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Governor's Office of Planning & Research

April 9, 2021

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STATE CLEARINGHOUSE

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Dear Ms. Hashimoto:

San Joaquin Marsh Reserve Water Conveyance and Drainage Improvement (PROJECT)
 MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2021030295

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from UC Irvine 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: University of California, Irvine (UCI)

Objective: The objective of the Project is to update infrastructure at the San Joaquin Marsh Reserve (the Reserve), to improve long-term water management and improve habitat value of the Reserve. The MND informs that the Project will assist UCI in managing existing water sources in the Reserve, by increasing capacity for wetland habitat, improving water circulation, and enabling UCI to retain water in specific high priority cells during times of drought.

Fresh water for the Reserve is currently sourced from the San Diego Creek flood control channel; Irvine Ranch Water District (IRWD) pumps water from the channel basin, which is then processed through a Natural Treatment System and conveyed passively through a culvert at the west end of the Marsh Reserve. During periodic storm events, the Reserve also pumps from San Diego Creek's Basin 1 within the Reserve property. Multiple culverts, pipes, and slide gates control the distribution of water within the Reserve. The MND indicates that several of the original pipes, gates, and culverts no longer function. Additionally, drought over the last decade in conjunction with groundwater pumping, diversion, and conservation of water from the San Diego Creek, have

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.

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contributed to degradation of the water resources available for the Reserve. The Project does not propose the use of additional water sources; however, it will allow for increased water capacity in the future if additional inputs become available.

Project activities involve replacement of an existing open pipe with a culvert and slide gate; replacement of a non-functioning outlet to San Diego Creek; excavation of a swale; installation or replacement of multiple culverts; raising of multiple berms; and installation of a gated headwall, pipes, and a water measurement sensor.

Location: The Project site is located within the San Joaquin Marsh Reserve in the City of Irvine, Orange County, California. The 199-acre Reserve is owned by the University of California (UC), and managed by the UC Natural Reserve System (UCNRS) and by UCI. The southeastern portion of the Reserve encompasses a segment of the San Diego Creek. 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: A Biological Technical Report was completed by Glenn Lukos Associates in March 2021. General biological surveys, focused plant surveys, and a jurisdictional delineation were completed in October through December 2020. A literature review of the California Natural Diversity Database (CNDDDB) and California Native Plant Society (CNPS) data, as well as Sea and Sage Audubon data was conducted to analyze vegetation communities and presence of special-status species.

Vegetation communities identified in the Project site include: 17.73 acres of Goodding's willow riparian forest and woodland, 5.53 acres of California sagebrush scrub, 21.14 acres of mulefat thickets, 0.07 acre of coast prickly pear scrub, 12.99 acres of salt marsh bulrush marshes, 37.48 acres of California bulrush marshes, 29.55 acres of cattail marshes, 3.94 acres of western sea-purslane marshes, 2.94 acres of swamp pricklegrass mats, 0.47 acre of pickleweed mats, 39.10 acres of mixed herbaceous wetland, and 5.84 acres of mixed herbaceous upland.

Two special-status plants were identified on the Project site: southern tarplant (*Centromadia parryi* ssp. *australis*; CNPS rarity ranking 1B.1) and vernal barley (*Hordeum intercedens*; CNPS rarity ranking 3.2).

Numerous special-status animals were detected on the Project site, including: southwestern pond turtle (*Actinemys pallida*; CDFW Species of Special Concern (SSC)), American peregrine falcon (*Falco peregrinus anatum*; CDFW Fully Protected (FP)), bald eagle (*Haliaeetus leucocephalus*; wintering and nesting; California Endangered Species Act (CESA) listed Endangered), burrowing owl (*Athene cunicularia*; wintering; SSC), coastal California gnatcatcher (*Polioptila californica*; Endangered Species Act (ESA) listed Threatened, SSC), California least tern (*Sterna antillarum browni*; ESA listed Endangered, CESA listed Endangered, FP), least Bell's vireo (*Vireo bellii pusillus*; ESA listed Endangered, CESA listed Endangered), light-footed Ridgway's rail (*Rallus obsoletus levipes*; ESA listed Endangered, CESA listed Endangered, FP), southwestern willow flycatcher (*Empidonax traillii extimus*; ESA listed Endangered, CESA listed Endangered), yellow-breasted chat (*Icteria virens*; SSC), yellow warbler (*Setophaga petechia*; SSC), and white-tailed kite (*Elanus leucurus*; FP).

