



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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Governor's Office of Planning & Research

Jul 21 2020

STATE CLEARINGHOUSE

July 21, 2020

Mr. Albert Lopez, Planning Director
ATTN: Monte Vista Memorial Gardens Project EIR
Alameda County Community Development Agency
224 W. Winton Avenue, Suite 110
Hayward, CA 94544
Albert.lopez@acgov.org

Subject: Monte Vista Memorial Gardens PLN2017-194, Notice of Preparation of an Environmental Impact Report, SCH No. 2020069045, Alameda County

Dear Mr. Lopez:

The California Department of Fish and Wildlife (CDFW) has reviewed Alameda County's (County) Notice of Preparation (NOP) for an Environmental Impact Report (EIR) for Monte Vista Memorial Gardens Project Conditional Use Permit (PLN 2017-00194) (Project). The Project is an application for a Conditional Use Permit (CUP) to allow construction of a funeral home with crematorium, burial lots, an entry plaza, internal roadways, parking, landscaping, new wetlands, lakes, and other associated infrastructure and improvements. The purpose of the EIR will be to evaluate the specific environmental effects of the Project as proposed by Monte Vista Memorial Investment Group, LLC (MVMIG).

CDFW is therefore submitting comments on the NOP to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project. CDFW is providing these comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (California Environmental Quality Act (CEQA) Guidelines, §§ 15086, 15096 and 15204).

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 permits issued under the California Endangered Species Act (CESA), 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.

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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.

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, and 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.

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. 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 Incidental Take Permit) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Monte Vista Memorial Investment Group, LLC.

Description and Location: The Project is located at 3656 Las Colinas Road, Livermore, CA in unincorporated Alameda County. Development of the Project would occur on approximately 47 acres in the southern portion of the ±104-acre parcel (Assessor’s Parcel Number 099-0015-016-03) just north of the City of Livermore between the North Livermore Avenue and North First Street exits. The Project site topography consists of a relatively flat lowland valley area to the southeast and gently

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sloping hills and valleys to the north and west. The valleys in the western portion of the Project site drain toward Arroyo Las Positas, which flows in a southwesterly direction.

The property bordering the Project site to the east of Arroyo Las Positas supports an existing residence and several roadways, while the area west of Arroyo Las Positas is undeveloped and is currently used for grazing and farming. The Project site is accessed on the southeastern corner of the property from Las Colinas Road that connects with Las Positas Road [south of Interstate 580 (I-580)]. North of I-580, legally recorded easements provide access to the Project site via County roads.

The proposed Project includes a funeral home with crematorium, 24 acres of burial lots, an entry plaza, 6.8 acres of internal roadways and parking, 9 acres of landscaping, 2.9 acres of new wetlands, 2.5 acres of lakes, two bridges, and other associated infrastructure and improvements.

The NOP describes access to the Project is hampered by the lack of direct access to the site from an improved County or City right-of-way. An easement over County property (currently configured as an unnamed road) connecting the Project site to Las Colinas Road will serve as the only access to the site. This County-owned property lies between two private properties in County jurisdiction which are subject to an active Clean-Up and Abatement Order No. R2-2017-1021 issued by the San Francisco Bay Regional Water Quality Control Board (Water Board). A representative of the Proponent has been named in said Order as a “discharger” due to unauthorized fill placed into jurisdictional waters on these sites (wetlands). Due to adjacencies of the privately owned properties and access to the site over County-owned property, resolution of the Order will be analyzed as one of the EIR alternatives, and resolution of the Order will be required prior to Project approval and issuance of any grading, building, or other construction-related permits. Discussions with the Water Board in late April 2020 indicate there is an on-going state of violation. The MVMIG has acknowledged that their representative was a discharger and had done so to facilitate access to the site.

The Property and the adjacent private has had several violations caused by the MVMIG’s representative over the past eight years including a Notice of Violation (NOV) regarding the unlawful fill of wetlands and habitat for special-status species, issued by CDFW, dated September 29, 2015. CDFW recommends all violations be resolved and cleared prior to Project approval.

