



June 22, 2020

Nathan Brostrom, Interim Chancellor (with enclosures)  
University of California, Merced  
5200 North Lake Road  
Merced, California 95343

Steve M. Tietjen, Principal Officer of the Virginia Smith Trust (without enclosures)  
Merced County Board of Education  
632 West 13<sup>th</sup> Street  
Merced, California 95341

**Subject: Incidental Take Permit Amendment No. 3 for University of California,  
Merced, Campus and Community North Project (2081-2009-010-04)**

Dear Interim Chancellor Brostrom and Mr. Tietjen:

Interim Chancellor Brostrom, enclosed you will find three originals of Amendment No. 3 for the incidental take permit for the above referenced Project, which have been signed by the California Department of Fish and Wildlife (Department). Please read the amendment carefully, sign the acknowledgement on all three copies of the amendment. After signing the acknowledgement, please forward all three copies of the amendment to Mr. Tietjen.

Mr. Tietjen, please read the amendment carefully and sign the acknowledgement on all three copies. After signing the acknowledgement, keep one original, return the second original to Interim Chancellor Brostrom, and return one original **no later than 30 days from Department signature**, and prior to initiation of ground-disturbing activities, to:

For United States Postal Service:

California Department of Fish and Wildlife  
Habitat Conservation Planning Branch, CESA Permitting  
Post Office Box 944209  
Sacramento, California 94244-2090

For all other methods:

California Department of Fish and Wildlife  
Habitat Conservation Planning Branch, CESA Permitting  
1740 North Market Boulevard  
Sacramento, California 95834

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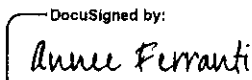
HABITAT CONSERVATION  
PLANNING BRANCH

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Steve M. Tietjen, Virginia Smith Trust  
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Interim Chancellor Brostrom and Mr. Tietjen, you are advised to keep the other original signature amendment in a secure location and distribute copies to appropriate Project staff responsible for ensuring compliance with the conditions of approval of the permit. Note that you are required to comply with certain conditions of approval prior to initiation of ground-disturbing activities. Additionally, a copy of the permit and amendments must be maintained at the Project work site and made available for inspection by Department staff when requested.

The amendment will not take effect until the signed acknowledgement is received by the Department. If you wish to discuss these instructions or have questions regarding the permit, please contact Craig Bailey, Senior Environmental Scientist (Supervisory), at [craig.bailey@wildlife.ca.gov](mailto:craig.bailey@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
041A77B10D78486...

for Julie A. Vance, Regional Manager  
Central Region  
California Department of Fish and Wildlife

Enclosures (3)

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

CENTRAL REGION

1234 EAST SHAW AVENUE

FRESNO, CALIFORNIA 93710



**AMENDMENT NO. 3**

(A Major Amendment)

California Endangered Species Act

Incidental Take Permit No. 2081-2009-010-04

Regents of the University of California

University of California, Merced

Campus and Community North Project in Merced County

**INTRODUCTION**

On March 30, 2011, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2009-010-04 (ITP) to the Regents of the University of California (Permittee) authorizing take of California tiger salamander (*Ambystoma californiense*), Swainson's hawk (*Buteo swainsoni*), succulent owl's clover (*Castilleja campestris* ssp. *succulenta*), Colusa grass (*Neostapfia colusana*), San Joaquin orcutt grass (*Orcuttia inaequalis*), and San Joaquin kit fox (*Vulpes macrotis mutica*) (collectively, the Covered Species) associated with and incidental to the University of California, Merced Campus and Community North Project (Project) in Merced County for a term of 25 years.

The Project, as described in the ITP originally issued by CDFW in March 2011, includes the construction and operation of a major research university campus sustaining up to 25,000 full-time students and a contiguous student/faculty community to support the housing, retail, and commercial needs of the university. At full build-out under the ITP, the Project Site will encompass the University of California, Merced Campus and student/faculty community (Community North) on 1,648 acres, and set aside 6,236 acres of Habitat Management (HM) lands representing compensatory mitigation for the Project-related take of the Covered Species under the California Endangered Species Act (CESA). A portion of the HM lands (1,307 acres adjoining the campus) will constitute a vernal pool-grassland habitat/species laboratory providing research, general education, and student outreach opportunities. The ITP was acknowledged by the Permittee in April 2011 and progress towards full build-out of the Project is on-going. Although the development of another student/faculty community (the 1,118-acre Community South) was being contemplated during the environmental review of the Project, it was not included as part of the Project subject to the ITP, and is not included as part of the Project subject to this Amendment.



On September 30, 2011, CDFW issued Amendment No. 1 (A Major Amendment) removing the Small Mammal Burrow Excavation requirement originally set forth in Condition of Approval 7.4 of the ITP and allowing the Permittee to implement an alternate means of minimizing direct take of California tiger salamander (CTS) in the form of mortality. Amendment No. 1 was acknowledged by the Permittee in October 2011 and continues to guide CTS salvage and relocation activities at the Project Site.

On October 15, 2015, CDFW issued Amendment No. 2 (A Major Amendment) to extend incidental take coverage over off-Site wetland restoration activities which have since been required of the Permittee by the United States Army Corps of Engineers (USACE) under Section 404 of the federal Clean Water Act, remove a remaining reference to the originally-required Small Mammal Burrow Excavation activities that were removed through the issuance of Amendment No. 1, and revise the exclusion fence requirement allowing the Permittee and CDFW the flexibility to consider alternative fence designs that may better represent current practices.

