

During the comment period on the Draft EIR, the University received 115 comment letters. In addition, at the September 13, 2001, public hearing, 30 speakers provided comments related to the Draft EIR or the project. These comments provided a wide range of observations and opinions regarding the Draft EIR and the project in general. In addition, many of the commenters requested further information about the project, alternatives, or mitigation measures. Other commenters requested additional information about environmental impacts, additional explanation of the Draft EIR's environmental findings, or clarification of statements contained in the Draft EIR. This section provides the responses regarding the environmental issues raised in comments submitted on the Draft EIR.

In accordance with CEQA and the CEQA Guidelines, the University and its team of consultants have by these responses considered and responded to all questions and comments on the Draft EIR relating to significant environmental issues. This Final EIR does not respond to comments that do not relate to significant environmental issues, such as requests for information that had already been presented in the Draft EIR, statements of opinion on policy issues, comments addressed solely to Merced County or which concerned only the University Community Plan (UCP) project, the contents of the County's Draft EIR for the UCP, or County policies and actions, and comments of a general nature not related to significant environmental issues associated with the LRDP.

In addition to the comments themselves, the University and its consultants also considered and reviewed any additional documents physically submitted with the comment letters, but did not review or consider documents not submitted to the University along with the comment letter. Accordingly, any information that may be contained in such incorporated materials is not addressed in these responses to comments.

The comment letters (including any attachments) and a transcript of the public hearing are contained in Volume 3 of the Final EIR. The comments in these materials that directly raise material environmental issues have been identified, marked, and assigned a comment number. The responses to comments are set forth below in Sections 4.1 to 4.23 by topic. Each response lists the main comments on the topic that are being addressed by the response. Other comments raising the same issues as the comments specifically addressed by the response, but in a more general or less direct manner, have not been specifically flagged for response. Nevertheless, to the extent they raise material environmental issues, the substance of these comments has been addressed in the responses. Readers interested in the response to comments on any particular topic are accordingly referred to the appropriate response by topic.

## 4.1 CEQA PROCESS

### 4.1.A Relationship to Site Selection Process

These responses address comments concerning the relationship between this EIR and the SSEIR certified in 1995, including comments O25-1, O28-4, O28-5, O28-44, O29-1a, O29-3, O31-2, O31-8, O31-9, and SA10-1. These, and related comments, raise questions that generally concern the process resulting in selection of the Virginia Smith Trust (VST) property as the site for the UC Merced Campus, the adjusted location for the Campus within the VST property, which is examined in this EIR, and the differences between this EIR and the SSEIR.

On pages 2-30 and 2-31, the Draft EIR explains that the University studied alternative sites for the Campus in its 1995 SSEIR. The project evaluated in both EIRs is substantially the same project, although more details about the Campus are now known and evaluated in the Draft EIR. The Draft EIR also explains that the proposed Campus location is now 2 miles to the southwest of the location identified in the SSEIR. As explained in Section 4.4 of the Draft EIR this adjustment in the Campus site is designed to *reduce* the project's direct and indirect effects on wetlands and other biological resources.

The Draft EIR evaluates every significant environmental impact that may result from full development of the LRDP, using the most up-to-date information available. It does not rely upon the SSEIR for the analysis of project impacts or for the analysis of cumulative impacts. In response to specific questions by commenters, it considers and addresses all currently known information about endangered species in the project vicinity. It also evaluates all impacts of development of a campus at the currently proposed location on the VST property. In addition, the EIR summarizes the information previously presented in the SSEIR and compares the conclusions and recommendations of the two environmental documents.

At the beginning of the discussion of each topic evaluated in the Draft EIR, the Draft EIR provides a table summarizing the impact conclusions in the SSEIR, and a list of the mitigation measures recommended by the SSEIR. The Draft EIR then explains the reasons for any changes in the impact analysis and findings between the SSEIR and the Draft EIR. Finally, the Draft EIR explains how the mitigation measures in the SSEIR have been incorporated in this EIR, and where the Draft EIR proposes changes in the mitigation measures or proposes additional mitigation measures, it explains why these changes are proposed. In this manner, reviewers and decision makers can understand the extent to which the EIR's conclusions and recommendations differ from those of the SSEIR due to adjustment of the Campus location on the VST property, new information, or changes in methodology.

While the Draft EIR does not rely upon the SSEIR for evaluation of project impacts, the Draft EIR's discussion of alternatives does rely upon the SSEIR for part of the analysis of off-site campus alternatives. This reliance on the SSEIR is appropriate because the purpose for the SSEIR was the selection and acquisition of a site for the new campus. Thus, the University considered sites throughout the Central Valley when it prepared and certified the SSEIR. The Draft of the current EIR explains whether any new information about the preferred sites and other alternative sites studied in the SSEIR has come to light since completion of the SSEIR; however, it concluded that in the Central Valley most of the information about those sites has not changed, and the discussion and analysis regarding those sites contained in the SSEIR remains

valid. The Draft EIR also provides up-to-date information about the environmental conditions on the VST property including the northern half of the property proposed for development of the Campus in the SSEIR. Finally, the Draft EIR evaluates additional off-site locations in eastern Merced County identified since completion of the SSEIR. In each case, the Draft EIR compares the environmental effects of construction and operation of the Campus at the alternative location to the impacts of construction and operation of the Campus at the proposed site. In this manner, the Draft EIR supplements rather than replaces the SSEIR with regard to the analysis of off-site alternatives.

A few commenters have stated that the University should have prepared a “subsequent EIR” rather than a “supplemental EIR,” suggesting that the Draft EIR is simply a “supplemental EIR.” However, the University has not represented that the Draft EIR is simply a supplemental EIR. As explained above, the Draft EIR is an entirely new EIR with regard to analysis of the direct and cumulative impacts of the Campus. It is a supplemental EIR to the SSEIR only with regard to the assessment of off-site alternatives. For this reason, as explained in the Notice of Preparation, the EIR evaluates full development of the LRDP, development of the Phase 1 Campus, *and* supplements the SSEIR, which is also why the Draft EIR is not titled “Supplemental EIR.”

The University has followed the process contemplated by CEQA for evaluation of higher education projects. CEQA provides that the selection of a location for a particular campus and the approval of a LRDP are actions subject to CEQA and require the preparation of an EIR. When The Regents conducted the site selection process, it did not have before it a proposed LRDP. Thus, the University prepared, and The Regents certified, an SSEIR. Now The Regents has been presented with a proposed LRDP, and the University must complete and certify an EIR for that LRDP before determining whether to adopt it. The Draft EIR recognizes the evaluation and decision making that has occurred to date, and studies the environmental consequences of development of a campus in the proposed location. The Draft EIR goes a step further, however, by updating the SSEIR’s analysis of alternative locations for the campus. It does so because the specific campus site, although on the same property as identified when The Regents selected the campus location, is not identical to the location on that property as described in the SSEIR. Thus, the EIR serves both as a new EIR for the LRDP and as a supplement to the SSEIR for purposes of the evaluation of location alternatives.

