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VIA ELECTRONIC MAIL (JULY 17, 2018) AND HAND DELIVERY (JULY 18, 2018)

Board of Regents of the University of California  
Office of the Secretary and Chief of Staff to the Regents  
1111 Franklin St., 12th floor  
Oakland, CA 94607

Re: *July 18, 2018 Finance and Capital Strategies Committee, Agenda Items F5 and F6*  
*July 19, 2018 Regents of the University of California, Agenda*  
*-- Approval of the UC Davis 2018 Long Range Development Plan, Following Action Pursuant to the California Environmental Quality Act, Davis Campus*  
*-- Approval of Design Following Action Pursuant to the California Environmental Quality Act, West Village Transfer Student and Continuing Undergraduate Student Housing Project, Davis Campus*

Dear Honorable Regents,

Our office represents the City of Davis ("City") in connection with the Long Range Development Plan ("LRDP") proposed by the University of California, Davis ("UC Davis" or "University"), its associated Final Environmental Impact Report ("FEIR" or "Final EIR"), and the West Village Expansion and the Orchard Park Redevelopment projects identified in the LRDP and FEIR. These projects and the FEIR are proposed for your honorable Board's consideration and approval at your July 18-19, 2018 Board of Regents meeting.

While the City wishes to express its support for the LRDP in general and its new goal of providing housing for 10,958 students and employees on campus in particular, it is obligated to point out that neither the Draft nor the Final EIR properly evaluate the potential environmental consequences of this important, large-scale, and long-lasting plan. Moreover, the fact that the FEIR was released on July 2, 2018, and is now presented to your Board for certification just 17 days later has foreclosed the ability of the public and the City to continue to work with UC Davis to remedy the FEIR's deficiencies and address the City's concerns. The purpose of this letter is to identify some of the major flaws remaining in the FEIR following the public review period and

to request that your Board continue its consideration of the LRDP and the FEIR to a later date to enable the University to remedy these problems.

The following major issue areas continue to raise the largest hurdles to a sufficient FEIR and provide an outline of the City's concerns:

- The FEIR improperly relies on an assumption that all of the new on-campus housing contemplated in the LRDP will be built within the next 12 years without providing any assurances, such as an identifiable and enforceable implementation plan, that this will actually occur. This results in undisclosed and unevaluated potentially significant environmental impacts, in violation of the California Environmental Quality Act, Public Resources Code section 21000, *et seq.* ("CEQA").
- The FEIR fails to properly evaluate or disclose the near- or interim-term impacts of the LRDP on important issue areas such as transportation, air quality, and noise. The LRDP would create significant environmental impacts in these areas with the addition of new students, employees, and their dependents well before the plan is built out in 2030-31. But the FEIR provides no analysis of these impacts, improperly claiming that to do so would be misleading. This is simply not true and the result is a legally inadequate FEIR.
- The FEIR fails to incorporate feasible mitigation measures to address significant environmental impacts. Many of the measures that are identified do not ensure adequate mitigation and allow deferred implementation until well after significant environmental impacts will occur, in violation of CEQA.

The City believes these issues may be addressed through further analysis and adoption of additional mitigation measures, but more time for consultation with the City and others, and a revised FEIR, will be necessary. Such a collaborative approach is critical to the ongoing relationship of the City and the University, and has been urged by other commenters such as the County of Yolo, which "urges serious consideration of the City's comments." (Comment L6-3.) Indeed, as the County aptly put it: "As a partner, it is important that UC Davis be responsive and understanding of the needs of our local communities and strengthen this collaborative relationship. In the spirit of this collaborative partnership, we trust UC Davis will consider and address the comments brought forward by the City of Davis and other jurisdictions." (Comment L6-3.) Unfortunately, to date this has not occurred, notwithstanding what is stated in Master Response 3: Response to Local Community Requests. We are hopeful that more direct and responsive collaboration can occur now, before any action is taken on the FEIR or the LRDP. Absent such steps, the FEIR will remain legally inadequate, and the City may be forced to pursue other legal remedies to ensure that the environmental impacts of the LRDP are addressed appropriately.

The City provides the following comments on the FEIR in order to identify some of the problems which remain after circulation and public review of the Draft EIR. These issues must be addressed to ensure a legally sufficient environmental impact report.

Responses to the City's Draft EIR Comments:

Volume 4 of the FEIR includes all comment letters received on the Draft EIR and written responses to each of those comments. The City's comment letter, dated May 18, 2018 ("City Comment Letter"), includes over a dozen individual comments and incorporates the comments submitted in January 2017 in response to the Notice of Preparation of the Environmental Impact Report ("NOP Comment Letter").

