

January 11, 2013

Mr. Demian Hardman
Contra Costa County Department of Conservation and Development
30 Muir Road
Martinez, CA 94553

Re: Violation of Contra Costa County Ordinances and State of California Health and Safety Codes by the proposed Creekside Memorial Park Cemetery (LP05-2096)

Dear Mr. Hardman:

In addition to the many issues raised in our review of the Draft Environmental Impact Report for the proposed Creekside Memorial Park Cemetery (Letter from Newman 10/28/2011), the project would also violate several Contra Costa County Ordinances and one California Health and Safety Code. These violations are listed below, with the applicable Contra Costa County Ordinances listed in Appendix 1 and the applicable California Health and Safety Codes in Appendix 2. Appendix 3 contains copies of our memos cited in the discussion below, except for our review of the DEIR and its attachments (Letter from Newman 10/28/2011) which you already have.

The violations by the proposed Creekside Memorial Park cemetery are the following:

1. **The project would violate A-80 zoning** (Contra Costa Ordinance 84-84).

The site of the proposed cemetery is zoned A-80, Exclusive Agricultural District, and according to Contra Costa County Ordinance Section 84-84.204, the purpose of A-80 zoning “is to provide and protect areas for agricultural uses by preventing the establishment of urban and other incompatible land uses thereon.” As we conclusively showed in our comments on the Draft EIR (Letter from Newman 10/28/2011), this proposed cemetery would be highly urban (60,000 square feet of buildings, about 13 acres of impervious area, 448 visitors per day, etc.) and also would be incompatible with existing agricultural operations (particularly due to its excessive and non-sustainable use of water and the possibility of contamination of wells of nearby residents), thereby violating the site’s A-80 zoning.

In addition, the proposed cemetery would not “protect areas for agricultural uses” but instead would actively harm existing agricultural land uses in two ways. First, it would set a precedent for others in the area to convert their land to non-agricultural uses. It has been shown that the introduction of non-farm land uses into a predominantly agricultural area can have a negative effect on agricultural operations in that area. Second, the proposed cemetery would promote fragmentation, which is defined as the breaking up of an existing agricultural land base through the division of a large parcel into two or more smaller parcels or through the introduction of large, non-farm land uses into

predominantly agricultural areas. It has been shown that fragmentation of agricultural lands harms the long-term viability of agriculture in the area. These reasons combine to show that the proposed cemetery would violate the site's A-80 zoning.

2. **The project includes features which are not allowed uses for a cemetery** (Contra Costa County Ordinances 82-4.218, 88-2.602, 88-2.604).

The project's two proposed chapels, each 1,840 square feet in size and seating 138 people, are not an allowed use, since chapels are not included in the definition of a "cemetery" (Section 82-4.218), nor are they included as "incidental uses in connection with the operation and maintenance of a cemetery" (88-2.602), nor are they included as other "permissible" cemetery-related activities (88-2.604). In addition, chapels are excluded from allowed uses of A-80 property (84-84.404) as we showed in our DEIR comments (Letter from Newman 10/28/2011, pages 18-19). As a result, these chapels should not be allowed as part of the proposed cemetery.

3. **The project meets the criteria which require the Board of Supervisors to deny the permit for a proposed cemetery** (88-2.404 (b) and 26-2.2008):

- a. Criterion (1): "The establishment or maintenance of the proposed cemetery or the extension of an existing cemetery will or may jeopardize or adversely affect the public health, safety, comfort, or welfare."

Our DEIR comments (Letter from Newman 10/28/2011) discuss the many ways in which the proposed cemetery would jeopardize and adversely affect the public health, safety, comfort, and welfare, particularly through its excessive water usage and its potential degradation of water quality affecting Tassajara Valley residents, all of whom obtain their water from wells.

- b. Criterion (2): "The establishment, maintenance, or extension will or may reasonably be expected to be a public nuisance."

Our DEIR comments (Letter from Newman 10/28/2011) show that the proposed lack of exterior building lighting, landscape lighting, roadway lighting and parking area lighting would contribute to nighttime prowlers and possible vandalism. Yet having the site lit up all night long is not desirable either due to the impact on sensitive species and the additional light pollution in what is currently a rural area without street lights. In other words, the lighting necessary to prevent the site from becoming a public nuisance is not appropriate for this currently wildlife-friendly, rural site.

