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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Nov 16 2020**

## STATE CLEARINGHOUSE

November 16, 2020

Lindsey Hashimoto  
University of California, Irvine  
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Irvine, CA 92697  
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**Subject: UC Irvine Campus Medical Complex (PROJECT), Subsequent Environmental Impact Report (SEIR) SCH# 2020029099**

Dear Ms. Hashimoto:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a SEIR from UC Irvine for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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's 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.

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<sup>1</sup> 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.

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## PROJECT DESCRIPTION SUMMARY

**Proponent:** University of California, Irvine (UCI)

**Objective:** The objective of the Project is to develop an integrated medical campus at UCI. Primary Project activities include demolition and site grading, installation of utilities, and construction of three new buildings and a parking structure.

**Location:** The Project site is located within the North Campus area of UCI in the City of Irvine, Orange County. The Project site is located within the Coastal Subregion of the Orange County Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP); however, it is not within the Reserve System or identified Special Linkage areas.

**Biological Setting:** The North Campus of UCI is separated from the Main Campus by San Diego Creek, the San Joaquin Marsh Reserve (managed by the UC), and University Drive. A general biological resources survey was conducted of the Project site, the laydown and parking areas that will be temporarily impacted, and a 150-foot buffer required by the 2007 UC Long Range Development Plan along the San Joaquin Marsh. Vegetation communities and land uses identified in the survey area include: 0.18 acre southern arroyo willow riparian forest, 1.04 acres coastal sage scrub (CSS), 0.15 acre restored CSS, 0.03 acre disturbed CSS, 1.18 acres ornamental vegetation, 11.63 acres disturbed, and 2.57 acres developed land. The SEIR indicates that temporary impacts to 0.23-acre of CSS in the laydown area are covered by the NCCP and no additional CSS mitigation will occur. No permanent impacts to special-status vegetation communities are anticipated.

Based on a literature reviewed for the SEIR, many-stemmed dudleya (*Dudleya multicaulis*; California Native Plant Society (CNPS) rarity ranking List 1B.2) has a moderate potential to occur on the Project site; no many-stemmed dudleya individuals were identified during the biological survey. Two special-status animal species were observed during the biological survey: Endangered Species Act (ESA)-listed and CDFW Species of Special Concern (SSC) coastal California gnatcatcher (*Polioptila californica*); and ESA-listed and California Endangered Species Act (CESA)-listed least Bell's vireo (*Vireo bellii pusillus*). Both species are covered under the Orange County NCCP/HCP with UCI as a participating landowner. Orange-throated whiptail (*Aspidoscelis hyperythrus*; SSC), western pond turtle (*Emys marmorata*; SSC), and western mastiff bat (*Eumops perotis californicus*; SSC) were identified as having a moderate potential to occur within the survey area. Western pond turtle and western mastiff bat are not covered species under the Orange County NCCP/HCP.

**Timeframe:** The Project is expected to span 30 months, beginning April 2021 and ending in October 2023.

## 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. Editorial comments or other suggestions may also be included to improve the document.

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## **I. Mitigation Measure or Alternative and Related Impact Shortcoming**

### **COMMENT#1: Mitigation Measure BIO-2 (MM BIO-2) Section ES, Page 3.3-18**

**Issue:** Mitigation for special status species is deferred in the SEIR.

**Specific impacts:** MM BIO-2 does not offer mitigation measures for potential impacts to special-status species not covered under the Orange County NCCP/HCP; specifically, western pond turtle and western mastiff bat. MM BIO-2 states that a focused wildlife clearance survey for special-status species including western pond turtle and western mastiff bat will be completed prior to construction and that, “[i]f special status species not already covered by the NCCP/HCP are found within the project site at the time of construction that cannot move on their own, a qualified biologist shall coordinate with CDFW and/or USFWS, as applicable, to determine measures to avoid and minimize impacts and, if impacts cannot be avoided and mitigation is required, it will be provided to ensure CEQA compliance (SEIR, page 3.3-19).”

