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 Sent via e-mail

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**SAN DIEGO STATE UNIVERSITY, IMPERIAL VALLEY OFF-CAMPUS CENTER –
 BRAWLEY, BRAWLEY SCIENCES BUILDING PROJECT (PROJECT)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH#: 2002051010**

Dear Ms. Scheidlinger:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the California State University, San Diego (SDSU), 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.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW’s lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: California State University, San Diego (SDSU)

Objective: The Project proposes the construction of an approximately 37,000 gross square foot educational building on the SDSU Imperial Valley Off-Campus Center. The building would include teaching labs, research space, space for future public and private partners, faculty/administrative offices, conference rooms, and mechanical, electrical and telecommunication support spaces. The project would also include approximately 61,200 square feet of on-site landscaping including construction of bio-retention areas, 41,300

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.

square feet of hardscape improvements including sidewalks and pedestrian walkways, and utility connections for water, sewer, and electrical. The proposed project is associated with the previously approved Brawley Campus Master Plan Environmental Impact Report (EIR) (SCH#: 2002051010).

Location: The Project is located on SDSU's Off-Campus Center-Brawley, which is located at 560 California State Route 78, east of the City of Brawley in Imperial County. The Project site is surrounded by agricultural fields and undeveloped land. The current Brawley Center and accompanying parking lot are situated at the south-central portion of the Project site. An approximately 35-acre solar farm is located directly east on the property of the proposed Project site. Additionally, an abutting canal runs along the eastern boundary of the Project site, and an irrigation drain runs along the north, west, and both horizontally and vertically through the center of the Project site.

Timeframe: Construction is anticipated to begin January 2024 and end in approximately August 2025.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist SDSU in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The MND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) to biological resources and whether those impacts are less than significant. CDFW offers the following comments and recommendations to assist SDSU in adequately identifying and mitigating the Project's significant, or potentially significant, impacts to biological resources.

I. Project Description and Related Impact Shortcoming

COMMENT #1: Identifying the Project Location (Assessor's Parcel Numbers)

Initial Study/Mitigated Negative Declaration (IS/MND) document, Section 2.3

Issue: The MND does not identify the Assessor's Parcel Numbers over which the proposed Project will take place. Figure 1 in the IS/MND (p. 17) does not appear to include APN 047-390-004 in the campus; however, Figure 2 (p. 18) does appear to include this APN. The IS/MND should clarify whether there are two or three parcels comprising the campus site (i.e., APNs 047-390-002, -003, and -004).

Evidence impact would be significant: CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate project description, the MND likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information related to the project description.

CDFW Recommendations: A revised MND should clearly identify the area and extent of the proposed Project.

COMMENT #2: Landscaping

IS/MND document, Section 3.1, Page #22

Issue: The MND lacks a description of the type of landscaping that will be installed and maintained over the life of the Project.

Specific impact: The IS/MND states (p. 22) the proposed landscaping could consist of "shrubs, trees, decorative rock, and potentially, decomposed granite." However, no further details are provided.

Evidence impact would be significant: CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate project description, the MND likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information related to the project description.

CDFW Recommendation: To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in any Project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants, more information on native plants suitable for the Project location and nearby nurseries is available at CALSCAPE: <https://calscape.org/>. Local water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens. Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <https://saveourwater.com/>.

II. Environmental Setting and Related Impact Shortcoming

COMMENT #3: Assessment of Biological Resources

IS/MND document, Section 3.4, Pages #36-40, Appendix C

Issue: The MND does not adequately identify the Project's significant, or potentially significant, impacts to biological resources.

Specific impact: The MND bases its analysis of the Project site's existing biological resource conditions by using information contained in the 2003 SDSU Imperial Valley Campus Master Plan EIR (SCH#: 2002051010). Additionally, Dudek conducted a general biological reconnaissance survey for the presence of potential jurisdictional features on February 16, 2023 (Appendix C). CDFW is concerned about the potential for special-status species to occur on or near the Project site. No focused or protocol-level surveys were performed for the detection of special-status species. The Project is surrounded by agricultural, disturbed land, and irrigation canals, and there is potential for special-status species to be impacted either directly or indirectly by Project activities. The California Natural Diversity Database (CNDDDB) and Biogeographic Information and Observation System (BIOS) indicate that occurrences of ESA-listed, CESA-listed, or other special-status species have been reported near the Project area including, but not limited to: Abrams' spurge (*Euphorbia abramsiana*; CNPS rank 2B), burrowing owl (*Athene cunicularia*), Crissal thrasher (*Toxostoma crissale*), Gila woodpecker (*Melanerpes uropygialis*), mountain plover (*Charadrius montanus*), vermilion flycatcher (*Pyrocephalus rubinus*), Crotch's bumble bee (*Bombus crotchii*), flat-tailed horned lizard (*Phrynosoma mcallii*), western yellow bat (*Lasiurus xanthinus*), and American badger (*Taxidea taxus*).

