

ORGANIZATIONS & AFFILIATIONS

The following subsection includes comments and responses to the following organizations and affiliations.

- O-A-1 Community Water Coalition, Gary A. Patton, Wittwer & Parkin, LLP
- O-A-2 Environment in the Public Interest (EPI), Gordon Hensley
- O-A-3 Environment in the Public Interest, Alexander T. Henson Esq.
- O-A-4 Habitat and Watershed Caretakers, Stephan C. Voker
- O-A-5 Rural Bonny Doon Association
- O-A-6 Santa Cruz Bird Club
- O-A-7 Sierra Club
- O-A-8 University of California Faculty, Karen Holl, Don Croll, Laurel Fox, Gregory Gilbert, Deborah Letourneau, Michael Lok, Ingrid Parker, Daniel Press, Zdravka Tazankova, Chris Wilmers, Eria Zavaleta

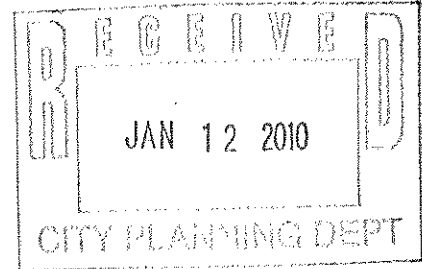
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OF COUNSEL
Gary A. Patton

January 10, 2010

Ken Thomas
Planning and Community Development Department
City of Santa Cruz
City Hall, 809 Center Street, Room 206
Santa Cruz, CA 95060



RE: Comments Relating to the Draft Environmental Impact Report for City of Santa Cruz Sphere of Influence Amendment (To Include Part of the UCSC North Campus) and Provision of Extraterritorial Water & Sewer Service (To Part of the UCSC North Campus)

Dear Mr. Thomas:

This office represents the Community Water Coalition ("CWC"), a group of residents and businesses within the City of Santa Cruz Water Service Area. The CWC is dedicated to ensuring that there will continue to be adequate water supplies for current customers within the Water Service Area, while maintaining a healthy environment.

The Draft EIR makes a compelling case that the expansion of the City's Sphere of Influence, coupled with approval of the UCSC application to receive extraterritorial water and sewer services from the City, would put the water supplies of current water customers in jeopardy, and would have significant and adverse impacts on the natural environment. We hope that the City (and ultimately LAFCO) will take seriously the following comments, made on behalf of the CWC:

1. The UCSC application to LAFCO seeking authority for the City to provide extraterritorial water and sewer services to the UCSC North Campus is legally ineffective. The law requires that such an application be made by the City of Santa Cruz, not by UCSC.

The DEIR indicates at Page 4.3-5 and 6 in Chapter 4.3 LAND USE, under the heading "PROVISION OF EXTRATERRITORIAL WATER SERVICES" that "in certain circumstances State law allows LAFCO to authorize a city ... to provide water service outside the agency's boundaries. [LAFCO] [R]esolution [No. 97-W, as amended by Resolution No. 2007-1] explains the procedures by which LAFCO will review requests to authorize a city ... to provide one or more services outside its jurisdictional limits pursuant to Government Code Section 56133."

LAFCO properly recognizes, in other words, that Government Code Section 56133 governs any application for the provision of extraterritorial water and sewer services.

Government Code Section 56133 relates to "new or extended services outside jurisdictional boundaries" and provides, in pertinent part, as follows (with emphasis added):

- (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries ***only if it first requests and receives written approval from the commission*** [LAFCO] in the affected county.
- (b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.
- (c) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:
 - 1. The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.
 - 2. The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.
- (d) The executive officer, within 30 days of receipt of a request for approval ***by a city or district*** of a contract to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.
- (e) This section does not apply to contracts or agreements solely involving two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is

consistent with the level of service contemplated by the existing service provider. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving the provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county. This section does not apply to an extended service that a city or district was providing on or before January 1, 2001. This section does not apply to a local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundaries.

The application for extraterritorial water service made by UCSC, in other words, is without legal effect, and cannot support approval. LAFCO can only grant the City the right to provide extraterritorial water service if "it," the City, makes an application to LAFCO, and if the Commission then approves that application as submitted by the City. Interestingly, state law does *not require* the City to have made the application for an expansion of its Sphere of Influence. Government Code Section 56428 specifically provides that "any person" can file a written request for a Sphere amendment.

Case law has upheld the application of Government Code Section 56133 in a manner supportive of CWC's position. In an action by an irrigation district against a power company alleging antitrust injury by the power company's attempt to prevent it from offering electric services outside its boundaries, summary judgment was granted for the power company where the irrigation district extended its electric services outside its jurisdictional boundaries without receiving prior written local agency formation commission approval in violation of Gov C § 56133. *Modesto Irrigation Dist. v. Pac. Gas & Elec. Co.* (2004, ND Cal) 309 F Supp 2d 1156, 2004 US Dist LEXIS 4225, *aff'd* (2005, 9th Cir Cal) 158 Fed Appx 807, 2005 US App LEXIS 27558. Water Code § 22120 did not permit an irrigation district to ignore the requirements of Government Code § 56133 as a matter of law. *Id.*

Comment/Question: Will the Draft EIR be revised to inform the public and responsible agencies of the requirements of Government Code Section 56133, and then be recirculated for further public comment? If not, why not?

2. Because the UCSC North Campus Area is outside the adopted Water and Wastewater Service Areas/Urban Services Line established by the City General Plan, the City is barred from serving this area.

Notwithstanding the fact that UCSC has erroneously been designated as the applicant to LAFCO, the DEIR makes clear in numerous places that the extraterritorial water and sewer services are "to be provided by the City of Santa Cruz" (e.g., p. 1-1), which is properly identified as "the agency responsible for carrying out the project (providing water and sewer service)" (e.g., p. 1-2). In other words the proposed extension of water and sewer services would be a City Public Works Project.

Case law makes clear that "a city's public works projects, as well as private development projects, must be consistent with its general plan." In other words, a city is "required to conform its proposed public works projects to its general plan." Case law has authorized enjoining the construction of a public works project on the basis of its relationship to a proposed private subdivision that was inconsistent with the local general plan, although no statute authorized injunctive relief. (*Save El Toro Assn. v. Days* (1979) 98 Cal. App. 3d 544, 555); *Friends of "B" Street v. City of Hayward*, 106 Cal. App. 3d 988, 998-999 (Cal. App. 1st Dist. 1980); *Friends of H Street v. City of Sacramento*, 20 Cal. App. 4th 152, 169 (Cal. App. 3d Dist. 1993).

The underlying basis of the foregoing is that the general plan "is, in short, a constitution for all further development within the city." (*O'Loane v. O'Rourke* (1965) 231 Cal.App.2d 774, 782; 58 Ops.Cal.Atty.Gen. 21 (1975); see also *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532). The Legislature's own declaration of state policy and legislative intent that "decisions involving the future growth of the state, most of which are made and will continue to be made at the local level, should be guided by an effective planning process, including the local general plan . . ." (Gov. Code, § 65030.1) is not limited to decisions regarding proposed private developments; it encompasses all decisions involving the future growth of the state, which necessarily includes decisions by a city to proceed with public works projects. All such decisions are to be guided by an effective planning process that includes consistency with the local general plan.¹

- 3 A project results in a significant impact on the environment where it conflicts with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect, as stated in the Guidelines for the Implementation of the California Environmental Quality Act, Cal. Code Regs., tit. 14, appen. G, § IX, subd. (b). See, *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903.

The conflicts with the City General Plan identified below each constitute a significant impact and cannot be found to "not result in impacts" as stated in the DEIR as to "Impact 3-1 in the box on page 4.3-14, since the City General Plan unquestionably qualifies as an "applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect."

¹ Government Code section 65302 requires charter as well as general law cities to adopt a general plan containing specified mandatory elements. In setting forth these requirements, the Legislature must have intended that a charter city would comply with whatever general plan elements it had adopted. (See *O'Loane v. O'Rourke*, *supra*, 231 Cal.App.2d at pp. 782-783).

(a) General Plan Conflict #1: The City General Plan establishes both a Water Service Area Boundary (MAP CF-4) and a Wastewater Service Area (MAP CF-6), and both of these maps exclude the Proposed UCSC North Campus Area. Confirmation of this conflict is the recent "Areawide Approval" sought by the City and obtained from LAFCO, allowing water service in certain areas outside the current City limits, but excluding the Proposed UCSC North Campus area.

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(b) General Plan Conflict #2: The City General Plan also provides that "[t]he unincorporated area of the County is divided into urban and rural areas by an Urban Services Line," and that "[t]his line serves to direct countywide growth into urban areas where services are more readily available and less costly (emphasis added)." Thus, the City of Santa Cruz General Plan incorporates the County's Urban Services Line and the urban/rural distinction required by voter-adopted policies incorporated into the County General Plan.² The Urban Services Line policies prohibit extension of sanitary sewer facilities to the UCSC North Campus. The County General Plan provides as follows:

"The Urban Services (USL) Line is a boundary, illustrated on General Plan and LCP Land Use and Facilities Maps and diagrams, that defines where urban services may be provided ... A more detailed description of the Urban Services Line is found in the County's Urban/Rural Boundary: Urban Services Line and Rural Services Line ordinance."

The referenced ordinance in turn provides at County Code Section 17.02.060(b) that: "Public sanitary sewer facilities shall not be established or extended to serve new development projects outside the Urban Services Line or the Rural Services Line." The DEIR acknowledges that the Proposed UCSC North Campus "is not located within the County's "Urban Services Line" (DEIR p. 4.3-2). Hence, the proposed extension of wastewater services is in conflict with Urban Services Line policies utilized for policy making purposes in the City General Plan.

