

# **APPENDIX B**

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## **COMMENTS ON NOP**

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**DEPARTMENT OF TRANSPORTATION**

DISTRICT 4

OFFICE OF TRANSIT AND COMMUNITY PLANNING

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7/29/2020

Governor's Office of Planning &amp; Research

**Jul 29 2020****STATE CLEARINGHOUSE***Making Conservation  
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July 29, 2020

SCH #2020069045

GTS # 04-ALA-2020-00548

GTS ID: 19842

ALA/580/PM 11.45

Albert Lopez, Planning Director  
Alameda County Community Development  
Agency  
224 W. Winton Avenue, Suite 110  
Hayward, CA 94544

**Monte Vista Memorial Gardens PLN2017-194 – Notice of Preparation (NOP)**

Dear Albert Lopez:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Monte Vista Memorial Gardens Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the July 2020 NOP.

***Project Understanding***

The proposed project would develop a cemetery and include a funeral home with crematorium, burial lots, an entry plaza, internal roadways, parking, landscaping, new wetlands, lakes, and other associated infrastructure and improvements. The Project would be developed 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 Interstate (I)-580 North Livermore Avenue and North First Street exits.

***Hydraulics***

Please clearly describe the impact of the proposed development drainage system to the existing facility to determine whether there are impacts to the existing Caltrans storm drain facility. Please provide a Hydrology study that

includes a drainage plan. This study should include existing and proposed drainage patterns and any impacts on the existing drainage draining to State's drainage system. Provide calculation for post-construction 25-year peak flows do not exceed the 25-year pre-construction flows.

### **Transportation Impact Fees**

Please identify project-generated travel demand and estimate the costs of transit and active transportation improvements potentially necessitated by the proposed project; viable funding sources such as development and/or transportation impact fees should also be identified. We encourage a sufficient allocation of fair share contributions toward multi-modal and regional transit improvements to fully mitigate cumulative impacts to regional transportation. We also strongly support measures to increase sustainable mode shares, thereby reducing VMT.

### **Lead Agency**

As the Lead Agency, Alameda County is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

### **Encroachment Permit**

Please be advised that any permanent work or temporary traffic control that encroaches onto the ROW requires a Caltrans-issued encroachment permit. If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As part of the encroachment permit submittal process, you may be asked by the Office of Encroachment Permits to submit a completed encroachment permit application, six (6) sets of plans clearly delineating the State ROW, six (6) copies of signed, dated and stamped (include stamp expiration date) traffic control plans, this comment letter, your response to the comment letter, and where applicable, the following items: new or amended Maintenance Agreement (MA), approved Design Standard Decision Document (DSDD), approved encroachment exception request, and/or airspace lease agreement.

To download the permit application and to obtain more information on all required documentation, visit <https://dot.ca.gov/programs/traffic-operations/ep/applications>.

Albert Lopez, Planning Director  
July 29, 2020  
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Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Laurel Sears at [laurel.sears@dot.ca.gov](mailto:laurel.sears@dot.ca.gov). Additionally, for future notifications and requests for review of new projects, please contact [LDIGR-D4@dot.ca.gov](mailto:LDIGR-D4@dot.ca.gov).

Sincerely,

A handwritten signature in black ink that reads "Mark Leong". The signature is written in a cursive, flowing style with a long horizontal tail on the letter "g".

Mark Leong  
District Branch Chief  
Local Development - Intergovernmental Review

c: State Clearinghouse



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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**GAVIN NEWSOM, Governor**

**CHARLTON H. BONHAM, Director**



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](mailto: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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Alameda County Community Development Agency  
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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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Alameda County Community Development Agency  
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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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Alameda County Community Development Agency  
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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,

Mr. Albert Lopez, Planning Director  
Alameda County Community Development Agency  
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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

Mr. Albert Lopez, Planning Director  
Alameda County Community Development Agency  
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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.).

Mr. Albert Lopez, Planning Director  
Alameda County Community Development Agency  
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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.