Additional species with potential to occur on the Project site include: two-striped garter snake (*Thamnophis hammondi*) and bank swallow (*Riparia*; CESA listed Threatened). Suitable foraging habitat also exists for big free-tailed bat (*Nyctinomops macrotis*; SSC), Mexican long-tongued bat (*Choeronycteris mexicana*; SSC), and western mastiff bat (*Eumops perotis californicus*; SSC). Potential roosting and foraging habitat exist on the Project site for western red bat (*Lasiurus blossevillii*; SSC) and western yellow bat (*Lasiurus xanthinus*; SSC).

Timeframe: Construction will occur in two phases and will take approximately eight to ten months total to complete.

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: Impacts to Least Bell's Vireo

Section 3.4, Page 48 / Mitigation Monitoring and Reporting Program (MMRP), Appendix A

Issue: Mitigation Measure BIO-3 (MM BIO-3) does not adequately mitigate for potential impacts to least Bell's vireo (vireo). Vireo is CESA-listed; therefore, if impacts to vireo cannot be avoided, an Incidental Take Permit (ITP) may need to be secured from CDFW prior to Project activities.

Specific impact: MM BIO-3 indicates that, if vegetation clearing cannot occur outside of least Bell's vireo nesting season (March 15 through September 15), then a qualified biologist will conduct a nesting bird survey within 500' of any planned construction within three days prior to the start of activities. Suitable buffers will be established until the nests are no longer occupied and the juvenile birds have fledged. MM BIO-3 goes on to state that,

“[a]lternatively, the biological monitor shall establish a behavioral baseline of all identified active nests and continuously monitor the nests during active construction for signs of project related behavioral changes. If behavioral changes are not observed, work may proceed. If behavioral changes are observed, work shall be halted or postponed until modifications demonstrate to the biologist's satisfaction that project related activities are no longer causing behavioral changes.”

Preconstruction surveys of occupied vireo habitat during vireo nesting season, in the absence of protocol-level surveys, may not be sufficient to make Project impacts to this species less than significant or to avoid take.

Why impact would occur: The Biological Technical Report indicates that vireo have been observed on the Project site by Sea and Sage Audubon Society every year from 2012-2020 (page 31). Black willow forest and mulefat thickets provide suitable breeding habitat for vireo. The Project will impact 0.72 acre of potentially occupied mulefat scrub, as well as 1.94 acre of black willow forest. In addition to direct removal of habitat, construction noise, vibration, dust, or human disturbance could result in temporary or long-term disturbance of nesting vireo on the Project site.

Evidence impact would be significant: Regarding CESA listed species, take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by state law (Fish and Game 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 incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and Game 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 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.

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

Mitigation Measure #1:

To reduce impacts to less than significant: CDFW recommends complete avoidance of occupied vireo habitat and a 100-foot buffer during nesting season to avoid take of vireo under CESA. Any adverse impacts to vireo are considered significant without sufficient mitigation. CDFW recommends species-specific protocol level surveys (United States Fish and Wildlife Service [USFWS] 2001), focusing on potential nesting sites within and adjacent to the Project area, prior to ground disturbance, construction activities, or vegetation clearing during vireo nesting season. If vireo territories or nests are identified, further consultation with CDFW is necessary and an Incidental Take Permit or Consistency Determination may be needed.

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CDFW also encourages UCI to consult as soon as possible with the USFWS, as informal or formal consultation may be appropriate to address impacts to vireo.

CDFW recommends adding an additional vireo-specific mitigation measure that states:

“[v]egetation clearing and construction activities shall occur outside of least Bell’s vireo (Vireo bellii pusillus; vireo) nesting season (March 15th to September 15th) to avoid impacts to vireo. Prior to initiation of construction activities within 100’ of suitable nesting or foraging habitat, a CDFW-approved biologist with experience surveying for and observing least Bell’s vireo shall conduct preconstruction surveys in accordance with established protocols to establish use of nesting habitat. Surveys shall be conducted within and adjacent to suitable habitat, where access allows, during the nesting season. If a nest is found, no activity shall occur within a 300-foot buffer of the nest until a qualified biologist determines and CDFW confirms that all chicks have fledged and are no longer reliant on the nest site. If impacts to vireo cannot be avoided and take will occur, an Incidental Take Permit or Consistency Determination under CESA shall be required.”

