and direct shading of air conditioning systems shall be included in the guidelines.

e) Transit usage and ride sharing shall be promoted by requiring participation in the development of a regional transit system at such time as a system is established and set-asides of land for park-and ride facilities. Fair share participation may consist of dedication of right-of-way, easements, capital improvements, and/or other methods of participation deemed appropriate. In addition, future project design shall ensure that an adequate number of developers in the plan area provide reservations for future installations of bus turnouts and passenger benches and shelters, to be installed at such time as transit service is established and as demand and service routes warrant. Transit centers shall be connected with the Class I bicycle trail. A public transit development fee may be required for all development projects. The amount of this fee shall be based upon the traffic generation potential of each project. A dial-a-ride transportation system may be established to reduce individual vehicle trips and establish data for the eventual formation of a transit system within the plan area.

> In addition, the applicant or its successor(s) in interest shall provide each home and business with an information packet that will contain, at a minimum, the following information:

- Commute options: to inform plan area occupants of the alternative travel amenities provided, including ridesharing and public transit availability/schedules;
- Maps showing plan area pedestrian, bicycle, and equestrian paths to community centers, shopping areas, employment areas, schools, parks, and recreation areas; and
- Information regarding PCAPCD programs to reduce county-wide emissions.
- f) Developers of both public and private schools shall be encouraged to incorporate the following measures into the design, construction, and operation of school buildings and facilities:
  - Install bicycle lockers and racks at all appropriate locations;

- Post signage prohibiting the idling of diesel vehicles for longer than five minutes;
- Construct at least one bus stop at a convenient location to be used for either fixed route service within the plan area or commuter service;
- Provide a community notice board and information kiosk with information about community events, ridesharing, and commute alternatives;
- Provide preferential parking for carpools and hybrid vehicles (vehicles with self-charging electric engines); and
- Incorporate solar water heating systems in building design.
- g) The following measures shall be incorporated into the design, construction, and operation of public park areas:
  - The pedestrian/bikeway (P/B) master plan shall provide at least one Class I linkage to all school sites;
  - Additional Class I and II linkages shall be provided to provide convenient access to/from the park sites;
  - Install bicycle lockers and racks at all appropriate locations; and
  - Provide a community notice board and information kiosk with information about community events, ridesharing, and commute alternatives.
- h) Prohibit open burning throughout the plan area. Include this prohibition in any project CC&Rs that are established.
- i) Implement Mitigation Measures 6.12-1 through 6.12-26 to ease traffic congestion, in order to provide a pedestrian and bicycle-safe transportation and circulatory system within the Plan Area, thereby increasing the chance that residents will walk and ride within the RUSP.
- j) Placer County and the project applicant shall work together to publish and distribute an Energy Resource Conservation Guide describing measures individuals can take to increase energy efficiency and conservation. The applicant shall provide a portion of the funding necessary to prepare the Guide, along with the developers of other projects in the region. The Energy Resource Conservation

Guide shall be updated every 5 years and distributed at the public permit counter.

- k) The project applicants shall pay for an initial installment of Light Emitting Diode (LED) traffic lights in all Plan Area traffic lights.
- 1) The project applicants and Placer County shall jointly develop a tree planting informational packet to help project area residents understand their options for planting trees that can absorb carbon dioxide.
- m) Prioritized parking within commercial and retail areas shall be given to electric vehicles, hybrid vehicles, and alternative fuel vehicles.

Energy sources come from a variety of sources and are consumed in a similar fashion regardless of specific project location. The Regional University Specific Plan has taken steps to ensure that energy efficiencies are incorporated into project design and specific energy conservation mitigation measures have been proposed where they would have a meaningful effect consistent with the purpose and intent of CEQA. Public Resources Code, Section 21002.1 requires lead agencies to focus the discussion in an EIR on potential environmental effects that the lead agency has determined are or may be significant (also see Section 21100, subd. (c) and CEQA Guidelines, Section 15128). These provisions underscore the importance of devoting the bulk of an EIR to those impacts that are or may be significant, as reflected by the NOP process and other required consultations.

(FEIR, pp. 4-80-4-82 [strike-out and underlining omitted].)

#### Comment 45

(The EIR increases greenhouse gas emissions for transportation sources by reducing the Level of Service to D, which will mean more idling vehicles; the EIR fails to include public transportation to its location in West Placer County; the lack of public transportation will increase greenhouse gas emissions.)

