses), especially during the period prior to the completion of the historical resources reviews, then - at the appropriate future moment - the local campus has built in the option to simply declare a new project essential to further growth, expansion, or maintenance (i.e. overriding concerns) and the bulldozers can get to work, end of story. As discussed above, that method is used consistently in the analysis throughout this FEIR. What is the lesson for the private landowner and developer in all this? What would happen if any large scale home developer or hotel/motel developer were to engage in the same logic? The conclusion is a matter not of sophisticated legal or scientific logic, but of common sense and practical experience.

Similarly, traffic issues are sidestepped, including CalTrans and AMBAG's comments regarding those issues specifically arising out of the 2300 Delaware project. The cumulative effects of the Marine Sciences facilities and the 2300 Delaware project are not addressed, even though the University recognizes that the negative impacts will be significant and require major commitments by other agencies to local and regional traffic

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and municipal transportation systems in the coming years. (e.g. see comments SA-2, 5-6, 9, LA-4, LA-7, LA-10-4 through 7, ORG-7.) There is no cumulative analysis regarding the combined effects of the Marine Sciences facilities that already exist and the proposed Terrace Point Project when cumulatively added to the construction, traffic flow, maintenance, and biological concerns in the immediate project area. Amazingly, the University does propose that parking issues may be resolved by requiring parking out of the project footprint on adjacent commercial or residential streets, with yet more unspecified negative impacts. The Coastal Commission responded:

> This could potentially impact parking for coastal access and, hence, may not be supportable under the Coastal Act. (SA-5-7.)

Noise and lighting issues are also left to future rule making and future project reviews, as are biological and other evaluations. While a programmatic document can serve as a guideline for future projects, it is to include baseline data. That this FEIR does not do. For example, there is no wetland and watershed impact baseline to serve as the scientific and environmental context of later projects. Such a baseline is a requirement to perform a USF&WS or NMFS biological review and opinion for a project. This FEIR leaves the development of baseline and scientific analysis to each incremental, and individual project under the FEIR. In this specific case involving a more than 2,000 acre project footprint and disbursed and acknowledged significant effects, that is piecemealing and impermissibly deferring environmental review to a later date.

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The City's comments, provided by Remy, Thomas, Moose and Manley, LLP, at Comment Letter LA-10, accurately reflect the community's and CLUE's predicament:

> Unfortunately [though the City wishes to provide more substantive comments], in many respects the current analyses and proposed mitigation measures are simply too superficial and vague to allow meaningful evaluation and comment. (LA-10 at p. 4.)

Not only has this FEIR failed to address CLUE's and CGNA's concerns, it has failed to respond, through revision or expansion, to government agency comments and responses. The USF&WS, and California DF&G, Coastal Commission, Regional Water Quality, CalTrans, and CDF&FP, and Regional Air Quality, the County, the City, Metropolitan Transit District, SCCRTC, AMBAG, and LAFCO all made comments in this vein, to the effect that this FEIR simply is not supported by sufficient, adequate, or accurate environmental or factual analysis and specific, enforceable, defined, mitigations.

As an example of the University's response to these agencies' comments, the University in rebuffing the USF&WS simply declares it will not do a campus wide Habitat Conservation Plan (HCP) for the red legged frog, or the tiger beetle or any other resource issue of concern. In dealing with CDF&G's comment that a salmonid HCP is underway with the City, the University simply acknowledges that development under the LRDP will have unavoidable significant impacts and abandons the issue. The University also informed CDF&FP that it would not develop a campus wide Timber Harvest Plan for timber management; instead the University

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proposes the largest single timberland conversion in the history of the region.

Such concerns or issues, as well as those addressed by the other state and local agencies, are deferred on a site by site and project by project review basis or unilaterally dismissed. (See for example the response to the Coastal Commission's comments regarding the Monarch butterfly and related parking and use issues, SA-5-5. Also, see generally responses to I-34, 45, 76.)

The University simply declares that it performed a single HCP for the red legged frog in a small footprint area near the arboretum pond -- which I do not believe even included the pond itself -- and that is it, no more HCPs will be performed, end of story. I have never witnessed any project proponent behave in this fashion in the face of the requirement that project proponents satisfy the USF&WS, USNMFS, and CDF&G that they either (1) will not illegally take a species, its habitat, and wetlands, or (2) the project proponent will obtain a take permit, usually via an HCP. Certainly the timber, mining, fishing, and construction industries that I served as legal counsel have never been afforded that luxury, nor permitted that kind of behavior.

A good example, as cited above, of the failure to properly address current baseline data or cumulative impact analysis, while deferring that analysis to the future, is the response to CDF&FP at SA-7-7 and SA-7-9:

> Draft EIR page 1-5 indicates that no additional environmental documentation would be required for projects within the scope of the 2005 LRDP if: (1) no new significant effects would result from the proposed project, (2) all significant effects have been adequately

> addressed in the 2005 LRDP EIR, and (3) no new mitigation measures would be required to address the impacts of the project.

In summarily dismissing another CDF&FP comment that regulatory fire safety buffer zones for structures (like student and faculty housing) have been increased from 30 to 100 feet, Public Resources Code 4291 cited at SA-7-9, which would significantly change the FEIR analysis of impacts on residential or other facilities in forested North campus areas, the University simply states in responding to comment SA-7-9:

> The current requirement for defensible space is cited on page 4.7-16 of the Draft EIR.

Previous community comments have addressed issues of underground water flows, the impacts of wells and pumping or changing surface runoff and drainage on water quality, flow regimes and volumes, and related potential impacts. Those concerns are not addressed in the FEIR in a manner significantly different from the previous DEIR. Issues raised by the community are either not addressed at all or only minimally so without adequate immediate or cumulative impact analyses. In the case of impacts to the underground mineralogical conditions there is, as described above, simply no analysis at all of mineral resources.

The community's concerns for damage to and significant negative effects on the karst geologic formations are unaddressed. The nature, extent, and flow regimes in the karst are admitted in the FEIR to be largely unknown. Comments from the community state that prior University operation of wells and grouting of the soils or impacts from drainage on subterranean caverns have produced direct and cumulative effects on water

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flows in the surrounding community, including active streams. (e.g. see I-61.)

The University's response simply denies the personally observed negative effects associated with University operations, as the University has done in the past, while asserting minimal scientific study is sufficient to go forward with further projects on a project by project basis. This is in the same document which states the karst formation is effectively unmapped and its flow regimes unknown. What the community fears is that in the future the University will persist in its projects relying solely and totally on this FEIR and findings that there are no additional significant impacts, no further mitigations needed, and overriding considerations – even when the community provides percipient witnesses to the modifications of flow regimes and water quality immediately following such University projects.

Indeed, it is hard for the community to imagine that the same environmental engineers, geologists, and others who prepared this FEIR and previous projects will ever find this FEIR inadequate as a basis for any future project; leaving the University the option at the level of the Chancellor's office, a building and grounds department, or a maintenance staffer to merely approve any such future projects on the basis that there are no new significant effects or the previous studies were adequate to such future project approvals. The University's method of deferring safety and effects reviews to future project specific analyses, with no enforceable standards of performance, review or chain of command, is viewed as irresponsible experimentation, at the expense of the community's safety and

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the safety and quality of its water, watershed, environment, wetland resources, and health.

The entire discussion of the North Campus development area also fits the pattern of impermissibly deferring analyses of environmental baselines and immediate or cumulative impacts to later project by project and site by site reviews; even though, as stated above, the analyses in this FEIR may be used for later individual and piecemealed project approvals without any further review, analysis, or mitigation. The Coastal Commission (SA-5-11) and the CGNA (ORG-4) in their comments note that traffic safety and usage have not been adequately addressed. The University defers to future traffic counts and declares that under the 2005 LRDP it is not "expected" or "likely" that safety will be an issue, with no substantial evidence in the record to justify such a conclusory and summary statement. (e.g. see SA-5-11, ORG-4 and responses.)

This FEIR acknowledges there will be unavoidable impacts to the North campus watersheds like Cave Gulch. In warning of the severe watershed and erosion problems in the North campus area the Regional Water Quality Control Board states, SA-3:

> UCSC has experienced extensive erosion and excessive sedimentation to its natural drainage system that is largely due to increased runoff from impervious surfaces ... The Stormwater and Drainage Master Plan states, "Any future development to the North Campus area is prohibited due to heavy erosion from increase in surface runoff as a result of increased impervious area" (Kennedy/Jenks Consultants 2004). This area is described as having highly erosive soil that relies on natural infiltration to accommodate stormwater flow. However, the Draft EIR proposes an increase from 7 acres to 54 acres of

impervious surface, resulting in a 31 percent increase in runoff. (SA-3-2.)

Further, the Regional Water Quality Control Board comments:

The University is currently not meeting these pre-development runoff standards, resulting in extensive erosion to the campus natural drainage system. (SA-3-2.)

Water Board staff is concerned with UCSC's history of failure to comply with mitigation requirements due to "lack of funding." (SA-4-2.)

We find the information provided in the Draft DEIR to be inconsistent with the NPDES General Permit for construction activity and inadequate at addressing source control of stormwater runoff, which would ultimately affect water quality. (SA-3, p. 1.)

[P]ortions of the north campus, which are proposed for development under the 2005 LRDP DEIR, contain jurisdictional wetlands. Section 4.4.1.7 of the LRDP DEIR contains a brief discussion of wetland habitat at UCSC. However, Section 4.8 (Hydrology and Water Quality) of the DEIR makes no mention of wetland habitat or mitigation for potential loss of wetlands.

A formal, campus-wide wetland delineation should be performed and incorporated into the 2005 LRDP EIR prior to specific development project proposals and before further evaluation of the 2005 LRDP DEIR. (SA-3-1.)

Cave Gulch watershed is connected to the Wilder Creek watershed which is known habitat for steelhead and the red legged frog and other species. The Regional Water Quality Control Board has commented that it does not want any degradation of the watersheds in the campus area; the campus has not complied with its previous mitigations and legal

requirements; this FEIR is not consistent with its permit requirements; there has been extensive and damaging erosion and sedimentation; and there are sensitive wetlands and riparian areas where the stormwater and drainage Master Plan mandates no further develop and the Water Quality Control Board requests a campus wide wetland delineation. Yet, this FEIR simply defers any substantive evidentiary review of potential adverse effects in any of the North campus watersheds. There is simply no substantial evidence in the record to support approving this FEIR, as the first necessary and effective step in the approval of projects identified expressly by this FEIR in the North campus area and these watersheds.

