BS139854
TENTATIVE ORDER

1. Motion to Augment Administrative Record

Petitioner Save Westwood Village's motion to augment administrative record is DENIED.

The administrative record includes "any other written materials relevant to the respondent public agency's compliance with this division . . ." (Pub. Res. Code 21167.6(e).) "A court may exercise its discretion to augment an administrative record if the evidence is relevant. . ." (Evans v. City of San Jose (2005) 128 Cal. App. 4th 1123, 1144.) However, the only evidence that is relevant is that which was before the agency at the time it made its decision. (Western States Petroleum Assn. v. Superior Court (1995) 9 Cal. 4th 559, 574 fn4.) Extra-record evidence is barred. (Id. at 578.)

Exhibits A-B, and E-L are extra-record evidence that are not relevant to the CEQA proceedings. Exhibits A-B are donor letters, pledging charitable gifts to the university. Exhibits E-L relate to the Project's capital budget approval process, which is separate and apart from the underlying CEQA proceedings. All of these documents are extra-record evidence that do not fall within Section 21167.6(e). Petitioner failed to make any showing that these records fall within any extraordinary circumstances that would allow the court to consider them in this CEQA action.

Further, the court finds Petitioner failed to exercise diligence in filing the subject motion. The University certified the record in December 2012, and provided petitioner with an Index on 12/17/12. Petitioner received a complete set on 2/6/14. Petitioner waited over six months before filing the instant motion, and only after Respondent filed its Opposition Brief to Petitioner's Opening Brief in the corresponding writ proceeding. Thus, Respondent has been deprived of an opportunity to address the evidence in its sole brief on the merits of this action. Petitioner's Reply failed to address its late motion and failure to exercise diligence.

Motion is DENIED.

2. Petition for Writ of Mandate

Petitioner Save Westwood Village's petition for writ of mandate is DENIED.

JUDICIAL NOTICE is taken of Petitioner and Respondent's exhibits. (Ev. Code 451 and 452.)

PROJECT:

The Project is the development of the Luskin Conference and Guest Center on the site of the existing Parking Structure 6 (to be demolished). The Regents of the University of California is the Lead Agency and approved the Project on 9/11/12. A Statement of Overriding Considerations was also adopted. (AR 16-17.)

STANDARD:

Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence. (Public Res. Code § 21168.5.) A rule of reason applies to the level of analysis and absolute perfection is not required. (Concerned Citizens of South Central L. A. v. LAUSD (1994) 24 Cal. App. 4th 826, 839.) A high degree of deference to agency action is implicit in the standard of review. (Western States Petroleum Ass'n v. Superior Court (1995) 9 Cal. 4th 559, 571.)

The court must uphold the EIR if there is any substantial evidence in the record to support the agency's decision that the EIR is adequate and complies with CEQA. (Laurel Heights Improvement Ass'n v. Regents of the Univ. of California (1988) 47 Cal. 3d 376, 392.) Substantial evidence is "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. (Id. at 393.) CEQA requires that an EIR reflect a good faith effort at full disclosure but it does not mandate perfection nor does it require analysis to be exhaustive. (14 CCR § 15151.) Whether other "conclusions might be reached is irrelevant." (14 CCR § 15384.)

In determining the adequacy of the environmental analysis, the court does not "pass on the correctness of the report's environmental conclusions, but only on its sufficiency as an informative document." (Laurel Heights Improvement Ass'n v. Regents of University of California (1988) 47 Cal. 3d 376, 392.) Petitioner bears the burden of presenting credible evidence that the agency's findings and

conclusions are not supported by "substantial evidence." (Jacobson v. County of Los Angeles (1977) 69 Cal. App. 3d 374, 388.)

As discussed below, Petitioner has not met its burden.

PRE-COMMITMENT:

Whether pre-commitment or post hoc rationalization has occurred is a procedural question subject to de novo review. (Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116, 131, fn. 10.) However, the critical question is whether THE TOTALITY OF CIRCUMSTANCES SURROUNDING THE PUBLIC AGENCY'S ACTION has effectively committed the agency to the project. (Ibid.)

Petitioner contends that the Regents pre-committed to the Project because it accepted a charitable donation made by the Luskins, who expressed the desire to have the Project located on-campus. However, Petitioner failed to support its theory with any factual evidence. The evidence Petitioner relies upon is extra-record evidence that is not part of the AR. Even if the court would consider this evidence, "the totality of circumstances surrounding the public agency's action" does not establish any pre-commitment.

