UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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San Francisco, CA 94105

FEB 0 4 2013

Mr. Marc Fugler
U.S. Army Corps of Engineers, Sacramento District
1325 J Street, Room 1350
Sacramento, California 95814-2922

Subject: Draft Environmental Impact Statement for the Elverta Specific Plan Project, Sacramento County, California (CEQ #20120388)

Dear Mr. Fugler:

The U.S. Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement (DEIS) for the Elverta Specific Plan Project pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act.

EPA provided comments on the Administrative Draft Environmental Impact Statement (ADEIS) on August 31, 2012. While we appreciate efforts by the U.S. Army Corps of Engineers to coordinate with our agency throughout the environmental review process, several of the key issues EPA has raised have not yet been addressed. We continue to have concerns about the potential cumulative impacts to Waters of the U.S. and air quality associated with the project, particularly when considered in concert with the multiple housing, transportation, and other development projects proposed in Sacramento and Placer Counties. These impacts represent a daunting cumulative burden that would be difficult to mitigate.

While we understand that the aquatic functions of resources on the project site have been degraded over several decades, we remain concerned that filling vernal pools removes the opportunity for restoration. Restoration opportunities are of significant value given California's estimated 80-90% loss in vernal pools by 2005, as compared to habitat that existed in the baseline period of 1976-1995.

We have rated the DEIS as Environmental Concerns – Insufficient Information (EC-2) (see enclosed EPA Rating Definitions) based on the absence of a clear project need; cumulative water and air quality impacts; and uncertainty over whether mitigation consistent with the 2008 Compensatory Mitigation Rule can be achieved. We are also concerned that the No Action Alternative does not appear to be thoroughly analyzed. Recommendations to address these issues, as well as additional concerns, are provided in our attached detailed comments.

Please note that, as of October 1, 2012, EPA Headquarters no longer accepts paper copies or CDs of EISs for official filing purposes. Submissions after October 1, 2012 must be made through the EPA's new electronic EIS submittal tool: e-NEPA. To begin using e-NEPA, you must first register with the EPA's electronic reporting site - https://cdx.epa.gov/epa_home.asp. Electronic submission does not change requirements for distribution of EISs for public review and comment, and lead agencies should

still provide one hard copy of each Draft and Final EIS released for public circulation to the EPA Region 9 office in San Francisco (Mail Code: CED-2).

We appreciate the opportunity to review this DEIS, and are available to discuss our comments. If you have any questions, please contact me at 415-972-3521, or contact Jen Blonn, the lead reviewer for this project. Jen can be reached at 415-972-3855 or blonn.jennifer@epa.gov.

Sincerely,

Kathleen Martyn Goforth, Manager
Environmental Review Office (CED-2)

Enclosures: Summary of the EPA Rating System
EPA Detailed Comments

Cc via email:
Terry Adelsbach, U.S. Fish and Wildlife Service
Mike McKeever, Sacramento Area Council of Governments
Larry Robinson, Sacramento Metropolitan Air Quality Management District

U.S. EPA DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE ELVERTA SPECIFIC PLAN PROJECT, SACRAMENTO COUNTY, CALIFORNIA, FEBRUARY 4, 2013

Purpose and Need

Section 1.4 of the Draft Environmental Impact Statement (DEIS), entitled Purpose and Need, does not appear to establish the project need. A DEIS must explain the "underlying purpose and need to which the [Lead] Agency is responding in proposing the alternatives, including the proposed action" (40 C.F.R. 1502.13). The need statement should enable resource agencies and the public to understand why a project is being pursued that would significantly adversely impact the environment. Referencing other documents where the project need may be explained is not sufficient. In addition, we are concerned that the project purpose may be overly specific in that it calls for development within *north-central* Sacramento County. In the absence of a clearly defined need, it is not possible to determine whether or not this is the appropriate scope.

Recommendations for the Final Environmental Impact Statement (FEIS):

- Augment section 1.4 to clearly explain the project need in the context of other reasonably foreseeable development projects in the area, and clarify the remaining needs for additional housing and commercial development that the Elverta project could help address. Please include a table which clearly provides population growth, housing, and jobs demand projections from all data sources that are used in the analysis, and ensure that data are used from the most recent Metropolitan Transportation Plan and Sacramento County General Plan. Display data on housing that would be provided by the Elverta project as well as other reasonably foreseeable projects in the area.
- Unless the project need must be met within north-central Sacramento, modify the project purpose to include the broader geographic region in which housing needs could be met.