As discussed in Response to Comment 44, the project contains elaborate requirements to help reduce the project's greenhouse gas emissions. The EIR also includes multiple provisions for public transit, which will help detract from the project's greenhouse gas emissions. For example, the project provides right of way for future BRT lanes, and provides for the construction of bus stop facilities in the Community component of the RUSP and a transit center on the University property, along with the provision of funding for buses. (See DEIR, pp. 6.12-117-6.12-118.) Notably, Mitigation Measure 6.12-24

provides for contribution of its fair share of the cost to provide public transit service to the study area as determined by Placer County through participation in a benefit or assessment district or through a separate agreement between the applicant and Placer County consistent with Mitigation Measure 6.12-1. The project may also provide for a public transit development fee, discussed in Response to Comment 44. Also, as discussed in Response to Comment 15, the RUSP is not lowering the applicable Level of Service to LOS D; the General Plan already allows for this standard. As shown in Policy 3.A.7.a and b, LOS D is already allowed within ½ mile of state highways. Thus, adhering to this established policy will not affect the project's greenhouse gas emissions.



# DEPARTMENT OF THE ARMY UNITED STATES U.S. ARMY ENGINEER DISTRICT, SACRAMENTO CORPS OF ENGINEERS 1325 J STREET SACRAMENTO CA 95814-2922

### ENVIRONMENTAL PROTECTION AGENCY



75 HAWTHORNE STREET SAN FRANCISCO, CA 94105

OCT 0 7 2008

Maywan Krach, Environmental Coordination Services Placer County Community Development Resource Agency 3091 County Center Drive, Suite 190 Auburn, CA 95603

Re:

Environmental Impact Report for Regional University Specific Plan - PEJR T20050187,

SCH #2005032026.

Dear Ms. Krach:

We have reviewed the Environmental Impact Report (EIR) for the proposed Regional University. Specific Plan (RUSP). The United States Army Corps of Engineers (Corps) and the United States Environmental Protection Agency, Region 9 (EPA) have been working with South Placer Regional Transportation Authority (SPRTA), Caltrans, and Federal Highway Administration (PHWA) on the proposed Placer Parkway project since 2004. We are concerned that two of the Placer Parkway alternatives under consideration in the interagency process cross the RUSP site, but the RUSP does not include right of way for either of these potential alternatives.

Interagency coordination on the Placer Parkway project is guided by the National Environmental Policy Act (NEPA)/CWA Section 404 Integration Process Memorandum of Understanding (NEPA/404 MOU). This process streamlines the federal environmental role in large scale projects subject to NEPA and CWA so that NEPA decisions are consistent with the Corps requirement to permit projects containing the least environmentally damaging practicable alternative (LEDPA). The NEPA/404 MOU contains five check-points for agency concurrence: 1) purpose and need, 2) selection criteria for project alternatives, 3) alternatives to be evaluated in the NEPA document, 4) preliminary LEDPA, and 5) conceptual mitigation plan. We have successfully completed three of the checkpoints in the Placer Parkway NEPA/404 process. However, EPA and the Corps did not concur with the FHWA request for concurrence that Placer Parkway Alternative 5 is most likely to contain the LEDPA (see attached letter). EPA and the Corps consider Alternative 1 (which crosses the RUSP site) most likely to represent the LEDPA.

Maintaining the viability of all potential Placer Parkway alignments is essential to preserving the integrity of the LEDPA selection, CWA Section 404 permit and ultimate construction of Placer

<sup>&</sup>quot;As shown in Figure 6.12-15, Placer Parkway Alternatives 1 and 2 would cross over the proposed RUSP project axes, while Alternatives 3 and 4 would run along the northern boundary of the RUSP area. The proposed RUSP does not include reservation of right-of-way for the two alternatives that cross through the plan area, nor does the project description for RUSP recognize these alignments as viable for the RUSP to be developed." Page 6.12-49.

Parkway. We are concerned that Placer County adoption of the RUSP FEIR as proposed, without accommodating the proposed Placer Parkway alignments within the RUSP project alternatives, will limit the Corps' ability to grant a CWA Section 404 permit for Placer Parkway and potentially jeopardize the construction of Placer Parkway. We understand that the Placer Parkway project is important to Placer and Sutter Counties and recommend including all proposed Placer Parkway alignments in RUSP if it is adopted by Placer County.

