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October 27, 2011

Via Hand Delivery and Electronic Mail

Demian Hardman
Contra Costa County
Department of Conservation and Development
651 Pine St., Fourth Floor -- North Wing
Martinez, CA 94553

Re: Comments on Draft Environmental Impact Report for Creekside Memorial Park Cemetery, County File No. LP 052096

Dear Department of Conservation and Development:

I am submitting the following comments on the Draft Environmental Impact Report for Creekside Memorial Park Cemetery, County File No. LP 052096 ("the DEIR"), on behalf of the Friends of Tassajara Valley, a local group of concerned citizens, and Bill and Holly Newman, neighbors who reside next to the proposed Creekside Memorial Park Cemetery Project.

The Creekside Cemetery Project is proposed to be built in the sensitive Tassajara Creek watershed in a largely undeveloped portion of Contra Costa County near San Ramon. The DEIR acknowledges and analyzes numerous serious adverse impacts on the environment that the Project as proposed would have. The DEIR concludes that these adverse impacts cannot be mitigated to a less than significant level. The DEIR further acknowledges that the four alternatives to the Project analyzed in any detail by the DEIR would also have serious adverse impacts on the environment. The DEIR concludes that these adverse impacts can only be mitigated to a less than significant level for two of the four alternatives: the "No Project alternative," (i.e., leaving the site in an undeveloped state) and the so-called "Green Cemetery alternative." The DEIR is partially successful at identifying adverse impacts on the environment that the Project as proposed and the analyzed alternatives would have. However, the DEIR is incomplete and flawed in several significant respects. The DEIR's three major defects are: (1) a failure to adequately analyze the most significant adverse impact of the Project--its excessive pumping of groundwater to irrigate the cemetery's extensive landscaping and meet the cemetery's other water needs in a fashion that will deplete local groundwater supplies and reduce flows in environmentally sensitive waters, (2) a failure to adequately analyze the potential for burials to contaminate local groundwater needed to supply neighboring property owners with their water and (3) the failure to include in its analysis a feasible alternative that would meet properly defined project objectives while avoiding at least the most serious of the adverse

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impacts of the Project. With respect to the first defect, the DEIR fails to analyze the following obviously foreseeable impacts: (a) the *specific* impacts groundwater pumping needed for the Project or its alternatives would have on adjoining neighbors' use of their existing groundwater wells, (b), the impacts that falling streamflow levels in Tassajara Creek caused by the Project or its alternatives would have on downstream water users, the riparian vegetation associated with the Creek, and the wildlife that use the Creek corridor and (c), the impacts that the Project or its alternatives would have on water levels in the other four water bodies located on the Project site and the sensitive and threatened species that inhabit these water bodies. With respect to the third defect, the DEIR adopts an overly truncated definition of Project objectives that leads it to omit analysis of a substantially downsized cemetery project designed to fit the level of groundwater that the Project could pump without causing local groundwater table levels to fall.

At a minimum, the DEIR must be revised to include a complete analysis of the specific adverse impacts following from a decline in local groundwater table levels that would be caused by the Project or its alternatives. The DEIR must further be revised to include an analysis of a substantially downsized cemetery project specifically designed to fit available local groundwater supply. As the lead agency responsible for certifying the EIR for the Project, the Contra Costa County Department of Conservation and Development has an obligation to analyze these issues independently and reach its own rational conclusions, supported by substantial evidence in the record. *Citizens to Pres. the Ojai v. County of Ventura*, 176 Cal. App.3d 421, 431-32 (2nd Dist. 1985); *Environmental Council of Sacramento v. Board of Supervisors*, 135 Cal. App.3d 428, 437-39 (3d Dist. 1982). In evaluating the adequacy of the DEIR, the Department must be mindful that the Courts "interpret the [requirements of the CEQA] Guidelines to afford the fullest possible protection to the environment" and that "An adequate EIR must be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences." *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App.3d 692, 712, 720 (5th Dist. 1990). The DEIR clearly would fail this level of judicial review given its failure, *inter alia*, to rationally analyze the full scope of the impacts that the Project's depletion of local groundwater supplies would have on the Project site's existing neighbors and the surrounding ecosystem. Furthermore, the Department must heed that, via an EIR, the County must identify and analyze all reasonable mitigation measures to decrease the adverse impacts of the projects it approves and/or less environmentally damaging alternatives to proposed projects. *See Oro Fino Gold Mining Corp. v. County of El Dorado*, 225 Cal. App.3d 872 (1990); *Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County*, 52 Cal. 3d 553 (1990); Cal. Code Reg. tit.14, § 15126(c), (d). In failing to analyze a much smaller cemetery project specifically designed to fit available local groundwater supplies, the DEIR has not met this standard. These points and the other flaws in the DEIR are discussed further below.