It is well established that the lead agency must respond to comments on a draft EIR with a "good faith, reasoned analysis." (CEQA Guidelines § 15088(c).) The written response "shall describe the disposition of significant environmental issues raised..." and "[c]onclusory statements unsupported by factual information will not suffice." (*Id.*) As shown below, the FEIR's responses to the City's and others' comments do not satisfy this requirement and do not adequately address the significant flaws remaining in the FEIR:

- L2-2: This City comment requests that the FEIR expand the Project Description to include a consolidated table showing student population and on-campus housing under existing conditions, under full buildout of the LRDP in horizon years 2030-31, and at some reasonable (e.g. three-year) increments in between in order to show how campus housing will be provided over time as student enrollment increases. Rather than provide this requested information, the FEIR response states that information on interim growth would be speculative and points the reader to Master Response 6. Master Response 6 explains that the LRDP's enrollment projection of 39,000 students is anticipated to be reached by 2030-2031, rather than by 2027-2028 as previously projected, because of changes to out-of-state student enrollment numbers. The FEIR's response to L2-2 then claims that the timing of when new student housing will be built under the LRDP cannot be determined, referring to Master Response 5. Master Response 5 simply cites to the CEQA provisions describing the level of detail required of a programmatic EIR.

The FEIR's response to L2-2 does not adequately address the problem identified in the City's comment. City comment L2-2 requests that the FEIR identify interim enrollment and housing numbers because the provision of new housing is crucial to the LRDP's ability to mitigate impacts associated with increased enrollment and employment at the University. If student enrollment increases or more employees are brought to campus before new housing units are built on campus, those additional students, employees,

and their dependents will require housing elsewhere. This will cause exponential increases in impacts to housing, transportation, air quality, recreation, and public services within the City and other nearby communities, which will bear the burden of accommodating the population influx. The FEIR provides no analysis of these impacts whatsoever, choosing instead to evaluate impacts from the assumption that all housing units contemplated under the LRDP have already been built. In order to avoid the significant environmental impacts that will result if enrollment and employment exceed new on-campus housing, the FEIR's Project Description needs to be amended to show that housing will keep pace with population increases caused by the LRDP.

CEQA requires that project components that are relied on to mitigate environmental impacts be either incorporated into the project's design or identified as enforceable mitigation measures. (See *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656 ("*Lotus*"); *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 185, review denied (Jan. 17, 2017).) In *Lotus*, the Court held that CalTrans failed to properly disclose and mitigate the potentially significant impacts of its highway reconstruction project on protected redwood trees. (*Lotus* (2014) 223 Cal.App.4th at p. 647.) There, CalTrans's EIR claimed that special construction techniques were incorporated into the project description to address impacts to the trees root systems and thereby avoided any analysis or disclosure of the potential impacts themselves. (*Id.* at pp. 655-657.) The Court found that this approach improperly conflated the impact analysis with the identification of a possible mitigation measure. (*Id.* at p. 656.) Moreover, CalTrans had not actually incorporated the "special construction techniques" into its project design work, making the measures unenforceable and unreliable as a source of mitigation. (*Id.* at p. 656, n. 8.)

The same occurs in the FEIR here. The FEIR relies on the LRDP's on-campus housing goals to mitigate impacts associated with increased enrollment and employment at the University. Yet the FEIR neither ensures that the housing will actually be built nor analyzes or discloses the potentially significant impacts that will result from the LRDP if the housing is not provided. As described in *Lotus*, the FEIR cannot have it both ways. Either the project needs to ensure that housing will keep pace with enrollment, or the FEIR must evaluate, disclose, and mitigate the environmental impacts associated with bringing the estimated 9,719 additional people to campus without building them any new housing. Neither the FEIR nor the LRDP provides any assurances or enforceable mechanisms to ensure that any of the contemplated housing will be built or that housing will be built before significant environmental impacts occur as a result of the increases in enrollment. This is a fundamental and fatal flaw of the FEIR.

A number of significant environmental impacts, not disclosed or evaluated in the FEIR, are likely to occur if the housing goal identified in the LRDP is not met as enrollment increases.

- Population and Housing. The vacancy rate of housing in the City is less than 3% overall and 0.2% for apartments, as stated in the FEIR (FEIR, Vol. 1, p. 3.13-7) and City Resolution No. 16-175 (FEIR, Vol. 4, p. 2-49). While the City has undertaken great efforts to meet housing needs within its jurisdiction, including its recent approval of three student-oriented housing projects that are anticipated to provide 700 new housing units, these efforts address existing housing shortages caused by the University's *past* increases in enrollment . If 5,175 more students are enrolled at the University under the LRDP without any new housing units being built on campus, those students are likely to be forced to find housing in communities outside of Davis or may displace existing residents within the City. (See also City NOP Comment Letter, Comment L2-29.) This will affect housing availability in these communities, potentially requiring the construction of additional units, which will cause impacts on the environment. The FEIR does not properly disclose and evaluate these potential impacts. In fact, the FEIR makes no reference to the possibility that the increased student enrollment contemplated under the LRDP might need to be accommodated in off-campus housing. Yet neither the FEIR nor the LRDP provides any assurances that this will not occur. Moreover, increased enrollment without increased on-campus housing will also increase impacts to transportation and air quality as these additional students are forced to commute to campus. While the FEIR does conclude that the impacts to housing and population would be significant, it identifies no potential mitigation measures to address this impact. This ignores one obvious measure that would provide a significant level of mitigation for population and housing impacts, namely, a requirement that increases in enrollment not occur until new housing is constructed on campus for those new students. The City's request that the Project Description identify the projected incremental increases in enrollment and on-campus housing was simply one way of incorporating such a requirement. The FEIR should be amended to include such a provision, as CEQA requires the incorporation of all feasible mitigation measures which would lessen significant environmental impacts of a project. (See Pub. Res. Code §§21002, 21002.1(b).)
- Transportation. The FEIR evaluates the impacts of the LRDP on transportation from the assumption that the entire LRDP has been built out and all on-campus

