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January 12, 2018

Hayes Shair
Omaha Fremont LLC
2540 Bridle Path Drive
Gilroy, CA 95020

Subject: Results of Biological Resources Assessment
Omaha Way Homes Property (PLN 2016-00275)
City of Fremont, Alameda County

Dear Hayes:

This letter presents the results of a biological resources assessment of your property located at the terminus of Omaha Way in Fremont, Alameda County (Property). LSA conducted the assessment in response to a request from the City of Fremont Community Development Department. The assessment identifies the biological resources on and in the vicinity of the Property; the potential presence of special-status species and sensitive habitats; and the potential biological impacts of proposed development. Project plans indicates the Property is to be subdivided into 20 lots with a new street connecting to Omaha Way.

This letter report includes: (1) a summary of relevant state and federal regulations that may apply to the project; (2) a description of the methods used to conduct the survey; (3) existing conditions on the site; (4) an analysis of special-status plant and animal species as well as sensitive habitats potentially present; and (5) recommended measures that may be necessary to support project planning/permitting efforts.

SITE LOCATION

The Property is located on the west side of Interstate Freeway 680 in the Warm Springs District of Fremont in southwestern Alameda County. The property is located within an unsectioned portion of Township 5 South, Range 1 East on the 7.5 minute USGS Milpitas, California quadrangle, roughly centered at UTM 4149600 Northing/595650 Easting. The site is bordered by East Warren Avenue to the north, Interstate 680 on the east, and residential developments to the west and south.

REGULATORY CONTEXT

The project site is within the general geographic range of several sensitive plant communities and special-status plant and wildlife species. Biological resources on the project site may fall under the jurisdictions and regulations of the agencies listed below and described in more detail in Attachment A:

- **U.S. Fish and Wildlife Service (USFWS).** Species listed under the federal Endangered Species Act.

- **California Department of Fish and Wildlife (CDFW).** Species listed under the State Endangered Species Act; Species of Special Concern; Streambed Alteration Agreements.
- **U.S. Army Corps of Engineers (Corps).** Fill of waters/wetlands subject to Section 404 of the Clean Water Act.
- **Regional Water Quality Control Board (RWQCB).** Water quality certification under Section 401 of the Clean Water Act, Porter-Cologne water quality standards.

METHODS

Prior to conducting field work, LSA searched the California Department of Fish and Wildlife (CDFW) California Natural Diversity Data Base (CNDDDB) and the California Native Plant Society's (CNPS) On-line Inventory of Rare and Endangered Plants to obtain observation records for special status plants and animals within the Milpitas, Niles and Calaveras Reservoir 7.5 minute USGS quadrangles. Based on these searches, LSA compiled a list of special-status species and habitats known to occur in the vicinity of the property. This list was used as a reference for field surveys.

For the purposes of this report, special-status species are defined as follows:

- Species that are listed, formally proposed, or designated as candidates for listing as threatened or endangered under the federal Endangered Species Act (ESA).
- Species that are listed, or designated as candidates for listing, as rare, threatened, or endangered under the California Endangered Species Act (CESA).
- Plant species on Lists 1B and 2 in the California Native Plant Society (CNPS) Inventory of Rare and Endangered Vascular Plants of California (CNPS 2009).
- Animal species designated as Species of Special Concern by CDFW.
- Species that meet the definition of rare, threatened, or endangered under Section 15380 of the California Environmental Quality Act guidelines.
- Species considered to be a taxon of special concern by local agencies.

An initial field survey was conducted by LSA staff biologist David Muth on May 19, 2016. He assessed the current habitat conditions and evaluated the potential for the property to support sensitive habitats, and/or special-status plant and/or animal species. The survey recorded all observations of plants and animals or evidence of their presence. All observations were recorded in field notes and on maps.

A follow-up visit was conducted on January 11, 2018 to confirm conditions and to note any significant changes since the 2016 survey.