CEQA provides for the use of LRDP EIRs in consideration and approval of specific development projects that implement the LRDP. Such use of this EIR for consideration and approval of the Phase 1 Campus and other future development envisioned by the LRDP is explained in Section 4.1.D below.

#### 4.1.B Relationship to County CEQA Process

These responses address comments I28-1, LA7-1, LA9-9, O14-1, O19-1, O21-1, O21-2, O21-3a, O21-8, O21-9, O23-1, O23-2, O24-1, O25-3, O26-1b, O26-2, O28-6, O28-78, O28-82, O29-2, O29-7, O30-1, O31-1, O31-10, O31-11, O31-12, O31-13, O31-14, O31-15, O32-3, SA10-2, SA10-3, and SA13-1, as well as other similar comments addressing the relationship between this EIR and the EIR the County is preparing for the University Community Plan (UCP). These comments question whether the LRDP EIR should have been prepared together with the UCP EIR. In addition, some of these comments assert that a single EIR should have been prepared for

the LRDP, the UCP, and the proposed Campus Parkway project, and that such a joint EIR should have been combined with a federal environmental impact statement (EIS) for the three projects. Several of these comments assert that preparation of such joint documents was required under the provisions of CEQA to avoid what the commenters assert is “piecemeal” environmental review or “segmentation” of a single project.

As is explained in the Draft EIR, the UC Merced Campus is a single, whole project under consideration for approval by The Regents under CEQA. This project, the UC Merced Campus, is a different project from the project sponsored by the County of Merced for development of the area adjacent to the Campus in accordance with the County’s proposed UCP.

Under CEQA, a public agency is required to comply with CEQA’s environmental review procedures when it proposes to carry out or approve a project. (CEQA Guidelines 15002(e), 15004(a)). CEQA provides that completion of an EIR for a project is the responsibility of the “lead agency” for the project. The “lead agency” is the public agency that has the primary responsibility for carrying out or approving a project. CEQA and the CEQA Guidelines also provide that a single public agency will be responsible for preparing and certifying an EIR for a project and that public agency is the lead agency. (CEQA Guidelines 15050(a) and 15090).

When the project will be carried out by a public agency, that public agency is the lead agency for the project it will carry out (CEQA Guidelines 15051(a)). When the project will be carried out by a person or entity, other than a public agency, the lead agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines 15051(b)).

The University is the sole public agency with responsibility for approving and carrying out the UC Merced LRDP. Under these provisions of CEQA, the University is the lead agency for the UC Merced project.

On the other hand, the County of Merced has the responsibility for formulating, preparing, and adopting the plan for the University Community area of the County as the local governmental body with jurisdiction over this unincorporated area. The UCP area is subject to the County’s jurisdiction and authority and the UCP will govern land uses in this area. The UCP does not extend to the Campus and will not apply to land uses on the Campus. The County is the public agency that will be responsible for overseeing implementation of the UCP. While other agencies may have limited permitting authority with respect to components of development projects that will ultimately be proposed within the University Community, the County has overall authority for approving the UCP project as a whole and the subsequent approvals needed for development to proceed within the University Community. Accordingly, Merced County is the proper lead agency for the UCP project.

Several commenters stated that they believed that single combined EIR must be prepared for the UC Merced Campus and University Community projects to comply with CEQA. However, the statute and the Guidelines do not include any provisions that require preparation of a single EIR by separate lead agencies that have proposed separate projects for approval. Under CEQA’s provisions relating to the role of the lead agency in the environmental review process, the lead agency for a project has sole responsibility for completing the various steps leading to preparation and completion of an EIR for the project that the lead agency has formulated and is considering for approval. With respect to the UC Merced Campus project, the University has responsibility for approving and carrying out that project, and as the lead agency, is responsible

for preparing and certifying the EIR for that project. By the same token, the County has responsibility for approving and overseeing implementation of the UCP project, and as the lead agency for that project, is responsible for preparing and certifying the UCP EIR.

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 may violate CEQA. CEQA requires that the EIR for a project be completed by the lead agency for that project. The lead agency 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. It is questionable whether it would be feasible for a lead agency to fully exercise its independent judgment and analysis over preparation of an EIR for one of its projects if responsibility for preparation of the EIR is delegated to, or shared with, another lead agency proposing its own project. The University is not aware of any situations in which a single EIR has been prepared for different projects sponsored by separate lead agencies.

Even if CEQA allowed a single EIR to be prepared for separate projects proposed for approval by separate lead agencies, nothing in CEQA or the CEQA Guidelines would require that a single EIR be prepared for these different projects. Several commenters read the language in CEQA Guidelines 15378(a) stating that the term project extends to the "whole of an action" that may cause a physical change to the environment as requiring that a single EIR be prepared because the UC Merced Campus project and the UCP project are closely related to each other. This part of the definition of a project indicates, however, that the project to be studied in an EIR encompasses the entirety of the activity the lead agency is proposing for approval. As CEQA defines the term project, the project is the activity the lead agency carries out or approves. A project is defined as an activity that may cause a physical change in the environment and that is either directly undertaken by a public agency, supported by a public agency, or involves the issuance of a lease, permit, license, certificate, or other entitlement for use by a public agency. (CEQA Guidelines 15378(a)(1)-(3); Public Resources Code 21065) Similarly, as CEQA Guideline 15378(c) states, "the term 'project' refers to the activity being approved." The reference to the "whole of the action" in CEQA Guidelines 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 UC Merced Campus EIR has fully evaluated all impacts of the ultimate, full development under the proposed LRDP, as well as the specific impacts of the first phase of development.

Several commenters have suggested that preparation of a single EIR for the UC Merced Campus project and the UCP project is mandated by the provisions of CEQA Guidelines 15165. However, that Section requires preparation of a single program EIR when a lead agency itself proposes to undertake a series of actions that are so closely interrelated that they must be treated as a single project. Thus, under CEQA Guidelines 15165, a lead agency must prepare a single program EIR when it proposes to undertake a phased project or multiple individual projects in which the total undertaking comprises a single project, proposes to undertake an individual

project that is a necessary precedent for action on a larger project, or proposes to undertake a project which commits it to action on a larger project. In such a situation, the lead agency must prepare a single program EIR covering the entire project it will ultimately undertake. This Guidelines Section by its terms applies to projects to be carried out by a single lead agency in which the combined projects carried out by that lead agency together constitute a single undertaking. This Section does not apply to separate projects that are proposed, approved, and then carried out or supervised by separate lead agencies.

The CEQA Guidelines, however, do not contain any provisions analogous to Section 15165 either authorizing or requiring preparation of a single EIR for separate but related projects to be proposed and approved, and then be undertaken or supervised by different lead agencies. Instead of providing for preparation of a single EIR in such a situation, the CEQA Guidelines contemplate that the lead agency for each project will prepare the EIR for the project that lead agency has proposed to approve, and that the respective EIRs for the related projects describe the cumulative effects of the two projects, thus examining the impacts of the projects together. The Draft EIRs prepared by the University and the County fully implement this principle and thus fulfill the letter and spirit of the statute and the Guidelines.

