

COMMENT LETTERS



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

OCT 04 2001

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Merced, California 95348-1959

Robert E. Smith
Planning Director
UC Merced Development Office
3351 M Street, Suite 240
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Dear Mr. Notini and Mr. Smith:

Thank you for the opportunity to review and provide comments on the Draft Environmental Impact Reports (DEIRs) for the County of Merced's University Community Plan (UCP) and the University of California's Long Range Development Plan (LRDP) for UC Merced. EPA has taken this opportunity to provide the UC and the County with advanced notification regarding information that will be required as part of the federal permitting process. EPA is anticipating Clean Water Act Section 404 permit applications from both the UC and the County later this year for the fill of waters of the United States at the campus and community sites. We believe that these comments will help with the preparation of those applications, as well as the development of the environmental documents required under the National Environmental Policy Act (NEPA).

The comments highlighted in this letter reflect the most substantive issues identified from both DEIRs that will arise in the federal permitting process. These issues were previously discussed in our May 5, 2001 comments on the Comprehensive Alternatives Analysis (CAA). The enclosure to this letter includes additional specific comments regarding the individual documents.

1. **Project Purpose and Objectives**

Within both the UCP and the LRDP DEIRs, some of the project objectives do not appear to conform with the stated project purpose. For example, on Page 2-5, the UCP DEIR states that the project purpose is "a planning framework for how lands are to be developed and important resources protected and conserved in anticipation of the growth and development associated with the proposed development of UC Merced." In addition, an objective states "to support regional programs to conserve and protect the County's important agricultural and natural resources as development of UC Merced and the University Community proceeds." However, one of the objectives for implementing the project purpose is "to provide adequate land and

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development opportunities to absorb the equivalent of 100 percent of the new growth demand generated by UC Merced over time." Since the community is sized to accommodate the overall growth demands generated by UC Merced, which will result in substantial regional impacts to biological and agricultural resources, this objective appears to be contrary to the stated project purpose.

EPA recognizes that some campus community development is necessary and appropriate for this project. However, it is unreasonable to assume that all growth induced by UC Merced needs to be accommodated by the development of an adjoining campus community, particularly given the magnitude of the impacts that would result from such concentrated development, and the availability of alternative development opportunities in the greater Merced area. In assessing the appropriate size for a campus community project adjoining the campus site, it seems more appropriate to consider: 1) the extent of community development that needs to adjoin the campus site for UC Merced to be developed practicably, and 2) the growth demand generated by UC Merced that cannot already reasonably be accommodated within the greater Merced area. To do so, would be consistent with your project purpose and other project objectives as well as be consistent with Section 404(b)(1) Guidelines under the Clean Water Act.

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2. Biological Resources

Both DEIRs contain confusing and incomplete information regarding the potential impacts to biological resources. For example, the standard of significance used to determine whether an impact would have a significant effect on waters is "substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act." Use of this standard poses several problems. First, the term "substantial adverse effect" is not language used in the federal regulations upon which to base Section 404 permit decisions. Second, it is unclear how this standard can be determined under the California Environmental Quality Act (CEQA) for a federal process that has yet to be initiated. It is also unclear how this standard is used in the case of the UCP, where there is no specific project upon which to analyze the environmental impacts. Without clarification regarding the standard, EPA cannot yet agree with the DEIRs' conclusion, that with mitigation, the impacts to wetlands would be reduced to a less-than-significant level.

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EPA is concerned with the degree to which mitigation is considered in evaluating the significance of the biological resource impacts. We believe that the mitigation proposed to offset the impacts on biological resources relies heavily on the UC and the County's Wetlands Resource Mitigation Program. This program proposes to restore, preserve, and enhance wetlands as mitigation for wetland functions and values lost during the development of the campus and community by using \$30 million provided by the State of California. In terms of Clean Water Act Section 404 compliance, the U.S. Army Corps of Engineers and EPA do not accept mitigation for discharges that might otherwise be avoided. In addition, it is EPA's understanding that certain milestones must be achieved prior to the release of the funds. If some of the milestones are not achieved and, therefore, a portion of the funds is not made available, it appears

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Page Three

that the scope and size of the Mitigation Program could shrink.

Finally, no estimates in the DEIRs include indirect, secondary, or cumulative impacts to waters. In addition, the extent of waters has not yet been verified by the Corps. EPA encourages the UC and the County to clearly represent in the DEIRs that the estimates are preliminary, and to conduct an assessment of the indirect, secondary, and cumulative impacts to waters.

3. Alternative Analysis

In preparing for the Clean Water Act Section 404 permit process, additional information will be needed and appropriate criteria considered in order to demonstrate that an alternative is not practicable. Specifically, Clean Water Act 404(b)(1) Guidelines require the consideration of onsite avoidance and minimization of impacts to aquatic resources during the evaluation of each alternative unless sufficient justification is provided that an alternative is not practicable.