General comments about funding of the proposed project do not equate to "approval" or pre-commitment by the decision-making body. (City of Vernon v. Bd. of Harbor Comm'rs (1998) 63 Cal.App.4th 677, 688.) CEQA does not bar the Regents from accepting the Luskin's charitable gift or adopting a budget for the project. "Approval, within the meaning of sections 21100 and 21151, cannot be equated with the agency's mere interest in, or inclination to support, a project, no matter how well defined... If having high esteem for a project before preparing an environmental impact report (EIR) nullifies the process, few public projects would withstand judicial scrutiny, since it is inevitable that the agency proposing a project will be favorably disposed toward it." (Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116, 136-137.) Further, unlike Save Tara, the Regents did not enter into a contract to constrain or waive CEQA review. There was no legislative action by the Regents approving the Luskin Center before the EIR was certified. Additionally, the 7/17/12 meeting of the Committee on Grounds and Buildings specifically noted that construction would only commence following design approval and that the Project's environmental impacts would be analyzed in an EIR pursuant to CEQA. (RJN, Ex. C.) The record here is explicit in affirming that approval of the budget did not constitute final approval, and that CEQA compliance was underway. The budget approval process does not obligate the

University to spend any dollars; rather, it allocates financial resources to ensure that funding is available for the Project. The Project did not receive final approval until 9/11/12 when the EIR was certified and the design was approved by the Regents. (AR 1, 3-5.)

Accordingly, the totality of the circumstances supports a finding that Regents did not "pre-commit" to the Project.

ALTERNATIVES:

Absolute perfection is not the standard governing a lead agency's proposed range of project alternatives. Rather, in preparing an EIR, a lead agency need only make an objective, good faith effort to provide information permitting a reasonable choice of alternatives that would feasibly attain most of the basic objectives of the project, while avoiding or substantially lessening the project's significant adverse environmental impacts. To that end, an EIR's discussion of alternatives must be reasonably detailed, BUT NOT EXHAUSTIVE. AN EIR NEED NOT CONSIDER EVERY CONCEIVABLE ALTERNATIVE TO A PROJECT OR ALTERNATIVES THAT ARE INFEASIBLE." (California Oak Foundation v. Regents of University of California (2010) 188 Cal. App. 4th 227, 275-276.)

The court finds that Regents reasonably considered Project alternatives. The Project's EIR considered three alternatives: No Project, Alternative Campus Location, and Reduced Density. (AR 1538.) The Regents expressly found that these alternatives failed to meet key project objectives, or resulted in more significant environmental impacts than the proposed Project. (AR 15-16.) The EIR analyzed a Reduced Density alternative by proposing an on-campus, stand-alone conference facility. (AR 1538-39.) The University ultimately determined that the stand-alone conference center alternative would not reduce significant unavoidable environmental impacts, and failed to satisfy key project objectives of providing: "a centrally located and welcoming environment for scholars, prospective students, alumni, and other visitors attending university-sponsored events; a facility that enables UCLA to host multi-day conferences and events with overnight accommodations that minimize travel time for conferees and allow more time for informal contact between conference participants throughout the duration of their stay; or develop a conference center for academic and scholarly exchange and provide overnight accommodations that would generate the majority of the net revenues that would enable the facility to be a self-supporting auxiliary enterprise." (AR 15, 1539.) The Conference Center Only alternative had the potential to result in additional impacts to air quality, greenhouse gas emissions, and traffic, and also

failed to meet the above objectives. (AR 1539.) Further, the purchase of an off-campus hotel is infeasible because none of the four hotels in the vicinity of the UCLA campus have adequate conference space. (AR 1539.) Substantial evidence in the AR supports the Regent's determination that an alternative conference facility without guest rooms fails to satisfy important project objectives. Accordingly, the court finds that Regents reasonably considered Project alternatives.

TOPICAL RESPONSES:

Petitioner also contends the Regent's responses to public responses were inadequate.

It is important to note from the outset that "CEQA IS NOT AN ECONOMIC PROTECTION STATUTE." (Porterville Citizens for Responsible Hillside Development v. City of Porterville (2007) 157 Cal.App.4th 885, 903; Hecton v. The People ex rel. Dep't of Transportation (1976) 58 Cal.App.3d 653, 656.) CEQA only requires evaluation of a project's impacts "on the physical environment." (Pub. Res. Code 21100 & 21151.) CEQA defines "environment" as "the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (Pub. Res. Code 21060.5.) "[T]he rule remains that economic and social change are not, in themselves, significant effects on the environment." (Friends of Davis v. City of Davis (2000) 83 Cal.App.4th 1004, 1019.)