Analysis of Alternatives

The DEIS states that development on the 563 acre area, comprised of parcels that are currently participating in the Clean Water Act Section 404 (CWA 404) permitting process, is assessed at the project level. The DEIS also includes a programmatic level assessment of the full build out of the 1,745 acre plan area, which also includes parcels that are not currently participating in the CWA 404 process. Alternative D, the No Action Alternative, presents a plan for development under a scenario in which a CWA 404 permit is not issued. It calls for development of 530 residential units on 547.3 acres within participating parcels, and 827 units on 1413.7 acres at full build out. The environmental analysis often states that Alternative D has comparatively "less" impacts to resources; however, actual impacts are seldom fully described. Generally stating that Alternative D could result in adverse impacts which would be, "...subject to local land use approvals and those measures contained in the 2007 EIR..." (p.4.9-6) is not sufficient for meeting the disclosure requirements of the National Environmental Policy Act (NEPA).

Recommendation for the FEIS:

Analyze and clearly describe impacts from Alternative D, including acreages and other quantitative measures of impacts. For examples of where this information is missing, see the following sections: Biological Resources (p.4.4-18), Hazards and Hazardous

Materials (p.4.9-6), Hydrology, Water Quality and Flooding (p.4.10-12), Noise (p. 4.12-8), Indirect Impacts (p.4.15-5), and Cumulative Impacts (p.4.16-3).

Required Information Under NEPA

The following elements are required by Section 102(2) of NEPA and do not appear to be in the DEIS: (1) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and (2) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Recommendation for the FEIS:

Ensure that all components of NEPA Section 102(2) are addressed in the FEIS.

Cumulative Impacts

The cumulative impacts analysis identifies proposed and locally approved development projects, including East Antelope Specific Plan, Placer Vineyard Specific Plan, Dry Creek-West Placer Community Plan, and Sutter Point Specific Plan. The Placer County Conservation Plan and the South Sacramento Habitat Conservation Plan are not discussed. We are aware that draft documents for both projects include projections of approximate levels of development and impacts to the aquatic resources in Placer and Sacramento Counties. While we recognize that EISs have not yet been published for these two projects, adding information from their planning processes to the FEIS would provide for a more complete discussion of likely cumulative impacts. In addition, while p. 4.16-4 states that the Sacramento Valley Air Basin (SVAB) is the geographic scope for the cumulative air analysis, several reasonably foreseeable projects located within this area are not mentioned. We note that the Suncreek and Folsom South of U.S. Highway 50 Specific Plans included a more comprehensive list of projects.

EPA is also concerned that quantitative water quality, habitat, and air quality impacts associated with past, present, and reasonably foreseeable projects are not provided. It is therefore not possible to clearly understand cumulative impacts. EPA is aware that much of this information is readily available through other U.S. Army Corps of Engineers (Corps) environmental documents.

Recommendations for the FEIS:

- Discuss the approximate levels of development and impacts projected for the Elverta cumulative impacts area (as defined in section 4.16) that are being considered within the Placer County Conservation Plan and the South Sacramento Habitat Conservation Plan processes.
- Provide quantitative data on impacts to Waters of the U.S., including vernal pool impacts, for the reasonably foreseeable projects listed on p 4.16-3.
- Provide a table with criteria air pollutant and precursor emissions estimates from all applicable reasonably foreseeable future actions located within the geographic scope of the cumulative air analysis (where information is readily available). Include construction and operational phases, the project size (in acres), and the number of residential units planned as part of each project.

- Clarify which reasonably foreseeable projects were used to analyze cumulative impacts on groundwater supplies and traffic conditions; provide quantitative information on the relative impact from each of the projects to the extent that it is available through other Corps environmental documents.

Aquatic Resources

EPA is concerned that, "...it is anticipated that there would be a net loss of wetland function within the project site watersheds due to lack of mitigation opportunities and available mitigation banks within the project site watershed" (p.4.16-7). Under Alternative A (Applicant's Preferred Alternative) and under Alternative C, "all of the 27.57 acres of jurisdictional Waters of the U.S. within the participating parcels and backbone infrastructure would be filled," including 11.23 acres of vernal pools (p.4.5-1). In addition, Alternative B would fill 22.98 acres of jurisdictional waters and 6.98 acres of vernal pools (p.4.5-6). We understand that the aquatic functions of resources on the project site have been degraded over several decades. While the proposed project includes on-site creation and enhancement of certain wetland types, on-site mitigation is not proposed for vernal pools. Filling vernal pools removes the opportunity for restoration, which is significant given California's estimated 80-90% loss in vernal pools by 2005, as compared to habitat that existed in the baseline period of 1976-1995.