Impacts to the watersheds, to riparian vegetation, to traffic, noise, light, air quality, surface water flows and drainage, the biotic environment, and all other resource issues are simply left as unquantified unknowns in the North campus area. Again, the future projects in the area are subject to the proviso that if the University simply makes a finding that the deficient or barely existent discussions of the area in this FEIR dealt with the issues, there are no new significant effects, or if the project is one of overriding concern, it may and most certainly will go forward without any further review by the University.

This FEIR does include the caveat that any future projects in the North campus area or the entire project area may be subject to a review enforced by another regulatory agency. Given the University's attitude towards, for example, LAFCO, the City, County, and the USF&WS, declaring by fiat that no LAFCO issues exist, that no City or County building or zoning codes apply to the University, or that no further HCP as

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requested by USF&WS will be created, then what particular agency will in fact be able to later enforce mitigations, environmental reviews, or project alternatives which are not put in place in this FEIR itself?

While any private developer would be expected to protect wetlands and watersheds, including the fish populations and habitat, there is no wetland delineation for federal or state purposes sufficient to inform the public of what potential or known impacts will occur. There is only a brief commentary concluding that only a few acres of wetland will be destroyed, and those acres will be mitigated by other agencies' reviews in the future. There are no standards or guidelines sufficient to monitor the appropriateness of any future proposed project in a context of impacts to baseline or historical conditions. Those kinds of impacts include, especially given the karst formations and underground water flows which are presently unmapped and unknown, impacts to tributaries and watersheds impacting listed salmonids, animal life, and other environmental resources.

The same is true for the review of golden eagle, other raptor, and owl habitat. This FEIR simply declares that during construction some monitoring and mitigation will occur, but there is no baseline analysis or description of what happens to the species of concern after construction is over and the endangered or protected species and their breeding and foraging habitat is forever destroyed or significantly impacted leading to take. There are some minimal estimations of lost breeding and habitat areas by acreage, but those are merely dismissed as insignificant because other marginally discussed environmental enhancement is proposed or the birds can go live elsewhere. Destruction of spawning, breeding, and nesting habit

is not adequately addressed, if it is addressed at all (e.g. see discussion at SA-7, LA-2, I-5, I-7, and the entire comment and responses at I-29).

The response to I-29 is of particular concern. The commenter raised the issue that golden eagle and raptor or bird habitat would be destroyed. The Federal Endangered Species Act and state laws provide that to harass or harm a protected raptor would be a violation of the law. The Act then goes on to state:

> 5)(A) The term "critical habitat" for a threatened or endangered species means-
> (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
> (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Clearly, habitat is protected under that Act in order to avoid harassing or harming the species, especially when the habitat is used by a protected species for nesting, raising young, and foraging.

The University's response, citing the Bald Eagle and Golden Eagle Protection Act (because golden eagles are not a listed endangered species and, therefore, not subject to the federal Endangered Species Act), and quoting only one portion of the Eagle Protection Act's definition of prohibited conduct, is to state: "The definition of take does not include habitat removal or degradation. Therefore, removal of foraging habitat on campus that supports golden eagle is not a violation of the Act." The part of

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that Act the University does not cite is as follows: ''take'" includes [a person may not] also pursue, ... molest or disturb [an eagle]". Taking away, forever destroying the eagles' breeding, nurturing, and foraging area is taking, molesting and disturbing the eagles. The University is interpreting the Act in a manner which defeats the Act's purpose. A statute should be interpreted so as to affect its purpose and intent. Here the University has not done what our rules of judicial statutory construction require.

What the University has done is go out of its way to shield itself from responsibility for preserving the habitat of the campus golden eagles and owls and, thereby, has refused to protect the eagles and owls from molesting and disturbing conduct or taking - all in the interest of rushing to obtain an approval of this FEIR and the projects which will flow from it. Any private developer following the same logic could simply build in such a manner as to render the area useless for breeding, nesting, or foraging and effectively eliminate the eagles from any tract of land over a period of time, leading to the absence of the eagles or a radical decline in population in the Santa Cruz coastal region.

Like the response to the Water Quality Control Board's comment that the University is out of compliance with its own standards, the law, and stormwater and drainage Master Plan, the University simply hides it head in the sand in dealing with air quality issues. In response to air quality issues, the University declares without regard for the law or the environmental integrity of this FEIR that the LRDP is simply not consistent with the Air Quality Management Plan. The FEIR now simply states or admits: "Growth associated with the 2005 LDRP would conflict with the Air Quality

Management Plan." (See Monterey Bay Unified Air Pollution Control District comments, RA-1,2, and University's statement at FEIR, Vol. 4 Chapter 3.2.9, p. 3-42.) Again, end of story. This FEIR is deficient and defective on any number of levels.

Where the University does make at least an appearance of responding to public comment, it reduces the number of proposed new students from approximately 6,000 to 4,500. The FEIR then identifies this as a 22% or so change in the proposed project. What this FEIR does not state is that the proposed growth is still approximately a 33% increase over the existing student load and facilities capacity. Given such logic, if one were to propose a 1,000,000 student population increase one could in the final environmental document reduce the amount to 25,000 projected students and achieve an even more remarkable degree of apparent mitigation, by orders of multitudinous magnitudes. That particular adjustment of this FEIR to community concerns was, perhaps at best, a bit little and late.

These are but a few examples of how this University FEIR does not meet the standards and requirements of CEQA, NEPA, the clean water, hazardous and radioactive substances laws, and aesthetic, hydrologic, biologic, and other resource protection regulatory regimes. Were a private developer to propose building out a thousands of acres site under an FEIR like that proposed by the University, it would be clear to the public, to the agencies, and even to the University that such FEIR was defective and should not be approved as a programmatic planning document.

We, therefore, urge you not to give this FEIR a pass, not to promote this kind of environmental conduct and documentary rationalization for

growth and expansion. This is simply not an intellectually honest document. This lengthy and expensive, but superficial, environmental review and the associated LRDP will govern the development of the entire 2,000+ acres of the campus and the Westside Santa Cruz 2300 Delaware Project housing hazardous and radioactive materials next to a residential and recreational area over the next 15 years or more. There are no built in checks and balances to prevent the University from abusing its privileges under this LRDP as it did under the last one.

The Santa Cruz community and CLUE request that this FEIR be tabled and, prior to its ultimate approval, be modified so as to conform to CEQA and the environmental laws and to address the numerous concerns raised by other agencies of government, the community, organizations, and individuals. The present FEIR merely provides facile or rhetorical answers to serious comments, issues, and questions in order to obtain an expedited approval -- without regard for the environment, the community, the agencies, and, ultimately, the health of the academic institution itself and the greater public - whose lands and educational institution are held in trust by the University and the Board of Regents.

It is because of uncontrolled or what is at least perceived as irresponsible growth and expansion that the University finds itself embroiled in lawsuits and ballot initiatives in the Santa Cruz area. It is for those reasons that we submit these comments and observations, in the hopes of establishing not only a clearer understanding of our concerns by you the Regents, but a renewed and meaningful, effective dialogue between our

community and yourselves, as well as the systemwide administration which you oversee and the local Santa Cruz Campus administration.

To fully appreciate the concerns of the community, we hope that you will consider that rumors and knowledgeable reports of abuses abound, for example: extreme costs of remodeling the Chancellor's residence, which was rarely used; outrageous costs, in the tens of thousands of dollars, to install a dog run at that same residence; firing of qualified personnel and replacement by unqualified personnel, creation of jobs to benefit friends of administration officials, nepotism and favoritism; failure to enforce previous environmental programs and plans; threats of firings of personnel who would not toe the line; execution of projects requiring the illegal cutting of trees and of projects not otherwise approved in any planning review process; destruction of habitat for endangered species in order to avoid future reviews by eliminating the species' presence ahead of time; maneuvering to get rid of volunteers at projects like the arboretum or organic farm to pave the way for future projects destructive of the environment, even in violation of environmental laws; illegal or unnecessary use of pesticides; needless and useless environmentally damaging maintenance practices or projects like converting what is known as the lower quarry to trailer space; hiring professors with promises of affordable housing which the University could not and cannot provide, because of market pricing and building costs in the Santa Cruz area; refusing to recognize and acknowledge the academic senate's and the retired staff and professors' expressions of concerns, including the request that this FEIR be tabled for further review and

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development; attempting to push an approval of this FEIR through while the faculty are on summer break and before classes begin; and much more.

The community is distrustful and has no evident or accessible contact on the campus or in the systemwide administration with whom to communicate regarding these issues. The community perceives not only a great waste of money and expenditure of energy for questionable fiscal purposes, but a system that is without any rational checks and balances for accountability. The community perceives and is concerned that the University is and has been damaging the environment and the community as a whole without restraint or intelligent leadership. As business and statewide community leaders, we ask you to consider these issues and concerns in the interest of protecting and improving the quality of not just the physical environment but of the academic environment.

We can only hope that you take a considered course of action which will eliminate the need for further law suits and further acrimony. We ask you to take a path of co-operative relations with the community and its representatives in pursuit of responsible and carefully considered University growth.

Thank you for your time, consideration, and, hopefully, for your tabling of this FEIR for further review and consideration.

William O. Davis
Attorney at Law
On behalf of CLUE, CGNA, and concerned members of the public

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cc: via email, FAX, or US mail
UC, Office of the President
UCSC
City and County of Santa Cruz
City and County attorneys
State agencies
Regional agencies
Individual concerned citizens and organizations

Response to POST-FEIR Comment Letter ORG-2

The Coalition to Limit University Expansion (CLUE), through its attorney, William O. Davis, submitted this 30-page letter late in the afternoon of September 18, 2006, one day before the meeting of The Regents' Committee on Grounds and Buildings. As a result, the University's response is perforce more general than its response to the City's letter of September 15, 2006. The following is a list of issues raised by the letter, by topic, followed by the University's response:

Tiering of future project-level CEQA analysis from the 2005 LRDP FEIR
The substance of CLUE's comment regarding tiering (page 5 of the comment letter) is summarized in its assertion that the "FEIR fails to provide a quantitative or enforceable basis for any later tiering of those projects which are either the LRDP's expressly identified goals or necessary adjunct projects to its generally proposed expansion." The 2005 LRDP EIR is a "program" EIR that evaluates at a program level the effects of the maximum growth accommodated by the proposed LRDP. The "program" EIR establishes a foundation for "tiered" program-level environmental documents. As explained in the Draft EIR, pages 1-5, 1-6 and 1-7, the campus may tier or focus environmental review of campus development project implementing the 2005 LRDP from the Final LRDP EIR. Applying CEQA's review standards, the campus will make a determination of whether tiering is appropriate under CEQA at the time a specific development project is proposed. When appropriate, the environmental documentation prepared by the campus for later projects will incorporate by reference the LRDP EIR general discussions and analysis of impacts, and will also include an analysis of site-specific impacts associated with the development proposal to the extent that these have not previously been analyzed in the Final LRDP EIR. This approach is authorized by CEQA; the CEQA process followed for the 2005 LRDP is described on page 1-6 of the Draft EIR.