In addition, the proposal does not include a caretaker's residence, so no-one would be on site to monitor for trespassing and vandalism, increasing the likelihood of such occurrences.

- c. Criterion (3): “The establishment, maintenance, or extension will tend to interfere with the free movement of traffic or with the proper protection of the public through interference with the movement of police, ambulance, or fire equipment and thus interfere with the convenience of the public or the protection of the lives and the property of the public.”

Our DEIR comments (Letter from Newman 10/28/2011) point out the issues with the additional traffic created by the proposed cemetery which were not adequately covered by the DEIR.

- d. Criterion (4): “The applicant, through the proposed endowment fund or otherwise, cannot demonstrate adequate financial ability to establish or maintain the proposed cemetery so as to prevent the proposed cemetery from becoming a public nuisance.”

We believe that the applicant has demonstrated a lack of financial ability to establish and maintain the proposed cemetery and that as a result, the proposed cemetery would have a high likelihood of becoming a public nuisance. The attached memo from Newman dated 6/17/2010 documents the financial obligations found in the public record which the applicant has been unable to meet; these financial issues are significant because if the applicant has been unable to meet all of his financial obligations in the past, it raises concerns about his ability to do so in the future.

In addition, the attached memos from Newman dated 6/14/2010 and 3/2/2010 describe the financial viability concerns associated with locating a cemetery at this site, and request that the applicant be required to present a business plan fully describing the costs to develop and run the proposed cemetery along with the projected income, especially how the applicant plans to meet any projected shortfalls. Without a solid business plan, the proposed cemetery is likely to become a public nuisance which would become a permanent financial burden to the County.

The applicant also has a documented history of bankruptcies and disputes related to property development. Although the multiple bankruptcies and disputes experienced by the applicant in the past ten years have since been resolved or are in the process of being resolved, these repeated examples make the likelihood of this project running into similar issues higher than one would want to see for such an irreversible land use as a cemetery. The County should require the applicant to file updated financial statements in addition to those which were initially submitted shortly after the initial permit application (December 2005), due to these subsequent and serious financial issues, which include:

- Almaden Associates LLC (applicant is the principal owner) petitioned for voluntary Chapter 11 bankruptcy when unable to restructure Mechanics Bank loans on real property (case no. 10-41903, filed 2/2010, closed 7/2012; the attached memo from Newman dated 6/17/2010 lists earlier actions related to this matter). Almaden Associates went into Chapter 11 bankruptcy due to claims from Contra Costa County, Alameda County, and Broward County (Florida) regarding unpaid real and personal property taxes and also due to claims from Mechanics and two other banks on other real estate owned by Almaden Associates.
- River Island Farms Inc. (wholly owned by applicant) petitioned for voluntary Chapter 11 bankruptcy when one of its properties was foreclosed on by Gibraltar Private Bank (case no. 11-15410-BKC-RBR, filed 2/2011; ongoing as of 1/9/2013). The filing stated: "This dispute centers on Gibraltar's entitlement to default interest and its calculation. The amount of default interest is impacted by a judgement in the sum of \$6,000,000 obtained by Gibraltar on a portion of the overall debt owed by the Debtor (River Island) to Gibraltar." River Island was also indebted to Eurotrade Short Term Loans Ltd.
- Self-Storage of Walnut Creek, 2690 N. Main St, Walnut Creek, petitioned for voluntary Chapter 11 bankruptcy (case no. 10-46516, filed 6/2010, closed 8/2010; applicant signed the filing as the "President of Managing Member"). This facility was also listed in the River Land Farms bankruptcy described above as one of the real properties owned by the applicant "that generate a substantial positive monthly cash flow," with no mention of its bankrupt status. This facility is now (January 2013) called Central Self-Storage and is owned and run by Security Public Storage.
- Earl Anthony Bowling, Inc. versus Corrie Development Corporation and Dublin Land Company (2003). According to the Willamette Law Online Dispute Resolution, "Earl Anthony Bowling (Anthony) leased a piece of property from Dublin Land (DLC), and the lease contained a right-of-first-refusal provision. In spite of this provision, DLC sold the property to Corrie Development Corp (Corrie). Anthony opposed the sale, but settled with DLC through private mediation, without filing a complaint in court. Their agreement provided that Corrie would pay certain expenses, and contained a provision that any party may enforce the agreement under California Code of Civil Procedure §664.6 or any other procedure permitted by law. Corrie did not pay the designated expenses. DLC filed a motion to enforce the settlement pursuant to section 664.6. Corrie opposed the motion, and claimed enforcement of a settlement under section 664.6 requires "pending litigation" between the parties. At the time of settlement, there was no "pending litigation" between Anthony and DLC. The court held the statutory language