#### **4.1.C Relationship to Federal NEPA Process**

This response addresses comments I28-1, I28-2, I33-2, I33-16, O2-1, O14-2, O21-3b, O21-18, O23-1, O24-1, O24-3, O24-41, O25-2, O25-4, O28-3, O28-42, O28-82, O29-1, O29-2, O30-1, O30-2, O31-13, O31-15, SA10-4, SA10-18, and related comments, which raise questions regarding the relationship between environmental review under CEQA and environmental review under the provisions of the National Environmental Policy Act (NEPA), the timing of such review, and preparation of joint NEPA documents or joint CEQA/NEPA documents for various projects. Although these comments largely raise legal questions about federal agency actions and the applicability of NEPA to those actions, rather than questions relating to the EIR's environmental analysis, a general response to these comments providing an overview of the legal issues involved is nevertheless provided below for interested members of the public.

##### **4.1.C.1 Requirements for NEPA Review**

Several commenters ask that the Final EIR clarify whether the state and federal permitting processes for the LRDP will require both CEQA and NEPA review. Some commenters suggest that the proposed LRDP should be found to be subject to NEPA on a variety of grounds arising out of federal agency jurisdiction over various aspects of the LRDP, such as the need for Section 404 Clean Water Act (CWA) authorizations, federal involvement in application of the Clean Air Act's general conformity regulations, and federal funding and federal oversight for the County's Campus Parkway project. Other commenters assert the LRDP cannot be approved until all NEPA review that may be required has been completed. These comments are addressed below.

#### **Uses of the EIR**

The University of California is a state agency and the Board of Regents of the University of California, as the governing body of the University, has sole responsibility for the approval of the LRDP. Adoption of the LRDP by The Regents is considered a discretionary action pursuant to state law, and thus, subject to review under CEQA. As the lead agency under CEQA, the

University is responsible for completing an EIR for the LRDP under CEQA. Action taken by The Regents to approve the LRDP must be based upon the information in the EIR. (See Section 4.1.A.) In addition to The Regents' approval of the LRDP, implementation of various components of the LRDP may require approvals from various state agencies. As responsible agencies under CEQA, such state agencies will use the EIR as the CEQA document in authorizing activities related to the LRDP. An example is California Department of Fish and Game (CDFG) approvals and authorizations. See Draft EIR pages 1-6 through 1-9 for a discussion of public agency approvals that may be required.

Implementation of the LRDP beyond the Phase 1 Campus will also require authorizations from various federal agencies. The EIR is intended to satisfy the requirements of CEQA and includes a complete and comprehensive evaluation of the environmental impacts of *all* activities including those that may be subject to permitting or authorization requirements of federal agencies.

The Draft EIR indicates on page 1-1 that, in addition to meeting CEQA requirements, the Draft EIR is intended to serve as a source document for information that will be needed by several regulatory agencies to issue permits and approvals for the proposed project. The Draft EIR is not the sole environmental review document that will be prepared, however. As the Draft EIR indicates, some of the federal approvals required to implement the LRDP may be subject to review under NEPA. Thus, although the University anticipates that information contained in the EIR may be used in connection with federal permitting and approval processes, future review under NEPA will also be required before issuance of various federal permits and other authorizations.

### **Federal Agency Requirements Under NEPA**

Review under NEPA applies whenever a federal agency proposes an action, grants a permit, or agrees to fund or authorize any other entity to undertake an action that could affect environmental resources (42 United States Code 4322). For a proposed action to be subject to NEPA, the agency that carries out or otherwise approves the action must be a federal agency. NEPA does not apply to nonfederal actions when no federal discretionary authority exists. However, an action to be undertaken by a nonfederal entity may be subject to NEPA when it requires a permit, a regulatory decision, funding, or other form of federal involvement. When such federal involvement is necessary, the federal agency with discretionary authority or involvement in the proposed action is required to conduct NEPA review of that action (40 Code of Federal Regulations [CFR] 1508.18(b)(4)). Additionally, federal approvals may trigger other types of federal reviews (e.g., Clean Air Act conformity analysis). However, federal reviews in and of themselves ordinarily do not trigger NEPA review; it is federal involvement in the form of a discretionary permit, funding, or authorization that necessitates NEPA review.

### **Approvals Subject to NEPA**

Based upon applicable NEPA requirements, it can be anticipated that the federal agencies with jurisdiction over certain actions related to development of the UC Merced Campus project will require NEPA review. With respect to the UC Merced Campus, the Phase 1 Campus will not require federal agency action and will accordingly not require review under NEPA. CWA authorizations required for campus development beyond Phase 1 (outside of the Merced Hills Golf Course boundaries) will, however, implicate NEPA review. As indicated in the LRDP Draft EIR on pages 1-6 and 1-7, Campus development other than Phase 1 will require CWA

authorizations. U.S. Army Corps of Engineers (USACE) approvals generally are subject to NEPA and the University anticipates that the USACE will determine that the Campus 404 permit is subject to NEPA review (33 CFR Part 325, Appendix B). On November 9, 2001, the University filed an application for a Section 404 permit with the USACE. The University anticipates that the USACE will initiate the NEPA process when the USACE determines sufficient information is available to begin preparation of the appropriate NEPA document.

As indicated above, construction of Phase 1 Campus buildings on the Merced Hills Golf Course requires approval from The Regents, but does not require federal authorizations or permits to proceed. Construction of Phase 1 would not involve the fill of wetlands or other waters of the U.S. Consequently, a Section 404 permit would not be required to initiate construction. The Phase 1 Campus also does not require federal funding to proceed. No other federal permits or authorizations are required for construction within the Phase 1 boundaries. Since Phase 1 would not require federal agency authorizations or other federal permits and approvals, nor require federal funding, NEPA review would not be required prior to approval of Phase 1 by The Regents or the start of construction.

Several comments suggest that federal air quality conformity requirements might trigger NEPA review independent of Section 404 CWA or other federal authorizations. Under the federal conformity program, when a proposed federal action could interfere with the attainment of clean air standards, the federal agency is required to conduct a “conformity analysis” (40 CFR 51 Subpart W and 40 CFR 93 Subpart B). As a general matter, before awarding financial assistance or issuing particular types of permits, a federal agency must find that the proposed federal action conforms with the applicable state implementation plan. Although the conformity analysis may be incorporated into the NEPA document for the federal action, the conformity analysis itself is not a federal agency permit or approval that independently triggers NEPA review of a project that would not otherwise require a federal agency permit or approval. Instead, a federal conformity determination is a determination made by a federal agency only once the requisite federal involvement with respect to funding or approval of the project already exists. Thus, a need for a federal conformity determination does not independently trigger application of NEPA to a project.

Several commenters asked about NEPA review for the Campus Parkway project. The Campus Parkway project, a project which has been proposed by the County as a project separate from the University Community, involves federal funding and is subject to NEPA review. The Federal Highway Administration will provide oversight regarding the planning, design, and operations of this facility. Additionally, construction of the Campus Parkway project may require a Nationwide Permit, other CWA and federal Endangered Species Act (ESA) approvals, conformity review under the Clean Air Act, and Section 4(f) review because the project is federally funded. Because the Campus Parkway project is a federally funded project contingent upon the issuance of federal permits, the Campus Parkway is being reviewed under NEPA. Similarly, the UCP Draft EIR states on pages 1-3 through 1-4 that the Community requires CWA authorizations. These authorizations may trigger NEPA review. Environmental review for these projects is discussed below in Section 4.1.C.3.

