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**Via Email and Regular Mail**

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**Re: Scoping Comments: Tiered Focused Integrated Projects EIR; Southeast  
Campus Integrated Projects**

Dear Ms. Lawrence:

I am writing on behalf of the Coalition of Affected Parties (CAP), a community based organization initially formed in response to U.C. Berkeley's (UCB) long range development plans and the impacts of this proposed expansion on local citizens. CAP submits these scoping comments to UCB's Notice of Preparation ("NOP") of the Tiered Focused Integrated Projects EIR on the Southeast Campus Integrated Projects ("Integrated Projects"), prepared pursuant to the California Environmental Quality Act ("CEQA.")

**I. INTRODUCTION AND SUMMARY**

CAP appreciates UCB's intent to prepare an EIR for Southeast Campus development but has legitimate concerns about how this development is proceeding forward. The NOP presents a general outline of issues that will be addressed in a more focused EIR for seven different projects occurring over approximately seven years in the Southeast Campus of UCB. In preparing the more focused EIR, UCB intends to tier to its 2020 Long Range Development Plan Final Environmental Impact Report ("LRDP FEIR"), which provided a general assessment regarding the potential impacts of UCB's expected growth over the next 20 years. The LRDP FEIR assumed such growth as inevitable and thus did not consider site-specific variations on the overall amount of growth possible in already congested areas such as the Southeast Campus.

CAP believes the LRDP EIR process did not meaningfully consider the impacts of long range development on the Southeast Campus, including its surrounding communities. Yet now, the NOP

appears to assume that large scale development, including seven projects that each would require an EIR in its own right, are inevitably going forward. The NOP appears to be preparing the community for inevitable development that will inevitably change the essentially non-commercial and residential character of the surrounding neighborhoods. However, CAP does not agree that such significant change is either inevitable or desirable. While CAP endorses UCB's intent to improve and modernize its facilities, such development must not come at the expense of the local residential environment in which UCB is operating.

As set forth below, the Integrated Project EIR must provide an accurate description of the individual projects proposed and the environmental setting, including surrounding neighborhoods, in which the development is intended. CAP emphasizes that UCB must assess the overall effects of the Integrated Projects on neighborhood integrity, particularly with regards to aesthetic impacts, lighting, noise, pollution, public services and traffic circulation. As the NOP recognizes, many of these adjacent areas, including Piedmont Avenue and its residences, and the lower hill section of the Panoramic Hill neighborhood, have been officially recognized as having great historical value. However, the NOP does not appear to recognize this value in assuming, for example, that a significant expansion in Memorial Stadium and law and business school events, including commercial ventures and permanent nighttime lighting, is both inevitable and desirable for the area.

To assess the impacts of UCB's proposed expansion on local communities, UCB must consider not only the proposed construction and physical structures, but also the nature of the use that will be expected from the Integrated Projects, were they to be actually implemented. For example, how many visitors will the "modernized" facilities be expecting to receive? How many "events" does UCB intend to add to its present program, and what kind of activities? If UCB intends to add evening activities, how does it intend to do so without inexorably altering the current residential nature of the affected environment?

In preparing an EIR for the proposed Integrated Projects, UCB must explain how it can avoid furthering existing significant impacts in the area relating to noise, traffic, public services and air pollution. CAP asks, how does UCB intend to account for the changes that will accompany the Integrated Projects, without creating significant impacts – and a resulting lowered quality of life – for residents in the adjacent communities? Neither the LRDP FEIR, nor the NOP provide any answers to this question.

UCB has public trust obligations under the California Constitution and local laws to ensure that its land use decisions do not have adverse impacts on local affected communities. Further, under CEQA, UCB is required to determine whether such impacts can be avoided through the adoption of feasible mitigation or project alternatives. *See* Pub. Res. Code § 21002. CAP urges UCB to address the issues raised below in the EIR process to ensure that UCB's proposed development of the Southeast Campus area does not create significant impacts to the surrounding communities.

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## II. LEGAL BACKGROUND

CAP provides the following legal background on CEQA to support its scoping comments on the proposed Integrated Projects.