Recent surveys during the appropriate times of the year are needed to inform and identify potential impacts to biological resources; inform appropriate avoidance, minimization, and mitigation measures; and to determine whether impacts to biological resources have been mitigated to a level that is less than significant. CDFW generally considers field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years.

Evidence impact would be significant: Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed Project. CDFW is concerned that the assessment of the existing environmental setting with respect to biological resources has not been adequately analyzed in the MND. CDFW is concerned that without a complete and accurate

description of the existing environmental setting, the MND likely provides an incomplete or inaccurate analysis of Project-related environmental impacts and whether those impacts have been mitigated to a level that is less than significant. Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts, that special emphasis should be placed on environmental resources that are rare or unique to the region, and that significant environmental impacts of the proposed Project are adequately investigated and discussed.

Recommended Potentially Feasible Mitigation Measure:

To establish the existing environmental setting with respect to biological resources, CDFW recommends that a revised MND include the following mitigation measure:

Mitigation Measure BIO-[A]: Assessment of Biological Resources

Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and 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, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for revised MM BIO-1 and BIO-2, and CDFW-recommended MM-BIO [A] through [D] (see Attachment 1).

III. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #4: Nesting Birds

IS/MND document, Section 3.4, Pages #36-40, BIO-1

Issue: CDFW is concerned that the MND does not sufficiently identify Project impacts to nesting birds or ensure that impacts are mitigated to a level less than significant.

Specific impact: The MND (p. 37) indicates that “the study area contains trees, shrubs, and bare ground that would potentially be used by migratory birds for breeding,” and “direct and indirect impacts to nesting birds would be significant absent mitigation.” Additionally, a vermillion flycatcher (CSSC), was observed nesting on site in February 2023 (Appendix C, p. 7). CDFW is concerned about the impacts to nesting birds including loss of nesting/foraging habitat and potential take from ground-disturbing activities and construction. Conducting work outside the peak breeding season is an important avoidance and minimization measure; however, CDFW also recommends the completion of nesting bird surveys *regardless* of the time of year to ensure that impacts to nesting birds are avoided. The timing of the nesting season varies greatly depending on several factors, such as bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). In

response to warming, birds have been reported to breed earlier, thereby reducing temperatures that nests are exposed to during breeding and tracking shifts in availability of resources (Socolar et al., 2017). CDFW staff have observed that climate change conditions may result in nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site and surrounding area be avoided any time birds are nesting on-site. CDFW therefore recommends the completion of nesting bird surveys *regardless of the time of year* to ensure compliance with all applicable laws pertaining to nesting and migratory birds.

Evidence impact would be significant: It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

Recommended Potentially Feasible Mitigation Measure:

CDFW appreciates the inclusion of MM BIO-1; however, the measure is insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends a revised MND include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but are not limited to, Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site be avoided **any time birds are nesting on-site**. Preconstruction nesting bird surveys shall be performed within 3 days prior to Project activities to determine the presence and location of nesting birds. Although the MND includes Mitigation Measure BIO-1 for nesting birds, CDFW recommends SDSU include a revised Mitigation Measure BIO-1 in a revised MND as follows, with additions in **bold** and removals in ~~strikethrough~~:

MM BIO-1: ~~Pre-Construction Nesting Bird Survey~~ Avoidance of Nesting Birds

~~If ground disturbance and/or vegetation clearance activities are scheduled to occur during the avian nesting season (February 15 to August 30), SDSU, or its designee,~~
Regardless of the time of year, the Permittee shall retain a qualified avian biologist to conduct a pre-construction nesting bird survey within the area to be disturbed and a 500-foot buffer. Surveys should be conducted within 3 days prior to initiation of **vegetation removal or ground-disturbing activity ~~between dawn and noon~~. **Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts.****

~~If construction begins outside the nesting bird season (i.e., between August 31 and February 14), work may proceed without a nesting bird survey. If construction begins outside the nesting season, but crosses into the nesting season (i.e., start in January but work until March), construction activities may proceed without a nesting bird survey. However, **A**nytime construction must pause for more than 72 hours during the nesting season, an updated nesting bird survey should be conducted prior to the resumption of construction activities.~~

