

October 19, 2004

Mr. Jerry Haag  
2029 University Avenue  
Berkeley, CA 94704

Subject: Proposal to Conduct Biological Surveys at the Ohlone College Newark Center  
Project Site, Newark, CA

Dear Jerry:

LSA Associates, Inc. (LSA) is pleased to provide you with this proposal to perform species-specific field surveys at the Ohlone College Newark Center project site. This scope was developed as a result of the observations made during the biological resources assessment conducted by LSA during preparation of the biological resources section of the EIR, a phone conversation with Simon Barros (Ohlone College) on August 31, 2004, and a meeting with the Simon Barros and Don Eichelberger (Ohlone College) on October 6, 2004.

## **BACKGROUND**

In the draft project EIR, a number of measures to mitigate potential impacts to biological resources on the site were proposed. Some of these measures require that focused surveys for a particular plant or animal be conducted in order to determine the presence of the species onsite and implement the appropriate mitigation measure as specified in the draft EIR. The following scope of services has been developed in order to comply with those mitigation measures. In developing the scope we are working under the assumption that construction is scheduled to begin onsite in mid-April 2005 and that we are working to resolve all pending issues prior to that date.

Pending issues related to biological resources include:

- Extension of the verification of the jurisdictional wetlands on the project site and confirmation of status of all wetlands on the project site under Section 404 of the Clean Water Act;
- Development of a wetland mitigation plan;
- Field marking of wetland boundaries;
- Rare plant surveys;
- Burrowing owl mitigation, including development of mitigation plans and passive relocation of owls, preconstruction surveys, and construction of artificial burrows;

- Informal consultation with the U.S. Fish and Wildlife Service regarding the range of California tiger salamanders and vernal pool tadpole shrimp in the vicinity of the site.

For each task identified below, we identify the mitigation measure in the draft EIR to which the task applies and then describe the task that will be carried out. Optional surveys that may be required by the agencies are also included at the end of the scope.

## **SCOPE OF SERVICES**

### **Wetlands**

Mitigation Measure 4.3-1 requires that wetlands onsite be replaced at a 1:1 ratio and that a mitigation plan be developed to specify the details of such mitigation. The appropriate permits from the state and federal agencies must be obtained for fill of the wetlands.

Waters of the United States including wetlands on the 81-acre parcel were delineated by McLaren/Hart in 1999. Within the proposed 30-acre Ohlone College Newark Center site, only one small wetland was identified in the northwest corner of the site. Additional wetlands occur in the southeast corner of the site, but these will not be impacted by the current project. The wetland delineation was verified by the U.S. Army Corps of Engineers (Corps) on March 15, 2000, and will expire on March 15, 2005. Based on recent court decisions, the northwest wetland may no longer be subject to jurisdiction by the Corps under the federal Clean Water Act. Regardless of the jurisdiction under the Clean Water Act, impacts to the wetland onsite may be subject to state jurisdiction and represent an impact to a sensitive resource under CEQA thereby requiring mitigation.

**Task WET-1.** Request an extension of the wetland delineation and confirmation of the status of jurisdictional features onsite from the Corps. We will request this confirmation for the 81-acre parcel with emphasis on the 30-acre development site. We assume that because conditions on the site have not changed since the delineation a new report will not be required. If the delineation must be revised, the new delineation would be completed under a separate scope and budget.

**Task WET-2.** Develop a plan to mitigate impacts to wetlands from the proposed development. The wetland mitigation plan will include a discussion of 1) the plant species composition and hydrology of the existing wetland and the proposed plant species composition and hydrology of the mitigation wetland; 2) location of the mitigation site, 3) the performance standards by which success will be evaluated, 4) monitoring procedures, 5) contingency plan, 6) annual reporting requirements, 7) and rationale for expected success.

**Task WET-3 .** Identify and stake existing wetland boundaries and proposed mitigation area on the 81-acre parcel. GPS coordinates of the boundaries will be provided to the College for use in creating maps of environmentally sensitive areas.

## **Botany**

Mitigation Measure 4.3-2 identifies a number of plants that may occur on the site. These include Contra Costa goldfields, dwarf downingia, alkali milk-vetch, prostrate navarretia, hairless popcorn flower (a survey for Congdon's tarplant, another plant identified as potentially occurring onsite, was conducted in September 2004 with negative results). In order to determine if these plants occur on the site, a rare plant surveys will be conducted in suitable habitats onsite during the spring of 2005.

**Task BOT-1.** LSA botanists will conduct spring rare plant surveys on the proposed project site. The site will be searched for the presence of these plants by a botanist experienced in conducting surveys in the South Bay. We will conduct two surveys, one each in March and early April 2005, to assess the presence of rare plants on the site. A letter report will be prepared and submitted to the College detailing the results of the survey.