For example, in the LRDP DEIR, a Smaller Main Campus/Higher Density Alternative is identified which would reduce the campus size from 910 acres to 610 acres. The DEIR acknowledges that a smaller main campus would reduce significant impacts to: 1) the quantity and type of wetlands directly affected; 2) the habitat for sensitive plant and animal species; 3) water quality by reducing runoff volume; 4) reduce the demand for irrigation water; 5) as well as other impacts associated with the project. However, the Smaller Main Campus/Higher Density Alternative is essentially eliminated in the DEIR because the impacts to "visual quality" would be substantially more severe and would not comply with mitigation measures adopted at site selection which required "the new campus to ensure that campus layout, buildings, and landscaping are compatible with the surrounding developed and undeveloped environment." The DEIR also states "that buildings higher than 4 stories would not complement the natural features of the surrounding area." Additional information will be needed to demonstrate that this alternative is not practicable, particularly since the UCP is proposing to locate the Town Center directly adjacent to the campus, which will include buildings ranging from 4 to 6 stories.

In addition, we believe that the amount of the campus community development, which needs to directly adjoin the campus, has not been adequately assessed. Once there is a proper analysis of the development footprint necessary to accommodate the UC Merced campus and adjoining community, we believe that alternatives can be developed at all the sites examined in the DEIRs that will have substantially less impacts on environmental and agricultural resources. We urge the UC and the County to carefully examine this issue.

Page Four

Additional examples of inadequacies in the alternative analysis are included in the enclosure. Our May 2001 comments on the Comprehensive Alternative Analysis also more fully describes the information needed for the federal permitting process.

We continue to look forward to working with you on the outstanding issues concerning the Clean Water Act Section 404 permit process. If you have any questions regarding this letter please, feel free to contact me at (415) 744-1861.

Sincerely,



Karen Schwinn
Deputy Director
Water Division

Enclosure

cc: U.S. Army Corps of Engineers
U.S. Fish and Wildlife Service
California Resources Agency
California Department of Fish and Game
California Office of Planning and Research
Regional Water Resources Control Board

Enclosure

Long Range Development Plan DEIR

Issues:

The LRDP DEIR states on Page 2-3 that the guiding project objective is "to develop a premier research university consistent with the University of California's mission of teaching, research and service excellence." However, many of the specific project objectives discussed in the section to implement the above objective do not correspond. For example, some of these specific objectives include "providing a high quality campus setting," "promoting regional harmony," and "ensuring community integration." Although many of the specific objectives identified in the section are fine goals, they do not support the guiding project objective to develop a premier research university. Many existing UC campuses are examples of premier research universities, but which do not provide the type of amenities described in the specific project objectives.

Furthermore, many of the examples included in the DEIR to achieve the project objectives also do not directly correlate with the specific project objectives. For example, the methods to implement the specific project objective of "attracting high-quality faculty" includes "providing for on-campus faculty housing." Again, many UC campuses attract and retain high quality faculty, but do not provide on-campus housing. Another example is the project objective of "avoiding unnecessary costs." One of the examples identified to implement this specific project objective is to "design and locate buildings in a manner that will avoid construction cost multipliers, additional maintenance costs, and other economic inefficiencies." Although the objective to reduce unnecessary costs is a fine objective, in reading the text, the desire to "avoid construction cost multipliers" translates into constructing buildings no greater than 3 to 4 stories. Again, there are many examples of UC buildings, including student housing, that are greater than 3 to 4 stories.

Page 2-12 to 2-19 describes the various land use alternatives proposed for the LRDP. On May 5, 2001, the U.S. Army Corps of Engineers forwarded a letter from EPA regarding UC Merced's Comprehensive Alternatives Analysis (CAA). In that letter, EPA requested additional justification regarding the acreage required for the various land uses within the proposed UC Merced campus. This information is required as part of the alternative analysis required under Section 404 of the Clean Water Act. The information provided in Section 2.0 of the DEIR provides none of the additional information needed as part of the federal alternatives analysis.

Page 2-18 states that no development is planned or proposed within the campus reserve. However, Figure 2-12 identifies a 116 acre stormwater retention basin within the Campus Reserve area. No information is provided in the DEIR regarding the detention basin, including how it will be constructed and what environmental impacts will occur during construction and/or operation. Please provide additional information on this basin and the other 18 basins identified in the Figure.

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Page 4.14-20 identified a Circulation Policy (#28) to charge users the full cost of providing parking facilities and to assign premium prices to the close-in parking and limit the supply of such spaces in order to maximize the use of remote parking, limit the amount of traffic in and near the campus core, and encourage intra-campus walking and transit use. The current plan to include only surface-level parking within the campus area rather than parking structures appears to be inconsistent with the Circulation Policy. In terms of the 404(b)(1) alternatives analysis, information regarding campus land use requirements, including parking requirements, must demonstrate their practicability to ensure that no unnecessary discharges of fill material into water would occur as a result of the proposed project.