If an active nest is detected during the nesting bird survey, **appropriate** avoidance buffers shall be ~~implemented~~ **marked on the ground** as determined by a **qualified avian** biologist retained by SDSU. The buffer should be **species specific and** of sufficient distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. **Nest buffers shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active.** All nests **and the adequacy of the established buffer distance** shall be monitored **daily** as determined by the **qualified** biologist until the **qualified biologist has determined the** nestlings have fledged and dispersed, or it is confirmed that the nest has been unsuccessful or abandoned, **or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.**

COMMENT #5: Burrowing Owl Surveys

IS/MND document, Section 3.4, Pages #36-40, BIO-2

Issue: CDFW is concerned that the MND does not sufficiently identify Project impacts to burrowing owl (*Athene cunicularia*) or ensure that impacts are mitigated to a level less than significant.

Specific impact: Suitable burrowing owl habitat has been confirmed on site including, disturbed areas, agricultural fields, and irrigation ditches that would likely support the species at any time during construction. The MND (p. 37) indicates that “project implementation could result in direct impacts on burrowing owl in the form of habitat destruction and potential death, injury, or harassment of nesting birds, their eggs, and their young. Injury or mortality occurs most frequently during the vegetation clearing stage of construction and affects eggs, nestlings, and recently fledged young that cannot safely avoid equipment. Indirect impacts to burrowing owl include vibration, excess noise, chemical pollution, fugitive dust, and increased human presence. Direct and indirect impacts to burrowing owl specific to construction of the proposed project therefore would be potentially significant, absent additional mitigation beyond the general mitigation previously adopted.”

Burrowing owls have a high potential to move into disturbed sites prior to and during construction activities. Burrowing owls frequently move into disturbed areas since they are adapted to highly modified habitats (Chipman et al. 2008; Coulombe 1971). Impacts to burrowing owl from the Project could include take of burrowing owls, their nests, or eggs or destroying nesting, foraging, or over-wintering habitat, thus impacting burrowing owl populations. Impacts can result from grading, earthmoving, burrow blockage, heavy equipment compaction and crushing of burrows, general Project disturbance that has the potential to harass owls at occupied burrows, and other activities.

Evidence impact would be significant: Burrowing owl is a California Species of Special Concern. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5, and 3513. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

Recommended Potentially Feasible Mitigation Measure:

CDFW appreciates the inclusion of MM BIO-2; however, the measure is insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends a revised MND include specific avoidance and minimization measures to ensure that

impacts to burrowing owls do not occur. CDFW recommends that prior to commencing Project activities for all phases of Project construction, surveys for burrowing owl be conducted for the entirety of the Project site by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). Although the MND includes Mitigation Measure BIO-2 for burrowing owl, CDFW recommends SDSU include a revised Mitigation Measure BIO-2 in a revised MND as follows, with additions in **bold** and removals in ~~strikethrough~~:

MM BIO-2: ~~Burrowing Owl Avoidance and Relocation~~ Burrowing Owl Surveys

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the “Mitigation Impacts” section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.

Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.

~~Prior to the initiation of construction activities, SDSU, or its designee, shall retain a biologist to conduct a pre-construction survey for burrowing owl to determine the presence/absence of the species. SDSU shall submit at least one burrowing owl pre-construction survey report to the satisfaction of CDFW to document compliance with this mitigation measure. For the purposes of this mitigation measure, “qualified biologist” is a biologist who meets the requirements set forth in the 2012 California Department of Fish and Wildlife (CDFW) Staff Report on Burrowing Owl Mitigation (CDFW-2012).~~

~~The survey shall be conducted within 30 days of site disturbance in accordance with the most current and applicable CDFW protocol. If burrowing owls are not detected during the survey, no additional surveys or mitigation is required. Preconstruction surveys shall observe suitable burrowing owl habitat within the Project footprint and within 500 feet of the Project footprint (or within an appropriate buffer as required in the most recent guidelines and where legal access to conduct the survey exists).~~

~~Nesting Season Observation:~~

~~If burrowing owl is located during the survey, occupied burrowing owl burrows shall not be disturbed during the nesting season (February 1 through August 31) unless a biologist approved by CDFW verifies through non-invasive methods that either the birds have not begun egg laying and incubation, or that juveniles from the occupied burrows are foraging independently and capable of independent survival. If occupied burrows are present during the nesting season, construction activities may commence, or resume as applicable, after non-disturbance buffers are implemented by a biologist in accordance with the recommendations included in the Staff Report on Burrowing Owl Mitigation (CDFW 2012). If burrows are present, the biologist shall be contracted to perform monitoring during all construction activities approximately every other day. However, the definitive frequency and duration of monitoring shall be dependent on whether it is the breeding versus nonbreeding season and the efficacy of the disturbance buffers, as determined by the biologist and in coordination with CDFW.~~