COMMENT #2: Ridgway’s Rail Avoidance

Section 3.4, Page 49 / MMRP, Appendix A

Issue: Mitigation Measure BIO-3 (MM BIO-3) and Mitigation Measure BIO-5 (MM BIO-5) do not adequately avoid impacts to Ridgway’s rail (rail), a CDFW Fully Protected species.

Specific impact: As discussed in the prior comment, MM BIO-3 includes pre-construction nesting bird surveys within three days prior to construction activities, and exclusionary buffers of up to 500’. MM BIO-5 more specifically addresses Ridgway’s rail, stating:

“[t]o minimize the potential for Ridgway’s rails being harmed during construction activities, a biologist shall survey the proposed work area for rails within three days of the start of vegetation removal or ground disturbance. Once it is determined that there are no Ridgway’s rails within the work area, exclusion fencing consisting of silt fence or similar material may be installed to deter rails from entering the work area. The need for exclusionary fencing and the precise locations of fencing shall be determined by the biologist based on field conditions (e.g. proximity to Ridgway’s rail or dense vegetation; density of vegetation within the work area and ground visibility; intensity of proposed equipment). This measure may be modified as necessary to meet conditions of any required regulatory permits.”

Why impact would occur: The MND indicates rails have been observed on multiple occasions within the emergent marsh at the Reserve, and that suitable nesting and foraging habitat is present. Potential indirect impacts include disturbance from noise, dust, and increased human presence during construction. The MND also indicates that potential direct impacts can occur from crushing by construction equipment, because rails typically prefer to walk or run, rather than fly.

Evidence impact would be significant: In addition to being both CESA- and ESA-listed Endangered, Ridgway’s rail are also Fully Protected under FGC section 3511(b)(6). A Fully Protected species may not be taken at any time and any impacts to Ridgway’s rail would be considered significant.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure #2:

To reduce impacts to less than significant: In addition to the mitigation proposed in MM BIO-3 and MM BIO-5, CDFW recommends that a qualified biologist be present on site when any construction activities occur within 500’ of potential rail habitat. Should rails be detected, no activity should occur within 500’ of the observation. We recommend that MM BIO-4 be amended with the following language (changes in **bold**):

*“[t]o **fully avoid** the potential for Ridgway’s rails being harmed during construction activities, a biologist shall survey the proposed work area for rails **daily**. Once it is determined that there are no Ridgway’s rails within the work area, exclusion fencing consisting of silt fence or similar material may be installed to deter rails from entering the work area. The need for exclusionary fencing and the precise locations of fencing shall be determined by the*

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*biologist based on field conditions (e.g., proximity to Ridgway's rail or dense vegetation; density of vegetation within the work area and ground visibility; intensity of proposed equipment). **The biologist shall remain on site during construction activities to ensure that there is no take of Ridgway's rail.** ~~This measure may be modified as necessary to meet conditions of any required regulatory permits.~~*

COMMENT #3: White-tailed Kite Avoidance

Section 3.4, Page 48 / MMRP, Appendix A

Issue: MM BIO-3 does not adequately avoid impacts to white-tailed kite, a CDFW Fully Protected species.

Specific impact: As previously discussed, MM BIO-3 requires nesting bird surveys within 500' of any planned construction areas within three days prior to the start of activities, should activities occur within white-tailed kite nesting season (January 1 through June 30). Suitable buffers will be established until the nests are no longer occupied and the juvenile birds have fledged. An alternative of behavioral baseline establishment and monitoring for changes of avian behavior is proposed as well.

Preconstruction surveys of occupied white-tailed kite habitat may not be sufficient to make Project impacts to this species less than significant.

Why impact would occur: The MND indicates that white-tailed kites have been observed on the Project site by the Sea and Sage Audubon Society every year from 2011-2020. Breeding habitat exists on the Project site in riparian areas, including black willow forest, and mulefat thickets. The Project proposes removal of black willow riparian forest which, if used as nesting or foraging habitat by white-tailed kite, could result in direct impacts to this species. Indirect impacts to this species may occur from construction noise or increased human presence.

Evidence impact would be significant: White-tailed kite are Fully Protected under FGC section 3511(b)(6). A Fully Protected species may not be taken at any time and any impacts to white-tailed kite would be considered significant.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure #3:

To reduce impacts to less than significant: In addition to the mitigation proposed in MM BIO-3, CDFW recommends that a qualified biologist remain on site while any construction activities, particularly vegetation removal, occur within 500' of potential white-tailed kite habitat. Should white-tail kite be detected, no activity should occur within 500' of the observation.