**Why impact would occur:** The Project site is adjacent to the San Joaquin Marsh and contains southern arroyo willow riparian forest, which may provide basking or nesting habitat for western pond turtle. The nearest previously recorded occurrence of the species is 0.2 mile south of the survey area. The SEIR indicates that there is moderate potential for western pond turtle to bask and nest along the eastern edges of the survey area, although the species is not expected to occur in the area proposed for construction. The SEIR also identifies moderate potential for western mastiff bat to roost in tall buildings and trees present within the survey area. Direct impacts may occur if western pond turtle or western mastiff bat are found within the Project construction area. Indirect impacts to western pond turtle may be caused by construction-related noise, dust, or off-site sedimentation and indirect impacts to western mastiff bat may be caused from construction-related noise, light, or dust.

**Evidence impact would be significant:** The Guidelines for the Implementation of the California Environmental Quality Act (Cal. Code Regs., tit. 14, § 15000 *et seq.*) state that, “[w]here several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures shall not be deferred until some future time.” (CEQA; §§ 15126.4, subdivision (a)(1)(B)).

Detection of these species is moderate, and mitigation measures must be specific and cannot be deferred under CEQA. “CEQA compliance” as referenced cannot be determined within the context of deferred mitigation.

### **Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)**

**Mitigation Measure #1:** In addition to coordination with CDFW and the United States Fish and Wildlife Service (USFWS), we recommend that MM BIO-2 be amended to include species-specific mitigation measures, should western pond turtle or western mastiff bat be identified during focused species surveys.

**To minimize significant impacts:** Prior to clearing, mowing, or ground-breaking activities, a qualified biologist shall conduct a focused wildlife clearance survey for special-status wildlife species with the potential to occur within the Project site, which includes least Bell’s vireo, coastal California gnatcatcher, orange-throated whiptail, western mastiff bat, and western pond turtle.

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Focused surveys shall be inclusive of the entire survey area. Areas immediately adjacent to the San Joaquin Marsh Reserve at the southern area of the Project site have a higher potential to support least Bell's vireo and western pond turtle, areas immediately adjacent to CSS have a higher potential to support coastal California gnatcatcher, and the majority of the Project site provides potential habitat for orange-throated whiptail. In addition, all trees and buildings within and near the Project site should be surveyed for roosting bats such as western mastiff bat.

- a. If western pond turtle is detected in focused surveys, CDFW shall be consulted. The qualified biologist shall submit a Pond Turtle Avoidance and Minimization Plan (Plan) to CDFW prior to ground disturbances. The Plan shall include complete avoidance and minimization measures (e.g., project timing, restrictions on grading date and location, exclusionary fencing and zones, trapping); and identification of suitable existing sites for relocation of pond turtles. The Plan shall be approved by CDFW, in writing, prior to ground disturbance.
- b. If western mastiff bat is detected in focused surveys, CDFW shall be consulted. To avoid direct mortality of western mastiff bats, any structure with potential bat habitat shall have temporary and humane bat exclusion devices installed under the supervision of the qualified biologist prior to the initiation of construction activities. Exclusion devices shall be installed between October 1 and November 30, within the 12-month period prior to construction to avoid trapping flightless young inside during the summer months or hibernating individuals during the winter. Exclusion shall be implemented selectively, and only to the extent necessary, to prevent morbidity or mortality to the bats. Exclusionary devices shall be removed at the end of construction or as otherwise authorized by CDFW.
- c. If additional special-status species not already covered by the NCCP/HCP, that were not analyzed in the SEIR, are found within the project site at the time of construction, a qualified biologist shall coordinate with CDFW and/or USFWS, as applicable, to determine measures to avoid and minimize impacts.

**Mitigation Measure #2:** CDFW currently implements its authority to issue permits for the take or possession of wildlife, including mammals, birds, and the nests and eggs thereof, reptiles, and amphibians, fish, certain plants, and invertebrates for scientific, educational, and propagation purposes through Section 650, Title 14, California Code of Regulations, by issuing Scientific Collecting Permits.