In issuing the ITP, Amendment No. 1, and Amendment No. 2 (collectively, this ITP, as amended), CDFW found, among other things, that the Permittee's compliance with the Conditions of Approval of the ITP, as amended, would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

In a letter dated August 23, 2017, the Permittee requested that the ITP as amended, be amended a third time to: 1) document recordation of a conservation easement over 167 acres of County-owned lands adjacent to the campus referred to as the Merced County Preserve (MCP); 2) requested MCP be considered surplus Habitat Management (HM) Lands that can be applied to future Project impacts; 3) removal of the University Community North from the Project Description and Project Area; 4) update contact information; 5) remove all references to the Lazy K Reserve; 6) inclusion of the Yosemite Lake Conservation Area as HM Lands; 7) modify the frequency of open trench, hole, or sump inspections; 8) modify Conditions of Approval to allow removal of trees during the SWHA nesting season; 9) modifications to the tree replacement plan; 10) allow for standing water during dust control; and 11) clarification to several Conditions of Approval. Several subsequent meetings occurred after the ITP amendment request, and through electronic mail correspondence on November 21, 2019, the Permittee documented the discussions between the Permittee and CDFW and listed modifications to the original request. These modifications include: 1) keeping the University Community North in the Project Description and Project Area; 2) request approval of multiple Designated Biologists; 4) add a "biological monitor" to the Conditions of Approval; 5) allow for small scale disturbance without CTS exclusion

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fencing but require burrow excavation; 6) allow for vehicle refueling on-site; 7) clarify that the Permittee may fill wetlands as permitted under Section 401 and 404 of the Clean Water Act; and 8) not including the MCP as part of the HM Lands at this time. An additional request to further modify the Project Description, including a replacement for Figure 4, was submitted by email on March 17, 2020.

This Major Amendment No. 3 (Amendment No. 3) makes the following changes to the existing ITP as amended:

- 1) Amendment No. 3 adds the Virginia Smith Trust as a Permittee;
- 2) Amendment No. 3 removes the Lazy K Ranch from the Project Location;
- 3) Amendment No. 3 removes the Lazy K Ranch from the Project Description;
- 4) Amendment No. 3 revises acre estimates for the UC Campus and the Community North from the Project Description (the total acreage increases by one acre);
- 5) Amendment No. 3 removes the Lazy K Ranch from the Project Description and clarifies wetland restoration activities at the Yosemite Lake Conservation Area;
- 6) Amendment No. 3 adds temporary loss of foraging habitat for San Joaquin kit fox and Swainson's hawk resulting from the wetland restoration at the Yosemite Lake Conservation Area to the Impacts of the Taking;
- 7) Amendment No. 3 adds Designated Monitors to assist Designated Biologists when implementing the Conditions of Approval for the ITP, as amended;
- 8) Amendment No. 3 allows dust control measures to leave puddles that do not last more than four (4) hours;
- 9) Amendment No. 3 allows hazardous materials to be stored within the Project Area in areas that have been completely developed;
- 10) Amendment No. 3 replaces Condition of Approval 7.4 with a requirement to excavate small mammal burrows that are within 0.25 miles of known or potential California tiger salamander breeding habitat and cannot be fully avoided by 50 feet;
- 11) Amendment No. 3 allows the Permittee to submit an alternative exclusion fence plan subject to written approval from CDFW;
- 12) Amendment No. 3 allows the Designated Biologist to remove California tiger salamander that become trapped in trenches or other excavations according to a California Tiger Salamander Relocation Plan;
- 13) Amendment No. 3 clarifies the timing of Swainson's hawk pre-activity surveys;

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- 14) Amendment No. 3 limits the Swainson's hawk nest tree no-disturbance buffer to active nests and limits the prohibition on tree removal to historic and active Swainson's hawk nest trees;
- 15) Amendment No. 3 allows the Permittee to submit an alternative Swainson's hawk nest tree replacement plan to CDFW for written approval;
- 16) Amendment No. 3 adds joint and several liability between the Regents of the University of California and the Virginia Smith Trust;
- 17) Amendment No. 3 removes the Lazy K Ranch and adds UC Merced's wetland restoration area and associated uplands at the Yosemite Lake Conservation Area to the HM Lands.
- 18) Amendment No. 3 replaces Figure 4 of the ITP, as amended, with Attachment No. 1.

## AMENDMENT

The ITP as amended is further amended as follows (amended language in ***bold italics***; deleted language in ~~strikethrough~~):

1. The following changes shall be made to Permittee's Principal Officer, Contact Person, and Mailing Address:

**Permittee 1:** Regents of the University of California  
**Principal Officer:** ~~Sung-Mo (Steve) Kang~~ ***Nathan Brostrom, Interim Chancellor of UC Merced***  
**Contact Person:** ~~Brad Samuelson~~ ***Phillip Woods***  
***Director of Physical and Environmental Planning***  
***(209) 658-8487 (209) 349-2561***  
**Mailing Address:** University of California, Merced  
***Post Office Box 20395200 North Lake Road***  
***Merced, California 9534495343***

**Permittee 2:** Virginia Smith Trust  
**Principal Officer:** Steve M. Tietjen  
**Contact Person:** Steve M. Tietjen  
***(209) 381-6601***  
**Mailing Address:** Merced County Board of Education  
***632 West 13th Street***  
***Merced, California 95341***

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2. The second, third, and fourth paragraphs Project Location shall be amended to read:

In addition to development of the campus and north community at the inclusive Project Site, the Project will include wetland restoration work ~~at on a~~ portions of the nearby ~~Lazy K Ranch (LKR) and Yosemite Lake Conservation Area (YLCA)~~ properties **property**.

