



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846



In Reply Refer To:  
08ESMF00-2011-TA-0878-1

OCT 20 2011

Mr. Demian Hardman  
Contra Costa County  
Department of Conservation & Development  
651 Pine Street, 4<sup>th</sup> Floor-North Wing  
Martinez, California 94553

Subject: Comments on the Draft Environmental Impact Report for the Creekside Memorial Park Cemetery Project, Unincorporated Contra Costa County, California

Dear Mr. Hardman:

This letter represents the U.S. Fish and Wildlife Service's (Service) comments on Contra Costa County's Draft Environmental Impact Report (DEIR) for the Creekside Memorial Park Cemetery located at 7000 Camino Tassajara Road in unincorporated Contra Costa County, California. At issue are the potential effects to the threatened California red-legged frog (*Rana draytonii*) and its critical habitat, the threatened Central California Distinct Population Segment (DPS) of the California tiger salamander (*Ambystoma californiense*) (Central California tiger salamander), endangered San Joaquin kit fox (*Vulpes macrotis mutica*), threatened vernal pool fairy shrimp (*Branchinecta lynchi*), endangered vernal pool tadpole shrimp (*Lepidurus packardii*), endangered longhorn fairy shrimp (*Branchinecta longiantenna*), threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), and listed plants. Our comments are provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

Corrie Development Corporation is proposing the development and operation of a new cemetery on a 221.66± acre site fronting the west side of Camino Tassajara approximately 2,600 feet south of Highland Road in unincorporated Contra Costa County, California. The proposed new cemetery will occupy approximately 58.7± acres of the 221.66± acre site which includes an upper garden (non-irrigated) area consisting of approximately 13.2± acres and a lower garden area (landscaped and irrigated) consisting of 45.5± acres. Approximately 9.0± acres are to be set aside for the existing residence and 1.0± acre set aside for a possible future fire station site fronting Camino Tassajara. The remaining area of approximately 152.9± acres will be left mostly in its natural condition. A detailed description is included in the DEIR.

The Service participated in a site visit with the project proponent in 2008 and commented on Contra Costa County's Notice of Preparation for the Creekside Memorial Park Cemetery (Service file 1-1-07-TA-0807) in 2007. The Service also commented on the Notice of Preparation & Notice of Scoping Meeting for a Draft Environmental Impact Report for the proposed New Farm Project (Service file 81420-2011-TA-0525-1) which is adjacent to the proposed Creekside Memorial Park Cemetery Project. The Service's position on the proposed Creekside Memorial Park Cemetery and proposed New Farm Project has not changed from the previous letters. Development in this area will reduce the functionality of established conservation areas by fragmenting habitat, reducing connectivity, increasing human activity, and increasing contaminants, noise and light pollution. The Service is also concerned with the proposed project's growth inducing effects within the Tassajara Valley.

The following are the Service's comments on the DEIR for the Creekside Memorial Park Cemetery Project. The Service's specific comments are restricted to Section 3.4.

**Comment 1:** Section 3.4, Page 3.4-13, Lines 15-16: This is an incorrect statement. Informal consultation can only be initiated by a federal agency. The Service provided technical assistance to the project proponent but did not engage in informal section 7 consultation with a federal agency for the proposed project.

**Comment 2:** Section 3.4, Page 3.4-15, Lines 12-18, Valley Elderberry Longhorn Beetle: The Service, in a 2007 phone call with the DEIR biologist, communicated that the valley elderberry longhorn beetle is unknown in the area and unlikely to occur in the project area. However, the Service was unaware at the time the number and locations of the valley elderberry shrubs and the suitability of habitat for valley elderberry longhorn beetles. The 2007 phone call is not sufficient to rule out species presence. The Service recommends the project proponent and Contra Costa County survey for valley elderberry longhorn beetles using the Service's 1999 *Conservation Guidelines for the Valley Elderberry Longhorn Beetle*.

**Comment 3:** Section 3.4, Page 3.4-16, Lines 29-31, California Tiger Salamander: The California tiger salamander is no longer considered a California Special Concern species. It was listed as threatened by the State of California on May 20, 2010.