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I. The DEIR Fails to Adequately Analyze the Impacts of the Project's or the Project's Alternatives on Depletion of Local Groundwater Supplies.

As noted, the most significant adverse impact of the Project will be created by the Project's groundwater pumping. As documented by the DEIR, the Project's extensive groundwater pumping would:

> substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (i.e., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted).

DEIR at 3.9-27 to 29. While the DEIR's conclusions are sound in this respect, the DEIR is flawed in failing to further analyze all the adverse impacts that will follow from this dropping of the local groundwater table level. One, the DEIR correctly notes that the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses, but the DEIR omits the necessary analysis of what these existing local land uses are and how they would be specifically affected.

The DEIR fails to consider a critical environmental baseline fact: there is no municipal water supply in the Tassajara Valley between Windemere Parkway (which is 1.5 miles south of the cemetery site) and Tassajara Hills Elementary school (which is 2.25 miles north of the cemetery site); all properties along this 3.75 mile stretch secure their water via groundwater wells. The DEIR fails to consider or document how many neighboring groundwater wells exist that would be affected by the Project, how much water the current users need to extract from their existing wells to support their ongoing land uses, the amount of water yield that would likely be left to these water users should the Project proceed as proposed, and the impacts on these water users from the declining supply of water that will be available to them should the Project proceed. Owners of seven properties near the Project have serious concerns about the project's water impacts. Six of these have wells that are within 1,000 feet of the Project site (the seventh is about 2,000 feet away). Of these seven properties, four of them are operating ranches or farms which depend on their wells for their agricultural or livestock operations as well as for residences.

Friends of Tassajara Valley has specific information to convey concerning the water wells in the vicinity of the Project and usage of these wells that a revised DEIR must take into

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account. The seven properties located near the Project consist of four operating ranches and three smaller parcels and cover 510 acres These properties have a total of 11 wells drawing a total of 21.3 acre feet per year (AFY). These wells provide water for livestock, an olive orchard, a kennel, miscellaneous irrigation and a number of residences. The production rate of two of these wells drops in the late summer to about half of their normal 3 gallons per minute (GPM) yield. Over the past 12 years, eight "dry holes" have been drilled (that is prospective wells that are not competed because they had no chance of providing more than 1 GPM flow). In addition, one of the ranches trucks in between 3,500 and 10,500 gallons of water per month. The drop in well yields during the summer months implies that the water supply in the area is likely no more than the 21.3 AFY over 500 acres, or about 0.042 AFY/acre. This means that for the 211 acres of the proposed cemetery (221 less 10 acres excluded), there is likely no more than 9 AFY available (=211 acres * 0.042 AFY/acre).

Two, the DEIR correctly notes that the Project's proposed groundwater pumping would have the adverse impact of decreasing streamflow in Tassajara Creek. DEIR at 3.9-29. The DEIR, however, fails to analyze the impacts of this decreased streamflow on downstream water users and on wildlife and riparian vegetation. The DEIR contains no analysis whatsoever of what are the downstream uses of flows from Tassajara Creek and how these might be affected. The DEIR further contains no analysis of the impacts that decreased streamflow in Tassajara Creek will have on riparian vegetation associated with the Creek and the wildlife that utilizes the Tassajara Creek riparian corridor as habitat--both on the Project site and further downstream. Additionally, the DEIR acknowledges that there are other waters on the Project site that will be affected by the development: two tributary drainages and two ponds[1]. DEIR at 2.0-1, 2.0-7, 3.4-6, 3.4-17. The DEIR points out that these waters all provide habitat for sensitive species including two species that are listed as threatened under the federal Endangered Species Act--California red-legged frog and California tiger salamander. The DEIR, however, lacks any analysis of how falling groundwater levels caused by the Project's excessive groundwater