### A. CEQA Policy

CEQA's fundamental policy is that all public agencies "shall regulate such activities so that major consideration is given to preventing environmental damage." *Laurel Heights Improvement Assn. v. Regents of University of California ("Laurel Heights")*, *supra*, 47 Cal. 3d at 390; Pub. Res. Code § 21000(g). The "primary means" by which the legislative goals of CEQA are achieved is the preparation of an EIR. *Laurel Heights*, *supra*, 47 Cal.3d at 392; Pub. Res. Code §§21080(d), 21100, 21151; 14 Cal. Code Reg. §15080. The EIR has been described as "an environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Laurel Heights*, *supra*, 47 Cal.3d at 392; *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810. An EIR is intended to serve as "an environmental full disclosure statement." *Rural Land Owners Assn. v. City Council of Lodi* (1983) 143 Cal.App.3d 1013, 1020.

CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. CEQA Guidelines § 15002(a)(1). An EIR must include a description of the physical conditions in the vicinity of the project at the time environmental analysis commences. CEQA Guidelines § 15125. This environmental setting will normally constitute the baseline physical conditions by which the lead agency determines whether an impact is significant. *Id.* See also *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal. App. 4th 892, 915-916; *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal. App. 3d 350, 357.

### B. CEQA Requirement to Mitigate Significant Impacts Where Feasible

Aside from evaluating a proposed project's environmental impacts, an EIR must identify mitigation measures and alternatives to the project which may reduce or avoid the project's significant adverse impacts, thus accomplishing CEQA's basic statutory goals. See *Laurel Heights*, *supra*, 47 Cal.3d at 400-403; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; Pub. Res. Code §§ 21002.1, 21100. This analysis of feasible mitigation measures and a reasonable range of alternatives is crucial to CEQA's substantive mandate that significant environmental damage be substantially lessened or avoided where feasible. Pub. Res. Code §§ 21002, 21081, 21100; CEQA Guidelines, 14 Cal. Code Reg. § 15002(a)(2) and (3). *Laurel Heights*, *supra*, 47 Cal.3d at 392, 404-405. CEQA requires government agencies to disclose to the public the reasons why they have approved a particular project if it will result in significant adverse environmental effects. CEQA Guidelines § 15002(a)(4). "The EIR process protects not only the environment but also informed self-government." *Laurel Heights*, *supra*, 47 Cal.3d at 392.

When the EIR determines that significant adverse effects remain, even after the implementation of all feasible mitigation measures, the agency must balance the benefits of the project against its environmental harm to determine if the project should proceed. Pub. Res. Code §21002; § 21081(d); 14 Cal. Code Reg. § 15093. This "statement of overriding considerations," as the last step in the analysis, provides critical information to the public to fulfill the law's public disclosure requirement - that the EIR function as "a document of accountability" and "informed self government." *Sierra Club v. Board of Forestry* (1994) 7 Cal 4th 1215, 1229 (the agency "retains the power to approve a plan that has significant adverse effects upon the environment, so long as it justifies its action in light of "specific economic, social, or other conditions.")

### **C. Tiering under CEQA**

CEQA allows for the use of a "tiered" review process based on an initial programmatic EIR document. *See* Public Resources Code §§ 21068.5, 21093, 21094. These provisions allow an agency "to evaluate broad environmental issues, to respond to those issues in an EIR prepared at the planning stage, and to provide detailed examination of specific issues in EIRs on later development projects that are consistent with or implement the approved plan." *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal. App. 4th 182, 201.

The fact that a lead agency has completed a programmatic environmental document does not mean that detailed review is not required at the project implementation stage. *See e.g., Endangered Habitats League v. State Water Resources Control Board* (1997) 63 Cal. App. 4th 227, 242-243 (CEQA's allowance of tiering "does not mean that because the first tier sails through without challenge that the second tier is thereby immune from review, simply because it was envisioned, in general terms, in the first tier.")

The CEQA Guidelines state that a subsequent EIR tiered to a program EIR (such as the LRDP FEIR) must still address potential environmental impacts which (1) were not examined as significant effects on the environment in the prior EIR; or (2) are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means. 14 Cal. Code Reg. § 15152(d).