#### 4.1.C.2 *Timing of NEPA Review in Relation to LRDP Approvals*

Several comments suggest that NEPA review should be conducted before, or as part of, the LRDP CEQA process. Some commenters state that the University should conduct NEPA review prior to certifying its EIR for the Campus and another commenter asserts that if it proceeds with the Draft EIR and the Phase 1 Campus, before receiving a Section 404 permit under the CWA and Section 10(a)(1)(B) permit under the ESA, the University would violate NEPA.

##### **Timing of CEQA Review**

The University is a state agency with its jurisdiction over the UC system established by state law. Under CEQA, the University is required to prepare an LRDP to meet academic and institutional objectives for UC Merced and the EIR for that LRDP (Public Resources Code 21080.09).

The University prepared the Draft EIR to comply with its statutory requirements to address UC Merced Campus planning needs in an LRDP. Consistent with requirements under CEQA, the Draft EIR fully evaluated all of the environmental impacts resulting from the proposed LRDP, and identified the potential significant environmental effects that could result from development of the Campus. Additionally, as discussed throughout Chapter 4 of the Draft EIR, the University evaluated the cumulative impacts resulting from development of the Campus, the Campus Community, and the Campus Parkway. See Section 4.20 of this Final EIR for a discussion of cumulative effects.

##### **Timing of NEPA Review**

The University itself, as a state agency, is not subject to NEPA. NEPA does not apply to nonfederal entities. Instead, NEPA applies to actions taken by federal agencies. To trigger NEPA, the proposal must be for an action and the action must be federal (40 CFR 1502.4, 1508.18(a)). If action by a nonfederal entity is subject to federal approvals (e.g., see discussion above in Section 4.3.A), the federal agency with discretionary authority over approvals is responsible for NEPA review. That agency conducts a preliminary review under NEPA as soon as it has enough information about a proposed action to engage in meaningful analysis. Neither NEPA nor CEQA requires that a federal agency must complete and adopt a NEPA review document for permits or approvals it will issue before a state agency may certify the EIR under CEQA for a project.

Under both statutory frameworks, the University may proceed with environmental review under CEQA before federal agencies involved in the project initiate NEPA review. This approach is consistent with the CEQA process, which often occurs for development projects in that the local approval process precedes any necessary federal permitting process and CEQA review is completed before NEPA review is initiated (see Section 4.3.A.1 below). Such is the case in the present circumstances, where it is anticipated that the USACE will not be in a position to initiate NEPA review until after the LRDP has been approved by The Regents.

While the CEQA Guidelines encourage cooperation between federal and state agencies with respect to preparation of environmental documents, the CEQA Guidelines recognize that in many cases the process under CEQA will not run concurrently with the environmental review and permitting process under federal law. See CEQA Guidelines Section 15220-28.

Accordingly, under CEQA and the CEQA Guidelines, a state agency has discretion to proceed

with and complete the CEQA process before a federal agency undertakes NEPA review for federal actions related to the project.

Several commenters urge, however, that no commitment of resources be made before NEPA review is completed. These commenters assert that proceeding with the Draft EIR, approving the LRDP, and proceeding with the Phase 1 Campus, would be improper under NEPA. However, neither NEPA nor CEQA requires that an EIS be prepared prior to preparation of a Draft EIR. An EIR is the *state* agency's informational document prepared in accordance with CEQA to address the environmental effects of the proposed action. The University's preparation of the Draft EIR represents a state agency's efforts to fulfill its duty under CEQA to evaluate the effects of The Regents' adoption of the LRDP. Further, nothing in NEPA or the NEPA regulations would prevent the University from approving the LRDP and proceeding with the Phase 1 Campus. Because Phase 1 would not require CWA authorizations or other federal permits and approvals, nor would it require federal funding, no independent federal agency jurisdiction controls the development of the Phase 1 Campus. Consequently, the Phase 1 Campus does not involve a federal action triggering NEPA review, and an EIS would not be required prior to approval or construction of the Phase 1 Campus.

In accordance with the NEPA regulations, preparation of the Draft EIR constitutes the performance of other work necessary to support applications for permits and approvals from The Regents and other state and federal responsible agencies. Through the CEQA process, the University has consulted with federal and state agencies to obtain agency review and comment. When the federal agencies are ready to commence the federal process for their approval actions, each federal agency will be required to fulfill its responsibilities under NEPA and comply with its requirements.

As stated above in Section 4.1.C.1, Phase 1 of the Campus will be constructed on a portion of the Merced Hills Golf Course. Phase 1 has been designed to avoid any fill or hydrologic impact on wetland resources or "take" of state or federally listed threatened or endangered species. Accordingly, no state or federal wetland or endangered species authorizations will be required for construction of Phase 1.

Construction of Phase 1 will also not interfere with compliance with the provisions of the ESA. Because of the avoidance, minimization, and mitigation measures built into the project (see Section 4.8), it is not expected that the UC Merced Campus project will result in jeopardy to species under the provisions of the ESA.

Finally, the University has fully evaluated the significant environmental effects of the Phase 1 Campus and the LRDP, and has considered rigorously more than 20 alternative configurations and locations for the entire Campus in Chapter 5 of the Draft EIR. This alternatives analysis included in the Draft LRDP EIR both anticipate further federal review and has been designed to provide a substantial basis for that analysis by considering in detail matters such as the potential for impacts on federally protected resources such as wetlands and threatened and endangered species.

#### **Preparation of a Joint EIR/EIS for the LRDP**

Several comments state that the University should prepare a joint EIR/EIS that would satisfy the requirements of NEPA at the same time the requirements of CEQA are met.

Both CEQA and NEPA allow, but do not compel, a lead agency for an EIR on a project to prepare a joint EIR/EIS for the project if it is subject to federal permits, approvals or funding. CEQA does not directly authorize preparation of joint documents, but encourages the use of an EIS or combined state/federal documents in lieu of a separate EIR (Public Resources Code 21083.5, 21083.7; 14 California Code of Regulations (CCR) 15170, 15221-15222). CEQA does not, however, mandate that these documents be prepared as a combined document and leaves the decision whether preparation of a joint document is appropriate to the discretion of the lead agency.

NEPA also does not compel a federal agency to prepare a joint EIR/EIS. The NEPA regulations provide that federal agencies will cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements unless otherwise barred from doing so (40 CFR 1506.2). These regulations encourage joint planning processes, joint environmental research and studies, joint public hearings, and joint environmental assessments. While the Council on Environmental Quality NEPA regulations provide that a NEPA document may be combined with a CEQA document, NEPA, like CEQA, does not mandate the preparation of combined documents and leaves the decision whether to prepare a joint document to the discretion of the agencies involved. Thus, under NEPA and CEQA, the University is not required to prepare a joint EIR/EIS for the LRDP. Because of the differing procedural and substantive requirements of CEQA and NEPA, as well as the differing requirements that agencies may have regarding the timing and sequencing of various steps in the environmental review process, the decision whether to prepare joint CEQA and NEPA documents is left to the discretion of the agencies involved. In this case, after considering the relevant factors, the University determined that it is preferable at this stage to prepare a EIR on its proposed LRDP rather than to participate in a joint EIR/EIS.