**Comment 4:** Section 3.4, Page 3.4-18, Lines 11-16, California Red-Legged Frog: Lines 11-13 are incorrect. Portions of the proposed project are within designated critical habitat unit CCS-2B. The DEIR should describe the amount of acreage of the project is within critical habitat and what primary constituent elements are found in that acreage.

**Comment 5:** Section 3.4, Page 3.4-21, Lines 20-26, San Joaquin Kit Fox: This section states that proposed project area was not occupied at the time of the evaluation or is considered an important area. However, the site visit notes state that the Service considers the area within the range of the San Joaquin kit fox and important to the species. Additionally, the section states that project area is seven to nine miles from consistent records but fails to mention that this is within the dispersal distance for the San Joaquin kit fox.

**Comment 6:** Section 3.4, Page 3.4-22, Lines 24-33, Wildlife Movement Corridors and Habitat Fragmentation: This section discusses habitat corridors and developments such as Windemere but does not discuss the protected conservation areas adjacent to the proposed project set aside in perpetuity as listed species compensation for the Windemere and Alamo Creek developments or Brown Ranch on the east side of Camino Tassajara Road. This is important to distinguish as the value of these protected areas and corridors will diminish with adjacent development.

**Comment 7:** Section 3.4, Page 3.4-31, Lines 35-38, Valley Elderberry Longhorn Beetle: Without assessing the habitat and surveying, the no significant impact assertion is invalid. Elderberry shrubs are present but have not been surveyed for valley elderberry longhorn beetles. It is unknown if the shrubs are occupied or contain suitable habitat. Avoidance of “*most*” shrubs does not guarantee avoidance of impacts to the valley elderberry longhorn beetle. Additionally, the “*preservation and enhancement of suitable riparian habitat*” is not described. Describe how the preservation and enhancement will specifically benefit the valley elderberry longhorn beetle. There is not enough detail in the DEIR to make an adequate impact analysis and no impact conclusion.

**Comment 8:** Section 3.4, Page 3.4-32, Lines 22-31, Aquatic Invertebrates: It is unclear how the suitable habitat for listed crustaceans will be avoided. The section asserts that there is low potential for listed crustaceans to occur in the suitable habitat without supporting documentation. Surveys were not conducted. The section does not state how far from the aquatic features the construction will occur. However, the section does state that irrigation runoff may alter quality which the Service considers an indirect effect. Altering water quality may result in take of listed crustaceans and the Service does not concur that the proposed project would have a less-than-significant impact to listed crustaceans.

**Comment 9:** Section 3.4, Page 3.4-32-33, Lines 50-54, 1-9: This section does not analyze fragmentation in the context of other adjacent and regional protected conservation lands on either side of Camino Tassajara Road. The analysis should adequately describe how the proposed project will have a less than significant effect without mitigation on habitat and corridors using current information regarding protected conservation lands near the proposed project.

**Comment 10:** Section 3.4, Page 3.4-38, Lines 30-32, Impact 3.4-2: Overall Impacts on Special-status Animal Species: This citation is not correct. The site visit notes state: “*Based on our discussions we understood, provided that the Service could review an updated biological assessment including more project detail as discussed below, the proposed 150-acre conservation easement habitat area would be adequate compensation for project impacts to federally listed species. Kim agreed that it is acceptable to exclude the road from the Conservation Easement but include remedial grading and restored areas in the easement. The conservation easement and associated management plan document would need to be worded accordingly. The management plan will include but not be limited to contractor and cemetery maintenance worker training, grazing management, a fencing plan, and a predator control plan.*” The Service never received an updated biological assessment or any further information

on the proposed project. Therefore, the assertion that the proposed conservation easement area was determined adequate by the Service is incorrect and misleading.

**Comment 11:** Section 3.4, Page 3.4-38, Lines 47-48, Impact 3.4-2: Overall Impacts on Special-status Animal Species: This statement: “*Several aspects of the Project as proposed would reduce the effectiveness of habitat enhancement and conservation measures proposed as mitigation for the Project.*” implies that the mitigation measures and habitat enhancement are not sufficient to reduce the impacts of the proposed project. Does this mean the mitigation for the proposed project is to redesign the project? It would seem that the newly designed project would need to have a separate DEIR.

**Comment 12:** Section 3.4, Page 3.4-39, Lines 7-15, Impact 3.4-2: Overall Impacts on Special-status Animal Species: Similar comment to Comment 10. Will the proposed project be revised?