The lack of "clear findings related to overriding concerns"
The commenter maintains that basis for the University's conclusion regarding the infeasibility of certain alternatives, and its rational for the approval of the LRDP despite its environmental effects, is lacking. The University's Findings and the Overriding Considerations are posted on The Regents web site at http\\:universityofcalifornia.edu\regents\regmeet\sept06\102attach8.pdf.

Inadequate analysis of the cumulative impacts of growth on the Marine Science Campus in conjunction with the 2005 LRDP
The Draft EIR Section 4.0 (Volume I) describes the EIR's approach to cumulative analysis, including growth at the Marine Science Campus through 2020.

Wetland baseline, delineation and loss of wetlands in the North Campus
See Draft EIR Section 4.4.1.1 and Master Response BIO-2.

Stormwater and the applicability of the Clean Water Act
See the response to POST-FEIR Comment Letter ORG-1.

Lack of analysis of mineral resources
See the Initial Study published by the University on January 27, 2005, page 43, included in the Draft EIR as Appendix A. That study determined that the 2005 LRDP would not have potential impacts on mineral resources as defined under CEQA. Therefore, this topic area was not analyzed further in the 2005 LRDP EIR.

Inadequate analysis of historical resources
Potential impacts to historical resources are analyzed in detail in the Draft EIR, Section 4.5.

Inconsistency with AMBAG's Air Quality Management Plan and the Air Quality Control District management Plan
See discussion on page 4.3-30 of the Draft EIR regarding the consistency determination by the Association of Monterey Bay Area Governments. Mitigation Measures AIR-4A and AIR-4B will ensure that campus growth is accounted for in future population forecasts.

Inadequate response by campus to CDF comment letter related to "defensible space" and requirements for Timber Conversion Permit and Timber Harvest Plan
See DEIR page 4.4-68 regarding the relationship between timberland conversion permits and timber harvest plans. Please also see Response to Comment SA-7-5, which explains why it is not appropriate to compare the potential maximum size of timberland conversion for individual projects in the county with development under the 2005 LRDP. The reference to the Draft EIR discussion of defensible space as cited by the commenter points out that the Draft EIR specifically stated the requirement noted in the CDF comment letter.

Inadequate analysis of effects on karst and ground water
Please see Draft EIR pages 4.8-37 through 4.8-41, which presents a quantitative analysis of the potential effects on the karst aquifer of using ground water for irrigation, and describes the Campus's procedures for pressure grouting. Please also refer to Responses to Comments LA-3-13, LA-6-44, and ORG-4-4. Please also refer to Master Response BIO-6 and Response to Comment SA-5-13.

Traffic safety on Empire Grade
See Master Response TRAFFIC-2 (Section 5.2.13.1) regarding Empire Grade traffic impacts, which quantifies the number of projected car and truck trips on Empire Grade.

In adequate response to agency jurisdictional concerns including the RWQCB, LAFCO, City and County
Please see Response to Comment LA-5-1, which discusses the role of LAFCO in relation to City water service to the campus.

Inadequate response to USFW regarding campus-wide Habitat Conservation Plan and concerns related to impacts on owl and golden eagle habitat

See Response to Comment FA-1-4 regarding a campus-wide Habitat Conservation Plan. Please also refer to Draft EIR page 4.4.-56 and 4.4-57, which explains why the impact on special-status raptors would be less than significant. See also response herein, about tiering. Potential impacts on Ohlone tiger beetle are analyzed in the Draft EIR on pages 4.4-48 through 4.4-50, and potential impacts on California red-legged frog are analyzed in the Draft EIR on pages 4.4-54 to 4.4-55.

Several concerns related to the 2300 Delaware Avenue project-level EIR, including hazardous materials at the site, the need for a Coastal Development Permit from the California Coastal Commission and the recommendation that 2300 Delaware be included in the Marine Science Campus Coastal LRDP

The Final EIR did not present any changes to the 2300 Delaware project as described in the Draft EIR. Potential hazardous materials impacts of that project are analyzed in the Draft EIR, Volume III, pages 4-35 to 4-37. The 2300 Delaware project is not part of the Coastal LRDP prepared for the Marine Science Campus and therefore it was not necessary for the Campus to apply for a coastal development permit for that site at the same time that the CLRDP was submitted to the Coastal Commission. However, the Campus would be required to apply for a Coastal Development Permit from the Coastal Commission prior to commencing a development project at 2300 Delaware. As described in the Draft EIR, Volume III, page 4-2, the existing facilities at the 2300 Delaware site are suitable for the proposed uses as administrative offices and research that would make use of the specialized infrastructure.

The Marine Science Campus LRDP and the 2005 LRDP for the main campus should have been considered in a single LRDP document.

CLUE suggests that the Marine Science Campus and the main campus should have been considered together, but fails to identify an omission in the CEQA analysis prepared for either campus. CEQA allows the consideration of separate projects in separate documents, especially where, as here, there is permitting and geographic reason for the separation. As long as impacts are accurately disclosed and not minimized, CEQA is satisfied. Accordingly, the fact that two, rather than one, LRDP was prepared does not constitute impermissible "piecemealing" or segmentation.

David G. Eselius
1312 Laurel Street
Santa Cruz CA 95060

September 13, 2006

To: Gerald L. Parsky, Chairman of The UC Regents

cc: Governor Schwarzenegger, President of the UC Board of Regents
Senator Don Perata, Senate President pro Tempore
Speaker Fabian Núñez, Speaker of the Assembly
Committee on Grounds and Buildings, UC Regents
Sam Farr, Member of Congress, 17th District California
Joe Simitian, 11th Senate District
John Laird, 27th Assembly District
Milford Wayne Donaldson (SHPO)
Robert C. Dynes, UC President
George Blumenthal, UC Santa Cruz Chancellor (acting)
Santa Cruz County Supervisors, members
Santa Cruz City Council, members
Santa Cruz MAH Board, Museum of Art and History
Santa Cruz *Sentinel*

Subject: UCSC 2005-2020 LRDP's EIR -- Request to revise EIR for quality of life issues

Dear Chairman Parsky;

This letter concerns the University of California Santa Cruz 2005-2020 Long Range Development Plan's Environmental Impact Report, which is coming before the University of California Board of Regents, Committee on Grounds and Buildings, September 19, 2006.

The letter provides supporting information that the acceptance by the Board of Regents of the UCSC 2005-2020 Environmental Impact Report is to be postponed, until impacted government agencies can review and comment upon a revised Environmental Impact Report.

The revised Environmental Impact Report is to present more adequately the quality of life issues within Santa Cruz County. (1)

Those agencies who need to review and comment upon the revised Environmental Impact Report are --- Santa Cruz County, Santa Cruz City, State Historic Preservation Officer, California/U.S. Fish-Wildlife Department, California State Parks, and the California Coastal Commission.

THE PROBLEM

The **University of California Santa Cruz (UCSC)** 2005-2020 **Long Range Development Plan's (LRDP)** and **Environmental Impact Reports (EIRs)** (as with previous UCSC EIRs and the previous UCSC 1988 LRDP-EIR) do not adequately conform to some State and Federal environmental laws. Content within the UCSC 2005-2020 LRDP Final EIR has intentionally excluded and piecemeal identification of relevant significant quality of life issues: i.e., Santa Cruz County's high order organic environment and cultural heritage resources. Piecemealing of EIRs leads to cumulative negative impacts. (2)

UC Administration has intentionally, and inadequately, represented Santa Cruz County's high order organic environment and cultural heritage resources. UC Administration intends to use Santa Cruz County quality of life resources for new construction real estate areas.

By not identifying or adequately identifying Santa Cruz County's high order organic environment and cultural heritage resources, UC Administration's EIRs have promoted UCSC growth, which has resulted in EIR piecemealing and accelerating cumulative negative impacts. California courts and environmental law are very clear that the piecemealing of EIR projects is not acceptable.

Please note, in legal terms and obligations, an EIR is a very important document. UC Administration EIRs are the only public legally binding documentation that represents UC's planning and mitigation requirements. If it is not defined within the EIR, it is most likely not binding to the UC. By omitting significant statements from an EIR, it becomes more difficult in a court of law to prove that the absence of something causes harm (this is a part of the EIR piecemealing problem). Previous UC Administration verbal statements about its intended construction impact upon the surrounding environment remain empty promises. 2

THE SOLUTION

- The President of the UC Board of Regents, as Governor Schwarzenegger, is requested to issue a Governor Executive Order, to direct the **University of California (UC)** Administration reporting of Santa Cruz County high order organic environment and cultural heritage resources, within the UCSC 2005-2020 LRDP revised Final EIR. Previously, Governor Pete Wilson had addressed these issues, in part, within his Executive Order W-26-92 (April 8, 1992).
- It is requested that the UC Regents place on-hold the UCSC 2005-2020 LRDP Final EIR, until the EIR is **revised and resubmitted** to the UC Regents for final approval.
- Before re-submittal of the revised EIR to the UC Regents, critical EIR reviewers are requested to include the government agencies of --- Santa Cruz County, Santa Cruz City, State Historic Preservation Officer, California/U.S. Fish-Wildlife Department, California State Parks, and the California Coastal Commission. 3
- Realistically, to preserve and protect Santa Cruz County's historical *Cowell Home Ranch 12,000 +/- acre District's* cultural resources, the resource must be listed within the National Register of Historic Places (NRHP). It is request that my nomination of *Cowell Home Ranch District* to NRHP be permitted to complete that registration process. 4

DOES UC HAVE EXCEPTIONAL SOVERN IMUNITY FROM ENVIROMENTAL LAWS?

Sovereign immunity comes from the idea that a sovereign is superior to all others in authority and power. Sovereign immunity springs from the English common law concepts that the "King can do no wrong" (from the days it was believed that kings ruled by divine right and that all rights flowed from the sovereign) and that there can be no legal right as against the authority that makes the law on which the right depends. Despite widespread criticism by legal scholars, the doctrine retains a substantial degree of viability in American law.

Sovereign immunity prevents, in advance, a suit against a sovereign (a monarch, ruler, or a government) without the sovereign's consent. The problem is why would a sovereign government agency (such as the UC Regents) consent to liability?