1 The first of these tributaries originates at the northwestern corner of the site, runs along the north property boundary to the east, turns south toward the ranch complex located on the site, joins a second tributary, and flows southeast toward Tassajara Creek. The second tributary originates at an existing pond at the southwest corner of the property, flows east along the south property boundary and turns northeast to join the first tributary. DEIR at 2.0-1.

The first of these ponds is located in the southwestern portion of the site near the top of the site's southern drainage. The second is a stock pond fed by a seep and is located in the northwestern portion of the site on the site's northern slopes. This second pond includes freshwater wetland habitat. DEIR at 2.0-7, 3.4-6, 3.4-17.

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pumping will impact water quantity and quality in these additional four water bodies--and thus in turn impact the sensitive and federally protected species that inhabit these water bodies.

In pointing out generally that the Project and the analyzed alternatives would cause local groundwater table levels to decline, the DEIR provides enough information to rationally conclude that the Project would tend to dry out these other four water bodies substantially—decreasing both the area in these water bodies that have standing water or saturated soils that support wetland and riparian vegetation and the amount of time over the year that these water bodies would have standing water or saturated soils. The water that does remain would likely be diminished quality, being both shallower and thus warmer and having higher concentrations of pollutants from runoff from the Cemetery--as the less the quantity of water in these water bodies, the less dilution there will be for pollutants that are transported into them. This would of course diminish the value of these water bodies as aquatic habitat for sensitive species, including the California red-legged frog and California tiger salamander--perhaps to the point where the existing populations of these latter two species in these waters are extinguished.

Three, the DEIR fails to include any analysis of how these above-discussed adverse impacts of the Project's groundwater extraction would be exacerbated by drought conditions, especially multiyear drought conditions--during which both the demand for irrigation water to support the Project's landscaping would increase (as less rainfall would be available to support this landscaping naturally) and the supply of groundwater would decline (as less rainfall would mean less groundwater recharge). California is well documented to experience periodic droughts which can last for several years. Friends of the Tassajara Valley have attached as Attachment 2 rainfall data for nearby Livermore Airport dating to 1903, obtained from the Western Regional Climate Center at http://www.wrcc.dri.edu under "Historical Climate Information". This data indicates several incidences of drought years, including some multiyear droughts.

As noted, the DEIR considered four Project alternatives in detail: the No Project Alternative, the Smaller Project Alternative, the Green Cemetery Alternative, and the Modified Plan Alternative. DEIR at 4.0-6. The DEIR includes some analysis of the groundwater pumping impacts of these four Project alternatives and concludes that both the Smaller Project Alternative and the Modified Plan Alternative would also involve groundwater extraction at levels that would cause the local groundwater table to fall and have substantial adverse impacts on local groundwater supply. The DEIR further concludes that the Green Cemetery Alternative would not have such substantial adverse impacts. DEIR at 4.0-13.

The DEIR is correct to conclude that the Smaller Project Alternative and the Modified Plan Alternative would have substantial adverse impacts on local groundwater supplies. The

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DEIR's analysis of these impacts, however, is inadequate in the same ways as the DEIR's analysis of the groundwater withdrawal impacts of the Project as proposed is inadequate. One, the DEIR fails to consider the specific impacts groundwater pumping needed for these two alternatives would have on adjoining neighbors' use of their existing groundwater wells. Two, the DEIR fails to consider the impacts that falling streamflow levels in Tassajara Creek caused by these two alternatives would have on downstream water users, the riparian vegetation associated with the Creek, and the wildlife that uses the Creek corridor. Three, the DEIR fails to consider the impacts that these alternatives would have on water levels in the other four water bodies located on the Project site and the sensitive and threatened species that inhabit these water bodies. The DEIR further omits any analysis of the impacts of these alternatives' groundwater utilization during drought conditions.

