

LETTER BW

OCT - 4 2001

Via Facsimile

October 3, 2001

Ric Notini
 Environmental and Permitting Manager
 University of California, Merced
 1170 West Olive Avenue, Suite I
 Merced, CA 95348

Robert Smith
 Planning Director
 UC Merced Development Office
 3351 M Street, Suite 240
 Merced, CA 95348

Re: UC Merced Long Range Development Plan Draft EIR &
 County of Merced University Community Plan Draft EIR

Dear Mr. Notini and Mr. Smith:

On the behalf of Defenders of Wildlife and our more than 100,000 members in California, this letter provides Defenders' comments on both the UC Merced Long Range Development Plan ("LRDP") Draft Environmental Impact Report EIR ("EIR") and the County of Merced University Community Plan ("UCP") Draft EIR. These comments have been sent to both of the above addressed individuals.

I. Improper "Piecemealing" of the UC Merced Project

The proposed university, the adjacent community and Campus Parkway are interdependent components. By releasing two separate Draft EIRs on the UC Merced LRDP and County of Merced UCP, along with the failure to include adequate review of the Campus Parkways Project, both UC Merced and the County of Merced have violated the California Environmental Quality Act's ("CEQA") prohibition on "piecemealing" projects. CEQA provides a number of options for dealing with complex, phased projects (e.g., Master EIR, Programmatic EIR or Joint EIR/EIS).

As the court in Whitman v. Board of Supervisors, (1979) 88 Cal. App. 3d 397, states "the EIR on a project must show the big picture of what is involved." Here, by both dividing up this larger project – the creation of a new UC campus and the new university town – into two EIRs and leaving out any kind of adequate environmental review of the Campus Parkway Project, which is an integral part of

BW-1

California Office
 926 J Street
 Suite 522
 Sacramento, CA 95814
 Telephone: 916-313-5800
 Fax: 916-313-5812

National Headquarters
 1101 Fourteenth Street, N.W.
 Suite 1400
 Washington, D.C. 20005
 Telephone: 202-682-9400
 Fax: 202-682-1331
 www.defenders.org
 www.kidsplanet.org

Printed on Recycled Paper

the whole "UC Merced" project, both the UC and the County of Merced have failed to "show the big picture."

The result of this piecemealing is that there is an inadequate review of the of both the individual and cumulative impacts of the creation of a UC campus in Merced. The public is left to piece together the impacts from reviewing the two Draft EIRs and guessing the impacts from the Campus Parkway Project.

II. The UC and County of Merced Are Violating NEPA and ESA

This "piecemealing" by the UC and County of Merced also creates problems with federal law. By proceeding with the Draft EIRs, including proceeding with Phase I of the UC Merced Project, before receiving a Section 404 permit under the Clean Water Act and Section 10(a)(1)(B) permit under the Endangered Species Act, the UC and County of Merced are violating the National Environmental Policy Act (NEPA) and Endangered Species Act. As the UC and County freely admit in their Draft EIRs, a Clean Water Act (CWA) Section 404 permit and Endangered Species Act (ESA) Section 10 permit will be required for the UC Merced project.

NEPA requires that the UC take a "hard look" at the impacts and alternatives to the proposed project. Moreover, both NEPA and the ESA require that there not be an "irretrievable and irreversible commitment" of resources before NEPA and ESA review proceed. See, e.g., Metcalf v. Daley, 214 F.3d 1135 (9th Cir. 2000) (NEPA) and Thomas v. Peterson, 753 F.2d 754 (9th Cir. 1985) (ESA). Here, by proceeding with the Draft EIRs, which includes the approval of Phase 1 of the UC Merced Campus, both the UC and County of Merced are creating a situation where there is such a commitment of resources before there is adequate review under the NEPA and ESA.

To remedy this situation, Defenders strongly recommends that both the UC and County of Merced step back and merge all components of the UC Merced Campus, Community and Parkway into a larger Joint EIR/EIS.

III. Inadequate Environmental Review of Biological Resources:

A. Both Draft EIRs fail to adequately analyze cumulative impacts.

Neither Draft EIR contains an adequate environmental review of the impacts from the proposed Campus Parkway. The Campus Parkway proposal is an integral part of the larger UC Merced project. While both vaguely discuss the Parkway Proposal in the cumulative impacts discussions, neither document provides any meaningful review of the impacts on any of the biological resources, especially as it pertains to the impacted mammals (e.g., San Joaquin kit fox).