The University appreciates the time commitments public agencies and members of the public must make in reviewing the Draft EIR and other environmental documents that may be prepared during future permitting processes. The University is committed to providing the public with opportunities to review and comment throughout the process, and has attempted to minimize the costs to the public associated with its efforts to facilitate public review. See the discussion in Section 4.1.E.

In response to assertions that the LRDP should be subject to a joint EIR/EIS because Castle Air Force Base reuse was reviewed in a combined EIR/EIS, it is important to note that the joint EIR/EIS was prepared for the Castle Air Force Base reuse project pursuant to CEQA's military base reuse plan provisions (Public Resource Code 21083.8.1). Furthermore, as to base reuse projects, no legal requirement that a joint EIR/EIS be prepared exists, and it is common practice for the EIR and EIS to be prepared separately.

#### **4.1.C.3      *The Environmental Review Process for Distinct Projects***

Several commenters argue that the UC Campus project, the Campus Parkway project and the University Community project are "interdependent" or a "major federal action" and should be evaluated together in a single EIS under NEPA. Other commenters urge the University to define the proposed project as a joint EIR/EIS or request that a single joint EIR/EIS be prepared for the Campus project, the Community project, and the Parkway project asserting that a single environmental review document is required to prevent project "segmentation" or to adequately

examine traffic impacts and circulation system questions. Other comments request that the contemplated Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) for eastern Merced County be addressed in a joint EIR/EIS together with the Campus, University Community, and Parkway projects or that the contemplated HCP/NCCP provide the framework for a joint EIR/EIS.

As an initial matter, it should be understood that contrary to assertions made in some comments, a proposed project is not defined under CEQA or NEPA as an EIR or an EIS, and a “joint EIR/EIS” is not a “project” under CEQA or NEPA (See 14 CCR 15378, 40 CFR 1508.18). Rather, under CEQA, and under NEPA, the project is defined as the physical activity that is proposed for approval; it is not the environmental document that is prepared or the approvals required for that physical activity to proceed.

Further, under CEQA as well as under NEPA, the environmental document prepared for a proposed project focuses on a discussion and analysis of the anticipated environmental impacts of the project that is proposed. Potential impacts of other pending projects in the area are considered in the document’s discussion and analysis of cumulative impacts. In accordance with CEQA, the University fully evaluated all of the significant impacts related to the LRDP and the cumulative effects resulting from the Campus, University Community, and Campus Parkway projects in the Draft EIR.

Four different projects are under various stages of consideration at this time in eastern Merced County. These projects include (1) the LRDP, (2) the UCP, (3) the Campus Parkway, and (4) the NCCP/HCP for eastern Merced County. Each of these projects is being proposed as a distinct project, sponsored by different lead agencies, and subject to differing approval requirements.

### **UC Merced LRDP**

As stated in Section 2 of the Draft EIR, the University is proposing to adopt the LRDP and to construct a major research university on a 2,000-acre site in eastern Merced County. The University is responsible for the preparation, adoption, and implementation of the LRDP and serves as the lead agency under CEQA for review of the environmental effects of the LRDP. All of the aspects related to approval and implementation of the LRDP by The Regents and other governmental agencies have been disclosed in the Draft EIR. See Section 4.1.B for a discussion of the University’s responsibilities under CEQA related to the LRDP.

### **University Community Plan**

The County of Merced is the local agency responsible for the preparation, adoption, and implementation of the UCP. Although the justification for the Community is dependent upon the approval of the LRDP, adoption of the UCP is not part of the LRDP. Further, the LRDP could be approved independent of UCP approval. The County is the lead agency under CEQA for the preparation of the environmental document for the UCP. See Section 4.1.B for a discussion of the County’s responsibilities under CEQA related to the UCP.

Commenters are correct in noting that the UCP is dependent upon the Campus for its justification. In other words, the County would not adopt the UCP unless The Regents approve the Campus. Although these actions are closely related, the UCP is not a component of the UC Merced project. The University is not proposing to adopt the UCP and does not have any discretionary authority over the approval of the UCP. However, to ensure that the impacts of the UCP are fully considered in connection with review of the UC Merced project, the Draft EIR

includes a detailed evaluation of the impacts of the UCP in the discussion of cumulative effects for each resource topic.

### **Campus Parkway Project**

The County of Merced has proposed the approval and construction of the Campus Parkway project, a separate regional roadway improvement project that has independent utility from the LRDP and UCP. The University is not proposing the Campus Parkway project and is not the sponsor of the Parkway project. The Parkway project was proposed by the County independent of the proposal to develop the UC Merced Campus to address the need for additional traffic capacity in this traffic corridor, and the County has identified a need for this roadway project whether or not the LRDP for the UC Merced project is approved. The primary purpose of the Campus Parkway project is to provide additional capacity to the regional circulation network to help satisfy the future transportation needs of the Merced area resulting from planned growth. The additional capacity provided by the Campus Parkway will reduce projected future traffic congestion in the area (Merced County Department of Public Works, *Traffic Report Summary and Commentary for the Campus Parkway Project*, November 30, 2000).

The Campus Parkway project to the south of Yosemite Avenue is included in Tier 1 of the 1998 Regional Transportation Plan (RTP). Funds have been programmed for the construction of the Campus Parkway project for a number of years. As the Draft EIR states on page 4.14-46, the initial construction of the Parkway from Highway 99 to Yosemite Avenue will be four lanes. The *Analysis of Travel Characteristics Traffic Report for the Campus Parkway Project* (Merced County Department of Public Works, November 30, 2000) concludes that, independent of the Campus or Community development, a four-lane facility would provide needed benefits to important regional roads such as R Street, M Street, and 16th Street. This four-lane facility is necessary to serve the traffic demand generated by future conditions without the Campus or the Community. The current Campus Parkway project definition includes sufficient right-of-way to accommodate eventual widening to six lanes. Any widening beyond the initial four-lane segment would be funded by the development causing the need for the widening.

Although the Campus Parkway is a project with independent utility from the LRDP and the University is not proposing to construct the Campus Parkway project, the Draft EIR includes an evaluation of the Campus Parkway project in the analysis of cumulative projects in Section 4.14 of the EIR. Section 4.14 of the Draft EIR includes the effects of the proposed Campus Parkway project in the analysis of traffic impacts resulting from the Campus. Additionally, the effects of the proposed Campus Parkway project are included in the analysis of the cumulative traffic impacts in the year 2025 associated from both the Campus and the University Community. Based upon these analyses, the LRDP Draft EIR identifies transportation improvements that would be required to mitigate traffic impacts. For a detailed discussion of the treatment of the Campus Parkway project in the Draft EIR circulation analysis, also refer to the responses in Section 4.18.E, and for a discussion of traffic mitigation measures, refer to Section 4.18.B.