CDFW recommends adding an additional white-tailed kite-specific mitigation measure that states:

"[i]mpacts to white-tailed kite shall be fully avoided. A qualified biologist shall remain on site during all vegetation clearing and construction-related activities. Should a white-tailed kite nest be detected, a buffer of 500' shall be established and no activity shall occur within the buffer zone until the biologist determines, and CDFW confirms, that all chicks have fledged and are no longer reliant on the nest site. If an individual white-tailed kite is observed, no activity shall occur within 500', until the bird has relocated on its own."

COMMENT #4: Southwestern Pond Turtle Mitigation

Section 3.4, Page 29 / MMRP, Appendix A

Issue: Mitigation Measure BIO-1 (MM BIO-1) does not adequately minimize impacts to southwestern pond turtle (pond turtle), a CDFW Species of Special Concern.

Specific impact: Although MM BIO-1 is targeted at reducing impacts to pond turtles, a draft of the WPTCMP is not available for review. Absent its inclusion, the MND's requirement to prepare and implement the WPTCMP does not benefit from public review and analysis.

Why impact would occur: According to the MND, the Reserve supports a large population of pond turtles, including active breeding sites. Temporary construction activities may impact

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foraging, basking, or aestivating habitat for pond turtles. The MND indicates that nesting sites within the adjacent upland areas of coastal sage scrub or along banks of access roads will not be impacted by temporary construction activities.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

Mitigation Measure #4:

To reduce impacts to less than significant: CDFW recommends that the MND specify how the WPTCMP will be implemented, who the responsible party for overseeing the WPTCMP's implementation is, when the WPTCMP will be approved, as well as define the specific measures that the WPTCMP will utilize to minimize potential impacts to pond turtle. The WPTCMP should be made available for review and approval by CDFW prior to final Project approval and implementation. Additionally, suggested additions to MM BIO-1 are indicated below (in **bold**):

"[t]o minimize the potential for western pond turtles to be harmed during construction, a biologist familiar with the ecology, behavior, and movement patterns of the pond turtle within the Marsh Reserve shall prepare and implement a Western Pond Turtle Construction Monitoring Plan (WPTCMP). The WPTCMP shall include the following components:

-Goals of the WPTCMP;

*-Methods to be employed in pre-construction surveys including mapping requirements. **A combination of visual, seine, and trap methods will be utilized during pre-construction surveys to determine the population structure and status. A minimum of two trapping periods, each consisting of four days and three nights, will be conducted during period of peak pond turtle activity (i.e., April to August). A CDFW-approved Biologist will visually survey the work area prior to construction activities, and relocate any western pond turtles to the relocation site as approved by CDFW and the Reserve Manager in the WPTCMP;***

*-Monitoring requirements during construction for each phase of the western pond turtle lifecycle (e.g., nesting, aestivation, foraging). **A Biological Monitor shall be present on site during all vegetation clearing and construction activities, even if pond turtles are not detected during pre-construction surveys;***

*-Methods for removing western pond turtles from "harms way" if found during monitoring. **If a pond turtle enters the construction area following pre-construction trapping, the Biological Monitor shall have the authority to halt construction that could harm the turtle, until the individual can be captured and relocated. The Biological Monitor shall contact the Construction Lead and CDFW immediately to notify them of the observation. If the western pond turtle has not been captured after four days of trapping, the Construction Lead shall contact CDFW to determine whether trapping will be extended, or for authorization to continue construction activities;***

*-Description of exclusion fencing or enclosures necessary to protect western pond turtle and locations where such can be determined during WPTCMP preparation. **Exclusionary fencing will be maintained throughout the duration of construction and the integrity of the fencing will be checked daily by the Biological Monitor. Any western pond turtle found within the exclusion area will be relocated immediately to the relocation area approved by the Reserve Manager and CDFW. If pond turtles are relocated pre-construction or during daily biological monitoring, the Biological Monitor shall visit the relocation site to monitor the effectiveness of pond turtle relocation.***

-Reporting requirements.

*The WPTCMP must be reviewed and approved by the Marsh Reserve Manager, **as well as CDFW**, 30 days prior to the start of construction to allow sufficient time for pre-construction surveys and associated mapping needed for western pond turtle protection. This measure may be modified as necessary to meet conditions of any required regulatory permits."*

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COMMENT #5: Western Red Bat and Western Yellow Bat Mitigation

Section 3.4, Page 50 / MMRP, Appendix A

Issue: Mitigation Measure BIO-6 (MM BIO-6) does not adequately impact for potential impacts to western red bat and western yellow bat roosting sites.