Kit foxes are especially impacted by road development. Roads not only result in roadkill, they also fragment habitat and result in the introduction of invasive species. There is little to no

BW-1

BW-2

BW-3

BW-4

discussion regarding road development impacts on kit foxes.

B. Both Draft EIRs contains an inadequate review of mitigation of impacts to biological resources

As noted above, both draft EIRs have proceeded ahead of any review by agencies under the federal Clean Water Act or Endangered Species Act or state Endangered Species Act. Without this review, it is impossible to say what adequate mitigation would be for the impacts to wetlands and wildlife in the UC Merced/Campus Community project area. Both Draft EIRs set forth how the UC and County believe they will mitigate for impacts. However, without having gone through the environmental review and permitting process under the CWA, federal ESA and state ESA, such mitigation is only a guess.

IV. Conclusion

While Defenders of Wildlife supports the establishment of a UC campus in the San Joaquin Valley, the current process for the establishment of UC Merced is fatally flawed. Defenders urges the UC and County of Merced not to rush the permitting of UC Merced. The current rush to open up the campus by 2004 has resulted in inadequate environmental review and documentation, inadequate public review, and has generated animosity where there should be a collegial attitude.

For all of the above reasons, Defenders believes that both Draft EIRs are in violation of both the letter and spirit of CEQA. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,


Kim Delfino
California Program Director

BW-4

BW-5

BW-6

COMMENT LETTER BW: DEFENDERS OF WILDLIFE

Response to Comment BW-1:

Please see Master Response 3 regarding segmentation.

Response to Comment BW-2:

Please see Master Response 2 regarding the federal permitting process.

Response to Comment BW-3:

Please see Master Response 3. In addition, the comment provides no substantive information that suggests that the analysis in Impact 4.4-11 of the UCP DEIR is either inadequate or incomplete as it relates to mammalian species that could be affected by the proposed project. The effects of the Campus Parkway (as addressed in the cumulative projects scenario and in particular with regard to San Joaquin kit fox) have been adequately addressed on pages 4.4-67 through 4.4-69 of the UCP DEIR. As is stated on page 4.4-66 of the DEIR,

“the cumulative context for which potential cumulative impacts on biological resources is assessed includes the UC Merced Campus, the University Community, and Campus Parkway projects as well as other planned or reasonably foreseeable projects that would be accommodated within the SUDP’s in eastern Merced County.”

The cumulative biological resources impacts analysis reflects that the UCP, UC Merced Campus, and Campus Parkway together would result in adverse effects to approximately 114.54 acres of wetlands (including 0.24 acres as a result of the Campus Parkway) (see DEIR page 4.4-67). In addition, the analysis discloses that the three projects, taken together, would result in the loss of approximately 1,124 acres of annual grassland habitat (58 acres due to the Campus Parkway) (see DEIR page 4.4-67). The cumulative analysis of effects to San Joaquin kit fox reflect the conclusions that the primary lands serving as travel corridors for dispersed kit foxes be to the east of the UCP, the Campus, and the Campus Parkway (see DEIR page 4.4-68).

Response to Comment BW-4:

A thorough review of the available data on San Joaquin kit fox in eastern Merced County suggests that the taxon does not currently and has not historically occurred in established populations in eastern Merced County. Most of the proposed roads would be within developed areas or agricultural habitats, which are not considered high quality habitat for kit fox. For a more detailed response see Responses to Comments BX-141, BX-142, BX-143, and BX-155.

Response to Comment BW-5:

Both the USFWS and DFG have been consulted during the preparation of the FEIR. This coordination assisted in developing responses to other comments on the UCP DEIR and refining the proposed mitigation measures. The USACE has also been consulted regarding Section 404 of the Clean Water Act to determine appropriate mitigation. UCP policies PA 1.2 and 1.6, and the Habitat Mitigation Plan called for in the UCP Implementation Program (IMP 4.10) would require all permit conditions imposed by the permitting agencies to be included in all development approvals. Please also see Master Response 13.

Response to Comment BW-6:

Please see Responses to Comments BW-1 through BW-5, above, for responses on the commentor's opinions regarding the adequacy of the EIR.