State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Rd.
San Diego, CA 92123
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

March 30, 2020

Lindsey Hashimoto
University of California, Irvine
4199 Campus Drive, Suite 380
Irvine, CA 92697
hashimol@uci.edu

Dear Ms. Hashimoto:

Subject: Irvine Campus Medical Complex (PROJECT)
NOTICE OF PREPARATION (NOP) OF AN ENVIRONMENTAL IMPACT REPORT (EIR) SCH# 2020029099

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of an Environmental Impact Report (EIR) from the University of California, Irvine (UCI) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

Proponent: University of California, Irvine (UCI)

Objective: The objective of the Project is to develop an integrated medical campus that provides inpatient, ambulatory, and emergency care services. Proposed buildings include a hospital, ambulatory care center, central utility plant, and parking structure. Primary Project activities include demolition of existing buildings, removal of cargo containers and storage sheds, undergrounding utilities, landscaping, and construction of the new facilities.

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Location: The 14.5-acre Project site is located on the North Campus sector of the UCI Campus in the City of Irvine in Orange County. The site is bordered by Birch Street to the northeast, Jamboree Road to the northwest, and UC San Joaquin Marsh Reserve to the south. The site is primarily undeveloped but does host support service facilities. Special status species with the potential to occur in the region identified using the California Natural Diversity Database (CNDDB) include: burrowing owl (*Athene cunicularia*; California Species of Special Concern (SSC)), western pond turtle (*Emys marmorata*; SSC), and light-footed Ridgway's rail (*Rallus obsoletus levipes*; federal Endangered Species Act (ESA) and California Endangered Species Act (CESA) listed endangered; California Fully Protected Species (FPS)). UCI's informational website on the San Joaquin Marsh Reserve indicates that the marsh is a Pacific Flyway stopover for 100 migratory bird species. In addition to light-footed Ridgway's rail, California least tern (*Sternula antillarum browni*; CESA and ESA Endangered; FPS) has also been observed in the San Joaquin Marsh Reserve.

Timeframe: Project construction is anticipated to take 54 months.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist UCI in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the potential for the Project to have a significant impact on biological resources, CDFW agrees that an Environmental Impact Report (EIR) is appropriate for the Project.

I. Open Space and Pedestrian Trail Improvement Impacts

COMMENT #1:

Issue: Proposed landscape improvements include outdoor public spaces and gardens, as well as open space and pedestrian trail improvements. Details on open space and trail design were not available for review.

Specific impact: The area proposed for open space and trail improvements overlays an existing open space area, as indicated on the conceptual site plan in Figure 2 of the NOP. Bisecting of open space areas can create edge effects and habitat fragmentation, which would impact biological resources as a result.

To minimize significant impacts: The EIR should detail the design elements for trail improvements and open space areas, focusing on minimizing impacts to biological resources. Bisecting of existing open space areas should be avoided to minimize edge effect and maximize the biological value for the resources.

II. Impacts to San Joaquin Marsh Reserve

COMMENT #2:

Issue: The Project site is adjacent to the San Joaquin Marsh Reserve, which hosts multiple wetland habitats and provides a stopover for migratory birds. In consideration of the Project's proximity to this biologically rich habitat, the following measures should be implemented to minimize significant impacts to biological resources.

CDFW recommendations to minimize significant impacts:

1. CDFW has responsibility for wetland and riparian habitats. It is the policy of CDFW to strongly discourage development in wetlands or conversion of wetlands to uplands. We oppose any development or conversion that would result in a reduction of wetland acreage or wetland habitat values, unless, at a minimum, project mitigation assures there will be "no net loss" of either wetland habitat values or acreage. Development and conversion include but are not limited to conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks that preserve the riparian and aquatic values and maintain their value to onsite and offsite wildlife populations. Mitigation measures to compensate for impacts to mature riparian corridors must be included in the DEIR and must compensate for the loss of function and value of a wildlife corridor.

a. The project area supports aquatic, riparian, and wetland habitats; therefore, a jurisdictional delineation of the creeks and their associated riparian habitats should be included in the EIR. The delineation should be conducted pursuant to the U.S. Fish and Wildlife Service wetland definition adopted by CDFW.[2] Please note that some wetland and riparian habitats subject to CDFW's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers.

b. CDFW also has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the project applicant (or "entity") must provide written notification to CDFW pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. CDFW as a Responsible Agency under CEQA may consider the local jurisdiction's (lead agency) Negative Declaration or Environmental Impact Report for the project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSAA.[3]

2. CDFW considers adverse impacts to a species protected by the California Endangered Species Act (CESA), for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species that results from the project is prohibited, except as authorized by state law (Fish & G. Code, §§ 2080, 2085). Consequently, if the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the project proponent seek appropriate take authorization under CESA prior to implementing the project. Appropriate authorization from CDFW may include an

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[2] Cowardin, Lewis M., et al. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Fish and Wildlife Service.