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Section 5 describes a range of on-site and off-site alternatives. Each alternative is evaluated against project objectives established by the UC. In several cases, the discussion in the DEIR does not provide adequate justification for eliminating the alternative. The DEIR also does not fully evaluate reasonable on-site options which could be undertaken and which would allow the alternative to better meet the project objective. In preparing a 404(b)(1) alternative analysis, a more complex analysis will be required. Examples of missing information are described below:

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Page 5-10 describes a Smaller Main Campus/Increased Density Alternative which would include a 610 acre core campus and a 25,000 full-time-equivalent student population. This alternative was eliminated since it fails to satisfy physical, financial, and programmatic effects. It was found not to "promote regional harmony" because of the need for a higher-density campus, although the UCP's Town Center proposes to include structures up to 5 to 6 stories. In addition, on Page 5-11, the DEIR states that the Increased Density Alternative fails to meet the project objective of avoiding unnecessary costs, since there are increased cost with constructing buildings greater than 3 to 4 stories. The analysis, however, does not consider the cost of environmental impacts, including the cost of mitigation. The DEIR also does not specify why most UC campuses have structures which are multi-story, including multi-story student housing. Finally, in terms of programmatic effects, the DEIR does not adequately explain why providing satellite campuses, as being currently done at UC Merced, can not continue to be feasible in order to maintain all academic programs. Providing this information on the project alternatives will be critical when completing the 404(b)(1) alternatives analysis.

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Another example is on Page 5-14, which describes a Smaller Main Campus/Fewer On-Site Programs Alternative. This alternative includes a 610 acre campus with 25,000 students. However, some of the programmatic components of the campus would be eliminated or moved offsite. Although there would be an overall reduction in the environmental effects with a reduced campus, the DEIR found that additional vehicle trips would be generated if students and faculty were required to live-off campus and overall congestion would increase within the roadways in Merced. The analysis does not include an evaluation of the option of moving a portion of the students and/or faculty a relatively short distance from the campus to the community or providing addition bus service to the surrounding community. Reasonable options appear to be available which could maintain more on-site programs, while reducing the potential of increased vehicle trips.

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Page 5-32 discusses the North Merced/Bellevue Ranch Site "A" Alternative. In evaluating the environmental impacts of the Bellevue Ranch Site "A" Alternative, the LRDP DEIR states that the alternative would impact 596 acres of farmland of concern, of which 330 acres are of statewide significance. The analysis doesn't acknowledge that this area has previously been designated by the City of Merced as part of their future growth corridor, thus impacts to farmlands have already been considered as part of the City's General Plan.

The DEIR states that "the project would have substantially greater impacts to *Juncus* wetlands and potentially jurisdiction waters than the proposed UCP." The extent of jurisdictional waters located at Bellevue Ranch has not been verified by the Corps. In addition, the evaluation doesn't acknowledge that the impacts to waters of the U.S. from the Bellevue Ranch Site "A" Alternative is estimated to be 44.5 acres for both the campus and community, which would result in a substantially lower impact than the proposed campus and community alternative.

On Page 5-34, the DEIR states the cumulative traffic resulting from the Bellevue Ranch alternative places greater emphasis on streets in central Merced, which tend to be congested even under the Future Baseline conditions. Therefore, this alternative is likely to contribute to more unmitigatable cumulative impacts than the proposed alternative. Since the City of Merced plans to develop this area, the City will likely be developing plans or policies to offset the impacts to traffic.

Page 5-34 states that the fractured ownership of the Bellevue Ranch site presents a formidable barrier to acquisition of the land that would be needed for the campus. The area needed for the Main Campus alone would consist of parcels under 19 separate ownerships. The Reserve would add an additional 4 owners and the Natural Reserve would involve 3 additional owners. The site identified for the university community would involve 72 additional owners making development of a nearby community unlikely. EPA acknowledges that addressing multiple ownerships is difficult, but not an insurmountable task. The UC should consider that the Natural Reserve area would not necessarily need to be located adjacent to the Bellevue Ranch site if that site was selected as the new campus location, particularly since the VST contains high quality habitat. Keeping the reserve at the current site reduces the number of owners by 4.

Clarification:

Page 2-11 of the DEIR identifies the UC Merced population projections for students, faculty, and staff in Year 2035 as 31,248, although the original 1994 EIR estimated the population to be 34,200. In addition, the acreage for the core campus has increased from 745 acres to 910 acres. Please clarify the change in population projections, as well as the increase in the size of the core campus. In addition, Page 3-9 states that the on-campus population size to be 34,188 persons at full development and that this figure includes all students, faculty, and staff and the dependents of faculty and students who would live on campus. However, Table 2-1 on Page 2-11 identifies the full build-out population to be 31,248. Please clarify what the population will be at full build out and what figure was used in the analysis of Sections 4.11, 4.12, and 4.15 of the LRDP DEIR.

Page 2-22 indicates that the City of Merced is interested in providing wastewater service on a long-term basis to the campus and has plans to expand capacity of its treatment plant by about 5 million gallons per day (mgd) in the near term and up to 10 mgd in the longer term. It is EPA's understanding that the City of Merced's Wastewater Treatment Plant is designed to treat 10 mgd of wastewater. Currently, the plant is operating at 7.7 mgd due to a cease and desist order issued by the California State Water Resources Control Board. Since expansion of the plant will be necessary to treat the wastewater from the campus, the impacts from the expansion of the facility should be addressed as part of the DEIR.

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Page 2-26 states that the Merced Irrigation District (MID) plans on widening Le Grand Canal in the future. In addition, MID will require a 20-foot wide dirt road to be maintained on both sides of the canal to allow for operation of vehicles and equipment for canal maintenance. A dirt road would be maintained along one side of the Fairfield Canal. Impacts of widening both canals and constructing roadways need to be addressed in the DEIR and considered as part of the University of California's Section 404 permit application for the campus. Finally, MID advised in their scoping letter on the LRDP DEIR that the Le Grand Canal should be concrete lined. Please advise if this recommendation is being accepted and what impacts, if any, will occur from this modification.

