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DEPARTMENT OF FISH AND WILDLIFE
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October 9, 2019

Mr. Andy Ross, Associate Planner
City of Livermore
1051 S. Livermore Avenue
Livermore, CA 94550
aaross@cityoflivermore.net

Subject: Lassen Road Residential Development Project, Initial Study/Mitigated Negative Declaration, SCH #2019099018, City of Livermore, Alameda County

Dear Mr. Ross:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from the City of Livermore (City) for the Lassen Road Residential Development (Project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the IS/MND to inform the City, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Incidental Take Permit (ITP), a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act
Please be advised that a CESA Permit must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

Lake and Streambed Alteration
CDFW requires an LSA Notification, pursuant to Fish and Game Code section1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is

required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: LD-Fund III Livermore Land LLC c/o Westgate Ventures

Description and Location: The Project is proposing to amend the existing General Plan and Zoning designations and develop approximately 186 dwelling units on the Project site. Residential development would occupy approximately 12 acres of the eastern portion of the site and the remaining approximately 23 acres of the western portion of the site would remain undeveloped and preserved as open space. The Project site is located in the City of Livermore, Alameda County, California. The 35.2-acre Project site consists of two parcels (Assessor's Parcel Number [APN] 902-0008-002 and APN 099-0023-008). The Project site is bounded by the Livermore Valley Joint Unified School District property (west), the Archdiocese of Oakland property (north), residential and commercial uses (east), and Interstate 580 (south).

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

East Alameda County Conservation Strategy
Several of the species potentially impacted by this Project are included as focal species in the East Alameda County Conservation Strategy (EACCS), such as California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), western burrowing owl (*Athene cunicularia*), and American badger (*Taxidea taxus*).The IS/MND, p. 52, states the mitigation measures set forth in the IS/MND are consistent with the EACCS guidance. However, none of the biological mitigation measures in the IS/MND recommend or require mitigation in the form of habitat conservation despite acknowledging there are several special-status species that may be present in the Project area. The EACCS mitigation guidance sections (Chapter 3), for grassland, California tiger salamander, western burrowing owl, California red-legged frog, and American badger all include mitigation in the form of habitat conservation, for the loss of species habitat when it cannot be avoided. To be consistent with the EACCS and to offset permanent habitat loss or conversion the IS/MND should include permanent habitat conservation as an enforceable mitigation measure.

Western Burrowing Owl
The IS/MND should evaluate the potential for burrowing owls to be present within and adjacent to the Project area by documenting the extent of fossorial mammals that may provide burrows

used by owls during the nesting and/or wintering seasons. Burrowing owls may also use unnatural features such as debris piles, culverts and pipes for nesting, roosting or cover. If potential burrowing owl habitat is present, CDFW recommends that surveys be conducted following the methodology described in Appendix D: Breeding and Non-breeding Season Surveys of the CDFW Staff Report on Burrowing Owl Mitigation (Staff Report), which is available at https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843.

Burrowing owl surveys should be conducted by a qualified CDFW-approved biologist. In accordance with the Staff Report, a minimum of four survey visits should be conducted within 500 feet of the Project area during the owl breeding season which is typically between February 1 and August 31. A minimum of three survey visits, at least three weeks apart, should be conducted during the peak nesting period, which is between April 15 and July 15, with at least one visit after June 15. Additional surveys should be conducted during winter months to document presence of wintering owls. Pre-construction surveys should be conducted no-less-than 14 days prior to the start of construction activities with a final survey conducted within 24 hours prior to ground disturbance.

Please be advised that CDFW does not consider exclusion of burrowing owls or "passive relocation" as a "take" avoidance, minimization or mitigation method, and considers exclusion as a significant impact. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid "take".

The CEQA document for the Project should also include measures to avoid or minimize loss of burrowing owl foraging habitat, and mitigation for loss of habitat that cannot be fully avoided. The EACCS's Mitigation Guidance (p.3-66) for burrowing owl recommends mitigating the loss of habitat by protecting habitat in accordance with the mitigation guidelines outlined in Table 3-10 (BUOW-3) through acquiring parcels, through fee title purchase or conservation easement, where known nesting sites occur or where nesting sites have occurred in the previous three nesting seasons (BUOW-1 and BUOW-2). Additionally, the Project applicant could work with the EACCS's Implementation Committee to fund the implementation of an annual monitoring program in coordination with local conservation groups on all burrowing owl nest colonies on protected lands using monitoring protocols established by the California Burrowing Owl Consortium (1993). The results of these surveys would be submitted to the CNDDB and the Conservation Strategy database (BUOW-4 and BUOW-5). This would allow for informed avoidance of impacts in the future.