~~The irregularly shaped LKR property straddles the Merced-Madera County line approximately 18.5 miles southeast of the inclusive Project Site. The LKR constitutes approximately 1,556 acres of natural lands with some cultivated agriculture and a two-mile reach of the Chowchilla River with its associated riparian area. In general, the LKR is bound on the southwest by the Burlington Northern Railroad right-of-way, on the southeast by Ash Slough, and on the north by Marguerite Road. The LKR occupies portions of Sections 12 and 13 of Township 9 South, Range 16 East, Mount Diablo Baseline and Meridian; and Sections 7, 8, 9, and 18 of Township 9 South, Range 17 East, Mount Diablo Baseline and Meridian. Figure 10 depicts the LKR.~~

The triangular-shaped YLCA is located across Yosemite Lake from the inclusive Project Site, and constitutes approximately 397.5 acres of natural lands bound by the shores of Yosemite Lake on the southeast, the Crocker-Hoffman Canal on the southwest, and by similar natural lands on the north. The YLCA occupies portions of Sections 28 and 27 of Township 6 South, Range 14 East, Mount Diablo Baseline and Meridian. Figure 11 depicts the YLCA. ***Project-specific activities on the YLCA include the restoration and permanent protection of approximately 25 acres of vernal pool habitat features and the permanent protection of 50 acres of upland habitat features.***

3. The Project Description shall be amended to read:

In 2002, the Regents of the University of California (The Regents) approved the development of the University of California, Merced (UCM) Project (Project) which consisted of an approximately 2,000-acre UCM Campus and an adjacent 2,133-acre University Community with a 750-acre Campus Natural Reserve. Shortly thereafter, the University of California (UC) began construction of the first phase of the UCM Campus on a 910-acre portion of the 2,000-acre site that did not contain any wetlands or species protected pursuant to CESA. During the construction of the first phase of the Project, DFG staff met over the course of two years with the UCM staff, United States Fish and Wildlife Service (USFWS), United States Army Corps of Engineers (USACE), United States Environmental Protection

Agency (USEPA), and others to assist the UC in developing focused mitigation strategies for inclusion in the Conservation Strategy for the Project and a modified Campus and associated Community footprint which would further reduce impacts to species protected pursuant to CESA.

Through the process, the configuration of the Project was compressed. In 2009, the University prepared an updated UCM Long Range Development Plan to address the changes in location and footprint and to guide the development of the Project. The Project ~~newas~~ **defined in the 2009 UC Merced and University Community Environmental Impact Report/Environmental Impact Statement (EIR/EIS) consisted of** ~~consists of~~ the construction and operation of a major research University campus in Merced County which will sustain up to 25,000 full time students and a contiguous associated community to support the needs of the University. ***In that EIR/EIS, the Project site is comprised of an approximately 815-acre Campus; a 1,951-acre University Community; and a 1,307-acre Campus Natural Reserve which is not intended to be developed but would be used for the purposes of *habitat mitigation*, research, a vernal pool-grassland habitat/species laboratory for students, and for general education and outreach opportunities. The proposed University Community was divided into an approximately 833-acre Community North and an approximately 1,118-acre Community South. University Community North was owned by UCLC, LLC.***

***On June 14, 2016, the UCLC transferred 623 acres of the University Community North property to the Virginia Smith Trust and the remainder to the University of California. With this change, the Campus footprint is now approximately 1,026 acres and the Community North area is approximately 623 acres, for a total of 1,649 acres which is approximately the same area that was analyzed in the 2009 EIR/EIS.***

At full build out, the Campus would include an academic core consisting of instruction, research, and administrative buildings; student housing; campus support; limited commercial development; parking; recreation facilities; transit, bike, and pedestrian paths; and infrastructure (stormwater collection/retention; potable water delivery; wastewater collection and treatment; fire and irrigation water; telecommunications, electric, and gas). ~~The proposed University Community is divided into an approximately 833-acre Community North and a 1,118-acre Community South.~~ The University Community North would be developed with a town center, a business park; mixed use commercial; cultural facilities; a range of density levels of multi-family housing and single family residential neighborhoods; parks; open space; transit, bike, and pedestrian paths; schools; roads; parking; and other associated infrastructure. The University



Community South would be developed in accordance with the County of Merced's previously adopted University Community Plan.

It is important to note that due to the contiguous location of the UC exclusively controlled Campus and Community North to the Community South; the Community South has been analyzed as part of the University Campus and the entire Community Project under both the California Environmental Quality Act (CEQA) and the National Environmental ~~Protection~~**Policy** Act. However, absent the execution of development agreements between the University of California, the County of Merced Local Agency Formation Commission, and the City of Merced, development of the Community South portion of the Project is not ready to move forward and is not covered under this ITP. However, the Community South is an integral part of the Project description in the broader context of analyzing the cumulative effects on the proposed Covered Species. ***Within the 1,648-acre development envelope***, only the ~~819-acre~~ Campus and the ~~839-acre~~ Community North are currently being developed by the UC ***and the Virginia Smith Trust***. The expected North and South Campus Community at full build-out would include 11,616 dwelling units and a total residential population of approximately 30,780 persons.