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(c) General Plan Conflict #3: The current City General Plan provides that the City shall "[a]pprove the expansion of services to UCSC only as required by law or as they mitigate impacts." The extension of water and wastewater services to the Proposed UCSC North Campus would conflict with this policy. There is no law that "requires" the City to extend its services, and far from helping to

² The DEIR correctly includes the County General Plan in its "review of consistency with local plans and policies," which "review focuses on policies or regulations adopted for the purpose of avoiding or mitigating an environmental impact" [i]n accordance with State CEQA Guidelines, Appendix G." See the last paragraph on Page 4.3-14. "Based on the review above [which included a review of County Policies]," the DEIR informs the public in its "Conclusion" to the LAND USE IMPACTS AND MITIGATION MEASURES section (pp. 4.3-14-20), that "the proposed project does not appear conflict or be inconsistent with the existing City or County General Plan/Local Coastal Program policies (emphasis added)." Clearly, this statement is mistaken.

"mitigate impacts," the extension of services to the UCSC North Campus would cause significant new impacts, as the DEIR demonstrates.

6 Comment/Question: Will the Draft EIR be revised to inform the public and responsible agencies that:

- A. The extension of water and wastewater services to the UCSC North Campus is inconsistent with the policies establishing the boundaries of the City Water and Wastewater Service Areas; and
- B. That the extension of water and wastewater services to the UCSC North Campus is prohibited under Urban Service Line policies recognized in the City and County General Plans; and
- C. That the extension of water and wastewater services to the UCSC North Campus is neither required by law nor required to mitigate impacts?

Further, after modification to make these disclosures, will the DEIR then be recirculated for further comment? If not, why not?

7 3. The extension of water and sewer services to the UCSC North Campus Area would act as a repeal or modification of a voter-enacted regulation, and would violate settled principles of law intended to protect the prerogatives of the voters.

The DEIR fails to discuss the fact that in 1978 the voters of the County of Santa Cruz (including the vast majority of the voters in the City of Santa Cruz) approved land use policies requiring that there be a distinction between urban and rural areas as to intensity of development, and that significant features of these voter-adopted policies were then incorporated into the City General Plan.

County Code Section 17.01.030(b), duly adopted as part of Measure J by the voters on July 5, 1978, provides that:

"... the following policies shall guide the future growth and development of Santa Cruz County:

"Distinguish "Urban" and "Rural" Areas. It shall be the policy of Santa Cruz County to preserve a distinction between areas of the County which are 'urban' and areas which are 'rural' ... (Co. Code Section 17.01.030)."

The urban/rural distinction policy cited above is based on a finding, duly adopted by the voters on that same date and set forth in County Code Section 17.01.020(e)(3) that:

Adequate roads, sewers, and water. School overcrowding, traffic congestion, higher crime rates, and increasingly inadequate water supplies, roads, and sewage facilities will be the result of continued rapid population growth and development.

These problems are greatly aggravated when new development takes place in rural areas rather than in areas where urban services can be provided at less cost to taxpayers (emphasis added).

Among the findings adopted by the voters in support of the above policy is a concern about "Water Supplies," namely that "[t]he 'safe yield' capacity of natural surface and groundwater sources is being exceeded in many areas of the County, causing water supply and water quality problems which will be irreversible or extremely expensive to correct." See County Code Section 17.01.020.

County Code Section 17.02.010 goes on to confirm that:

"[T]he County General Plan ... and [voter-adopted] Chapter 17.01 of the Santa Cruz County Code ... requires the County to preserve a distinction between urban and rural areas, to encourage the location of new development in urban areas, and to protect agricultural land and natural resources in rural areas. These policies are supported by the establishment of a Rural Services Line (RSL) and an Urban Services Line (USL) to define areas which are or have the potential to be urban and areas which are and should remain rural."

Section 17.02.030 defines "Urban Services Line (USL)" to mean "a boundary, defined by the County General Plan, which distinguishes areas which are to remain rural from areas planned to accommodate urban densities of development.... As already noted, the County's voter adopted growth management measure, which establishes an urban/rural boundary, has been incorporated into the City General Plan, and the UCSC North Campus Area is located outside the urban/rural line.

The Courts have established a rule of law requiring any amendment or "clarification" of a voter-adopted measure to meet the strictest standard, so as to avoid any evasion of the will of the people. Hence, any analysis of the expansion of water and wastewater services to the UCSC North Campus must begin with the overriding policy established by the voters of preserving a distinction between urban and rural areas. This proposal is for an expansion of water and wastewater services to be located outside the County Urban Services Line, as incorporated within the City General Plan. The intense urban-like development proposed by UCSC will require a substantial bridge to leapfrog the sizable Cave Gulch watershed, which represents significant sprawl beyond a natural and major topographic barrier. It would also destroy 73 forested acres and be thoroughly inconsistent with the voter-adopted Urban/Rural Distinction policy.

The Courts have repeatedly established an extremely strict standard of review for any ordinance affecting (including evasion by interpretation or implementation) the subject matter of a voter-adopted legislative act. An ordinance adopted by the people which contains no provision for amendment or repeal cannot be amended by the Board of Supervisors, but can only be amended by a vote of the people. 36 Ops. Atty. Gen. 236 (1960). In the case of a voter-adopted measure establishing land use policies

in the County of San Mateo, the Court of Appeal repeated the holding of the California Supreme Court that:

“In determining whether a particular action constitutes an amendment [of a voter adopted measure], we [the courts] keep in mind that ‘[i]t is the duty of the courts to jealously guard [the people’s initiative and referendum power].’ It has long been our judicial policy to apply a liberal construction to this power whenever it is challenged in order that the right [to local initiative or referendum] be not improperly annulled.” *San Mateo County Landowners’ Association v. County of San Mateo* (1995) 38 Cal.App.4th 523 (fn.7) citing *DaVita v. County of Napa* (1995) 9 Cal. 4th 763, 775-776, quoting *Associated Home Builders, etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591; See also *Proposition 103 Enforcement Project v. Charles Quackenbush* (1998) 64 Cal.App. 4th 1473.

The case of *Proposition 103 Enforcement Project v. Charles Quackenbush*, supra, distills the strict standard of review, largely from two California Supreme Court cases nearly 20 years apart, as follows:

“Any doubts should be resolved in favor of the initiative and referendum power and amendments which may conflict with the subject matter of initiative measures must be accomplished by popular vote, as opposed to legislatively enacted ordinances, where the original initiative does not provide otherwise. (*De Vita v. County of Napa*, supra, 9 Cal.4th at p. 7765, 38 Cal.Rptr. 699, 889 P.2d 1019; *Mobilepark West Homeowners Assn. v. Escondido Mobilepark West*, supra, 35 Cal.App.4th at p. 41, 41 Cal.Rptr.2d 393.)”
(Emphasis added).

Thus, it is clear from appellate precedent that all doubts must be resolved in favor of requiring a popular vote if the subject matter of voter-adopted legislation is subsequently addressed. This requirement has been held to be of constitutional dimension. “When a statute enacted by the initiative process is involved, the Legislature may amend it only if the voters specifically gave the Legislature that power.... (Cal. Const., Art. II, Sec. 10, subd.(c); *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1251, 48 Cal.Rptr.2d 12, 906 P.2d 1112[.]) The purpose of California’s constitutional limitation on the Legislature’s power to amend initiative statutes is to ‘protect the people’s initiative powers by precluding the Legislature from undoing what the people have done without the electorate’s consent.’ (*Huening v. Eu* (1991) 231 Cal.App.3d 766, 781, 282 Cal.Rptr. 664 (conc. and diss. Opn. Of Raye, J.).” (All as quoted in *Proposition 103 Enforcement Project v. Charles Quackenbush* (64 Cal.App.4th 1473, 76 Cal.Rptr.2d 342— emphasis added).

An “amendment” has been defined as “any change of the scope or effect of an existing statute, whether by addition, omission, or substitution of provisions, which does not wholly terminate its existence, whether by an act purporting to amend, repeal, revise, or supplement, or by an act independent and original in form, ...” ...
An amendment of an initiative may be accomplished by some other action other

than by the subsequent enactment of a statute; the question is whether the action in question adds to or takes away from the initiative. (See e.g., *Franchise Tax Board v. Cory*, *supra*, 80 Cal.App.3d at pp. 773, 777 [initiative enacted by voters was amended by "control language" in budget item, which, in part significantly restricted the manner in which audits were to be conducted] To give effect to the constitution, it is as much the duty of the courts to see that it [the initiative] is not evaded as that it is not directly violated." The foregoing is all as quoted in *Proposition 103 Enforcement Project v. Charles Quackenbush*, *supra*, emphasis added).

It is clear that the Courts are empowered to preclude any action (including evasion by interpretation of its ordinances) which may conflict with the voter-adopted policy of maintaining a distinction between urban and rural areas as to the intensity of development. The action by the City to expand water and wastewater service outside the County Urban Services Line "may conflict" (in fact "does" conflict) with the voter-adopted measure requiring preservation of an "Urban/Rural Distinction," as that measure has been incorporated into the City General Plan. Such "expansion" may only be accomplished by a vote of the People.

Comment/Question: Will the DEIR be revised to discuss the environmental significance of the voter adopted policies establishing an urban/rural distinction, and their incorporation into the City General Plan, and fully analyze and disclose these impacts, and will the DEIR then be recirculated for further comment? If not, why not?