Nomenclature for vegetation and plant communities used in this report is based on *A Manual of California Vegetation* (Sawyer and Keeler-Wolf 1995). Plant taxonomy and nomenclature follows *The Jepson Manual* (Baldwin et al 2012). Common and scientific names for animals are based on *Scientific and Standard English Name of Amphibians and Reptiles of North America North of Mexico* (Crother 2012) for amphibians and reptiles, the *American Ornithologists' Union (AOU) Check-list of North American Birds* (AOU 1998) for birds, and *A revised Checklist of North American Mammals North of Mexico* (Bradley et al. 2014) for mammals.

The USDA Web Soil Survey (<http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>) was reviewed to identify if any soil types (e.g., sandy, acidic, or highly alkaline soils; serpentinite, etc.) that support special-status plants and/or sensitive communities were present on the site.

RESULTS

Existing Conditions

The long, narrow Omaha Way subdivision property extends roughly north to south along the western side of Interstate 680. All of the property slopes to the west. An unnamed tributary to Agua Fria Creek crosses the site at the northern end of the property. The tributary enters the property through a culvert under I-680 on the east side and flows above ground approximately 200 feet before entering a culvert that carries it under the developments to the west. Soils on the site consist of very deep Diablo clay.

A dirt access road running south from E. Warren Ave parallels the backyard fences of homes along Yucatan Drive to the tributary culvert inlet. An excavated ditch, originating at the southern end of the property, runs north behind the backyard fences of the remaining homes along Yucatan Drive. The ditch becomes cement lined and enters a drain inlet at Omaha Way.

Most of the property (south of the creek) is disturbed by regular disking for fire control. However, the area north of the creek has not been recently disked. Review of historic aerial photos indicates the property has been disked over the course of the last ten years. Based on our historic aerial photo review and the plant remnants observed, the disked portions of the site supports annual grasses and ruderal vegetation similar to the vegetation observed in the undisturbed areas north of the creek. Habitat on the Property is best described as an annual grassland/ruderal community. The vegetation along the bed and banks of the tributary support numerous tree species forming a community best described as riparian woodland. In addition, there is a copse of eucalyptus and other ornamental trees located at the very southern end of the property.

The annual grassland/ruderal community on the site appears to be dominated by non-native annual species such as oats (*Avena* sp.), Italian ryegrass (*Festuca perennis*), ripgut brome (*Bromus diandrus*) and vetch (*Vicia* sp.). Other species observed include poison hemlock (*Conium maculatum*), mustards (*Brassica nigra*, *B. rapa* and *Herschfeldia incana*) and thistles (*Carduus pynoccephalus*, *Cirsium vulgare* and *Silybum marianum*). There is a single willow tree (*Salix* sp.) on a hillock just south of the creek. A small (about 15' by 10') patch of cattails (*Typha* sp.), grows near Omaha Way. The reason for the presence of the patch of cattails could not be determined in the field (no evident hydrologic source) and could not be determined by reviewing historic aerial photos.

The tributary to Agua Fria Creek has a defined bed and bank with a dense riparian canopy. Water depth was shallow (1 to 6 inches). Based on the site visits and plants growing within the bed, the tributary appears to contain water at or above the soil surface year-round. Plant species in the riparian woodland along the tributary consist of coast live oak (*Quercus agrifolia*), willows, cottonwoods (*Populus* sp.), black walnut (*Juglans hindsii*) and toyon (*Heteromeles arbutifolia*). Understory near the creek edge includes creeping wildrye (*Leymus triticoides*), cattails, rush (*Juncus* sp.) and watercress (*Nasturtium officinale*). The upper banks understory is similar to the upland grassland/ruderal community previously discussed. There is a 2 to 3-foot deep plunge pool located just below the I-680 culvert outlet. The plunge pool is surrounded by cement bag riprap and tree roots.

The isolated nature of the Property (surrounded by extensive development and a major freeway) prevents access by larger terrestrial mammals, such as mule deer, bobcat, and coyote, which are known to be present east of I-680. Resident songbirds, including Anna's hummingbird, black phoebe and house finch would be expected to nest and forage on the site. Smaller fossorial species, such as pocket gopher, ground squirrels, gopher snakes and western fence lizards, that require less space, are present. Other species known to readily adapt to disturbed and urban landscapes, such as Virginia opossum, striped skunk and northern raccoon are likely to use the site.