Further, the CEQA Guidelines state that a "later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR. Significant environmental effects have been "adequately addressed" if the lead agency determines that: (A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report; (B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project; or (C) they cannot be mitigated to avoid or substantially lessen the significant impacts despite the project proponent's willingness to accept all feasible mitigation measures, and the only purpose of including analysis of such effects in another environmental impact report would be to put the

agency in a position to adopt a statement of overriding considerations with respect to the effects. 14 Cal. Code Reg. § 15152(f)(3).

With regard to whether a tiered project will contribute to new significant cumulative impacts, the lead agency must “consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects. At this point, the question is not whether there is a significant cumulative impact, but whether the effects of the project are cumulatively considerable.” 14 Cal. Code Reg. § 15152(f)(2).

### **III. SCOPING COMMENTS**

#### **A. The LRDP FEIR Does Not Allow for the Integrated Projects to Be Approved Without Comprehensive and Detailed Environmental Review**

In its LRDP UCB stated that the 2020 LRDP FEIR is a first tier EIR that evaluates the potential effects of the entire 2020 LRDP at a program level. The LRDP DEIR stated that:

[S]ubsequent projects should be examined in light of the program-level EIR to determine whether subsequent project-specific environmental documents must be prepared. If no new significant effects would occur, all significant effects have been adequately addressed, and no new mitigation measures would be required, subsequent projects within the scope of the 2020 LRDP could rely on the environmental analysis presented in the program-level EIR, and no subsequent environmental documents would be required.

Where these requirements are not all met, however, the LRDP DEIR envisioned that subsequent documents would focus on project-level information not available for the 2020 LRDP EIR and that project specific mitigation measures for significant impacts not addressed in detail in the 2020 LRDP EIR would have to be identified and discussed in the project-specific review.

Given the general and vague nature of the LRDP FEIR’s environmental review process, CAP strongly disagrees that the SCIR Project may rely on the findings of 2020 LRDP process to avoid and limit future necessary environmental review for the Integrated Projects. CEQA allows a lead agency to tier individual projects to a programmatic environmental review document, but only where the programmatic document has accurately assessed the degree of cumulative impacts that will occur. *See e.g., Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 531 (“Designating an EIR as a program EIR ...does not by itself decrease the level of analysis otherwise required in the EIR”); Pub. Res. Code §§ 21068.5, 21093, 21094.

In this case, the LRDP DEIR and FEIR presented an exceedingly vague project description with little specifics as to how projected growth would occur, the nature of specific project or how such projects would be implemented and little to no analysis as to potentially significant impacts from UCB’s proposed expansion. The LRDP FEIR also did not accurately describe present and ongoing significant impacts to the existing environment in a way that could purport to have assessed the

cumulatively significant impacts that are inevitable from UCB's proposed expansion. *See Stanislaus Natural Heritage Project v. County of Stanislaus*, *supra*, 48 Cal. App. 4th at 202 ("Calling it a "program" does not relieve the County from having to address the significant environmental effects of that project. ")

In particular, the LRDP FEIR does not assess *any* project specific impacts on the neighborhoods bordering the proposed Project. As discussed below, the LRDP FEIR does not even consistently identify surrounding neighborhoods in describing the environmental setting of the programmatic project.

### **B. The Proposed Bundling of the Integrated Projects Raises an Issue about the Informational Adequacy of UCB's Proposed Environmental Review Process**

CEQA requires that an EIR be prepared in a "clear format" which is readily readable and understandable by the public and by the agency decisionmakers. *See e.g.*, Cal. Code Reg. §§ 15006, 15120, 15140. An adequate EIR must be "prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." 14 Cal. Code Reg. § 15151. It "must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." *Laurel Heights Improvement Assn.*, *supra*, 47 Cal.3d at 405. The EIR must reflect the analytical route the agency traveled from evidence to action. *Kings County Farm Bureau*, *supra*, 221 Cal. App. 3d at 733.