The DEIR is further incorrect to conclude that the Green Cemetery Alternative would not have substantial adverse impacts on local groundwater supplies. The DEIR contends that the Green Cemetery Alternative would reduce the Project's groundwater demand by 42%. DEIR at 4.0-12. The DEIR leaps to the conclusion that this reduction is sufficient to avoid adverse impacts on local groundwater supply. This conclusion, however, is unsupported by any substantial evidence or even analysis. To begin, the DEIR lacks any supporting information for the conclusion that the Green Cemetery Alternative would use 42% less groundwater than the Project as proposed--especially during drought conditions. Notably, the DEIR does not quantify the amount of water to be used by the Project during drought conditions and contains no quantification of the amount of water that would be used by the Green Cemetery Alternative. Moreover, the DEIR lacks any analysis or conclusions concerning how much groundwater can be extracted from the Project's groundwater wells without causing any of the following: (1), declining streamflow levels in Tassajara Creek, (2), less water in the other four water bodies on site, and (3), falling groundwater elevation levels in neighboring off-site groundwater wells causing diminished or even zero yield from these off-site wells. The DEIR omits any analysis linking the specific locations of groundwater extraction wells to be utilized by the Project to on-site and off-site sensitive areas that could be impacted by groundwater pumping; i.e., the DEIR does not map or analyze potential cones of depression caused by the Project's groundwater extraction wells and show how these cones of depression would affect (a) water levels in neighboring groundwater wells, (b), water levels in Tassajara Creek, or (c), water levels in the two on-site tributaries to Tassajara Creek and two on-site ponds. Without any analysis or conclusions concerning what level of groundwater can be extracted from the Project's groundwater wells without causing adverse impacts at any of the specific three locations, especially during drought conditions, it is simply irrational for the DEIR to conclude that reducing groundwater demand by 42% will not have substantial adverse impacts. Thus, the DEIR also effectively lacks any meaningful analysis of the Green Cemetery Alternative concerning the same crucial impacts identified above: (1) the specific impacts groundwater

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pumping needed for the Green Cemetery Alternative would have on adjoining neighbors' use of their existing groundwater wells, (2), the impacts that falling streamflow levels in Tassajara Creek potentially caused by the Green Cemetery Alternative would have on downstream water users, the riparian vegetation associated with the Creek, and the wildlife that uses the Creek corridor and (3), the impacts that the Green Cemetery Alternative would have on water levels in the other four water bodies located on the Project site and the sensitive and threatened species that inhabit these water bodies.

The DEIR attempts to gloss over the shortfall in its analysis of these impacts by proposing mitigation measures which essentially call for additional future study and potential modification of the Project's utilization of groundwater pumping in the future. This approach however is highly flawed and does not comport with CEQA's requirements.

The DEIR specifies that as Mitigation Measure 3.9-3b, the Project developer must design and implement a phased groundwater supply development program developed and supervised by a qualified registered geologist or certified hydrogeologist. The development program shall guide the siting, design, and future operation of the Project's groundwater wells. In implementing this program, the developer must provide an estimate of long-term supply for onsite uses under average rainfall, short-term extreme drought, and multi-year drought conditions. Under this Mitigation Measure, the developer supposedly would only be allowed to extract groundwater contingent on demonstration of reliable groundwater supply. The information needed for this demonstration would be supposedly produced by other mitigation measures which would require a groundwater monitoring and reporting program (Mitigation Measure 3.9-1c,), a well drilling and testing program (Mitigation Measure 3.9-2a), and a long-term groundwater monitoring and reporting program that would include at least quarterly measurement of water levels in selected wells (Mitigation Measure 3.9-3c). DEIR at 1.0-49 to 50.

These are inadequate mitigation measures for alleviating potential adverse impacts of the Project on local water supplies. The DEIR fails to specify even in general terms several key items necessary to make these mitigation measures meaningful: (1) to whom the Project developer would make these groundwater demonstrations to and when, (2) by what authority the person to whom these demonstrations will be made will act and have the ability to compel the Project developer to comply with his/her directives, (3) what will be the trigger criteria be for allowing groundwater objection to go forward or mandating a reduction in the Project's groundwater extraction, and (4) how the Project will meet its water needs should its groundwater pumping be curtailed in accord with these mitigation measures. For these reasons, these mitigation measures are highly flawed and do not comport with CEQA requirements.