- 8 4. The informational purposes of CEQA are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to evaluate the pros and cons of supplying the amount of water that the project will need. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412. In this case, the DEIR fails to meet the "Vineyard" standard, because it fails to explore uncertainties that a more complete analysis could quantify or illuminate. The failure adequately to analyze the range of possible water supply cutbacks associated with the adoption of an HCP covering the San Lorenzo River and the North Coast streams is one example. What might those reductions be? So is the failure of the DEIR to analyze whether water from the City's Live Oak well field will continue to be available, as groundwater overdraft and saltwater intrusion make this source either wholly or partially unavailable. What range of groundwater supply reductions might occur? So is the failure of the DEIR to take seriously the range of possible water supply cutbacks that might be caused by climate change in the watersheds serving the City of Santa Cruz Water Service Area. What sort of climate related water supply work has been done elsewhere, and what sort of guidance does it provide for what might happen here? So is the failure to examine whether or not the City's water rights actually support the City's current diversions. What water rights does the City actually currently have, and how much of the water they count as their water supply is currently not being taken under established legal permits? So is the failure to examine what would be the result of a reduction based on the fact that the City currently uses water from the San Lorenzo

- 9 River to which the San Lorenzo Valley Water District has a prior claim. What is the maximum reduction that the City would experience if the District asserted its prior rights, and how would that affect the DEIR analysis? So is the failure of the DEIR to review materials relating to the proposed CEMEX quarry expansion, being resisted by the City. What do the City's consultant reports show might be the impacts on North Coast water supplies if the CEMEX permit application is approved by the County of Santa Cruz?
- 10 5. On Page 4.1-8, the DEIR says, "the City's adopted UWMP indicates that current water supplies will remain relatively unchanged with a total net production capacity of approximately 4,300 MGY (approximately 13,200 AFY) through the year 2030 assuming normal water conditions and no change to current operations or water rights." On Page 4.1-11, the DEIR says, "a basic assumption of the City's *Integrated Water Plan* and UWMP is that the City will continue to use its existing water supply sources in the future without change in current production levels. However, the City faces a series of ongoing challenges that potentially could lead to some loss of existing supply in the future..." Given the fact that "some loss of existing supply" is at least possible (and actually likely, as the DEIR reveals) the DEIR must seek to quantify the possible reductions, so that the impacts of the proposed project can be based on a realistic range of possible water supply scenarios. Again, what range of water supply reductions is likely, with respect to the HCP proceedings now underway? What has happened in other jurisdictions? What do the resource agencies think might be the necessary reductions? What does past correspondence with the resource agencies show? What do other written materials related to this topic and exchanged between the City and the resource agencies reveal as the possible water supply reductions? Similar inquiries need to be made about all of the "challenges" mentioned by the DEIR. The problem with this DEIR is that it simply recites what the City has said in its other reports, as opposed to exploring possible impacts, as the law requires.
- 11 6. Attached is a December 10, 2008 Memorandum from Charles Armor, Regional Manager of the State Department of Fish and Game, addressed to Ms. Victoria Whitney at the State Water Resources Control Board. This Memorandum indicates the problematic nature of the City's assertion that it can continue to use the same amount of water from its surface sources in the future that it has used in the past. The DEIR must evaluate what the water supply effects would be if the City were in fact required to eliminate the concerns outlined by the Department of Fish and Game.
- 12 7. In a November 16, 2009 Memorandum from Bill Kocher, Water Director, addressed to Stephanie Strelow, and included in Appendix F to the DEIR, the Water Director says, "there are unresolved Ongoing Planning Issues...that threaten the City's current water supplies, i.e. negotiations over a Habitat Conservation Plan; water rights conformance issues; the potential for seawater intrusion in the City's Live Oak Wells. Until all those outstanding issues are resolved, the City should not be making judgments about how much water it will have available in the future." This is the *opposite* of what CEQA requires. The City is proposing to commit itself to expand

water service to areas not now legally entitled to receive City water, at a time when the City admittedly does not know how much water it will actually have available in the future. CEQA requires that the best information possible about the future be developed before that commitment is actually made. That's what the EIR is actually supposed to do. Instead, the Water Director is essentially saying, "let's just do it, without trying to "make a judgment" about how much water it will have in the future. The DEIR must attempt to "make that judgment," and then it must be recirculated for further public review and response.

- 13 8. In view of the fact that the water supply future of the City is so uncertain, the DEIR must evaluate an alternative that would *delay* extension of water service to the UCSC North Campus until more certainty exists, either because the pending issues mentioned by Water Director Kocher in his November 16, 2009 memo (and others) are resolved in a way that demonstrates that there will be adequate water available, or because a new water supply through an approved desalination plant becomes available. The City will not "prefer" this alternative or course of action, but it is legally required to consider this option in its DEIR. Specifically, if the University suspends its "housing commitment" under the Settlement Agreement, because of a delay in the LAFCO decision, what will that actually mean in terms of environmental impacts, in view of the fact that construction in the UCSC North Campus area will not be possible without water service there?
- 14 9. The DEIR must also examine the alternative of a University-supplied water supply, to be produced by water sources on the UCSC campus. Is that a possibility? What would be required, and what impacts would be caused?
- 15 10. The University appears to claim in the Comprehensive Settlement Agreement that it has the "right" to have City water delivered to its North Campus Area, despite the provisions of Government Code Section 56133, which states that extraterritorial water service from the City of Santa Cruz can be made available "only" if the City applies for the right to provide such extraterritorial water service and LAFCO grants its application. Is there any other basis on which the University could claim water from the City? This is pertinent, because environmental impacts associated with University growth would arguably be less if the University kept its "housing commitment," but if it is not able to grow significantly without the provision of City water to the North Campus Area, it is unclear that delaying or denying the extraterritorial water service would cause increased impacts. The DEIR must actually investigate this issue. For instance, is there some contract between the University and the City that requires the City to deliver water to the North Campus, and that would prevail over state law? If any such right exists, it is pertinent, and the existence of such right should be documented in the EIR.
- 16 11. The DEIR does not properly respond to the significant comments made on the City's Water Supply assessment, and contained in Appendix F. CWC specifically wishes its comments in Appendix F to be treated as comments on the DEIR, since the issues raised in these comments were not properly addressed in the DEIR as released. To be

legally sufficient, the DEIR must include a full and adequate discussion of all of the comments made on the WSA, and then it must be recirculated for further public review and comment.

- 17 12. It is not clear that the City's decision to claim "Lead Agency" status, as reported on Page 1-1, is legally supportable. Public Resources Code Section 21067 provides as follows: "Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." In this case, the DEIR states on Page 1-1 that the environmental review "addresses the potential environmental effects of the proposed City of Santa Cruz Sphere of Influence amendment request to the Santa Cruz Local Agency Formation Commission (LAFCO)...The University concurrently submitted an application ... for extraterritorial water and service to be provided by the City of Santa Cruz." The legal ineffectiveness of the University's application aside, it is clear that the "project" being analyzed is the proposed applications." In that case, LAFCO is the proper Lead Agency because LAFCO has "the principal responsibility for carrying out or approving [the] project."
- 18 13. The DEIR must consider an alternative of an "annexation" of the North Campus Area, as opposed to the proposal that the City's Sphere be expanded, but that no annexation occur, and that water and sewer services be provided on an "extraterritorial" basis. If the North Campus Area were annexed, fire and law enforcement responsibility would be with the City of Santa Cruz. If it is not annexed, such responsibilities will be with the County of Santa Cruz. What is the differential environmental impact? Clearly, there would be some differences, including longer trips for back up law enforcement from the County, and better fire protection backup from the City, as opposed to the Department of Forestry and Fire Protection.

Thank you very much for taking our comments and concerns into consideration. We do believe that the DEIR must be significantly revised, and then recirculated for further public review and comment.

WITTWER & PARKIN, LLP



By: Gary A. Patton

cc: Members, Santa Cruz City Council
 Members, Santa Cruz County Board of Supervisors
 City of Santa Cruz Water Director
 City of Santa Cruz Water Commission
 Local Agency Formation Commission



State of California
Department of Fish and Game

Memorandum

Date: December 10, 2008

To: Ms. Victoria Whitney
State Water Resources Control Board
Division of Water Rights
Post Office Box 2000
Sacramento, CA 95812

Attention: Mr. Norm Ponferrada

From: Charles Armor, Regional Manager
Department of Fish and Game – Bay Delta Region, Post Office Box 47, Yountville, California 94599

Subject: Protest of Petitions to Extend Time for Water Applications (WA) 23710 and 22318 and Petitions for Change for WA 2370, 22318 and 17913, Filed by the City of Santa Cruz to Divert Water from San Lorenzo River and Newell Creek in Santa Cruz County

The Department of Fish and Game's (DFG) interest in this petition is based on its status as trustee agency for California's fish and wildlife resources and as a responsible agency under Fish and Game Code Section 1600 et. seq. and the California Endangered Species Act (CESA). DFG's right to protest this petition is based on State Water Code §1330 and other associated provisions of law.

Basis of Protest

Granting an Extension for the project will result in direct and cumulative adverse impacts to public trust resources of Newell Creek and the San Lorenzo River, and DFG is concerned that ongoing activities have been occurring without appropriate authorization from DFG and the State Water Resources Control Board (SWRCB). Granting an extension to expand current operations could impact instream resources by further reducing instream flow and water availability necessary to maintain riparian and fish¹ habitat in good condition. In particular, impacts to coho salmon (*Oncorhynchus kisutch*), steelhead trout (*Oncorhynchus mykiss*), California red-legged frog (*Rana aurora draytonii*), foothill yellow-legged frog (*Rana boylei*), and other aquatic and terrestrial species are already occurring and could be further aggravated by the proposed extension. The current Petition does not adequately disclose the current operations nor does it adequately analyze the effects of either the current operations or additional effects of the new diversions. Direct and cumulative impacts to downstream resources from the additional diversions proposed in the WA must be assessed and appropriately minimized and mitigated.

¹ "Fish" means wild fish, mollusks, crustaceans, invertebrates, or amphibians, including any part, spawn, or ova thereof.

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Project Description

Under WA 30546, the applicant seeks to extend the time available to put water to beneficial use for 25 years. The City of Santa Cruz (City) also wishes to add direct diversion activities to its water right in conformance with actual operations. The City currently has a Water Right License 9847 (WA 17913) for collection of 5,600 acre-feet (af) of water and storage of 8624 af of water in Loch Lomond Reservoir on Newell Creek, tributary to the San Lorenzo River. The application includes additional diversion of direct flow from Loch Lomond Reservoir but indicates that the change will not increase the amount of water diverted.

It is important to note that DFG has been working with the City and NOAA's National Marine Fisheries Service in developing a Habitat Conservation Plan (HCP) to address the impacts associated with the City's operations that impact listed coho salmon and steelhead. The measures to protect listed species are still in development.