**Comment 13:** Section 3.4, Page 3.4-39, Lines 16-20, Impact 3.4-2: Overall Impacts on Special-status Animal Species: The Service is not clear on what these two sentences are trying to convey other than the proposed project will obstruct wildlife movement on the northeastern edge of the proposed project site. It is not clear what “*being forced*” or “*maintenance of opportunities for wildlife movement*” mean.

**Comment 14:** Section 3.4, Page 3.4-39, Lines 26-27, Impact 3.4-2: Overall Impacts on Special-status Animal Species: “*Future management goals and practices must be carefully designed and implemented to ensure that the conservation easement area functions as intended.*” Explain how impacts can be mitigated if the management goals and practices are not developed for this analysis.

**Comment 15:** Section 3.4, Page 3.4-39-42, Mitigation Measure 3.4-2a: Biological Mitigation and Monitoring Plan (BMMP): It is not clear how preparing a plan mitigates the specific stated impacts. Shouldn’t the plan be developed where the specific components of the plan are analyzed in the DEIR? This implies the proposed project description is incomplete and the specific mitigation will not be analyzed in the DEIR.

**Comment 16:** Section 3.4, Page 3.4-39, Lines 48-49, Mitigation Measure 3.4-2a: BMMP: For federally listed species and their habitats, the BMMP should include standards acceptable to the Service.

**Comment 17:** Section 3.4, Page 3.4-42-43, Mitigation Measure 3.4-2b: Long Term Management and Operations Plan (LTMOP): Same comments as Comment 15 and Comment 16.

**Comment 18:** Section 3.4, Page 3.4-43-45, Mitigation Measure 3.4-2c: Special-Status Species Relocation and Construction Management Plan: Same comments as Comment 15 and Comment 16.

**Comment 19:** Section 3.4, Page 3.4-45, Mitigation Measure 3.4-2d: Revisions to Project Master Site Plan and Conceptual Landscape Plan: Shouldn’t this be developed as the proposed project description, not mitigation?

**Comment 20:** Section 3.4, Page 3.4-46, Impact 3.4-3: California Red- Legged Frog: Please define “*temporary disturbance*”. The Service defines temporary and permanent effects as areas denuded, manipulated, or otherwise modified from their pre-project conditions, thereby removing one or more essential components of a listed species’ habitat as a result of project activities that include, but are not limited to, construction, staging, storage, lay down, vehicle access, parking, etc. Temporary effects are limited to no more than two consecutive seasons and at a minimum, are fully restored to baseline habitat values or better within one year following initial disturbance. Permanent effects are not temporally limited and include all effects not fulfilling the criteria for temporary effects. Areas subject to ongoing operations and maintenance also are considered permanent. The restored temporary impact areas would need to meet success criteria and be monitored to ensure the impacts have not been exceeded.

**Comment 21:** Section 3.4, Page 3.4-46, Impact 3.4-3: California Red- Legged Frog: This section should discuss the impacts of increased human activity associated with operation of the proposed project (light, noise, road and foot traffic, trash, etc.).

**Comment 22:** Section 3.4, Page 3.4-46, Lines 37-39, Impact 3.4-3: California Red- Legged Frog: To clarify, the Service’s 1999 programmatic biological opinion to the U.S. Army Corps of Engineers (Corps) on the California red-legged frog is not for development activities as implied in Lines 37-39. The programmatic biological opinion is implemented on small projects that are authorized by under specific Corps Nationwide Permits and are not part of larger developments.

**Comment 23:** Section 3.4, Page 3.4-48, Lines 6-10, Mitigation Measure 3.4-3: California Red-Legged Frog: Complying with Federal law is not a mitigation measure. An incidental take permit is obtained via section 10 of the Act (Habitat Conservation Plan, Recovery Permit, or Safe Harbor Agreement). The Service assumes the DEIR is implying either a permit via a habitat conservation plan or a biological opinion with an incidental take statement via section 7 of the Act.

**Comment 24:** Section 3.4, Page 3.4-48, Line 16, Mitigation Measure 3.4-3: California Red-Legged Frog: The Service will require all work, not just in aquatic habitats, to be overseen by a Service-approved qualified biological monitor.

