

October 5, 2021

Governor's Office of Planning & Research

Oct 07 2021

STATE CLEARINGHOUSE

David Mayer, Environmental Program Manager I
California Department of Fish and Wildlife
South Coast Region
3883 Ruffin Road
San Diego, CA 92123

Re: Response to Comments for the Health Sciences Parking Structure Initial Study/Mitigated Negative Declaration

Dear Mr. Mayer:

The University of California, Irvine (UCI) has reviewed the California Department of Fish and Wildlife's comment letter regarding the Draft Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the proposed Health Sciences Parking Structure project. UCI has prepared responses to the comments for the Final IS/MND, and are also provided as an attachment to this letter.

If you have questions regarding the project, please contact Lindsey Hashimoto at (949) 824-8692 or hashimol@uci.edu.

Sincerely,



Richard Demerjian
Assistant Vice Chancellor
Physical & Environmental Planning

Attachment



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 21, 2021

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

Subject: Health Sciences Parking Structure (Project), Mitigated Negative Declaration (MND), SCH #2021060488, City of Irvine, Orange County

Dear Ms. Hashimoto:

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 also administers the Natural Community Conservation Planning (NCCP) program. UC Irvine participates in the NCCP program through its role as a Participating Landowner under the County of Orange Central and Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP).

PROJECT DESCRIPTION SUMMARY

Proponent: University of California, Irvine (UCI)

Objective: The objective of the Project is to construct a new six-story open parking structure in the vicinity of the Health Sciences Quad of UCI. Primary Project activities include removal of

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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vegetation, demolition and grading, developing building pads using cut and fill, and construction of the parking structure.

Location: The Project site is located within the Health Sciences Quad of the West Campus area of UCI in the City of Irvine, Orange County. The Project site is surrounded by university buildings to the south and east, the University Research Park across California Avenue to the west, and undeveloped land to the north. 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 6.1-acre project site is currently undeveloped. A site-specific biological resources survey was conducted in April 2021. A larger area was surveyed in December 2018, that encompassed 24 acres within the West Campus, as well as a 150-foot buffer. The MND indicates that the Project site includes ornamental landscaping, disturbed land, and non-native grassland. The proposed project will result in permanent loss of 0.36 acre of wild oats and annual brome grasslands, 0.05 acre of ornamental vegetation, 0.92 acre of developed land, and 2.41 acres of disturbed habitat.

Special-status wildlife species observed during the biological surveys include: the California Fully Protected white-tailed kite (*Elanus leucurus*), the federally threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher), and the California Species of Special Concern (SSC) northern harrier (*Circus hudsonius*). Additionally, the survey area contains suitable habitat with moderate or high potential to support the California Watch List species California horned lark (*Eremophila alpestris actia*). White-tailed kite and California horned lark are not covered species under the Orange County NCCP/HCP.

Timeframe: The Project is expected to span 16 months, beginning August 2021 and ending in December 2022.

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.

Mitigation Measure or Alternative and Related Impact Shortcoming

1. COMMENT #1: White-tailed Kite Avoidance

Section 4.3, Page 4.3-1

Issue: Mitigation Measure BIO-1 (MM BIO-1) and Mitigation Measure BIO-3 (MM BIO-3) do not adequately avoid impacts to white-tailed kite, a CDFW Fully Protected species.

Specific impact: As written, MM BIO-1 requires a focused wildlife clearance survey for special-status wildlife with the potential to occur on the Project site. For special-status species not covered under the Orange County NCCP/HCP, the mitigation measure indicates that, if found, UCI will coordinate with CDFW and/or US Fish and Wildlife Service (USFWS) to determine avoidance and minimization measures, or mitigation as required. MM BIO-3 requires

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pre-construction nesting bird surveys within 3 days prior to construction activities. If a nest is found, an appropriate buffer determined by the on-site biologist will be established until the nest is no longer active. 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: White-tailed kite was observed foraging in the study area during general biological surveys. The MND indicates that white-tailed kite are unlikely to nest in the survey area due to dense-topped trees being marginally present; however, foraging can be expected. Indirect impacts to this species may occur from construction noise, lighting or increased human presence. Long-term permanent impacts may result from loss of foraging habitat, as well as night lighting of the parking structure, if in the vicinity of any active nests.

Evidence impact would be significant: White-tailed kite is Fully Protected under FGC section 3511(b)(6). A Fully Protected species may not be taken at any time and loss of any individual kites, eggs, or nestlings would be considered significant.

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

Mitigation Measure #1

To reduce impacts to less than significant: In addition to the mitigation proposed in MM BIO-1 and MM BIO-3, CDFW recommends that a qualified biologist determine if white-tailed kites are nesting in the vicinity and be present on-site during initial construction activities, particularly vegetation removal, occur. A minimum 500' buffer should be established between construction activities and an active nest.

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 perform periodic site inspections (1-2 times/week) during grading-related activities. Should a white-tailed kite nest be detected, a buffer of a minimum 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.”