Personally, I do not believe the California Constitution grants special sovereign immunity privileges to a specific government agency (such as UC). This is a particularly irritating situation when claims of sovereign immunity privileges come into conflict with Federal and State environmental laws.

The Center for Studies in Higher Education (located on the UC Berkeley campus) has provided a summary statement describing UC Regents approach to California Constitution, Article IX, and statutory law:

> *"California's second state constitution (1879) made a number of sweeping changes that included elevating the University of California to the status of a "public trust." Modeled on a similar provision for the University of Michigan, this new provision placed the University of California in the constitution and gave its Board of Regents' authority on all issues related to the management*

> *of the institution, 'subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and the proper investment and security of its funds.' **Hence, beyond fiduciary regulations as a public institution, statutory laws are not binding.** Only five other public universities have a similar status and **arguably the University of California has the greatest level of autonomy.**"*
>
> Center for Studies in Higher Education, Berkeley re:
> "California Master Plan for Higher Education"
> [Emphasis added DGE]

The California Constitution prohibits another public agency from imposing a special assessment on UC without legislative authority (such as with a city's infrastructure development): UC payment of fees (or support) for a non-public purpose could constitute an improper gift of public funds --- as with any other state government agency. However, the UC Regents and UC Administration are not exempted from any part of State and Federal environmental laws concerning **California Environmental Quality Act (CEQA)** EIRs --- as with any other state government agency.

The goal of the legislature's environmental laws is to provide for the common good of America and California's residents. It is the intent of State and Federal legislatures that government agencies, like UC, shall adhere to that legislation. There are no special provisions within State or Federal environmental laws that exclude a special UC Administration from parts of existing environmental laws.

Nor does State or Federal environmental law contain provisions that exclude the UC Board of Regents fiduciary obligations from enforcement of any part of environmental laws.

The way UC Administration has chosen to interpret EIR disclosure statements and significant mitigations of Santa Cruz County's high order organic environment and cultural heritage resource is just plain nonsense.

UC Administration's UCSC 2005-2020 LRDP-EIR has shortchanged the County of Santa Cruz on quality of life issues for UCSC/County/City Cultural Heritage Resources and UCSC/County Environment Resources (See **Attachment 1**). It is up to the UC Regents to straighten out the problem.

STATE AND FEDERAL ENVIROMENTAL LAWS

Since the UC system receives State and Federal funding, the UC Regents must consider their impact upon State and Federal environmental laws --- the following laws have a relation to the UCSC 2005-2020 LRDP-EIR:

5

> *Federal and State Environmental Policies/Acts* – three (3) Acts effectively establish environmental policies: National Historic Preservation Act of 1966 (NHPA), National Environmental Policy Act of 1969 (NEPA), and California Environmental Quality Act of 1970 (CEQA).
>
> *Federal Archaeology Laws* – Archaeology federal laws include the Historic Sites Act of 1935 (HAS), Historic Preservation Act of 1966 (HPA), National Environmental Policy Act of 1969 (NEPA), Archaeological Resources Protection Act of 1979 (ARPA), and Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)

CEQA BASICS

The **California Environmental Quality Act (CEQA)**, encoded in Sections §21000 et seq. of the Public Resources Code (PRC) with Guidelines for implementation codified in the California Code of Regulations (CCR), Title 14, Chapter 3, Sections §15000 et seq., requires state and local public agencies to identify the environmental impacts of proposed discretionary activities or projects, determine if the impacts will be significant, and identify alternatives and mitigation measures that will substantially reduce or eliminate significant impacts to the environment.

Historical resources are considered part of the environment and a project that may cause a substantial adverse effect on the significance of a historical resource -- is a project that may have a significant effect on the environment. The definition of "historical resources" is contained in Section §15064.5 of the CEQA Guidelines

Since the CEQA was modeled on the Federal NEPA (42 U.S.C. s 4321 et seq.), California courts have consistently treated judicial and administrative interpretation of the NEPA enactment as persuasive authority in interpreting California's CEQA.

There are some excepted CEQA projects. PRC Section 21080(b) and the Secretary of the Resources Agency identify those excepted projects. However, "Exemptions cannot be used for projects which have cumulative impacts, when there is a reasonable possibility that there may be a significant impact due to unusual circumstances, or when there would be an adverse impact on historical resources." See **Attachment 2.**

The UC Regents do not retain exceptions to the CEQA, PRC, and CCR provisions. The UC system cannot get around the requirements by the unlawful practice of ignoring CEQA provisions, piecemealing a project, or ignoring cumulative negative impacts. UCSC/County/City Cultural Heritage Resources and UCSC/County Environment Resources must now be completely identified and mitigated within a revised UCSC 2005-2020 LRDP and 2005-2020 LRDP-EIR. 6

CSU EXECUTIVE ORDER NO. 374

As an environmental law compliance example, California State University (CSU) has been properly identifying cultural heritage resources within their EIRs. The identification process started with CSU Executive Order No. 374, January 28, 1982. The identification of CSU compliance is in accordance to PRC §5024(a).

> **CSU Executive Order No. 374 -- January 28, 1982,** The California State University (CSU), with the authority of the Public Resources Code Section §5024(a), set forth its administrative policy to carry out preservation of heritage resources under the jurisdiction of CSU. The Office of the Chancellor of California State University (CSU) issued Executive Order No. 374 on (Title: Historic Preservation), which directs CSU compliance to §5024(a).
>
> *PRC §5024. (a) On or before January 1, 1982, each state agency shall formulate policies to preserve and maintain, when prudent and feasible, all state-owned historical resources under its jurisdiction listed in or potentially eligible for inclusion in the National Register of Historic Places or registered or eligible for registration as a state historical landmark pursuant to...etc...*
>
> CSU web site

Since the UC Regents purchased UCSC campus lands in 1961, the required historical resource listing with the State Office of Historic Preservation (SHPO) has not happened. UC Administration has refused to comprehensively comply with PRC §5024. If UC Administration had complied with PRC §5024, UCSC's significant portions of historic *Cowell Home Ranch 12,000 +/- acre District* would most likely have been preserved and maintained. 7

Thus, circa 1770 -1947 cultural historical limekiln resources eligible for inclusion in the National Register of Historic Places (NRHP) has been intentionally denied its existence and UCSC campus portions of cultural resources destroyed. See **Attachment 1.**

EXECUTIVE ORDER W-26-92

Apparently Governor Pete Wilson was concerned enough about protection of the state cultural historic resources to issue his Executive Order W-26-92 (April 8, 1992). See **Attachment 2.**

Executive Order W-26-92 identifies PRC Section §21080(b)(3) and (4) which clearly states that CEQA projects "shall not be construed or applied to exempt from review projects to alter significant historic resources except to the extent that the condition of the historic structures or resources poses an emergency, as defined by Section §21060.3 of the PRC."

However, a literature review indicates that the UC Regents unilaterally exempted UC from the Governor's Executive Order W-26-92.

> **Executive Order W-26-92 -- April 8, 1992,** Governor's Executive Order W-26-92 was signed by Governor Pete Wilson. The goal of the Executive Order is to preserve and maintain the significant historic resources of the State. It reiterates parts of California Public Resources Code Section 5024. Executive Order W-26-92 directs state agencies to inventory properties under their jurisdiction for historic resources and to manage these resources for the benefit and inspiration of the people of California. ...etc...

See **Attachment 2**

PIECEMEALING AND CUMULATIVE IMPACTS

The piecemealing of environmental and UCSC camps portion of *Cowell Home Ranch 12,000 +/- acre District* has negated the intent of Federal and State Environmental Policies/Acts and Federal Archaeology Laws. Piecemealing promotes cumulative negative impacts. Both piecemealing and not taking into account cumulative negative impacts are not permitted within the CEQA.

The piecemealed UCSC 2005-2020 LRDP-EIR has caused, and will continue to cause, cumulative negative impacts upon Santa Cruz County's high order organic environment and cultural historical resource. **8**

Piecemeal and cumulative negative impacts -- Piecemealing is a process of chopping of a large project into several smaller ones---each smaller project with a potential impact on the environment -- which cumulatively may have impacts of significant consequences. As far as I know, UC Administration has piecemealed <u>all</u> its EIRs and LRDPs within issues concerning Santa Cruz County's high order organic environment and cultural historical resource of *Cowell Home Ranch 12,000 +/- acre District.*

Several court ruling concerning piecemealing and cumulative impacts:

- As a general rule, an environmental document such as an EIR must describe the entirety of a project, including reasonably foreseeable future actions that are part of the project (14 CCR & 15378 (a); ***Laurel Heights Improvement Association v. Regents of U.C.* (1988)** 47 Cal.3d 376, 395 ("*Laurel Height I*")).
- The California Environmental Quality Act and the National Environmental Policy Act ("CEQA/NEPA") both protect against environmental considerations by "...chopping a large project into many little ones----each with a ...potential impact on the environment---which cumulatively may have disastrous consequences" (i.e., piecemealing) (***City of Santee v. County of San Diego* (1989)** 214 Cal.App.3d 1438, 1452).
- It is well established that the CEQA prohibits piecemeal environmental review by "'chopping a large project into many little ones--each with a minimal potential impact on the environment--which cumulatively may have disastrous consequences. [Citations]' "**(Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo (1985)** 172 Cal. App. 3d 151, 165 [217 Cal. Rptr. 893].)
- To ensure that the initial study considers the "whole of an action," it must evaluate all phases of project planning, implementation, and operation. 14 C.C.R. Section 15063 (a). A project' may not be "piecemealed" into a succession of smaller projects, none of which by itself causes significant impacts. ***Citizens Association for Sensible Development of Bishop Area v. Com& of Invo (1985)*** 171 Cal.App.3d 151, 165-166; ***McQueen v. Board of Directors of the Mid-peninsula Regional Open Space District (1988)*** 202 Cal.App.3d 1136, 1144; ***Laurel Heights Improvement Ass'n v. Regents of the University of California***, supra, 47 Cal.3d at pp.395-396.

It is most likely that Santa Cruz County's high order organic environment and cultural historical resource would be best represented by multiple reviews of the revised UCSC 2005-2020 LRDP-EIR. Those reviewers external to UCSC are to be -- Santa Cruz County, Santa Cruz City, State Historic Preservation Officer, California/U.S. Fish-Wildlife Department, California State Parks, and the California Coastal Commission.

