UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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San Francisco, CA 94105-3901

April 15, 2009

Ms. Nancy Haley
U.S. Army Corps of Engineers
Sacramento District
1325 J Street, Room 1480
Sacramento, CA 95814-2922

Subject: Final Environmental Impact Statement for the University of California at Merced Campus and University Community Project in Merced (CEQ #20090060)

Dear Ms. Haley:

The U.S. Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (FEIS) for the University of California at Merced (UCM) Campus and University Project (Project) pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. This letter conveys our comments, which were also prepared under the authority of, and in accordance with, the provisions of the Federal Guidelines (Guidelines) promulgated at 40 CFR 230 under Section 404(b)(1) of the Clean Water Act (CWA). We appreciate your office's accommodation of our request for additional time to submit our comments.

The EPA appreciates having had the opportunity to provide input as a cooperating agency during the development of the Draft Environmental Impact Statement (DEIS) for the Project. Unfortunately we did not have an opportunity to review a preliminary FEIS, including the response to comments; therefore, we were unable to ensure that the concerns raised in our DEIS comment letter were sufficiently addressed prior to publication of the FEIS. The remainder of this letter identifies where our DEIS comments have been addressed, and expands on our continuing concerns.

Comments Addressed

Thank you for revising the performance standards for created mitigation wetlands and committing to use appropriate reference wetland site conditions. We acknowledge the addition of Cumulative Mitigation Measure HYD-3c which provides details of a water conservation plan to help address our concerns over depleting groundwater. The FEIS also addresses our concerns over impacts to surface waters due to groundwater pumping. We note that incorrect air quality information has been updated and that Mitigation Measure AQ-1d has been added to further address construction emissions.

Primary Continuing Concerns

Clay Playa

The EPA raised concerns over potential direct and indirect impacts to the clay playa area and recommended UCM and Merced County work together to develop a joint management plan to protect this resource that was previously designated an Aquatic Resource of National Importance by the EPA. Thank you for providing figure 3.0-1 to illustrate that the clay playa proper and its contributing watershed are outside of the development footprint of the Project. Though not explicit in our DEIS comments, the EPA also considers the lands to the southwest -- between Lake Yosemite, the irrigation canal, and the Campus -- to be part of the clay playa area and potentially subject to indirect Project impacts or development pressures from other projects. We understand that the Long Range Development Plan (LRDP) policies are intended to protect biological resources from Project impacts, but remain concerned that the clay playa area remains vulnerable to direct and indirect impacts that could result from regional development to meet future growth projections or induced by the Project. We appreciate UCM's commitment to work with the County to protect the clay playa area, and continue to recommend development of a comprehensive conservation plan for the area.

Wetland Mitigation

The EPA continues to have concerns that UCM may not be required to replace vernal pool and swale wetlands in-kind, as previously discussed, and we continue to recommend the Corps make in-kind mitigation a special permit condition. The EPA previously commented that the Corps and UCM should commit to in-kind mitigation as compensation for direct impacts to 85.05 acres of vernal pool and swale wetlands. The FEIS response to comments states that UCM "...is committed to providing in-kind mitigation" for these resources, but continues to qualify this by stating that in-kind mitigation will depend on the suitability of the conditions of available lands in Merced County. The response also suggests that the reason for a high preservation ratio is to compensate for any in-kind mitigation shortfalls. The EPA considers the high preservation ratio to be compensation for impacts to functions of vernal pools and swale wetlands on the Project site and not an alternative to in-kind mitigation. This is based on previous coordination and the DEIS discussion that preservation and management are primarily intended to ensure no net loss of wetland function, while the restoration and creation components are to ensure no net loss of wetland aerial extent (p. 4.4-100). In the event UCM is unable to identify sufficient opportunities for in-kind mitigation for these resources, we suggest the Corps, UCM and the EPA reconvene to determine how best to address this mitigation shortfall. The Record of

Decision (ROD) should commit to making in-kind mitigation a permit requirement and to future coordination if in-kind mitigation is deemed infeasible.