## **Wildlife**

### ***Burrowing Owl***

Mitigation Measure 4.3-4 Requires that a protocol-level surveys for burrowing owls be conducted and if owls are found onsite a mitigation plan will be developed consistent with the *Staff Report on Burrowing Owl Mitigation* (California Department of Fish and Game, 1995). Mitigation requires preparation of a mitigation plan for the owls that specifies that location of the mitigation site (minimum 6.5 acres per pair or single owl observed onsite), management prescriptions for the mitigation area, establishment of a conservation easement over the area, monitoring of the mitigation area, and establishment of an endowment to fund the management activities and monitoring. Methods to passively relocate the owls are also specified in the *Staff Report*. Burrowing owls were observed onsite during the September 2004 botanical survey and protocol-level surveys have been initiated to determine the number of owls using the site and location of the active burrows.

**Task WLD-1.** LSA biologists will develop a plan to mitigate for impacts to burrowing owls using the site. The number of owls to be mitigated will be based on the results of the surveys currently being conducted. In the plan we will include 1) a description of the location of the mitigation site and the existing resources onsite, 2) management prescriptions to encourage use of the mitigation area by burrowing owls, 3) a schedule for implementation of the management prescriptions, 4) performance standards by which success will be evaluated, 5) monitoring procedures and period, 6) contingency plan, 7) annual reporting requirements, 8) and rationale for expected success.

**Task WLD-2 .** LSA biologists will implement a plan to passively relocate burrowing owls from the Ohlone College Newark Center project site. We will coordinate this plan with California Department of Fish and Game personnel prior to implementation. Passive relocation will be conducted prior to February 1, 2005 (the start of the breeding season). Passive relocation includes identification of active burrows by biologists, establishment of exclusion zones around the burrows (fencing to be completed by College), installation of one-way door in all potential burrows within the exclusion zones, and monitoring of the excavation and backfilling of all burrows within the exclusion zones 48 hours after placement of one-way doors (College to provide laborers to excavate all burrow using

hand tools)<sup>1</sup>. A brief letter report will be provided detailing the results of the passive relocation effort.

**Task WLD-3.** LSA will construct artificial burrows and monitor the installation of the burrows at the approved mitigation site. At a 2:1 ratio, we anticipate that no more than 10 artificial burrows will be required as replacement habitat. We will oversee the installation of the artificial burrows on the approved mitigation site by the College's contractor or staff.

**Task WLD-4.** To ensure that no owls occupy the site prior to construction activities, LSA biologists will conduct preconstruction surveys on the project site. Two surveys are proposed. The first would be conducted in early January prior to the start of the breeding season. The timing of this survey would allow identification of any owls that may reoccupy the site after passive relocation in a timely manner so that additional passive relocation could be completed before the start of the breeding season. The second survey would be conducted no more than 30 days prior to the initiation of ground disturbing activities for the construction phase of the project. We will provide a brief letter report on the results of each survey. We would also search for other nesting raptors on the site during the March preconstruction survey.

### ***Vernal Pool Tadpole Shrimp and California Tiger Salamander***

Mitigation Measure 4.3-3 requires that the College enter into informal consultation with the U.S. Fish and Wildlife Service and California Department of Fish and Game to address potential impacts to these species. Vernal pool tadpole shrimp and California tiger salamanders are both known from about 2 miles southeast of the project site. There is a low potential for these species to occur on the Ohlone College Newark Center project site. We will request concurrence from the U.S. Fish and Wildlife Service and California Department of Fish and Game that the proposed project will have no effect on these species.

**Task WLD-5.** LSA will contact the U.S. Fish and Wildlife Service and California Department of Fish and Game and will initiate informal consultation to seek a no effect determination for vernal pool tadpole shrimp and California tiger salamander from the proposed project. In order to initiate the consultation we will complete habitat assessments for each species and provide the assessments to the agencies for review. If the agencies issue no effect determinations, no additional work will be required.

### ***Optional Surveys***

Optional surveys would be authorized only if required by the agencies in order to assess the presence of these species on the site.

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<sup>1</sup>We have allowed for 4 person-days for installing the one-way doors and 8 person-days for monitoring the excavation. Actual time will be dependent on the number exclusion zones and the number of burrows in each exclusion zone to be monitored and excavated.

**Task OPT-1.** If the agencies require surveys for vernal pool tadpole shrimp, we would conduct a dry season survey followed by a wet season survey (or wet season survey followed by a dry season survey) for vernal pool tadpole shrimp. Soil for the dry season survey must be collected either before or after the rainy season. Wet season surveys would be conducted biweekly from two weeks after the pool fills through about March (the end of the rainy season). Approval for wet and dry season sampling must be obtained from the U.S. Fish and Wildlife Service prior to initiating such surveys.