To mitigate for the Project-related loss of wetlands at the campus and community north under the Permittee's Section 404 Clean Water Act Permit (SPK-1999-00203), wetland restoration efforts are being required of the Permittee by the USACE. This wetland restoration work will be conducted within 50 acres of the 397.5-acre YLCA and ~~65.5 acres of the 1,556-acre LKR properties~~. ~~The 65.5-acre restoration area at the LKR property will be permanently protected under conservation easement and perpetually managed representing compensatory mitigation for take of the Covered Species at both properties.~~

In general, the wetland restoration activities at ~~both properties~~***the YLCA*** will constitute the conversion of uplands to seasonal wetlands in areas ~~at both properties~~ where wetlands historically existed. To accomplish the wetland restoration work, ATVs/UTVs, light trucks, and heavy equipment (including scrapers, excavators, back-hoes, dozers, tractors, fuel trucks, dump trucks, and water trucks) will be used to excavate, stockpile, contour, compact, and transport soils. After the wetlands are restored at the mitigation areas at ~~both the YLCA and LKR~~, inoculum will be collected from natural vernal pools at both properties and distributed within the restored vernal pools, coincident with, (but in advance of) the on-set of the 2016-2017 rainy season. The inoculum will include surface available soils, seeds, and organic materials hand-raked and hand-vacuumed from within the natural vernal (donor) pools at the designated inoculum collection areas ~~at both~~

properties. ~~Permittee will ensure that at least 3.4 acres of the restored wetlands at the LKR are designed, constructed, re-vegetated, protected, and perpetually managed as vernal pools representing CTS breeding habitat.~~ In addition, at least 4 **0.43**-acre of restored wetlands associated with the Project will be suitable CTS breeding habitat.

Mitigation for the Permittee's Section 404 Clean Water Act permit is also expected to include the permanent preservation of existing wetlands on three other parcels (Merced County Assessor's Parcel Numbers 052-300-008, 052-300-011, and 052-300-012) in Merced County. It should also be noted that similar wetland restoration work will occur at the YLCA alongside but not coincident with the aforementioned Project-related restoration work there. All of the restored wetlands at the YLCA ~~will eventually behave been~~ **will be** protected and perpetually managed under conservation easement ~~but not as a requirement of this ITP~~ **recorded for both this Project and the Yosemite Lake Project (ITP No. 2081-2016-025-04).**

For the purpose of discussion within this ITP, as amended, the Project Area includes the 1) development envelope within the inclusive Project Site encompassing the campus and community north areas; 2) the areas of wetland restoration at both the YLCA (50 acres) and LKR (65.5 acres) properties, and the inoculum collection areas at YLCA and LKR; and the 6,236 acres of Habitat Management Lands.

4. The last paragraph of the Impacts of the Taking on Covered Species shall be amended to read:

In association with the off-Site Wetland Restoration work, wetland restoration is expected to result in an increase of potential breeding habitat **for California tiger salamander** at YLCA and LKR and enhance the value of the adjacent uplands resulting from the restored breeding habitat. ***The wetland restoration area will not be available to San Joaquin kit fox and Swainson's hawk for foraging while restoration activities are in progress and these activities are expected to result in temporary impacts to 50 acres of foraging habitat for these species.*** The collection and distribution of inoculum at both YLCA will be conducted during the dry season using only hand tools and will involve only small portions of natural pools without state listed (threatened, endangered, or rare) plants; therefore, impacts to the Covered **Plant** Species are not anticipated.

5. Table 1 of the Incidental Take Authorization of Covered Species shall be amended to read:

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Species	Habitat Type	Number of Acres Impact
1. California tiger salamander	Non-native grassland (upland refugia)	1,905.5 <b>1,895</b> acres permanent 80 acres temporary <sup>b</sup>
	Wetland breeding	7.5 acres permanent
2 Swainson's hawk	Non-native grassland (foraging)	1,514 acres permanent <sup>a</sup> <b>50 acres temporary<sup>b</sup></b>
	Nesting	1 nesting tree
3. San Joaquin kit fox	Non-native grassland	1,293 acres permanent <sup>a</sup> <b>676726</b> acres temporary <sup>b</sup>
4. Succulent owl's clover	Vernal pool	31 acres permanent
5. Colusa grass	Vernal pool	0 acres permanent <sup>bc</sup>
6. San Joaquin orcutt grass	Vernal pool	0 acres permanent <sup>bc</sup>

<sup>a</sup>Permanent habitat impacts are based on the ability of the species to utilize open space within the fully built Project Area on a limited basis for foraging, movement corridors, and/or nesting and denning.

<sup>b</sup>*Twenty-five acres of temporary impacts resulting from wetland restoration activities that will make areas will temporarily make the area unavailable to San Joaquin kit fox and Swainson's hawk or as refugia for California tiger salamander. These areas will be available to use as foraging habitat for San Joaquin kit fox and Swainson's hawk during dry months when these activities are complete. Some of these wetland restoration areas will also provide suitable breeding habitat features for California tiger salamander when these activities are complete.*

<sup>bc</sup>*While Colusa grass and San Joaquin orcutt grass have not been identified in vernal pool habitat location on the UCM Campus and Community North, there is a strong likelihood both may be present within the Project Area based on the known abundance and distribution of these species on the adjacent HM lands.*

6. Condition of Approval 5.2, Designated Biologist, shall be amended to read:

Permittee shall submit to DFG in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist(s) is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain DFG approval of the Designated Biologist(s) in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Designated Biologist(s) must be changed. ***The Designated Biologist(s) may be assisted by approved individuals identified as Designated Monitors that may not meet the qualifications to be a Designated Biologist. Designated Monitors and their***

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**activities shall be approved in advance and in writing by CDFW (previously DFG).**

7. Condition of Approval 5.3, Designated Biologist Authority, shall be amended to read:

To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist/**Designated Monitor** shall have authority to immediately stop any activity that is not in compliance with this ITP, and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species, or a species not covered by this ITP.