Statement of Facts

- Fish and Game Code Section 5937² requires that sufficient water be passed over, around or through to maintain fish in good condition. CCR Title 23 Section 782 emphasizes the requirement for compliance with this section of the Fish and Game Code. Current operations at Loch Lomond Reservoir and the Felton Diversion Dam are bypassing a minimum flow of one cubic feet per second (cfs) and 20 cfs, respectively. Substantial evidence indicates that these minimum flow requirements are considerably lower than flows necessary to maintain adequate passage, spawning and rearing flows necessary to keep fish in good condition.
- State and federally listed coho salmon have historically used the San Lorenzo River watershed, and on-going operations of the Felton diversion structure have the potential to take³ State listed endangered coho salmon. The City does not currently have a CESA Incidental Take Permit issued by DFG pursuant to Fish and Game Code Section 2081(b) and California Code of Regulations, Title 14, Section 783 et seq. CESA prohibits the take of any species of wildlife designated as an endangered, threatened, or candidate species by the Fish and Game Commission without authorization.
- The proposed expansion of water use and subsequent development beyond existing conditions may result in undisclosed direct and cumulative adverse impacts to sensitive instream resources. Effects to sensitive resources including State and federally listed species have not been sufficiently analyzed or disclosed. The application has failed to accurately disclose current operations and identify whether sufficient water exists for expansion without unreasonably affecting other water users

² Fish and Game Code Section 5937 states, "The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam. During the minimum flow of water in any river or stream, permission may be granted by DFG to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam when, in the judgment of DFG, it is impracticable or detrimental to the owner to pass the water through the fishway.

³ Pursuant to Fish and Game Code Section 86, "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill."

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or adversely affecting sensitive resources in downstream reaches. The Petition has not provided substantial evidence that current operations or additional diversions are not adversely affecting sensitive resources.

Considerations in Developing Protest Dismissal Terms

Newell Creek

DFG has recently received a draft Assessment of Streamflow Effects (Assessment) dated November 10, 2008 for the City operations including those at Newell Creek and San Lorenzo River. Though the Assessment does not cover the San Lorenzo River above the Tait Diversion in the City, it does include an assessment of flows needed to keep fish in good condition in Newell Creek below Loch Lomond Reservoir. The City is currently bypassing a total of one cfs year-round below the reservoir. According to the Assessment, 20 cfs is the minimum flow necessary to maintain peak spawning habitat for both coho and steelhead and 21 cfs is necessary to allow for adult passage at critical riffles. The site-specific analysis included in the Assessment provides substantial evidence that the current bypass flow of one cfs is insufficient to keep fish in good condition. Further, the historic timing of spills from Loch Lomond Reservoir has varied according to water year but in most years does not occur until February if at all. Though the release of one cfs during the late summer months may provide enhanced flows for summer rearing, the release of one cfs during the fall, winter and spring has impaired downstream habitat by preventing adult migration and severely restricting spawning habitat. Until such time as more information is available, DFG is recommending that operations at Newell Creek be revised to allow for a minimum flow of 20 cfs and that a schedule be developed to release additional peak flows for adult migration.

Felton Diversion

Diversion operations at the Felton Diversion are currently required to bypass a minimum of 20 cfs for in-stream beneficial uses. However, the City is currently not able to divert water when levels drop below 40 cfs or during high flow events above 300 cfs. Although DFG does not consider the current bypass requirement of 20 cfs sufficient to keep fish in good condition, the operational constraints at the Felton Diversion Dam allow for sufficient flow to bypass the structure to allow for some fish passage and possible spawning. Due to these operational constraints, DFG had determined that it is likely that sufficient water is available for salmonids to pass during peak flow events and that dam operations are not significantly affecting the amount of time that those passage flows are available. As such, any modification of the Felton diversion facility or increases in diversion amount may adversely impact salmonids and will require additional analysis in consultation with DFG staff. Although the current operation of the diversion structure is sufficient to protect adult migration, DFG remains concerned that current dam operations may continue to have an adverse effect on spring and summer spawning and rearing habitat below the diversion site. It is unclear whether current operation of the diversion dam, including dam installation and diversion, modifies flows to downstream habitat during times when salmonids may be spawning or rearing. Inflation of the dam and diversion operations have the potential to abruptly dewater downstream reaches potentially stranding fish and dewatering redds. Further, when water collected behind the dam is released during deflation, elevated flows have the potential to scour downstream reaches and salmonid redds. The Petition request and subsequent California Environmental Quality Act (CEQA) document should analyze the effects of current operations on downstream flows and the potential effects caused by additional diversions. Specifically, the analysis should determine whether 20 cfs is sufficient

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to maintain spawning and rearing habitat, as well as whether operation of the facility abruptly modifies downstream flows likely taking salmonid species. The analysis of these baseline issues is currently lacking and is necessary to determine whether extension of the existing Permit will adversely affect listed resources.

Protest Dismissal Terms

Protest dismissal terms, if adopted as enforceable conditions of the water right permit, are intended to minimize and mitigate adverse impacts to fisheries and wildlife resources. The lack of sufficient analysis to date prevents DFG from developing complete appropriate site-specific flows for all diversions. DFG will provide draft protest dismissal terms and recommendations with the understanding that final terms are dependent on the analysis of further information. Dismissal terms for these diversions may include, but are not limited to:

1. No work shall commence and no additional water shall be diverted, stored, or used under this permit until a signed copy of a Lake and Streambed Alteration Agreement (LSAA) between DFG and the Permittee addressing the diversion of water and providing seasonally adequate bypass flows is filed with the SWRCB, Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the Permittee.
2. No work shall commence and no additional water shall be diverted, stored, or used under this permit until the City receives an Incidental Take Permit for State and federally listed coho salmon from DFG. Compliance with the terms and conditions of the permit is the responsibility of the Permittee.
3. The bypass shall be a passive system that is designed to only divert flow when the terms of the SWRCB permit will be met. Outside the diversion season and at low flows, water will automatically bypass all points of diversion.
4. No water shall be diverted, even within the allowable diversion season, until the measure of flow being bypassed around all existing points of diversion are of sufficient quantity and quality to allow upstream and downstream fish passage, and maintain in good condition any aquatic resources that would exist in downstream reaches under unimpaired flows. Determination of the bypass flow shall be based on site-specific biological investigations approved by DFG and NOAA Fisheries personnel. A final site-specific study including the San Lorenzo River shall be conducted to determine the specific life history needs of coho salmon, steelhead trout and other aquatic resources and propose species-specific protective bypass flows and channel maintenance flows. The study should include, at a minimum:
 - a. A hydrologic study of the undisclosed modifications and proposed operations to determine if the production of the watershed is sufficient to provide the water requested without having significant adverse impacts to aquatic and riparian resources of the subject streams or downstream reaches.
 - b. An assessment of potential impacts to sensitive species due to diversions at San Lorenzo River and its tributaries. The assessment shall include a discussion of adverse impacts from operation of diversion facilities, as well as

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effects of operations on instantaneous flows on downstream habitat. The use of additional water under a riparian claim should also be disclosed to allow adequate assessment of the full potential impacts of the project.

- c. An assessment of the impacts of the proposed on-stream reservoirs on channel forming flows with a specific proposal to provide periodic channel maintenance and flushing flows that are representative of the natural hydrograph. A plan to monitor compliance, the effectiveness of the stipulated flows on maintaining channel form, and procedures for making subsequent modifications, if necessary.
 - d. The diversion rate and quantity of water available for this diversion project while providing adequate flows for channel maintenance, breeding, fish migration and spawning during the diversion period. The study shall be provided for DFG's written concurrence prior to expansion of any diversion facility.
6. To reduce impacts due to abrupt changes in released or diverted flows to downstream fish resources, inflation of the diversion dam at Felton and bypass flows shall be modified incrementally to avoid sudden changes in flow which may cause fish stranding downstream of PODs. An Operations Plan including a ramping plan shall be provided to DFG for review and concurrence prior to construction. By July 1 of each year, a summary monitoring report conducted over the previous season shall be provided to DFG. The report shall provide a summary of the flow data collected in a manner that clearly demonstrates whether or not the flow and diversion rate conditions of the Agreement were met.
7. The Applicant shall submit an effectiveness monitoring plan for approval by DFG. The intent of this monitoring plan is to document and verify that project operations, including operations of Felton Diversion Dam and minimum bypass flows, are achieving the stated resource goals and providing sufficient rearing, spawning and passage for salmonids downstream of each diversion facility. The plan shall include the following elements:
 - a. Identification of a date on which the annual report will be submitted.
 - b. Identification of monitoring points at critical passage areas, such as riffles or barriers, which will be monitored to ensure that passage has been achieved.
 - c. Identification of the methods and criteria used to evaluate the critical areas to determine whether habitat value and/or passage ability has been improved and, if so, by how much.
 - d. If the observed flows are not sufficient to keep fish in good condition, a description of possible additional measures that could achieve the desired ends.

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8. All pumping and diversion facilities shall be fitted with a fish screen that meets the NOAA Fisheries fish screening criteria. Screens shall be in place prior to any diversion of water and shall be maintained in good condition at all times when water is being diverted.
9. If unforeseen conditions arise which may cause adverse impacts to fish and/or wildlife resources or as further data is accumulated for analysis, the applicant may be required to remediate the situation to the satisfaction of DFG.
10. Permittee must agree to allow access for DFG personnel to monitor compliance.

All or some of these terms may be subject to modification or cancellation should facts warranting such action come to light at a later date.

If you have questions regarding this protest, please contact Ms. Corinne Gray, Environmental Scientist, at (707) 944-5526; or Mr. Greg Martinelli, Water Conservation Supervisor, at (707) 944-5570; or by writing to DFG at the memorandum address listed above.

