

LETTER BJ

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SEP 18 2001

September 14, 2001

VIA FACSIMILE AND
REGULAR MAIL

Mr. Gregory B. Wellman
Merced County, UC Development Office
3351 "M" Street, Suite 240
Merced, California 95348

Re: Violations of CEQA Regarding the Circulation of the University
Community Plan EIR for Public Review and Comment

Dear Mr. Wellman:

San Joaquin Raptor Rescue Center and Protect Our Waters request that Merced County, as lead agency, recirculate the Draft Environmental Impact Report ("EIR") for the University Community Plan for public review and comment. On August 13, 2001, the DEIR was released for public review and comment. Merced County, however, has failed to circulate and provide notice of the Draft EIR in compliance with the requirements of the California Environmental Act, Public Resources Code, section 21000 *et seq.* and Title 14, California Code of Regulations ("CEQA Guidelines"), section 15000 *et seq.*

Section 15087 of the CEQA Guidelines requires the lead agency to provide public notice of the availability of a draft EIR at the same time it sends a notice of completion to the Office of Planning and Research. San Joaquin Raptor Rescue Center and Protect Our Water sent you a letter addressing this issue which have failed to respond to. The letter noted that the newspaper notice published on August 23, 2001 in the local once-weekly Merced County Times did not satisfy CEQA Guidelines, section 15087(a)(1). A thorough site visit by members of the public on September 9, 2001, yielded no on-site posting of a notice, the substance of section 15087(a)(2).

Only in the past few days have notices of availability been received by some members of the public. These notices are postmarked September 7, 2001, fully 25 days later than the date they bear of August 13, 2001. This late notice constitutes a violation of section 15087(a)(3). Additionally, as noted in the public hearings held thus far, property owners have not been adequately noticed.

CEQA requires the lead agency to notify the public of the address at which "all documents referenced in a draft EIR" can be found and made available for review. (Pub. Resources Code, § 21092.) Specifically section 21092(b)(1) states that:

B5-1



The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meeting or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report are available for review.

The lead agency must ensure that the public can obtain and review all of the documents on which agencies rely upon for the environmental conclusions. (See *Emmington v. Solano County Redevelopment Agency* (1987) 195 Cal.App.3d 491, 502-503.) The County has failed to do so even after written requests by the public.

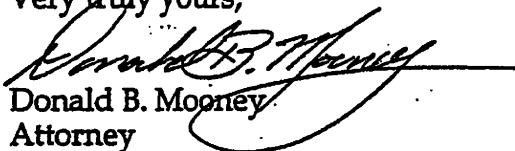
While the UC has now extended the public comment period to October 4, 2001, based on newspaper publication of Notice of Availability in the Merced Sun Star on August 19, 2001, this action does not remedy the UC's other statutory violations, nor does it serve as remedy for any of the County's violations. The newspaper notice did not address the County's project of the University Community Plan, only the LRDP. The County has yet to issue a legally adequate Notice of Availability, and their other statutory violations remain.

Therefore, the San Joaquin Raptor Rescue Center and Protect Our Water request that Merced County:

1. Remedy the problems and violations of the University Community Plan EIR circulation as partially noted above,
2. Recirculate the EIR, beginning a new 45-day review period.
3. Re-notice the review period.

Please provide a timely response to this request and furnish copies to both Lydia Miller of the San Joaquin Raptor Rescue Center and Steve Burke of Protect Our Water. In the meantime, please do not hesitate to contact me if you have any questions regarding this matter.

Very truly yours,


Donald B. Mooney
Attorney

cc: Steve Burke, Protect Our Water
Lydia Miller, San Joaquin Raptor Rescue Center
Terry Richards, Office of Planning & Research
Mary Nichols, Secretary, The Resources Agency

BJ-1

BJ-2

**COMMENT LETTER BJ: DONALD B. MOONEY
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Response to Comment BJ-1:

Please see Master Response 6 regarding the public review process and noticing requirements. Because the County provided for a 52-day review period after publication of the Notice of Availability, and complied with all other noticing requirements, the recommended measures are not necessary. It should be noted that the San Joaquin Raptor Rescue Center and Protect Our Waters were sent a Notice of Availability on August 13, 2001. Thus, they had 45 days to review the Draft EIR. The County's records indicate that a representative of the San Joaquin Raptor Center picked up a copy of the Draft UCP, UCP DEIR, and Technical Appendices from the UC Development office on August 14, 2001. CD-ROM copies of the documents were picked up on August 31, 2001. Records of the County's document distribution list are located in Appendix A of this FEIR. Please see Response to Comments BF-1 through BF-3, which address a comment letter received from the San Joaquin Raptor Rescue Center and Protect our Waters.

Response to Comment BJ-2:

Please see Response to Comment BJ-1.