COMMENTS AND RECOMMENDATIONS

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

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General Avian and Bat Impacts

The EIR should evaluate the cumulative effects of loss of habitat as an indirect cause of avian mortality for grassland birds. Breeding Bird Surveys (BBS) conducted by the U.S. Geological Survey Biological Resources Division and volunteers throughout the country show that grassland birds, as a group, have declined more than other groups, such as forest and wetland birds (Brennan and Kuvlesky 2005; NRCS 1999). The BBS shows that in California, grassland birds such as western meadowlark (*Sturnella neglecta*), State Species of Special Concern northern harrier (*Circus cyaneus*), horned lark (*Eremophila alpestris praticola*), and State Species of Special Concern western burrowing owl (*Athene cunicularia*), have shown population declines since 1966 (Sauer et al. 2017). CDFW recommends at a minimum an equal amount of land with primary purpose of habitat conservation should be enhanced and conserved elsewhere to offset the loss of habitat for grassland birds.

East Alameda County Conservation Strategy

The Project site is located within the Conservation Zone 4 of the Eastern Alameda County Conservation Strategy (EACCS). The EACCS provides a baseline inventory of biological resources and conservation priorities to be utilized by local agencies and resource agencies during project-level planning and environmental permitting. It was designed to convey project-level permitting and environmental compliance of the federal and state endangered species acts, CEQA, the National Environmental Policy Act, and other applicable laws for all projects within the study area with impacts on biological resources. The EACCS was a joint effort including, but not limited to, the cities of Pleasanton, Dublin, and Livermore; Zone 7, Alameda County, East Bay Regional Park District, U.S. Fish and Wildlife Service (USFWS) and CDFW. The EACCS is intended support and streamline the permitting process. EACCS does not create new regulations or change the process by which a project applicant obtains permits for authorization to impact biological resources, but it has, in fact, been accepted as a guidance document by several agencies including USFWS and CDFW.

Several of the species potentially impacted by this Project are included as focal species in the EACCS, such as the federally threatened and State Species of Special Concern California red-legged frog (*Rana draytonii*), the federally and State threatened California tiger salamander (*Ambystoma californiense*), State Species of Special Concern western pond turtle (*emys mamorata*), the federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), western burrowing owl, and the State Species of Special concern American badger (*Taxidea taxus*). The EACCS mitigation guidance sections (Chapter 3), for grassland, California tiger salamander, western burrowing owl, California red-legged frog, San Joaquin kit fox, 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

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loss or conversion, the EIR should include permanent habitat conservation as an enforceable mitigation measure.

California Red-legged Frog

Based on our records, California red-legged frogs have been documented on the adjacent property to the west, less than 300 feet from the Project site and have been present on adjacent properties. The USFWS Recovery Plan for California Red-Legged Frog (USFWS 2002) beginning on p. 12 describes a variety of habitats used by the California red-legged frog such as upland areas used as important dispersal, estivation and summer habitat for this species. During periods of wet weather, starting with the first rains of fall, some individuals may make overland excursions through upland habitats. They have been observed to make long-distance movements (up to 1.7 miles) that are straight-line, point to point migrations rather than using corridors for moving in between habitats. California red-legged frog are also known to use small mammal burrows and moist leaf litter as refuge (USFWS 2002). Because the actual movement patterns of California red-legged frog are generally not known and there are known occurrences of California red-legged frog on adjacent lands, the entire Project site should be considered suitable habitat for the species. Given their wide variety of habitat usage during different times of the year, it is highly unlikely all California red-legged frogs would be located during pre-construction surveys. The EIR should therefore assume presence and, in addition to including avoidance and minimization measures, should include compensatory mitigation for loss of suitable California red-legged frog habitat in accordance with the EACCS for California Red-legged frog section 3.5.3.5.

California Tiger Salamander

The Project site is located within dispersal distance of known and/or potential California tiger salamander breeding ponds. Based on our records, California tiger salamanders have been found on the adjacent properties to the west and north. 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 protocol-level presence/negative finding surveys, the EIR should assume presence.

California tiger salamanders spend much of their lives in underground retreats, often in burrowing mammal (ground squirrel, pocket gopher, and other burrowing mammal) burrows (USFWS 2004). Therefore, widespread burrowing mammal control as may be required in grassy areas such as golf courses, cemeteries, and parks may pose threats to the salamander.

Due to the potential presence of this listed species and the potential for Project-related take, including but not limited to, installation of exclusion fencing, grading, trenching,

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use of water trucks, and proposed construction of the lakes and wetlands, 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 measures, and fully describe a mitigation, monitoring and reporting program. 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 can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

Western Burrowing Owl

The EIR 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. Based on our records, burrowing owls have been documented on adjacent properties. Burrowing owls may also use unnatural features such as debris piles, culverts and pipes for nesting, roosting or cover. If suitable 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. 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 EIR should also include measures to avoid or minimize loss of burrowing owl foraging habitat, and mitigation for loss of breeding and foraging habitat that cannot be

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fully avoided. As described above, widespread burrowing mammal control as may be required in grassy areas such as cemeteries, may also pose threats to the burrowing owl. The ESCCS 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).