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This DEIR-recommended approach is essentially identical to the mitigation measure found invalid in *Sundstrom v. County of Mendocino*, 202 Cal. App.3d 296, 306-308 (1st Dist. 1988). In *Sundstrom*, the County of Mendocino approved a project on the proviso that the project sponsor would perform a hydrological study to monitor the project's subsequent impacts. The County Department staff would review and approve both the study and recommendations from the study on mitigation measures to address subsequently discovered adverse hydrologic impacts. The court held that the County had thus violated CEQA in four ways. One, the court held that "the requirement that the sponsor adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA," which the Court held mandate that mitigation measures must be specified *before* a project is approved. *Id.* at 306. Two, by deferring environmental assessment to a future date, the County had violated CEQA's directive to perform environmental review "at the earliest feasible stage in the planning process." *Id.* at 307. Three, by specifying that the sponsor would perform the hydrological studies subject to the approval of the planning commission staff, the County had violated CEQA's requirement that the EIR be prepared directly by or by an entity under contract to the County and then be presented to the decisionmaking body for certification. *Id.* Four, the County had effectively circumvented CEQA's public comment and agency review requirements. Whereas CEQA requires that a DEIR be presented to the public and other interested public agencies for review and comment and mandates that a final EIR respond to comments received by the public and other agencies, the hydrological study program would not be subjected to any such public review and comment process. *Id.* at 308.

The DEIR's recommended approach for the Creekside Cemetery project suffers from the same flaws found unlawful in *Sundstrom*: the Creekside Cemetery Project groundwater monitoring program and what findings in the monitoring program will trigger a halt in Creekside Cemetery Project's pumping have not yet been designed.[1] At a minimum, to comply with

[1] With respect to groundwater monitoring, Friends of Tassajara Valley suggests the County should mandate these specifics:

a. The Project developers should be required to measure water level elevations in all wells on the parcel in May, July, September and October of each year, reporting the results to the Department.
b. The Project developers should be required to report irrigation water use and total water use monthly to the Department.
c. The Project developers should report any identifying unusual events (such as a water-tank rupture) may have affected either (a) or (b).
d. The Project developers should be required to take measurements of daily flow of Tassajara Creek whenever they are pumping groundwater wells.

The County should require that monitoring be conducted under the direction of an individual

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CEQA, the study should be designed and the triggers for halting pumping clearly defined *in the DEIR*. Moreover, how the Creekside Cemetery will meet its water needs should groundwater pumping be halted must be specified *in the DEIR*–and the environmental impacts of this alternative water supply regime appropriately analyzed in the DEIR as well. To fully comply with CEQA, however, additional hydrological analysis must be done *in the DEIR* which shows the potential impacts of the Project sponsors' proposed groundwater pumping to irrigate the Creekside Cemetery Project. Given the obvious threat to local groundwater supplies posed by the Project's planned groundwater extraction—which the DEIR expressly acknowledges--CEQA mandates that more investigation and analysis be done *before* the Project is approved. To proceed as the DEIR recommends would be simply irresponsible: neighbors adjoining the Creekside Cemetery Project might well run out of potable and irrigation water or the populations of species protected under the Endangered Species Act that reside on-site destroyed by the time the as-of-yet undefined triggers for halting Creekside Cemetery Project's pumping were met. This would also be unlawful under CEQA, the central purpose of which is to make decisionmakers aware of potential adverse environmental impacts *before* they have occurred, so as to be able to take reasonable measures to prevent them. *E.g.*, *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412 (Cal. 2007) (setting aside City approval of project absent adequate CEQA analysis of how project's long-term water needs would be met and impact of meeting these long-term water needs), *see also No Oil, Inc. v. Los Angeles*, 13 Cal. 3d 68, 84 (Cal. 1974); *City of Inyo v. Yorty* 32 Cal. App.3d 795, 810 (1973).