housing goals have been met. But if UC Davis increases enrollment and employment as contemplated in the LRDP without simultaneously providing new on-campus housing, impacts to transportation infrastructure will be significantly greater than disclosed in the FEIR. As discussed above, new students and employees will be forced to seek housing either in the City or out of the area, which has the potential to significantly increase the number of commuters to campus. This possibility was not disclosed or evaluated in the FEIR, which creates problems throughout the FEIR such as in the analysis of air quality, greenhouse gas, and transit impacts. Undisclosed increases in commuters to campus creates will be particularly problematic for intersections and roadway segments that are identified as nearing an unacceptable level of service under a full LRDP buildout scenario, such as those along Russell Boulevard. (See FEIR, Vol. 1, Table 3.16-22.) If the numbers of commuters increase beyond what is disclosed in the FEIR because enrollment increases before housing is built on campus, these intersections are more likely to reach unacceptable service levels. The FEIR does not evaluate these possibilities and, thereby, fails to identify potentially significant impacts to additional intersections. Without any assurances that the housing contemplated in the LRDP will be built to keep pace with increased enrollment and employment, the FEIR fails to properly disclose potential impacts to transportation associated with the LRDP.

- Air Quality. The FEIR's air quality analysis relies on traffic modelling data that presumed full buildout of the LRDP and accommodation of 21,382 of the 57,269 total campus population in on-campus housing. This assumes that housing to accommodate 10,958 new beds will be built on campus. If these 10,958 people are not housed on campus, they will be required to live in Davis or in communities further away, which will necessitate commuting to campus and will increase vehicle trips and their resulting air quality impacts. (See also City NOP Comment Letter, Comment L2-27.) Neither the traffic modelling nor the air quality analysis accounts for this possibility. Because neither the FEIR nor the LRDP provides any assurances that the housing contemplated in the LRDP will keep pace with increased enrollment, the FEIR must be revised to account for the air quality impacts associated with the possibility that thousands of additional students and employees will be required to commute to campus.
- Public Services, Recreation, and Utilities. In event that on-campus housing does not keep pace with increased enrollment and employment under the LRDP, the City's public services and utilities will be impacted by the inevitable increase in

University-related residents within the City. The FEIR does not account for this possibility and makes no attempt to evaluate whether increased numbers of students and UC Davis employees will impact the City's police, fire, recreation, or utility services. Instead, the FEIR assumes that the LRDP's housing goals will be met and that, by housing the additional students on campus, no additional impacts will occur to the City's services. Without assurances that the housing will be built, or that the other components of the LRDP that will provide police, fire, recreation, and utility services to the new on-campus residents will be available to these residents in time, the FEIR must evaluate potential impacts to City services from the increased population under the LRDP. Moreover, the FEIR's analysis of impacts to Public Services and Recreation remains deficient in other respects. For instance, the FEIR does not analyze potential impacts to City services from increased calls for mutual aid that will result from the additional 10,958 people who will reside on campus under the LRDP. Increased enrollment numbers will also result in additional attendance at large-scale special events held on campus, such as commencement and Picnic Day. This will result in additional calls for service from the City, which the FEIR does not discuss. Nor does the FEIR fairly evaluate increased use of City recreational facilities from the anticipated 10,958 additional residents on campus. It is unreasonable to assume that these residents will not use City services, yet no analysis is done to ensure that the City's facilities can accommodate this increased use. The FEIR should be revised to address these impacts.

The City's comments appearing at L2-6 – L2-16 suggest a number of mitigation measures to help address the fact that neither the LRDP nor the FEIR include an enforceable commitment to provide campus housing at a rate that keeps pace with increases in student population. Suggested mitigation measures include requirements that the University commit to housing 100% of projected student enrollment of new students, that the University commit to including affordable housing options to help ensure that new students will actually live on campus, that the University enter into an agreement to mitigate direct and indirect impacts of students on City services, and that the University regularly demonstrate to the City that the housing target has been achieved. These suggested mitigation measures would enable the FEIR to rely on the provision of housing contemplated in the LRDP to mitigate impacts associated with increased enrollment as well as a number of other potentially significant impacts. However, the FEIR's responses to these comments reject the recommended mitigation measures, improperly claiming that they were comments on the LRDP rather than the Draft EIR, without providing any other form of assurances to address the potential

impacts. Nor does the FEIR provide substantial evidence to support rejection of these identified mitigation measures, which would lessen potentially significant impacts to transportation, housing, recreation, and public services. (See *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029 (“In keeping with the statute and guidelines, an adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible.”).) As a result, the FEIR remains legally deficient under CEQA.

