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October 2, 2019

Via Email & U.S. Mail

Steve Stewart
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Andy Ross, Associate Planner
Community Development Department
1051 South Livermore Avenue
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Re: Request to Extend the Public Review and Comment Period for the Initial Study/Mitigated Negative Declaration – Lassen Road Townhomes Project (SCH #2019099018)

Dear Mr. Stewart and Mr. Ross:

On behalf of **Livermore Residents for Responsible Development** (“Livermore Residents”), we respectfully request that the City of Livermore (“City”) extend the public review and comment period for the Initial Study and proposed Mitigated Negative Declaration (“IS/MND”) for the Lassen Road Residential Development Project (“Project”) proposed by Westgate Ventures (“Applicant”). We request an extension of at least 30 days—the minimum public review period set out in the California Environmental Quality Act (“CEQA”) guidelines—due to the City’s failure to provide timely access to supporting documents for the IS/MND.¹ This request is made pursuant to Public Resources Code (“PRC”) Section 21092(b)(1) and CEQA Guidelines Section 15072(g)(4), which require that “all documents referenced,” and “incorporated by reference,” in an environmental review document

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¹ 14 Cal. Code Regs. (“CCR”) § 15105(b) (“When a proposed negative declaration or mitigated negative declaration is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 30 days...”). The State Clearinghouse website (<https://ceganet.opr.ca.gov/2019099018/2>) indicates that the City submitted environmental review documents for review by state agencies.

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be readily accessible for review by the public during the entire comment period, and “readily accessible to the public during the lead agency’s normal working hours.”²

On September 12, 2019, we submitted a letter to the City, pursuant to CEQA Section 21092(b)(1) and CEQA Guidelines Section 15072(g)(4), requesting “*immediate access to any and all documents referenced or relied upon*” in the IS/MND (“MND Reference Request”) (emphasis added).³ On September 18, 2019, our paralegal spoke with City staff about the request for records and was informed that the City’s response would be delayed because its computers were incapacitated by a virus.⁴ On September 24 and 26, 2019, we followed up with the City to inquire about the status of the City’s response to our document request.⁵ On September 30, 2019, the City provided a partial response to our MND Reference Request by providing our copy service with access to a box of hard copy documents. The documents provided by the City included the MND appendices (which were already available on the City’s website) and some Project-related documents from the City’s planning file. The response did not include the documents referenced in the MND and its appendices, as we had requested. Livermore Residents has not received any further communications from the City related to its MND Reference Request, and no further responsive documents have been provided.

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During our subsequent review of the IS/MND we have identified dozens of documents and files that are referenced and/or incorporated by reference in the IS/MND which are not available through an Internet hyperlink and were not provided in response to Livermore Residents’ MND Reference Request. These missing documents are critical to understanding and commenting on the IS/MND’s analysis of the Project’s impacts to several critical resource areas, including IS/MND’s air quality, health risk, hazardous materials, biological resources, noise, and traffic analyses. Livermore Residents is unable to meaningfully review and comment on the IS/MND without these documents.

² PRC §§ 21092(b)(1); 14 CCR § 15072(g)(4).

³ See Exhibit A, Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) re Request for Immediate Access to Documents Referenced or Relied Upon in the Mitigated Negative Declaration – Lassen Road Townhomes Project (SCH #2019099018) (September 12, 2019).

⁴ See Exhibit B, Email from J. Laurain, ABJC, to Marie Weber, City of Livermore, re Lassen Road Townhomes Project by Westgate Ventures (September 26, 2019).

⁵ See Exhibit B, Email from J. Laurain, ABJC, to Marie Weber, City of Livermore, re Lassen Road Townhomes Project by Westgate Ventures (September 26, 2019).

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The missing documents include, but are not limited to, the following:

- All references cited in IS/MND, Section 3, References, that are not accompanied by a web link or encapsulated by the appendices. This includes 7 documents without web links. A copy of Section 3, References, with the missing documents highlighted is attached to this letter as Exhibit C. 2
- Association of Environmental Professionals, 2016. *Beyond 2020 and Newhall: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California*, which is referenced in IS/MND Appendix B, *Air Quality Assessment*. 3
- Documents referenced in IS/MND Appendix C, *Biological Resource Assessment*, including:
 - (1) Bolster, B.C., editor. 1998. *Terrestrial Mammal Species of Special Concern in California Draft Update*. Report submitted to California Department of Fish and Game Wildlife Management Division, Nongame Bird and Mammal Conservation Program for Contract No. FG3146WM.
 - (2) Environmental Laboratory. 1987. *Corps of Engineers Wetlands Delineation Manual*. Department of the Army, Waterways Experiment Station, Vicksburg, Mississippi 39180-0631.
 - (3) Erikson, C.H. and D. Belk. 1999. *Fairy Shrimps of California's Puddles, Ponds and Playas*. Mad River Press, Inc., Eureka, CA. 4
 - (4) Hanson, CH, J Sowers, A. Pastron. 2004. *Evaluation of the potential historic and current occurrence of steelhead within the Livermore-Amador Valley*. Prepared for Zone 7 Water Agency.
 - (5) Long, C. A. 1973. *Taxidea taxus*. *American Society of Mammalogy, Mammalian Species* No. 26. 4 pp.
 - (6) Lowther, P.E., C. Celada, N.K. Klein, C.C. Rimmer, and D.A. Spector. 1999. *Yellow Warbler Dendroica petechia*. Pages 1-32 in Poole, A. and F. Gill (editors), *The birds of North America*, No. 454. The Birds of North America, Inc., Philadelphia, PA.
 - (7) Rathbun, G. B., N. J. Scott, Jr., and T. G. Murphey. 2002. *Terrestrial habitat use by Pacific pond turtles in a Mediterranean climate*. *The Southwestern Naturalist* 47: 225-235.

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- (8) Richmond, B., H. Green, and D.C. Rice. 2011. Alameda County Breeding Bird Atlas. Golden Gate and Ohlone Audubon Societies, p. 219
 - (9) Shuford, W.D., and Gardali, T., editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and CDFG, Sacramento.
 - (10) Sproul, MJ and MA Flett. 1993. Status of the San Joaquin kit fox in the northwest margin of its range. 1993 Transactions of the Western Section of the Wildlife Society 29:61-69.
 - (11) Thomson, Robert C., Amber N. Wright, H. Bradley Shaffer. 2016. California Amphibian and Reptile Species of Special Concern. University of California Press. 408 pages.
 - (12) WRA, Inc. 2017b. SCHMIDIG/LAM Property – Biological Resource Assessment and Permitting Strategy Memorandum. April 14.
- Documents referenced in IS/MND Appendix G, *Environmental Noise Assessment*, including:
 - (1) Preliminary Grading and Drainage Plan, Lassen Road Property; City of Livermore, Alameda County, California; Ruggeri-Jensen-Azar, Pleasanton CA; November 27, 2017.
 - (2) 2016 Traffic Volumes on California State Highways; Division of Traffic Operations, Department of Transportation, Sacramento, CA; December 2017.
 - (3) 2015 Annual Average Daily Truck Traffic on the California State Highway System; Department of Transportation.
 - The Transportation Research Board’s 2010 Highway Capacity Manual, referenced in IS/MND Appendix H, *Transportation Impact Assessment*

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Without access to these critical IS/MND reference documents during the public comment period on the IS/MND, Livermore Residents and other members of the public are precluded from having the meaningful opportunity to comment on the IS/MND that is required by CEQA. The City’s failure to make the underlying IS/MND documents available during the entire comment period makes public review particularly burdensome in this case because of the IS/MND’s reliance on

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missing documents for significance determinations and mitigation measures to address the Project's air quality, health risk, hazardous materials, and biological impacts. Without having access to these documents, Livermore Residents and other members of the public are unable to evaluate the accuracy of the City's analyses, or the efficacy of the City's proposed mitigation measures. Additionally, the size of the IS/MND and the Project's complexity make it difficult to effectively comment without the referenced documents by the current comment deadline of October 10, 2019.

The courts have held that the failure to provide even a few pages of CEQA documents for a portion of the review period invalidates the entire process, and that such a failure must be remedied by permitting additional public comment.⁶ It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.⁷ By failing to make all documents referenced and incorporated by reference in the IS/MND "readily available" during the current comment period, the City is violating the clear procedural mandates of CEQA, to the detriment of Livermore Residents and other members of the public who wish to meaningfully review and comment on the IS/MND.

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Accordingly, we request that:

- 1) the City immediately provide us with access to the missing documents requested in our MND Reference Request, including the documents enumerated by this letter.
- 2) the City extend the public review and comment period on the IS/MND for at least 30 days from the date on which the City releases these documents for public review.⁸ If the missing documents are provided today, we request an extension to November 1, 2019.

⁶ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

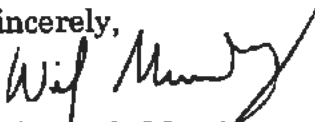
⁷ *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").

⁸ This Project has a 30-day public comment period, pursuant to 14 CCR § 15105 (projects submitted to the State Clearinghouse).

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Given the shortness of time before the current comment deadline, please contact me as soon as possible with your response to this request, but no later than Friday, October 4, 2019.

Please feel free to call or email with any questions: Tel: (650) 589-1660, Email: wmumby@adamsbroadwell.com. Thank you for your prompt attention and response to this matter.

Sincerely,

William C. Mumby

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Attachments

WCM:acp

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