Mitigation Credits & Ratios

The strategy for mitigating impacts to aquatic resources presented in the DEIS is unclear. Mitigation Measure 4.1a calls for the purchase of habitat creation credits at Corps and U.S. Fish and Wildlife Service (FWS) approved mitigation banks for all direct and indirect effects to habitat for federally listed vernal pool species. There are many projects seeking approval in Sacramento County and Placer County, creating considerable competition for existing credits. The DEIS does not demonstrate that necessary mitigation credits would be available; nor is EPA aware of sufficient available mitigation credits.

Further, Mitigation Measure 5.1 states that "[t]he project proponent would ensure that any loss of Waters of the U.S. would be compensated for by restoration or creation of waters at a ratio no less than 1:1." Text on p. 4.5-2 explains that a ratio greater than 1:1 may be necessary to account for the method of compensatory mitigation, the likelihood of success, differences in functions, and temporal losses, among other reasons. This position does not appear to be tied to a mitigation measure, and details on how ratios would be determined are not provided. Table 4.5-3 provides an onsite creation to impact ratio of 0.9 to 1 for Alternative A. The 0.9:1 ratio is inadequate to offset losses of wetlands and other Waters of the U.S., particularly in light of the national and State no-net-loss policies. It is unclear how a mitigation ratio would be achieved that is consistent with the 2008 Compensatory Mitigation Rule and the Corps South Pacific Division's recently issued Standard Operating Procedures (SOP) for establishing mitigation ratios.

In addition, it is unclear whether the Corps intends to allow mitigation credit for wetlands created in drainage ways that primarily have a water quality polishing function. Such wetlands are "treatment wetlands" and credit should not be given for these features due to the likelihood of low water quality. Credit can, however, be given for wetlands created downstream of wetlands that have the primary polishing function, including stream corridors. As an example, this issue was addressed for the recently permitted Rio del Oro project.

Recommendations for the FEIS:

- EPA recommends that the Corps conduct a comprehensive analysis of mitigation resources in order to assess whether this project, and the others currently seeking CWA Section 404 permits in the area, have access to sufficient compensatory mitigation resources. Provide clear information and detailed locations on available, approved mitigation credits that could be used for (1) currently participating parcels and (2) full build out including currently non-participating parcels.
- Ensure that the mitigation strategy proposed within the FEIS is consistent with Mitigation Measure 5.1 by revising or clarifying proposed mitigation ratios that are less than 1:1, including the 0.9:1 ratio proposed for Alternative A on p. 4.5-5.
- Provide a statement of how mitigation ratios are consistent with the Mitigation Ratio SOP or, if not consistent, a justification for why there is a deviation from the SOP.
- Commit to avoid introducing any untreated or unpolished stormwater into any wetlands for which onsite compensatory mitigation credits would be issued.

Out-of-Kind Mitigation

In addition to purchasing mitigation credits, the DEIS states, "...the applicant is proposing to replace some wetland habitats, such as vernal pools and wetland swales, with increases in other types (such as seasonal wetlands) or the introduction of new wetland types (such as freshwater marsh)..." (p. 4.5-5). Out-of-kind mitigation is the lowest ranking form of compensatory mitigation according to the soft hierarchy in the 2008 Compensatory Mitigation Rule. This form of compensation, therefore, should only be allowable under outstanding circumstances.

Recommendations for the FEIS:

- Commit to replace all of the vernal pools in the project area through the purchase of in-kind credits from a mitigation bank (approved by Corps, FWS, and other authorities on the interagency review team) or through in-kind creation, restoration, or enhancement. Remove text which proposes out-of-kind mitigation.
- If the Corps does not act on EPA's above recommendation and chooses to allow out-of-kind mitigation for vernal pools, describe the outstanding circumstances that make out-of-kind of mitigation acceptable.

Least Environmentally Damaging Practicable Alternative (LEDPA)

Page 1-8 states, "This Draft EIS includes information regarding the Applicant's Preferred Alternative and alternatives that the [Corps] will use in making its determination of the LEDPA and factual determinations." It is unclear if the Corps intends to use supplemental information in making these determinations. EPA believes that the alternatives analysis in the DEIS does not contain sufficient detailed information for the Corps to identify the LEDPA in compliance with the 404(b)(1) Guidelines (Guidelines). Necessary information includes, but is not limited to, an avoidance and minimization analysis and description of how costs, logistics and technical feasibility were used to eliminate alternatives with lesser impacts to wetlands. Disclosure of this information is critical to the decision-making process because only the LEDPA that achieves the basic project purpose, while not causing or contributing to significant degradation of the aquatic ecosystem, can be permitted by the Corps.