**Comment 25:** Section 3.4, Page 3.4-48, Lines 28 and 39, Mitigation Measure 3.4-3: California Red-Legged Frog: Add the Service to these measures.

**Comment 26:** Section 3.4, Page 3.4-48, Lines 44-48 and 50-55, Mitigation Measure 3.4-3: California Red-Legged Frog: The Service will require a Service-approved biological monitor on-site for all phases of the proposed project commensurate with Comment 24.

**Comment 27:** Section 3.4, Page 3.4-49, Lines 2-6, Mitigation Measure 3.4-3: California Red-Legged Frog: Need to describe bank stabilization techniques and materials. Not all bank stabilization is beneficial for California red-legged frogs and may result in permanent impacts to habitat.

**Comment 28:** Section 3.4, Page 3.4-49, Lines 8-21, Mitigation Measure 3.4-3: California Red-Legged Frog: Are two years long enough to identify a trend? What about water year type? Explain if there will be baseline data prior to construction to compare the post construction monitoring. How is monitoring or mitigation at the ratio of 1:1 adequate mitigation for the loss of functional aquatic habitat and individuals? Additionally, the impact/mitigation analysis does not take into consideration the depletion of the groundwater supply and the impacts to aquatic habitat for the California red-legged frog or other listed species.

**Comment 29:** Section 3.4, Page 3.4-49, Lines 23-27, Mitigation Measure 3.4-3: California Red-Legged Frog: If it is anticipated that the proposed project will impact the aquatic habitats, mitigation should be developed prior to project construction. A minimum ratio for aquatic habitat is arbitrary as the proposed mitigation aquatic habitat will require an amount of functional upland habitat.

**Comment 30:** Section 3.4, Page 3.4-49, Line 45, Impact 3.4-4: California Tiger Salamander: Please define “*temporary disturbance*”. The Service defines temporary and permanent effects as areas denuded, manipulated, or otherwise modified from their pre-project conditions, thereby removing one or more essential components of a listed species’ habitat as a result of project activities that include, but are not limited to, construction, staging, storage, lay down, vehicle access, parking, etc. Temporary effects are limited to no more than two consecutive seasons and at a minimum, are fully restored to baseline habitat values or better within one year following initial disturbance. Permanent effects are not temporally limited and include all effects not fulfilling the criteria for temporary effects. Areas subject to ongoing operations and maintenance also are considered permanent.

**Comment 31:** Section 3.4, Page 3.4-56, Line 30, Impact 3.4-8: San Joaquin Kit Fox: Same comment as Comment 20 and Comment 30.

**Comment 32:** Section 3.4, Page 3.4-56, Lines 23-26, Mitigation Measure 3.4-8: San Joaquin Kit Fox: See comments on BMMP.

**Comment 33:** Section 3.4, Page 3.4-60, Lines 11-28, Mitigation Measure 3.4-11b: Complying with Federal and State laws is not a mitigation measure.

**Comment 34:** Section 3.4, Page 3.4-61-62, Cumulative Impacts: The Service does not agree with the conclusions in this section or with the statement: “*With implementation of recommended mitigation for the Proposed Project, the Project contribution to cumulative impacts would not have a cumulatively considerable contribution.*” The proposed New Farm development will reduce the functionality of the proposed project’s mitigation, as well as, the conservation areas for the Windemere and Alamo Creek projects. The Service has previously commented on both this proposed project and the New Farm project and their potential for undermining the functionality of existing conservation areas.

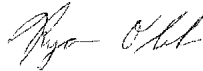
This concludes our comments on the Draft Environmental Impact Report for the Creekside Memorial Park Cemetery Project. The Service is interested in working with Contra Costa

Mr. Demian Hardman

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This concludes our comments on the Draft Environmental Impact Report for the Creekside Memorial Park Cemetery Project. The Service is interested in working with Contra Costa County in the resolution of these issues to listed species and other wildlife. If you have any questions regarding this response, please contact Kim Squires, Senior Endangered Species Biologist (Kim\_Squires@fws.gov) or Ryan Olah, Coast Bay/Forest Foothills Division Chief (Ryan\_Olah@fws.gov) at the letterhead address or telephone (916) 414-6600.

Sincerely,



*for* Eric Tattersall  
Deputy Assistant Field Supervisor

cc:

Randi Adair, California Department of Fish and Game, Yountville, California