The draft EIR proposed by UCB does not appear to meet these criteria. UCB proposes to analyze the impacts of the seven projects together in a single environmental review document, thereby raising an issue whether the public or agency decision makers will ever have a complete analysis of any specific project addressed in a draft EIR. This bundling approach has the potential to preclude informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process. *Laurel Heights Improvement Assn.*, *supra*, 47 Cal.3d at 403-405.

### **C. Need for an Accurate and Detailed Project Description**

CEQA requires that the environmental review document contain a full and accurate description of the proposed project. *See e.g. Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal. App.3d 357, 366; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal. App.3d 818, 829-831; *County of Inyo v. UCB of Los Angeles* (1977) 71 Cal. App. 3d 185; 14 Cal. Code Reg. § 15124.<sup>1</sup> As the *County of Inyo* court noted:

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<sup>1</sup> *See also Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal. App. 4th 1344; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal. App. 4th 182, 201; *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal. App. 4th 351, 369-370; *Sacramento Old UCB Assn. v. UCB Council*, *supra*, 229 Cal. App. 3d at 1023; 14 Cal. Code Reg. § 15378(a.)

Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e. the "no project" alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.

71 Cal.App.3d at 192.

The Integrated Projects description must provide detailed information on a host of project aspects that were not discussed in the LRDP FEIR including:

- the manner of deconstruction of Memorial Stadium and how the destruction and removal of concrete and other building materials will be accomplished in relation to impacts relating to noise, air quality, traffic and circulation, aesthetics, public services, water quality etc;

- the level and nature of increased use of Memorial Stadium as a part of the overall development, including the role of private commercial vendors and events, envisioned as part of the Integrated Projects. See NOP p. 23 ("expand use of the existing Memorial Stadium"); ("no increase in public-interest events at the California Memorial Stadium"). The NOP describes these changes as "program improvements;" these "improvements" must be described in detail so as to ensure an accurate assessment of environmental impacts.

- physical changes to the existing structures relating to noise, air pollution, aesthetics, circulation etc; this includes lighting changes and increased size of structures. For example, as UCB is aware, community neighborhoods have long been concerned over UCB's continual efforts to increase lighting at the Stadium. The NOP (p. 13) refers to "permanent lighting to support existing training needs and ..nationally televised games." Rather than indirect generalizations, CAP urges UCB to specify precisely the nature of increase lighting that will accompany each alternative proposed for the Integrated Projects.

- changes to the Piedmont Avenue corridor in relation to traffic flow and circulation. The NOP describes "landscape improvements" to Piedmont Avenue. CAP urges UCB to provide a project description of Piedmont Avenue that includes not just landscaping "improvements" but also increased circulation and potential necessary changes to avoid significant impacts to existing congested circulation patterns, particularly given UCB's apparent intention to establish a central parking structure that will concentrate traffic flow into this area.

CAP is particularly concerned that UCB may intend to defer the specifics of the Integrated Projects description until after the CEQA review process is complete, based on an asserted need for flexibility or more information. In the absence of such specific project description, however, a draft EIR for the project will fail to provide adequate information to the public in order to apprise them of what is being proposed, and to allow them to convey critical comments on the impacts that one

may expect.

In describing the Integrated Projects, UCB must describe not only the structures or landscape changes that will occur, but also the expected changes in use on the Southeast Campus area as a result of the development. For example, if UCB's development will be funded in part by private money, how will private participation affect subsequent activities in the area? What kind of "events" does UCB envision to be occurring in the area, including but not limited to Memorial Stadium? Will private funding require the initiation of commercial activities in the Southeast Campus, including commercial events such as concerts etc., as part of the funding agreement? CAP believes that any such arrangements must be disclosed as part of any project description in the DEIR.

Further, the lack of project description in the current NOP raises an issue whether UCB may be committing itself to a certain intensity or size of development incompatible with the environmental setting in which the Integrated Projects are proposed. CAP urges UCB to consider different project designs and intensity prior to drafting schematic plans that would tend to commit UCB to development that would be fundamentally incompatible with the local community and public services in the area.

