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## San Francisco Bay Regional Water Quality Control Board

July 27, 2020

Governor's Office of Planning & Research

*Sent via electronic mail: No hardcopy to follow*

**Jul 27 2020**

Alameda County Community Development Agency  
ATTN: Albert Lopez, Planning Director (albert.lopez@acgov.org)  
224 West Winton Avenue, Suite 110  
Hayward, CA 94544

**STATE CLEARINGHOUSE**

**Subject:** San Francisco Bay Regional Water Quality Control Board Comments on the Notice of Preparation for an Environmental Impact Report for the Monte Vista Memorial Gardens in Alameda County, California (PLN 2017-00194)  
**SCH No.** 2020069045

Dear Mr. Lopez:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Notice of Preparation for an Environmental Impact Report for the Monte Vista Memorial Gardens* (NOP). The NOP describes the proposed Monte Vista Memorial Gardens Project (Project) and the potential environmental impacts associated with implementing the Project that are to be assessed in the Environmental Impact Report (EIR) for the Project.

**Project Summary.** The proposed Project is located at 3656 Las Colinas Road, Livermore, CA in unincorporated Alameda County. Development of the Project would occur on 47 acres in the southern portion of 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 from I-580. 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.

The Project includes a funeral home with crematorium, burial lots, an entry plaza, internal roadways, parking, landscaping, new wetlands, lakes, and other associated infrastructure and improvements.

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

JIM McGRATH, CHAIR | MICHAEL MONTGOMERY, EXECUTIVE OFFICER

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 Cleanup and Abatement Order No. R2-2017-1021 issued by the San Francisco Bay Regional Water Quality Control Board. A representative of the applicant has been named in said Order as a “Discharger” due to unauthorized fill placed into jurisdictional waters on these sites. 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. The applicant has acknowledged that their representative was a Discharger and had done so to facilitate access to the site.

Access to the site is adjacent to, and may utilize a portion of, identified wetlands in order to accommodate a new roadway serving the site. Mitigation of such an impact has been proposed and should be further evaluated as part of the EIR. In particular, approximately six acres of manmade wetlands are being proposed by the Project to serve this purpose, as well as to provide additional habitat for sensitive species.

**Comment 1. Cleanup and Abatement Order No. R2-2017-1021 remains unresolved three years after being issued.**

Cleanup and Abatement Order No. R2-2017-1021 (CAO) was issued in 2017. The CAO required removal of unpermitted fill, restoration of waters of the State that were filled without permits, and the creation of compensatory mitigation for illegally filled wetlands. In the three years since issuance of the CAO, the violations have not been resolved. The Water Board is preparing a Notice of Violation (NOV) for failure to respond to the CAO in a timely manner. To account for the temporal loss of wetlands associated with the three-year delay in restoring wetlands and providing mitigation wetlands, the NOV will increase the required amount of mitigation wetlands to be created at the Project site from 0.75 acres to 1.35 acres. If the Dischargers continue to defer compliance with the CAO, the required amount of mitigation may increase further.

**Comment 2. The EIR should assess the feasibility of creating self-sustaining mitigation wetlands at the Project site.**

Figure 2 in the NOP indicates that mitigation wetlands are proposed to be created in an area of the Project site west of Arroyo Las Positas and immediately north of I-580. The EIR should assess the feasibility of creating self-sustaining wetlands in this area of the Project site. Mitigation wetlands must have a sufficiently large watershed to support the required acreage of mitigation wetlands, without anthropogenic management to provide the hydrology necessary to sustain the wetlands.

The EIR should also discuss the establishment of buffers around the mitigation wetlands to minimize impacts to the wetlands associated with the operation of the cemetery (e.g., pesticide or herbicide drift from managed areas of the cemetery, seed spread from landscaping at the cemetery, leach fields for septic systems). Figure 2 indicates that a walkway may transit the area with the mitigation wetlands. The walkway should be designed to avoid the mitigation wetlands.

A restrictive covenant (e.g., conservation easement or deed restriction) must be placed over the mitigation wetlands in perpetuity. The EIR should describe the restrictive covenant to be used at the Project site and the third party that will be responsible for holding the covenant.