Mr. Albert Lopez, Planning Director  
Alameda County Community Development Agency  
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## FILING FEES

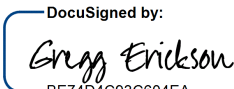
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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](mailto:Marcia.Grefsrud@wildlife.ca.gov); or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or [Brenda.Blinn@wildlife.ca.gov](mailto:Brenda.Blinn@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse, SCH No. 2018092012

Ryan Olah, [Ryan.Olah@fws.gov](mailto:Ryan.Olah@fws.gov)  
U.S. Fish and Wildlife Service

Brian Wines, [Brian.Wines@waterboards.ca.gov](mailto:Brian.Wines@waterboards.ca.gov)  
San Francisco Bay Regional Water Quality Control Board

Frances Malamud-Roam, [frances.p.malamud-roam@usace.army.mil](mailto:frances.p.malamud-roam@usace.army.mil)  
San Francisco District, U.S. Army Corps of Engineers

## REFERENCES

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Alameda County Community Development Agency  
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## NATIVE AMERICAN HERITAGE COMMISSION

7/29/2020

June 30, 2020

Governor's Office of Planning &amp; Research

Jul 03 2020

## STATE CLEARINGHOUSE

Albert Lopez  
Alameda County Community Development Agency  
224 W. Winton Avenue, Suite 110  
Hayward, CA 94544

**Re: 2020069045, Monte Vista Memorial Gardens PLN2017-194 Project, Alameda County**

Dear Mr. Lopez:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines §15064.5 (b))). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1))). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

**Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.**



CHAIRPERSON  
**Laura Miranda**  
Luiseño

VICE CHAIRPERSON  
**Reginald Pagaling**  
Chumash

SECRETARY  
**Merrí Lopez-Keifer**  
Luiseño

PARLIAMENTARIAN  
**Russell Attebery**  
Karuk

COMMISSIONER  
**Marshall McKay**  
Wintun

COMMISSIONER  
**William Mungary**  
Paiute/White Mountain  
Apache

COMMISSIONER  
**Julie Tumamait-Stenslie**  
Chumash

COMMISSIONER  
[Vacant]

COMMISSIONER  
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EXECUTIVE SECRETARY  
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AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
  - a.** A brief description of the project.
  - b.** The lead agency contact information.
  - c.** Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
  - d.** A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
  
- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).
  - a.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
  
- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
  - a.** Alternatives to the project.
  - b.** Recommended mitigation measures.
  - c.** Significant effects. (Pub. Resources Code §21080.3.2 (a)).
  
- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:
  - a.** Type of environmental review necessary.
  - b.** Significance of the tribal cultural resources.
  - c.** Significance of the project's impacts on tribal cultural resources.
  - d.** If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
  
- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
  
- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
  - a.** Whether the proposed project has a significant impact on an identified tribal cultural resource.
  - b.** Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
  - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
    - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
    - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
  - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
    - i.** Protecting the cultural character and integrity of the resource.
    - ii.** Protecting the traditional use of the resource.
    - iii.** Protecting the confidentiality of the resource.
  - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
  - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
  - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
  - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
  - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
  - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: [http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation\\_CalEPAPDF.pdf](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)

## SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: [https://www.opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf).

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
  - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
  - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

### NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center ([http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)) for an archaeological records search. The records search will determine:
  - a. If part or all of the APE has been previously surveyed for cultural resources.
  - b. If any known cultural resources have already been recorded on or adjacent to the APE.
  - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
  - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
  - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
  - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
  - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
  - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
  
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
  - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
  - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
  - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: [Nancy.Gonzalez-Lopez@nahc.ca.gov](mailto:Nancy.Gonzalez-Lopez@nahc.ca.gov).

Sincerely,



Nancy Gonzalez-Lopez  
Cultural Resources Analyst

cc: State Clearinghouse

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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.

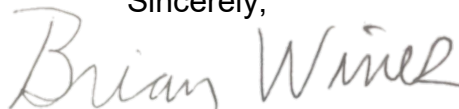
**Comment 4. The EIR should describe how the Project will comply with the stormwater management requirements of the Municipal Regional Permit (MRP) for the management of stormwater runoff.**