### **Eastern Merced NCCP/HCP**

Merced County is undertaking preparation of an NCCP under the Natural Community Conservation Planning Act and an HCP under Section 10 of the ESA. Independent of the University's approval of the LRDP, the HCP/NCCP is being undertaken as a separate habitat conservation planning effort for eastern Merced County. While the University may participate in

the NCCP/HCP, approval of the LRDP is not contingent upon the County's adoption and implementation of the NCCP/HCP. This process is in its early planning phases, as described below in Section 4.3, and is intended to provide conservation planning strategies for development throughout eastern Merced County. Adoption of the LRDP will not trigger adoption of the NCCP/HCP, nor is the NCCP/HCP dependent upon the LRDP for its justification.

Because of the differing procedural and substantive requirements of CEQA and NEPA, as well as the differing requirements that The Regents, the County and federal agencies have regarding the structure and timing of the review and approval process, preparation of joint CEQA and NEPA documents can be a complicated effort even for a single project. Neither CEQA nor NEPA includes any provisions which require that different projects proposed by separate lead agencies be combined into a single EIR, EIS or a single joint EIR/EIS. It is also highly questionable whether such a procedure would be permitted. In any event, due to different stages of planning, information gathering, and permitting activities for these various projects, and the multiple agencies involved, having differing responsibilities with respect to these projects, preparation of such an omnibus joint environmental document would be highly impractical even if such a procedure were legally permissible.

#### **4.1.D Relationship Between LRDP Analysis, Analysis of the Phase 1 Campus and Future Development**

This response addresses comments I28-1, O31-7, SA10-7, SA10-15, and other similar comments relating to the relationship between the EIR's impact analysis for the LRDP and the environmental analysis for activities to implement the LRDP. These comments request clarification of the scope of CEQA analysis conducted in the EIR for the LRDP and the scope of the CEQA analysis conducted in the EIR for Phase 1 Campus development. These comments also request additional information about future use of the LRDP EIR.

This EIR is a LRDP EIR prepared in accordance with the provisions of Public Resources Code 21080.09 to evaluate the environmental impacts from development and operation of the UC Merced LRDP. Public Resources Code 21080.09 governs the application of CEQA to institutions of public higher education. Under this statute, an LRDP is defined as "a physical development and land use plan to meet the academic and institutional objectives for a particular campus." The UC Merced LRDP will thus establish the long-range planning framework setting the primary vision for the Campus and providing a guide for physical planning and development of the Campus.

Volume 1 of the Draft EIR provides a complete discussion and analysis of the impacts of development and operation of the UC Merced Campus as envisioned in the LRDP, including a full analysis of the impacts expected from full development under the LRDP and operation of the Campus with an ultimate planned population of 25,000 full-time equivalent (FTE) students. In accordance with the provisions of Public Resources Code 21080.09(b), this EIR will provide the environmental analysis required under CEQA for The Regents consideration of the proposal to approve the UC Merced Campus LRDP, including the specific location and configuration of the Campus as described in the LRDP, as well as the goals, objectives, standards, policies, and guidelines for planning, development, and operation of the Campus set forth in that plan.

Thus, the EIR is a comprehensive document that evaluates environmental impacts, mitigation measures, and alternatives relating to development of the Campus including impacts expected from operation of the Campus in the long-term future, at full development. It does not defer analysis to later CEQA review. Instead, it provides a full assessment of all of the relevant data regarding the anticipated impacts of development and operation of the Campus as envisioned by the LRDP. As specific activities are proposed to implement the LRDP, they will be examined in light of the information in the LRDP EIR to determine the scope of the additional environmental review that may be required for the activity that is proposed. This is the procedure envisioned by Public Resources Code 21080.09(c) and (d) which contemplate that as specific projects within the scope of the LRDP are proposed for construction on a campus, the environmental analysis for the proposal will be based upon the LRDP EIR. Under this procedure, a further environmental analysis augmenting the analysis in an LRDP EIR is undertaken as needed to evaluate new or more severe environmental impacts of the specific project not considered in the program EIR, and whether new mitigation measures or alternatives are required for the project that are not already considered in the LRDP EIR.

Because construction of the Phase 1 Campus is proposed for approval by The Regents concurrently with the LRDP, this EIR includes an analysis of the impacts of developing the Phase 1 Campus. This analysis, which is contained in Volume 2 of the Draft EIR, examines the “project-level” impacts from the specific elements proposed for construction as components of the Phase 1 Campus. As provided in Public Resources Code 21080.09, the analysis of the Phase 1 Campus is a second level or tier of review that builds upon the environmental analysis contained in Volume 1 of the EIR for the LRDP as a whole. It differs from the analysis for the LRDP as a whole in that it reflects, and provides an analysis that considers the detailed information available relating to the Phase 1 Campus, such as the specific locations, configuration, and design of buildings and other structures proposed for construction within the Phase 1 Campus. The analysis thus builds upon the analysis for the LRDP as a whole in Volume 1 by examining whether development of the Phase 1 Campus, in light of the more detailed information about that development that is available, may have environmental impacts not considered in the LRDP EIR, and whether feasible mitigation measures or alternatives, not already considered in the LRDP EIR, might be available to address significant impacts of the Phase 1 Campus development.

By providing a specific “project-level” of analysis of the impacts of developing Phase 1, this analysis provides the environmental information required under CEQA for the proposed approval of development of the Phase 1 Campus by The Regents and will serve as the CEQA document required for action that may be taken by responsible agencies in connection with any permits or other approvals that may be required for development of components of the Phase 1 Campus. Hence, this EIR is intended to fully satisfy CEQA requirements and provides all information necessary for responsible agencies to fulfill their duties under CEQA. However, this EIR will not necessarily satisfy all of the other, unique informational requirements that may be associated with the permitting processes of the various responsible agencies.

#### 4.1.E Notices, Document Availability, Requests for Time Extensions

##### 4.1.E.1 *Availability of the Draft EIR*

These responses address comments that raise questions about the availability of the Draft EIR, the notices that were provided regarding the completion of the Draft EIR, and related issues. These responses thus consider these issues raised in comments I33-1, LA1-1, O10-1, O11-1, O26-1a, O28-1, O28-2, O28-9, O28-79, O31-4, O31-5, O31-6, and other comments that raise such issues less directly.

Commenters have asked whether the University complied with CEQA's requirements regarding notice of the Draft EIR and in making copies of the Draft EIR available to the public. As explained below, the University fully complied with, and well exceeded, CEQA's requirements.

The University completed and published the Draft EIR on August 13, 2001. On that same date, the University commenced an extensive public outreach program designed to disseminate information about the EIR to interested persons in Merced County and throughout the state.

