

September 21, 2006

September 2006 Regents Item Supplement #2

- #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 Letter Received After September 19, 2006 Hearing before The Regents Committee on Grounds and Building

The Office of General Counsel received by e-mail on September 20, 2006 at 5:00 p.m., the attached letter submitted on behalf of the City of Santa Cruz, and has been informed that a representative of the City intends to submit this letter to The Regents at its meeting on September 21, 2006.

The letter and the University's written response, included herein, are being provided to The Regents for consideration in certification of the Santa Cruz campus' Final Environmental Impact Report and approval of the 2005 Long Range Development Plan and as part of the administrative record.

As with the City's September 15, 2006 letter commenting on the Final EIR (included in the September 19, 2006 Regents Item Supplement as Post-FEIR LA-1, along with the University's response) the City again offers comments on the topics of water conservation, traffic, and housing. All issues raised by the City have been previously addressed in the Final EIR and the September 19, 2006 Regents Item Supplement.

The primary thrust of the City's letter relates to water supply availability during drought conditions and the adequacy of the FEIR in assessing the significance of University-related growth on water supply during a drought. The University has satisfied the requirements of CEQA in this regard by:

- (1) identifying the campus' water supply source (provided by the City pursuant to contractual agreements with The Regents from the 1960's) and concluding that it was not sufficient to accommodate proposed LRDP growth;
- (2) identifying the City's proposed desalination plant as an alternate water supply source as a result of its conclusion in (1); and
- (3) evaluating the impacts of implementing the alternate supply, and concluding that its impacts would be significant and unavoidable.

The City, however, is asking the University to take an additional step by identifying a second alternate water supply plan in the event the City fails to implement the desalination plant, even though the City itself has selected to pursue desalination for future water supply needs within its service area. Not only is the City's request beyond

CEQA's requirements, but the University has committed through EIR mitigations, to aggressive conservation measures that will reduce demand on the City's present and future supply systems. The cases cited by the City do not impose a requirement on the University to perform any additional analysis or adopt mitigation measures beyond those already included in the EIR for a planning level document like an LRDP.

The City also suggests that the LRDP be "phased," by tying enrollment growth to water supply availability. However, the City ignores the fact that even under existing enrollment levels, water supply availability is limited during drought conditions, and that campus water usage represents approximately 5% of the City's total water demand. The campus's aggressive water conservation mitigation program, by reducing demand on the City's system, will further minimize that share. However, the "phasing" that the City insists that the University adopt will not forestall the need for the planned desalination plant, which will be required regardless of campus growth, nor will it avoid the significant and unavoidable environmental effects that the EIR concluded the plant will cause. Moreover, the LRDP does not commit the University to reaching a specified campus enrollment level; the LRDP is a plan that establishes an enrollment envelope that the campus may reach by 2020-2021. Many factors, including the demand for higher education, the pace of construction, and the development of needed utility infrastructure, will influence the actual enrollment in any given year. Lastly, the City questions the University's commitment to pay its proportional share of infrastructure improvements associated with its desalination plant or other alternate water supply source. However, the EIR acknowledges the University's responsibility under Government Code section 54999, *et seq.* to pay its proportional share of infrastructure improvements, and including this requirement as a mitigation measure is not necessary, and will not strengthen the enforceability of the University's legal obligation. For improvements not covered by Section 54999, such as intersection improvements, the University has adopted fair share mitigation measures.

On the topic of traffic, the City proposes a new mitigation measure requiring a City/University collaborative University Access Plan to be in place prior to any additional campus development. The items proposed as part of the Plan are, for the most part, already included as mitigation measures for the LRDP. While the University is willing to work with the City towards achieving the goals identified by the city in its letter, there is no basis for requiring the Plan as a mitigation measure. Moreover, requiring the approval of the Plan as a pre-condition to any University growth will, in effect, allow the City to constrain campus growth by obstructing the necessary negotiations.

The City raises no new issues regarding housing that were not previously addressed in the Final EIR and the September 19, 2006 Regents Item Supplement.

For these reasons, the campus recommends that The Regents adopt Regents Item #102, as conformed to reflect the Findings and Mitigation Monitoring Program identified in the September 19 Supplement, and approve the FEIR and LRDP.

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September 20, 2006

Via hand-delivery

The Regents of the University of California
Office of the Secretary of the Regents
1111 Franklin Street, 12th Floor
Oakland, California 94607

Re: University of California, Santa Cruz 2005 LRDP; Reply of the City of Santa Cruz to responses contained in UCSC's September 19, 2006 "Supplement to Action Item #102"

Dear Regents of the University of California:

The City of Santa Cruz submitted a letter dated September 15, 2006 to the Office of the Regents for the Regents' consideration during their deliberations on the University of California, Santa Cruz's (the "University's" or "UCSC's") final version of its proposed 2005 Long Range Development Plan ("LRDP") and the September 6, 2006 Final Environmental Impact Report ("FEIR") for the 2005 LRDP. In response, the University prepared and provided the Regents with a "Supplement" containing responses to the City's and others' comments on the FEIR and proposing last-minute revisions to certain mitigation measures.

While the City appreciates the University's willingness to adopt some of the revisions the City suggested for the proposed mitigation measures, much of the rest of the University's responses are nothing more than vague and unenforceable promises to work with the City in the future on several difficult and important issues, such as future water supplies, traffic improvements, and City housing impacts. These gestures of future cooperation are certainly not unwelcome, but they do not suffice as legally adequate

substitutes for the full and informed analysis and mitigation that should have occurred under CEQA for this project, but unfortunately did not.