8. Condition of Approval 5.13, Dust Control, shall be amended to read:

Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles **that last more than four (4) hours and watering shall not occur if puddles cannot percolate prior to one (1) hour before dusk.**

9. Condition of Approval 5.16, Hazardous Materials, shall be amended to read:

Permittee shall immediately stop and following pertinent State and federal statutes and regulations arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area, **except in areas that have completed development and have been determined not to be Covered Species habitat by the Designated Biologist**, and shall properly contain and dispose of any unused or leftover hazardous products off-site.

10. Condition of Approval 7.4, Salvage Efforts, shall be renamed and amended to read:

~~Salvage Efforts: The Designated Biologist shall survey all portions of the construction footprint within grassland habitat for the presence of all life stages of CTS immediately after initial ground disturbance (e.g., first ripping/discing/grading event). All small mammal burrows or burrow complexes incidentally dug up or otherwise disturbed during the grading or excavation activities shall be visually inspected for CTS by the Designated Biologist. The Designated Biologist shall~~

~~relocate any live CTS discovered during these surveys in accordance with the approved CTS relocation plan.~~

***Small Mammal Burrow Surveys and Excavation. The Permittee shall flag any small mammal burrows within 0.25 mile of known or potential California tiger salamander breeding habitat. Any small mammal burrows that cannot be fully avoided by 50 feet shall be fully excavated by the Designated Biologist(s) as described in the California Tiger Salamander Relocation Plan (Condition of Approval 7.2). The Designated Biologist(s) shall relocate any live California tiger salamander discovered during burrow excavation in accordance with the approved California Tiger Salamander Relocation Plan required in Condition of Approval 7.2 above.***

11. Condition of Approval 7.5, California Tiger Salamander Exclusion Fencing, shall be amended to read:

Permittee shall place California tiger salamander exclusion fencing around the construction footprint following the hand excavation of burrows in upland habitat areas within 1.3 miles of potential or known California tiger salamander breeding sites. Permittee shall maintain the California tiger salamander exclusion fencing throughout all construction activities. Permittee shall use wildlife fencing, which consists of a fine (less than 0.4 inch) mesh equipped with one way exits to avoid entrapment of amphibians inside the fence. Permittee shall bury fencing to a depth of six inches and fencing shall be a minimum of 3.3 feet tall following installation. The fencing shall include the optional barrier lip designed to prevent species such as California tiger salamander from climbing over. The Permittee shall avoid small mammal burrows to the maximum extent possible during installation of the exclusion fencing. Where burrows cannot be avoided, the Designated Biologist shall excavate them by hand before the fence is installed. ***Alternatively, the Permittee may propose substitute exclusion fence plan for specific locations within the Project area. Any substitute exclusion fence plan shall be submitted to CDFW (previously DFG) for written approval and shall be approved prior to its use.***

12. Condition of Approval 7.6, Rain Forecast, shall be amended as follows:

If a 70 percent or greater chance of rainfall is predicted within 72 hours, Permittee shall cease all Covered Activities in areas within 1.3 miles of potential or known California tiger salamander ***until*** no further rain is forecast.

13. Condition of Approval 7.11, Open Trenches, shall be amended to read:



The Designated Biologist shall inspect all open holes, sumps, and trenches within the Project Area at the beginning, middle, and end of each day for trapped animals. To prevent inadvertent entrapment of Covered Species or any other animals the Designated Biologist shall oversee the covering of all excavated, steep-walled holes or trenches more than two feet deep, or of any depth if they contain water or other material, with plywood or other barrier materials at the close of each working day such that animals are unable to enter and become entrapped. Alternatively, Permittee shall provide earthen escape ramps of no more than 3:1 slope every 200 feet. Before holes or trenches are filled, the Designated Biologist shall thoroughly inspect them for trapped animals. If any worker discovers that Covered Species have become trapped, Permittee shall cease all Covered Activities in the vicinity and notify the Designated Biologist immediately. Project workers and the Designated Biologist shall allow the Covered Species to escape unimpeded if possible. ***If California tiger salamander is discovered in a hole or trench, the Designated Biologist shall relocate California tiger salamanders as described in the California tiger salamander relocation plan (Condition of Approval 7.2), before*** Covered Activities are allowed to continue. If an injured Covered Species is discovered at any time, the Designated Representative shall contact the USFWS Sacramento Fish and Wildlife Office and DFG's Regional Representative within one working day of the incident.

14. Condition of Approval 7.14, Raptor Surveys, shall be amended to read:

The Designated Biologist shall conduct preconstruction surveys during the raptor nesting season (February 15 through September 15), within 0.5 mile of Covered Activities. ***Raptor surveys will be conducted no more than 10 days prior to the start of Covered Activities.*** The Designated Biologist or Designated Representative shall provide the survey results to DFG in a written report within 30 days of beginning Covered Activities.

15. Condition of Approval 7.16, Swainson's Hawk Nest Buffer, shall be amended to read:

The Permittee and Designated Biologist shall ensure that no Covered Activities occur within 500 feet of ***an active*** Swainson's hawk nest during the nesting season (February 15 through September 15).

16. Condition of Approval 7.17, Tree Removal, shall be amended to read:

Permittee shall prohibit removal of ***any historic or active Swainson's hawk nest*** trees to between September 16 and February 14 of any year to avoid impacts to nesting Swainson's hawk.

