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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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May 7, 2020

Governor's Office of Planning & Research

MAY 07 2020

STATE CLEARINGHOUSE

Mr. Raphael Breines
Physical & Environmental Planning
University of California, Berkeley
300 A&E Building
Berkeley, CA 94720-1382
planning@berkeley.edu

Subject: University of California, Berkeley Long Range Development Plan Update and Housing Projects #1 and #2, Notice of Preparation of a Draft Environmental Impact Report, SCH 2020040078, Alameda County

Dear Mr. Breines:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the University of California, Berkeley (UC Berkeley) Long Range Development Plan (LRDP) Update ("LRDP Update" or "Project") in Alameda County.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act, the Lake or Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts

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must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or Incidental Take Permit) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION AND LOCATION

Each University of California campus periodically prepares an LRDP, which provides a high-level planning framework to guide land use and capital investment in line with the campus's mission, priorities, strategic goals, and enrollment projections. The most recent LRDP (2020 LRDP) for UC Berkeley forecasted development through the year 2020. The LRDP Update will replace the current LRDP. The UC Regents adopted the previous 2020 LRDP and associated EIR on January 20, 2005. The previous LRDP requires updating to reflect new growth projections and plans.

The LRDP Update EIR will function as a Program EIR (pursuant to CEQA Guidelines section 15168) that can be used in the environmental review of subsequent campus development projects during implementation of the LRDP Update. The LRDP Update EIR evaluates the physical environmental effects of the LRDP Update proposed development program that includes two specific student housing projects located off of the Campus Park. The site for Housing Project #1 is located west across Oxford Street from the UC Berkeley Campus Park, and is bounded by Oxford Street, University Avenue, Walnut Street, and Berkeley Way. The site for Housing Project #2 is located at the southwestern corner of the intersection of Bowditch Street and Haste Street, roughly 0.2 miles south of the UC Berkeley Campus Park 3.

The planning area for the LRDP Update and associated EIR includes properties owned by the UC Regents located within the City of Berkeley, as well as areas of the Hill Campus located within the City of Oakland and a portion of land located in unincorporated Contra Costa County. Specifically, the LRDP Update Planning Area includes the Campus Park, which is bounded by the hills to the east, Hearst Avenue to the north, Oxford Street to the west, and Bancroft Way to the south; the Hill Campus, which extends east from the Campus Park; campus environs north of the Campus Park to Ridge Road, west of the Campus Park to Shattuck Avenue, and south of the Campus Park to Dwight Way; the Clark Kerr Campus southeast of the Campus Park; and several satellite properties located within the City of Berkeley.

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The draft LRDP Update land use plan supports potential growth on the Campus Park and adjacent university property, Hill Campus, Clark Kerr Campus, and satellite properties within the City of Berkeley.

Academic, Research, and Support (Approximately 180-200 acres).

The majority of the identified program needs in this category will be accommodated on the Campus Park. The intention of the LRDP Update is to preserve the existing proportion of open space within the Campus Park.

Hill Campus (Approximately 800 acres)

Limited development, focusing primarily on expansion and renewal of existing academic, research, and public-facing uses, is expected in the Hill Campus. The remaining Hill Campus area, comprising the majority of its acreage, will continue to be used for purposes of recreation and managed to reduce wildfire risks and enhance biodiversity.

ENVIRONMENTAL SETTING

The 2020 draft LRDP EIR describes the environmental setting as located on the western slopes of the Berkeley Hills, occupying the upper watersheds of Strawberry and Claremont canyons. It contains two distinct areas, one the largely developed Campus Park, and the other the largely undeveloped Hill Campus. The City Environs, the lands to the south, north and west of the Campus Park, are extensively developed with urban uses, including residential, commercial, and institutional uses. Sensitive vegetation and wildlife resources are generally absent in the urbanized area surrounding the Campus Park due to its intensively developed character. The eastern edge of the Southside area, along the upper slopes of the Clark Kerr Campus and Smyth-Fernwald housing area, contain areas of undeveloped habitat. These areas include native woodlands and grasslands, and remnants of riparian habitat along the remaining segments of open creek channels.

