



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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GAVIN NEWSOM, Governor
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December 18, 2023

Ms. Ashley Vera
Senior Planner
City of Livermore
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ASVera@livermoreca.gov

Subject: East of Greenville Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2023110566, City of Livermore, Alameda County

Dear Ms. Vera:

The California Department of Fish and Wildlife (CDFW) received the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) from the City of Livermore (City) for the East of Greenville Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife resources. 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 a **Trustee Agency** with responsibility under the California Environmental Quality Act (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) permit, the Lake and Streambed Alteration (LSA) Program, 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

The "take" of CESA listed plants and animals is prohibited without a CDFW-issued permit. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and

Ms. Ashley Vera
City of Livermore
December 18, 2023
Page 2

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. Fish and Game Code section 86 defines take as hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture or kill.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

Nesting Birds

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully protected species, such as those listed in Attachment 1 may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species;
- Live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the Project planning process.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat.

Ms. Ashley Vera
City of Livermore
December 18, 2023
Page 3

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

Description and Location: The Project is for a potential City Council-authorized ballot measure to adjust the North Livermore Urban Growth Boundary (Ballot Measure) east of its current location along Greenville Road to align with the portion of the South Bay Aqueduct east of Greenville Road and south of Interstate 580 (I-580). The Project would modify the existing land use designations of the Project area which may allow for industrial technology campuses, district serving commercial, community parks, public facilities, a research and educational campus, and agriculture uses. Before the adjusted land use designations can be implemented, the voters must approve the Ballot Measure, and the Project areas, or portions thereof, must be annexed into the City. A majority of the land north of Patterson Pass Road would be designated for industrial uses with a small portion of the land just north of Patterson Pass Road designated for general commercial. The Patterson Reservoir and associated water treatment infrastructure would be designated as public uses. Areas south of Patterson Pass Road would include a mix of public, general commercial, research campus and educational facility, parks and recreation, and agricultural land uses.

The Project area is located east of the City of Livermore city limits in unincorporated Alameda County, California. The Project area encompasses approximately 1,140 acres directly adjacent to city limits. The western boundary of the Project area follows Greenville Road, with the exception of several parcels west of Greenville Road between Marathon Drive and National Drive. The northern boundary of the Project area is located just south of I-580. The eastern and southern boundaries of the Project area roughly follow the South Bay Aqueduct.

ENVIRONMENTAL SETTING

The draft EIR should provide sufficient information regarding the environmental setting (“baseline”) to understand the Project’s, and its alternative’s (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 & 15360).

CDFW recommends that the draft EIR provide baseline habitat assessments for special-status plant, fish and wildlife species located, and potentially located, within the Project area and surrounding lands, including, but not limited to, all rare, threatened, or

Ms. Ashley Vera
City of Livermore
December 18, 2023
Page 4

endangered species (CEQA Guidelines, § 15380). The draft EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or state, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see: <https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland setback distances the City may require. Fully protected, threatened or endangered, candidate, and other special-status species and sensitive natural communities that are known to occur, or have the potential to occur in or near the Project area, include, but are not limited to, those listed in **Attachment 1**.

Habitat descriptions and the potential for species occurrence should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Consultation System, and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDB). Based on the data and information from the habitat assessment, the draft EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrological conditions, and require the identification of reference populations. More than one year of surveys may be necessary based on environmental conditions. Please refer to CDFW protocols for surveying and evaluating impacts to special status plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

IMPACT ANALYSIS AND MITIGATION MEASURES

The draft EIR should discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project (CEQA Guidelines, § 15126.2). This includes evaluating and describing impacts such as:

- Land use changes that would reduce open-space or agricultural land uses and increase residential or other land use involving increased development;
- Encroachments into riparian habitats, wetlands or other sensitive habitat areas;

Ms. Ashley Vera
City of Livermore
December 18, 2023
Page 5

- Potential for impacts to special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, vegetation overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of wildlife movement corridors, fish passage, or access to water sources and other core habitat features.