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Page 4.3-21 identifies 103 acres to be graded in Phase I of the UC campus, although Volume 2 of the DEIR states that Phase I will only be 96 acres. Please explain the difference in the two figures.

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On Page 4.4-2, it states that the original EIR concluded that campus construction would impact wetlands, but that the effect would be reduced to less-than-significant level with the implementation of proposed mitigation. The evaluation of wetland impacts in the original EIR may have under represented the number of acres of wetlands potentially impacted on the original site. In addition, it did not consider impacts to wetlands from associated projects such as roadway projects like the Campus Parkway or the community. It also did not evaluate any indirect impacts or cumulative impacts to wetlands. EPA does not believe that the original site could have been mitigated to reduce impacts to wetlands to a less-than-significant level.

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Page 4.4-4 states that "In response to suggestions from state and federal regulatory agencies and input from interested members of the public regarding the potential environmental impacts associated with use of this part of the VST property for the campus, the University has proposed that the campus site be located on the southwestern portion of the VST property." Although the relocation of the campus to the southwest site may result in a net benefit to the environment by locating the campus closer to the City of Merced, EPA was not involved in the decision to relocate the site to its current proposed location.

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Page 4.4-49 lists "wetland density" as a criterion for lands to be acquired for preservation under the Resource Mitigation Program. Although wetland density maybe one criterion in selecting lands for acquisition, EPA suggests modifying the criteria to obtain lands which represent the

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various types of habitat found within the eastern Merced Region. Properties with low to medium density pools may provide other unique features or biological resources.

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Page 4.4-50 states that the Resource Mitigation Program is designed to achieve a minimum overall ratio of a total of 3 acres of wetlands preserved, restored, enhanced or created for every 1 acre of impact. This statement is confusing since the ratio for preservation is 2:1 and the ratio for enhancement is 1:1 with varying amount of acres for each activity. This does not explain how replacement of wetland acreage will occur to achieve overall "no net loss," which is a Clean Water Act policy.

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Page 4.4-65 states that the Campus Land Reserve would be periodically monitored and maintained by campus maintenance crews to verify that the monitoring area is meeting the performance criteria. EPA suggests that the campus maintenance crews would be well served by training on: 1) the environmental sensitivity of the area; 2) the special status species; and 3) the performance criteria. In addition, EPA recommends that trapping of domestic cats and dogs in the buffer area would be helpful to reduce impacts to species in the Campus Land Reserve, since student and faculty housing may be adjacent to this area.

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Page 4.4-71 identifies that 264 acres of jurisdictional wetlands within the 2,000 acre campus site and approximately 78 acres of wetlands within the campus footprint are subject to a Clean Water Act jurisdiction. However, Table 4.4-3 identifies 252 acres of clay flats, vernal pools and swales, and freshwater marshes. In addition, the discussion in Section 4.4 regarding the amount of acreage of vernal pools that will be impacted within the proposed campus and community sites only includes one reference that the estimates are preliminary estimates, since the extent of waters have yet to be verified by the Corps. None of the figures included in the Section, including the Figure titled, "Delineated Wetlands in the Vicinity of the Campus Site," notify the reader that the acreages are unverified.

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On Page 4.7-5, it states that hazardous materials transported to and from the campus would not significantly expose people to potential health risks in the event of an accidental release. The analysis does not include the potential risk from the transportation of the natural gas to the proposed Natural Gas Co-generation Facility, especially during subsequent phases of construction. Please provide information on any potential impacts and mitigation. In addition, no information is provided on the location and type of treatment which will be provided at the grey water treatment system. Please clarify if there will be any hazardous materials used in the treatment process, as well as any general information about the proposed facility.

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Page 4.7-19 states that the construction of the proposed campus could expose people or structures to a significant risk of loss, injury, or death involving wildland fires. Wildland fires are an integral part of sustaining the vernal pool habitat. Please clarify how fires in the reserve and preserve area will be managed to sustain habitat, but not risk injury to property or residents.

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Page 4.8-10 states that a dam failure inundation study has not yet been completed for the

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proposed Haystack Dam. However, the proposed reservoir's location suggests that, if the dam failed, the inundation path would correspond to Rascal Creek and would not affect the proposed UC Merced campus site. The reference used for this conclusion is the original EIR, which was referring to a different campus location. The original EIR actually states that Haystack Reservoir would "inundate a large area of the southeastern portion of the Virginia Smith Trust property." Please clarify if this area is where the proposed campus is sited.

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Page 4.8-29 acknowledges that the City of Merced's wastewater treatment plant is currently under a cease and desist order and that the City is constructing improvements necessary to address the ammonia exceedances that were responsible for triggering the cease and desist order. According to the Merced County Association of Government's (MCAG) website, the City of Merced is required, in accordance with their NPDES permit, to: (1) restrict pH discharge to between 6.5 and 8.5 standard units and not change the background level of pH to more than 0.5 standard units and, (2) not raise background temperature by more than 5 degrees. MCAG's white paper states that these repairs will cost the city \$9.6 million. The analysis on Page 4.8 does not discuss these impacts.