#### **D. Need for an Accurate and Detailed Description of Environmental Setting**

An EIR must include a description of the physical conditions in the vicinity of the project at the time environmental analysis commences. CEQA Guidelines § 15125. This environmental setting will normally constitute the baseline physical conditions by which the lead agency determines whether an impact is significant. *Id. See also Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal. App. 4th 892, 915-916; *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal. App. 3d 350, 357.

In *San Joaquin Raptor v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, the court held:

[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA." (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal. App.3d 818, 829. The error is prejudicial "if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App.3d 692, 712.)

*Id.* at 721-722.

In describing the environmental setting, UCB has an obligation to describe the degree to which ongoing impacts of current development are affecting the capacity of natural and government infrastructure systems to accommodate additional impacts. *See e.g., See Kings County Farm Bureau*



*v. City of Hanford* (1990) 221 Cal.App.3d 692, 722-723, *San Joaquin Raptor v. County of Stanislaus, supra*, 27 Cal. App. 4th at 722-723. 14 Cal. Code Reg. § 15125 ("An EIR must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and regional perspective.")

Such a description is particularly important where existing cumulative impacts such as those related to traffic, noise, aesthetics, sediment loading, air pollution, wildlife corridor depletion, etc is already "significant." By contributing to existing significant effects, a project will be considered to have significant impacts on the environment under CEQA. *See Kings County Farm Bureau, supra*, 221 Cal.App.3d at 722; *EPIC v. Johnson* (1985) 170 Cal.App.3d 604, 624-625.

Like the LRDP FEIR, the Integrated Projects NOP does not identify the surrounding neighborhoods that will be affected by the Integrated Projects as part of its proposed description of the environmental setting. For example, the NOP describes the location of the Integrated Projects as including areas characterized as "Adjacent Blocks South" and "Campus Park" in the LRDP FEIR. NOP, p. 9. However, neither the LRDP FEIR's description of Adjacent Blocks South, nor the larger "City Environs" contain any meaningful discussion of the local communities adjacent to the proposed Integrated Projects, including the Panoramic Hill, Dwight Hillside and nearby Piedmont Avenue Districts. The NOP implies that the cumulative impacts of this level of development on adjacent neighborhoods has been already adequately addressed in the LRDP FEIR, but this cannot be so if the LRDP FEIR never described the neighborhoods that would be impacted. Not only did the LRDP FEIR fail to recognize the existence of these neighborhood communities as part of the environmental setting for projects located on or adjacent to the south and east side of campus, that document provides little to no information regarding the existing significant impacts from traffic, noise etc that exist in these areas.

Further, the LRDP FEIR contains little to no discussion regarding the historical significance and/or the relevance of historical designation of streets and adjacent communities. The setting of an historical property, a key criteria for designation, includes the property's relationship to surrounding features and open space. *See* U.S. Department of the Interior, National Park Service, National Register, History and Education website, [http://www.cr.nps.gov/nr/publications/bulletins/nrb15/nrb15\\_8.htm](http://www.cr.nps.gov/nr/publications/bulletins/nrb15/nrb15_8.htm). Here, UCB must describe the setting of these historic resources in order to assess accurately how the proposed development will affect their value. *See also* 36 C.F.R. § 800.5(a) (criteria for defining adverse impacts on historical resources includes factors that affect integrity and character of environmental setting.)

Given the location of the Integrated Projects, CAP believes it is imperative to describe these neighborhoods as part of the environmental setting for the Integrated Projects DEIR and to characterize the existing impacts to these neighborhoods from existing development prior to assessing the potential for additional impacts to have cumulatively considerable effects. *See e.g.*, Pub. Res. Code § 21084.1; 14 Cal. Code Reg. 15064.5(b)(1); *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896.

### **E. The DEIR Must Consider a Range of Alternatives**

A central purpose of the EIR is to identify mitigation measures and alternatives to the project that may reduce or avoid the project's significant adverse impacts, thus accomplishing CEQA's basic statutory goals. See *Laurel Heights, supra*, 47 Cal.3d 376, 400-403; *Citizens of Goleta Valley, supra*, 52 Cal.3d at 564; Pub. Res. Code §§ 21002.1, 21100.