Regulated Waters and Wetlands

The tributary to Agua Fria Creek is a perennial waterbody with a defined bed and bank. This feature is likely subject to the jurisdiction of the Corps, RWQCB and CDFW.

The patch of cattails located near Omaha Way appears to be an isolated feature and unlikely to be subject to agency jurisdiction.

Other Sensitive Habitats

CDFW monitors the status of uncommon and declining plant communities/sensitive habitats in California. Riparian woodlands are considered a sensitive plant community. No other declining communities/sensitive habitats were observed on the site during our visit.

Special-Status Plant Species

The CNDDDB and CNPS report twelve (12) special-status plant species known to occur in grassland and/or riparian communities in the vicinity of the Property (Table A). Eleven of these species require specific micro-habitat components not present within or adjacent to the Property (i.e., those requiring alkaline, saline, rocky or serpentine soils, etc.). These eleven species are listed in Table A, but are not discussed further in this report. The remaining special-status plant species, round-leaf filaree (*California macrophylla*), is known to grow in grassland/ruderal habitats similar to those present on the property. The species is unlikely to occur on the site due to the history of disking. Round-leaf filaree would have been blooming or identifiable during the May 19 survey. However, disking prevents LSA from being able to completely rule out the presence of the filaree.

Special-Status Animal Species

Based on CNDDDB records and LSA's knowledge of wildlife in this part of Alameda County, there are ten (10) special-status wildlife species (Table B) reported from the vicinity of the Property. Six of these species are not considered further due to the absence of suitable habitat (Table B). The remaining four species; California tiger salamander, California red-legged frog, western burrowing owl and San Francisco dusky-footed woodrat, can occur in grassland/ruderal communities such as those present on the Property. While unlikely at present, these species may have occurred on the Property prior to isolation and/or disturbance.

The disturbed conditions on the Property (disking) significantly reduces the possibility that western burrowing owl could use the site. A few ground squirrel burrows suitable for use by burrowing owls are present. No burrowing owls or sign of their presence was observed during either site visit.

California tiger salamanders live underground in grassland habitats. However, the disturbance (disking), the isolation from occupied habitat, and the inability to access suitable breeding habitat prevent this species from occurring on the Property.

The riparian vegetation along the tributary provides structurally suitable habitat for dusky-footed woodrat. Woodrat occurrence is easily determined by the presence of stick houses. No woodrat stick houses were observed during our surveys indicating they are absent from the Property. There is no unimpeded way for woodrats to disperse onto the site.

The plunge pool below the I-680 culvert outlet, though too small for breeding, provides suitable aquatic habitat for adult California red-legged frogs (*Rana draytonii*). Adults could temporarily reside in this location, but would have to access and exit the Property through the culvert beneath I-680 which is unlikely. No California red-legged frogs were observed during either site visit.

The small trees on the Property are suitable for nesting birds. No nesting birds were observed during LSA's spring site visit.

POTENTIAL IMPACTS

Project plans dated December 19, 2017 show that no work is proposed within the Agua Fria Creek tributary. Project construction could potentially disrupt active bird nests. Nests could be destroyed or abandoned.

RECOMMENDATIONS

- Fill or disturbance of jurisdictional areas, including project related work within the banks of the tributary to Agua Fria Creek (such as for storm water outfalls), would require permits from one or more of the following agencies; Corps, CDFW and the RWQCB. The project has been designed to avoid impacts to jurisdictional features or work within the stream banks and no resource agency permits are needed.

- The project should erect a temporary barrier fence of orange netted material along the top of the tributary bank. This will prevent construction activities from entering portions of the tributary that will not be disturbed.
- If construction activities begin during the nesting season (February 1 to July 31) a preconstruction survey for nesting birds should be conducted. Presence of active nests will require establishing buffer zones until the young have fledged from a nest. Buffer distance will depend on the nesting species.