17. Condition of Approval 7.18, Tree Replacement, shall be amended to read:

If Covered Activities affecting Swainson's hawk result in the removal of a Swainson's hawk nest tree in the Project Area, the Permittee shall plant native species replacement trees at a 4:1 ratio (four trees for each nest tree removed) on HM lands in close proximity to suitable foraging habitat. The HM Lands manager shall monitor the tree survival rates and shall report them in the ASR pursuant to the reporting requirements of Condition 6.6 of this ITP. Permittee shall ensure that the number of trees required as compensation under this ITP matches the number of healthy and thriving trees at the end of the initial five-years monitoring period. ~~Permittee shall plant replacement trees that are separated from each other by at least 0.75 mile and shall not plant trees within 1.5 miles of a known Swainson's hawk nest tree.~~ ***shall prepare a Swainson's Hawk Nest Tree Replacement Plan and submit it to CDFW (previously DFG) for review and written approval. The Swainson's Hawk Nest Tree Replacement Plan shall identify replacement tree locations, planting methods, and any site-specific management activities necessary to ensure the performance criteria of this Condition of Approval are achieved.***

18. The ITP shall be amended to add Conditional of Approval 7.28 on page 18

***Joint and Several Liability. All terms and conditions of this ITP, including those set forth in the attached MMRP, shall be binding upon both Permittee 1 and Permittee 2. Notwithstanding California Civil Code section 1431 or any other provision of law, each Permittee is jointly and severally liable for providing and maintaining security in accordance with this ITP and for performance of all other terms, conditions, and obligations of this ITP, including, but not limited to, those set forth in the attached MMRP. Any failure by either Permittee to comply with any term, condition, or obligation set forth in this ITP shall be deemed a failure to comply by both Permittee 1 and Permittee 2.***

19. Condition of Approval 8, Habitat Management Land Acquisition, shall be amended to read:

DFG has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate

Project-related impacts of the taking on Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and DFG's estimate of the acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall provide for the permanent protection and management of ~~6,301.56~~ **6,286** acres of HM Lands by recording a conservation easement, selecting a land manager, and funding the long-term management of the HM Lands.

8.1 There are two types of conservation lands associated with the Project: lands owned in fee title by the ~~Knapp family~~ **Yosemite Lake Vernal Pool, LLC**, the UC, and The Nature Conservancy and which are remote or located immediately adjacent to the campus (i.e.: Tier 1 properties – ~~Knapp Family~~ **Yosemite Lake Conservation Area (YLCA)**, Virginia Smith Trust, Campus Natural Reserve, Myers Easterly, and Cyril Smith Trust), and other lands in the region set aside for resource conservation and held under easement (i.e.: Tier 2 properties – the Robinson, Chance, Carlson, Nelson, and Cunningham properties). Permittee shall permanently preserve ~~6,301.56~~ **6,286** acres of Tier 1 HM lands which are currently owned in fee title by the UC, The Nature Conservancy, or the ~~Knapp family~~ **the Yosemite Lake Vernal Pool, LLC** and located in eastern Merced County (Figure 2 **and Figure 10**). The Cyril Smith Trust is not included in the acreage of HM Lands because it is not owned in fee title by the Permittee. The Tier 1 lands to be used as HM Lands for the Project include:

8.1.1. The 5,098-acre Virginia Smith Trust Preserve (VST);

8.1.2. The 1,307-acre Campus Natural Reserve (CNR); and

8.1.3. The 101-acre Myers Easterly; and

8.1.4. ~~The 65.5-acre Knapp Family (LKR)~~ **75 acres of the Yosemite Lake Vernal Pool, LLC's YLCA, 50 of which is suitable upland habitat for Covered Species.**

8.2 The HM lands consist of high quality habitat for the Covered Species as determined through extensive biological resource surveys spanning

multiple years. Based upon these surveys, Table 2 contains the acreage of habitat on the HM lands known to be occupied by Covered Species;

Table 2. Acreage of Habitat on HM Lands Known to be Occupied by Covered Species

Species	Habitat Type	Number of Acres			
		VST	CNR	Myers Easterly	LKRYLC A
1. California tiger salamander	Non-native grassland (upland refugia)	5,098	1,270	94	<b>5550</b>
2. Swainson's hawk	Non-native grassland (foraging)	5,098	1,270	94	<b>50</b>
3. San Joaquin kit fox	Non-native grassland	5,048	1,181	48	<b>50</b>
4. Succulent owl's clover	Vernal pool, wetland	194	111	0	<b>0</b>
5. SJV orcutt grass	Vernal pool, wetland	0	16	0	<b>0</b>
6. Colusa grass	Vernal pool wetland	0	14	0	<b>0</b>

8.3 As part of this condition, Permittee shall:

- 8.3.1 Convey a conservation easement to DFG over the VST, CNR, **LKRYLCA**, and Meyers Easterly HM lands under terms approved by DFG within 18 months of execution of this ITP. Alternatively, the transfer may be to a DFG-approved non-profit organization qualified pursuant to California Government Code section 65965, with DFG named as a third-party easement beneficiary.
- 8.3.3. Manage the VST, CNR, and Meyers Easterly in accordance with the *Management Plan for Conservation Lands and the Adjacent Campus Buildout Lands for the University of California, Merced* (September 2008) and incorporate the plan by reference into the conservation easements. Similarly, manage the **LKRYLCA** acreage in accordance with a long-term management plan to be prepared by the Permittee **as part of the Conditions of Approval for ITP No. 2081-2016-025-04** and approved by CDFW and incorporate the plan by reference into the conservation easement. In addition, Permittee shall implement the Take Avoidance and Minimization required in ITP Condition 87 when conducting

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biological monitoring, infrastructure maintenance or improvement, and management activities.