- L2-3: This comment points out that the FEIR’s use of a future baseline year of 2030-2031 against which to measure the environmental impacts of the LRDP is inappropriate under CEQA, as articulated by the California Supreme Court in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439 (“*Neighbors for Smart Rail*”). The FEIR’s response to this comment argues that use of existing conditions as the environmental baseline against which to measure the LRDP’s impacts would be misleading. The response indicates that, because the LRDP is a long-range planning document similar to a General Plan, which contemplates development over time rather than under the existing physical conditions of the area, it is appropriate to use a future baseline to measure impacts of the LRDP. The response asserts that this approach is used only with respect to “traffic and traffic-related” issues and that the programmatic mitigation measures identified in the FEIR will suffice to address impacts occurring before full buildout of the LRDP. The FEIR then states that near-term transportation impacts to the existing physical baseline are evaluated in Volumes 2 and 3 with respect to the West Village Expansion and Orchard Park Redevelopment projects.

This response misunderstands the import of the *Neighbors for Smart Rail* decision and fails to remedy the underreporting of potential impacts that will occur during the LRDP’s 12-year implementation timeline. As explained by the California Supreme Court in *Neighbors for Smart Rail*:

The CEQA Guidelines establish the default of an existing conditions baseline even for projects expected to be in operation for many years or decades. That a project will have a long operational life, by itself, does not justify an agency’s failing to assess its impacts on existing environmental conditions. For such projects as for others, existing conditions constitute the norm from which a departure must be justified—not only because the CEQA Guidelines so state, but because using existing conditions serves CEQA’s goals in important ways.



Even when a project is intended and expected to improve conditions in the long term—20 or 30 years after an EIR is prepared—decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement. These costs include not only the impacts involved in constructing the project but also those the project will create during its initial years of operation. Though we might rationally choose to endure short- or medium-term hardship for a long-term, permanent benefit, deciding to make that tradeoff requires some knowledge about the severity and duration of the near-term hardship. An EIR stating that in 20 or 30 years the project will improve the environment, but neglecting, without justification, to provide any evaluation of the project's impacts in the meantime, does not “giv[e] due consideration to both the short-term and long-term effects” of the project (Cal.Code Regs., tit. 14, § 15126.2, subd. (a)) and does not serve CEQA’s informational purpose well. The omission of an existing conditions analysis must be justified, even if the project is designed to alleviate adverse environmental conditions over the long term.

(*Neighbors for Smart Rail* (2013) 57 Cal.4th at p. 455.)

In other words, the fact that the project is a long-range plan for development that may occur over the course of 12 years does not mean that environmental impacts can be measured only against predictions of conditions that will exist at the end of that 12-year period. Yet this is exactly what the FEIR did.

As explained in *Neighbors for Smart Rail*, CEQA requires that an EIR evaluate and disclose the potential “severity and duration of the near-term hardship” associated with a project. (*Id.*) Contrary to the FEIR’s response to the City’s comment, this could have been done here in a number of different ways. For instance, the FEIR could have assumed that increases in enrollment and employment at the University would occur at a steady rate of 1/12 of the total projection each year, or 1/6 of the total every two years. Similarly, the FEIR could have estimated the rate at which the 2 million square feet of academic and administrative space and the 10,958 new beds of student and employee housing would be constructed to accommodate the increased enrollment. Then, the near- and interim-term impacts associated with this increase in population and rate of construction could have been estimated and disclosed in the FEIR, providing

the public with the information necessary to evaluate the severity and duration of near-term hardship that it will be required to endure. This is particularly important for the development that is anticipated to occur in the areas bordering the City, where impacts will be acutely felt by City residents and City services may be more greatly impacted. Trip counts, air emissions, noise impacts, and housing needs should be calculated using estimated increases in population and estimated square feet of new construction each year, or every two years, over the course of 12 years. This information is crucial to understanding how development of the LRDP may occur, including how the interaction of all of its many component parts with each other and with the existing environmental baseline may create potentially significant impacts. By not attempting to undertake this analysis, the FEIR violates the information disclosure requirements of CEQA and is inconsistent with the principles articulated by the California Supreme Court in *Neighbors for Smart Rail*.

The FEIR's refusal to evaluate near-term and interim impacts associated with the LRDP results in an under-estimation of environmental impacts, particularly in the area of transportation. By analyzing impacts to transportation only from the perspective of projected conditions in 2030 and 2036, the FEIR fails to disclose potentially significant impacts that will occur before 2030.