Friends of Tassajara Valley and Bill and Holly Newman have retained their own hydrological expert consulting firm, Hydrofocus, to do some of the analysis that is missing from the DEIR. Hydrofocus has done some site-specific modeling of the potential drawdown in groundwater table levels by groundwater pumping to implement the Project as proposed (using the location of existing wells on the Project site as the locations of the Project's future production wells and assuming the levels of groundwater extraction identified in the DEIR as needed for the Project). Hydrofocus's analysis shows how the modeled drawdown would reduce the production rate of pre-existing nearby water wells, both in times of normal rainfall and during drought. Hydrofocus's analysis shows that this drawdown would substantially reduce the production rate of water wells utilized by the Project's neighbors, especially in drought conditions. Hydrofocus further analyzes how groundwater table drawdown caused by the Project's groundwater pumping would affect surface flows in Tassajara Creek. Hydrofocus's analysis shows that surface flows in Tassajara Creek would be substantially reduced in the vicinity of the Project by this extraction. A memo summarizing Hydrofocus's analysis and conclusions is attached as Attachment 1. A revised DEIR must take into account this analysis

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with appropriate active State of California professional registration.

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and further build upon it by also, for example, modeling the effects of groundwater extraction for the Project on water levels in the four on-site water bodies.

II. The DEIR Fails to Adequately Analyze the Impacts of the Project's or the Project's Alternatives on Depletion of and/or Contamination of Local Groundwater Supplies.

The DEIR acknowledges that human burials associated with the Cemetery Project have the potential to introduce contaminants into groundwater from formaldehyde used for embalming, furnishes, sealers, and preservative used on wood coffins; and lead, zinc, copper, and steel from metal coffins. DEIR at 3.9-26. The DEIR inappropriately concludes that the Project will have no significant potential to produce substantial contamination of groundwater, however because of the presence of soils with high clay content that will absorb organic chemicals and metals and prevent widespread migration of these contaminants into groundwater. This analysis is highly flawed, however. The DEIR contains no meaningful subsurface modeling of groundwater flow gradients from areas of where human burials would take place. The DEIR further contains no analysis whatsoever of the potential for organic compounds and pathogens associated with decaying human remains from being mobilized in groundwater and transported by existing gradients into aquifer areas that are being tapped by on-site or off-site groundwater wells. Available literature well documents that human burials produce such contaminants. *See* Attachment 1. The DEIR must be revised to include analysis of these potential impacts.

III. The DEIR's Alternatives Analysis Is Flawed due to Omission of a Smaller Feasible Cemetery Option.

The DEIR acknowledges that the Project poses risks of substantial adverse environmental impacts–which in turn mandates a robust alternatives analysis. *See, e.g., Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County*, 52 Cal. 3d 553 (1990); Cal. Code Reg. tit.14, § 15126(d). The DEIR's alternatives analysis, however, is fundamentally flawed by an overly truncated definition of project objectives as including a certain sized cemetery. The DEIR impermissibly truncates its alternatives analysis with the sponsors' unlawfully narrow, self-serving definition of the Project's purposes that is crafted to essentially pinpoint a cemetery near the size wished for by the project developer at the developer's preferred location as the only viable alternative. CEQA does not allow the County to adopt a project proponent's definition of a project's purposes that are so narrowly crafted as to rule out meaningful consideration of project alternatives. *See City of Santee v. County of San Diego*, 214 Cal. App.3d 1438, 1455 (4th Dist. 1989); *Rural Land Owners Assn. v. Lodi City Council*, 143 Cal. App.3d. 1013, 1025-26 (3rd Dist. 1983); *Kings County Farm Bureau*, 221 Cal. App.3d at 735-37.

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Specifically, the DEIR accepts the Project developer's stated project objectives wholesale as Contra Costa County's definition of project objectives. DEIR at 2.0-16. The DEIR, *inter alia*, adopts the following statements of the developer's preferences as the Project's objectives:

> To utilize large acreage in Contra Costa County to accommodate approximately 100,000 burials without the need for a General Plan Amendment or Rezoning, that is outside the Urban Limit Line, and is easily accessible to the two major transportation corridors of Interstate 580 and Interstate 680.
>
> To provide a cemetery site located geographically near the center of the approximately 336,000 people of the five Tri-Valley Cities of Danville, San Ramon, Dublin, Pleasanton and Livermore, and adjacent unincorporated areas of Contra Costa and Alameda Counties, thereby reducing travel times for cemetery visitors and emissions that contribute to Green House Gas production, by the proximity and convenience of the site as compared to the existing choices of cemetery facilities currently available.