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Page 4.10-19 states that construction of the campus facilities could expose nearby receptors to elevated noise levels, which is considered to be a potentially significant impact. It also states that construction of off-site utility connections and infrastructure improvements would not expose sensitive land uses to high noise levels, which is considered to be less-than-significant impact. In the analysis of noise impacts during construction for campus facilities and off-site utility connections and infrastructure, there was no discussion regarding impacts from noise to biological resources. Sensitive receptors appears to be defined in the DEIR as parkland users and residential areas. EPA suggests that the UC consider, as part of consultation with the U.S. Fish and Wildlife Service, that noise impacts to biological resources be evaluated.

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Section 4.14 of the DEIR does not include any references. In addition, there is no information regarding the size of the surface parking lots planned for the campus.

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Page 4.15-4 identifies 72 new drinking water wells to be drilled as part of the new Merced Irrigation District's Water Supply Plan. Since construction of these new drinking water wells is connected in part to the demand generated from the construction of UC Merced, these impacts need to be addressed in the DEIR, including the potential impacts to biological and water resources.

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Page 4.15-8 states that the proposed campus would require 2,310 acre-feet per year (afy) of potable water, including for residential and academic use and cooling purposes. The same page also states that the proposed campus would require 1,130 afy of water for irrigation of turf grass and other landscaping. These two figures total to 3,440 afy. However, earlier in the DEIR it states that "approximately 3,620 acre feet of water per year for potable water for indoor use and irrigation water for outdoor use."

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Page 5-15 states that the reason for underutilization of UC Berkeley's Richmond Field Station is due solely to its distance from the campus. This example was used to demonstrate that location is a key factor in the level of use of a facility. However, based upon EPA staff experience with the Richmond Field Station, there may be other factors which result in the underutilization of the Station. Please provide information such as surveys results which demonstrates that the Station is underutilized solely due to its distance from the campus. Additional examples of off-site facilities maybe needed to justify the need for an adjoining natural research reserve.

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On Page 5-34, the DEIR states the cumulative traffic resulting from the Bellevue Ranch alternative places greater emphasis on streets in central Merced, which tend to be congested even under the Future Baseline conditions. Therefore, this alternative is likely to contribute to more unmitigatable cumulative impacts than the proposed alternative. Since the City of Merced intends to eventually develop the Bellevue Ranch area, please provide information, if available, on any plans or policies proposed by the City to address this issue

Page 5-34 states that the fractured ownership of the Bellevue Ranch site presents a formidable barrier to acquisition of the land that would be needed for the campus. The area needed for the Main Campus alone would consists of parcels under 19 separate ownerships. The Reserve would add an additional 4 owners and the Natural Reserve would involve 3 additional owners. The site identified for the university community would involve 12 additional owners making development of a nearby community unlikely. EPA acknowledges that addressing multiple ownerships is difficult, but not an insurmountable task. The UC should consider that the Natural Reserve area would not necessarily need to be located adjacent to the Bellevue Ranch site if that site was selected as the new campus location, particularly since the VST contains high quality habitat. Keeping the reserve at the current site reduces the number of owners by 4.

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Volume 2, Page 3-24 states that the campus was designed with an approximately 250 foot buffer between the site boundary and the nearest downgradient wetland habitat to avoid the potential for indirect effects to these resources. Please clarify how the buffer will be constructed and if there will be trails and/or public access within the buffer area. In addition, how will the buffer avoid indirect impacts such as human and domestic pet encroachment, edge effect, interruption of wildlife movement, habitat fragmentation, and hydrological downstream impacts?

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Page 3-26 states that the construction activities for Phase I of the campus would not result in temporary construction impacts to sensitive biological resources. Please clarify if impacts from lighting and noise was considered in the evaluation.

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Figure 2 labels student and faculty, but faculty housing is not discussed as part of Phase I. Please clarify.

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University Community Plan DEIR

Page 2-5 of the DEIR states the project purpose "as a planning framework for how lands are to be developed and important resources protected and conserved in anticipation of the growth and development associated with the proposed development of UC Merced. While one of the objectives is "To provide adequate land and development opportunities to absorb the equivalent of 100 percent of the new growth demand generated by UC Merced over time," it seems more appropriate to consider the growth demand generated by UC Merced that cannot already reasonably be accommodated within the greater UC Merced area. To do so, would be consistent with the project purpose and another one of the objectives, "To support regional programs to conserve and protect the County's important agricultural and natural resources as development of UC Merced and the University Community proceeds."

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Page 4.4-1 states that the standard is significant if the impact would have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act. It is unclear how this standard can be determined under CEQA, for a federal process that has not yet been initiated and for which there is no specific project upon which to analyze the environmental impacts. In addition, "substantial adverse effect" is not language in the federal regulations upon which to base 404 permit decisions.

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Page 4.4-4 states that within the proposed UCP planning area there are 58.1 acres of waters of the United States. At a maximum, 36.3 acres are expected to be filled, graded or otherwise adversely affected as a result of the proposed UCP. Merced irrigation canals comprise 21.8 acres of jurisdictional waters within the UCP area, and the DEIR states that the proposed UCP would not physically alter the canals. Yet, the Merced Irrigation District anticipates modifications to the canals due to anticipated growth and development. Therefore, consideration of environmental impacts associated with the canal should be included in this DEIR.