Specific impact: As written, MM BIO-6 states:

“If work is to be conducted within areas of Goodding’s black willow forest during the maternity roost season (March through August), a biologist shall conduct weekly bat surveys for western red bat and western yellow bat beginning 30 days prior to start of work. If a maternity roost site is detected, the active roost tree shall not be removed until roosting has been completed and the pups are no longer dependent on the roost site as determined by the biologist. This measure may be modified as necessary to meet conditions of any required regulatory permits.”

Why impact would occur: Black willow forest habitat on the Reserve site may provide suitable habitat for western red bat and western yellow bat roosting. Removal of trees may directly impact these species, and construction noise or vibration may disturb maternal roosting colonies if activities are conducted during roosting season (March through August).

Evidence impact would be significant: Western red bat and western yellow bat are both CDFW Species of Special Concern. Weekly surveys prior to vegetation removal may not detect maternal roosts, and so may not reduce impacts to these species to below significant. Removal of roosts or disturbance of maternity colonies would be considered significant without mitigation.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

Mitigation Measure #5:

To reduce impacts to less than significant: CDFW recommends that the initial bat surveys be conducted during maternity season (March 1 to August 31) by a qualified bat biologist to confirm if any maternity colonies have been established within the Project site prior to the commencement of construction activities. Surveys should include both a visual inspection and at least one evening emergence and acoustic survey, as a simple visual inspection may not sufficiently identify bat presence. Furthermore, because bats tend to move roosts frequently, CDFW recommends that pre-construction surveys be conducted no more than three days prior to removal of trees/suitable roosting habitat.

To reduce potential impacts on western red bat and western yellow bat to less than significant, CDFW recommends that MM BIO-6 incorporate the following language:

“(1) Initial surveys are recommended to be conducted at least 6 months prior to the initiation of vegetation removal and ground disturbing activities. Surveys shall be completed during the maternity season (typically March 1 to August 31), to allow time to prepare mitigation and/or exclusion plans if needed, and

(2) Pre-construction surveys shall be conducted by a qualified bat biologist no more than three days prior to the initiation of vegetation removal and ground disturbing activities. Surveys shall include a combination of suitable habitat inspection and sampling, as well as at least one nighttime emergence and acoustic survey.

BIO-6(a): If active bat roosts are present, a qualified bat biologist shall determine the species of bats present and the type of roost (i.e., day roost, night roost, maternity roost). If it is outside of the maternity season (March 1 to August 31) and the biologist determines that the roosting bats are not a special-status species and the roost is not being used as a maternity roost, then the bats may be evicted from the roost by a qualified bat biologist experienced in developing and implementing bat mitigation and exclusion plans. If a roost is identified during maternity season, the bat biologist shall contact CDFW for additional coordination.

BIO-6(a)(i): If special-status bat species or a maternity roost of any bat species is present, but no direct removal of active roosts will occur, a qualified bat biologist shall determine appropriate avoidance measures, which may include implementation of a construction-free

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buffer around the active roost. Combustion equipment such as generators, pumps, and vehicles shall not be parked or operated under or adjacent to the roost habitat. Vibration and noise shall be avoided, and personnel shall not be present directly under the colony.

BIO-6(b): If the pre-construction survey determines that no active roosts are present, then trees/suitable habitat shall be removed within three days following the pre-construction survey.

BIO-6(c): All potential roost trees shall be removed in a manner approved by a qualified bat biologist, which may include presence of a biological monitor.

BIO-6(d): All construction activity in the vicinity of an active roost shall be limited to daylight hours.”

COMMENT #6: Habitat Reestablishment and Monitoring Plan (HRMP)

Mitigation Monitoring and Reporting Program (MMRP)

Issue: Mitigation Measure BIO-4 (MM BIO-4) requires further description and detail for CDFW to determine if mitigation for impacts to wetlands are sufficient.

Specific impact: The MND indicates that the Project will remove up to 2.27 acres of Goodding’s black willow forest and 2.06 acres of mulefat thickets (Table 7). Project elements will result in fill of herbaceous wetlands including 0.55 acre of California bulrush marsh, 1.04 acres of cattail marsh, 1.30 acres of mixed herbaceous wetland, 0.16 acre of saltmarsh bulrush, and 0.01 acre of swamp pricklegrass mats (Table 7). Excavation of herbaceous wetlands will include 1.68 acres of California bulrush marsh, 0.83 acre of cattail marsh, 1.23 acre of mixed herbaceous wetland, 0.16 acre of saltmarsh bulrush and 0.01 acre of swamp pricklegrass mats (Table 7). Mowing within herbaceous wetlands for access will include 1.62 acres of California bulrush marsh, 0.84 acre of cattail marsh, 2.35 acres of mixed herbaceous wetland, 0.54 acre of saltmarsh bulrush, and 0.05 acre of swamp pricklegrass mats (Table 7). The mowed areas would not be permanently impacted, as they would regrow upon completion of construction.

