



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

Feb 18 2022

STATE CLEARINGHOUSE

February 18, 2022

Tiffany Ho, Planner III
Merced County Community and Economic Development Department
2222 M Street, 2nd Floor
Merced, California 95340
Tiffany.Ho@countyofmerced.com

**Subject: Amendment to the University Community Plan and the Virginia Smith Trust Specific Plan Project (Project)
Notice of Preparation (NOP)
SCH No.: 2001021056**

Dear Ms. Ho:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Merced County Community and Economic Development Department for the above-referenced Project pursuant to 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, CDFW appreciates 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 Fish and Game Code. Although the comment period has passed, CDFW would appreciate if you would still consider the following comments.

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,

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.

Tiffany Ho, Planner III
Merced County Community and Economic Development Department
February 18, 2022
Page 2

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.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Merced County

Objective: Merced County (County) is proposing to update the 2004 University Community Plan (Adopted UCP). The Adopted UCP involved cooperation between the City of Merced (City), County, State and numerous local stakeholders. Currently, University of California, Merced (UC Merced) and Virginia Smith Trust (VST) have discrete land ownership. Assembly Bill 3312 passed in 2020 and allows the City to annex the UC Merced campus. The proposed plan would remove a portion of the UCP area owned by UC Merced from the County's UCP, expand the UCP area east to align with current land ownership, and update the land uses proposed within the 654-acre VST Specific Plan. As the lead agency, the County will prepare a focused Subsequent Environmental Impact Report (SEIR) for the UCP amendments and VST Specific Plan. The focused SEIR will tier from the certified 2004 UCP EIR (SCH# 2001021056) and will evaluate whether the proposed changes to the UCP would result in new or substantially more severe significant impacts.

The UCP supplements the goals, objectives, and policies of the County of Merced General Plan to reflect the unique issues, planning vision, and objectives for development of the University Community. The proposed update to the Adopted UCP would modify the UCP boundary, revise the policy plan to reflect current conditions, regulations, and best practices, and update the land use and circulation diagram to reflect the land uses proposed within the VST Specific Plan and establish the alignment of Campus Parkway through the VST plan area to its ultimate connection to Bellevue Road to complete the eastern side of the Merced-Atwater perimeter expressway. The

Tiffany Ho, Planner III
Merced County Community and Economic Development Department
February 18, 2022
Page 3

Project would also result in an update to the Circulation Element of the General Plan to include the revised alignment of Campus Parkway, both within and outside of the UCP.

Location: The Project site is located in unincorporated Merced County just northeast of the City of Merced and within the City's sphere of influence. The UCP would include the VST Specific Plan property and the UCP South. The VST plan area is bounded by Lake Road on the west, UC Merced property to the north, Cardella Road on the south, and the Orchard Drive alignment on the east. The UCP South is bound by Lake Road to the west, Cardella Road to the north, Yosemite Avenue to the south, and the Fairfield Canal to the east.

Timeframe: N/A

COMMENTS AND RECOMMENDATIONS

The NOP indicates that the SEIR will tier from the certified 2004 UCP EIR (SCH# 2001021056) and will evaluate whether the proposed changes to the UCP would result in new or substantially more severe significant impacts. It is unclear if the modification of the UCP boundary will involve impacts to acreage not included in the previous environmental document. In addition, it is unclear who will be the developer on the Project site.

If the Project includes impacts to new acreage as a result of modification of the UCP boundary not previously included in the certified 2004 UCP EIR, the following list of special status species may need to be addressed in the SEIR. Several special-status plant and animal species that have been documented in the Project area per the California Natural Diversity Database (CNDDDB), include but is not limited to, the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), the State fully protected white-tailed kite (*Elanus leucurus*), the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State and federally endangered Harweg's golden sunburst (*Pseudobahia bahiifolia*), the State endangered and federally endangered and federally threatened hairy Orcutt grass (*Orcuttia pilosa*), the State endangered and federally threatened succulent owl's clover (*Castilleja campestris var. succulenta*), the State endangered Colusa grass (*Neostapfia colusana*), and the State species of special concern burrowing owl (*Athene cunicularia*), and western spadefoot toad (*Spea hammondi*). CDFW recommends the SEIR prepared for the Project analyze potential impacts to these species provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels. More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>).

Tiffany Ho, Planner III
Merced County Community and Economic Development Department
February 18, 2022
Page 4

CDFW is unclear if the proposed development on the Project site will occur through the County, UC Merced, and/or private developers. Currently, UC Merced is the Permittee and authorized entity for development on the Project site under their Incidental Take Permit (2081-2009-010-04). An amendment to the Incidental Take Permit (ITP) may be needed to add permittee(s) or update the ITP's Project description and associated Conditions of Approval. On a similar note, the Project may be subject to notification under Fish and Game Code section 1602, and if UC Merced's Lake or Streambed Alteration Agreement (LSAA) includes activities within the Project site, an amendment to the LSAA may also be needed. Please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593 for more information.

CDFW also recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, California tiger salamander, San Joaquin kit fox, Harweg's golden sunburst, succulent owl's clover, Colusa grass, and vernal pool invertebrates. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

CDFW is available to meet with you ahead of draft SEIR preparation to discuss amendments to the existing ITP and/or LSAA, and potential impacts and possible mitigation measures for some or all of the resources that may be analyzed in the SEIR. If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3203, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:

041A77B10D78486...
Annee Ferranti for Julie A. Vance
Regional Manager

cc: Phillip Woods
University of California, Merced
Post Office Box 2039
Merced, California 95344

Tiffany Ho, Planner III
Merced County Community and Economic Development Department
February 18, 2022
Page 5

ec: United States Fish and Wildlife Service
Patricia Cole; Patricia_Cole@fws.gov

CDFW LSA/1600; R4LSA@wildlife.ca.gov

University of California, Merced
Phillip Woods; pwoods3@ucmerced.edu

Tiffany Ho, Planner III
Merced County Community and Economic Development Department
February 18, 2022
Page 6

LITERATURE CITED

CDFW. 2022. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>.