20. Attachment 1 of Amendment No. 3 shall replace Figure 4 of the ITP, as amended.

The corresponding measures in the Mitigation Monitoring and Reporting Program (MMRP) (Attachment 1 of the ITP, as amended) shall be amended to read the same as above.

All terms and conditions of the ITP, as amended and MMRP that are not expressly amended herein, remain in effect and must be implemented and adhered to by the Permittee.

## FINDINGS

*Issuance of Amendment No. 3 may increase the amount of take of one of the Covered Species compared to the Project as originally approved; however, by implementing the avoidance, minimization, and mitigation measures contained in the ITP, as amended and Amendment No. 3, it is not expected that Amendment No. 3 will increase Project impacts on these species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).*

Discussion: Major Amendment No. 3 makes 20 specific changes to the ITP, as amended:

- (1) adds the Virginia Smith Trust as a Permittee;
- (2) removes the Lazy K Ranch from the Project Location;
- (3) removes the Lazy K Ranch from the Project Description;
- (4) revises acre estimates for the UC Campus and the Community North from the Project Description (the total acreage increases by one acre);
- (5) removes the Lazy K Ranch from the Project Description and clarifies wetland restoration activities at the Yosemite Lake Conservation Area;
- (6) adds temporary loss of foraging habitat for San Joaquin kit fox and Swainson's hawk resulting from the wetland restoration at the Yosemite Lake Conservation Area to the Impacts of the Taking;
- (7) adds Designated Monitors to assist Designated Biologists when implementing the Conditions of Approval for the ITP as amended;
- (8) provides Designated Biologist Authority to the Designated Monitors;

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- (9) allows dust control measures to leave puddles that do not last more than four (4) hours;
- (10) allows hazardous materials to be stored within the Project Area in areas that have been completely developed;
- (11) replaces Condition of Approval 7.4 with a requirement to excavate small mammal burrows that are within 0.25 miles of known or potential California tiger salamander breeding habitat and cannot be fully avoided by 50 feet;
- (12) allows the Permittee to submit an alternative exclusion fence plan subject to written approval from CDFW;
- (13) allows the Designated Biologist to remove California tiger salamander that become trapped in trenches or other excavations according to a California Tiger Salamander Relocation Plan;
- (14) clarifies the timing of Swainson's hawk pre-activity surveys;
- (15) limits the Swainson's hawk nest tree no-disturbance buffer to active nests
- (16) limits the prohibition on tree removal to historic and active Swainson's hawk nest trees;
- (17) allows the Permittee to submit an alternative Swainson's hawk nest tree replacement plan to CDFW for written approval;
- (18) adds joint and several liability between the Regents of the University of California and the Virginia Smith Trust; and
- (19) removes the Lazy K Ranch and adds UC Merced's wetland restoration area and associated uplands at the Yosemite Lake Conservation Area to the HM Lands;
- (20) replaces Figure 4 of the ITP, as amended, with Attachment 1 of Amendment No. 3.

CDFW has determined that changes to small mammal burrow excavation, Swainson's hawk nest buffer reductions, restrictions for Swainson's hawk nest tree removal, and Swainson's hawk nest tree replacement plan may increase the amount of take of Covered Species, but through avoidance, minimization, and mitigation, avoids an increase of the impacts to the Covered Species. Other changes either remove Project activities (e.g., Lazy K Ranch) or are for clarification to the Conditions of Approval and are not expected to affect the amount of take of Covered Species.

*Issuance of Amendment No. 3 does not affect CDFW's previous determination that issuance of the ITP as amended meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).*

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Discussion: CDFW determined in March 2011 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to Amendment No. 3 because the Project and ITP, as amended, adds measures to minimize the authorized take and fully mitigate the wetland restoration-related impacts to the Covered Species, increases the compensatory mitigation required of the Permittee, and requires Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in Conditions of Approval in the ITP, as amended, and MMRP, effectively minimizing and fully mitigating impacts of the taking on the Covered Species.

*None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of Amendment No. 3.*

Discussion: CDFW originally issued the original ITP in March 2011, Major Amendment No. 1 in September 2011, and Major Amendment No. 2 in October 2015 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*) after, among other things, considering the Final Environmental Impact Statement/Environmental Impact Report (Final EIS/EIR) certified by the University of California for the Project. However, because the off-Site restoration work at the YLCA and the increase of one acre to the Project disturbance were not contemplated within the scope of the Final EIS/EIR, CDFW herein further amends the ITP, as amended, after, among other things, considering the Final Environmental Impact Report (EIR) certified by the County of Merced, for the Yosemite Lake Estates General Plan Amendment as it regarded the YLCA property and the Supplemental EIR prepared for the University of California Merced 2020 Long Range Development Plan as it regarded the increased Project disturbance. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required under CEQA as part of CDFW's approval of Amendment No. 3.