Page 4.4-41 states that the magnitude of the impacts to jurisdictional waters will further be reduced through an implementation program that requires the UCP achieve no net loss of wetland functions and values through a combination of restoration, preservation and enhancement. Efforts to replace lost acreage and function of wetland and aquatic areas are difficult and most compensatory mitigation efforts fail to replace lost function. EPA is concerned with the assumption that the mitigation measures proposed under this DEIR would result in a "less-than-significant" determination.

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Page 4.4-54 through 4.4-63 discusses the indirect impacts associated with the construction of the UCP. With regard to construction-related impacts, increased habitat degradation from human encroachment, edge effect, interruption of wildlife migratory/movement corridors, habitat fragmentation, and downstream hydrological impacts, the DEIR makes a conclusion that permitting processes would likely mitigate indirect effects on local resources to a less-than-significant level. Once again, EPA questions this assumption based, in part, on a reliance on mitigation. In addition, since this document is programmatic, it is unclear how the County can

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make any conclusions on the extent or significance of the indirect impacts. A specific project description is necessary in order to analyze the direct, indirect, secondary and cumulative environmental impacts associated with a project.

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Page 4.4-66 identifies the cumulative impacts from the project. This section appears to lack the detail necessary to fully assess the cumulative impacts to biological resources as a result of reasonable and foreseeable growth in the greater City of Merced area. In addition, the "Other Planned Uses" section on Page 4.9-7 identifies some planned uses in the vicinity of the UCP area, which do not appear to have been evaluated under the Cumulative Impact section of the DEIR.

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Page 6-4 states that "The Merced County University Community Plan, UC Merced, Economic Background Report was used in the DEIR to more fully understand the economic effect of UC Merced in the local economy of Merced." This report calls into question the need to absorb 100% of the anticipated growth of UC Merced with respect to housing within the University Community Plan. The report addresses regional economic and real estate market conditions, population and employment forecasts, and the potential effects of the UC Merced campus on the regional economy. The following statement is taken from page 29 of the *Economic Background Report*: "There exists a very large supply of developable land that is currently designated for urban uses." Capacity of lands designated for development in the Cities of Merced and Atwater would double the population of the two cities. Most of this capacity in the City of Merced is located in North Merced, which is west of the campus site. At current absorption rates in the City, this area would take 20 or more years to be fully developed. In addition, the North Merced area contains many of the more well-to-do neighborhoods and will likely be attractive to UC Merced faculty and professional staff." The report (page 3) goes on to state, "Merced and Atwater are within a reasonable commute distance from the campus site and maintain a relatively abundant supply of residentially zoned land, much of which is served by existing infrastructure." In addition, Table 12 shows a 1998 residential vacancy of 4% for the City of Merced, 14% for the City of Atwater and 7% for the County of Merced. On page 32, the report states, "there is enough vacant land within the two cities to support a total of about 32,000 new housing units, or about 97,000 new residents." This calculation does not include the proposed University Community or the unincorporated areas of Merced County. The bulk of this land in the Merced area is located close to the campus site and existing desirable neighborhoods. The residential vacancy can easily accommodate the 11,616 residential units proposed in the UCP DEIR. On page 61, the report states, "The University Community will also provide a significant increase in residential development capacity in an already over supplied land market."

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With respect to retail, office, industrial and commercial development, EPA believes the DEIR should reevaluate the need to meet anticipated development within the proposed UCP planning area, given the availability of business sites in the greater Merced area. In addition, the report (page 65) recommends strengthening existing neighborhoods and commercial areas given the potential for the University Community to compete with and ultimately weaken them.

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U.S. EPA

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The DEIR evaluated 6 onsite alternatives which varied in the size and degree of impacts to farmland, and varied in the size of the community and the population of the proposed UCP. Since the extent of wetlands has not been verified by the U.S. Army Corps of Engineers, we are unable to compare the environmental effects of each the proposed alternatives.

At the end of the description of each alternative, there is a section, "Relationship of Alternative to Project Objectives" which describes why the alternative fails to achieve a number of the basic objectives of the proposed UCP. The following is a summary of each alternative's failure to meet the project objectives along with EPA's response:

A. No Loss of Prime Farmland Alternative – The DEIR states, this alternative fails to achieve the objectives of the proposed UCP because it:

1) *"fails to provide a community that can be developed in an integrated fashion through a master developer due to the large number of parcels and ownerships."* Once it is determined exactly how large an associated UC community is needed, given the extent of available developable lands in the surrounding area, the number of land owners may diminish significantly, consistent with the project objectives. In addition, a large number of land owners may be cumbersome at first, but still capable of achieving the objective of using a master developer.

2) *"fails to be configured and planned so that environmental permitting allows community development to proceed at a pace necessary to support campus development because of increased number of wetlands."* The wetlands impacts associated with this proposal are unclear since there is no verified delineation by the Corps. It is also unclear whether additional onsite avoidance and minimization can occur, since the specific development plans have not been included.