California Tiger Salamander

California tiger salamander is federally listed as threatened and is also state listed, under CESA, as threatened. The Project site is located within dispersal distance of known and potential California tiger salamander breeding ponds. The IS/MND MM BIO-3 (1) recommends conducting a pre-construction survey for the entire grassland area of the Project site. If California tiger salamanders are detected during the pre-construction surveys, the qualified biologist would stop work until such time the individual(s) either move clear of the construction zone on their own or, if "authorized by the agencies," the biologist would capture and move individuals out of harm's

way. California tiger salamanders spend a majority of their lives underground in burrows created by fossorial mammals. Some salamanders migrate to and from breeding ponds on rainy nights during the winter and spring. Based on their life history, it is highly unlikely a salamander would be found during pre-construction surveys unless the surveys included actions such as; burrow excavation, pitfall traps and drift fencing, as authorized under CESA.

MM BIO-3 (2) also recommends installing an exclusion fence if California tiger salamanders are found during pre-construction surveys. Please be advised that installing fencing around the Project site could be a form of "take" if California tiger salamanders are present. Any action that could cause take of California tiger salamanders (such as trapping within an exclusion fence) must be authorized under appropriate federal and state permits.

MM BIO-3 as written, does not reduce the impacts to less-than significant levels as required by CEQA. Mitigation measures should include actions such as, preserving off-site habitat through either purchasing California tiger salamander habitat credits at a CDFW approved conservation bank (see https://www.wildlife.ca.gov/Conservation/Planning/Banking/Approved-Banks), or by placing a conservation easement over lands providing habitat, including funding an endowment for managing the lands for the benefit of California tiger salamander in perpetuity, and preparation and implementation of a long-term management plan.

California tiger salamander are known to be able to travel 1.3 miles from upland habitat to breeding ponds. Given the historical and extant California tiger salamander detections within 1.3 miles of the Project site, and without evidence such as presence/negative finding surveys, the IS/MND should assume presence. Therefore, due to the potential presence of this listed species and the potential for Project-related take, including *relocation out of harm's way*, CDFW advises that the Project proponent obtain a CESA permit (pursuant to Fish and Game Code Section 2080 et seq.) in advance of Project implementation. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts; mitigation, and should fully describe a mitigation, monitoring and reporting program. As mentioned above, if the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit. More information on the CESA permitting process and protocol survey procedures can be found on the CDFW website at https://www.wildlife.ca.gov/Conservation/CESA or https://www.wildlife.ca.gov/Conservation/Survey-Protocols.

California red-legged frog

The IS/MND, p. 50, states, the "project site does not contain significant vegetation to support California red-legged frog breeding or seasonal wetlands to support California tiger salamander breeding." and goes on to state that California red-legged frog and California tiger salamander have the potential to disperse through the upland area of the Project site following significant rain events. California red-legged frogs are known to breed in ponds and stream and need little or no vegetation. Movements of California red-legged frogs include utilizing areas above top-of-bank and in adjacent uplands where they have been observed at the entrances of ground squirrel burrows. California red-legged frogs have been documented to move daily, both day

and night, and not only during significant rain events. Separate "take" authorization from U.S. Fish and Wildlife Service would likely be required.

Bioretention Basin

The Project proposes to install a storm drainage system consisting of inlets, underground piping, and bioretention basins. Bioretention basins can create an attractive nuisance for both California tiger salamanders and California red-legged frogs. California tiger salamanders and California red-legged frogs have been documented to breed or, attempt to breed, in these basins. This can result in amphibians becoming trapped in the basin or cause desiccation of eggs, larvae or adults. Conversely, the basins could become suitable breeding habitat in an environment where the upland area no longer supports enough suitable habitat to maintain a viable population. The IS/MND should be revised to require that bioretention basins be designed to prevent amphibians from accessing the basin.

Cumulative Impacts

The IS/MND does not analyze the cumulative impacts to special-status species, but instead relies on the implementing proposed mitigation measures, none of which require conservation of habitat. The City should revise the IS/MND to include appropriate mitigation measures and analyze the cumulative impacts.

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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the City in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Ms. Marcia Grefsrud, Environmental Scientist, at (707) 644-2812 or Marcia.Grefsrud@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541.

Sincerely,

Gregg Erickson

Gregg Erickson
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse (SCH #2019099018)
Ryan Olah, U.S. Fish and Wildlife Service – ryan_olah@fws.gov