[3] A notification package for a LSA may be obtained by accessing CDFW's web site at http://www.wildlife.ca.gov/Conservation/LSA.

incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and G. Code §§ 2080.1, 2081, subds. (b), (c)). Early consultation is encouraged, as significant modification to a project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the project's CEQA document addresses all project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

3. To enable CDFW to adequately review and comment on the proposed project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the EIR.

a. The document should contain a complete discussion of the purpose and need for, and description of, the proposed project, including all staging areas and access routes to the construction and staging areas.

b. A range of feasible alternatives should be included to ensure that alternatives to the proposed project are fully considered and evaluated; the alternatives should avoid or otherwise minimize impacts to sensitive biological resources. Specific alternative locations should be evaluated in areas with lower resource sensitivity where appropriate.

Biological Resources within the Project's Area of Potential Effect

4. The document should provide a complete assessment of the flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a complete floral and faunal species compendium of the entire project site, undertaken at the appropriate time of year. The EIR should include the following information:

a. CEQA Guidelines, section 15125(c), specifies that knowledge on the regional setting is critical to an assessment of environmental impacts and that special emphasis should be placed on resources that are rare or unique to the region.

b. A thorough, recent floristic-based assessment of special status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (see https://www.wildlife.ca.gov/Conservation/Plants/Info). CDFW recommends that floristic, alliance-based and/or association-based mapping and vegetation impact assessments be conducted at the Project site and neighboring vicinity. The Manual of California Vegetation, second edition, should also be used to inform this mapping and assessment (Sawyer et al. 2008[4]). Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation condition.

c. A current inventory of the biological resources associated with each habitat type onsite and within the area of potential effect. CDFW's California Natural Diversity Data Base in Sacramento

[4] Sawyer, J. O., T. Keeler-Wolf and J.M. Evens. 2009. A Manual of California Vegetation, Second Edition. California Native Plant Society Press, Sacramento.

should be contacted at https://www.wildlife.ca.gov/Data/BIOS to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code.

d. An inventory of rare, threatened, endangered and other sensitive species onsite and within the area of potential effect. Species to be addressed should include all those which meet the CEQA definition (see CEQA Guidelines, § 15380). This should include sensitive fish, wildlife, reptile, and amphibian species. Seasonal variations in use of the project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service.

Analyses of the Potential Project-Related Impacts on the Biological Resources

5. To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the EIR.

a. A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage should also be included. The latter subject should address: project-related changes on drainage patterns on and downstream of the project site; the volume, velocity, and frequency of existing and post-project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-project fate of runoff from the project site. The discussions should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary, and the potential resulting impacts on the habitat, if any, supported by the groundwater. Mitigation measures proposed to alleviate such impacts should be included.

b. Discussions regarding indirect project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a NCCP). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the EIR.

c. The zoning of areas for development projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the environmental document.

d. A cumulative effects analysis should be developed as described under CEQA Guidelines, section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

Mitigation for the Project-related Biological Impacts

6. The EIR should include measures to fully avoid and otherwise protect Rare Natural Communities from project-related impacts. CDFW considers these communities as threatened habitats having both regional and local significance.

7. The EIR should include mitigation measures for adverse project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of project impacts. For unavoidable impacts, onsite habitat restoration or enhancement should be discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

8. For proposed preservation and/or restoration, the EIR should include measures to perpetually protect the targeted habitat values from direct and indirect negative impacts. The objective should be to offset the project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

9. In order to avoid impacts to nesting birds, the EIR should require that clearing of vegetation, and when biologically warranted construction, occur outside of the peak avian breeding season which generally runs from February 1 through September 1 (as early as January 1 for some raptors). If project construction is necessary during the bird breeding season, a qualified biologist with experience in conducting bird breeding surveys should conduct weekly bird surveys for nesting birds, within three days prior to the work in the area, and ensure no nesting birds in the project area would be impacted by the project. If an active nest is identified, a buffer shall be established between the construction activities and the nest so that nesting activities are not interrupted. The buffer should be a minimum width of 300 feet (500 feet for raptors), be delineated by temporary fencing, and remain in effect as long as construction is occurring or until the nest is no longer active. No project construction shall occur within the fenced nest zone until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the project. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

10. CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species. Studies have shown that these efforts are experimental in nature and largely unsuccessful.

11. Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation onsite; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey

form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP of an EIR to assist UCI in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jessie Lane, environmental scientist at (858) 636-3159 or Jessie.Lane@wildlife.ca.gov.

Sincerely,

David A. Mayer
Acting Environmental Program Manager
South Coast Region

ec: Office of Planning and Research, State Clearinghouse, Sacramento

REFERENCES

Cowardin, Lewis M., et al. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Fish and Wildlife Service.

Sawyer, J. O., T. Keeler-Wolf and J.M. Evens. 2009. A Manual of California Vegetation, Second Edition. California Native Plant Society Press, Sacramento.

University of California. Natural Reserve System: San Joaquin Marsh Reserve. https://ucnrs.org/reserves/san-joaquin-marsh-reserve/