Our staffs are working closely with Placer County on many large projects, including the Placer County Conservation Plan (PCCP), Placer Parkway, Placer Vineyards Specific Plan, and others. We look forward to continuing our cooperative relationship and working together on the Regional University Specific Plan. If you have any questions, please call David Smith, Chief of EPA Rogion 9's Wetland's Office (415-972-3464), or Michael Jewell, Chief of the Corps Sacramento District Regulatory Division (916-557-6605).

Sincerely,

Colonel The mas C. Chapman

District Engineer, U.S. Army Corps of

Engineers, Sacramento District

ans 6 October 2008

Director, Water Division

CC:

Mr. Michael Johnson, Planning Director Placer County Planning Department 3091 County Center Drive Auburn, CA 95603

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#### RESPONSE TO LETTER FROM CORP AND EPA RECEIVED BY PLACER COUNTY ON OCTOBER 7, 2008

In a letter to Placer County employee Maywan Krach received on October 7, 2008, Colonel Thomas C. Chapman of the United States Army Corps of Engineers (Corps) and Alexis Strauss of the United States Environmental Protection Agency (EPA) state that they have reviewed the Environmental Impact Report (EIR) for the Regional University Specific Plan (RUSP) and "are concerned that two of the Placer Parkway Alternatives under consideration . . . cross the RUSP site, but the RUSP does not include right of way for either of these project alternatives." They add that their two agencies do not concur in the judgment of the Federal Highway Administration (FHWA) that Parkway Alternative 5 "is most likely to contain" what federal law calls the "Least Environmentally Damaging Practicable Alternative" (LEDPA). Instead, they say that "Alternative 1 (which crosses the RUSP site) [is] most likely to represent the LEDPA.

For this reason, they "recommend including all proposed Placer Parkway alignments in the RUSP if it is adopted by Placer County." Although the Board of Supervisors should not take these concerns lightly, and should certainly consider them in going forward, County staff notes that nothing in state or federal law precludes approval of the RUSP as proposed under the circumstances. Rather, the question of whether to approve the RUSP as proposed by its proponents - that is, without any right-of-way reserved for a potential Placer Parkway alignment – is a matter of legislative discretion for the Board, which need not accommodate the federal agencies' request if the Board concludes that the RUSP as proposed embodies a desirable land use outcome. Staff believes that the practical effect of approving the RUSP as proposed would not be to "potentially jeopardize the construction of the Placer Parkway," as suggested in the letter, but rather would be to simply reduce the number of "practicable" alignments available for the Parkway. The federal agencies will ultimately have to work around the land use patterns created by decisions by Placer and Sutter Counties, as well as the City of Roseville.

County staff is certainly aware of the "chicken and egg" aspect of the parallel federal and local processes occurring in western Placer County. Just as the RUSP has been in the planning pipeline for many years and is proposed in an area identified for "future growth" since as early as 1994, so too has the Placer

Parkway environmental review process been ongoing for several years. Notably, though, the RUSP proponents filed their application with the County prior to the point in time at which the Placer County Transportation Planning Agency (PCTPA) first identified a potential alignment through the RUSP site. As things have turned out, moreover, the RUSP process has reached the finish line well in advance of the Placer Parkway Process, for which no final decision has been made, and none is imminent.

Over the last several years, the RUSP proponents and County staff have been working diligently on getting the RUSP to a point where it is ready for approval, in the hope that such approval will inspire an entity such as Drexel University to commit to building a nationally ranked new university in Placer County offering bachelor's degrees and other certificates. As events have unfolded, the RUSP is now ready for approval well in advance of any final decision on a Placer Parkway alignment, with Drexel going on record before the Planning Commission indicating a very high level of interest in the site. Drexel and the applicant have also signed a "donation agreement," which is further evidence of Drexel's very high level of interest in the property. Importantly, the proponents have informed the County that, if the Board were to reject the RUSP in its current form due to the lack of any right-of-way for a parkway alignment through the site, there would be no practical way to go forward with the project in its current form with synergy between the University and Community components.