As identified in the MND’s MM BIO-4, UCI is required to prepare and implement a HRMP prior to removal, fill, or excavation of herbaceous wetlands. The measure also describes a 1:1 mitigation ratio for impacts to suitable least Bell’s vireo and white-tailed kite habitat.

Why impact would occur: Pursuant to the MND, the HRMP is a required Project component to mitigate for wetland vegetation that will be removed or impacted by construction activities. However, the MND does not include a draft HRMP for public review and comment. Absent its inclusion, the MND’s requirement to prepare and implement the HRMP does not benefit from public review and analysis.

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

Mitigation Measure #6:

To reduce impacts to less than significant: CDFW recommends that the MND specify additional details of the HRMP, including specific measures that the HRMP will utilize to minimize potential impacts to wetlands and associated biological resources. The MND should also provide a biological rationale for use of a 1:1 ratio for impacts to suitable least Bell’s vireo and white-tailed kite habitat. Finally, we request that the HRMP be made available for review and approval by CDFW and USFWS (collectively the Wildlife Agencies) prior to final Project approval and implementation.

We recommend that the MM BIO-4 be amended with the following language (changes in **bold**):

“MM BIO-4 Habitat Reestablishment and Monitoring Plan. Prior to removal of wetland vegetation, fill of herbaceous wetlands or excavation of herbaceous wetlands, UCI shall prepare, or have prepared by a restoration specialist, a Habitat Reestablishment and Monitoring Plan (HRMP) that details the restoration requirements for each of these sensitive habitats that will be impacted during a project phase.

The HRMP shall include the following components:

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1. *Map(s) identifying areas where reestablishment of Goodding's black willow forest, Mulefat thickets, California bulrush marsh, cattail marsh, mixed herbaceous wetland, saltmarsh bulrush, and swamp pricklegass mats would occur. Note:*

a. *swamp pricklegass is non-native and would be replaced with western sea-purslane;*

b. *suitable least Bell's vireo/white tailed kite habitat disturbed during construction shall be replaced at a minimum 1:1 ratio within the immediate area or other nearby suitable location. **UCI shall provide analysis of the ecological value of the impacted habitat used to determine mitigation ratios;***

c. *passive reestablishment may be included in the HRMP, where the HRMP can demonstrate that such passive reestablishment will result in no net loss of wetlands and riparian habitat;*

2. *Plant palettes and type of plant materials, including use of seed, container stock, cuttings, regrowth by trees cut but not fully removed or salvaged materials such as bulrush and cattails from excavation areas;*

3. *Methods for monitoring success of reestablishment areas;*

4. *Performance standards and adaptive management strategies; and*

5. *Reporting requirements;*

6. The Plan will also include information on the responsible party for implementation of the mitigation. The habitat restoration plan will be made available to the Wildlife Agencies for review and approval prior to implementation.

Reestablishment shall begin following construction of the Element completed. This measure may be modified as necessary to meet conditions of any required regulatory permits."

II. Additional Comments

COMMENT #7: Lake and Streambed Alteration Agreement

CDFW 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 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 UCI's MND for the project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, UCI's document should fully identify the potential impacts to any stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSAA.

Whether a LSAA is required to satisfy requirements of FCG section 1600 *et seq.* can only be determined at the time a formal Notification package is submitted to CDFW. Given that design elements of the proposed Project include replacement of a non-functioning outlet to San Diego Creek (MND, Conceptual Design Element 2), which would restore a connection from the Lower Marsh to San Diego Creek, we strongly encourage UCI to consider submittal of a Notification package to the Lake and Streambed Alteration Program. We welcome scoping and ongoing discussion on this issue look forward to UCI's continued coordination.

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 found at the following link:
http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form

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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:
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 MND 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.

Sincerely,

DocuSigned by:



D700B4520375406...