The court critically notes that Petitioner's primary argument regarding the various topical responses is that the Project will economically harm or compete with surrounding hotels in the UCLA vicinity. Petitioner's criticisms of the EIR are almost entirely focused on economic and policy arguments. Petitioner's claims have little to do with the environment; instead, it appears Petitioner is improperly using CEQA as a vehicle to stall development because it does not want the university to compete with surrounding hotels. Regardless, this court will address each of Petitioner's concerns below.

PROJECT SIZE:

Petitioner failed to exhaust its administrative remedies with regard to the Project size. (Pub. Res. Code 21177(a); Tahoe Vista Concerned Citizens v. County of Placer (2000) 81 Cal.App.4th 577, 589.) Petitioner did not raise this issue in any of

its comments submitted during the CEQA process. Further, Petitioner relies on extra-record evidence outside the CEQA review process, and excluded from the AR. Regardless, the University fully complied with CEQA's requirement for an accurate and consistent project description. The project size remained consistent. The numbers cited by Petitioner differ only in whether or not the square footage for the parking garage is included in the total area. The EIR describe the Project in 4 components: 1) a conference and guest center; 2) a parking garage; 3) a catering kitchen; and 4) site improvements to the existing Westwood Plaza terminus. The renderings and other visual materials confirm that the same project was being reviewed for CEQA and budget purposes. (See California Oak Foundation v. Regents of the University of California (2010) 188 Cal.App.4th 227, 270-71 – holding that the description complied with CEQUA and should not supply extensive detail beyond that needed for evaluation and review of the project's environmental impact.) The only distinction is whether the 42,000 gross square foot garage was included. In the CEQA documents, the parking garage did not specify the square footage of that component because it will be located on a subterranean level under the guest facility building, and is not considered occupied space. It is commonplace to exclude parking facilities and other unoccupied areas from square footage calculations. (See, e.., Los Angeles Mun. Code 12.03.)

TOPICAL RESPONSE 1: "UNIVERSITY AFFILIATE"

This claim is well outside this CEQA action. This Court previously sustained Respondent's demurrer without leave to amend based on Petitioner's improper claim that the university is prohibited from operating an auxiliary enterprise, as defined by its internal policies. Petitioner has once again resurrected this claim, cloaked as a CEQA cause of action. This court previously found that Petitioner failed to state a claim under UCOP Bus-72 and UCOP No A-59 because these provisions impose no ministerial or mandatory duty on Regents. "To be ministerial, a decision must be one the administrative agency itself is forced to follow. It must be a STANDARD FIXED BY STATUTE OR ORDINANCE OR THE ENACTMENT OF SOME OTHER LEGISLATIVE BODY. It cannot be a standard the administrative agency itself exercised its own discretion to create and therefore which it possesses the discretion to modify or ignore should an environmental assessment reveal the standard would cause adverse environmental consequences if the agency continued to apply it." (Friends of Westwood v. City of Los Angeles (1987) 191 Cal.App.3d 259, 278.) UCOP Bus-72 and UCOP No A-59 are internal university operating policies. It is not a standard fixed by statute or ordinance or an enactment of some other legislative body.

The Regents of the University of California has broad quasi-judicial and quasi-legislative powers for internal regulation. (Miklosy v. Regents of the University of California (2008) 44 Cal.4th 876, 882-85.) The Regents of the University of California are vested by the Cal. Constitution with the legal title and management of property of the University of California and have the unrestricted power to take and hold real and personal property for the benefit of the university. Thus, the University of California is not subject to local regulations with regard to its use or management of the property held by the Regents in public trust. (Regents of the University of California v. City of Santa Monica (1978) 77 Cal.App.3d 130, 136; Hall v. City of Taft (1956) 47 Cal.2d 177, 183.) Here, the Project is intended to provide a meeting space for academic conferences and symposia at UCLA, and the hotel rooms will provide accommodations for those attending such meetings or otherwise affiliated with the University. Petitioner is demanding that the University reject its own interpretation of its own internal policies, i.e. use of the term "university affiliate," and instead adopt Petitioner's interpretation. However, the Regents has broad discretion to define its educational and research mission. (Smith v. Regents of University of California (1993) 4 Cal.4th 843, 855.)

Regardless, the Final EIR addressed Petitioner's argument in Topical Response 1. (See AR 1531 – "university affiliate" are people with a special relationship to UCLA: visiting scholars, faculty, and staff from other institutions or UC campuses and offices; international visitors and dignitaries; families of current and prospective students; patients or families of patients; alumni, emeriti; donors; administrators; and professionals doing business with or on behalf of UCLA.) Thus, the definition of "university affiliates" is perfectly consistent with the University's lawful authority to operate the Center as an auxiliary enterprise.