3) *"fails to support the educational goals of the Virginia Smith Trust by maximizing enhancement of its scholarship fund because land value would likely be reduced compared to those that could be created in the proposed UCP."* There is no information in the DEIR to support this statement. In addition, since there are other ways to enhance the scholarship fund, this objective should not limit alternatives from meeting the project purpose.

B. No Loss of Prime Farmland/Reduced Community Size Alternative – The DEIR states this alternative fails to achieve a number of basic objectives of the proposed UCP because it:

1) *"fails to provide adequate land and development opportunities to absorb the equivalent of 100 percent of the new growth demand generated by UC Merced."* While this is an objective of the project, based on the economic report referenced above; it has

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not been demonstrated that the UCP needs to absorb 100 percent of the anticipated growth.

2) "fails to provide adequate circulation that supports the long term sustainability of the UC Merced campus." This determination is based on anticipated impacts to G Street in central Merced, but it is unclear as to how it came to this conclusion, and whether other circulation alternatives can resolve this concern.

C. Limited Loss of Prime Farmland Alternative – The DEIR states this alternative fails to achieve a number of basic objectives of the proposed UCP because it:

1) "would involve impacts to wetlands and endangered species greater than those of the proposed UCP" and, 2) "fails to be configured and planned so that environmental permitting allows community development to proceed at a pace necessary to support campus development." The wetlands impacts associated with this proposal are unclear since there is no verified delineation by the Corps. It is also unclear whether additional onsite avoidance and minimization can occur since specific development plans have not been identified.

D. Reduced Residential Density Alternative – This alternative only proposes a reduction in population density. It does not meet some of the project objectives and it appears to be in conflict with the CEQA Guidelines which state, "the discussion of alternatives shall focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly."

E. Reduced Community Size and Population Alternative – Please see our comments above on the No Loss of Prime Farmland/Reduced Community Size Alternative. In addition, the DEIR states this alternative fails to achieve one of the objectives of "providing adequate circulation that supports the long term sustainability of the UC Merced Campus." It is unclear why the UCP is responsible for providing circulation to the campus. While the cost of the providing circulation to the campus is a concern, please note on page 103 of the UCP, it proposes to seek grant funding for UC infrastructure and facilities from outside sources including the state and federal government. These grant proposals may address the costs of circulation and allow the UCP to meet the circulation objective.

F. Increased Community Size and Population Alternative – There is no information in the DEIR to support this alternative. This alternative would be contrary to CEQA which states "the discussion of alternatives shall focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly."

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Page 5-40 describes five alternatives located within the existing university Community SUDP (VST property), and six off-site alternatives within Merced County. The six offsite alternatives are as follows: 1) North Merced/Bellevue Ranch, 2) Castle Airport, 3) South Merced City Infill, 4) North Merced Rangeland; 5) Southern Highway 99 and, 6) Delhi Area. Please refer to our letter dated May 5, 2001 to the Corps regarding the Comprehensive Alternatives Analysis submitted by the County of Merced and University of California dated March 1, 2001, which comments in detail on the alternatives analysis for these alternatives.

Page 5-88 identifies the No Loss of Prime Farmland/Reduced Community Size Alternative and the Reduced Community Size and Population Alternative as the environmentally superior alternatives. These alternatives are rejected by the County of Merced because they fail to meet basic objectives such as providing adequate land and development opportunities to absorb 100 percent of the new growth demand generated by UC Merced and adequate circulation for the sustainability of UC Merced. We recommend a reevaluation of these alternatives based on a reassessment of the needs of the UCP and a reasonable range of alternatives for achieving adequate circulation for UC Merced.

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In addition, the project purpose states that this proposal is a planning framework for how lands are to be developed and important resources protected and conserved in anticipation of the growth and development associated with the proposed development of UC Merced. Given this project purpose, it seems reasonable to consider alternatives that provide combinations of development adjacent to and in close proximity to the campus. With the availability of lands in the greater UC Merced area, which are in close commuting distance, the County might be able to achieve their project purpose and most of their project objectives.

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

October 4, 2001

In reply refer to:
SWR-01-SA-6084:TDW

Mr. Rich Notini
University of California
1170 West Olive Ave.
Suite I
Merced, CA 95348

Dear Mr. Notini:

This letter responds to receipt of the Draft Environmental Impact Report (EIR) for the Proposed Long Range Development Plan (LRDP) for the University of California (UC) Merced Campus, dated August 2001. As indicated in the DEIR, the primary purpose of the proposed LRDP is to guide the physical planning and development to achieve the academic needs and goals of the new campus in Merced County. This campus is to provide a new major research university in the San Joaquin Valley for a student population of 25,000 full-time equivalent (FTE) students. The campus would be located approximately two miles northeast of the city limits of Merced on the property owned by the Virginia Smith Trust and the County of Merced. The site is immediately east of Lake Yosemite Regional Park and a portion of Lake Road.

The National Marine Fisheries Service (NMFS) has reviewed the draft EIR for the LRDP and has the following comments. In general, NMFS is concerned with how water demands for the campus and its related community, as well as for any related urban growth will affect listed and sensitive anadromous fishery resources and their habitats, including affects to the Merced River, the lower San Joaquin River, the San Joaquin Delta, and associated tributaries or other aquatic resources. More specifically, we are concerned about effects to the federally threatened Central Valley steelhead (*Oncorhynchus mykiss*) and its designated critical habitat, and the candidate species fall-run chinook salmon (*O. tshawytscha*).