9

Sincerely,

David G. Eselius

Attachment 1: Community Quality of Life - high order organic environment and historical resources
Attachment 2: Governor Pete Wilson's Executive Order W-26-92 and exemptions statement

Attachment 1: Community Quality of Life - high order organic environment and historical resources

UCSC 2005-2020 LRDP Final EIR vs. Santa Cruz County

Community Quality of Life Concerns of
High order organic environment and Cultural Historic Resources

UCSC/County High order organic environment Resource

> ***UCSC/County Environment Resources***: is the natural world, within which reside people, air quality, riparian ways, animals, and plants. (a.k.a., "Organic Environment" or "High Order Organic Environment")

UCSC 2005-2020 LRDP Final EIR does not adequately account for cumulative negative impacts of the environmental schism, which will most likely result from UCSC campus growth into the north campus. UC Administration has presented their environmental impact assessment as being represented within a piecemealed 50 +/- environmental studies. UCSC's EIR evaluation of campus growth impact upon campus and surrounding high order organic environment has been piecemealed. 10

A high-order natural environment infringement example would be the UCSC permanent draining (2000) of the UCSC Arboretum Reservoir (a.k.a., former City of Santa Cruz Reservoir, historic registration CA-SCR-UCSC-001H, reservoir complex, built 1890). The area is now called the UCSC Arboretum Pit. Did UCSC Administration follow proper CEQA Project EIR environmental evaluation protocols before creating the Pit? The *Metro Santa Cruz* says not.

> ***Road Kill*** *-- The Arboretum's gardens may not be the only casualty of UCSC Chancellor M.R.C. Greenwood's building frenzy.*
>
> *Biologists and Arboretum volunteers say the university's plan to build at least 80 faculty housing units on Inclusion Area D, a 12-acre parcel located on Empire Grade between the Arboretum and Farm and Garden Project, threatens the California red-legged frogs, a federally threatened species.*
>
> *Biologists say the Arboretum reservoir and the riparian habitat surrounding it are a key habitat and breeding site for the little hopper.*
>
> *. . . "They don't want any interference," says former Arboretum board president William Grant. "It is absolutely behaving badly. They are government employees. They are working for us taxpayers, and they act like they don't have any responsibility to us."*
>
> *Metro Santa Cruz*, June 28-July 5, 2000

11

Note: August 2006, in the Santa Cruz County Superior court case CLUE vs. UCSC, it has been reported that UCSC has consented to correcting the Arboretum Pit problem.

For many years, red-legged frogs were listed as "a species of special concern." As of June 1996, red-legged frogs acquired federal protection as a federally listed threatened species (four years prior to UCSC creating the Arboretum Pit). There are many California/U.S. Fish and Wildlife Department listed concerns, threatened, endangered, or extinct species within the high order natural environment of the UCSC campus and surrounding campus area.

In addition to affecting the County's high order organic environment, the removal of the 12-acre surface-water storage-facility historic reservoir complex affected the regional hydrologic cycle for both ground water and surface water retention.

The UCSC campus, and surrounding area, has many riparian corridors that appear to be in need of valid CEQA EIR environmental mitigation procedures. One reason it is of particular importance is that UCSC riparian corroders and organic environment flow through the California Costal Commission and other government agency spheres of influence.

The health and well-being of UCSC's 2,000 +/- acres of riparian corridors is a cumulative impact concern. Years of UCSC benign neglect, or inadequate EIR mitigations, has a cumulative negative impact, which will destroy the quality characteristics of significant riparian corridors and organic life.

The impact of an increased UCSC campus environmental schism (and an increased cultural historical resource schism), between the costal region and the inland areas, have not been addressed within the UCSC 2005-2020 LRDP/DEIR. The increase of such an environmental schism will greatly affect the sensitive costal environment within the government agency spheres of influence, within the associated surrounding area. 11

The 3 km (1.8 mile) schism increase is as measured from UCSC campus Firehouse Station to the UCSC north campus upper boundary.

The increased UCSC environmental schism affects the resources and organic migration patterns of Wilder Ranch State Park separated from the City of Santa Cruz's Pogonip City Park, Henry Cowell Redwoods State Park, and the Henry Cowell Redwoods State Park Fall Creek Unit.

Among possible environmental disturbances noted in the UCSC 2005-2020 LRDP Draft EIR are:

- *120 acres of redwoods could be cut to allow for a new road and a variety of buildings in a wooded area known as upper campus.*
- *A total of 50 acres of "sensitive natural communities" could be built over, including northern maritime chaparral, riparian woodland, and native coastal prairie. The environmental report says coastal prairie grassland, which would be replenished at another location, once defined much of the county's landscape and can support at least 30 endangered species.*
- *A new road to campus could be built off Empire Grade Road, which many Bonny Doon residents fear would upset the area's bucolic charm.*
- *Bridges and housing could cause sediment erosion and polluted storm-water runoff in Jordan Gulch, Moore Creek, and Cave Gulch.*

In written comments to university planners over the past six months, faculty scientists have said the growth plan's environmental report either underestimates or misrepresents the impacts.

Beyond specific impacts, many on campus worry new construction will have a spillover effect on other areas of campus, among those, the 400 protected acres known as the Campus Natural Reserve, which are used for teaching and research. Letters to university officials say development would turn dynamic habitats for Santa Cruz manzanita, endangered Ohlone tiger beetle, the San Francisco dusky-footed woodrat, and others into a broken patchwork.

"UCSC professors worry valuable campus
ecology isn't protected from growth"
Santa Cruz *Sentinel*, June 4, 2006

The impact of UCSC 2005-2020 expansion plans upon *UCSC/County Environment* has been inadequately studied, the cumulative impact not defined, piecemealed, mitigations are not adequate, and the environmental issues are inconclusively presented within the UCSC 2005-2020 LRDP Final EIR. 12

The government organization divisions associated with Santa Cruz County's high-order natural environment are:

- Wilder Ranch State Park (central northeast section) and a California Costal Commission sphere of influence
- UCSC South Campus, under Santa Cruz City sphere of influence
- UCSC North Campus, under Santa Cruz County sphere of influence
- City of Santa Cruz's Pogonip City Park, under Santa Cruz City sphere of influence
- Henry Cowell Redwoods State Park,
- Henry Cowell Redwoods State Park, Fall Creek Unit

UCSC/County/City Cultural Historic Resource

> ***UCSC/County/City Cultural Historic Resources***: encompasses the qualities and attributes of places that have aesthetic, historic, scientific or social value for past, present or future generations. These values may be seen as a place's physical features, but importantly can also be intangible qualities such as people's associations with, feelings for a place, or a cultural historic fabric. (a.k.a., "Cultural Heritage Resources")

By not admitting to the extant existence of *Cowell Home Ranch 12,000 +/- acre District*[1], UC Administration has secured three (3) high-value real-estate historic limekiln areas, for UCSC campus growth construction:

- Bridge Kiln area — in operation ca. 1850 to ca. 1855
- Upper Quarry Kiln area — in operation ca. 1850 to ca. 1855
- Elf Land Kiln area — in operation ca. 1840 to ca. 1850

The above limekilns are part of a historic area identified as the "Upper Six Kilns." The other kilns within this grouping of six (6) limekilns are:

- Old Pit Kiln — in operation ca. 1770 to ca. 1850
- North and South Kilns — in operation ca. 1850 to ca. 1855

Many State and Federal laws apply to UCSC's EIRs. However, realistically, to preserve and protect Santa Cruz County's historical *Cowell Home Ranch 12,000 +/- acre District's* cultural resources, the resource must be listed within the National Register of Historic Places (NRHP) (or the State's equivalent listing). To date, my nomination of *Cowell Home Ranch 12,000 +/- acre District* to the NRHP appears to be held up pending the UC Regents decision as to wither or not UC Administration is going to annex the UCSC portion of this cultural resource, which is of national significance. 13

Since UC acquired the campus land in 1961, UCSC has not appropriately identified *Cowell Home Ranch 12,000 +/- acre District* lime production cultural historic resources within any of the many UCSC project EIRs. Additionally, important elements within EIRs do not identify cumulative construction impact upon the cultural resources, cultural historic fabric, or the surrounding high order natural high order organic environment.

To gain real estate to build upon, UC Administration has coincidently under represented *Cowell Home Ranch District's* historical resources and piecemealed the representation of what has been partially identified.

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[1] The term "district" can sometimes lead to confusion. The UCSC campus entrance 31 +/- acre ranch house/lime production location is an "area" or "site," but it is not the "district." It is more correct to refer to the whole of historic Cowell Home Ranch 12,000 +/- acre District's multiple properties as the "District." The nomination for registration within the NRHP is for the 12,000 +/- acre Cowell Home Ranch District, and this nomination includes the 31 +/- acre UCSC entrance location.

In a manner similar to UCSC Administration's treatment of the California red-legged frogs within the former 1890 City of Santa Cruz Reservoir, to obtain additional UCSC real estate for campus construction, the UCSC Administration has intentionally destroyed, mutilated, "Demolished by Neglect," confiscated, squandered, and undermined portions of a cultural historic resource of national significance: *Cowell Home Ranch 12,000 +/- acre District.*

13

Original Area of Cowell Home Ranch District Cultural and Environmental Fabric
Santa Cruz County
State Park, City Park, and UCSC -- Contiguous Area Locations

	Cultural Resource Area	*Limekiln-quarries/operational dates*	
1)	Wilder Ranch State Park's east and north area	Samuel Adams Kiln	1858 to ca. 1920
2)	UCSC South Campus (City of Santa Cruz)	Elf Land Kiln	ca. 1840 to ca. 1850
		Bridge Kiln	ca. 1850 to ca. 1855
		Upper Quarry Kiln	ca. 1850 to ca. 1855
	Davis & Jordan Kiln	1853 to 1920	
	HC Continuous Kiln	ca. 1890 to 1920	
3)	UCSC North Campus (Santa Cruz County)	(Gold Reduction Furnace	ca. 1855 removed 1980s)
4)	City of Santa Cruz's Pogonip City Park	Old Pit Kiln	ca. 1770 to ca. 1850
		North and South Kilns	ca. 1850 to ca. 1855
5)	Henry Cowell Redwoods State Park	(Standard Kiln 4-ea	1906-1920 removed 1980s)
		Rincon Station Pot Kiln	1920 to 1947
6)	H. C. Redwoods State Park, Fall Creek Unit	I. X. L. Kiln	1874 to 1919

(Note: Fall Creek is historically joined to above contiguous areas)

Source: *Cowell Home Ranch District* NRHP nomination, David G. Eselius
A down rev version of the *Cowell Home Ranch District* cultural landscape report can be found with a web search for -- *Cowell Home Ranch District* Eselius

Although small in relative area, UCSC's portion (2,000 +/- acres) of *Cowell Home Ranch District* cultural historic resources (ca. 1770 to 1947 within 12,000 +/- public acres), the campus is centrally located and retains a very important elements of Santa Cruz County's historic lime production facilities and supporting ranching facilities. The same 12,000 +/- acre Cowell *Home Ranch District* historic lime production facilities area is intertwined within Santa Cruz County's high order natural environment and park systems.