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

cc: State Clearinghouse ([state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov))  
CDFW, Marcia Grefsrud ([marcia.grefsrud@wildlife.ca.gov](mailto:marcia.grefsrud@wildlife.ca.gov))  
USACE, Katerina Galacatos ([Katerina.galacatos@usace.army.mil](mailto:Katerina.galacatos@usace.army.mil))  
USACE, Frances Malamud-Roam ([Frances.P.Malamud-Roam@usace.army.mil](mailto:Frances.P.Malamud-Roam@usace.army.mil))  
Joan Boblitt ([joanboblitt@yahoo.com](mailto:joanboblitt@yahoo.com))



July 4, 2020

Albert Lopez, Planning Director  
ATTN: Monte Vista Memorial Gardens Project EIR  
Alameda County Community Development Agency  
224 W. Winton Avenue, Suite 110  
Hayward, California 94544

RE: Response to Notice of Monte Vista Memorial Gardens EIR Report  
for Conditional Use Permit (PUN 2017-00194)

Dear Mr. Lopez:

We own two small parcels of land in Livermore, 902-8-5-9 and 902-8-5-5, the latter of which abuts the Monte Vista Memorial Gardens parcel 099-0015-016-3. From the beginning, Dr. Starkweather, Chairman of the Board of MVMG/MVMIG (Monte Vista Memorial Investment Group) hoped to gain ownership of our two parcels so that the approach (our land) to the cemetery he was planning would be in keeping with the theme and appearance of his project. When we did not accept his offer, he had his attorneys draw up a 297-year lease, which, if signed, we would have lost our land through Adverse Possession. Naturally, our attorneys advised against signing the lease. However, the MVMG/MVMIG board was so convinced by Dr. Starkweather that our land was theirs to do with as they pleased, that work took place on our land often without our permission, always without permits, and in most cases without our knowledge. What follows are some highlights of what has transpired between MVMG/MVMIG and the owners of the above-mentioned parcels.

At first, there was a neighborly relationship with Dr. Starkweather and MVMG/MVMIG who worked diligently on an aggressive clean-up effort for our mutual benefit. Two of the owners went on a walking tour to see what Dr. Starkweather had envisioned. He spoke of cleaning up junk which had been dumped

along the roadside. He talked about removing the sagging outbuildings and deteriorating old fences as well as clearing out weeds. When asked why he was willing to work so hard to clean up our property, Dr. Starkweather replied to the two of us, "I want to use your land as collateral to get a bank loan for the cemetery project." Yes, we heard the word "collateral," but since we had no intention of selling our parcels or signing a lease, we were not worried. At first.

After the initial clean-up, which involved weeding and light disking, along with removing dead trees and debris from a couple of old outbuildings which had slowly collapsed over the years, and the removal of old barbed-wire fences, the appearance of our property was nothing short of amazing. Dr. Starkweather carefully and respectfully bundled old wood from demolished buildings he said he would use to repair the barn. He spoke about plans for restoring the barn and putting a new roof on the 100-year-old home. One of the owners worked side by side with Dr. Starkweather. There appeared to be a true friendship and mutual trust developing.

Dr. Starkweather even spoke of starting a 501c3, a nonprofit, with the establishment of a museum in the barn he was planning to restore honoring the Robert Livermore family and history. Our family has many photos, books, artifacts, etc., highlighting the rich history of our great great great grandfather, Robert Livermore, on whose land these parcels exist of the original Rancho Las Positas. Two of the owners spent hours researching, gathering materials, planning, and writing the application for a 501c3 only to learn at a subsequent meeting that Dr. Starkweather had already submitted the application for a 501c3. It did not reflect the appropriate name we agreed upon and it did not reflect the agreed-upon goals and intention of the nonprofit. In fact, the whole point of the nonprofit dramatically changed so that it would become a showcase for Mrs. Starkweather's artwork, and it would become an upscale destination for future donors to the cemetery project who would be able to sip wine and eat finger sandwiches while listening to presentations for donations. The museum was never spoken of again and the owners had no interest in donating our barn for the cemetery business.

Dr. Starkweather then spoke of getting free soil from a nearby orchard to bring to the property so the lower spots could be filled in. One of the owners asked, "Won't you need a permit for that?" His reply was, "No. The dirt's clean. It's been certified. I have friends from the County who know me and will work with me. Don't worry. I know what I'm doing. I've been doing this for 30 years." Over and over, Dr. Starkweather assured us that he wouldn't do anything that we, the family, didn't want him to do. We would have a say in everything. Considering what had happened to the nonprofit plans, we questioned the bringing in of dirt. We were assured that the dirt was from an orchard in Fremont and that it had been certified twice as clean. We were led to believe the amount of dirt was small.