*CDFW finds that Amendment No. 3 is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).*

Discussion: Amendment No. 3 adds a Permittee, clarifies multiple Conditions of Approval, provides alternative minimization measures for California tiger salamander and Swainson's hawk, adds the Yosemite Lake Conservation Area to HM Lands, and removes the Lazy K Ranch (65.5 acres) from the HM Lands. Therefore, Amendment No. 3 will significantly modify the scope and nature of the permitted Project under the ITP, as amended. CDFW has determined that the change to the ITP constitutes a Major

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Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

The authorization provided by Amendment No. 3 is not valid until Permittees sign and date the acknowledgement below, and return one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

California Department of Fish and Wildlife  
Habitat Conservation Planning Branch  
Attention: CESA Permitting Program  
Post Office Box 944209  
Sacramento, California 94244-2090

**Attachments:**

ATTACHMENT 1 Revised Figure 4 (UCM Proposed Action and University's Proposed Project)

**APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

on 6/22/2020

DocuSigned by:  
Anne Ferranti  
041A77B10D78486...

for Julie A. Vance  
Regional Manager  
Central Region

**ACKNOWLEDGMENT**

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of the original ITP and this Amendment, and (3) agrees on behalf of the Permittee to comply with all terms and conditions of the ITP as amended.

**Regents of the University of California**

By: Nathan Brostrom Date: JUNE 30, 2020

Printed Name: NATHAN BROSTROM Title: INTERIM CHANCELLOR

**Virginia Smith Trust**

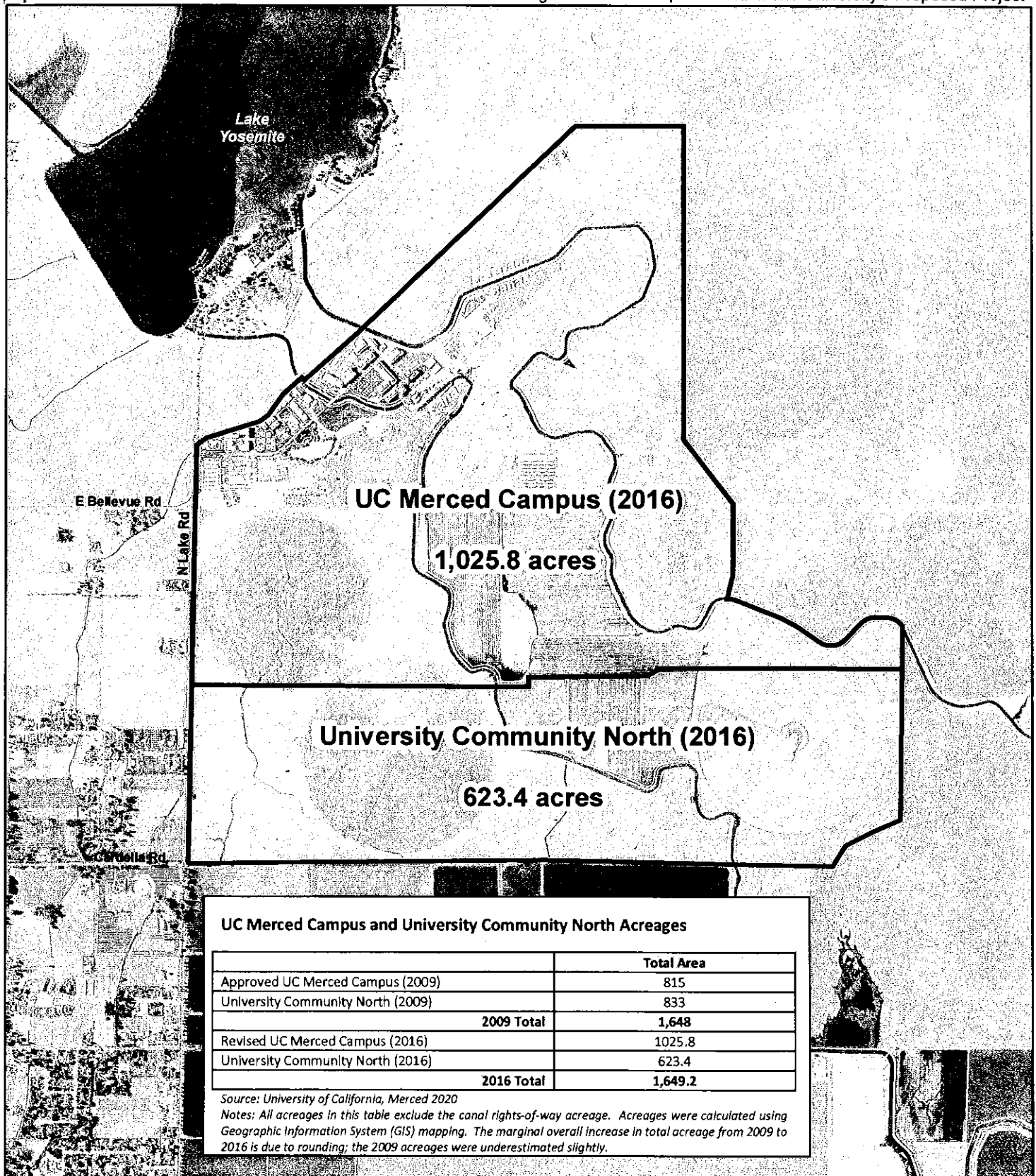
By: Steve M. Tietjen Date: July 13<sup>th</sup>, 2020

Printed Name: Steve M. Tietjen Title: Merced COE Superintendent  
Advisor Virginia Smith Trust

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ATTACHMENT 1

revised Figure 4. UCM Proposed Action and University's  
Proposed Project



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FEET

SOURCE: Golden Valley Eng. (03/2016); CTA Eng. and Surv. (03/2015); USDA NAIP Imagery (2014).

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