The Project summary provided with the NOP states that the created wetlands would provide habitat for special status species. Special status species that may currently use the Project site include the California red-legged frog (CRLF) and the California tiger salamander (CTS). The Project proposes to create two artificial lakes and a water channel between the lakes as part of the Project's landscaping. Permanent water bodies provide habitat for bullfrogs and crayfish; these species prey on CRLF and CTS. The EIR should assess the compatibility of the proposed landscaping for the Project with the ability to sustain special status species in the created wetlands.

**Comment 3. The EIR should include a wetland delineation for the entire Project site, including portions of Arroyo Las Positas that will be impacted by the new access bridges and any new stormwater outfalls to Arroyo Las Positas.**

Based on the NOP, there does not appear to be a wetland delineation available for the Project site. To support the discussion of impacts to biological resources, a wetland delineation should be prepared for the entire project site, including any areas of Arroyo Las Positas that may be impacted by the new access bridges or new stormwater outfalls. Once the delineation is completed, the EIR should include an evaluation of alternatives that would avoid impacts to waters of the State and provide mitigation for all unavoidable impacts to waters of the State. The NOP proposes two new bridges over Arroyo Las Positas to provide access to the cemetery. Bridges impact waters of the State via fill associated with abutments and piers, including any rock riprap armoring to protect abutments and piers from scour, and by shading waters of the State. The EIR should evaluate design options that use a single bridge over Arroyo Las Positas. To minimize impacts to waters of the State, bridges should be clear span structures with abutments set back from the top of bank.

The required amount of mitigation for any unavoidable impacts to waters of the State will depend on the similarity of the impacted waters to the waters in the mitigation proposal, the uncertainty associated with successful implementation of the mitigation project, and the distance between the site of the impact and the site of the mitigation water. In-kind mitigation for the fill of waters consists of the creation of new waters. If the mitigation consists of restoration or enhancement of waters, the amount of mitigation will be greater than if the mitigation consists of creation.

In a CEQA document, a project's potential impacts and proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. CEQA requires that mitigation measures for each significant environmental effect be adequate, timely, and resolved by the lead agency. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA

Guidelines Section 15126.4). Mitigation measures to be identified at some future time are not acceptable. It has been determined by court ruling that such mitigation measures would be improperly exempted from the process of public and governmental scrutiny which is required under the California Environmental Quality Act.

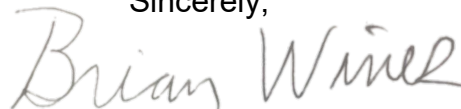
**Comment 4. The EIR should describe how the Project will comply with the stormwater management requirements of the Municipal Regional Permit (MRP) for the management of stormwater runoff.**

Projects requiring permits from the Water Board are required to provide documentation that they will provide stormwater runoff treatment and hydromodification mitigation that is consistent with the requirements of the National Pollutant Discharge Elimination System (NPDES) Municipal Regional Permit (MRP) for the management of stormwater runoff (Order R2-2015-0049; NPDES Permit No. CAS612008). The EIR should describe how the Project will provide the required water quality treatment and the required mitigation for hydromodification impacts associated with the Project's new and recreated impervious surfaces.

The EIR should identify the locations of stormwater management features and demonstrate that sufficient surface area has been set aside for the construction of the required stormwater treatment and hydromodification mitigation infrastructure. Figure 2 in the NOP identifies an area west of Arroyo Las Positas and north of I-580 as "seasonal wetlands/water quality treatment". Water quality treatment areas must be maintained separately from mitigation wetlands. To facilitate their maintenance, stormwater treatment features installed for conformance with the MRP are not regulated as waters of the State. Since they are not waters of the State, they cannot provide mitigation for impacts to waters of the State. The EIR should indicate the locations on the Project site of the proposed water quality treatment measures and the locations on the Project site at which mitigation wetlands will be established.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at [brian.wines@waterboards.ca.gov](mailto:brian.wines@waterboards.ca.gov).

Sincerely,



Brian Wines  
Water Resources Control Engineer  
South and East Bay Watershed Section

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