During the delivery of the dirt, there was apparently an anonymous tip called into the County that the dirt was not from a Fremont orchard but from a mechanic's yard. Agencies visited our property and noticed several violations: disking had taken place too close to the wetlands, an "illegal dwelling" (camper) had been moved so that it was visible to passersby, truckloads of uncertified dirt had been dumped and graded to level out the property, a horse shed was erected to provide shelter for two horses belonging to a board member's wife who paid no horse rental fees to the owners and was making plans for an elaborate horse stable and horse therapy school the owners knew nothing about, and a triple-wide trailer was placed inches from the MVMG/MVMIG property line to be used as an office building for MVMG/MVMIG business. Since no permits had been obtained, violations were issued, but not in Dr. Starkweather's/MVMG/MVMIG's name. At that point, our property had several violations against it. Our family had NEVER had one violation or issue with the City, County, State, or Federal Government. We had always followed the rules. When a garage was added to the home property, all necessary permits and inspections were obtained.

Two of the four owners lived in another city and one of the owners lived in another state at the time. When two of us visited our property to look at new fencing, we were shocked to see how much dirt had been brought in, what it covered, and the

grading that had taken place. In fact, we arrived while dumping and grading was taking place and took photos. It was no longer the same place that our grandfather farmed. All the once-fertile land was covered with new soil. That new soil had been graded so that all the land was now level. No more ancient little creek full of cattails. No more "vegetable patch." No more character. The writer of this letter wept. Memories and "sacred" places on the properties were wiped away with someone else's dirt and huge graders. No permission had been given for any of this. No certification of the soil or permits were obtained. Dr. Starkweather had gone too far. All the assurances he gave us about not doing anything the family didn't want him to do were for naught. He even had his crew dump truckloads of dirt on an adjacent parcel owned by the Calvin Andersen family. Dr. Starkweather had also hoped to own this land. It just so happened that Calvin's son, Eric, drove by on I-580 and saw what was taking place. He called his real estate agent who came to the property and ordered the dumping of dirt halted. Even though the property was/is up for sale, the Andersen family will not sell to Dr. Starkweather due to unethical practices.

At first, Dr. Starkweather and MVMG/MVMIG took no responsibility for these violations issued against us. Agencies stated no further work was allowed on our property, but work by them continued. We had to call and email many times for work to stop. Agencies ordered the camper, horse shed, horses, and triple-wide off the properties and gave firm time limits for each violation to be cleared. These orders and timelines were ignored by Dr. Starkweather, Mike Kliment, and MVMG/MVMIG despite our insistence to comply with the orders.

Dr. Starkweather, possessing a degree in Urban Planning, knew what was allowed and what was not allowed. He knew when permits were needed and which permits were required. Yet, he failed to obtain the appropriate permits, and he failed to obtain permission from all four owners, and he failed to comply with agency orders and timelines. Since he expressed ownership interest in our property, Dr. Starkweather and members of his board have viewed our property as their property. They looked into 19 various County permits concerning our property without our

knowledge. A few of these are as follows: Boarding Stables/Riding Academy, Boarding Stables Manure Management Plan, Certified Massage Practitioners, Rezoning, Boundary Line Adjustment or Lot Merger, Subdivision, etc. None of the 19 permit inquiries was ever fully completed and paid for. We owners knew nothing about their interest in any of the above as they failed to include us in any of their true planning. Interestingly, it appears that County Portal records showing these 19 permit inquiries have been "wiped" clean. It does show, however, that Robert and William Vidalin, two of the owners, took out a permit for a triple-wide office building to be placed temporarily on our parcel abutting MVMG/MVMIG property. Neither of them took out such a permit!!!!