On August 13, the University took the following steps:

- The University submitted a Notice of Completion to the State Clearinghouse. The Notice of Completion described the project, the project location, the address where copies of the Draft EIR were available, and the period during which comments would be received on the Draft EIR. The Notice of Completion also identified the impact areas addressed in the EIR. The State Clearinghouse received the Notice of Completion on August 13, and the Clearinghouse distributed copies of the Draft EIR to all state responsible and trustee agencies.
- The University submitted the Notice of Completion to the Merced County Recorder's Office located at 2222 M Street, Merced, CA. The University also submitted a Notice of Availability to the Merced County Recorder's Office on August 14. The Notice of Availability described the project, the project location, the period during which comments would be received on the draft EIR, the significant environmental effects anticipated as a result of the project, and the addresses where copies of the EIR and all documents referenced in the EIR would be available for public review.
- The University posted the Notice of Availability at the UC Merced office located at 1170 West Olive Avenue, Merced, CA. In addition, on August 14, the County posted the Notice of Availability on a bulletin board outside the Merced County Recorder's Office located at 2222 M Street, Merced, CA.
- The University placed copies of the Draft EIR at the locations specified in the Notice of Completion and Notice of Availability. These locations included the UC Merced office located at 1170 West Olive Street in Merced, the Merced County Public Library, Main Branch, located at 2100 "O" Street in Merced, and the State Clearinghouse located at 1400 Tenth Street, Sacramento, CA 95814. A copy of the Draft EIR was also couriered to the Merced County Public Library, Los Banos Branch, located at 1312 7th Street in Los Banos. However, the branch was closed on August 13, and a copy had to be hand delivered on the first day that the branch was open following August 13, which was August 15.
- The University distributed copies of the Draft EIR via overnight mail to responsible federal, state, and local agencies, as well as to several individuals and organizations who had

participated substantially in the environmental review process. Copies of the Draft EIR were immediately distributed in this manner to a number of individuals and organizations, including Vernal Pools.org, the California Native Plant Society, Protect Our Water, Audubon Society, and San Joaquin Raptor Rescue Center.

- The University began distributing copies of the Notice of Availability by mail to all individuals, organizations, and agencies that had submitted comments on the Notice of Preparation, all owners and occupants of property contiguous to the parcels where the project would be located, as well other potentially interested persons and agencies. Approximately 150 notices were mailed out on August 14 and 15. The University notified news organizations that the Draft EIR had been completed and was available for public review by providing press releases to a number of newspapers, including but not limited to, the *Merced Sun Star*, the *Modesto Bee*, the *Fresno Bee*, the *Sacramento Bee*, the *San Francisco Chronicle*, the *Los Angeles Times*, and several television and radio stations in San Joaquin Valley. The University also submitted the Notice of Availability to the *Merced Sun Star* on August 17 for publication on the earliest available publication date, Sunday, August 19, and the Notice of Availability was published in the *Merced Sun Star* on that date. On August 20, the University continued its efforts to disseminate the Draft EIR by posting an electronic version of the Draft EIR on the joint UC Merced County website, <http://www.ucmercedplanning.net>. The pending availability of the electronic version on the website was indicated in the news release sent on August 13 to the above-mentioned newspapers and other media outlets and notice of its availability for review and comment by posting a Notice of Availability on the website. Newspapers in Merced County, the Bay Area, and elsewhere in the state ran stories on the availability of the Draft EIR.

From August 14 forward, the University promptly mailed or handed out copies of the Draft EIR to all persons requesting copies. Beginning on Tuesday, August 14, the University began distributing CD-ROM versions of the Draft EIR, in addition to hard copies. Throughout the public comment period, the University promptly mailed or handed out hard copies and CD-ROM versions of the EIR to all persons requesting copies.

The University and County jointly conducted a planning fair on August 22 at the Merced Civic Center. The University distributed CD-ROM and paper copies of the Draft EIR to all those requesting copies at the planning fair. On September 13, the University and the County held a joint public hearing to accept oral comments on the two Draft EIRs at the Merced College Theater. The University distributed CD-ROM and paper copies of the Draft EIR to all those requesting copies at the hearing.

At the September 13 hearing on the Draft EIR, the University and County announced that they would be extending the public comment periods for 1 week, to October 4, 2001. The University also posted a notice of the extension on its website and sent a press release to the media list named earlier in this section. A Supplemental Notice of Availability announcing the time extension was published in the *Merced Sun Star* on September 22.

The University has encouraged public participation in the environmental review process, and has undertaken numerous steps to make the Draft EIR available to all interested persons. As demonstrated above, the University complied with all of required procedures and took multiple additional steps to make the Draft EIR available for review and comment.

#### 4.1.E.2 *Requests for Extensions of Time and Comments About Access to the Draft EIR*

Some commenters on the Draft EIR, including some of the comments listed in Section 4.1.E.1, above, requested more time to submit comments on the EIR. As noted above, the University extended the public comment period to October 4 in response to requests for extension of the comment period.

With respect to comments about the availability of the Draft EIR it should be noted that in addition to making the Draft EIR available at four public locations and on the University's website, the University attempted to provide personal copies of the Draft EIR promptly to all persons who requested that they be provided with copies directly. In a few instances, members of the public have complained that they did not receive their personal copies immediately upon the Draft EIR's availability. One commenter indicates that she had not received an electronic copy of the EIR by August 21, and therefore called the University to request a copy. This comment states that the commenter was informed that an electronic version was not yet available. However, the CD-ROM version was available beginning on August 14, and the EIR was posted electronically on the website by August 20. On only two occasions, clerical staff ran out of copies to hand out, and were unable to fulfill someone's request immediately. As soon as additional copies were produced, they were provided to those individuals. Furthermore, as noted above, hard copies of the EIR were available as of August 13.

Two comments state that some people had trouble accessing the Draft EIR on the University's website. However, other members of the public were able to access the Draft EIR with much less difficulty and in far less time than stated by the commenters. One of these commenters also stated that she believes that other individuals who received CD-ROM versions of the EIR complained of formatting problems with the CDs. However, the University received only one such complaint and in this case, the University promptly provided the individual with a replacement CD.

A few commenters stated that some members of the public received Notices of Availability that were postmarked on September 7. However, the University mailed the Notice of Availability on August 14 and 15. A total of approximately 120 individuals, organizations and agencies, and property owners, including all parties who had previously requested that they receive notifications related to the EIR, were mailed a Notice of Availability by the end of the day on August 15.

The University took many extra steps to facilitate public review of the Draft EIR. While most agencies simply place copies of the EIR in local libraries and provide an address where additional copies can be purchased, the University chose to do much more to make the Draft EIR available to members of the public. It is also evident from the comments that have been submitted that members of the public have had a sufficient amount of time to review and comment upon the Draft EIR. Accordingly, the University has concluded that these comments have not raised any issues that warrant a further extension of time.