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LETTER OA-1 – COMMUNITY WATER COALITION

Gary A. Patton, Wittwer & Parkin, LLP

OA-1-1 Legality of Application for Extraterritorial Service. Government Code § 56133 expressly authorizes a city to extend new or extended services outside its jurisdictional boundaries provided it first receives permission to do so from LAFCO. Moreover, the commenter relies on Government Code section 56133, subsections (a) and (d), to support the argument. However, UCSC made its application pursuant to subsection (b) of Government Code section 56133, which does not require that the application be made by the City. Subsection (b) provides: “The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.” Thus, while subsections (a) and (d) may require the application to be made by the city or district that is proposing to provide the service pursuant to contract or agreement, subsection (b) contains no such requirement. Here, the City has filed an application with LAFCO seeking permission to extend services outside its jurisdictional boundaries by expanding its Sphere of Influence to include the approximately 374 acres designated as the “North Campus” by UCSC. (LAFCO Application No. 928.) UCSC has filed its own, corollary application seeking authorization for the City to provide water and sanitary sewer services outside its city limits to parts of the UCSC North Campus. (LAFCO Application No. 929.) The case cited by the commenter is inapplicable to the circumstances of the project considered in the EIR because here, unlike in the case cited, applications have been submitted to the LAFCO prior to any action being taken to extend services beyond the City’s service boundaries. The companion applications by the City and UCSC are the primary steps necessary to fulfill the parties’ respective commitments under their Comprehensive Settlement Agreement. Government Code § 56133 does not prohibit either of the two LAFCO applications that have been submitted nor does it prevent LAFCO from considering and approving them. In addition, LAFCO’s own regulations contemplate requests for extraterritorial service that are not made by the city or district that will be providing the service.¹ In fact, LAFCO has previously processed applications for extraterritorial service filed by private land owners.²

In June 2010 after the close of the public review period for the DEIR, the Community Water Coalition filed a lawsuit challenging the University of California’s claimed right to be the applicant under the application filed with LAFCO for provision of

¹ See “Extraterritorial” at: <http://www.santacruzlafco.org/Library>

² See “923 staff bruzone.” Online at: <http://www.santacruzlafco.org/pages/agenda/20080109materials>

extraterritorial services. A court hearing and determination had not been made at the time of publication of this FEIR.

See also Master Response CC-2 – EIR Recirculation regarding the request to recirculate the DEIR.

- OA-1-2 City's Service Area and "City Public Works Projects". See Responses to Comments OA-1-1 regarding the application to LAFCO for provision of extraterritorial services. Additionally, per Public Contracts Code § 20161, a "public work" is defined to include the erection, improvement, painting or repair of public buildings and works, street or sewer work except their maintenance or repair, and supplies or materials for any such project including the supply of materials for sewer or street repair and maintenance projects. The LAFCO applications that comprise the proposed project and resulting expansion of the City's Sphere of Influence and provision of extraterritorial water and sewer service entails none of the foregoing. As indicated throughout the DEIR (i.e., pages 3-9, 4.1-28, 4.2-7, 4.3-13), no development or extension of water or sewer lines are proposed at this time or any specific time. Ultimate extension of water and sewer lines on the North Campus would be the responsibility of UCSC. If the LAFCO applications are approved, at some future point in time, public work contracts may be let for the installation of water and sewer facilities to the North Campus, but there is currently no such project scheduled or contracted for.
- OA-1-3 Project Consistency with City General Plan – Service Area Maps. The City's 2005 General Plan/Local Coastal Program does include maps that show the Water Department's service area and the City's wastewater treatment service area. The maps are referenced as part of the discussion of the services the City provides. The maps are not referenced in any policies that would suggest that water and wastewater treatment services are limited to the areas shown on the maps. Specifically, as indicated on pages 4.3-12 and 4.3-15 of the DEIR, Policy CD 1.2 supports annexation of UCSC to the City.
- OA-1-4 Project Consistency with City General Plan – Urban Service Line. The City's 2005 General Plan/Local Coastal Program does include the referenced statement about the County's Urban Services Line as part of the "Regional Setting" description of the "Community Profile" chapter at the beginning of the General Plan. However, the existing General Plan does not include any policies related to the County's Urban Services Line nor does it incorporate the County's Urban Services Line in policies as suggested by the commenter. It merely provides a one-sentence description in the background introduction. Santa Cruz County Code section 17.02 (Urban & Rural Services Line) is not directly applicable to the proposed project as discussed in Response to Comment OA-1-7.

Thus, there is no inconsistency with City General Plan policies as asserted by the commenter as there is no City General Plan policy that pertains to the subject of the County's Urban Services Line, and the County Code chapter governing this topic is not applicable to the proposed project. The commenter indicates in a footnote to this comment that the DEIR's conclusion that the project does not appear to conflict with or be inconsistent with City or County policies is mistaken, but a specific reference to a policy that supports this assertion is not provided. If it is regarding the Urban Services Line, this response addresses that concern.

The Community Design Element of the City's current General Plan explains and directs the physical form and character of the City, and also serves as a guide to the City Council in its decision making. Goal CD1 states: *"Maintain a compact City with clearly defined urban boundaries."* The primary policy direction for this goal can be found under program General Plan Policy CD1.3.2, which directs that the City establish an urban development boundary at Moore Creek (east branch above Highway 1) and along the City limits below Highway 1.

The applicable policy that limits expansion of the City's Sphere of Influence and annexation can be found under CD Policy 1.2. It states:

"Do not expand the City Sphere of Influence or annex lands other than those specified in Programs 1.2.1 and 1.2.2 of this Plan.

1.2.1 Annex the balance of UCSC lands outside of the coastal zone immediately and consider annexing lands inside the coastal zone at a later date.

1.2.2 Consolidate the City limits in the Carbonera Area.

1.2.3 Evaluate deannexing agriculturally zoned land on the western edge of the City."

The physical form of the City around its boundaries that is envisioned by the General Plan is to not allow development past the east branch of Moore Creek to protect the open space character of the north coast but to allow the City's Sphere of Influence to include both the upper and north campus outside of the coastal zone. The proposed Sphere of Influence amendment does not include University land within the coastal zone. The City met with University officials in the early 1990s to implement Program 1.2.1. These discussions ended due to changes in UCSC staff priorities.

It is also worthwhile to review project consistency with the proposed Draft City of Santa Cruz General Plan 2030. As the review below demonstrates existing community design goal and policy direction is maintained regarding urban development. Goal LU2 states:

“A compact community with boundaries defined by the city’s greenbelt and Monterey Bay.”

Policy LU2.1 – Maintain the city’s urban development line a Moore Creek Preserve (east branch above Highway 1) and along the city limits below Highway 1.

Policy LU2.2 – Do not expand the city’s Sphere of Influence or annex lands, except as specified in action in this Plan.

LU2.2.1 Consider consolidating the city limits in the Carbonera Area.

LU2.2.2 Pursuant to the UCSC/City Comprehensive Settlement Agreement amend the City’s Sphere of Influence to add approximately 374 acres of the north campus area.

- OA-1-5 Project Consistency with City General Plan – Expansion of Services. The comment cites a City of Santa Cruz General Plan policy that provides services to UCSC may be expanded only as required by law or to mitigate impacts, and there is no law that requires the City to extend water and wastewater services to the project area. The Comprehensive Settlement Agreement (CSA) was incorporated into a Santa Cruz County Superior Court judgment which serves as a court order and is legally binding upon all parties to the CSA. It is therefore fair to conclude that to the extent the CSA calls for the provision of water and wastewater services to the University, the City is legally required to do so in accordance with the Settlement Agreement/court judgment. Thus, the Settlement Agreement is a legal decision that meets the provision of the policy that states “as required by law.”
- OA-1-6 Project Consistency with City General Plan – EIR Recirculation. As discussed in Response to Comments OA-1-3, OA-1-4, and OA-1-5, the proposed project does not conflict with the policies raised by the commenter, and no revisions to the DEIR are required. Thus, for the reasons explained in Master Response CC-2 – EIR Recirculation, revision and recirculation of the DEIR is not necessary.
- OA-1-7 County Urban Services Line. Chapter 17.02 of the County Code is entitled “Urban Services Line and Rural Services Line.” It governs the delivery of public services to “new development projects” inside and outside the Urban Services Line established by the County in its General Plan and Local Coastal Program. Per County Code § 17.02.030(d), “new development project” is defined as “developments that create new lots, housing units, or commercial or industrial buildings requiring a Development or parcel approval from Santa Cruz County.” The proposed project does not include new development. Since future development by the University on its campus property requires no type of prior approval from Santa Cruz County, this chapter of the County Code has no application to the subject project and hence the project cannot be in violation of the County Code. Thus, for the reasons explained in

Master Response CC-2 – EIR Recirculation, revision and recirculation of the DEIR is not necessary.

OA-1-8 Water Supply Analysis. See Master Response WS-1 – Water Supply Adequacy & Potential Reductions regarding potential reductions to existing water supply sources due to future implementation of a HCP, groundwater pumping changes, climate changes, water right application decisions, and use of entitled Loch Lomond water by the San Lorenzo Valley Water District. The commenter asserts that the EIR fails to comply with the informational requirements of *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2006) 40 Cal.4th 412 in light of the uncertainties surrounding the City's various water supplies. The *Vineyard* Court provided the following summary of the requirements for an adequate water supply analysis for a large-scale, long-term development project:

- (1) The EIR must contain information on planned long-term development in the area, and identify the competing water demands associated with such development. (*Id.* at p. 445.)
- (2) The EIR must demonstrate a reasonable likelihood of adequate long-term supply by showing “a rough balance between water supply and demand.” Where, “despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.” The estimate of demand must include not only the proposed project, but also other planned development in the area. (*Id.* at pp. 445-446.)
- (3) To the extent the EIR relies upon water supply analyses prepared for other projects, the EIR must adhere to the rules governing tiering and incorporation by reference. Among other things, the EIR for the development project must incorporate and adopt the mitigation measures identified in the EIR that is being relied upon. (*Id.* at p. 446.)
- (4) Although an agency may rely on a provision calling for curtailing the later stages of development if water supplies do not materialize, the EIR must disclose or propose mitigation for “the environmental effects of such truncation.” (*Id.* at p. 447.)

The DEIR was prepared with these principles from the *Vineyard* decision in mind. The portion of the DEIR addressing Water Supply (section 4.1, pp. 4.1-1–4. 1-46) discusses at length the various water supply sources utilized by the City and the competing demands and limiting factors of each of those supplies (DEIR, pp. 4.1-3–4.1-13). The Water Supply section further discusses possible replacement sources or

alternatives to the use of the current supplies and the environmental impacts of developing those sources. (DEIR, pp. 4.1-13—4.1-24, 4.1-35—4.1-41.) The DEIR further discloses the water demands of the planned growth at UCSC that could be facilitated by approval of the proposed project and the potential impacts, including earlier or more severe curtailment that could result. (DEIR, pp. 4.1-24—4.1-28, 4.1-30—4.1-35.) Although a new WSA was prepared for the proposed project analyzed in this EIR, the DEIR also identified and explained the previously adopted mitigation measures pertaining to water supplies from the LRDP EIR. (DEIR, p. 4.1-41—4.1-45.) Therefore, in light of this comprehensive discussion applying all of the principles from the *Vineyard* decision, the City believes this EIR fully complies with the California Supreme Court’s direction regarding water supply analysis under CEQA.