**Task OPT-2.** If surveys are required for California tiger salamanders, we will conduct a survey of the potential breeding habitat onsite (namely the small wetland in the northwest corner of the site). The aquatic survey would consist of three sampling events one each in February, March, and early April 2005, depending on rainfall.

Results of all surveys will be reported to the College, U.S. Fish and Wildlife Service and California Department of Fish and Game. Occurrences of special-status species observed during the surveys will be reported to the California Natural Diversity Data Base as required by our permits.

## COMPENSATION AND TERMS

LSA proposes to perform the tasks described in the Scope of Services on an hourly plus expenses basis, consistent with our Standard Contract Provisions and Billing Rates, which are attached as part of this proposal. The estimated cost for these services is \$50,708. Optional surveys that may be required by the U.S. Fish and Wildlife Service are estimated at \$24,670. Table 1 details the cost by task.

## SCHEDULE

The schedule for completion of the tasks identified in this proposal is shown in Table 2.

**Table 2. Survey Schedule, Ohlone College Newark Center**

<b>Task</b>	<b>Timing</b>
WET-1: Reconfirm Delineation	October-November
WET-2: Wetland Mitigation Plan	November-December
WET-3: Stake Wetland Boundaries and provide GPS coordinates	November
BOT-1: Rare Plant Survey	Field Survey: March, April 2005 Report: 2 weeks after completion of 2 <sup>nd</sup> survey
WLD-1: Burrowing Owl Mitigation Plan	Plan: November-December
WLD-2: Burrowing Owl Passive Relocation	Field: November-December Report: 2 weeks after completion of relocation

<b>Task</b>	<b>Timing</b>
WLD-3: Construct Artificial Burrows	Contingent upon establishment of mitigation area
WLD-4: Preconstruction Surveys	January and March 2005
WLD-5: Informal Consultation and Habitat Assessments for Tadpole Shrimp and California Tiger Salamander	November
Optional Surveys	
OPT-1: Vernal Pool Tadpole Shrimp Survey	Dry Season: October-November or April-October Wet Season: Biweekly from November through March
OPT-2: CTS Breeding Season Survey	March, April, May

If these terms are acceptable, please authorize this work by returning a signed copy of this proposal to us. Please contact me if you have any questions or require further information.

Sincerely,

**LSA ASSOCIATES, INC.**

Timothy Lacy  
Associate/Wildlife Biologist

Enclosure: Standard Contract Provisions

## **REFERENCES CITED**

California Department of Fish and Game. 1995. Staff Report on Burrowing Owl Mitigation.  
Prepared by California Department of Fish and Game, Sacramento.

McLaren/Hart, Inc. 1999. Wetland Delineation Report, 81.54 Acres Parcel, Cherry Street and Mowry Avenue, Newark, California. Report submitted to Sun Microsystems, Inc. Dated October 5, 1999.

THE ABOVE STATED TERMS ARE HEREBY ACCEPTED AND AUTHORIZED

CONSULTANT:

LSA Associates, Inc.

\_\_\_\_\_  
Authorized Signature

Assistant Secretary

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

CLIENT:

\_\_\_\_\_  
Company

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



Table 1. Labor and Expense Estimate for the Ohlone College Newark Center Focused Biological Surveys

<b>OPTIONAL SURVEYS: Labor</b>													
OPT-1: Vernal Pool Tadpole Shrimp Survey													
Request for Authorization													
Dry Season Survey		2							4				
Wet Season (12 sampling visits, every 2 weeks Nov-Mar, 6 hrs/visit) plus field prep			12							80			
Dry Season Report		4							24		8	2	
Wet Season Progress Reports (2)		2							8				
Final Report	1	2							24		12	2	
OPT-2: California Tiger Salamander Surveys													
Aquatic Survey (3 surveys - February, March, and April)		2								20			
Final Report	1	2							24		8	2	
Hours	2	28	0	0	0	0	0	0	164	44	0	28	6
Rate	\$185	\$105	\$85	\$65	\$120	\$75	\$65	\$90	\$75	\$80	\$75	\$60	
Subtotal	<b>\$370</b>	<b>\$2,940</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$14,760</b>	<b>\$3,300</b>	<b>\$0</b>	<b>\$2,100</b>	<b>\$360</b>
<b>OPTIONAL SURVEYS: Expenses</b>													
Mileage (16 RT @ 100 miles/RT)									16	100	0.375		\$600
Field Supplies (nets, flagging)									1	1	100		\$100
Copies									1000	1	0.1		\$100
Phone, Fax, Delivery									2	1	20		\$40
											<b>Expenses Subtotal</b>	<b>\$840</b>	
											<b>Total Labor and Expenses for Optional Surveys</b>	<b>\$24,670</b>	