When we owners explained to the owner of the two horses that the horses needed to be removed and the reason, the response was, "T.W. said I could have my horses here, that I could do anything I wanted." It was at this point that Dr. (T.W.) Starkweather turned us over to Mike Kliment. From that point on he was to work with us to clear up the violations against our property. It took weeks for this writer to respectfully "evict" the board member's wife's horses. Mike Kliment was no help in the removal of the horses. Then there was the removal of the camper (illegal dwelling), the home of an elderly gentleman. He had been feeding and watering the horses and called his spot on the property "home." The County said the camper could stay but a pad had to be placed and improvements made for it to be legal. Upgrades would cost us \$140,000! We had no resources to finance the necessary upgrades. Mike Kliment brokered the solution. He said T.W. had set aside a beautiful shady spot on his ranch in San Ramon next to a little stream. It would be ideal for Preston and his horse to live out their years. In fact, a pad was already being poured for Preston's camper. Of course, T.W. knew nothing of these plans for Preston to live on his ranch. This would not be the last of Mike Kliment's deceptions. Weeks passed before a place was readied for Preston and his horse and the move could take place. With two violations cleared, next was the triple-wide trailer.

We did receive an email from the County Fraud Department inviting us to contact them. To date we have not responded to that invitation.

All of this information is to provide some history of what has led us to this point and to help establish a pattern of behavior illustrating Dr. Starkweather's, Mike Kliment's, and MVMG/MVMIG's disdain for agencies' rules and procedures along with their contempt toward us, their neighbors. I can provide further information, evidence, documentation, as well as business plans written by two of the owners with the encouragement of Dr. Starkweather who tried to make us believe we could work together to realize our dreams of honoring our ancestry with the establishment of a Robert Livermore Museum and Historic Rancho along with an education center.

We four owners go on record that we are not opposed to MVMG/MVMIG's plans for a cemetery. However, we are absolutely and vigorously opposed to their proceeding with their plans unless and until they address and fulfill their promises to the agencies and to us to remediate the wetlands and mitigate 0.6 acres, thereby cleaning up the long-standing abatement order on our land, parcels 902-8-5-9 and 902-8-5-5.

We have the following comments, questions, and concerns:

1. The agencies found Dr. Starkweather/MVMG/MVMIG in the wrong and found them responsible for damage to the wetlands on our two parcels. Remediation and mitigation have yet to take place. They are now allowed to proceed with an EIR for their project toward obtaining a CUP. Yet, we are not allowed to do anything with our land until the abatement order is cleared. We cannot sell, get a loan, make some necessary improvements, get a permit, earn an income, or even to successfully grow vegetables for home use in once highly

fertile soil. When will the agencies require Dr. Starkweather/MVMG/MVMIG to fulfill their obligations?

2. If Dr. Starkweather, Mike Kliment, and the board of MVMG/MVMIG decide to walk away from their cemetery project or, God forbid, go bankrupt, what then happens? Will they still be held accountable to remediate the wetlands on our property and to mitigate the 0.6 acres? We have been asking this from the beginning and thus far have received no response from any agency.
3. When will we, the owners, begin to hear from the agencies with regard to our unanswered questions and repeated requests for information and involvement?
4. Do we have to file a formal complaint that we have been forgotten, ignored, not informed, not included, and not protected. We have been kept in the dark.
5. Why have Dr. Starkweather, Mike Kliment, MVMG/MVMIG been allowed all this time to evade their responsibility and legal obligation to clear up the abatement order?
6. Mr. Lopez, in your letter of June 29, 2020, Page 2, last paragraph, you state, "North of I-580, legally recorded easements provide access to the Project site via County roads." We are unaware of any "legally recorded easements." Can you provide documentation of these legally recorded easements?
7. Finally, regarding the road that was created by Dr. Starkweather, without a permit, which comes off the Las Colinas overpass onto the county road that serves our mutual properties: when it rains, water washes down this portion of roadway deviating the stream onto our property flooding the barn and land surrounding the barn. This needs to be addressed and remediated.

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Until Dr. Starkweather involved himself by taking advantage of us and trying to take over our land, our family held the distinction of being in continuous business since 1834. Now, because of his refusal, and that of the board members of MVMG/MVMIG and Mike Kliment, to honor his/their legal obligation to clear the abatement order against our property and have it signed off, we can no longer have our property earn enough to pay for taxes and expenses. Until such time when the abatement order is lifted from our property, we strongly oppose any progress made by MVMG/MVMIG toward fulfilling their project requirements.

We thank you very much for allowing us to comment in this process.

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