Pollinators

Urbanization continues to alter the landscape and changing habitats provide challenges for pollinators. It is more difficult for them to thrive in areas where fewer nest sites and host plants are available. Man-made structures and traffic make foraging riskier and more difficult. The CEQA document should include measures to increase use by pollinators such as preserving riparian areas, protecting native plant remnants and the planting of native species essential to the survival of bees and decrease use of herbicides and pesticides. The Project should be designed to optimize a balance between urban ornamental landscaping, drought resistant plants, and native plants. Bioswales can be planted with deep-rooted native flowers and grasses that capture and filter storm water, build topsoil, and provide abundant and healthy food for bees and other insects that provide critical services to our food and agricultural systems.

On June 12, 2019, CDFW the California Fish and Game Commission accepted a petition to list the western bumble bee (*Bombus occidentalis occidentalis*) as endangered under CESA, determining the listing “may be warranted” and advancing the species to the candidacy stage of the CESA listing process. The Project's potential to substantially reduce and adversely modify habitat for the western bumble bee, reduce and potentially seriously impair the viability of populations of the western bumble bee, and reduce the number and range of the species while taking into account the likelihood that special-status species on adjacent and nearby natural lands rely upon the habitat that occurs on the proposed Project site.

Due to suitable habitat within the Project site, within one year prior to vegetation removal and/or grading, a qualified entomologist familiar with the species behavior and life history should conduct surveys to determine the presence/absence of the western bumble bee. Surveys should be conducted during flying season when the species is most likely to be detected above ground, between February 1 to November 30 (Thorp et al. 1983). Survey results including negative findings should be submitted to CDFW prior to initiation of Project activities. If “take” or adverse impacts to western bumble bee cannot be avoided either during Project activities or over the life of the Project, MVMIG must consult CDFW to determine if a CESA Incidental Take Permit is required (pursuant to Fish and Game Code, § 2080 et seq.).

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Stream Impacts

Riparian and stream areas provide habitat for a wide variety of wildlife species and should be protected. Trees and shrubs provide nesting and roosting sites for birds in addition to foraging areas for species of mammals, reptiles, birds, and amphibians. CDFW recommends a minimum 100-foot buffer, measured outward from the top of each streambank or from the outer edge of riparian habitat if it extends beyond the streambank, be established to protect streams and riparian vegetation, and to provide a travel corridor for wildlife. No roads, buildings, yards, turf, or paved paths should be permitted within the buffer, except the bridge crossing which are subject to Fish and Game Code section 1600, as described above. Pedestrian trails should be located along the outside edge of the riparian vegetation. Vegetation planting and landscaping should be native plants appropriate for the area. Common causes of bank failure include over-watering lawns, removal of vegetation, and on-site or upstream alteration of the creek channel so CDFW recommends no permanent irrigating of landscape be permitted in the riparian area and on the banks.

Construction of Lakes and Wetlands

The Project proposes to install artificial lakes and new wetlands. Artificial water bodies such as lakes, reservoirs, ornamental ponds, and 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 aquatic features. This can result in amphibians becoming trapped or cause desiccation of eggs, larvae or adults. Conversely, the aquatic features could become suitable breeding habitat in an environment where the upland area no longer supports enough suitable habitat to maintain a viable population. Since California tiger salamanders rely on burrows constructed by fossorial mammals, as described above, the Project site will no longer provide suitable habitat. In addition, ornamental ponds, reservoirs and other perennial aquatic habitat can attract invasive non-native species such as American bullfrogs (*Lithobates catesbeianus*) and human introduced species such as red-eared sliders (*Trachemys scripta elegans*), goldfish (*Carassius auratus*) and pond koi.

The Project proposes to create new wetlands, as mitigation for the wetlands that were previously filled and were the subject of the Notices of Violation. CDFW does not recommend creating mitigation wetlands adjacent to upland areas that no longer support suitable habitat for the amphibians and reptiles that it is intended to benefit. CDFW recommends the lakes and wetlands be removed from the proposed Project.

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FILING FEES

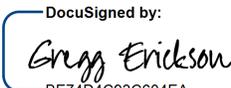
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs., tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the County 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 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse, SCH No. 2018092012

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REFERENCES

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