David Mayer

Environmental Program Manager
South Coast Region

Attachments

- A. CDFW Comments and Recommendations

ec: State Clearinghouse, Sacramento, State.Clearinghouse@opr.ca.gov
Jennifer Ludovissy, CDFW, Jennifer.Ludovissy@wildlife.ca.gov
CEQA Program Coordinator, Sacramento – CEQACommentLetters@wildlife.ca.gov

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Attachment A:

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

	Mitigation Measures	Timing	Responsible Party
Mitigation Measure #1	Vegetation clearing and construction activities shall occur outside of least Bell's vireo (<i>Vireo bellii pusillus</i> ; vireo) nesting season (March 15 th to September 15 th) to avoid impacts to vireo. Prior to initiation of construction activities within 100' of suitable nesting or foraging habitat, a CDFW-approved biologist with experience surveying for and observing least Bell's vireo shall conduct preconstruction surveys in accordance with established protocols to establish use of nesting habitat. Surveys shall be conducted within and adjacent to suitable habitat, where access allows, during the nesting season. If a nest is found, no activity shall occur within a 300-foot buffer of the nest until a qualified biologist determines and CDFW confirms that all chicks have fledged and are no longer reliant on the nest site. If impacts to vireo cannot be avoided and take will occur, an Incidental Take Permit or Consistency Determination under CESA shall be required.	Prior to construction activities	UCI
Mitigation Measure #2	To fully avoid the potential for Ridgway's rails being harmed during construction activities, a biologist shall survey the proposed work area for rails daily . Once it is determined that there are no Ridgway's rails within the work area, exclusion fencing consisting of silt fence or similar material may be installed to deter rails from entering the work area. The need for exclusionary fencing and the precise locations of fencing shall be determined by the biologist based on field conditions (e.g., proximity to Ridgway's rail or dense vegetation; density of vegetation within the work area and ground visibility; intensity of proposed equipment). The biologist shall remain on site during construction activities to ensure that there is no take of Ridgway's rail.	Prior to and during construction activities	UCI
Mitigation Measure #3	Impacts to white-tailed kite shall be fully avoided. A qualified biologist shall remain on site during all vegetation clearing and construction-related activities. Should a white-tailed kite nest be detected, a buffer of 500' shall be established and no activity shall occur within the buffer zone until the biologist determines, and CDFW confirms, that all chicks have fledged and are no longer reliant on the nest site. If an individual white-tailed kite is observed, no activity shall occur within 500', until the bird has relocated on its own.	Prior to and during construction activities	UCI
Mitigation Measure #4	To minimize the potential for western pond turtles to be harmed during construction, a biologist familiar with the ecology, behavior, and movement patterns of the pond turtle within the Marsh Reserve shall prepare and implement a Western Pond Turtle Construction Monitoring Plan (WPTCMP).	Prior to and during construction activities	UCI