The CEQA document should also identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a special-status species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines direct the Lead Agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the draft EIR, and/or mitigate significant impacts of the Project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW, USFWS, and the National Marine Fisheries Service. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

CDFW recommends that the City ensure that the draft EIR include the following:

1) A complete habitat assessment for the western burrowing owl (*Athene cunicularia*) and bats within the Project area and nearby surrounding lands. Lands should be assessed for their potential use by breeding, foraging, migrating and wintering species. The draft EIR should include results of pre-Project avian and bat surveys. The draft EIR 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 East Alameda County Conservation Strategy (EACCS), 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

Ms. Ashley Vera
City of Livermore
December 18, 2023
Page 6

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 Implementation Committee to fund the implementation of an annual monitoring program in coordination with local conservation groups on all burrowing owl nesting 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 CNDDDB and the Conservation Strategy database (BUOW-4 and BUOW-5). This would allow for informed avoidance of impacts in the future.

2) Project-specific impact analyses on California red-legged frog (*Rana draytonii*) a federally threatened species and state Species of Special Concern (SSC) and California tiger salamander (*Ambystoma californiense*), a federally and state threatened species. The draft EIR should include detailed habitat assessments for these species and a thorough analysis of potential impacts of the Project on these species during any construction, as well impacts to the species from loss of habitat. The Project area is located within dispersal distance of, or has, known and potential California red-legged frog and California tiger salamander breeding ponds.

3) Project-specific impact analyses on tri-colored blackbird (*Agelaius tricolor*), a species listed under CESA as threatened, and golden eagle (*Aquila chrysaetos*) a species designated as fully protected under Fish and Game Code section 3511. Both tricolored blackbird and golden eagle are known to nest within or adjacent to the Project area. It is also unlawful to take, possess or destroy any birds in the order Falconiformes or Stringiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game code. The draft EIR should include detailed habitat assessments for these species and a thorough analysis of potential impacts of the Project.

4) Project-specific impact analysis on special-status plants, including Livermore tarplant (*Deinandra baccigalupii*), a species listed under CESA as endangered. Field surveys should use the current protocol, *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (March 2018). While use of the protocols is not mandated under code or regulation, the purpose of the protocols is to facilitate a consistent and systematic approach to botanical field surveys and assessments of special-status plants and sensitive natural communities so that reliable information is produced and the potential for locating special-status plants and sensitive natural communities is maximized, therefore using the most recent version is highly recommended. Additionally, annual weather variance, including, but not limited to, the drought conditions may require the necessity for additional floristic surveys to be performed.

Botanical field surveys should be comprehensive over the entire Project area, including areas that will be directly or indirectly impacted by the Project. Adjoining properties should also be surveyed where direct or indirect Project effects could occur, such as

Ms. Ashley Vera
City of Livermore
December 18, 2023
Page 7

those from fuel modification, herbicide application, invasive species, and altered hydrology. Surveys restricted to known locations of special-status plants may not identify all special-status plants and sensitive natural communities present, and therefore do not provide a sufficient level of information to determine potential impacts.

According to the referenced CDFW protocols, to meet adequate disclosure of potential impacts the following items should be included in the botanical survey reports prepared for the environmental review process:

1. A discussion of the potential for a false negative botanical field survey;
2. A discussion of how climatic conditions may have affected the botanical field survey results;
3. A discussion of how the timing of botanical field surveys may affect the comprehensiveness of botanical field surveys;
4. Any use of existing botanical field surveys and a discussion of their applicability to the Project;
5. The deposition locations of voucher specimens, if collected;
6. A list of references used, including persons contacted and herbaria visited;
7. A discussion of the significance of special-status plant populations in the Project area considering nearby populations and total range and distribution;
8. A discussion of the significance of sensitive natural communities in the Project area considering nearby occurrences and natural community distribution;
9. A discussion of Project related direct, indirect, and cumulative impacts to special-status plants and sensitive natural communities;
10. A discussion of the degree and immediacy of all threats to special-status plants and sensitive natural communities, including those from invasive species;
11. A discussion of the degree of impact, if any, of the Project on unoccupied, potential habitat for special status plants; and
12. Recommended measures to avoid, minimize, or mitigate impacts to special status plants and sensitive natural communities.