Cumulative Impacts

The EPA suggested the Corps and UCM expand the cumulative impacts analysis in the FEIS to discuss impacts to wetlands from specific projects, knowing that proposed projects, such as the Yosemite Lake Estates, were not mentioned. This particular project would have a negative impact to wetlands in the Project area. The main point of the EPA's comment was that the approach used in the DEIS analysis did not provide sufficient information to describe the past and continuing impacts of development trends on wetlands. The DEIS discussed past impacts to vernal pools in the San Joaquin and Central Valleys, and we note the update by Holland in the FEIS response to comments indicating that, between 1986 and 2005, 23,835 acres of grassland/vernal pool habitat had been lost in Merced County, alone. What is still lacking is a discussion of expected impacts due to development trends in the area. The EPA does not disagree with the planning approach, but we do find the results to be insufficient to demonstrate what cumulative wetland impacts are anticipated in the Project area. This need not be presented in specific project acreages, but a quantitative estimate of future impacts, based on expected development and local plans, would be valuable.

As described in the DEIS, "the grassland-vernal pool landscape is the single largest remaining block of pristine unfragmented vernal pool habitat in California (USFWS 2005)." Given the importance of these resources, an expanded discussion of anticipated future cumulative wetland impacts from the proposed Project and reasonably foreseeable development in the area is appropriate. Instead, the DEIS discussion only provides City of Merced General Plan build out projections and lacks any discussion of the anticipated wetland fill that could result. This lack of information is attributed to not having detailed land surveys that would be performed for individual projects. The response to comments states that the DEIS identified 2,723 acres of grassland/vernal pool habitat that would be affected by other developments in the area, but no citation is provided for this information, nor does it appear to be provided within the cumulative impacts to biological resources discussion. The EPA continues to find the discussion of cumulative impacts to wetlands in the Project area to be insufficient.

Growth Inducing Impacts

Potential impacts from growth induced by the Campus and Campus Community warrant further discussion. The EPA recommended an expanded discussion of growth induced impacts be included in the FEIS, with special consideration given to the planned Yosemite Lake Estates, and areas along La Paloma Road and in the foothills east of the campus. The response to comments states that impacts from the proposed Yosemite Lake Estates would need to be addressed by the project proponent, and refrains from any substantive discussion of what these impacts could be. As referenced in our DEIS comments, the 2009 Summary Report for this project clearly states that it is intended to meet the need for additional housing in Merced, particularly growth induced by UCM. The FEIS response to comments also concludes that the potential for growth induced impacts in areas north, northeast, and east of the Project are low because these areas contain sensitive resources or are protected by conservation easements. EPA acknowledges that conservation easements are generally protective mechanisms against growth, but we disagree that the presence of sensitive resources necessarily prevents development, as is

demonstrated by the intent of UCM to construct the Project, which would impact sensitive resources such as vernal pools and swale wetlands. We continue to find the discussion of growth inducing impacts to be too narrow and suggest that an expanded discussion is needed to disclose the potential indirect impacts from the Project.

Water Supply

The commitment to implement a recycled wastewater facility remains unclear and should be clarified in the ROD. The EPA recommended, in our DEIS comments, that UCM commit to developing a recycled wastewater treatment facility to increase water conservation. The FEIS response to comments states that "the Campus is already committed to implement water conservation programs and development of alternate sources of water, including a recycled water plant…" (p. 3.0-50), but later states that UCM will "evaluate the feasibility" of such a facility for irrigation purposes (p. 3.0-53). The EPA continues to recommend UCM build and operate a recycled wastewater treatment facility and include this commitment in the ROD.

We appreciate the opportunity to review this FEIS and look forward to continued coordination with the Corps and UCM during the Clean Water Act Section 404 permit process. When the ROD is published, please send a paper or electronic copy to the address above (Mail Code: CED-2). If you have any questions, please contact me at 415-972-3521, or contact Paul Amato, the lead reviewer for this project. Paul can be reached at 415-972-3847 or amato.paul@epa.gov.

Sincerely,

Connell Dunning

FOR Kathleen M. Goforth, Manager
Environmental Review Office

cc: Mr. Brad Samuelson, UC Merced;
Dr. Jeffrey R. Single, California Department of Fish and Game;
Ms. Cay Goode, U.S. Fish and Wildlife Service;
Mr. Dale Harvey, Central Valley Regional Water Quality Control Board;
Robert Lewis, County of Merced Planning and Community Development