
**MASTER RESPONSE 3: RELATIONSHIP OF THE UCP EIR TO THE
UC MERCED LRDP EIR AND OTHER
ENVIRONMENTAL DOCUMENTS**

Several comments received by the County questioned whether the LRDP EIR should have been prepared together with the UCP EIR. Some of the comments assert that a single EIR should have been prepared for the UC Merced LRDP, the UCP, and/or that a joint EIR should have combined with a federal environmental impact statement (EIS) for the projects. This response addresses the reasons for the preparation of the UCP EIR as a stand-alone EIR, separate from the UC Merced LRDP EIR and any associated NEPA environmental federal agencies.

CEQA requires preparation of an EIR if there is substantial evidence that a “project” may have a significant effect on the environment. (Pub. Res. Code 21080(d).) As defined in the CEQA Guidelines, “project” means “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change.” (CEQA Guidelines section 15378(a)) CEQA allows approval of adjacent projects separately or in series. However, CEQA disallows dividing projects into smaller pieces for purposes of evading environmental review. This latter practice often referred to as “segmentation.”

Relationship to UC Merced LRDP EIR

If a project will be carried out by a public agency, that public agency is the “lead agency” for purposes of complying with CEQA. (Guidelines 15051(a)) As discussed below, the County has “principal responsibility” for the UCP project, and the University has “principal responsibility” for the UC Merced project; hence, each is the lead agency for the project within its sole jurisdiction. (Pub. Res. Code 21067 (definition of lead agency))

It is appropriate under CEQA for two EIRs to be prepared in the present circumstances. The UCP, consisting of amendments to the County General Plan, is within the sole jurisdiction of the County of Merced, and the University of California has no shared jurisdiction over the Merced County General Plan. The LRDP, on the other hand, is a University of California project. Campus siting, adoption of LRDPs, and decisions about land use matters on UC campuses are within the sole authority of the University of California to approve. The University is therefore the “lead agency” for the purposes of complying with CEQA for the LRDP. University approval is not required for amendments to the County’s General Plan or other land use approvals within the County, nor is County approval required for campus siting, the LRDP or campus development approvals.

Summary

The term “project,” under CEQA, refers to the whole of the activity being approved which may be subject to several discretionary approvals, not to each separate government approval (CEQA Guidelines section 15378(c)). The project analyzed in the UCP EIR includes the entire project that the County proposes to approve (see pages 1-2 through 1-5 of the Draft EIR). The UCP EIR analyzes all phases of the project that the County is proposing to approve, including the impacts of full development of all lands within the UCP. As CEQA Guidelines section 15378(c) states, “the term ‘project’ refers to the activity being approved.” The reference to “whole of the action” in CEQA Guidelines section 15378(a) accordingly indicates that the scope of a project includes all phases and components of the project the lead agency is proposing to carry out or approve, including planning, acquisition, development, and operation. The UCP DEIR fully evaluated all impacts of the ultimate, full development under the proposed UCP. Similarly, the project analyzed in the UC Merced LRDP EIR includes the entire project that the University has approved. The Draft DEIR also analyzed the cumulative effects of the proposed UCP in combination with the UC Merced LRDP, the proposed Campus Parkway, and other relative cumulative projects. Hence, there is no segmenting of the UCP project.

Prior to issuance of the Draft EIRs, the County and the University coordinated the analyses contained in the two EIRs, and secured and followed advice from the Governor’s Office of Planning Research on the coordination process. For example, each EIR considers alternatives that relate to the alternatives in the other EIR. The EIRs quantify both proposed-specific and cumulative totals for impacts such as loss of wetlands, emissions of air pollutants, and traffic. Where quantification is not possible, the EIR includes a qualitative analysis of proposed-specific and cumulative effects. Further, the lead agencies circulated the UCP and the Draft EIRs concurrently so that the public and decision-makers would have both EIRs in hand when considering and commenting on the environmental analyses for each project. However, due to differing public meeting and approval schedules based on the differing goals, needs and responsibilities of each agency, differing procedural requirements, and unique issues raised in DEIR comments, the County and University did not proceed simultaneously with regard to issuance of the Final EIRs, and consideration of EIR certification and project approval. CEQA does not limit the lead agency’s discretion in these matters.