Analysis of feasible mitigation measures and a reasonable range of alternatives is crucial to CEQA's substantive mandate that significant environmental damage be substantially lessened or avoided where feasible. Pub. Res. Code §§ 21002, 21081, 21100; 14 Cal. Coder Reg. § 15002(a)(2)-(3); *Laurel Heights, supra*, at 392, 404-405. Thus, "CEQA compels government first to identify the environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives." *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1233. See also Pub. Res. Code § 21002.

In the DEIR, UCB must consider, in addition to a no-project alternative, alternatives with less intensity and with less overall impacts on the surrounding community. In particular, CAP requests that UCB consider an alternative that avoids increasing existing environmental impacts in the area, including aesthetic impacts, noise, traffic and circulation, air pollution, stormwater discharge etc. While CAP does not dispute the legitimacy of UCB's goal to modernize and update its academic and athletic facilities, CAP strongly disagrees that such changes necessarily have to *increase* the environmental impacts of UCB's operation on the local community and environment.

In considering smaller project alternatives, UCB must consider alternatives for each of the seven projects and, because UCB has chosen to bundle these projects in a single environmental review, consider alternatives under which smaller individual projects may be combined together to form a less intense development that will avoid additional environmental effects.

In reviewing the NOP, CAP notes that in several places, UCB appears to be proceeding ahead as if the specifics of the proposed Integrated Projects have already been reviewed. For example, the NOP (p. 21) refers to existing lighting at Memorial Stadium as "substandard" and then states that the "Integrated Projects would improve lighting at the Stadium and alter lighting at the existing Maxwell Family Field as it is replaced atop a parking structure." CAP strongly disagrees that UCB's previous proposals for permanent lighting at the Stadium are essential for UCB to meet the general project purposes as set forth in the NOP. To the extent that UCB believes permanent lighting is required to allow for year round nighttime events to occur at the Stadium, CAP believes this is not a legitimate project purpose consistent with the University's charter and public trust obligations under the California Constitution.

### **F. UCB Cannot Tier off the LRDP FEIR in Considering the Impacts of the Integrated Projects**

The primary purpose of an EIR is to provide public agencies and the public alike with detailed

information about the effect a project is likely to have on the environment, to list ways significant effects might be minimized, and to indicate alternatives to the project. Pub. Res. Code §§ 21002, 21002.1(a), 21061, 21100, 21150. Accordingly, an EIR must identify and analyze all direct and indirect potentially significant environmental impacts of a project. Pub. Res. Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).

The NOP proposes to tier off the LRDP FEIR's consideration of a number of impacts that the NOP lists are relevant to the Integrated Projects. However, as discussed above, CEQA limits a lead agency's ability to tier off an initial programmatic EIR document to those impacts specifically addressed in the programmatic document. *Endangered Habitats League v. State Water Resources Control Board*, *supra*, 63 Cal. App. 4th at 242-243. In particular, UCB may not tier to the LRDP FEIR on potential environmental impacts which (1) were not examined as significant effects on the environment in the prior EIR; or (2) are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means. 14 Cal. Code Reg. § 15152(d). *See also* 14 Cal. Code Reg. § 15152(f)(3).

For several environmental impacts, the NOP states that the LRDP FEIR has already conducted sufficient analysis. CAP strongly disagrees with this conclusion with regards to:

- Air Pollution: The NOP (pp. 22-23) purports to rely on the LRDP FEIR to find that the Integrated Projects will not conflict with implementation of applicable air quality plan or result in cumulatively considerable increase in any criteria pollutant for which the area is currently non-attainment. The LRDP simply commits UCB to work with other agencies to address campus growth as part of the Clean Air Plan. However, how UCB implements the Integrated Projects will have an effect on the area's overall compliance with the Plan. Nothing in the LRDP explains how specific projects will avoid cumulative air impacts. As discussed below, under CEQA, additional impacts to an existing significant impact must be considered significant and avoided where feasible. Further, the NOP appears to ignore local cumulative air impacts from both construction, demolition and project increases in criteria and toxic air emissions.