of “pending litigation” is to be construed literally. There was no unresolved dispute between the parties at the time of mediation; therefore, the enforcement provision in the mediated agreement was ineffective.” Although the applicant was within his rights in following the letter of the law, he seems to have ignored the original intent of the agreement to treat all parties fairly.

- e. Criterion (5): “The proposed cemetery is not consistent with the general plan of the county or the orderly development and growth of the county.”

Our DEIR comments (Letter from Newman 10/28/2011) describe how the proposed cemetery is not consistent with the Contra Costa general plan.

In addition, the proposed cemetery would “adversely affect the orderly development of property within the county,” as the applicant himself noted in the “Project Description” submitted by Corrie Development Corporation to Mr. Dennis Barry (7/10/2002), noting that “locating a cemetery on this strategically-located property would dramatically limit any further growth beyond the designated Urban Limit Line in the County. Rather than encourage residential development, a cemetery use for this site would be decidedly growth limiting.” While many people want to preserve the open space nature of the Tassajara Valley, it is not right for one developer to unilaterally limit the options for the entire valley, as would happen if this large, urban-scale cemetery were allowed to be built. In addition, this large, urban development would make it difficult if not impossible to avoid piecemeal development of the Tassajara Valley.

- f. In addition to the specific cemetery-related criteria from section 88-2.404 listed above, Contra Costa County ordinance 26-2.2008 also lists standards for conditional use permits. While most of these standards are similar to the criteria listed above, item (3) in section 26-2.2008 states that before granting the permit, the planning agency shall find “that it shall not adversely affect the preservation of property values and the protection of the tax base within the county.”

However, it is well-known that property values of land near cemeteries is lower than for comparable properties located elsewhere, as was shown in July 2012 when Peace Lutheran Church, located at 3201 Camino Tassajara in Danville, proposed building a columbarium (a wall to store cremated remains) and local residents strongly protested. In an article in the San Ramon Express News (7/24/2012), a real estate agent stated that “the value of a home near a cemetery can decrease \$100,000,” while a second realtor added that many people living in the area “have differing cultural beliefs that prevent them from living near cemeteries or like institutions.” In addition, the applicant told Roz Rogoff when she interviewed him for her San Ramon Express blog (11/22/2010), “Nobody wants to live near a cemetery.” These comments show that the drop in property

values caused by a cemetery would definitely “adversely affect the preservation of property values” and lower the tax base within the county.

4. **The project violates California Health and Safety Code 8252**, which states: “It is unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within this state except by means of a corporation or limited liability company duly organized for these purposes.”

The January 10, 2006 memo from P/A Design Resources, Inc., to Ryan A. Hernandez, Senior Planner, states that “Corrie Development Corporation, a private California corporation, is seeking issuance of a Land Use Permit **to develop and operate an** endowment-care new cemetery on a 221.66 +/- acre site ...” (bold added). But Corrie Development Corporation has no past experience in building or running a cemetery, and was not “duly organized” for the purposes of engaging in or transacting any of the businesses of a cemetery. For these reasons, we believe that it is unlawful for Corrie Development Corporation to do so, and they should not be allowed to proceed with the cemetery project.