This likely result of a denial for such a reason should come as no surprise, as the Draft EIR for the project (vol. 2, p. 7-8) made it clear that the land use plan would not work in an integrated fashion if a Placer Parkway alignment went through the property:

The Placer County Transportation Planning Agency (PCTPA) is in the planning process for the Placer Parkway, an approximately 15-mile long, high-speed transportation facility, which would connect State Route (SR) 65 in western Placer County to SR 70/99 in south Sutter County. The PCTPA is considering five corridor alternative alignments at this time, two of which (Alignments 1 and 2) would pass through the Regional University Specific Plan Area. Because of the location of Placer Parkway Alignments 1 and 2, substantial changes to the land use plan for RUSP would be required in order to accommodate this roadway. The extent of the required changes, particularly for Alignment 2, would reduce the size of the Community portion of the project and hinder the project's ability to

function as an integrated community. Therefore, an alternative that assumes construction of Placer Parkway for Alignments 1 and 2 are not considered in this Draft EIR.

Another factor is that County staff has heard repeatedly from Sutter County representatives that Sutter County simply will not cooperate in the construction of Placer Parkway Alternatives 1, 2, or 3, but rather is only interested in a Parkway terminus at the point where Sankey Road meets State Route 70/99. Its reasons have to do with plans for a new interchange that will be built where Riego Road meets SR 99/70. For example, in a letter to PCTPA Executive Director Celia McAdam dated August 21, 2007 (attached hereto as Exhibit A), Lisa Wilson, Planning Chief for Sutter County, stated her county's "continued support for either of the northerly corridor alignments (Alternatives 4 and 5)" and its opposition to Alternatives 1 through 3. The latter three options would terminate "in an alignment north of Riego Road," and thus would "conflict with" an interchange proposed for Riego Road and SR 99/70, which "has been approved by the California Transportation Commission, Caltrans, SACOG and Sutter County and is funded through multiple sources. Construction is slated to begin May 2011." In other words, Sutter County will only cooperate with respect to Placer Parkway Alternatives 4 and 5, both of which terminate at the Sankey Road- SR 70/99 intersection. It therefore appears that, despite the current inclinations of the Corps and EPA. Alternatives 1, 2, and 3 will ultimately prove to be "impracticable."

A little legal background may be helpful to put this issue in context. Traditionally, local agencies such as cities and counties have had primary land use authority over private property, with federal agencies intervening only pursuant to a "clear and manifest" statement by Congress, and state agencies intervening only to the "limited degree necessary to further legitimate state interests." (See, e.g., Rapanos v. U.S. (2006) 126 S. Ct. 2208, 2224 (Rapanos); DeVita v. County of Napa (1995) 9 Cal.4th 763, 782-783 (DeVita); and Big Creek Lumber Co. v. County of Santa Cruz (2006) 38 Cal.4th 1139, 1151-1152.) Thus, regardless of how tough a stance a leverage-seeking federal agency sets forth in a comment letter on a CEQA document, the Clean Water Act (33 U.S.C. § 1251 et seq.) generally requires the Corps to defer, at least to some considerable degree, to the legislative discretion that local governments have traditionally enjoyed in determining appropriate land uses within their boundaries.

In Rapanos, in which the United States Supreme Court rejected an expansive view of wetlands regulation put forward by the Corps, Justice Scalia,

writing for a plurality of the court, observed that the Corps cannot exercise its authority to regulate "waters of the United States" in a way that would eviscerate local land use authority.

Regulation of land use . . . is a quintessential state and local power. [Citations] The extensive federal jurisdiction urged by the Government would authorize the Corps to function as a de facto regulator of immense stretches of intrastate land — an authority the agency has shown its willingness to exercise with the scope of discretion that would befit a local zoning board. [Citation] We ordinarily expect a "clear and manifest" statement from Congress to authorize an unprecedented intrusion into traditional state authority. [Citation] The phrase "the waters of the United States" hardly qualifies.

(Ibid., italics added, citing FERC v. Mississippi (1982) 456 U.S. 742, 768, fn.30, Hess v. Port Authority Trans-Hudson Corporation (1994) 513 U.S. 30, 44.)

This traditional deference to local agencies' decisions is reflected in both the Corps' own regulations and in Clean Water Act case law. The most pertinent regulation provides as follows:

The primary responsibility for determining zoning and land use matters rests with state, local and tribal governments. The district engineer will normally accept decisions by such governments on those matters unless there are significant issues of overriding national importance. Such issues would include but are not necessarily limited to national security, navigation, national economic development, water quality, preservation of special aquatic areas, including wetlands, with significant interstate importance, and national energy needs. Whether a factor has overriding importance will depend on the degree of impact in an individual case.

