
MASTER RESPONSE 13: WETLANDS MITIGATION

Several comments questioned the efficacy of the wetlands mitigation proposed in the UCP DEIR. The requirement for mitigation of wetland impacts is established in the UCP Plant and Animal Policies and Implementation Program. No additional mitigation was deemed necessary. Plant and Animal Resources Policies PA 1.1, PA 1.3, and PA 1.4 would ensure protection of avoided on-site wetlands and all off-site adjacent wetlands. Implementation of Plant and Animal Resources Policy PA 1.2 would require all Specific Plan applicants to obtain the appropriate permits and regulatory approvals prior to development. Plant and Animal Resources Policy PA 1.6 requires project applicants to prepare habitat mitigation plans, acceptable to the USCOE, USFWS, and CDFG, that achieve no net loss of wetland function and values by meeting established ratios for wetland enhancement/restoration and off-site compensation for the loss of wetland functions (including habitat functions for special-status species) within the Community Plan Area. To achieve “no net loss of wetland functions and values,” the habitat mitigation plans will be designed to compensate for the loss of wetlands at a three to one ratio through a combination of compensatory actions that restore/enhance, create, or preserve habitat.

UCP Implementation Program 4.10 establishes the minimum requirements for a Habitat Mitigation Plan.¹

The HMP requirements are that the proposed mitigation be implemented in a manner consistent with a landscape-scale approach to conservation whenever feasible. The performance standards for the UCP require the long-term conservation of wetland functions and values, which will be more readily attained through the preservation and management of larger, contiguous areas. Recognizing that there is some possibility of compensation lands being preserved within areas that are inappropriate in terms of the larger regional context, paragraphs 3 and 4 on page 4.4-31 of the UCP DEIR are amended as follows:

Impacts to wetland habitats will be compensated as follows:

¹ Accordingly, each Habitat Mitigation Plan must achieve the following level of performance:

- (1) no net loss of wetland functions and values;
- (2) avoidance of jeopardy to any federally or state-listed endangered or threatened species; and
- (3) minimization of impacts to affected annual grassland or other upland habitats.

To achieve this level of performance, each Habitat Mitigation Plan must include:

- (1) all permit conditions from state and federal resource agencies;
- (2) mechanisms for long term protection, monitoring and maintenance of protected habitats;
- (3) specific design criteria to protect on-site and off-site avoided habitats; and
- (4) specifications of buffers and other habitat protective measures.

Mitigation that, at a minimum, meets or exceeds the following: The County shall ensure that three acres of wetlands will be preserved, enhanced, restored, or created for each acre lost. Wetland habitats will be mitigated in-kind to the maximum extent possible. The mitigation wetlands will also be located immediately adjacent to other preserved wetlands of similar type whenever feasible to avoid creating isolated preserves where function and value cannot be maintained over the long-term.

Wetland Preservation as Mitigation

Mitigating the effects of the UCP on wetlands by preserving similar wetlands and their surrounding uplands, as required by Policy PA 1.6, is consistent with USACE mitigation policy. USACE mitigation policy allows preservation of existing wetlands and other aquatic resources in conjunction with restoration, rehabilitation, establishment and enhancement activities where “it is demonstrated that the preservation will augment the functions of the established, restored, rehabilitated or enhanced aquatic resource” (RGL 01-1). USACE policy also allows for preservation as the sole basis of mitigation and for mitigation credit to be given for preserving upland areas where the protection and management of such upland areas enhances the overall value of the mitigation project. Preservation also is routinely required by the US Fish and Wildlife Service as the cornerstone of mitigation designed to compensate for impacts to vernal pools and seasonal wetlands where they are considered habitat for threatened or endangered species. As is demonstrated by the stated requirements of the HMP, the UCP has been developed to be consistent with these policies.

The majority of aquatic habitats that would be affected by implementation of the UCP are vernal pools and related seasonal wetlands. Acquisition and protection would provide mitigation by reducing potential existing and future threats to these aquatic habitats and similar habitats in the region. These threats include:

- Many agricultural activities, such as normal plowing and disking that are not regulated under Section 404 of the Clean Water Act can seriously degrade the functional value of these wetlands;
- A portion of these wetlands may not be regulated under Section 404 of the Clean Water Act because they may be isolated and may not otherwise have a nexus to interstate commerce;
- Uplands surrounding vernal pools and other seasonal wetlands are not regulated pursuant to Section 404 of the CWA. As a result, these uplands can often be substantially modified with the result being that the adjacent aquatic habitats are adversely affected; and
- Activities on private lands that are in violation of the Section 404 CWA or take prohibitions of the ESA may occur and be undetected. Placement of lands under conservation easements provides additional legal protection and a monitoring program to ensure compliance. Preservation as mitigation would reduce the potential for these threats to occur on the preserved lands. The reduction in threat to sensitive wetland resources can be deemed to compensate for the loss of some wetland resources.
- Other unregulated activities that occur within watersheds of wetlands, but not within wetlands themselves could affect watershed integrity.

No Net Loss of Wetland Functions and Values

UCP policies have been designed to ensure that a sufficient amount of wetlands will be preserved, enhanced/restored or created to meet the “no net loss of wetland functions and values criteria”. In ensuring no net loss of wetland functions and values, mitigation measures in the DEIR rely primarily on preservation and enhancement/restoration, particularly with regard to vernal pools because successful creation of vernal pools has had limited success to date and has not been reliable. (Creation of vernal pool habitat will depend on approvals of the resource agencies, and is not anticipated unless future science and technology improve the reliability of successful creation.)

The County will require the preparation of wetland functional assessments as part of the development of Habitat Mitigation Plans for each sub area specific plan within the UCP area. The functional assessment method will quantify the functions provided by a wetland, and will be applied to calculating the quantity of wetland functions lost due to development, and thus that must be replaced to have no net loss.

The quantity of functions lost will depend on the area and condition of the wetland. Not all wetlands provide comparable functions. For example, many of the vernal pools located within the UCP area have been degraded to varying degrees as a result of agricultural practices, disruption of their hydrological basins, habitat fragmentation and other direct and indirect effects. Relatively unaltered vernal pools would provide greater quantities of ecological functions.

Therefore, the functions and values of wetlands lost as a result of development could be replaced by either successful creation of wetlands and thus increasing the wetland area providing functions, or by restoring/enhancing degraded wetlands to provide a greater quantity of ecological functions than they provide in their current condition. It is this later approach that will likely be emphasized in Habitat Mitigation Plans under the UCP. Lastly, as is noted elsewhere on this FEIR, the HMPs prepared under the UCP must receive approval by the USACE, USFWS, CDFG and any other relevant state and federal regulatory agencies.