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We write concerning Endangered Species Act issues at the University of California, Santa Cruz, specifically those involving the California Red-Legged Frog (CRLF, *Rana draytonii*), federally listed as a threatened species and state listed as a species of special concern.

First, we thank you and your USFWS colleagues for many years of urging UCSC to do a campus-wide Habitat Conservation Plan (HCP), which they have recently begun. The ongoing disaster of the Student Housing West (SHW) project, brought on by UCSC's ill-advised decision to avoid working with you and your USFWS colleagues on a site-specific HCP for CRLF, may have finally convinced UCSC of the wisdom of a campus-wide HCP. In any event, a comprehensive and science-based campus-wide HCP can only benefit both biological diversity and future campus projects, as you and your colleagues have argued for years.

Second, we also thank you for comments provided by your office on the Draft EIR for the recently adopted Long Range Development Plan (LRDP). (Comments by Leilani Takano, Assistant Field Supervisor, USFWS Ventura Office) These comments focused largely on CRLF and improved UCSC's draft text on those issues.

It is on CRLF issues related to the SHW Hagar site (aka East Meadow) that we write you today.

There is a considerable body of scientific research, beginning with the work of J. B. Bulger and others, that CRLF upland and dispersal habitat often extends up to a mile from breeding and non-breeding aquatic habitats. This is acknowledged by UCSC (see for example their Revised EIR for the SHW project at 4.3-16). It is also known to all parties that there is CRLF breeding habitat at the Arboretum Pond on the UCSC campus.

At the conference of USFWS and Jolie Kerns of UCSC on August 18, 2017, USFWS stated that an incidental takings permit and mitigation would be required for half of the proposed east site (i.e. the Heller site) due to that area being "degraded upland and dispersal habitat" for the CRLF. The site in question is three quarters of a mile from the Arboretum Pond. In contrast, the Hagar site is barely over half a mile from the Arboretum Pond.

UCSC acknowledges that the Hagar site could be upland and dispersal habitat for CRLF, and yet avoids the issue by failing to survey the site for CRLF. If you don't look, you won't find them. UCSC did no site assessment or field survey for CRLF in the Hagar site as part of their environmental review for the SHW project. In contrast they had two different biological contractors, Biosearch Associates and LSA, do multiple CRLF site assessments and/or field surveys for the Heller site. (SHW RDEIR pp 4.3-4, 5, and 17)

It is also known that when CRLF dispersal is aimed specifically at other potential water features, CRLF can disperse up to 1.7 miles. (LRDP FEIR 2-30) UCSC in particular notes that potential aquatic habitat just beyond the Hagar site, specifically Kalkar Pond and the two small ponds along its outflow, would be attractive to CRLF and could draw them across the Hagar site. "CRLF could occur in these ponds. CRLF could move from the Arboretum Pond or from Moore Creek, Cave Gulch stream, and Wilder Creeks through the Hagar site to these ponds." (SHW RDEIR at 4.3-18) The total distance from the Arboretum Pond, across the Hagar site, to the Kalkar Pond is less than one mile.

Whether or not CRLF have adopted Kalkar Pond and/or its outflow as habitat, it is clear that one way or another it is quite plausible that the Hagar site is upland and dispersal habitat for CRLF. This comports with the assessment your office made in comments to the LRDP DEIR: "We believe the majority of undeveloped terrestrial habitats within the LRDP area provides suitable habitat for the California Red-Legged Frog." (LRDP FEIR at 2-29) That certainly includes the entire Hagar site.

So both UCSC and USFWS are of the view that the Hagar site could well be upland and dispersal habitat for CRLF. It would seem that the only responsible next step would be to do a site assessment and/or field survey to determine whether this threatened species is in fact using the Hagar site as dispersal and upland habitat.

UCSC has declined to do that as part of its preparation for the Hagar site portion of the SHW project.

UCSC acknowledges that "CRLF has the potential to disperse through the Hagar site" but offers minimal mitigation BIO 5A and B only for impacts during actual construction. (SHW RDEIR 4.3-43-45) No mitigation is offered for loss of dispersal habitat beyond the brief period of construction. This is particularly troubling given that elsewhere UCSC references USFWS's conclusion that "maintaining dispersal corridors between breeding and non-breeding habitats is considered essential for preserving CRLF populations." (SHW RDEIR at 4.3-16; USFWS's Revised designation of Critical Habitat for the California Red-legged Frog, Final Rule. Federal Register 75 (51): 12816-12595)

In the LRDP Final EIR (at 2-30) UCSC speculates that CRLF are "not as likely" to wander eastward from the Arboretum Pond as they are to wander northward from the Arboretum Pond. However that speculation is backed by no site assessment or

field survey. Furthermore, even if there were direct evidence that such a speculation were accurate, that would not establish that CRLF were not wandering eastward across the Hagar site in lesser but still significant numbers.