For instance, the FEIR found that a number of intersections surrounding the campus will be significantly and negatively impacted as a result of full buildout of the LRDP in 2030, causing levels of service to drop to F and causing delays of over 120 seconds, the actual estimated amount over (and therefore the true severity of the impact) not being disclosed in the FEIR. (See FEIR, Vol. 1, Table 3.16-22.) It is likely that delays at some of these impacted intersections will drop to unacceptable levels well before 2030 as the LRDP is built out and an additional 9,719 people are brought to campus each day. This is even more likely and more problematic in light of the fact that the traffic model used to estimate 2030 traffic patterns assumes that single occupancy vehicle use will decrease by 10%, though the FEIR provides no substantial evidence to support such an assumption. As a result, the FEIR underestimates potential traffic impacts by 10% across the board. It is, therefore, likely that impacts may become significant when enrollment is increased by 2,500 students, which could occur by 2024 if the University increases enrollment at a steady rate. Or maybe impacts to these intersections become significant when only 1,000 new students are added. Because the FEIR's analysis is limited to a fixed, predicted future in 2030, based on a model that underestimates traffic counts by at least 10%, these possibilities are unknown. In short, FEIR fails to properly disclose to the public when significant impacts are likely to occur.

These problems are compounded by the fact that the projected 2030 conditions assume that all of the self-mitigating components (i.e. housing) of the LRDP have been built. If the University is unable to meet the on-campus housing goals identified in the LRDP before 2030 and the additional students and employees are forced to find housing elsewhere and commute to campus, these additional commuters will cause undisclosed impacts to the roads and other transportation modes surrounding the campus. CEQA requires that the FEIR analyze and disclose these potentially significant near- and interim-term impacts. This is of particular concern in light of the University's history of exceeding enrollment estimates and not achieving on-campus housing goals set in its 2003 Long Range Development Plan ("2003 LRDP"). Whereas the 2003 LRDP set a goal of housing 36% of an anticipated enrollment of 30,000 students in 2015-16, UC Davis enrolled 32,663 students in 2015-2016 and housed only 29% of them on campus. Since 2015-16, the University increased enrollment during the 2017-18 academic year and just recently announced that it has again admitted a larger number of students than it had in 2017-18 for the 2018-19 academic year. Meanwhile, insufficient new housing units have been added on campus to accommodate these additional students. This indicates that near- and interim-term impacts associated with increases enrollment are highly likely and will not be mitigated by the development of new housing on campus. The FEIR must be revised to address these likely impacts.

The fact that Volumes 2 and 3 of the FEIR use the current environmental baseline to measure transportation impacts from the West Village Expansion and the Orchard Park Redevelopment projects does not provide the information necessary to properly evaluate the impacts of the LRDP. These are just two individual projects that will not impact the same roadway segments or intersections as the overall LRDP, as shown in the shortened list of studied intersections appearing in Table 3.16-1 in Volumes 2 and 3 of the FEIR. Nor are there any assurances provided in the FEIR or in the LRDP that these two projects will actually be built or that they will be built before other components of the LRDP are implemented, such as the increased enrollment of 5,175 additional students. As a result, the FEIR cannot rely on the transportation analysis of these two individual projects to satisfy the information disclosure requirements of the entire LRDP under CEQA.

- L2-15: In this comment, the City identifies a number of problems with the mitigation measures identified to address transportation impacts resulting from the LRDP. In response, the FEIR explains that the transportation demand management techniques incorporated into Mitigation Measures 3.16-1, 3.16-2a, 3.16-2c, and 3.16-2d were altered somewhat from the measures included in the Draft EIR and will require

monitoring of impacts and implementation of mitigation to reduce trips. The FEIR also responds to specific concerns raised in City Comment L2-15 regarding the evaluation and disclosure of traffic impacts associated with University-related parking within the City, the reliance on full buildout of the housing contemplated in the LRDP to determine traffic impacts, and failure of the FEIR to consider implementing certain physical roadway improvements identified in the City's NOP Comment Letter. The FEIR's responses to these comments fail to adequately address significant flaws in the transportation section of the FEIR.

