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PLOWING CALLED ECO-TERRORISM'

ENVIRONMENTALISTS SAY DESTRUCTION OF A NORTH LIVERMORE SEASONAL POND
COULD HARM SALAMANDERS, ENDANGERED FAIRY SHRIMP

Bonita Brewer

LIVERMORE One of the wildlife biologists hired to survey sensitive species in North Livermore has alleged "apparently willful destruction" of a pond known to be a breeding habitat for the California tiger salamander.

The seasonal wetland is on property owned by the Lin family, one of two major North Livermore landowners seeking urban development rights in the area.

A report submitted last week to the state Department of Fish and Game by biologist Raymond White says that on May 4, White visited the salamander pond site and "it had been completely plowed up."

A nearby tractor was pulling "very deep claws designed to rip the earth perhaps a foot deep," White's report says. "The intent was apparently to prevent the pond from filling in the future." He noted that since 1996 the pond had been a known breeding habitat for the California tiger salamander, a candidate for federal protection as a threatened species. The salamander is listed as a state "species of special concern." The pool was also being surveyed for several species of vernal pool fairy shrimp, listed as federally endangered.

Biologists have complained about plowing along the edge of the sensitive pond. White contends both the property owner and manager were aware of the concerns.

White was on a team of biologists conducting surveys as part of a 12,500-house urban development proposal for North Livermore. Findings could result in costly mitigation for developers. The pond site is about a half mile south of the west end of Hartman Road, immediately adjacent to the area proposed for urbanization near where a roadway would be built. Martin Inderbitzen, an attorney representing the Lin family, disputed claims that the wetland was being intentionally destroyed.

"Obviously, I think all this stuff is unfounded," Inderbitzen said. "We haven't done anything illegal or improper. The property is leased to a tenant and the tenant is engaged in formal farming activities" that are exempt from federal seasonal-wetland regulation.

Though biologists said a permit is required for the farming activity, Inderbitzen believes that "as long as it's not intentionally harming a species of concern, there's nothing wrong with that." But a coalition of environmental groups says it will file next week a notice of intent to pursue federal penalties against both the Lins and the property's unidentified tenant.

The coalition includes the Center for Biological Diversity, the Sierra Club, Preserve Area Ridgelands Committee, Golden Gate Audubon Society, Alameda Creek Alliance, and Citizens for Balanced Growth.

Because the tiger salamander is technically not yet listed as a threatened species, the coalition will pursue damages for the "unpermitted plowing" along Cayetano Creek as a violation of the federal Clean Water Act. The groups allege that no wetlands alteration permit had been secured from the U.S. Army Corps of Engineers, the federal agency with jurisdiction over wetlands.

"This seems to have been an act of eco-terrorism aimed at eliminating sensitive species to allow future development," said Jeff Miller of the Center for Biological Diversity in a prepared statement. "Unfortunately, this incident is probably just the tip of the iceberg. We want to put landowners and developers on notice that the era when you could just illegally bulldoze wetlands with impunity is gone."

Inderbitzen said even though there are a number of federally protected wetlands identified on the Lin properties, "it is also the case that normal farming activities are not prohibited" and are in fact exempt from regulation.

"I think the ecological terrorists are the guys making the complaints," Inderbitzen said. "We are obeying the law and somebody out there is looking for the opportunity to make big press."

Inderbitzen said the North Livermore plan currently under review by the city and county identifies the pond as a wetlands area and mitigates the situation by having a roadway go around the pond. "If that's the case, we don't gain anything if we eliminate the pond," he said. "We've avoided it, absolutely."

If the salamander gets federal threatened species designation, state and federal agencies could impose far more costly mitigations than those identified in the North Livermore plan, said Sierra Club member Steve Bloom.