Please contact us if you have any questions about the information contained in this report or require additional information.

Sincerely,

LSA Associates, Inc.

David Muth
Senior Herpetologist

Table A: Special-Status Plant Species, Southwestern Alameda County Vicinity

Species	Status* (Federal/State/ CNPS)	Habitat Notes	Suitable Habitat Present within Project Site
<i>Astragalus tener</i> var. <i>tener</i> Alkali milk-vetch	--/--/1B	Alkaline or saline clay soil in annual grasslands; blooms March-June	No
<i>Balsamorhiza macrolepis</i> Big-scale balsamroot	--/--/1B	Thin, rocky soil, sometimes on serpentine, grasslands, chaparral and woodlands; blooms March-June	No
<i>California macrophylla</i> Round leaved filaree	--/--/1B	Clay soils in grasslands and woodlands; blooms March-June	Yes Not observed
<i>Centromadia parryi</i> ssp. <i>congdonii</i> Congdon's tarplant	--/--/1B	Alkaline or saline clay soil in annual grasslands; blooms June-November	No
<i>Cirsium fontinale</i> var. <i>campylon</i> Mt. Hamilton fountain thistle	--/--/1B	Moist soils (around seeps or springs) in grasslands, chaparral and woodlands on serpentine soils; blooms February-October	No
<i>Fritillaria liliacea</i> Fragrant fritillary	--/--/1B	Woodlands, scrub and grassland communities often on serpentine soils; blooms February-April	No
<i>Helianthella castanea</i> Diablo helianthella	--/--/1B	Thin, rocky soil, grassy hillsides, 500-4,000 feet; foothill woodland and chaparral edges; blooms April-May	No
<i>Hoita strobilina</i> Loma Prieta hoita	--/--/1B	Mesic area in woodlands and chaparral typically on serpentine soil; blooms May-October	No
<i>Monolopia gracilens</i> Woodland woollythreads	--/--/1B	A variety of habitats on serpentine soils; blooms February-July	No
<i>Puccinellia simplex</i> California alkali grass	--/--/1B	Mesic alkaline or saline soils along the edge of waterbodies; blooms March-May	No
<i>Trifolium hydrophilum</i> Saline clover	--/--/1B	Mesic alkaline or saline clay soil in annual grasslands; blooms April-June	No
<i>Tropidocarpum capparideum</i> Caper-fruited tropidocarpum	--/--/1B	Annual grassland hillsides with alkaline or saline clay soils; blooms March-April	No

*Status: 1B = CNPS rare and endangered throughout its range

Table B: Special-Status Wildlife Species, Southwestern Alameda County Vicinity

Species	Status* Federal/ State	Habitat Notes	Suitable Habitat Present within Project Area
<i>Ambystoma californiense</i> California tiger salamander	FT/ST	Lives underground in grasslands, (occasionally woodlands or scrub); breeds in seasonal ponds and pools	Yes, but isolated from occupied habitat.
<i>Rana (aurora) draytonii</i> California red-legged frog	FT/SC	Ephemeral and perennial ponds and streams; both large and small features	Yes, marginal due to isolation.
<i>Actinemys marmorata</i> Western pond turtle	--/SC	Ephemeral and perennial ponds and streams, typically large features	No
<i>Anniella pulchra</i> California legless lizard	--/SC	Sandy soils and around decomposing rock outcrops	No
<i>Coluber (=Masticophis) lateralis euryxanthus</i> Alameda whipsnake	FT/ST	Chaparral and other scrub habitats; considered to occupy all habitat within one mile of suitable scrub	No
<i>Athene cunicularia hypugea</i> Western burrowing owl	--/SC	Uses burrows in grasslands, prairies and pastureland; typically nests in abandoned ground squirrel burrows	Yes, disturbed by disking.
<i>Agelaius tricolor</i> Tricolored blackbird	--/CP	Typically nests colonially in emergent vegetation, but will use dense stands of thistle, mustard or Himalaya berry	No
<i>Antrozous pallidus</i> Pallid bat	--/SC	Roosts in caves, tunnels, buildings; forages over variety of habitats	No
<i>Coryrhinus townsendii</i> Townsend's big-eared bat	--/SC	Roosts in caves, tunnels, buildings; forages over variety of habitats	No
<i>Neotoma fuscipes annectens</i> San Francisco dusky-footed woodrat	--/SC	Woodland/scrub, builds stick houses	Yes, marginal due to isolation. No houses observed.