#### (33 C.F.R. + 320.4(j)(2).)

In Clean Water Act case law, courts have impliedly recognized the principle that the Corps is not a primary land use regulator by instructing the Corps to generally defer to the reasonable objectives of applicants seeking 404 permits. (See, e.g., Louisiana Wildlife Federation v. York (5th Cir., 1985) 761 F.2d 1044, 1047-1048 ("the Corps has a duty to take into account the objectives of the applicant's project"; "[i]ndeed it would be bizarre if the Corps were to ignore the purpose for which the applicant seeks a permit and to substitute a purpose it

deems more suitable").) <sup>1</sup> Because the Placer Parkway is a local project, the Corps should ultimately defer to the local sponsors' objectives while also accepting the planning "lay of the land" created by local land use decisions such as general plans and specific plans.

State law also contemplates that state agencies will defer to local land use decisions. Thus, the California Supreme Court has said that the Planning and Zoning Law (Gov. Code, § 65000 et seq.) "incorporates the state's interest in placing some minimal regulation on what remains essentially locally determined land use decisions." (DeVita, supra, 9 Cal.4th at p. 782.) The court explained:

[T]he Legislature has been sensitive to the fact that planning and zoning in the conventional sense have traditionally been deemed municipal affairs. It has thus made no attempt to deprive local governments ... of their right to manage and control such matters, but rather has attempted to impinge upon local control only to the limited degree necessary to further legitimate state interests.

(Ibid., quoting City of Los Angeles v. State of California (1982) 138 Cal.App.3d 526, 533.)

Applying these principles to the facts at hand, the Corps and EPA will simply have to account for the primacy of local decision-making in determining, ultimately, whether a particular Placer Parkway alignment is "practicable." <sup>2</sup> Should the Board choose to approve the RUSP as proposed, a Placer Parkway alignment going through the RUSP site will no longer be "practicable." Given the current stance of Sutter County, moreover, Alternatives 1, 2, and 3, all of which would connect into State Route 70/99 south of Sankey Road, would be impracticable regardless of whatever action the Placer County Board of Supervisors takes on the RUSP. For these reasons, County staff does *not* believe,

This deference, concededly, is not absolute. In this context, the applicable Corps regulation states that "while generally focusing on the applicant's statement, the Corps, will in all cases, exercise independent judgment in defining the purpose and need for the project from both the applicant=s and the public=s perspective." (33 C.F.R. § 325, App. B(9)(c)(4).)

<sup>&</sup>lt;sup>2</sup>/ EPA's "404(b)(1) Guidelines" define "practicable" as "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose." (40 C.F.R. ' 230.3(q).)

as noted earlier, that approval of the RUSP as proposed would "potentially jeopardize the construction of the Placer Parkway."



## SUTTER COUNTY COMMUNITY SERVICES DEPARTMENT

Planning – Lisa Wilson, Planning Division Chief Animal Control Building Inspection Environmental Health Director -- Larry Bagley Assistant Director -- Randy Cagle Fire Services -- Dan Yager Emergency Services -- John DeBeaux

RECEIVED

AUG 2 3 2007

P.C.T.P.A.

August 21, 2007

PCTPA
Celia McAdam, Executive Director
299 Nevada Street
Auburn, CA 95603

Re: Comments on the Draft Placer Parkway Corridor Preservation Tier 1 Environmental Impact Statement / Program Environmental Impact Report (Draft Tier 1 EIS/EIR)

The Draft Tier 1 EIS/EIR concludes that Alternative 4 is the environmentally superior alternative. Sutter County would like to provide its continued support for either of the northerly corridor alignments (Alternatives 4 and 5) both of which terminate at Sankey Road and State Route 99/70 with an interchange.

A full interchange has been proposed for the current at-grade intersection of Riego Road and SR99/70. This interchange project has been approved by the California Transportation Commission, Caltrans, SACOG and Sutter County and is funded through multiple sources. Construction is slated to begin May 2011. Alternatives 1-3 terminate in an alignment north of Riego Road and will conflict with this currently programmed project.

If you have any questions regarding this matter feel free to contact me at (530) 822-7400.

Sincerely,

Lisa Wilson

Planning Division Chief

LW:kf

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