- OA-1-9 CEMEX Quarry Expansion Effects on Water Supply. See Master Response WS-1 – Water Supply Adequacy & Potential Reductions; due to closure of the Cemex plant in Davenport, the quarry expansion is no longer being pursued by the applicant. Therefore, the Cemex project is not considered to have any implications for the City’s future water supplies.
- OA-1-10 Water Supply Adequacy. See Master Response WS-1 – Water Supply Adequacy & Potential Reductions regarding potential reductions to existing water supply sources due to future implementation of a HCP and other factors that could result in water supply reductions. Furthermore, since HCPs are unique to the local areas and species involved, research regarding outcomes in other jurisdictions would not necessarily mean anything to the Santa Cruz process, and is beyond the scope of work for this EIR. As indicated in Master Response WS-1, a draft HCP has not yet been prepared, and tentative agreements on operations have not been reached. Nor has the City received any written communication from the resource agencies regarding the amount of any potential reductions in the City’s water supplies due to implementation of the HCP.
- OA-1-11 Water Supply. See Master Response WS-1 – Water Supply Adequacy & Potential Reductions regarding challenges to City water rights petitions.
- OA-1-12 Water Supply Adequacy. See Master Response WS-1 – Water Supply Adequacy & Potential Reductions regarding unresolved issues regarding the City’s water supply.
- OA-1-13 Alternatives – Delay Extension of Water Service. The commenter suggests the EIR should evaluate a project alternative requiring a delay in water service extension until more certainty exists regarding the City’s water supplies. CEQA Guidelines section 15126.6(c) provides that the range of potential alternatives to be analyzed in an EIR shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant

impacts. The project objectives are to implement the City's and University's commitments set forth in the Comprehensive Settlement Agreement with regard to the provision of water and sewer services to the UCSC North Campus area, and to amend the City's Sphere of Influence boundaries to include this area to provide such services. The Settlement Agreement includes several provisions that would effectively delay water service extensions and increases in water demand due to higher UCSC enrollment in response to City water supply constraints, as well as require the University to contribute funding for water service infrastructure improvements that will help to mitigate the effects of shortages and curtailments. (See, e.g., sections 1.3, 3.1-3.6.) An alternative requiring the City unilaterally to delay water service extension until all of the uncertainties associated with its water supplies are resolved would be entirely inconsistent with the basic project objective to implement the City's commitment in the Settlement Agreement to pursue the LAFCO approval in good faith. Additionally, as explained in Master Water Response WS-1, the City considers such delay or refusal to allow additional water service entitlement until water supply uncertainties are resolved to be impractical and infeasible. Finally, it should be reiterated that the proposed project would only result in changes to the City's Sphere of Influence boundary lines at this time, as no specific future development projects are currently proposed to be served by the extended service area, nor is the potential location of physical service lines currently known. The Settlement Agreement requires that for future projects under the 2005 LRDP, UCSC will not "tier" from or otherwise rely on the water or housing analysis in the LRDP EIR to obtain CEQA compliance. (Agreement, section 6.2.) Thus, it is expected that for any major future development project under the LRDP, including any in the North Campus area that would be served by the expanded service area, the University would prepare an updated environmental analysis that should also consider the state of the City's water supplies at that time.

- OA-1-14 Alternatives – University-Supplied Water Supply. Development of on-campus water supplies as an alternative is considered in the DEIR on pages 6-30 and 6-31. Potential UCSC water sources are also discussed on pages 4.1-40 and 4.1-41. See also Master Response WS-4 – UCSC Campus Water Sources for further discussion.
- OA-1-15 Water Service to UCSC. The commenter does not identify which specific provisions of the Comprehensive Settlement Agreement he believes constitute a claim by the University to have water delivered to its North Campus area regardless of the provisions of Government Code section 56133 requiring application and approval by LAFCO for extraterritorial service. In the event that the commenter is referring to section 3.1(b), acknowledging that the 1962 and 1965 Contracts between the City and University are unchanged by UCSC's payment of the City's System Development Fee, the City does not agree that this provision would constitute, in and of itself, a "claim" to have water delivered to the University for growth purposes. As further noted in sections 7.4 and 7.5, the litigation over City Measures I and J and the 1962

and 1965 water contracts was settled for consideration of this Agreement. Therefore, the City would disagree with the commenter's assertion that the Settlement Agreement provides the University any "right" to have City water delivered to its North Campus area independently of the LAFCO application and approval process outlined in the Settlement Agreement and by Government Code section 56133. It is noted that the University maintains that it is contractually entitled to receive water service from the City for its entire campus and has reserved the right to assert these contractual claims should the subject LAFCO application not result in permission to receive extraterritorial service in the North Campus area.

OA-1-16 Water Supply Assessment (WSA) Comments. Responses are provided to comments on the WSA provided to the City Council prior to the DEIR public review period. See WSA comment letters and responses at the end of this chapter. See Master Response CC-2 – EIR Recirculation regarding the request to recirculate the DEIR.

OA-1-17 Lead Agency. Page 1-2 of the DEIR explains the "lead agency" concept. As indicated, the State CEQA Guidelines indicate that where a project is to be carried out or approved by more than one public agency, one public agency, the "lead agency," shall be responsible for preparing an EIR. In accordance with section 15051 of the State CEQA Guidelines, where two or more public agencies will be involved with a project, the agency that will carry out the project is considered the lead agency. The lead agency is normally the agency with general governmental powers, such as a city or county. Additionally, the State CEQA Guidelines (section 15051(c)) indicate that where more than one public agency meet the criteria of lead agency, the agency which will act first on the project shall be the lead agency.

The City of Santa Cruz, University of California and Santa Cruz, and LAFCO discussed which agency would be lead agency. It was determined that the City of Santa Cruz should be the lead agency for environmental review as it is the agency responsible for carrying out the results of project approvals, (providing water and sewer service) and is the first agency to act on the project, as well as being the agency with general governmental powers, compared to LAFCO and the University. The action before the City Council will be adoption of a resolution regarding the Sphere of Influence amendment and boundaries. LAFCO requires a City Council Resolution authorizing the subject LAFCO Sphere of Influence application to be submitted by the City. The adoption of this resolution is the discretionary act for which the Council will first need to certify the subject EIR.

LAFCO is a responsible agency. Pursuant to State CEQA Guidelines sections 15050 and 15051, the decision-making body of each responsible agency shall consider the Lead Agency's EIR or Negative Declaration prior to acting upon or approving the project. Each responsible agency shall certify that its decision-making body reviewed and considered the information contained in the EIR or Negative Declaration on the

project. During preparation of the Final EIR, it was determined that the University of California is not a responsible agency as reported in the DEIR because there is no discretionary action required by The Regents in the foreseeable future to carry out the proposed project. The University of California is potentially a responsible agency if it initiates an application to LAFCO for annexation to the City in the future. However, the City understands that the University has no current plans to apply for annexation. See also Master Response PD-1 – Project Overview, Purpose & Objectives for further clarification of the project description – applications and implementing actions.

OA-1-18 Alternative – Annexation Instead of Provision of Extraterritorial Services. See Response to Comment RA-1-5.



EPI-Center, 1013 Monterey Street, Suite 202 San Luis Obispo, CA 93401
 Phone: 805-781-9932 • Fax: 805-781-9384

January 15, 2010

Ken Thomas
 City of Santa Cruz Planning Department
 809 Center Street, Rm 206
 Santa Cruz, CA 95060

VIA Email: KThomas@ci.santa-cruz.ca.us

Subject: Public Comment / City of Santa Cruz Sphere of Influence Amendment DEIR

Dear Mr. Thomas,

- 1 Environment in the Public Interest (EPI) is organized for the purpose of ensuring that public officials charged with responsibilities for water quality, land use planning, and environmental protection comply fully with sound planning principles and with all environmental laws of the State. As such, EPI and our 800 Central Coast supporters are concerned that the proposed Sphere of Influence Amendment will likely have significant impacts to rare and endangered species and their habitat on and around the University of California Santa Cruz Campus.

As such, I wish to reiterate the concerns EPI and others raised in our group letter of December 1, 2009 (copy attached). In addition I wish to express our support of the US Fish and Wildlife Service request for a campus-wide Habitat Conservation Plan as outlined in the Service letter of December 2, 2008.

Our specific concerns regarding the DEIR will be submitted under separate cover from our attorney, Alexander Henson.

Respectfully Submitted,

Gordon Hensley,
 Executive Director

CC:
 Chancellor George Blumenthal; chancellor@ucsc.edu
 Patrick McCormick, Santa Cruz LAFCO; info@santacruzlafco.org

December 1, 2009

Attention:

Ken Thomas, City of Santa Cruz Planning
809 Center Street, Rm. 206
Santa Cruz, CA 95060
KThomas@ci.santa-cruz.ca.us

Chancellor George Blumenthal
UC Santa Cruz, Chancellors Office
1156 High Street
Santa Cruz, CA 95064
chancellor@ucsc.edu

Patrick McCormick, Executive Director
Santa Cruz LAFCO
701 Ocean St. #318D
Santa Cruz, CA 95060
info@santacruzlafco.org

Re: Comments on the City of Santa Cruz Sphere of Influence Amendment Draft EIR
November 2009

Protect Biological Diversity At UCSC

We, the undersigned, are deeply concerned about protecting rare and endangered species and their habitats on and around the University of California Santa Cruz campus. We are joined by the US Fish and Wildlife Service (USFWS) in believing that the piecemeal approach UCSC has taken over time with regard to planning individual development projects has not adequately accounted for or protected against the cumulative environmental impacts of those projects. We further believe that without an adequate comprehensive conservation plan certified by the USFWS and the California Department of Fish and Game (CDFG), future development will put at increasing risk the rare and sensitive species on UCSC land. Accordingly, we strongly urge UCSC to adopt a campus-wide Habitat Conservation Plan (HCP) as recommended by the USFWS in conjunction with a Natural Community Conservation Plan (NCCP) developed in coordination with the CDFG before any major new development of the North Campus takes place.