These purposes are impermissibly, narrowly crafted to make a cemetery at the developer's proposed site of the size proposed by the developer the only viable alternative. By adopting such narrowly crafted project objectives, the DEIR effectively eliminated from consideration without analysis a much smaller cemetery option or a cemetery at a different location. Accepting this approach would render CEQA's obligations for alternatives analysis meaningless. An acceptable definition of the Project would be limited to creating a cemetery of a commercially viable size within reasonable commute distances from the Tri-Valley Cities. There is no basis for the DEIR to conclude that the cemetery project must have the capacity for 100,000 burials, be located geographically near the center of the Tri-Valley Cities, be in a currently undeveloped area and be outside the Urban Limit Line to be a commercially viable cemetery project. This approach is the equivalent of accepting a residential subdivision developer defining a project as necessarily including a certain number of houses located in a narrowly defined specified area and then eliminating from consideration a downsized subdivision development as an alternative.

The DEIR should have properly defined the Project as only a commercially viable cemetery to serve the Tri-Valley Cities. With such a broader and more permissible Project definition, the DEIR should have then included in its alternative analysis evaluation of a cemetery project built at the site to the size and with design principles that can be supported with groundwater extraction limited to a level that will not cause a decline in local groundwater levels, i.e., a project that truly would avoid the identified substantial adverse impact of causing a decline in local groundwater table levels. Identification of such an alternative would involve two steps not taken by the DEIR: first, a robust analysis of the volume of groundwater that can be pumped from the Project site without causing any of the following: (a), declining streamflow levels in

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Tassajara Creek, (b), less water in the other four water bodies on site, and (c), falling groundwater elevation levels in neighboring off-site groundwater wells causing diminished or even zero yield from these off-site wells; and second, a robust analysis of how large a cemetery built can be supported with this volume of groundwater, especially if built with green design principles.

With this broader and more permissible Project definition, the DEIR should further have included in its alternative analysis more serious consideration of alternative locations for the cemetery project--especially alternative locations where sources of water might be available that would not involve overtaxing local groundwater supplies. CEQA imposes a duty on the County to consider independently whether there are reasonably available off-site project alternatives that would involve less environmental impacts than the on-site project alternatives. *See Citizens of Goleta Valley*, 52 Cal. 3d 553; Cal. Code Reg tit.14, § 15126(d). The County must further thoroughly analyze the environmental impacts of such off-site project alternatives. *San Joaquin Raptor Wildlife Center v. County of Stanislaus*, 27 Cal. App.4th 713 (1994), *modified and rehearing denied*, 28 Cal. App.4th 940A; Cal. Code Reg tit.14, § 15126(d)(4).

IV. The DEIR Lacks Sufficient Analysis of the Effect of the Project on ESA-Protected Species.

As the DEIR acknowledges, the proposed Creekside Cemetery Project site provides habitat for the California red-legged frog and California Tiger salamander, threatened species protected by the federal Endangered Species Act ("ESA"). DEIR at 3.4-13.

The site provides essential habitat functions for California red-legged frogs in the form of both aquatic habitat where frogs can breed and feed, and in upland dispersal habitat. As the DEIR acknowledges, grading and construction activities for the proposed Project would result in both temporary and permanent loss of suitable upland dispersal habitat and possible harassment, injury, and death of individual California red-legged frogs. Implementation of the Project would further result in the permanent loss of approximately 48 acres of potential upland dispersal habitat, and temporary disturbance to an additional 30 acres of upland dispersal habitat. In addition, the project would involve recontouring an estimated 0.14 acre of tributary channel banks and placement of bank stabilization materials over an estimated 0.13 acre of tributary channels, all of which provide potential aquatic dispersal habitat for the species. As the DEIR acknowledges, the conversion of upland grasslands to active landscaped cemetery use would substantially reduce the suitability of this area as upland habitat for California red-legged frogs. DEIR at 1.0-23. California red-legged frogs have been documented to disperse up to about 4,600 feet (1,400 meters) from breeding locations. Thus, it is plain that the Project, including its development of upland areas, will adversely modify California red-legged frog habitat areas.