TOPICAL RESPONSE 2: FINANCIAL VIABILITY, DEMAND AND FUNDING FOR THE PROPOSED PROJECT

Petitioner's challenge to Topical Response 2 is a restatement of Topical Response 1 and fails to state a CEQA claim. Regardless, substantial evidence supports Regent's topical response. (AR 1532-33; 1539.)

TOPICAL RESPONSE 3: POTENTIAL FOR URBAN DECAY/BLIGHT IN WESTWOOD VILLAGE

CEQA only requires evaluation of impacts on the physical environment, not economic impacts affecting particular persons. Regardless, substantial evidence supports the finding that the Luskin Center would add 250 guest rooms, or 1.3% of

the overall market supply, which would not cause local hotels or retail uses to close. Unsatisfied demand in the West LA market was sufficient to fully absorb the Project without any adverse economic effects, and "we do not foresee any urban decay as a result of the Project." (AR 3534.)

TOPICAL RESPONSE 4: APPLICABILITY OF UC FINANCIAL POLICIES AND TAXES

Although CEQA does not require an EIR to discuss tax or financial issues, the Final EIR nonetheless provided specific analyses of whether the Project was subject to taxes. (AR 1536-37.) No Unrelated Business Income Tax liability is anticipated because no more than 25% of projected visitors are expected to be subject to UBIT, which only applies to room occupancy that is unrelated to the University's exempt education and research purposes. Further, no local tax liability is anticipated based on the University's constitutional authority exempting University property from local regulation. (AR 1537; Regents of the University of California v. City of Santa Monica (1978) 77 Cal.App.3d 130, 136; Hall v. City of Taft (1956) 47 Cal.2d 177, 183.) The taxation claim is also barred by Petitioner's ongoing prosecution of a separate lawsuit against the University regarding payment of local and federal taxes. Even cloaking that same cause of action as a CEQA challenge, Petitioner is improperly splitting its claim. (Hamilton v. Asbestos Corp. Ltd. (2000) 22 Cal.4th 1127, 1145.)

CUMULATIVE IMPACT ANALYSIS:

Substantial evidence supports the finding that the EIR fully analyzed the project's cumulative impacts. (AR 1546-47, 1672-73.)

Campus population: Petitioner's reliance on the population assumptions in the 2002 LRDP is misplaced, as those numbers have been updated by the 2009 Amendment. (AR 1546-47.)

Petitioner's parking buyout claims are akin to its other financial policy arguments. Petitioner's buyout claims are based on its disagreement with the Regents' internal discretionary decision-making on financial issues, and fails to identify any potential impacts to the physical environment. Regardless, in Topical Response 6 addresses the buy-out argument. In the absence of a formal policy to the contrary, the University has discretion to determine whether and how parking buy-out should be calculated on a project-by-project basis. (Regents of the University of California v. Superior Court (1970) 3 Cal.3d 529, 540.)

Topical Response 6 also addresses Petitioner's concerns regarding parking spaces. Substantial evidence confirms that the loss of 750 parking spaces can be absorbed by the UCLA campus without any adverse physical impact to the environment. (AR 1540-41.)

Emergency services was properly addressed. (See AR 393-97.) The Draft EIR discussed emergency services in reviewing the environmental issues that were determined to be adequately addressed by the 2009 LRDP EIR. (AR 781-83.) The Project would not require new or expanded emergency service facilities. (AR 782-83.) The Final EIR responded in detail to each of the public comments regarding potential emergency service impacts. (AR 1671-72.)

Accordingly, the Court finds that substantial evidence supports Regents' cumulative impact analysis and conclusions.

In conclusion, Regent's decision is upheld. It is presumed that Regents complied with the law, and Petitioner bears the burden of proving otherwise. (Al Larson Boat Shop, inc. v. Board of Harbor Commissioners (1993) 18 Cal. App. 4th 729, 740.) Any alleged failure to comply must also be shown to be prejudicial, i.e., the alleged error or omission is of such magnitude as to "preclude informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process. (Id. at 748; Pub. Res. Code 21005.)

"A court's task is not to weigh conflicting evidence and determine who has the better argument . . . We have neither the resources nor the scientific expertise to engage in such an analysis, even if the statutorily prescribed standard of review permitted us to do so. Our limited function is consistent with the principle that 'the purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always favor environmental considerations.'" (Laurel Heights Improvement Assn v. Regents of University of California (1988) 47 Cal. 3d 376, 393.)

The Petition is DENIED.