5. **The applicant is attempting to sell the proposed cemetery to others in violation of Contra Costa Ordinance 88-2.208**, which states: “No permit shall be assignable before the actual establishment of the cemetery or extension of an existing cemetery, nor shall the permit be used by any person other than the applicant or applicants in the establishment of a cemetery or extension of an existing cemetery.”

According to the bankruptcy documents for River Island Farms, Inc. filed in Florida (case no. 11-15410-BKC-RBR, filed 1/5/12), page 7, the applicant owns “a property (75% owned) located in Danville, California known as Creekside Memorial Park in the process of development as the largest (140,000 burial plots) private cemetery located in the East Bay, California area. Final entitlement approvals are expected by April, 2012 and negotiations are in process to sell the cemetery to the five local cities surrounding the property. Mr. Corrie’s interest in this property is valued in the moderate eight figures.”

How can the applicant be negotiating to sell the cemetery before the permit has even been obtained, especially when the county ordinance clearly states that “no permit shall be assignable before the actual establishment of the cemetery”?

6. **The applicant has not provided the names and addresses of all persons owning any part of the property proposed to be used as a cemetery**, in violation of Contra Costa Ordinance 88-2.402 (b)(1). The only owner listed is Corrie Development Corporation, yet in the bankruptcy documents for River Island Farms cited above, the applicant only owns 75% of the property. Who owns the other 25%? This information should be included as part of the application and made public before any permitting takes place.

7. Other issues which should be considered by the County in reviewing this permit application are the following:
- a. **This new cemetery is not needed.** Based on expected population growth, death rates, and the increasing choice of cremations rather than full-body burials, the existing cemeteries within 15 miles of this site have more than enough space to handle the anticipated need for the foreseeable future, as analyzed in our memo dated 4/30/2010, included with our DEIR comment letter of 10/28/2011.
 - b. **This site is a poor location for a cemetery.** An ideal site for a cemetery is one that is flat, has plenty of water, and is located close to the people it serves. But this site is mostly hilly, with the only flat area requiring 6 to 10 feet of fill to raise it above the level of the 100-year flood plain; it lacks water; and it would not be close to the people it would serve since it is not in the Highway 680 corridor. The site would require extensive modification, including initial grading of over 500,000 cubic yards, affecting 77 acres and destroying a highly visible ridgeline, in addition to requiring ten or more new wells to be drilled. These modifications would require huge initial expenditures which would not be required at a more suitable location. It is not financially responsible to accept such unnecessary risk for a cemetery, a permanent and irreversible land use, especially since a new cemetery is not even needed.
 - c. **It is not possible to mitigate the scope and risk of the project** by developing it in a phased approach, since the project plans require that all 77 acres of grading, including destroying the highly visible ridgeline, be done first.
 - d. **There are no economic, legal, social, technological or other benefits** of the project which outweigh the potentially significant unavoidable adverse environmental impacts described in the Draft Environmental Impact Report.

To conclude, as a result of these violations and the proposed project's many environmental flaws, combined with the facts that a new cemetery is not needed and that there are no economic, legal, social, technological or other benefits of the proposed cemetery, the project's request for a special use permit should and must be denied by the County.

Bill and Holly Newman

(Attachments)

cc. Mr. Christopher Sproul, Environmental Advocates (via e-mail)

Appendix 1: Applicable Contra Costa County Ordinance Codes

Source:

<http://library.municode.com/index.aspx?clientId=16286&stateId=5&stateName=California&customBanner=16286.jpg&imageclass=L&cl=16286.txt>

Title 2 – Administration

Division 26 – Commissions, Agencies and Boards

Chapter 26-2 – Planning Agency

26-2.1602 - Application—Generally.

Application for rezoning, conditional use, variance, special permits or any other matter designated to come before the planning agency shall be made to the planning department.

(Ord. 1975: prior code § 2203: Ord. 917).

26-2.2008 - Variance, conditional use and special permits—Conditional use permit standards.