**To minimize significant impacts:** If additional species not covered by the NCCP are identified, on-site biologists shall be required to obtain, as applicable, Scientific Collecting Permits (SCP). A Species Relocation Plan may be appropriate to establish protocol for relocation of wildlife, including guidelines for the SCP-holding biologist to capture unharmed and release found species in appropriate habitat an adequate distance from the project site, unless they are a CESA- and/or ESA- listed species in which case coordination and direction from CDFW and/or the USFWS, respectively, shall be required.

#### **Mitigation Measure or Alternative and Related Impact Shortcoming**

#### **COMMENT #2: Mitigation Measure BIO-4 (MM BIO-4) Section ES, Page 3.3-21**

**Issue:** Mitigation Measure BIO-4 (MM BIO-4) may not reduce potential impacts to nesting birds to less than significant due to no established timeframe for preconstruction surveys.

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**Specific impact:** MM BIO-4 describes pre-construction surveys for nesting birds, should clearing and/or construction activities occur during avian nesting season from January through August, and indicates that a suitable buffer based on the specific species will be established per biologist recommendations. For MM BIO-4 to be effective in reducing nesting bird impacts to less than significant, a specific timeframe should be established for occurrence of preconstruction nesting bird surveys. Surveys should be conducted as close to the time of potential disruption as possible, no more than 3 days prior to the start of construction.

**Why impact would occur:** Trees on the Project site as well as in the adjacent San Joaquin Marsh provide suitable nesting habitat for a variety of bird species. Construction activities including grading and vegetation removal may impact nesting birds.

**Evidence impact would be significant:** Per California Fish and Game Code Sections 3503, 3503.5, and 3513 the Proposed Project is required to avoid the incidental loss of fertile eggs or nestlings or activities that lead to nest abandonment.

**Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)**

**Mitigation Measure #3:** CDFW recommends that nesting bird surveys be conducted a maximum of 3 days prior to construction-related activities. To avoid or minimize impacts to nesting birds, CDFW recommends that MM BIO-4 be amended to read as follows (additions noted in **bold**):

**To minimize significant impacts:** Project construction activities involving ground disturbance or vegetation removal shall avoid the bird breeding season (typically January through July for raptors and February through August for other avian species), if feasible. If breeding season avoidance is not feasible, a qualified biologist shall conduct a pre-construction nesting bird survey **no more than three days** prior to the commencement of any ground disturbing activities to determine the presence/absence, location, and status of any active nests on or adjacent to the survey area. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided.

In the event that active nests are discovered, a suitable buffer (distance to be determined by the biologist based on the specific species found to be nesting, but typical nest buffers are from 500 feet to 300 feet but can be smaller depending on the bird species) shall be established around such active nests, and no construction within the buffer shall be allowed, until the biologist has determined that the nest(s) is no longer active (i.e., the nestlings have fledged and are no longer reliant on the nest) or that it is safe to resume certain construction activities. Avoidance buffers may be reduced in size if a qualified biological monitor is present to observe the birds. The biological monitor must use best professional judgment to ensure that construction activities do not cause "take" (e.g., adults flushing off of a nest, fledglings changing behavior that could put them in harm, or any other form of disturbance).

**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 (CNDDDB). The CNDDDB field survey form can be found at the following link:

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[http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](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 SEIR 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 [Jessie.Lane@wildlife.ca.gov](mailto:Jessie.Lane@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
B6E58CFE24724F5...  
Erinn Wilson-Olgin  
Environmental Program Manager I  
South Coast Region

Ec: CDFW

David Mayer, San Diego – [David.Mayer@wildlife.ca.gov](mailto:David.Mayer@wildlife.ca.gov)  
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## ATTACHMENTS

A. CDFW Comments and Recommendations

## REFERENCES

Public Resources Code Sections 21000-21177 and State CEQA Guidelines 14  
California Code of Regulations 15000-15387