At-risk species in need of protection include Golden Eagle, Western Burrowing Owl, Townsend's big-eared bat, Western red bat, long-eared myotis bat, Loggerhead Shrike, Grasshopper Sparrow, California red-legged frog, San Francisco dusky-footed wood rat, Dolloff's cave spider, Santa Cruz telemid spider, Empire Cave pseudoscorpion, MacKenzie's cave amphipod, Ohlone tiger beetle, and a number of plant species including Santa Cruz manzanita and San Francisco popcorn flower.

The new UCSC growth plan includes extending City of Santa Cruz services to the currently undeveloped North Campus, adding over 3 million square feet of new development and logging 120 acres of forest. These actions could result in irreparable harm to sensitive species and their habitat unless a comprehensive protection plan is adopted. Furthermore, the requirements for fire protection will necessitate a large-scale plan for chaparral and Douglas Fir habitats that must be taken into account as those habitats house many sensitive species in addition to presenting considerable risks of wildfire to potential North Campus structures.

We quote from the December 2, 2008 USFWS letter to the City of Santa Cruz regarding the City's role in conducting an EIR on behalf of North Campus development: "The piecemeal approach that UCSC has taken in terms of implementing individual development projects over time makes it difficult for the Service to adequately assess cumulative impacts... We believe that UCSC, involved agencies, and the Service would benefit from the development of a campus-wide HCP by providing needed protection for listed species. Therefore, we recommend that the City support the development of a campus-wide HCP."

The USFWS also detailed concerns in a January 11, 2006 letter to UCSC about the 2005 Long Range Development Plan DEIR. The cited deficiencies included the following: "1) underestimating the effects of various development projects on federally listed species, 2) [inadequate] UCSC land use designations regarding conservation of federally listed species, and 3) the lack of a comprehensive management plan for listed species at UCSC."

A model management plan for protecting rare species and biological diversity at the UCSC campus is readily at hand in the form of what CDFG calls a Natural Community Conservation Plan (NCCP). The CDFG website describes the plan as "an unprecedented effort by the State of California, and numerous private and public partners that takes a broad-based ecosystem approach to planning for the protection and perpetuation of biological diversity. An NCCP identifies and provides for the regional or areawide protection of plants, animals, and their habitats, while allowing compatible and appropriate economic activity."

Habitat loss is the primary threat to most imperiled species. Without a broad-based ecosystem approach to protection, cumulative habitat loss through piecemeal development can be significant and harmful. An example of the sort of thinking that permits harmful development can be found in the UCSC 2005 LRDP EIR, which concluded that the elimination of 98 acres of habitat for Golden Eagles and Western Burrowing Owls is less-than-significant because other suitable habitat exists. UCSC reached similar conclusions about habit loss for other sensitive species, including that the logging of 120 acres of campus forest was not significant. Justifying a finding of a less-than-significant impact because there is suitable habitat elsewhere is spurious and evasive because it avoids the question of the impacts of the proposed development on a species where it occurs and is contrary to provisions of the California Environmental Quality Act

(CEQA) Guidelines (15065), (15380) and (15382). This is precisely why a campus-wide conservation plan is needed.

CEQA Guideline (15065) calls for "Mandatory Findings of Significance when: (1)... The project has the potential to substantially reduce the habitat of a fish or wildlife species; ... (3) The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." CEQA Guideline (15380) refers to "rare" species that may become endangered if its environment worsens and (15382) says that "significant effect on the environment" means an adverse change in the physical conditions including flora and fauna.

Not only is UCSC in danger of undermining the intent of federal and state statutes, the lack of either a campus-wide HCP or an NCCP appears to ignore fundamental values UCSC supposedly shares with the City of Santa Cruz, for its proposed actions are inconsistent with the campus's espoused goals of working towards understanding and improving the natural environment and promoting sustainability in the world. UCSC should take full advantage of its unique biological circumstances and faculty expertise to further the study and protection of rare and special-status species and their habitats, rather than harming them through large-scale development without a comprehensive protection plan with enforceable provisions.

Unfortunately, we note that the City of Santa Cruz's November 2009 draft EIR for a Sphere Of Influence Amendment, which was jointly funded by UCSC and serving a dual purpose as the UCSC EIR for North Campus development, did not support the development of a campus-wide HCP as recommended by the USFWS December 2008 scoping letter or respond to the USFWS concerns in any meaningful way.

Therefore, we strongly urge the City of Santa Cruz in its role as a project proponent for UCSC development in the North Campus to take a protective approach, heed the recommendation of the USFWS, and support the development of a combined campus-wide HCP/NCCP at UCSC in its final EIR. Furthermore, we would point out that the Local Agency Formation Commission (LAFCO) has the responsibility to review environmental impacts and jurisdiction over whether to approve development of the North Campus. We hope that LAFCO will see a duty under state law, including CEQA, and require UCSC to develop an HCP/NCCP before approving the proposed development project. Absent a comprehensive HCP/NCCP, the environmental impacts of the proposed development cannot be fully understood, nor can rare and special-status species be protected.

Thank you for your attention.

Sincerely,

Jennifer Anderson, UCSC Retired Lecturer and Assistant to the Chair, Environmental Studies

Jeffrey Arnett, UCSC Lecturer in Writing, editor of An Unnatural History of UCSC

Martha Brown, Co-Editor of the Natural History of UCSC, Senior Editor, Center for Agroecology & Sustainable Food Systems.

Ray Collett, UCSC Faculty Member beginning in 1965; Professor Emeritus Division of Natural Sciences; Founding Director, Director Emeritus, UCSC Arboretum

Shelly Errington, UCSC Professor of Anthropology

Margaret Fusari, former Director of the UCSC Natural Reserves

Jodi Frediani, Director, Central Coast Forest Watch

Aldo Giacchino, Chair, on behalf of the Santa Cruz Chapter of the Sierra Club

James Gill, UCSC Professor of Earth and Planetary Science

Steve Gliessman, Ruth and Alfred Heller Professor of Agroecology, Environmental Studies

Tonya Haff, Co-Editor of the Natural History of UCSC and former Curator of the UCSC Museum of Natural History, PhD candidate Evolution, Ecology and Genetics

Brett Hall, President, on behalf of the Santa Cruz Chapter of the California Native Plant Society

Grey Hayes, PhD Environmental Studies, past UCSC Campus Reserve Steward, Endangered Species Act petitioner for the Ohlone tiger beetle

Gordon Hensley, on behalf of Environment in the Public Interest

A. Marm Kilpatrick, UCSC Assistant Professor, Dept. Ecology & Evolutionary Biology

Brian Latta, Executive Director, on behalf of The Bird Group www.birdgroup.org

Janet Linthicum, Assistant Director, The Bird Group www.birdgroup.org

Jeff Miller, Conservation Advocate, on behalf of the Center for Biological Diversity

Nell Newman, President of Newman's Own Organics, past volunteer and supporter of the UCSC Predatory Bird Research Group

Wallace J. Nichols, PhD, Research Associate California Academy of Sciences,
Founder/Co-Director OceanRevolution.org

Paul Niebanck, UCSC Professor Emeritus, Environmental Planning

John Pearse, UCSC Professor Emeritus, Department of Ecology and Evolutionary
Biology

Carol Shennan, UCSC Professor of Environmental Studies

Matthew Struss-Timmer, Conservation Chair, on behalf of the Santa Cruz Bird Club

Robert Stephens, Owner Elkhorn Native Plant Nursery

Don Stevens, Chair, on behalf of Habitat and Watershed Caretakers

David Suddjian, Ecologist, Historian for the Santa Cruz Bird Club

John Wilkes, UCSC Senior Lecturer Emeritus in Science Writing and founding director
of the Science Communication Program

LETTER OA-2 – ENVIRONMENT IN THE PUBLIC INTEREST

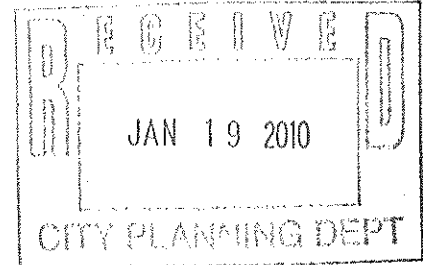
Gordon Hensley

- OA-2-1 Support UCSC Campus HCP/NCCP. The comment expresses support of the U.S. Fish and Wildlife Service request for preparation of a campus-wide Habitat Conservation Plan (HCP) in conjunction with a Natural Community Conservation Plan (NCCP). See Master Response GI-1 – Request for HCP regarding the process for preparing such plans and responses to particular points raised in the petition.

ALEXANDER T. HENSON ESQ.

January 15, 2010

Ken Thomas
City of Santa Cruz Planning Dept.
809 Center Street, Rm 206
Santa Cruz, CA 95060



Re: City of Santa Cruz Draft EIR Comments

Dear Sir:

1 I am writing on behalf of my client, Environment in the Public Interest, to address the serious inadequacies of the draft EIR entitled, City of Santa Cruz Sphere of Influence Amendment. The draft EIR states of its purpose "Approval of the proposed project-the SOI [Sphere Of Influence] amendment and provision of extraterritorial water and sewer service to a portion of the UCSC North Campus-would accommodate water and sewer service in the project area for development under UCSC's adopted 2005 LRDP." DEIR 1-2. This quote is under the heading "PURPOSE of EIR". One would therefore expect the EIR to present an unbiased environmental assessment of whether the city water and sewer systems should extend these city resources to this geographical area to serve this specific project as set out in the 2005 LRDP.

The reader is further told the city is the lead agency for preparing this EIR because "it is the agency responsible for carrying out the project (providing water and sewer service) and is the first agency to act on the project..." Id.

It is then rather shocking to learn that the decision to extend water and sewer service was made when the City adopted the COMPREHENSIVE SETTLEMENT AGREEMENT. DEIR, 6-29 "The objective of the project is to implement City of Santa Cruz obligations set forth in the Comprehensive Settlement Agreement with regard to provision of water and sewer services to the UCSC North Campus area, and specifically to amend the City's Sphere of Influence boundaries to include this area to provide such services." Id.