- Biological resources: The NOP purports to rely on the LRDP FEIR for impacts to biological resources. However, this document did not address direct site specific impacts to native trees and to Strawberry Creek due to tree removal, impervious surface coverage and increased pollutant discharge. Further, the NOP assumes that there will be no impacts to wildlife, but ignores the potential for increased lighting, noise, idling traffic etc. to contribute to significant impacts to wildlife and habitat to the east of the project site in the Strawberry Creek watershed.

- CAP also disagrees that the Integrated Projects do not conflict with local ordinances designed to protect biological resources. The Berkeley Creeks Ordinance prohibits developments over existing creeks, even those currently culverted such as Strawberry Creek. The NOP fails to address the possibility that Strawberry Creek could be enhanced by the proposed project, rather than covered over with even larger structures.

● The NOP states that the Southeast Campus Integrated Projects would not physically divide an existing community and thus no further analysis on this issue is required. CAP strongly disagrees with this assessment. The development of this area has the potential for changes in local land use, particularly relating to commercial development and the expansion of “events” that would separate the largely residential adjoining communities from Campus activities. Indeed, UCB’s failure to engage in meaningful dialogue on its proposed development expansion may well lead local citizens to lobby their elected officials to implement land use restrictions that would create conflicts between Campus activities and applicable laws on adjacent land.

● The NOP finds that the impacts on public services such as police and fire protection need not be analyzed. However, the LRDP FEIR did not analyze the impacts of the Integrated Projects on local public services.

● The NOP (p. 37) states that the Integrated Projects are not expected to result in inadequate parking capacity. CAP urges UCB to rethink this conclusion based on the obvious impacts that will occur during the multiple year construction process. The LRDP did not conclude that parking impacts would be insignificant, and thus reliance on the LRDP baseline is inappropriate. Further, it is likely that the Integrated Projects will increase visitor demand -- both on a regular basis or as part of events -- which will exacerbate existing parking shortages. CAP notes that UCB proposes no specific plans to encourage public transportation to the Southeast Campus area. The NOP refers to general UCB policies set forth in the LRDP to encourage alternative transportation, but at the project specific level, UCB must actually set forth the measures that will occur, which may then be reviewed by the public in an accountable forum as required by CEQA.

CAP also objects to UCB’s intent to rely in part on tiering for a number of impacts that *will* still be addressed in the Integrated Projects DEIR, including impacts relating to:

- aesthetics: scenic vistas, light impacts on views and visual character of the surroundings (NOP, pp. 21-22);
- cultural resources: causing substantial changes in historical resources; (NOP, p. 26.)
- hydrology and water quality: alteration of drainage patterns; (NOP, pp. 29-31).
- transportation traffic: increased traffic, exceeding congestion capacity; (NOP, pp. 36-37).

As discussed above, the LRDP FEIR did not address any of these impacts with specific reference to the development of the Southeast Campus, and the Integrated Projects in particular. Thus, full environmental analysis is required.

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### **G. The DEIR Must Consider the Cumulative Impacts of this Project and Other Development on the Local Environment**

CEQA Guidelines require UCB to consider "past, present, and probable future projects producing related or cumulative impacts." 14 Cal. Code Reg. § 15130 (b)(1)(A).<sup>2</sup> See *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859. UCB must interpret this requirement in such a way as to "afford the fullest possible protection of the environment." *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal. App. 3d 151, 168.

As discussed, to ensure that cumulative impacts are adequately considered, CEQA requires a description of the physical conditions in the vicinity of the project at the time environmental analysis commences. 14 Cal. Code Reg. § 15125. This environmental setting will normally constitute the baseline physical conditions by which the lead agency determines whether an impact is significant. See *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal. App. 4th 892, 915-916; *Environmental Planning & Information Council v. County of El Dorado, supra*, (1982) 131 Cal. App. 3d 350, 357.

In addition, UCB may not avoid a finding of significant impacts by measuring the incremental impacts of this project in a vacuum, without regard to the overall cumulative impacts that are occurring. See e.g., *Kings County Farm Bureau v. City of Hanford, supra*, 221 Cal. App.3d at 722 (court rejects agency's finding that "since the project's emissions are relatively minor when compared with other sources, ...the project would have no significant impact on air quality.")