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**Attachment A:**

**CDFW Draft Mitigation, Monitoring, and Reporting Plan and Associated Recommendations**

Biological Resources			
	Mitigation Measures	Timing	Responsible Party
MM BIO-1	<p>Prior to clearing, mowing, or ground-breaking activities, a qualified biologist shall conduct a focused wildlife clearance survey for special-status wildlife species with the potential to occur within the Project site, which includes least Bell's vireo, coastal California gnatcatcher, orange-throated whiptail, western mastiff bat, and western pond turtle. Focused surveys shall be inclusive of the entire survey area. Areas immediately adjacent to the San Joaquin Marsh Reserve at the southern area of the Project site have a higher potential to support least Bell's vireo and western pond turtle, areas immediately adjacent to CSS have a higher potential to support coastal California gnatcatcher, and the majority of the Project site provides potential habitat for orange-throated whiptail. In addition, all trees and buildings within and near the Project site should be surveyed for roosting bats such as western mastiff bat.</p> <p>a. If western pond turtle is detected in focused surveys, CDFW shall be consulted. The qualified biologist shall submit a Pond Turtle Avoidance and Minimization Plan (Plan) to CDFW prior to ground disturbances. The Plan shall include complete avoidance and minimization measures (e.g. project timing, restrictions on grading date and location, exclusionary fencing and zones, trapping); and, identification of suitable existing sites for relocation of pond turtles. The Plan shall be approved by CDFW, in writing, prior to ground disturbance.</p> <p>b. If western mastiff bat is detected in focused surveys, CDFW shall be consulted. To avoid direct mortality of western mastiff bats, any structure with potential bat habitat shall have temporary and humane bat</p>	Before Construction	UCI

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	<p>exclusion devices installed under the supervision of the qualified biologist prior to the initiation of construction activities. Exclusion devices shall be installed between October 1 and November 30, within the 12-month period prior to construction to avoid trapping flightless young inside during the summer months or hibernating individuals during the winter. Exclusion shall be implemented selectively, and only to the extent necessary, to prevent morbidity or mortality to the bats. Exclusionary devices shall be removed at the end of construction or as otherwise authorized by CDFW.</p> <p>c. If additional special-status species not already covered by the NCCP/HCP, that were not analyzed in the SEIR, are found within the project site at the time of construction, a qualified biologist shall coordinate with CDFW and/or USFWS, as applicable, to determine measures to avoid and minimize impacts.</p>		
MM BIO-2	<p>If additional species not covered by the NCCP are identified, on-site biologists shall be required to obtain, as applicable, Scientific Collecting Permits (SCP). A Species Relocation Plan may be appropriate to establish protocol for relocation of wildlife, including guidelines for the SCP-holding biologist to capture unharmed and release found species in appropriate habitat an adequate distance from the project site, unless they are a CESA and/or ESA -listed species in which case coordination and direction from CDFW and/or the United States Fish and Wildlife Service, respectively, shall be required.</p>	Before Construction	UCI
MM BIO-3	<p>Project construction activities involving ground disturbance or vegetation removal shall avoid the bird breeding season (typically January through July for raptors and February through August for other avian species), if feasible. If breeding season avoidance is not feasible, a qualified biologist shall conduct a pre-construction nesting bird survey <b>no more than three days</b> prior to the commencement of any ground disturbing activities to determine the presence/absence, location, and status of any active nests on or adjacent to the</p>	Before Construction	UCI

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	<p>survey area. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided.</p> <p>In the event that active nests are discovered, a suitable buffer (distance to be determined by the biologist based on the specific species found to be nesting, but typical nest buffers are from 500 feet to 300 feet but can be smaller depending on the bird species) shall be established around such active nests, and no construction within the buffer shall be allowed, until the biologist has determined that the nest(s) is no longer active (i.e., the nestlings have fledged and are no longer reliant on the nest) or that it is safe to resume certain construction activities. Avoidance buffers may be reduced in size if a qualified biological monitor is present to observe the birds. The biological monitor must use best professional judgment to ensure that construction activities do not cause "take" (e.g., adults flushing off of a nest, fledglings changing behavior that could put them in harm, or any other form of disturbance).</p>		
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