Furthermore, recent case law interpreting the CEQA Guidelines indicates that completion of an EIR on a project by a public agency other than the lead agency for the project violates CEQA (see Planning and Conservation League v. Department of Water Resources (2000) 83 CAL. APP. 4th 892.) CEQA requires that the EIR for a project be completed by the lead agency for that project. The lead agency that holds the legal authority and political responsibility for a project, must use its independent judgment to define the proposed project and determine the objectives the project is proposed to achieve. It must also use its independent judgment in the identification of potential alternatives in light of project objectives as well as the development of mitigation measures. The lead agency for a project is ultimately responsible for the contents of the EIR and that duty cannot be delegated to another public agency. Once an EIR has been completed, under the provisions of CEQA Guidelines 15090, the lead agency must certify that the Final EIR has been completed in

compliance with CEQA and it also must certify that the Final EIR reflects the lead agency's independent judgment and analysis.

The University completed and certified the Final EIR for the LRDP in 2002. The Superior Court and the Court of Appeal both upheld the LRDP EIR and found that it fully complied with CEQA's requirements. In that litigation, petitioners argued that the LRDP and UCP were improperly segmented, but that claim was rejected.

Relationship to Campus Parkway EIR/EIS

With regard to Campus Parkway, for which the County is the lead agency under CEQA and the Federal Highway Administration is the lead agency under NEPA, planning began on that project before a UC tenth campus site near Lake Yosemite was selected by the Regents in 1995. Formerly called the "Eastern Beltway," the road was proposed to be developed east of the City of Merced based on 1994 traffic modeling projecting daily traffic volumes of between 20,000 to 30,000 vehicles. This traffic modeling is summarized in the City of Merced Eastern Beltway Alignment Alternatives Analysis Plan (December 1994). That report, which establishes the preferred alignment between S.R. 99 and S.R. 140 but recommends additional analysis of the alignment north of S.R. 140, shows that the Eastern Beltway project is needed to serve planned growth in eastern and north Merced even without the proposed UC Merced campus and its related transportation needs. In 1997, after the selection of the Merced site for a UC campus, the proposed Eastern Beltway became known as "Campus Parkway." (MCAG, State Route 99 Merced/Atwater Corridor Major Investment Study ("MIS") (June 19, 1997), App. E, Table 1, Item C-44.) (Bryan Apper, Chief, Central California Environmental Analysis Branch, Department of Transportation.)

The southern end of Campus Parkway considered in the joint EIR/EIS is the Mission Avenue interchange with S.R. 99. The northern terminus is Yosemite Avenue, which forms the southern boundary of the UCP. The four-lane section of Campus Parkway that is proposed to be constructed between S.R. 99 and Yosemite Avenue is warranted by regional traffic needs; thus, this section of the proposed Parkway is independent of the transportation needs of the proposed campus or UCP (Merced County Department of Public Works, Campus Parkway Project Traffic Report Summary & Conclusions (November 30, 2000), pp. 1-5; Dowling Associates, Campus Parkway Traffic Operations Analysis (December 5, 2001)). The extension of Campus Parkway from Yosemite Avenue to Bellevue Road is considered part of the UCP, because it would only be needed if the campus and UCP are developed. The environmental impacts of this segment are addressed in the UCP EIR (Dowling Assoc., Campus Parkway Analysis of Travel Characteristics (November 29, 2000).) Therefore, the construction of Campus Parkway south of Yosemite Avenue is properly the subject of a separate EIS/EIR, and is not improperly segmented from the UCP project. That draft EIS/EIR is scheduled to be released for circulation in summer 2004.

Since the County has no authority to carry out the UC Merced LRDP, it would fail to meet the criteria of CEQA Guideline Section 15051 (a) in regards to the UC Merced LRDP EIR; similarly, since the University of California has no authority to amend the Merced County General Plan, it would fail to meet the criteria of CEQA Guideline Section 15051(a) in regards to the UCP.