*Status: FT = federally listed as threatened
 ST = California listed as threatened
 CP = California proposed for listing
 SC = California species of special concern

ATTACHMENT A: REGULATORY CONTEXT

The project site is within the general geographical range of several sensitive plant communities and special-status plant and wildlife species. Biological resources on the project site may fall under the jurisdictions and regulations of the agencies listed below:

U.S. Fish and Wildlife Service

The U.S. Fish and Wildlife Service (USFWS) has jurisdiction over federally-listed threatened and endangered species under the federal Endangered Species Act. The Endangered Species Act protects listed species from harm or "take" which is broadly defined as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." An activity can be defined as a "take" even if it is unintentional or accidental.

An endangered species is one which is in danger of becoming extinct throughout all or a significant portion of its range. A threatened species is one that is likely to become endangered within the foreseeable future. In addition to endangered and threatened species, which are legally-protected under the federal Endangered Species Act, the USFWS maintains a list of candidate species. Candidate species are specifically included on a list published in the federal register. Federal candidate species are not afforded legal protection under the federal Endangered Species Act.

California Department of Fish and Wildlife

The CDFW has jurisdiction over state-listed threatened, endangered, and rare (plant) species under the state Endangered Species Act. In addition, species proposed for listing under the State act are also protected until a determination is made on the listing proposal. The State and federal lists are generally similar, although a few species present on one list may be absent from the other list. The State also maintains lists of special-status wildlife species identified as Species of Special Concern. These are species whose status is being monitored due to one or more threats. Species on these lists are not afforded legal protection.

The CDFW also exerts jurisdiction over the bed and bank of watercourses according to the provisions of Section 1601 to 1603 of the Fish and Game Code. The CDFW typically requires a Streambed Alteration Agreement for the fill or removal of material from any natural drainage. The jurisdiction of the CDFW under Section 1600 of the Fish and Game Code extends to the top of bank of a stream.

U.S. Army Corps of Engineers

Under Section 404 of the Clean Water Act, the Corps is responsible for regulating the discharge of fill material into waters of the United States. Waters of the U.S. and their lateral limits are defined in 33 Code of Federal Regulations (CFR) Part 328.3 (a) and include streams that are tributary to navigable waters and their adjacent wetlands. Wetlands that are not adjacent to waters of the U.S. are termed "isolated wetlands" and may be subject to Corps jurisdiction.

In general, a Corps permit must be obtained before placing fill in wetlands or other waters of the U.S. The type of permit depends on the acreage involved and the purpose of the proposed fill. Nationwide Permits are available for projects that are anticipated to have minimal impacts on waters of the U.S. and wetlands and meet the general terms of the specific Nationwide Permit and the standard conditions for all Nationwide Permits. An Individual Permit is required for projects that result in more than a "minimal" impact on wetlands. The Corps will be required to consult with the USFW under Section 7 of the ESA if a project subject to Clean Water Act permitting will result in take of a federally listed species.

Regional Water Quality Control Board

Pursuant to Section 401 of the Clean Water Act, projects that require a permit from the Corps under Section 404 must also obtain water quality certification from the Regional Water Quality Control Board (RWQCB). This certification ensures that the project will uphold state water quality standards. The RWQCB requires mitigation for any loss of jurisdictional area.

National Oceanic and Atmospheric Administration: Fisheries. Like the U.S. Fish and Wildlife Service (USFWS), the National Oceanic and Atmospheric Administration: Fisheries (NOAA) has jurisdiction over federally listed threatened and endangered species under the federal Endangered Species Act. The NOAA jurisdiction is restricted to marine and anadromous wildlife species such as salmon and steelhead.