2. COMMENT #2: Scientific Collecting Permit and Species Relocation Plan

Section 4.3, Page 4.3-5

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

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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.

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:
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. 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:



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David Mayer
Environmental Program Manager I
South Coast Region

ec: CDFW

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State Clearinghouse, Office of Planning and Research – State.Clearinghouse@opr.ca.gov
Jonathan Snyder, USFWS – Jonathan_D_Snyder@fws.gov

Attachments

- A. CDFW Comments and Recommendations

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Attachment A

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

	Mitigation Measures	Timing	Responsible Party
MM BIO-1	Impacts to white-tailed kite shall be fully avoided. A qualified biologist shall remain on-site during all vegetation clearing and perform periodic site inspections (1-2 times/week) during grading-related activities. Should a white-tailed kite nest be detected, a buffer of a minimum 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.	Before Construction	UCI
MM BIO-2	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.	Before Construction	UCI

Response to the California Department of Fish and Wildlife

Comment 5-1: White-tailed Kite Avoidance, Section 4.3, Page 4.3-1.

Issue: Mitigation Measure BIO-1 (MM BIO-1) and Mitigation Measure BIO-3 (MM BIO-3) do not adequately avoid impacts to white-tailed kite, a CDFW Fully Protected species.

Specific impact: As written, MM BIO-1 requires a focused wildlife clearance survey for special-status wildlife with the potential to occur on the Project site. For special-status species not covered under the Orange County NCCP/HCP, the mitigation measure indicates that, if found, UCI will coordinate with CDFW and/or US Fish and Wildlife Service (USFWS) to determine avoidance and minimization measures, or mitigation as required. MM BIO-3 requires pre-construction nesting bird surveys within 3 days prior to construction activities. If a nest is found, an appropriate buffer determined by the on-site biologist will be established until the nest is no longer active. 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: White-tailed kite was observed foraging in the study area during general biological surveys. The MND indicates that white-tailed kite are unlikely to nest in the survey area due to dense-topped trees being marginally present; however, foraging can be expected. Indirect impacts to this species may occur from construction noise, lighting or increased human presence. Long-term permanent impacts may result from loss of foraging habitat, as well as night lighting of the parking structure, if in the vicinity of any active nests. Evidence impact would be significant: White-tailed kite is Fully Protected under FGC section 3511(b)(6). A Fully Protected species may not be taken at any time and loss of any individual kites, eggs, or nestlings would be considered significant.

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

Mitigation Measure #1

To reduce impacts to less than significant: In addition to the mitigation proposed in MM BIO-1 and MM BIO-3, CDFW recommends that a qualified biologist determine if white-tailed kites are nesting in the vicinity and be present on-site during initial construction activities, particularly vegetation removal, occur. A minimum 500' buffer should be established between construction activities and an active nest. 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 perform periodic site inspections (1-2 times/week) during grading-related activities. Should a white-tailed kite nest be detected, a buffer of a minimum 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.”

Response 5-1: Per the request of CDFW in this comment, mitigation measure MM BIO-4 has been added in the Final IS/MND to be consistent with the suggested language provided by CDFW. These mitigation measure includes having a qualified biologist remain on-site during vegetation clearing and requiring site inspections 1-2 times per week. Mitigation measure BIO-4 has been included on page 4.3-6 of the IS/MND as follows:

BIO-4: Impacts to white-tailed kite shall be fully avoided. A qualified biologist shall remain on-site during all vegetation clearing and perform periodic site inspections (1-2 times/week) during grading-related activities. Should a white-tailed kite nest be detected, a buffer of a minimum 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.

Comment 5-2: Scientific Collecting Permit and Species Relocation Plan, Section 4.3, Page 4.3-5.

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.

Response 5-2: Per the request of CDFW in this comment, mitigation measure MM BIO-5 has been added in the Final IS/MND to be consistent with the suggested language provided by CDFW. This mitigation measure includes procedures to take if a species not covered by the NCCP were identified by the on-site biologist. Mitigation measure BIO-5 has been included on page 4.3-6 of the IS/MND as follows:

BIO-5: 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.

Comment 5-3: 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: 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. 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.

Response 5-3: Per the request of CDFW and CEQA requirements, information related to biological resources (special status species and natural communities) will be reported by the qualified biologist as required during future surveys to the California Natural Diversity Database (CNDDDB) at the links provided by CDFW in their comment.

The comment is not at variance with the findings of the document nor requests additional information or clarification within the scope of CEQA. No changes or modifications to the IS/MND for clarification purposes have been made or are required as a result of this comment. No further response is required.

Comment 5-4: 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.)

Response 5-4: UCI is aware of the required assessment and filing fees upon filing of the Notice of Determination (NOD) by the Lead Agency that serve to help defray the cost of environmental review by CDFW. Accordingly, UCI will pay the fee in accordance with Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089. at the time of project approval and the filing of the NOD.

The comment is not at variance with the findings of the document nor requests additional information or clarification within the scope of CEQA. No changes or modifications to the IS/MND for clarification purposes have been made or are required as a result of this comment. No further response is required.