The 12,000 +/- public acres of *Cowell Home Ranch District* is nominated for inclusion within the National Register of Historic Places (NRHP). The NRHP nomination package is currently in process (again) within the Sacramento Office of Historic Preservation.

The government organization divisions associated with *Cowell Home Ranch District* environment are:

- Wilder Ranch State Park (central northeast section) and a California Costal Commission sphere of influence
- UCSC South Campus, under Santa Cruz City sphere of influence
- UCSC North Campus, under Santa Cruz County sphere of influence
- City of Santa Cruz's Pogonip City Park, under Santa Cruz City sphere of influence
- Henry Cowell Redwoods State Park,
- Henry Cowell Redwoods State Park, Fall Creek Unit

Attachment 2: Governor Pete Wilson's Executive Order W-26-92 and exemptions statement

Executive Order W-26-92
Pete Wilson, Governor of California
April 8, 1992

Whereas, the preservation and wise use of California's cultural and historic resources are of importance to the people of this state; and

Whereas, these cultural and historic resources, hereinafter referred to as "historic resources," include artifacts, sites, building, structures, districts, and objects with historical, architectural, archaeological, and cultural significance; and

Whereas, these historic resources provide not only continuity with our past, but foster community pride, stimulate economic activity, improve housing, enhance the quality of life and, along with California's unique natural resources, draw hundreds of thousands of visitors to California every year; and

Whereas, due to their location, age, and the construction materials used, many of our important historic buildings and historic sites may be at risk from deterioration, destruction, and natural disasters; and

Whereas, an assessment of the extent of our historic resources is needed in order to ensure their recognition and adequate protection in the future; and

Whereas, the preservation and wise use of historic resources must include consideration of cost-effectiveness and fostering private sector incentives, and state agencies must consider these and other public interests in their decision-making processes;

Now, therefore, I, Pete Wilson, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and the statutes of the State of California, do hereby issue this order to become effective immediately, and do hereby direct all agencies of the Executive Branch of state government as follows:

Section 1. In furtherance of the purposes and policies of the State's environmental protection laws, including but not limited to the California Environmental Quality Act, Public Resources Code Section 21000 et seq., the State Historic Building Code, Health and Safety Code Section 18950 et seq., and the historic resources preservation laws, Public Resources Code Section 5020 et seq., all state agencies shall recognize and, to the extent prudent and feasible within existing budget and personnel resources, preserve and maintain the significant historic resources of the State. In accordance with these statutes, each state agency is directed:

1) to administer the cultural and historic properties under its control in a spirit of stewardship and trusteeship for future generations; and
2) to initiate measures necessary to direct its policies, plans, and programs in such a way that state-owned sites, structures, and objects of historical, architectural, or archaeological significance are preserved, restored, and maintained for the inspiration and benefit of the people; and
3) to ensure that the protection of significant historic resources are given full consideration in all of its land use and capital outlay decisions; and
4) in consultation with the California State Office of Historic Preservation, to institute procedures to ensure that state plans and programs contribute to the preservation and enhancement of significant non-state owned historic resources.

Section 2. Each state agency shall designate from among its current staff a key official (Agency Preservation Officer) whose responsibility will be to ensure that the State's policies regarding the protection of cultural and historic resources within the jurisdiction of such state agency are carried out.

Section 3. Under the direction of its Agency Preservation Officer, in consultation with the State Historic Preservation Officer, and in consultation as appropriate with the State Historical Building Safety Board, each agency shall, by January 1994, develop and institute feasible and prudent policies and a management plan to preserve and maintain its significant historic resources.

a) Inventories pursuant to Section 5024 are to be completed or updated by January 1995, or as soon thereafter as feasible as specified in a Memorandum of Understanding with the State Historic Preservation Officer. Inventory preparation shall take into account the kind, quantity, location of, and development risk to properties within the ownership and control of the agency.
b) Heritage resources management plans and policies shall be reviewed periodically and revised as appropriate in consultation with the State Office of Historic Preservation.
c) For purposes of developing management plans and policies under this order, resources which meet the following criteria shall be considered significant heritage resources:
    1. listed in or potentially eligible for inclusion in the National Register of Historic Places; or
    2. registered or eligible for registration as a state historical landmark or point of historical interest; or
    3. registered or eligible for listing in a California Register of Historical Resources in accordance with procedures and criteria developed by the State Historical Resources Commission.

Section 4. The State Historic Preservation Officer and the State Office of Historic Preservation shall provide leadership to and shall coordinate the efforts of State agencies in implementing their stewardship obligations with regard to historic resources, including, but not limited to, the requirements of Public Resources Code Sections 5020, et seq.

Section 5. Each state agency shall report to the State Office of Historic Preservation annually its progress in completing inventories, management plans, and policies pursuant to this order.

Section 6. The Resources Agency and the Office of Planning and Research shall provide guidance concerning the application of the California Environmental Quality Act (CEQA) and the state's CEQA regulations in order to provide for the consistent protection and preservation of the heritage resources of California.

The provisions of Section 21080(b)(3) and (4) of the Public Resources Code shall not be construed or applied to exempt from review projects to alter significant historic resources except to the extent that the condition of the historic structures or resources poses an emergency as defined by Section 21060.3 of the Public Resources Code. The historic value of structures is to be preserved and enhanced, unless the state or local agency finds the structure presents an imminent threat of harm to the public or of damage to adjacent property.

In witness whereof I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 8th day of April 1992.

Pete Wilson, Governor of California
Attest: March Fong Eu, Secretary of State

CEQA Exempt Projects
PRC Section 21080(b) and the Secretary of the Resources Agency

CEQA exempts a number of specific types of projects from its provisions. For example, emergency repairs to public service facilities and specific actions necessary to prevent or mitigate an emergency are statutorily exempt from CEQA pursuant to Public Resources Code (PRC) Section 21080(b). In addition, the Secretary of the Resources Agency has identified 32 classes of project, which are normally exempt from the Act.

Exemptions cannot be used for projects which have cumulative impacts, when there is a reasonable possibility that there may be a significant impact due to unusual circumstances, or **when there would be an adverse impact on historical resources**, for example possible exemptions include, but are not limited to, the operation, repair, or minor alteration of existing facilities, replacement or reconstruction of existing structures, and construction or replacement of accessory structures (Guidelines Section 15301, 15302, and 15311, respectively).

- Notice of Exemption: PRC Sections 21108 and 21152, and Guidelines Section 15062 provide that after approving a project for which an exemption was employed, the lead agency (or the applicant) may file a Notice of Exemption with the county clerk. If a state agency files this notice, it must be filed with the Office of Planning and Research (OPR). Appendix E of the CEQA Guidelines contains a suggested format for the Notice of Exemption.
- Statute of Limitations: Filing a Notice of Exemption triggers a 35-day statute of limitations for litigation on CEQA grounds. If a Notice of Exemption is not filed, the statute of limitations becomes 180 days from either the date the decision is made to carry out or approve a project, or where no formal decision is required, 180 days from the date the project is commenced. (PRC Section 21167 and Guidelines Section 15112).

There are no other notice requirements for CEQA exemptions.

CEQA Technical Advice Series
July 2001
[Emphasis added DGE]

Response to Post-FEIR Comment Letter I-1

Mr. Eselius's comments on the Draft EIR (Letter I-22) and responses to his comments are presented in Volume V of the Final EIR.

Response to Comment Post-FEIR I-1: All of the listed government agencies were afforded the opportunity to comment on the Draft EIR. As described in Chapter 1 of Volume IV, in the Final EIR, the public comment period was extended to 86 days in order to provide agencies and individuals additional time to comment on the document. Comments from Santa Cruz County, the City of Santa Cruz, California Dept of Fish and Game, US Fish and Wildlife Service and the California Coastal Commission, and responses to each comment, are included in Volume V of the Final EIR (see index to comments, Volume V). The State Office of Historic Preservation and California State Parks did not comment on the EIR.

Response to Comment Post-FEIR I-2: The 2005 LRDP EIR is a programmatic CEQA analysis, which provides for subsequent analysis of specific projects that may be developed within the LRDP envelope, and as such does not piecemeal the analysis. The issue of piecemealing of analysis is addressed in more detail in Response to Comment LA-10-2 in Volume V of the Final EIR. The potential cumulative impacts of the proposed 2005 LRDP are considered under each environmental issue area, in the 2005 LRDP EIR, Volumes I and II, Chapter 4. Mitigation measures to address each identified impact were presented in the Draft EIR. Several measures were refined in the Final EIR to increase their effectiveness. Please refer to Table 2-1, Chapter 3, Volume IV of the Final EIR for the complete text of mitigation measures, including revisions.

Response to Comment Post-FEIR I-3: Please refer to Response to Comment Post-FEIR I-1.

Response to Comment Post-FEIR I-4: The University has complied with all relevant environmental laws in addressing cultural resources on the Santa Cruz campus. Section 4.5, Volume II of the Draft EIR describes the results of recent comprehensive cultural resources inventories on campus, assesses the potential for activities under the 2005 LRDP to affect cultural resources, and includes mitigation measures to protect identified and potential cultural resources on campus.

The Campus recently nominated the Cowell Ranch and Lime Industry Historic District to the National Register of Historic Places (NRHP) and prepared a Historic District Management Plan for the District (ARG 2006)[1].The proposed district includes the concentration of historic buildings and structures near the campus' main entrance. The District as defined in this nomination previously was determined eligible for the California Register of Historical Resources and the NRHP. The State Historic Preservation Officer (SHPO) is in the process of reviewing the campus's formal nomination at this time. While the Cowell operations originally encompassed a much

[1] Architectural Resources Group and University of California Santa Cruz. 2006. Cowell Ranch and Lime Industry Historic District Management Plan.

larger area than the Campus's proposed Historic District, not all of the related resources are contiguous. The area nominated by the campus as a District encompasses the area of the campus with the highest concentration of historic features. Additional features associated with the historic Cowell operations, which are more widely distributed around the campus, have been recorded as individual historical resources and are thoroughly addressed in mitigation planning in the 2005 LRDP EIR.