Finally, one comment indicates that the University did not provide documents that the commenters had requested pursuant to the Public Records Act. The allegation that these Public Records Act requests have not been responded to is incorrect. Each request was specifically responded to in writing. With respect to the assertions in that letter about the availability of documents adopted relative to the 1995 SSEIR, that EIR as well as the findings relating to the

SSEIR have been available for public review at the UC Merced public document repository since before the Draft EIR was published. In addition, copies of the findings were mailed to the commenters on July 27, 2001, in response to their request. With respect to the Public Records Act request to which the commenter refers relating to property owned by the University, that request asked for a list of properties owned or leased by the University in Fresno County, rather than to properties in the entire Central Valley as indicated in the comment. This list of properties owned or leased by the University in Fresno County is not relevant to the analysis in this EIR. The Kearney Park Parcel was discussed in the SSEIR, and its infeasibility as a campus site clearly explained. The other two parcels owned in Fresno County are less than 10 acres in size.

The purpose of the public review process under CEQA is to allow persons or agencies to comment on the sufficiency of the document in identifying and analyzing the possible impacts of the project on the environment and the ways in which the significant effects of the project might be avoided or mitigated through mitigation measures or alternatives. The Alternatives chapter of the EIR specifically states how the alternatives analyzed therein were selected for review. An extensive discussion of alternative sites was also included in the 1995 SSEIR.

Two commenters pointed out that background Tables 1-4 and several figures referred to in the text of the Draft EIR were not reproduced in a supplemental appendix to the Draft EIR (Volume 2, Appendix C) as indicated in the text of the Draft EIR. The omission of these tables and figures was an inadvertent mistake that occurred during the printing of the Draft EIR. The text of the Draft EIR described the relevant information in these tables and figures and these tables and figures were made available in background reports published on the University's website and in the reference library located at the University's Merced office. In addition, the University provided copies of the omitted tables and figures to both commenters upon their request. These tables and figures are reproduced in Appendix B3 to this Final EIR.

#### 4.1.F Areas of Controversy

The primary areas of controversy relating to the project and this EIR as disclosed in comments submitted on the Draft EIR are summarized below:

- Cumulative loss of agricultural land
- Impacts of air pollution associated with operations of the Campus and growth in the County
- Impacts on biological resources including impacts on wetlands, fragmentation of vernal pools and other habitats, special-status species, wildlife habitat, and adequacy and effectiveness of mitigation measures proposed for biological resources impacts
- Demand for water and effects on groundwater supplies on a local and regional basis
- Impacts to recreational facilities, including Lake Yosemite Regional Park and loss of Merced Hills Golf Course
- Generation of additional school needs and adequacy of funding for those needs
- Traffic congestion on the regional roadway network
- Adequacy of the City of Merced's wastewater treatment facilities
- Analysis of alternatives to the proposed project

- Amount and location of induced growth and the impacts of such growth

These and other substantive and procedural issues raised by commenters on the Draft EIR are discussed in detail in the comments and responses to comments. For a complete discussion of each of areas of controversy involved in these subject areas, see the responses to comments for each subject area.

#### 4.1.G Recirculation Requests

These responses address comment O26-29 and other comments that request recirculation of the EIR for a second round of public review and comments.

CEQA provides for a once-around procedure for review and comment upon EIRs. Under that procedure, a draft of the EIR is completed and then made available for review and comment by public agencies, members of the public, and others who may be interested in the project. At the conclusion of the review and comment period, the lead agency preparing the EIR is required to provide written responses relating to any significant environmental issues raised in the comments (CEQA Guidelines 15088, 15204). Once the responses to comments are completed, the lead agency may complete the Final EIR, which includes the Draft EIR, comments on the draft EIR, a list of persons, organizations, and public agencies commenting on the Draft EIR, the lead agency's responses to significant environmental points raised in the comments, and any other information added to the EIR by the lead agency (CEQA) (Guidelines 15132).

After it is completed, a final EIR need not be circulated for a second round of review and comment; the lead agency is entitled to certify the Final EIR without soliciting further review or comments on the document. The exceptions to this general rule are set forth in CEQA Guidelines 15088.5, which provides that a lead agency must "recirculate" an EIR (or the relevant parts of the EIR) before certification when the EIR has been changed in a way that prevents review of and comment upon "significant" new environmental information. Significant new environmental information is defined to include new information not discussed in the Draft EIR relating to a significant new environmental impact or a substantial increase in the severity of an environmental impact; new information showing that a feasible alternative or mitigation measure considerably different from those discussed in the EIR would clearly lessen significant effects, but it is not adopted; or a showing that the Draft EIR was so fundamentally and basically inadequate and conclusory that meaningful public review and comment were precluded.

None of these circumstances exist here. None of the comments or the responses to comments demonstrates the existence of any new or more significant impacts than discussed in the Draft EIR. Some of the mitigation measures discussed in the Draft EIR have been modified or expanded in the Final EIR. However, all of these changes have been made to further reduce potential impacts through refinements and further elaboration of the mitigation measures described in the Draft EIR. The mitigation measures do not result in any new impacts. Similarly, while minor modifications have been proposed to the UC Merced Campus project itself such as changes to the land use diagram to enlarge the buffer between academic facilities and the Regional Park; changes to the land use diagram to create more flexibility for mixed use; minor changes to the roadway network; slight boundary revisions at the campus/community interface and at the Bellevue/Lake Road intersection; and a change to the boundary of the Phase 1 Campus to reflect field verifications of watersheds (see discussion in Section 3), each of these changes will either not change impacts or will further reduce impacts anticipated from the project

as originally proposed. None of them will create any new or more severe impacts. Accordingly, recirculation of the EIR is not required. Finally, none of the alternatives identified in the comments are considerably different from those discussed in the EIR.

#### **4.1.H Miscellaneous Comments**

This response addresses comment letters I36, I44, O3, SA5, and SA11, and the comments of public speaker PH8, as well as other similar comments, which concerned the project but did not comment on the Draft EIR. In accordance with the provisions of CEQA, no response to these comments is required. However, the comments have been included in Volume 3 of this Final EIR, and the University thanks these commenters for their input.

The University also received some comments, either as a direct addressee, by carbon copy, or at the hearing, which solely concerned the UCP Draft EIR concurrently prepared by Merced County. No separate response to the comments in these letters is provided. The University has ensured that the County has received copies of these comments for its consideration and response in connection with completion of the UCP Final EIR.

This response answers comments O26-28, O31-16 and O31-16a relating to miscellaneous issues. A MMRP as required by CEQA will be completed and submitted to The Regents for approval together with the Final EIR. The University anticipates full compliance with the provisions of the state and federal environmental laws including the ESA and CWA. The Draft EIR discusses the impacts that may require compliance with and/or permits under these laws. Section 4.9.2 of the Draft EIR discusses relevant provisions of local land use plans and policies such as those in the Merced County General Plan, Merced County Local Agency Formation Commission policies, and the City of Merced General Plan. As stated in that section, “As a State entity, UC Merced is not subject to municipal policies such as the County and City General Plans. Nevertheless, such policies are of interest to the University because University development and local development will be coincident.” Finally, the Draft EIR identifies the standard of significance used for each impact area in that section of the Draft EIR. In identifying the significance standard used, the Draft EIR text states what the standard is based on.

#### ***References***

Nissen, S. 2002. Director, Governor’s Office of Planning and Research. Compliance with Procedural Requirements of the California Environmental Quality Act - UC Merced Project.