The NOP states that UCB will rely on the LRDP FEIR to analyze the cumulative impacts of this and other past, present, and probable future projects. However, as discussed above, the general conclusory findings of the LRDP cannot be relied on to avoid a thorough assessment of cumulative impacts to surrounding communities from the Integrated Projects, as measured against the existing environmental setting. In determining whether a tiered project will contribute to new significant cumulative impacts, UCB must "consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects. At this point, the question is *not* whether there is a significant cumulative impact, but *whether the effects of the project are cumulatively considerable.*" 14 Cal. Code Reg. § 15152(f)(2) (emphasis added.)

Further, CAP urges UCB to consider the cumulative impacts of the Integrated Projects

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<sup>2</sup>14 Cal. Code Reg. § 15355 states: "'Cumulative impacts' refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. (a) The individual effects may be changes resulting from a single project or a number of separate projects. (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time."

together, as is required for CEQA. To the extent UCB is intent on assessing impacts in a consolidated EIR, it must review the manner in which UCB's proposed transformation of the Southeast Campus will affect local communities, particularly with regards to air pollution, aesthetics, noise, traffic and circulation and overburdening of public services.

#### **H. UCB Must Consider the Impacts of the Integrated Projects to Surrounding Historic Neighborhoods**

Noticeably absent from the NOP is any concession from UCB that the proposed Integrated Projects is likely to transform the Southeast Campus area from a low impact, sustainable community to an intensive, world renowned "resource" center with regular "events" – potentially commercially driven that will increase visitor demand and concomitant noise, traffic and congestion. The impacts from this level of proposed development to surrounding communities is likely to be significant, yet the NOP glosses over this fact, stating only that it is University policy to "ensure that the character and livability of neighboring cities are respected and enhanced." (NOP, p. 32.)

As discussed above, the NOP does not acknowledge that the proposed development will have significant impacts on aesthetics, noise, viewshed, visual integrity due to increased lighting, air pollution, traffic, parking and neighborhood character. Further, while the NOP acknowledges the historical values of adjoining communities, including Piedmont Avenue, Bowles Hall and the Panoramic Hill historic district, it does not acknowledge the potential impacts of the proposed development on the historical integrity of these resources as part of a residential community.

CEQA requires an assessment of relevant impacts discussed above to these sensitive receptors. *See* Pub. Res. Code § 21084.1; 14 Cal. Code Reg. 15064.5(b)(1) ("Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or *alteration of the resource or its immediate surroundings* such that the significance of an historical resource would be materially impaired.") (emphasis added.) *See also League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896.

Federal law provides instructive guidance on this question. 36 C.F.R. § 800.5(a)(1) states:

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

Examples of adverse effects on historic properties include, but are not limited to i) physical destruction of or damage to all or part of the property; (ii) alteration of a property, including

restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 C.F.R. part 68) and applicable guidelines; ... (iv) change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance; (v) introduction of *visual, atmospheric or audible elements* that diminish the integrity of the property's significant historic features. 36 C.F.R. § 800.5(a)(2)

Here, the Integrated Projects are likely to have precisely these types of adverse impacts on the historical resources of the Southeast Campus environs. Under CEQA, UCB is required to identify such significant environmental impacts and to determine whether they can be avoided through the adoption of feasible mitigation or project alternatives. *See* Pub. Res. Code § 21002.

#### **IV. CONCLUSION**

CAP believes that there are possibilities for UCB to develop the Southeast Campus in a manner harmonious with the residential nature of the area. To do so, however, UCB must comply with detailed CEQA requirements to describe how specific project attributes, considered together, will not lead to significant impacts to surrounding communities. As discussed above, CAP has a legitimate concern that, to this point, UCB has not proceeded as if maintaining the quality of the community environment was a real priority. CAP hopes that UCB will take this obligation more seriously as part of its preparation of the DEIR for this project.

Respectfully submitted,

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(On Behalf of Coalition of Affected Parties)