As is evident from the City's September 15, 2006 letter, perhaps the most significant current and growth-related issue facing the City is water supplies. The City is pleased to see that the University finally admits in its "Supplement" that supplies in drought conditions are significantly limited and that growth will force the City to acquire a new water supply source. Further, the University conservatively assumes that the impacts associated with acquiring such new supply will be significant and unavoidable. This approach, however, takes the easy way out and fails to comply with CEQA's directive, as articulated by several courts of appeal in cases involving water supplies for future growth, that the lead agency – the University – must do more to identify the future water sources and must accept incremental limitations on future growth, known as "phasing", to ensure that growth does not outpace the actual provision of adequate water supplies. (See *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal App 4th 342, 373-374 (agency cannot dismiss reasonable possibility that prospective water supplies may not materialize; the appropriate mitigation to address such a possibility is one that prevents development if identified sources fail to materialize); see also, *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal App 4th 715, 723 (mitigation measure requiring a showing of adequate water supplies prior to tract map recordation does not obviate the need for an EIR to fully analyze a project's impacts on water supply).)

While the University's commitment to dealing with water supply problems as evidenced in the supplement is slightly stronger now, particularly in the area of conservation efforts set forth in improvements to the proposed mitigation measures, it remains softer than it should be in light of the dire shortages facing the City and the University in drought conditions. The City continues to push for conservation strategies that maximize, to the extent practical, the use of existing supplies before increasing demands. Studies and investigations do not constitute full mitigation.

There is also still no firm commitment by the University in its FEIR to pay its proportionate share of infrastructure improvements that are necessary to meet the increased demands, whatever those end up being after all the conservation efforts are in place. The University's acknowledgment of the applicability of Government Code section 54999 should be strengthened by its inclusion in an actual mitigation measure, which would be separately enforceable through the University's Mitigation Monitoring and Reporting Program, rather than forcing the City to seek independent enforcement of

section 54999 outside of CEQA. A simple measure could be crafted that commits the University to contributing its fair share, pursuant to the requirements of section 54999.

There is still language in even the supplemental materials that attempts to minimize the University's proportionate share of new system-wide water demand increases. That language is troubling as it suggests the University denies its responsibilities for the construction of new supplies by suggesting the City has already anticipated their growth.

Finally, a question: The City Council voted unanimously to pursue the construction of a desalination facility that is intended in the short term to protect current customers from the devastation of a 1977-type drought and in the long term to provide for modest system growth through expansion. There are many regulatory agencies that must permit that plant and despite the best efforts of the City, any of those agencies could deny permits, rendering the desalination project infeasible. Obviously if that should happen, the City would be forced to stop all new growth in the service area. What would the University propose to do with its growth plans if the new water source it is relying on cannot be built?

The City has already explained why this situation is not merely hypothetical, but rather, a very real threat. The uncertainty associated with the future construction of a desalination plant amplifies the need noted numerous times by the City for the University to agree to a phased approach to growth, under which certain thresholds of enrollment increases would not be reached unless and until the City and University can make joint determinations of actual water availability to support that growth.

The University's supplemental responses to the City's concerns about the sufficiency of the EIR's traffic analysis and mitigation similarly miss the point, deferring meaningful analysis to the distant future and making only vague commitments to working with the City on these issues. The City is far from satisfied with the EIR's analysis and proposed mitigation, but in the spirit of inter-agency comity proposes an arrangement under which the University shall collaborate with the City on the development of an University Access Plan. The objective of this plan would be to identify:

- the prime access corridors,
- the secondary access corridors,
- a method to accurately evaluate the effects on these corridors of University growth,

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- the measures needed to mitigate for these effects, and
- an implementation program for these measures.

If the University would commit to developing this plan prior to the next new development project on campus, that commitment, which should be embodied in a new mitigation measure, would provide the impetus to complete this work. This plan would not be so much a policy document, but rather, a transportation infrastructure facilities plan and program to guide analysis for future projects.

Lastly, the University's original and supplemental analysis of on and off-campus housing demand and related environmental impacts created by the proposed growth alternative remains wholly inadequate. Rather than studying and addressing the issues through the LRDP and EIR process as required by law, the University simply, and unacceptably, proposes to begin studying the issues upon approval of the LRDP and EIR. For example, the University's own documents state that the University's proposed growth would result in over 50% of their new students and over 75% of their new faculty and staff being housed off-campus, primarily in the City of Santa Cruz. The University provides no environmental or other analysis of this tremendous housing growth off-campus, nor any mitigation whatsoever to reduce the significant impacts of that housing growth. The University's planned, but unstudied and unmitigated, off-campus housing growth will have severe consequences on City and regional infrastructure and services.

All of the city's prior comments on inadequate housing are referenced and incorporated herewith given the inadequate and non-substantive response provided to date

The City also hereby reiterates its request that the Regents continue their consideration of the UCSC 2005 LRDP until the Regents' November meeting in order to allow more time for the University to investigate potential options for required phasing of campus development and enrollment increases and to work further with the City to resolve these issues.

Sincerely,



Sabrina V. Teller

cc: Ms. Kelly Drumm (via email)
John Barnes, UCSC Physical Planning and Construction (by mail)

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Mayor Cynthia Mathews, City of Santa Cruz

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