Campus Park

The Campus Park is an urbanized and landscaped area that contains the majority of UC Berkeley's academic and administrative space. The North and South Forks of Strawberry Creek and three designated Natural Areas bordering them are the most biologically important features on the Campus Park. Mature ornamental trees, shrubs and large areas of turf contribute to the landscaped character of the Campus Park.

Hill Campus

The Hill Campus consists of approximately 800 acres east of the Campus Park, largely referred to as Strawberry Canyon, bordered by Lawrence Berkeley National Laboratory, East Bay Regional Park District (EBRPD) Tilden Regional Park, East Bay Municipal Utility District (EBMUD) watershed lands, and low-density residential development. The western side of the Hill Campus includes the Lawrence Hall of Science, the UC Botanical Garden, the Strawberry Recreation Area, and Charter ("Tightwad") Hill above Memorial Stadium.

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COMMENTS

CDFW recommends that the draft EIR analyze all potential impacts to sensitive habitat types (e.g. grassland, riparian, wetland, forested and brush) and special-status species that could be present at each Project location. The 2020 draft LDRP EIR identified several special-status species that are known to or suspected to occur at Hill Campus including, but not limited to, the state and federally threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*) and the federally threatened and state species of special concern California red-legged frog (*Rana draytonii*). Please be advised the Fish and Game Commission recently accepted the mountain lion (*Felis concolor*) Central Coast North Evolutionarily Significant Unit as a state candidate for listing as threatened. CDFW recommends avoiding impacts to areas that provide habitat for sensitive species.

Trees are present within the Project boundary and in adjacent residential areas. Both native and non-native trees provide nesting habitat for birds. CDFW recommends that the following measures be included in the draft EIR:

1. Nesting Bird Surveys: If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), CDFW recommends that a qualified biologist conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically, the following but may differ even within species: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys should be conducted at the appropriate times of day and during appropriate nesting times.
2. Active Nest Buffers: If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, an appropriate buffer between the nest and active construction should be established. The buffer should be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist should conduct baseline monitoring of the nest to characterize “normal” bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist should monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g. defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman should have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.
3. Hooded Lighting: Project lighting to be installed should be hooded or shielded to direct light downwards and to minimize the spillage of light outwards into adjacent areas where trees are present.

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CDFW is concerned regarding potential impacts to lakes and streams within the Project location. Due to the limited information provided in the NOP, CDFW is providing comments below with regards to potential impacts and mitigation measures for lakes and streams. CDFW recommends that the following measures be included in the draft EIR:

1. Habitat Assessment: A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its immediate vicinity supports freshwater stream, wetland, and/or riparian communities. This survey should include, but not be limited to, Strawberry Creek or streams, and drainages. The assessment should include recommended stream buffers and setbacks.
2. Wetland Delineation: CDFW recommends a formal wetland delineation be conducted by a qualified biologist prior to Project construction to determine the location and extent of wetlands and riparian habitat present. Please note that, while there is overlap, State and Federal definitions of wetlands, as well as which activities require Notification pursuant to Fish and Game Code § 1602, differ. Therefore, CDFW further recommends that the delineation identify both State and Federal wetlands as well as which activities may require Notification to comply with Fish and Game Code.
3. Notification of Lake or Streambed Alteration: Fish and Game Code §1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. CDFW is required to comply with CEQA in the issuance of an LSA Agreement. For additional information, please see <https://www.wildlife.ca.gov/Conservation/LSA>.

CDFW recommends consulting with the U.S. Fish and Wildlife Service (USFWS) on potential impacts to federally listed species. Consultation with the USFWS in order to comply with the federal Endangered Species Act is advised well in advance of Project implementation.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database 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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code section 711.4; Pub. Resources Code, section 21089). 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.

Thank you for the opportunity to comment on the Project's NOP. If you have any questions regarding this letter, please contact Ms. Marcia Grefsrud, Environmental Scientist, at (707) 644-2812 or marcia.grefsrud@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or brenda.blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse #2020040078
Ryan Olah, USFWS – ryan_olah@fws.gov