UCSC further speculates that CRLF are less likely to wander eastward from the Arboretum Pond because of existing development or other obstacles. It is true that a straight line from the Arboretum Pond to the center of the Hagar site encounters Jordan Gulch and Hagar Drive. However, a straight line from the Arboretum Pond to the center of the undeveloped portions of the Heller site encounters the West Remote Parking Lot, the Oaks College Dorms, the Oakes College Parking Lot, tennis courts and a volleyball court, and Heller Drive, yet that portion of the Heller site has been determined to be upland and dispersal habitat for CRLF. Obstacles to CRLF movement to the Hagar site are certainly no greater, and appear to be significantly less, than obstacles to the Heller site.

The core question here is very straightforward and has nothing to do with these speculations: do CRLF use the Hagar site as upland or dispersal habitat? Speculation does not answer that question. It can only be answered by an actual site assessment and/or field survey (preferably the latter).

Therefore, our questions to you are:

- 1) Has USFWS required, or will USFWS require, UCSC to conduct a site assessment and/or field survey for CRLF throughout the Hagar site prior to beginning any construction activity at that site?
- 2) If not, why not, and how is that position consistent with your obligations under the Endangered Species Act?
- 3) If yes, is UCSC aware of that requirement, and do they accept their obligation to comply?

In answering these questions, you may need to take account of a peculiar sleight-of-hand that sometimes occurs with respect to the Hagar site. A short bit of history will explain:

In the previous LRDP (the 2005 LRDP), UCSC quite reasonably took the position that it did not need to provide analysis of development impacts on the Hagar site because that LRDP recommended against any development of that site.

In the project EIR for SHW (approved March 2019) UCSC illogically took the position that it did not need to provide analysis of some impacts at the Hagar site because it was adopting by reference (“tiering”) from the 2005 LRDP analysis, even though that earlier work never considered impacts arising from SHW development of the Hagar site.

In the latest LRDP (the 2021 LRDP), UCSC declined to analyze impacts on the Hagar site because, as the then Vice Chancellor in charge told one of the faculty members of the LRDP Committee, the Committee was to consider the SHW project to already

have been completed, even though construction had not even begun (and still to this day has not begun). Specifically, the “LRDP committee was told explicitly that we were not allowed to discuss this change in land use designation [i.e. the SHW development of the Hagar site] in the 2020 LRDP committee meetings.” (comments of Professor Karen Holl, SHW RDEIR)

The result is that many impacts of the SHW development of the Hagar site have never been properly analyzed. More to the point here, it is often not clear that SHW impacts have been considered or taken into account in the new LRDP, nor that mitigations promised in the new LRDP are promised for a SHW project that has yet to be built.

For example, consider figure 3.5-7 on page 3.5-46 of the LRDP Draft EIR as amended by any corrections in the Final. It shows the 2021 LRDP boundary, which encompasses the entire campus. So that would seem to indicate that mitigations promised in the 2021 LRDP would apply to the entire campus, i.e. “the LRDP area.” However the same figure 3.5-7 also shows “existing development” and areas “designated” under the LRDP for future development. And the entire SHW project, both the Hagar and the Heller sites, is missing from both categories: it is neither “existing” nor “future.” This perpetuates the idea first disclosed by Professor Holl that SHW is completely outside the LRDP, and therefore that the SHW project is not governed by any commitments or mitigations that were promised in the LRDP or might be promised in the future for projects in the LRDP.

This Orwellian absence occurs not only in Figure 3.5-7, but also occurs quietly in many places throughout the LRDP EIR. SHW doesn’t appear in the 2021 LRDP, its impacts don’t count in the LRDP analysis, and promised mitigations in the LRDP don’t necessarily apply to SHW, all because of the quiet fantasy that it has already been built. (This is not the same as the issue addressed in Master Response 2.2.8 of the LRDP FEIR at 2-18. There it is stated that the SHW project “is not covered by the 2021 LRDP” and is covered by a late amendment to the 2005 LRDP, approved by the Regents in March 2019, subsequently vacated by the courts, and then reapproved by the Regents in March 2021. That statement does not explain why in the 2021 LRDP SHW is neither an existing development nor a future development, i.e. according to the 2021 LRDP this very large project exists neither in the past, nor in the present, nor in the future.)

For the Hagar component of SHW this is a particularly troubling situation, because unlike the Heller component of SHW, the environmental analysis of the Hagar component was extremely rushed and minimalist in the SHW EIR. The Hagar component’s impacts were not analyzed in the 2005 LRDP, they were only scantily addressed in the SHW EIR, and now they seem to be outside the reach of the 2021 LRDP EIR. The Hagar component of SHW, in terms of environmental review, is largely a phantom project, flying under the radar. This is not a situation envisioned by our nation’s environmental laws.

We mention all this for two reasons. First, USFWS should be particularly vigilant with regard to the Hagar project. Do not assume that other aspects of environmental law and process would have detected a problem – normal processes do not apply here. And second, assurances given to you that UCSC will do everything it committed to in the 2021 LRDP, or that all projects within the LRDP will be handled in some particular way, may mean nothing for the Hagar project.

We therefore urge you, in answering the questions we have posed, to make certain that the answer does apply specifically to the Hagar component of SHW, and that UCSC understands and agrees that the answer applies to the Hagar component.

We thank you for your attention to this situation and for all the good work you do.

Yours truly,

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On behalf of
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