CDFW recommends that all reporting requirements in the CDFW protocols be disclosed in the draft EIR impact analysis. The draft EIR may also operate under the assumption that the entire Project site is occupied by all special-status plant species that both

Ms. Ashley Vera
City of Livermore
December 18, 2023
Page 8

historically occurred on or adjacent to the site and with the potential to occur on-site. If presence of special-status plant species or sensitive natural communities is documented or assumed within the Project area then the draft EIR should include all appropriate biological measures to avoid, minimize or mitigate impacts to these sensitive plants or natural communities.

ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs and negative declarations be incorporated into a database 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 CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:


<https://wildlife.ca.gov/Data/CNDDDB/Plantsand-Animals>.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). 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.

If you have any questions, please contact Marcia Grefsrud, Environmental Scientist, at (707) 644-2812 or Marcia.Grefsrud@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Special-Status Species

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023110566)
Craig Weightman, CDFW Bay Delta Region - Craig.Weightman@wildlife.ca.gov
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Ms. Ashley Vera
 City of Livermore
 December 18, 2023
 Page 9

Attachment 1: Special-Status Species

Species Name	Common Name	Status
Birds		
<i>Agelaius tricolor</i>	Tricolored blackbird	ST
<i>Elanus leucurus</i>	White-tailed kite	FP
<i>Athene cunicularia</i>	Burrowing owl	SSC
<i>Aquila chrysaetos</i>	Golden eagle	BGEAPA, FP
Amphibians and Reptiles		
<i>Rana draytonii</i>	California red-legged frog	FT, SSC
<i>Ambystoma californiense</i>	California tiger salamander	FT, ST
<i>Emys marmorata</i>	western pond turtle	FPT, SSC
Mammals		
<i>Vulpes macrotis mutica</i>	San Joaquin kit fox	FE, ST
<i>Taxidea taxus</i>	American badger	SSC
Invertebrates		
<i>Branchinecta lynchi</i>	Vernal pool fairy shrimp	FT
<i>Bumbus crotchii</i>	Crotch's bumble bee	SC
Plants		
<i>Atriplex depressa</i>	Brittlescale	CRPR 1B.2
<i>Deinandra bacigalupii</i>	Livermore tarplant	SE, CRPR 1B.1
<i>Extriplex joaquinana</i>	San Joaquin spearscale	CRPR 1B.2
<i>Astragalus tener var. tener</i>	Alkali milk-vetch	CRPR 1B.2
<i>Spergularia macrotheca var. longistyla</i>	Long-styled sand-spurrey	CRPR 1B.2
<i>Tropidocarpum capparideum</i>	Caper-fruited tropidocarpum	CRPR 1B.1
<i>Fritillaria agrestis</i>	stinkbells	CRPR 4.2

Ms. Ashley Vera
 City of Livermore
 December 18, 2023
 Page 10

<i>Atriplex minuscula</i>	Lesser saltscale	CRPR 1B.1
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FP = state fully protected under Fish and Game Code; FE = federally listed as endangered under the Endangered Species Act (ESA); FT = federally listed as threatened under ESA; FPT=federally proposed threatened; SE = state listed as endangered under CESA; ST = state listed as threatened under CESA; SC state candidate under CESA, SR = state listed as rare under the NPPA;¹; SSC = state Species of Special Concern; CRPR = California Rare Plant Rank² ; BGEAPA= Bald and Golden Eagle Protection Act

REFERENCES

California Department of Fish and Wildlife (CDFW). 2023. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed December 4, 2023.

¹ The list of California Terrestrial and Vernal Pool Invertebrates of Conservation Priority was collated during CDFW's Scientific Collecting Permit rulemaking process:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157415&inline>

² CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere. Further information on CRPR ranks is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/california-rare-plant-ranks>).