- The FEIR relies almost exclusively on implementation of Traffic Demand Management (TDM) techniques to mitigate impacts to local roadways and area freeways. Yet the mitigation measures are written so that they will not provide any actual mitigation until years after significant impacts occur. Under CEQA, implementation of mitigation measures cannot be delayed beyond the start of the project activity that causes the impact. (*POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681, 740 (“mitigation itself cannot be deferred past the start of the project activity that causes the adverse environmental impact”) (“*POET*”).) As they are currently written, Mitigation Measures 3.16-1, 3.16-2a, 3.16-2b, 3.16-2c, and 3.16-2d do exactly this. These measures would require UC Davis to monitor vehicle trips during the 2018-2019 academic year and every two years thereafter to determine if trip counts exceed baseline levels. Only when operations at specific intersections are found to reach unacceptable levels, or when a project-level environmental analysis indicates this, will the University be required to implement an unspecified number of measures to reduce impacts. Similarly, Mitigation Measures 3.16-2e and 3.16-7 would require UC Davis to upgrade Old Davis Road to an arterial only after monitoring, completed every two years, shows that operations at the intersections in the road have exceeded the thresholds of significance. These measures will allow significant impacts to exist for at least two years before mitigation might be implemented, delaying implementation of any mitigation until well after project activities have caused significant impacts. The FEIR's revisions to these mitigation measures do not remedy these problems, and Mitigation Measures 3.16-1, 3.16-2a, 3.16-2c, 3.16-2d and 3.16-2e continue to violate CEQA, as articulated in *POET*. This is particularly problematic for the FEIR's conclusions concerning cumulative impacts to local roadway segments. The FEIR relies on Mitigation Measure 3.16-7 to conclude that cumulative impacts to Old Davis Road, between I-80 and First Street, will be less than significant after mitigation. However, this measure allows UC Davis to delay

implementation of mitigation until significant impacts have been occurring for up to two years. As a result, Mitigation Measure 3.16-7 cannot be relied on to mitigate impacts below the level of significance. This is particularly problematic in light of the fact that the traffic model used to estimate the impacts was itself adjusted, without substantial evidence to support such an adjustment, to assume a 10% reduction in single occupancy vehicle use. The FEIR, therefore, under-reports the significant and unavoidable impacts of the LRDP, in violation of CEQA.

- Moreover, the FEIR does not provide substantial evidence that the TDM measures included in these mitigation measures will be effective, leaving the City and the public with no other means for reducing impacts. For instance, Mitigation Measure 3.16-1 includes a TDM measure that would support alternative congestion management policies on I-80, including turning I-80 into a toll road for all cars crossing the Yolo Causeway. While CalTrans has publicly discussed adding toll lanes to the Causeway, there has been no discussion of turning the entire causeway into a toll road, which would have huge implications for the public and CalTrans. These issues call into question whether any of the TDM measures are feasible and have received serious scrutiny from necessary stakeholders. Nor does the FEIR provide a mechanism to ensure accountability and transparency so that the City and the public can verify the effectiveness of the mitigation measures or that they are being carried out at all. Due to these flaws in the mitigation measures identified in the FEIR, they cannot be relied upon to actually mitigate impacts and alternative measures should be developed.
- The mitigation measures identified in the FEIR to address impacts to transit service and facilities, bicycle facilities, and pedestrian facilities also improperly delay implementation of mitigation until after significant impacts have already occurred. Mitigation Measures 3.16-3b, 3.16-4, and 3.16-5 require UC Davis to monitor transit-related, bicycle-related, and pedestrian-related collision rates every two years and to implement measures if those monitoring attempts show that collision rates have increased. Again, this would allow impacts to transit, bicycle, and pedestrian travel, including increased collision rates, to occur for two years before mitigation is implemented. This “wait and see” approach violates CEQA’s requirement that measures relied upon to mitigate impacts must be implemented before the project activity commences, as discussed above.

- The FEIR fails to remedy additional problems with the language of the transportation mitigation measures:
  - Mitigation Measure 3.16-1. This measure allows the University to estimate baseline trip counts from the annual Campus Travel Survey. Use of surveys of this sort is unreliable and should not be depended upon as the mechanism for measuring impacts from the LRDP. Nor does the FEIR explain or supply substantial evidence of why use of this survey would be appropriate. In addition to these fundamental reasons why the survey should not be used, the traffic modelling included in Appendix H, which formed the basis of the transportation impact conclusions in the FEIR, does not rely on the annual Campus Travel Survey, and therefore it is inappropriate for the mitigation measure to rely on data that has not been used in the traffic impact analysis or the EIR.
  - Mitigation Measures 3.16-2c, 3.16-2d, and 3.16-2e. These measures are written to address impacts to local roadway intersections, but they do not require the University to consult with the City in determining what TDM measures to implement or how. Because these measures are intended to address impacts to City roads and infrastructure, they should be amended to require consultation with the City.
  - Mitigation Measure 3.16-2d. This measure requires implementation of TDM measures to reduce peak hour vehicle delay at study intersections on the Old Davis Road corridor. In addition to the many problems with this measure identified above, 3.16-2d improperly allows UC Davis to avoid implementation of mitigation until delays at the intersections exceed 10% compared to 2030 no project conditions. The threshold of significance identified for this impact area does not include language requiring comparison to 2030 conditions, and for good reason. (FEIR, Vol. 1, p. 3.16-35.) If traffic volumes increase delay by more than 10% compared to *existing* conditions, and if the levels of service at this intersection have already reached F, then the 10% delay will feel quite significant to the public, who have lived with conditions in their current state and not in the state predicted by the FEIR to occur in 2030. (See *Neighbors for Smart Rail* (2013) 57 Cal.4th at pp. 455-456 (“use of existing conditions as a baseline makes the analysis more accessible to decision makers and especially to members of the public, who may be familiar with the existing environment but not technically equipped to