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The proposed development site further provides breeding habitat for California Tiger salamander. Larvae of the species have been found in the pond located in the southern portion of the site. As the DEIR acknowledges, grading and construction activities associated with the proposed Project may directly cause harassment, injury, and death to individual California tiger salamanders residing within burrows within the limits of grading and dispersing from breeding ponds as they dry down in late spring after construction activities begin. Construction of the proposed Project would result in the permanent loss of approximately 48 acres of suitable upland dispersal and refugia habitat, and temporary disturbance to an additional 30 acres. DEIR at 1.0-26.

As discussed above, the DEIR's analysis of the impacts of the Project on these threatened species is inadequate for failing to take into account the effects of the Project's pumping of groundwater in a fashion that would cause local groundwater tables to decline--and thus tend to dry out the aquatic habitat for the threatened species identified by the DEIR. This drying out effect will both reduce the quantity of water and aquatic habitat environment and quality of water and aquatic habitat environment available to the threatened species.

The DEIR's analysis of mitigation for the Project's adverse impacts on the threatened species is further flawed. The DEIR unreasonably concludes that the Project's adverse impacts on the threatened species can be mitigated with mitigation measures that are not yet designed. Specifically, the DEIR provides that the Project's developer would be required to monitor the areas on the site that provide aquatic habitat for these threatened species for the first two years after construction to determine the effects of land-use changes on the hydrology of these aquatic habitats. If this monitoring detects adverse impacts, then the developer would be required to consult with the U.S. Fish and Wildlife Service to determine the need for additional mitigation measures. The DEIR speculatively notes that such mitigation measures might include restoration or enhancement of habitat for the species on other lands at a minimum 1:1 ratio. The DEIR fails to identify where such on-site habitat would or could be located and has no analysis of the effectiveness or feasibility of such off-site restoration. DEIR at 1.0-26 to 28. The flaws with this approach are obvious and numerous: (1), the DEIR has no analysis why adverse impacts could not manifest later than two years after the Project is built--such easily could be the case if the first two years following completion of the Project were wet years, followed by a future drought. Under the approach of the DEIR, adverse impacts on the species that show up after two years would simply go undetected and unmitigated. (2), the DEIR fails to establish how the monitoring program will be conducted. (3), the DEIR fails to set forth criteria for determining what constitutes adverse impacts on the species that warrant further mitigation. (4), the DEIR fails to establish who will oversee determining whether additional mitigation to offset adverse impacts on the species is required and by what authority they will compel the Project

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developer to implement such measures. (5), the DEIR fails to establish criteria for what will constitute adequate mitigation, especially off-site mitigation, for adverse impacts to the species. In short, this proposed mitigation measures suffers from the same defects discussed above with respect to the DEIR's proposed groundwater impacts mitigation measures. This exemplifies the reason why the courts insist that CEQA review be completed in its entirety *before* projects are approved, i.e, why it is impermissible to rely on after the fact analysis of impacts to design subsequent mitigation measures. *Sundstrom*, 202 Cal. App.3d at 306-308.

Please add Environmental Advocates to your list of parties to receive any further notices related to the County's consideration of the Creekside Cemetery project. To the extent that you have electronic copies of such notices, I request that you send any such notices to Environmental Advocates via electronic mail at the following address: csproul@enviroadvocates.com . Please send a courtesy copy of any such notices to Bill and Holly Newman at the following electronic mail address: wcn440@gmail.com.

Thank you for consideration of our comments.

Sincerely,

Christopher a. Sproul

Christopher Sproul

Attachments:

1. Hydrofocus Inc., "Creekside Memorial Park Cemetery Draft Environmental Impact Report—Review of Water Use and Supply Calculations", October 2011

2. Rainfall data for Livermore airport dating to 1901