The campus is aware that Mr. Eselius has prepared a nomination for a proposed Cowell Home Ranch Historic District that includes the historic areas on the UC Santa Cruz campus but encompasses a much larger area. It is our understanding that this nomination was returned to Mr. Eselius by the State Historic Preservation Office (SHPO), with comments and questions, and has not subsequently been submitted for further consideration. There has been previous correspondence between Mr. Eselius and the University on this matter (most recently, University of California 2006)[2]. Historical resources associated with the Cowell operation that are located outside of the campus boundaries are not addressed in the Campus's Historic District nomination or the 2005 LRDP EIR. These resources are not within the control of the University, nor will they potentially be affected by University actions under the 2005 LRDP.

Response to Comment Post-FEIR I-5: The University of California is subject to state and federal environmental laws. The 2005 LRDP EIR complies with all CEQA requirements. Relevant state and federal laws are addressed under pertinent issue areas, in subsections of Chapter 4, Volumes I and II of the EIR.

Response to Comment Post-FEIR I-6: Please refer to Response to Comment Post-FEIR I-2.

Response to Comment Post-FEIR I-7: Please refer to Response to Comment Post-FEIR I-4.

Response to Comment Post-FEIR I-8: Please refer to Response to Comment Post-FEIR I-2.

Response to Comment Post-FEIR I-9: Please refer to Response to Comment Post-FEIR I-1.

Response to Comment Post-FEIR I-10: Please refer to Response to Comment Post-FEIR I-2.

Response to Comment Post-FEIR I-11: The comment refers to the Ranch View Terrace project which was approved in 2003 and analyzed in a project specific EIR. The project included a Habitat Conservation Plan and the EIR included comprehensive mitigation program for potential impacts to California Red Legged Frogs (CRLF).

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[2] University of California. 2006. Letter from Michael Bocchicchio, A.I.A, Assistant Vice President, Facilities Administration, University of California, Office of the President, August 4, 2006, to David Eselius.

The 2005 LRDP EIR includes mitigation measures to protect and enhance CRLF and their habitat, as described in Volume II, Section 4.4. Protections for riparian vegetation and wildlife corridors are also included as mitigation measures in the EIR, as discussed in the same section.

Response to Comment Post-FEIR I-12: Please refer to Response to Comment Post-FEIR I-2.

Response to Comment Post-FEIR I-13: Please refer to Response to Comment Post-FEIR I-4.

To: Regents of the University of California
510-987-9224

Re: UCSC Growth Plans

Gentlemen,

I vigorously oppose the expansion planned by UCSC.

The university has placed an inordinate burden on citizens of Santa Cruz County, by increasing traffic congestion, huge demands on city/county services, and creating a severe and worsening shortage of housing. All this while contributing very little to mitigate these problems.

Furthermore, the university itself has been highly politicized and carried, by its faculty, administration, and students to support positions and causes that are far from representative of the local community, California, or mainstream American values.

Most citizens of Santa Cruz want the university to be diminished in size, not increased.

If the university is going to run roughshod over local citizens and local government, then at least it should make some reasonable and nontrivial compensation to the local community.

I urge you to disapprove the ill-advised plans for increasing the size of the university. It has not properly served the state, the county, nor the citizens of the USA.

1

Dion L. Johnson II
265 Woodland Drive
Scotts Valley CA 95066

Response to Post-FEIR Comment Letter I-2

Response to Comment Post-FEIR-I-2-1: Comment noted. Impacts of the campus growth under the 2005 LRDP on traffic congestion, public services, and housing are analyzed in Sections 4.14, 4.12, and 4.11 of the Draft EIR (Volumes I and II of the Final EIR). The EIR includes mitigation measures to reduce impacts of campus growth insofar as this can feasibly be accomplished. Please refer to Table 1-1 in the Final EIR, Volume IV, for a list of all of the proposed mitigation measures.

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0028
(916) 319-2028
FAX: (916) 319-2128

DISTRICT OFFICE
100 WEST ALISAL ST., SUITE 134
SALINAS, CA 93901
(831) 759-8676
FAX: (831) 759-2961

Assembly
California Legislature

SIMÓN SALINAS
ASSEMBLYMEMBER, TWENTY-EIGHTH DISTRICT

CHAIR
LOCAL GOVERNMENT
COMMITTEES
AGRICULTURE
HOUSING & COMMUNITY DEVELOPMENT
TRANSPORTATION
SELECT COMMITTEES
CALIFORNIA LATIN AMERICAN AFFAIRS
RURAL ECONOMIC DEVELOPMENT
WINE

September 18, 2006

University of California
Board of Regents
Office of the Secretary
1111 Franklin Street
Oakland, CA 94607

VIA FAX: 510-987-9224

Dear University of California Board of Regents:

Please accept this letter as my endorsement of the Long Range Development Plan (LRDP) soon to be presented to you by the University of California-Santa Cruz (UCSC). This is a sensible growth plan which responds to UCSC's academic plans and aspirations as well as the state's need to accommodate the demand for UC eligible students; particularly underrepresented minority students and those transferring in from community colleges.

UCSC's current enrollment is 15,000 students. The LRDP projects 19,500 students by the year 2020. This plan provides for a modest increase of 4,500 additional students (instead of the 6,000 students originally proposed) over a 14 year period, less than 325 new students per year. The final LRDP also reduces new construction on campus by nearly 900,000 square feet without reducing proposed on-campus housing. Traffic and water are two of the bigger concerns of the local community. In the final LRDP, UCSC acknowledges the full impact of potential university growth. They are committed to paying for specific mitigations to reduce the impact of that growth and to accomplish this in partnership with the city. 1

UCSC is on a strong, upward trajectory and is among the top tier of national public universities. They must update the LRDP in order to continue this momentum. University officials are aware of their need to be a good neighbor, as well as their responsibility to welcome a wide range of qualified students, from various backgrounds, so that the campus truly reflects the diversity of our incredible state.

This plan has been carefully and thoughtfully designed with input from a wide range of stakeholders. The University has been especially diligent in taking into consideration the community's concerns and adjusted the Plan accordingly. I would urge the Board of Regents to give the University's Long Range Development Plan their strong approval.

Sincerely,

Simón Salinas
Assemblymember, 28th District

Response to Post-FEIR Comment Letter I-3

Response to Comment Post-FEIR-I-3-1: Comment noted.

Appendix A. Revisions to Mitigation Measures and Mitigation Monitoring Program

The City has proposed several revisions to bolster mitigation measures identified in the LRDP EIR. The Campus has reviewed these measures for feasibility, and where appropriate, proposes to incorporate those modifications into the Final EIR and the Mitigation Monitoring Program. This Appendix identifies the revisions to the LRDP EIR mitigation measures suggested by the campus in response to the City's suggestions and corresponding revisions to the mitigation monitoring program. If these revisions are approved by The Regents, they will be attached as an addendum to the Findings.

As noted by the commenter, the Final EIR states that the University is committed to implementing SWPPPs for all projects regardless of federal jurisdiction. The University inadvertently omitted the corresponding revision to LRDP Mitigation HYD-2A. The University proposes to revise that mitigation to read:

HYD-2A For all construction projects less than one acre in area, and for projects larger than one acre that do not drain to waters of the U.S., the Campus shall continue to require the use of construction site controls and best management practices in compliance with the campus draft Storm Water Management Program, the campus Erosion Control Standards, and the Site Requirements for Erosion Control and Drainage in the Campus Standards Handbook."

LRDP Mitigation HYD-3D is revised as follows in response to Comment Post-FEIR LA-1-4:

HYD-3D The Campus shall require each new capital project to include design measures to minimize, to the maximum extent practicable, the increase in the volume of storm water runoff discharged from the project site to sinkholes or natural drainages. These design measures shall include features that maximize infiltration and dissipation of runoff, preferably near the area where new runoff is generated, and may include, but will not be limited to: vegetated swales, bioretention areas, infiltration trenches and basins, level spreaders, permeable pavement, minimizing directly connected impervious surfaces, storage and re-use of roof runoff, and green roofs. The features described above shall be designed to provide best management practices in reducing storm water pollution. Within one year following approval of the 2005 LRDP, the Campus shall provide a protocol for design consultants to use in demonstrating that measures to reduce runoff are included in the project design to the maximum extent practicable.

LRDP Mitigations UTIL-9A, UTIL-9B, UTIL-9D and UTIL-9F are revised as follows in response to comment LA-1-14:

UTIL-9A The Campus shall continue to implement and improve all current water conservation strategies to reduce demand for water, including the following:

- Continue the leak detection and repair program.
- Install an individual water meter in each new employee housing unit to encourage residential water conservation.
- Install waterless urinals in all new buildings.
- Require that new contracts for washing machines in student residences be certified by the Consortium on Energy Efficiency 6 to have a water factor of 5.5 or less or meet an equivalent standard. New washing machines purchased for use in athletic facilities shall meet applicable standards for water-efficiency for institutional machines.
- Incorporate water-efficient landscaping practices in all new landscape installations. Water-conservative landscaping practices shall include, but will not be limited to the following: use of water-efficient plants, temporary irrigation systems for plant establishment areas where mature plants will be able to survive without regular irrigation, grouping of plants according to their water requirements, design of planting areas to maximize irrigation pattern efficiency, and mulch covering in planting areas.
- To facilitate monitoring of water usage in all new development, the Campus shall: (1) install separate meters on water lines for individual buildings and (2) install meters on irrigation lines where one point of connection irrigates ~~1 acre~~ 5,000 square feet or more.

UTIL-9B As new technologies become available, the Campus shall continue to conduct pilot programs for high-efficiency plumbing fixtures including, but not limited to, dual-flush toilets. If a piloted technology proves to be successful (i.e., the high-efficiency fixtures are effective in water savings and do not require more frequent or expensive maintenance than the existing standard), the Campus shall revise its standards to require use of the fixtures in all new buildings and in existing buildings as existing fixtures need to be replaced.

UTIL-9D Within one year following approval of the 2005 LRDP, the Campus shall consult with the City of Santa Cruz regarding the appropriate scope of and initiate, an engineering audit of campus water use. The audit will assess existing campus water uses, identify options for reducing water consumption, prioritize feasible improvements based on the amount of potential water savings and cost effectiveness, and recommend top priority measures for implementation within the succeeding five years, and lower priority measures for potential subsequent implementation. The Campus will re-evaluate the lower priority measures during subsequent updates of the audit. The audit will include, but will not be limited to the following:

- An inventory of plumbing fixtures in ~~non-housing~~ all facilities on campus, which will identify the number and locations of fixtures and identify those that do not meet current campus standards for water efficiency. (Regarding retrofit of plumbing fixtures in student housing, see LRDP Mitigation UTIL-9H.)