Recommendation for the FEIS:
Include a 404(b)(1) Alternatives Analysis in order to demonstrate the project's compliance with the Guidelines and support the identification of the LEDPA by the Corps. The Alternatives Analysis should demonstrate that the proposed project is avoiding and minimizing damage to waters to the maximum extent practicable.

Impacts on Waters of the U.S.
The proposed construction phasing (Table 2.3) schedules project buildout from 2013 to 2032. Without phased grading, we are concerned that vernal pools and other Waters of the U.S. could unnecessarily be filled for a future housing demand that may not occur. In addition, it is unclear whether direct on-site and indirect off-site impacts to biological and aquatic resources from roadways and other backbone infrastructure were fully assessed.

Recommendations for the FEIS:
- Limit grading to areas where construction is scheduled within five years.
- Clarify whether all roadways and other backbone infrastructure across the entire site (including participating and non-participating parcels) were analyzed at the project level. If not, provide a quantitative and qualitative analysis at the highest level that can be determined at this stage in the project; discuss where and how compensatory mitigation for these impacts would occur.
- Augment the description and analysis of indirect impacts from off-site roadway improvements so that it includes acreages, locations, and other specific information on impacts to biological and aquatic resources.

Stormwater
The DEIS relies on permitting conditions under the National Pollutant Discharge Elimination System (NPDES) to protect stormwater for all alternatives in section 4.10. Details on the NPDES program and the specific permit conditions that would be committed to are not included, and this documentation does not support the claim that impacts would not be significant.

Recommendations for the FEIS:
- Specify how the NPDES permit would ensure that stormwater quality is not degraded, and identify specific Best Management Practices that would be incorporated into the permit.
- Clarify which agency would approve the Comprehensive Drainage Plan that is called for in Mitigation Measure 10.2 on p. 4.10-7.

Floodplain Impacts
Under Alternatives A and C, approximately 10 acres of development is proposed within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain. The DEIS states that, "...the project proponent would acquire a Letter of Map Revision from FEMA..." and, "The updated extent of flooding...would not interfere with the proposed housing on site" (p.4.10-8). Coordination with FEMA is not discussed, and the likelihood that FEMA would revise their floodplain designation is unclear.

Recommendation for the FEIS:
Describe past coordination with FEMA regarding development within the 100-year floodplain, and commit to only begin construction in the 100-year floodplain area *after* FEMA has issued a Letter of Map Revision stating that the area to be developed is no longer considered within the 100-year floodplain.

Air Quality

The project site is located in a federally designated nonattainment area for ozone and particulate matter smaller than 10 and 2.5 microns (PM10 and PM2.5). EPA is concerned with long-term health impacts from emissions from induced vehicle miles traveled (VMT) that would result from the development of up to 2,456 new housing units under the proposed project, and up to 6,190 new housing units under full build out of the plan area.

Criteria Air Pollutants & General Conformity
The DEIS states that the project is below the de minimis threshold for EPA's general conformity rule (p. 4.3-4). Operational emissions (p. 4.3-6) do exceed the de minimis threshold, and are not included in the conformity analysis. We recognize that the Corps has historically asserted that operational emissions from development projects are not included in the conformity analysis because the Corps lacks continuing program authority to control them. We believe that a full discussion of the Corps' rationale for excluding operation emissions is needed in order to better document that all applicable emissions are included in the conformity analysis.

In addition, the DEIS (p. 3.3-7) cites the general conformity rule incorrectly. The general conformity rule was revised April 5, 2010 (75 FR 17257). The EPA deleted the provision in 40 CFR 93.153 that required federal agencies to conduct a conformity determination for regionally significant actions where the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

Recommendations for the FEIS:

- If the Corps chooses not to include operational emissions in the conformity determination, discuss the rationale for excluding these emissions.
- Include a draft general conformity determination in the FEIS, either as a detailed summary or as an appendix.
- Update p. 4.3-1 so that it also lists the nonattainment status of PM2.5 and includes the de minimis level of 100 tons per year.
- Revise footnote #2 in Table 4.3 so that it correctly lists the federal PM2.5 de minimis threshold.
- Remove the outdated general conformity provision from the top of p. 3.3-7.
- Commit to implement the recommendations from the *Air Quality and Land Use Handbook: A Community Health Perspective* that are listed on p. 4.3-9 of the DEIS.
- Augment Mitigation Measure 3.3 so that it requires the project proponent to have an air quality management plan approved by the Sacramento Metropolitan Air Quality Management District (SMAQMD) *before* construction begins.