assess a projection into the distant future. As an amicus curiae observes, '[a]nyone can review an EIR's discussion of current environmental conditions and determine whether [it] comports with that person's knowledge and experience of the world.' But '[i]n a hypothetical future world, the environment is what the statisticians say it is.'") In other words, impacts will be significant when delays reach 10% greater than what is currently experienced, not what might be experienced 12 years in the future. To remedy this impact, mitigation must be required before that point and before the impact becomes significant. But if the language in Mitigation Measure 3.16-2d remains in its current state, mitigation will only occur if traffic volumes cause delay well above the larger volumes of traffic that are predicted to occur in the future. This violates CEQA's requirement that measures relied on the mitigation impacts actually be put in place before impacts occur.

- Mitigation Measure 3.16-3a: This measure includes language that attempts to require Unitrans to continue monitoring and adjusting service levels to meet demand. Unitrans is a separate legal entity from the University and cannot be required to implement any measures by the FEIR. Moreover, as Unitrans's comment letter on the Draft EIR points out, it is facing severe financial problems and may exhaust its reserves within just a few years due to increases in the state minimum wage. As a result, the existing bus system may not be in a position to mitigate the impacts of campus growth contemplated in the LRDP. Without enforceable assurances from UC Davis that it will ensure ongoing financial resource for Unitrans, the FEIR cannot rely on this portion of the mitigation measure to reduce impacts to transit services and facilities.
- The FEIR fails to evaluate the environmental impacts that will result from the mitigation measures identified to address transportation impacts. CEQA requires analysis and disclosure of any potentially significant impacts that may result from implementation of identified mitigation measures. (See CEQA Guidelines, §15126.4.) Here, a number of transportation mitigation measures carry the potential to create significant impacts of their own, yet the FEIR contains no disclosure or analysis of these potential impacts. The following components of Mitigation Measures 3.16-1 – 3.16-7 include contemplated physical changes to the environment that have the potential to create significant impacts, which were not evaluated in the FEIR as required under CEQA:

- Mitigation Measures 3.16-1, 3.16-2a, 3.16-2c, 3.16-2d include TDM measures that call for the “expan[sion of] public transit service, including additional regional service for UC Davis students and employees living off-campus and outside of Davis.” (See also Mitigation Measure 3.16-3a, which calls for transit improvements such as adding new routes, adding service capacity, and improving terminal facilities.) There is no indication in the FEIR that such service expansions are practically, physically, or financially feasible. These expanded services will likely require additional space to store and maintain new buses, new bus stops, new bus stations, or other physical improvements to accommodate the increase in services and routes. Yet the FEIR provides no analysis of these requirements or their potential impacts on the environment. As a result, the FEIR’s reliance on this measure to mitigate impacts to less than significant levels lacks substantial evidence.
- Mitigation Measures 3.16-4 and 3.16-5 include potential countermeasures to address bicycle and pedestrian collisions resulting from the LRDP that call for the construction of physically separate facilities for each mode of travel, widening of existing facilities, and the construction of new facilities, all of which may have significant physical impacts on the environment. However, the FEIR provides no analysis of any such potential effects, nor does it identify where these improvements might be located or evaluate the feasibility of accomplishing them. All of these considerations indicate that the FEIR cannot rely on this measure to mitigate potential impacts to bicycle and pedestrian facilities to less-than-significant levels, contrary to the conclusions stated in the FEIR.
- Mitigation Measure 3.16-7 calls for the construction of improvements to Old Davis Road to upgrade it to an arterial road, including improvements that would add lanes, install roundabouts, install physical separations between modes of travel, and construct a grade-separated crossing for the Arboretum Trail. The FEIR supplies no evidence that the potential environmental effects of these improvements were evaluated in any respect. Nor does it provide evidence that these improvements may be feasibly and timely constructed. As a result, the FEIR cannot rely on this measure to mitigate cumulative impacts to Old Davis Road to less-than-significant levels.