~~Non-Breeding/Non-Nesting Observation:~~

~~If burrowing owl is detected during the non-breeding/non-nesting season (September 1 through January 31) or if confirmed to not be nesting, a non-disturbance buffer between the project activities and the occupied burrow shall be installed by a qualified biologist in accordance with the recommendations included in the Staff Report on Burrowing Owl Mitigation (CDFW 2012). However, under these circumstances, monitoring by the biologist is not required.~~

~~Avoidance Not Possible through Non-Disturbance Buffers:~~

~~If avoidance is not possible through the installation of non-disturbance buffers, SDSU, or its designee, shall prepare a Burrowing Owl Relocation and Mitigation Plan for submittal and approval by CDFW. Once approved, the Plan shall be implemented to relocate burrowing owls from the project site.~~

COMMENT #6: CDFW Lake and Streambed Alteration (LSA) Program

IS/MND document, Section 3.4, Pages #39-40

Issue: The MND acknowledges that drainage canals are located in proximity to the proposed Project but does not include mitigation measures to avoid or reduce impacts to a level less than significant.

Specific impact: The MND (p. 21) indicates that an “adjacent earthen drain” and (p. 4) “Moorhead Canal bounds the center to the east.” CDFW review of aerial imagery confirms the location of one drainage canal named Wills Drain located along the north, west, and both horizontally and vertically through the center of the Project site. Additionally, as noted, an abutting canal named Moorhead Canal runs along the east boundary of the Project site. Drainage canals and ditches, regardless of whether they are concrete lined, may provide suitable habitat for biological resources. Potential direct and indirect impacts to the canals and associated fish and wildlife resources, such as burrowing owl, resulting from Project construction are subject to notification under Fish and Game Code section 1602.

Evidence impact would be significant: Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream, or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into

any river, stream or lake. Note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the Project that would eliminate or reduce harmful impacts to fish and wildlife resources. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). Early consultation with CDFW is recommended since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To submit a Lake or Streambed Alteration notification, visit: <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

Recommended Potentially Feasible Mitigation Measure:

Although the MND includes Mitigation Measure BIO-3 for avoidance of aquatic resources, CDFW considers the measure to be insufficient in scope and timing to reduce impacts to a level less than significant. CDFW recommends SDSU include the following additional mitigation measure in a revised MND:

MM BIO-[B]: Lake and Stream Alteration (LSA) Program

Prior to Project-activities and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

COMMENT #7: Construction Noise

IS/MND document, Section 3.13, Pages #74-78

Issue: The MND does not include sufficient mitigation measures to avoid or reduce impacts to biological resources from construction noise to a level less than significant.

Specific impact: The MND (p. 76) states the Project would result in a substantial temporary noise increase from the operation of equipment for on-site construction activities, which can reach up to 70 dBA, but includes no analysis of the impacts of construction noise on biological resources. These levels exceed exposure levels that may adversely affect wildlife species at 55 to 60 dBA.

Evidence impact would be significant: Construction may result in substantial noise through road use, equipment, and other Project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 dB (Barber et al. 2009). Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006, Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cues (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2017). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009) and cause increased stress that results in decreased immune responses (Kight and Swaddle 2011).

Recommended Potentially Feasible Mitigation Measure:

Because of the potential for construction noise to negatively impact wildlife, CDFW recommends a revised MND include an analysis of impacts to biological resources and specific avoidance and minimization measures to ensure that impacts to wildlife are avoided or reduced to less than significant. CDFW recommends adding the following mitigation measure to a revised MND:

MM BIO-[C]: Construction Noise Impacts to Biological Resources

During all Project construction, SDSU shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. SDSU shall ensure use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.

COMMENT #8: Artificial Nighttime Light

IS/MND document, Section 3.1, Pages #20-23; Appendix A

Issue: The MND does not analyze impacts to biological resources from artificial nighttime light and includes no mitigation measures to avoid or reduce impacts to biological resources to a level less than significant.

Specific impact: Appendix A (p. 4) indicates that “campus parking lot lighting (pole mounted lights are installed along the parking lot perimeter) and wall mounted lighting on the exterior of the Brawley campus building contribute light sources to the existing nighttime environment” and light sources installed at the new science building (MND, p. 22) “would be similar to those installed at the existing Brawley Center.” However, impacts to biological resources are not analyzed and no mitigation measures are proposed. The direct and indirect impacts of artificial nighttime lighting on biological resources including migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife should be analyzed, and appropriate avoidance and minimization measures to reduce impacts to less than significant should be included in a revised MND. The revised MND should also include lighting specifications and designs.