Automobile Transportation
Mitigation measures for traffic impacts call for widening roadways. Several of these mitigation measures are stated to be inconsistent with the General Plan, have potential adverse environmental effects, be unfunded, and be outside of the project proponents' authority to implement. In addition, we are concerned with the rationale behind the indirect air quality impacts discussion, which states, "Proposed roadway development and modifications would reduce congestion and improve traffic flow. This would reduce emissions from the idling vehicles at these intersections and roadway segments resulting in improved conditions. These impacts are therefore considered less than significant." Long term increases in traffic volumes that could result from widening roadways are not discussed.

Recommendations for the FEIS:

- Commit to partner with the county and SACOG to develop and implement a plan for mitigating transportation impacts that is consistent with regional planning goals and minimizes long-term air emissions *before* construction begins.
- Analyze and discuss the potential for long term increases in traffic volume, and associated air emissions, which could result from implementation of the mitigation measures in section 4.14 that call for widening roadways. Consider whether alternative mitigation measures are needed, such as those recommended for transit coordination below.

Greenhouse Gas Emissions (GHGs) & Sustainability
EPA is concerned with the levels of GHGs from operations under each action alternative, ranging from 132,411 to 138,959 metric tons/year of CO2e. As described in the DEIS, these emissions "would impair the state's ability to implement [California Assembly Bill] 32" (p.4.3-11). Further, the DEIS explains that operational emissions from the action alternatives would "conflict with local regulations pertaining to GHGs" (p.4.3-12). The majority of operational GHGs are attributed to on-road vehicles. We recognize that impacts to GHG emissions are not unique to the Elverta project; the many development projects proposed in the region share this impact, further exacerbating the concern.

EPA recognizes that project proponents would be required to develop a GHG Reduction Plan, which would be approved by the County in consultation with SMAQMD. The plan would incorporate green building and development measures, with the goal of reducing GHG emissions by 30 percent from business as usual 2006 emission levels. We are pleased to see this commitment and the list of measures (Appendix J) that project proponents may include in their plans. Collaborating with transit agencies to integrate transit, such as a bus rapid transit system, into the overall site design appears to be an additional opportunity that could significantly lower long term emissions from the project.

Recommendations for the FEIS:

- To further minimize GHG emissions from on-road vehicles and assist the region in complying with air quality standards, we recommend that the FEIS include a strong commitment for project proponents to partner with local transit agencies to accommodate transit access by removing "if warranted" from Mitigation Measure 14.7. Neighborhood design should include development of transit routes to maximize

ridership, and bus stops should be identified early so that they can more easily be incorporated into streetscapes.

- Consider using a grid pattern for roadways to reduce the travel distance for vehicles, bikes, and pedestrians for local trips. Grid patterns can also make more trips possible to complete without use of a vehicle.
- Modify Mitigation Measure 3.7b so that it requires the proposed GHG Reduction Plan to be approved by SMAQMD in addition to the County, and also requires the GHG Reduction Plan to be approved *before* construction.
- Consider obtaining Leadership in Energy and Environmental Design (LEED) for Neighborhood Development (ND) Certification for the project area or a portion of it. LEED-ND certification provides independent, third-party verification that a neighborhood development project is located and designed to meet high levels of environmentally responsible, sustainable development, with principles that are in line with the Sacramento Region Blueprint's growth principles.
- Consider obtaining LEED certification for homes, schools, and commercial buildings.
- Consider exceeding CALGreen standards in priority areas by meeting "optional" standards, including those for: pollutant control, indoor air quality, renewable energy, energy and water conservation, and low impact development.
- Consider recycled materials that could be used to replace raw materials for particular infrastructure components. Some options include tire-derived aggregate, crushed recycled concrete, recycled asphalt pavement, and rubberized asphalt concrete.
- Consider creating a policy to use locally sourced materials to reduce air emissions from transport.

Public Safety

Mitigation Measure 9.6 recommends that water supply wells, septic tanks, leach lines, and cisterns within the project area "should" be properly destroyed when their use ceases, but does not include a commitment. Failure to properly close such features could pose a public hazard.

Recommendation for the FEIS:

Strengthen Mitigation Measure 9.6 on p. 4.9-6 to state that the measure "shall" be implemented (rather than "should") within each parcel before construction is complete.