- An inventory of irrigation systems on the campus, including identification of systems that are not metered, the methods used to control the irrigation schedule, and potential for improvement.
- An inventory of locations on campus where buildings and irrigation are on the same meter.
- An analysis of potential water conservation measures for the campus cooling water system.
- Identification of landscaped areas on campus that have plants that are high water-use.
- An engineering estimate of the additional water savings that would be achieved through implementation of the "high priority" measures and a re-evaluation of the University's projected 2020 water demand.

UTIL-9F The Campus shall, at ~~five-year~~ intervals of no more than five years, during the term of the 2005 LRDP, revisit the results of the water audit conducted under LRDP Mitigation UTIL-9D, consult with the City of Santa Cruz Water Department, conduct round table discussions with representatives of relevant campus departments, and conduct additional study of new technologies as needed to identify additional feasible and effective water conservation measures for implementation on the campus during the subsequent five year period. The following are among the measures that shall be considered:

- Adding existing irrigation systems to the campus's central control system.
- Retrofitting existing water meters such that building use and irrigation are separately metered.
- Replacing natural turf on athletic fields with artificial turf.
- Installing timers on showers in student residences.

The monitoring and reporting procedures for LRDP Mitigations UTIL-9E and UTIL-9F in the Mitigation Monitoring Program (Final EIR, Chapter 4, Volume IV) are revised as shown in the table below in response to comment LA-1-14.

Mitigation Number	Applicability/ Project Type	Location	Mitigation Measure	Mitigation Procedure	Responsible Party[1]	Mitigation Timing	Monitoring and Reporting Procedure
LRDP UTIL-9E	General	NA	The Campus shall begin implementation of the top priority recommendations of the water audit conducted under UTIL-9D within one year of completion of the audit and complete implementation of the top priority recommendations within five years after completing the audit.	Begin implementation of priority recommendations from water audit.	Physical Plant, PP&C, and Planning and Budget	Within one year of completion of water audit	Document implementation of priorities identified in water audit.
				Prepare report on progress of implementation, and effectiveness of top priorities.	Physical Plant, PP&C, and Planning and Budget	Annually, following completion of water audit.	Include progress report in AMMR and provide copy to City.
				Complete implementation of top priorities.	Physical Plant, PP&C, and Planning and Budget	Within five years of completion of water audit	Document implementation of top priorities ID'd in water audit.
LRDP UTIL-9F	General	NA	The Campus shall, at five-year intervals during the term of the 2005 LRDP, revisit the results of the water audit conducted under UTIL-9D, consult with the City of Santa Cruz Water Department, conduct round table discussions with representatives of relevant campus departments, and conduct additional study of new technologies as needed to identify additional feasible and effective water conservation measures for implementation on the campus during the subsequent five year period. The following are among the measures that shall be considered: Adding existing irrigation systems to the campus's central control system. Retrofitting existing water meters such that building use and irrigation are separately metered. Replacing natural turf on athletic fields with artificial turf. Installing timers on showers in student residences.	Review water audit results and conduct water audit and study of new technologies as needed.	PP&C	Within one year of approval of 2005 LRDP and every five years thereafter	Confirm review of water audit.
				Prepare report on progress of implementation, and effectiveness of top priorities.	Physical Plant, PP&C, and Planning and Budget	Annually, following completion of water audit update.	Include progress report in AMMR and provide copy to City.
				Discuss potential effective water conservation measures with the City and campus departments that could be studied for implementation.	Physical Plant and PP&C	Every five years after approval of 2005 LRDP	Document results of discussions.

Appendix B: Chronology of UC Santa Cruz Communications with the City of Santa Cruz (March – September 2006)

The following chronology documents UCSC's outreach initiatives with the City of Santa Cruz since March 2006, two months after the close of public comment period on the DEIR. The overall intent of these initiatives was threefold;

- maintain constructive communication between the University and City,
- explore effectives ways of mitigating the impacts of the 2005 LRDP,
- build on existing collaborations of mutual benefit, by exploring other opportunities for the University to be a positive contributor to the overall welfare of the community.

On April 24th, the University proposed a series of joint staff meetings to discuss points of concern and potential proposals related specifically to Water, Traffic, Housing and Economic Development. (The City later added a session on Public Safety and Parks). Notwithstanding the University's repeated overtures the meetings did not start until mid-July. On July 12, August 2, 9 (two meetings), and September 14, city and campus staff held preliminary meetings to identify ways of addressing the effect of the University's presence in the community. The last of these preliminary meetings on Economic Development is scheduled for September 27th. The meetings have been productive and the University looks forward to the next phase, which will prioritize the most promising proposals and explore their effective implementation.

At the beginning of each meeting, the University presented a statement outlining the campus's intent in proposing the meetings and a preliminary list of ideas to stimulate discussion. The following is the University's statement of intent in proposing the meetings:

> ***Framework for Discussions***
> *We are meeting to discuss issues related to (Water, Traffic, Housing, Economic Development, Public Safety/Parks) and to explore potential ways for UCSC to collaborate with the City on projects or programs that support the City's efforts related to the presence of UCSC.*
>
> *We have generated a preliminary list of potential ideas to stimulate discussion and would like your input and to generate other potential ideas. Our goal today is to explore and identify concrete projects and programs that would produce tangible results.*
>
> *We believe the University and City should work together to explore and identify two types of collaborative projects that would address:*
>
> - *short-term specific areas of concern;*
> - *long-term structural change through incremental investment to benefit UCSC and the community.*

Clearly, UCSC does not have the resources to undertake all or even many of the proposals on the list. We cannot guarantee that any of these will be undertaken. However, imagine a handful of projects, what would be at the top of the City's list of priorities?

In the spirit of other tangible collaborative efforts such as the Master Transportation Study, Bus Rapid Transit Feasibility Study, Pilot Desalination Study, Car Share, etc. UCSC looks forward to exploring additional ways of combining forces to improve the quality of life in Santa Cruz.

March – September Chronology

March 22	Bimonthly Chancellor/Mayor meeting Chancellor's office Attended by Chancellor Denton, Vice Chancellor Vani, Vice Chancellor Murphy, Vice Chancellor Hernandez, Director Donna Blitzer Mayor Mathews, Councilmember Rotkin, Councilmember Reilly, City Manager Dick Wilson, Interim Planning Director Alex Khoury, Redevelopment Agency Director Ceil Cirillo
April 24	Breakfast meeting at Coast Hotel EVC/Provost Dave Kliger, Vice Chancellor Tom Vani, Director Donna Blitzer, Mayor Mathews, City Manager Dick Wilson
May 15	Meeting with City and UC attorneys and staff including, City Manager Wilson, Vice Chancellor Vani
May 15	Bimonthly Chancellor Mayor Meeting City Hall Chancellor Denton, EVC Kliger, VC Vani, VC Murphy, Blitzer Mayor Mathews, Councilmember Reilly, Manager Dick Wilson
May 30	John Barnes contacted Dick Wilson by phone to discuss staff level Workshops.
June 9	John Barnes emailed Dick Wilson to initiate staff level workshops on traffic, housing and water
June 12	City council and staff tour and briefing of UCSC's Silicon Valley Center This was part of the discussion with the city about economic development and the potential of a technology transfer center at the 2300 Delaware facility.
June 13	City Council meeting First discussion of propose ballot measures Attended by EVC Kliger, Tom Vani, Donna Blitzer, Donna Murphy

June 23	Follow up email from John Barnes to Dick Wilson to get staff level meetings started
July 12	First meeting of city and campus staffs to discuss Water
July 13	Meeting with Mayor Mathews and Councilmember Rotkin City Hall EVC Kliger, VC Vani, VC Murphy, Director Blitzer
July 14	Meeting with Council Members Reilly and Fitzmaurice City Hall VC Vani, VC Murphy, Director Blitzer (Ed Porter was contacted and was out of town but Blitzer spoke to him on the phone. Government Relations and Transportation staff at UCSC are working with Ed on a November conference related to Personal Rapid Transit)
July 14	Meeting with Council Members Coonerty and Madrigal City Hall
July 17	George Blumenthal's first day as Acting Chancellor
July 18	Acting Chancellor Blumenthal meeting with City Manager Dick Wilson
July 21	Kelly Drumm letter to John Barisone and Dick Wilson expressing UC's concern's about the legal issues raised by the proposed ballot measure
July 24	Acting Chancellor Blumenthal lunch meeting with Mayor Mathews Handed her list of UCSC's preliminary list of potential ways for UCSC to collaborate with city on projects or programs that support the city's efforts related to the presence of UCSC
July 24	Acting Chancellor Blumenthal phone calls to all city council members
July 25	Acting Chancellor Blumenthal attends public portion prior to council closed session
July 25	City Council meeting –voted unanimously to put ballot measures on November 7, 2006 ballot
August 2	Second meeting of city and campus staff to discuss Housing
August 8	Kelly Drumm letter advising city of CEQA suit
August 8	VC Murphy and Director Blitzer lunch meeting with planning director Greg Larson

August 9 Kelly Drumm provided city attorney with draft Cooperative Relations Agreement between UCSC and the City of Santa Cruz with specific proposals related to mitigations

August 9 City council closed session-voted to keep ballot measures on the ballot

August 9 Third meeting of city and campus staff to discuss of Traffic and Transportation
Fourth meeting of city and campus staff to discuss Housing

August 18 Acting Chancellor Blumenthal meeting with Mayor Mathews and City Manager Dick Wilson
Told Mayor and City manager that goal was to go to September Regents meeting
City Hall

August 21 Acting Chancellor Blumenthal met with Santa Cruz Neighbors Executive Committee (Lynn Robinson, Debbie Elston, Mike Boethke) to begin planning for community town hall meeting

August 29 Acting Chancellor Blumenthal breakfast with community leaders

September 5 Acting Chancellor Blumenthal telephone calls to Assembly Member John Laird, Supervisor Mardi Wormhoudt, Supervisor Mark Stone, Mayor Cynthia Mathews and city manager Dick Wilson notifying them of Final EIR and LRDP and September Regents meeting

September 6 Staff call to Mayor Mathews providing information on public comment session for Board of Regents meeting

September 12 Lunch meeting with Acting Chancellor George Blumenthal, Mayor Mathews and City Manager Dick Wilson to discuss Regents meeting

September 14 Fifth meeting of city and campus staff related to Police, Fire and Parks

September 27 Sixth meeting (scheduled) of city and campus staff to discuss Economic Development

(Follow-up meetings are proposed for early October on all topics)