- The FEIR's transportation analysis does not properly account for the cumulative projects identified in Chapter 4. (FEIR, Vol. 1, Table 4-2.) There is no indication that the FEIR included potential traffic and transit impacts from these cumulative projects in its analysis or projected trip counts. Chapter 4 of the FEIR refers the reader to the cumulative impact discussion within Section 3.16 for an analysis of cumulative transportation, circulation, and parking impacts. But that section provides no evidence that the transportation impacts of the projects listed in Table 4-2 were quantified or considered in any fashion in the FEIR. This is a significant concern and potentially fatal flaw of the FEIR.
- Estimated trip generation rates do not take into account the potential for delays in development of on-campus housing and parking, leading to undisclosed impacts associated with increased traffic from commuters seeking to park on campus or on City streets. Neither the LRDP nor the FEIR include an implementation plan or other form of assurance that new parking spaces will be developed in conjunction with new development on campus or increases in enrollment or employment under the LRDP. Instead, the FEIR indicates that approximately 675 commuter/visitor parking spaces are anticipated to be lost to infill development on campus. But the FEIR does not address when and how these spaces will be replaced, or when and how the additional spaces needed to accommodate growth under the LRDP will be constructed. Without this information and assurance, increased enrollment and employment at the University are likely to lead to increased use of parking on City streets, which will be detrimental to the downtown economy and may result in other indirect effects. Similarly, the FEIR does not address when or how increased transit services may be provided to new University employees and students in areas outside of the City. Without viable implementation plans for additional parking and transit services, the LRDP will create traffic and air quality impacts that are not disclosed in the FEIR.
- The FEIR assumes that new employees will live either on campus or beyond the City's boundaries without taking into consideration the fact that housing currently filled with students will likely be filled with either employees or students of the University after the on-campus housing is built as contemplated in the LRDP. (See FEIR, Vol. 1, pp. 3.13-13 – 3.13-14.) By assuming that the number of University-related residents in the City will decrease over time, the FEIR underestimates the amount of University-related traffic and transit impact

that will continue to be generated under the LRDP. This results in the underestimation of transportation impacts in the FEIR.

The City appreciates the efforts taken to respond to its comments in the FEIR. However, the FEIR continues to contain a number of significant problems, as indicated above. If these flaws are not addressed, the FEIR remains vulnerable to challenge under CEQA.

#### Responses to Comments Submitted by Other Agencies and Members of the Public

The flaws remaining in the FEIR are not limited solely to issues raised in the City Comment Letter. Several other commenters also have identified significant problems in the Draft EIR which the FEIR fails to adequately address. As just a few examples:

- Biological Resources: The California Department of Fish and Wildlife (CDFW) raised concerns regarding potential adverse impacts to special-status plant species (Comment S2-4) and to habitat for threatened animals such as the giant garter snake (Comment S2-5). In response, the FEIR points to mitigation measures 3.5-1c (3) and 3.5-2a. These measures, however, do not provide the requisite benchmarks to avoid constituting impermissible deferred mitigation. For example, the measures do not specify how and when it will be determined which options would be used to ensure no net loss of special-status plants, habitat, or individuals. And, the requirement under measure 3.5-2a to “consult” with CDFW and the U.S. Fish and Wildlife Service, without more detail as to what actions will ensure no net loss of giant garter snake habitat, amounts to deferred mitigation, in violation of CEQA. CDFW proposed specific amendments to the mitigation measures to address a number of these problems, but the FEIR inexplicably refuses to incorporate these changes.
- Greenhouse gas (GHG) impacts: Multiple commenters (Comment Letter 27, Comment Letter 31) noted problems with the Draft EIR’s analysis of GHG impacts, including insufficient discussion of the LRDP’s consistency (or lack thereof) with applicable policies and goals and certain metrics in CARB’s 2017 Scoping Plan. While the responses explain what the expected per capita emissions are for 2020 and 2030 (Response to Comment I27-32), the Final EIR still does not grapple with the benchmark for 2050 emissions goals, apparently still relying on the Draft EIR’s contention that “2050 is outside of the 2018 LRDP planning period” (page 3.8-30). This statement does not absolve the University of the need to analyze and disclose the LRDP’s consistency or lack of consistency with this goal, including an analysis of the University’s current trajectory toward meeting GHG reduction goals and an evaluation of whether the LRDP will hamper this trajectory. The EIR should be revised to present further information on the LRDP’s GHG impacts and potential mitigation strategies.

- Project Objectives and Alternatives: One commenter (Comment Letter 27) raised significant issues regarding the alternately vague and unduly narrow project objectives, which taken together lead to potential project alternatives being rejected without full consideration or without adequate justification. The responses to these comments do not sufficiently address the points raised in the comments, and instead simply repeat many of the same bases for rejection of alternatives set forth in the Draft EIR.

### Conclusion

While the City supports the goals articulated in the LRDP and appreciates the important role of the University in the community, it is committed to ensuring that the University mitigate the impacts of the LRDP to greatest extent feasible, and the FEIR falls significantly short of meeting this goal. As a result, the City must urge your honorable Board of Regents to delay approval of the LRDP until the FEIR is corrected and the City's concerns are addressed.

Unfortunately, if the FEIR is certified in its current state, the City may be forced to pursue other legal remedies. The City remains hopeful that further discussions with UC Davis staff and revisions to the FEIR will avoid such an outcome and hopes that your Board will enable this to occur by continuing your consideration of the LRDP to a future date.

Thank you for your attention and consideration of these important concerns, and we look forward to working with University staff toward a mutually beneficial resolution.

Very truly yours,



Whitney G. McDonald

cc: Matt Dulcich, Director of Environmental Planning, University of California, Davis  
Mayor Brett Lee  
Mayor Pro Tempore Gloria Partida  
Councilmember Will Arnold  
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