Evidence impact would be significant: Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation (Gatson et al. 2013). Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

Recommended Potentially Feasible Mitigation Measure:

Because of the potential for artificial nighttime light to negatively impact wildlife, CDFW recommends a revised MND include an analysis of impacts to biological resources and specific avoidance and minimization measures to ensure that impacts to wildlife are reduced to less than significant. CDFW recommends SDSU include the following mitigation measure in a revised MND:

MM BIO-[D]: Artificial Nighttime Light

During Project construction and operation, SDSU shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. SDSU shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). SDSU shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

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 the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES


The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 MND to assist SDSU in identifying and mitigating Project impacts on biological resources. CDFW concludes that the MND does not adequately identify or mitigate the Project's significant, or potentially significant impacts on biological resources. The CEQA Guidelines indicate that recirculation is required when insufficient information in the MND precludes a meaningful review (§ 15088.5) or when a new significant effect is identified and additional mitigation measures are necessary (§ 15073.5). CDFW recommends that a revised MND, including a complete Project description and a current assessment of biological resources, be recirculated for public comment. CDFW also recommends that a revised MND include an analysis of impacts to biological resources from construction noise and artificial nighttime lighting, as well as mitigation measures described in this letter for the assessment of biological resources, nesting birds, burrowing owl, CDFW's Lake and Streambed Alteration Program, construction noise, and artificial nighttime light to ensure impacts to biological resources are avoided or reduced to less than significant.

CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. Questions regarding this letter or further coordination should be directed to Alyssa Hockaday, Senior Environmental Scientist (Specialist) at (760) 920-8252 or Alyssa.Hockaday@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn
Environmental Program Manager

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

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ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Parties
MM BIO-[A]: Assessment of Biological Resources Prior to Project construction activities, a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511), will be completed. Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year	Prior to Project construction activities	SDSU

<p>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, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.</p>		
<p>MM BIO-1: Avoidance of Nesting Birds Regardless of the time of year, the Permittee shall retain a qualified avian biologist to conduct a pre-construction nesting bird survey within the area to be disturbed and a 500-foot buffer. Surveys should be conducted within 3 days prior to initiation of vegetation removal or ground-disturbing activity. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts.</p> <p>Anytime construction must pause for more than 72 hours, an updated nesting bird survey should be conducted prior to the resumption of construction activities.</p> <p>If an active nest is detected during the nesting bird survey, appropriate avoidance buffers shall be marked on the ground as determined by a qualified avian biologist retained by SDSU. The buffer should be species specific and of sufficient distance to ensure avoidance of adverse effects to the nesting bird by accounting for topography, ambient conditions, species, nest location, and activity type. Nest buffers shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. All nests and the adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the nestlings have fledged and dispersed, or it is confirmed that the nest has been unsuccessful or abandoned, or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>	<p>No more than three (3) days prior to vegetation clearing or ground-disturbing activities.</p>	<p>SDSU</p>
<p>MM BIO-2: Burrowing Owl Surveys Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). If burrowing owls are detected during the focused surveys, the qualified biologist and Project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on</p>	<p>Focused surveys: Prior to the start of Project-related activities.</p> <p>Pre-construction surveys: No less than 14 days prior to start of Project-related activities and within 24 hours prior to ground disturbance.</p>	<p>SDSU</p>

<p>proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the “Mitigation Impacts” section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Project proponent shall implement the Burrowing Owl Plan following CDFW and USFWS review and approval.</p> <p>Preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version). Preconstruction surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and prepare a Burrowing Owl Plan that shall be submitted to CDFW and USFWS for review and approval prior to commencing Project activities.</p>		
<p>MM BIO-[B]: Lake and Stream Alteration (LSA) Program Prior to Project-activities and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor shall obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Prior to Project-activities and issuance of any grading permit.</p>	<p>SDSU</p>
<p>MM BIO-[C]: Construction Noise Impacts to Biological Resources During all Project construction, SDSU shall restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning) and restrict use of generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. SDSU shall ensure use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.</p>	<p>During Project activities.</p>	<p>SDSU</p>

<p>MM BIO-[D]: Artificial Nighttime Light During Project construction and operation, SDSU shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light during the hours of dawn and dusk when many wildlife species are most active. SDSU shall ensure that lighting for Project activities is shielded, cast downward, and does not spill over onto other properties or upward into the night sky (see the International Dark-Sky Association standards at http://darksky.org/). SDSU shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.</p>	<p>During Project construction activities and operation.</p>	<p>SDSU</p>
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