Water allocation to accommodate the population growth was not adequately addressed in the draft EIR. Based on the draft, the projected campus population is 31,000 students, faculty and staff. Such population growth will increase the need for the City of Merced to accommodate growth with off-campus housing, commercial and retail facilities. These new facilities will require allocated water to accommodate both construction activities and the increased population both on and off campus.



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The draft EIR states that the campus alone will need 2,310 acre-feet/year potable water and 1,310 acre-feet/year irrigation water to be provided by the City of Merced and Merced Irrigation District (MID) through ground water wells. The present groundwater levels can accommodate the new campus. However, as the campus reaches full build out, the associated urban development's water demands will exceed that level. As stated in the draft EIR, the City of Merced's projected water demand for both the UC Merced campus and University Community by 2030 is 24,200 acre-feet/year. Urban demand is projected to increase to 121,000 acre-feet/year. Though the City of Merced and MID are in the process of updating their "Water Supply Plan" to recharge and extract groundwater, the source of groundwater for recharging remains a concern to NMFS. The draft EIR does not elaborate on where the City of Merced will be conducting their groundwater recharge activities. Specific details regarding infrastructure, operations, and phased build out of the "Water Supply Plan" are not yet available. The EIR must fully address the effects of the groundwater recharge activities including identifying the source for groundwater to be recharged, and clarifying whether or not water will be coming from water courses that contain any federally listed or candidate species or their critical habitat. In addition, the EIR must address additional direct and indirect effects of surface water usage in Merced County related to water demands, including groundwater recharge, for the campus and its related community. The EIR must address these actions and their effects to listed and candidate species of anadromous fish and their habitat.

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Storm water run off plans include some discussion of hydraulic drainage and storm runoff on campus during 10-year and 24-hour storm events. The runoff as described in the draft EIR would be detained on campus and may be discharged to the Fairfield Canal, with the approval of MID. This additional runoff from the campus is of concern to NMFS because the Fairfield Canal may receive unacceptable levels of untreated pollutants. Such runoff from the campus may continually drain into receiving waters containing federally listed and candidate anadromous fish species downstream from the project site. The proposed construction of onsite retention and detention ponds and a contingency plan for a 100-year, 24-hour storm event do not elaborate in sufficient detail regarding the treatment of campus Storm water runoff. NMFS suggests providing a technical report listing possible pollutants that may be found in the runoff, including a water quality characterization of the runoff, and the anticipated quantity of runoff produced throughout the campus. This technical report should also present a quantitative analysis of projected runoff from the campus and evaluate the removal efficiencies of the Storm water runoff plans. From this technical report, the suggested analysis should contain adequate information to assess the water quality of runoff to be discharged into Fairfield Canal.

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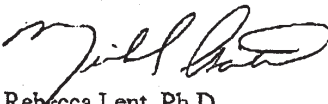
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We appreciate your continued cooperation in the conservation of listed species and their habitat and look forward to working with you and your staff in the future. If you have any questions regarding this response, please contact Ms. Diane Windham in our Sacramento Area Office, 650 Capitol Mall, Suite 8-300, Sacramento, CA 95814. Ms. Windham may be reached by telephone at (916) 930-3600 or by FAX at (916) 930-3629.

Sincerely,


for Rebecca Lent, Ph.D.
Regional Administrator

c: NMFS-PRD, Long Beach, CA
Stephen A. Meyer, ASAC, NMFS, Sacramento, CA
Robert E. Smith, County of Merced, UC Development Office, 3351 M Street, Merced,
CA 95338

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Southwest Region
 501 West Ocean Boulevard, Suite 4200
 Long Beach, California 90802-4213

October 4, 2001

In reply refer to:
 SWR-01-SA-6084:TDW

Mr. Robert E. Smith
 Planning Director
 County of Merced
 3351 M Street
 Merced, CA 95338

Dear Mr. Smith:

This letter responds to receipt of the Draft Environmental Impact Report (EIR) for the Proposed University Community Plan (Plan), dated August 2001. As indicated in the draft EIR, the primary purpose of the proposed Plan is to guide the physical planning and development to achieve the academic needs and goals of the new campus in Merced County. This campus is to provide a new major research university in the San Joaquin Valley for a student population of 25,000 full-time equivalent (FTE) students. The campus would be located approximately two miles northeast of the city limits of Merced on the property owned by the Virginia Smith Trust and the County of Merced. The site is immediately east of Lake Yosemite Regional Park and a portion of Lake Road.

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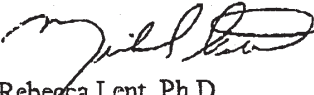
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WOODWARD-CLYDE CONSULTANT

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Sincerely,


for Rebecca Lent, Ph.D.
Regional Administrator

cc: NMFS-PRD, Long Beach, CA
Stephen A. Meyer, ASAC, NMFS, Sacramento, CA
Rick Notini, University of California, 1170 West Olive Ave., Suite I, Merced, CA 95348

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