An objective reading of the COMPREHENSIVE SETTLEMENT AGREEMENT suggests the agreement provides opportunities for the City in its dealing with the University, not obligations which are enforceable in a Court to compel the City to do anything it was not obligated to do outside of the COMPREHENSIVE SETTLEMENT AGREEMENT. In the DEIR discussion of alternatives to the proposed project, the issue of whether the City garnered "obligations" or "opportunities" by its participation in the COMPREHENSIVE

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SETTLEMENT AGREEMENT is clearly decided in favor of "obligations" DEIR 6-30. Indeed, now the project objective is no longer to serve the North Campus water and sewer needs, but rather to "implement the City of Santa Cruz legal obligations to provide water and sewer service to the North Campus of UCSC set forth in the Comprehensive Settlement Agreement". Id.

Since the rationale given for rejecting certain project alternatives is the failure to meet the "legal obligations" bestowed upon the City through its approval of the Comprehensive Settlement Agreement, 6-32, the question must be addressed-What part of the COMPREHENSIVE SETTLEMENT AGREEMENT obligates the City to provide water and sewer service to the North Campus? Further, if the COMPREHENSIVE SETTLEMENT AGREEMENT created "obligations" as opposed to "opportunities", regarding water and sewer service, then why is this EIR required? What is the scope of the City Council's discretion to approve or deny this proposed amendment to the SOI? The DEIR does not explain this issue but rather assumes there are "obligations" to provide water and sewer services.

The COMPREHENSIVE SETTLEMENT AGREEMENT (CSA) provides, "The City currently provides water service to UCSC through five (5) connections, the most northern of which is north of the City's limits and was installed in 1973. *The city will continue to provide water service to the campus through the five existing connections, and UCSC may use the water to support development of housing in the North Campus...*" CSA, para. 2.7(a). [Emphasis added] The foregoing quote from the COMPREHENSIVE SETTLEMENT AGREEMENT does not "obligate" the City to do anything other than "continue to provide water service to the campus through the five existing connections". Id

Regrettably, this bias of believing the primary objective of the project is to carry out some ill-defined "obligations" infects the entire Draft EIR. Consequently, the DEIR should be re-written and resubmitted anew.

When doing so, there are additional problems that must also be addressed. Consistency with the City Ordinance Chapter 16.22 is glossed over. The ordinance states there is to be no extension of City water and sewer to provide for the 2005 LRDP enrollment increase of 4500 students unless all impacts are fully mitigated. DEIR, 4.3-13. The DEIR states the additional project demand could potentially result in bringing the City into a more severe curtailment stage. Therefore this is considered a significant impact. DEIR, 4.1-34. Thereafter, the DEIR states, "Therefore, a conservative conclusion is that the project impact on water supply during dry years is significant and unavoidable, even with implementation of the identified mitigation measures." DEIR, 6-2. Further, the discussion of erosion in Cave Gulch indicates there will be a significant adverse environmental effect that cannot be mitigated. The discussion of conformity of this project with chapter 16.22 needs to be revised. Compare DEIR, 4.3-13.

The discussion of Significant Unavoidable Impacts is incorrect since it omits any reference to the erosion in Cave Gulch as being significant adverse environmental impact. Compare DEIR, 6-1 with 5-52.

Another major omission is the lack of discussion of the impacts of the City's water gathering efforts, specifically on steelhead. The DEIR acknowledges the North Coast supply source will depend on the outcome of a Section 10 "incidental

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take" permit application which may affect the timing and use of this component of the city's water supply system. DEIR 4.1-11. Further two water rights applications pending before the State Water Resources Board are being opposed by the California Department of Fish and Game, DEIR, 4.1-12. What is never stated is the amount of water currently available to the City which may be diminished pursuant to these actions identified in the DEIR as possibly having an impact. Not only is there no discussion of the basis for Fish and Game's opposition to the City's water rights claims, there is no discussion anywhere in the DEIR of the impacts of the city's water gathering on endangered species.

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Related to the foregoing omission is the failure to discuss the true "No project" alternative. It would seem the "no project" alternative would be to not provide water delivery or sewer service to the additional 4500 students provided for in the 2005 LRDP. The DEIR discussion speculates what the University might do as the sole justification for rejecting this no project alternative. The same is true of the "environmentally superior alternative". There really isn't one provided in the DEIR since the primary significant impact is on water supply and erosion in Cave Gulch and there is no alternative suggesting a smaller population growth on campus as a way to reduce demand and therefore the significance of any water shortfall and to reduce the runoff from the North Campus.

For each of the foregoing reasons the draft EIR is deficient.

Sincerely,



ALEXANDER T. HENSON
ATTORNEY

The Truth Works!

LETTER OA-3 – ENVIRONMENT IN THE PUBLIC INTEREST

Law Office of Alexander Henson

OA-3-1 Settlement Agreement Provisions & Project Objectives. The Settlement Agreement requires the City to continue to provide water service to the Campus through the five existing water service connections, and UCSC may use the water to support development implementing the 2005 LRDP, including the development of housing in the North Campus, consistent with the other provisions of the Settlement Agreement (section 2.7). The Agreement further provides that the City and UCSC will prepare and submit to LAFCO concurrent, complementary applications for extraterritorial water and sewer services and a City Sphere of Influence amendment to include the North Campus area (section 2.8(b)), and that the City will provide UCSC with all documentation identified or required by LAFCO as necessary to complete UCSC's application, including, but not limited to, a will serve letter, and will communicate to LAFCO that it does not oppose UCSC's application (section 2.8(c)). The City further agreed to treat the University the same as it would any other developer with respect to water supply capacity, subject to specific enumerated conditions (section 3.2). Taken as a whole, the City views its commitments under the Agreement to be to take the necessary steps to seek LAFCO approval of its Sphere of Influence amendment and to support in good faith the University's LAFCO application, and if those applications are approved, to take the further steps outlined in the Agreement with respect to the provision of water supply and sewer service for future development at the University.

See also Master Response PD-2 – Project Objectives regarding clarification of the project objectives, which has clarified the language from Settlement Agreement “obligations” to “commitments” since the latter is the term actually used in the Agreement. See Response to Comment LA-1-31 regarding the objectives as related to project alternatives.

OA-3-2 City Discretionary Approvals. See Response to Comment OA-1-17 regarding the City's role as lead agency. As indicated, LAFCO requires a City Council Resolution authorizing the subject LAFCO Sphere of Influence application to be submitted by the City. The adoption of this resolution is the discretionary act for which the Council will first need to certify the subject EIR.

OA-3-3 City Provision of Water. See Response to Comment OA-3-1.

OA-3-4 Settlement Agreement Provisions & Project Objectives. See Response to Comment OA-3-1 and Master Response CC-2 – EIR Recirculation regarding the request to recirculate the DEIR.

- OA-3-5 Project Consistency with City Code Chapter 16.22. Section 16.22.040 of the City's Municipal Code articulates a policy for the City to oppose future UCSC enrollment unless all impacts are "fully mitigated." The section is a policy statement not a legal mandate. Furthermore, this code section went into effect after the Comprehensive Settlement Agreement went into effect and was not a policy when the Settlement Agreement was signed. Section 16.22.040.1(b) further provides that the City shall not to extend city water or sewer services to the university beyond the existing city limits without the prior approval of the Local Agency Formation Commission (LAFCO). In this instance it will be LAFCO, not the City, making the ultimate policy decision to have City water/sewer service delivered to the North Campus.
- OA-3-6 Cave Gulch Erosion Impacts. See Master Response GI-3 – Cave Gulch Erosion regarding Cave Gulch erosion issues and see Master Response CC-1 – Significant Unavoidable Impacts.
- OA-3-7 Potential Water Supply Reductions & Impacts on Fisheries. See Master Response WS-1 – Water Supply Adequacy & Potential Reductions regarding the City's water supply (including adequacy for fisheries), the City's HCP process, and potential reductions to existing water supplies.
- OA-3-8 No Project Alternative. The No Project Alternative does address the scenario under which the project applications are denied and services are not provided (see page 6-34 of the DEIR). Pursuant to state CEQA Guidelines as discussed in this section of the DEIR, the No Project Alternative correctly identifies and reviews "the practical result of the project's non-approval", which in this case would result in implementation of certain provisions of the Comprehensive Settlement Agreement that could increase campus traffic and reduce the on-campus housing commitment (see page 6-35), and thus increase secondary impacts related to University growth. Additionally, the Settlement Agreement allows the University to retain its right to assert any rights or legal positions regarding its ability to develop the project area, and it is, therefore, not speculative to consider this possibility to be a logical extension of a decision to disapprove the project applications. Furthermore, the University may expand or intensify development in other parts of the campus within city limits. According to UCSC, both options would be considered (see Comment SA-4a-1) under a no-project scenario, and therefore, the DEIR addresses these possibilities. In either case, secondary impacts related to growth in the North Campus area may not necessarily be eliminated, and if no development occurred in the project area, it likely would occur in other parts of the campus with similar levels of impacts associated with the secondary growth impacts reviewed in the North Campus area. Thus, secondary impacts related to planned UCSC growth supported by the project would be not be eliminated with a "no development" in the North Campus scenario. More importantly, the direct project impact on water service would not be eliminated or reduced with development in another part of the

campus within existing City limits. See Master Response GI-3 – Cave Gulch Erosion and Master Response CC-1 – Significant Unavoidable Impacts regarding erosion impacts in Cave Gulch.

As discussed in Master Response PD-1 – Project Overview, Purpose & Objectives and throughout the DEIR, the project analyzed in this EIR are the reciprocal commitments agreed to by the City and the University in the Comprehensive Settlement Agreement, to prepare and submit complementary applications to LAFCO, which, if approved, would enable the provision of water and wastewater service to the North Campus area and thereby support the future development planned for that area as analyzed in the 2005 LRDP EIR and conditioned in the Comprehensive Settlement Agreement. The proposed project itself does not include development or growth on the UCSC campus; the adopted 2005 LRDP sets forth campus development and growth projections and development of the campus is within the exclusive control of the University of California.