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	<p>The WPTCMP shall include the following components:</p> <ul style="list-style-type: none">-Goals of the WPTCMP;-Methods to be employed in pre-construction surveys including mapping requirements. A combination of visual, seine, and trap methods will be utilized during pre-construction surveys to determine the population structure and status. A minimum of two trapping periods, each consisting of four days and three nights, will be conducted during period of peak pond turtle activity (i.e., April to August). A CDFW-approved Biologist will visually survey the work area prior to construction activities, and relocate any western pond turtles to the relocation site as approved by CDFW and the Reserve Manager in the WPTCMP;-Monitoring requirements during construction for each phase of the western pond turtle lifecycle (e.g., nesting, aestivation, foraging). A Biological Monitor shall be present on site during all vegetation clearing and construction activities, even if pond turtles are not detected during pre-construction surveys;-Methods for removing western pond turtles from “harms way” if found during monitoring. If a pond turtle enters the construction area following pre-construction trapping, the Biological Monitor shall have the authority to halt construction that could harm the turtle, until the individual can be captured and relocated. The Biological Monitor shall contact the Construction Lead and CDFW immediately to notify them of the observation. If the western pond turtle has not been captured after four days of trapping, the Construction Lead shall contact CDFW to determine whether trapping will be extended, or for authorization to continue construction activities;-Description of exclusion fencing or enclosures necessary to protect western pond turtle and locations where such can be determined during WPTCMP preparation. Exclusionary fencing will be maintained throughout the duration of construction and the integrity of the fencing will be checked daily by the Biological Monitor. Any western pond turtle found within the exclusion area will be relocated immediately to the relocation area approved by the Reserve Manager and CDFW. If pond turtles are relocated pre-construction or during daily biological monitoring, the Biological Monitor shall visit the relocation site to monitor the effectiveness of pond turtle relocation.		
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	<p>-Reporting requirements.</p> <p>The WPTCMP must be reviewed and approved by the Marsh Reserve Manager, as well as CDFW, 30 days prior to the start of construction to allow sufficient time for pre-construction surveys and associated mapping needed for western pond turtle protection. This measure may be modified as necessary to meet conditions of any required regulatory permits.</p>		
<p>Mitigation Measure #5</p>	<p>Western red bat and western yellow bat:</p> <p>(1) Initial surveys are recommended to be conducted at least 6 months prior to the initiation of vegetation removal and ground disturbing activities. Surveys shall be completed during the maternity season (typically March 1 to August 31), to allow time to prepare mitigation and/or exclusion plans if needed, and</p> <p>(2) Pre-construction surveys shall be conducted by a qualified bat biologist no more than three days prior to the initiation of vegetation removal and ground disturbing activities. Surveys shall include a combination of suitable habitat inspection and sampling, as well as at least one nighttime emergence and acoustic survey.</p> <p>BIO-6(a): If active bat roosts are present, a qualified bat biologist shall determine the species of bats present and the type of roost (i.e., day roost, night roost, maternity roost). If it is outside of the maternity season (March 1 to August 31) and the biologist determines that the roosting bats are not a special-status species and the roost is not being used as a maternity roost, then the bats may be evicted from the roost by a qualified bat biologist experienced in developing and implementing bat mitigation and exclusion plans. If a roost is identified during maternity season, the bat biologist shall contact CDFW for additional coordination.</p> <p>BIO-6(a)(i): If special-status bat species or a maternity roost of any bat species is present, but no direct removal of active roosts will occur, a qualified bat biologist shall determine appropriate avoidance measures, which may include implementation of a construction-free buffer around the active roost. Combustion equipment such as generators, pumps, and vehicles shall not be parked or operated under or adjacent to the roost habitat. Vibration and noise shall be avoided, and personnel shall not be present directly under the colony.</p> <p>BIO-6(b): If the pre-construction survey determines that no active roosts are present, then trees/suitable habitat shall be removed within three days following the pre-construction survey.</p>	<p>Prior to and during construction activities</p>	<p>UCI</p>

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	<p>BIO-6(c): All potential roost trees shall be removed in a manner approved by a qualified bat biologist, which may include presence of a biological monitor.</p> <p>BIO-6(d): All construction activity in the vicinity of an active roost shall be limited to daylight hours.</p>		
<p>Mitigation Measure #6</p>	<p>MM BIO-4 Habitat Reestablishment and Monitoring Plan. Prior to removal of wetland vegetation, fill of herbaceous wetlands or excavation of herbaceous wetlands, UCI shall prepare, or have prepared by a restoration specialist, a Habitat Reestablishment and Monitoring Plan (HRMP) that details the restoration requirements for each of these sensitive habitats that will be impacted during a project phase.</p> <p>The HRMP shall include the following components:</p> <ol style="list-style-type: none"> 1. Map(s) identifying areas where reestablishment of Goodding’s black willow forest, Mulefat thickets, California bulrush marsh, cattail marsh, mixed herbaceous wetland, saltmarsh bulrush, and swamp pricklegrass mats would occur. Note: <ol style="list-style-type: none"> a. swamp pricklegrass is non-native and would be replaced with western sea-purslane; b. suitable least Bell’s vireo/white tailed kite habitat disturbed during construction shall be replaced at a minimum 1:1 ratio within the immediate area or other nearby suitable location. UCI shall provide analysis of the ecological value of the impacted habitat used to determine mitigation ratios; c. passive reestablishment may be included in the HRMP, where the HRMP can demonstrate that such passive reestablishment will result in no net loss of wetlands and riparian habitat; 2. Plant palettes and type of plant materials, including use of seed, container stock, cuttings, regrowth by trees cut but not fully removed or salvaged materials such as bulrush and cattails from excavation areas; 3. Methods for monitoring success of reestablishment areas; 4. Performance standards and adaptive management strategies; and 5. Reporting requirements; 6. The Plan will also include information on the responsible party for implementation of the mitigation. The habitat restoration plan will be made available to the Wildlife Agencies for review and approval prior to implementation. 	<p>Prior to Construction Activities</p>	<p>UCI</p>

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	Reestablishment shall begin following construction of the Element completed. This measure may be modified as necessary to meet conditions of any required regulatory permits.		
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