An application for a conditional use permit is an application to establish a conditional land use within a land use district which does not allow establishment by right, but does allow the granting of a land use permit after a public hearing. The division of the planning agency hearing the matter either initially or on appeal, shall find the following before granting the permit:

- (1) That the proposed conditional land use shall not be detrimental to the health, safety and general welfare of the county;
- (2) That it shall not adversely affect the orderly development of property within the county;
- (3) That it shall not adversely affect the preservation of property values and the protection of the tax base within the county;
- (4) That it shall not adversely affect the policy and goals as set by the general plan;
- (5) That it shall not create a nuisance and/or enforcement problem within the neighborhood or community;
- (6) That it shall not encourage marginal development within the neighborhood;
- (7) That special conditions or unique characteristics of the subject property and its location or surroundings are established. Failure to so find shall result in a denial.

(Ord. 1975: prior code § 2204.40: Ord. 917).

Title 8 – Zoning

Division 82 – General Regulations

Chapter 82-4 Definitions

82-4.218 - Cemetery.

"Cemetery" means land which is used or dedicated for any one, or a combination of more than one, of the following land uses:

- (1) A burial park for earth interments;
- (2) A mausoleum for crypt or vault interments;
- (3) A columbarium for cinerary interments.

(Ords. 1781, 1760, 1759, 1569, 1513, 1469: prior code § 8102(mm); Ords. 1269, 1264, 1224, 939, 933, 382).

Division 84 – Land Use Districts

Chapter 84-80 A-20 Exclusive Agricultural District

84-80.404 Uses with Land Use Permit [in A-20 District]

[showing subsections (12) through (17) which are not allowed in A-80 District]

(12) Dude ranches, riding academies, stables, dog kennels.

(13) Hospitals, eleemosynary and philanthropic institutions, convalescent homes, and animal hospitals.

(14) Churches, religious institutions, parochial and private schools, including nursery schools.

(15) Community buildings, clubs, activities of a quasi-public, social, fraternal or recreational character.

(16) Medical and/or dental offices and clinics.

(17) Boat storage area within one mile by public road of a public boat launching facility.

Chapter 84-84 A-80 Exclusive Agricultural District

84-84.204 Purpose. The purpose of this chapter's regulations is to provide and protect areas for agricultural uses by preventing the establishment of urban and other incompatible land uses thereon. (Ord. 79-108).

84-84.402 Conform to A-20 district.

Except as specified, the A-80 district is established and administered conformably with all the provisions of Chapter 84-80 on A-20 districts. (Ord. 79-108).

84-84.404 Differences from A-20 district.

The following items for A-80 districts are different from those for A-20 districts:

(1) Uses with land use permit. No land use permits may be issued in the A-80 district for the uses listed in subsections (12) through (17) of [Section 84-80.404](#)

(2) Area, width and depth. No building or other structure permitted in the A-80 district shall be erected or placed on a lot smaller than eighty acres in area, but there are no lot width or depth requirements.

Division 88 - Special Land Uses
Chapter 88-2 Cemeteries

88-2.208 Permit – Assignment. No permit shall be assignable before the actual establishment of the cemetery or extension of an existing cemetery, nor shall the permit be used by any person other than the applicant or applicants in the establishment of a cemetery or extension of an existing cemetery.

88-2.402 Application – Information Requirements

- (a) Any person desiring to obtain issuance of a permit required by this chapter shall file a written application with the planning commission, which shall administer this chapter.
- (b) The president and the secretary of the corporation which will operate the proposed cemetery and the owner or owners of the land to be included in the cemetery shall sign and verify the written application for a permit. The application, in addition to any other matter required by the planning commission, shall set forth in separate paragraphs or in attached exhibits the following information:
 - (1) The names and addresses of all persons owning any part of the property proposed to be used as a cemetery;
 - (2) The names and addresses of the officers and directors of the corporation which will operate the cemetery;
 - (3) A map showing the exact location, exterior boundaries, and legal description of the property proposed to be used as a cemetery; the location and names of all public roads located within one-half mile from the property; the elevation in feet above sea level of the highest and lowest points on the property;
 - (4) A financial statement of applicant showing the financial ability of applicant to establish, care for, and maintain the proposed cemetery in a manner to prevent it from being or becoming a public nuisance;
 - (5) A statement setting forth whether the cemetery is to be established as an endowment-care or nonendowment-care cemetery and, if an endowment-care fund is to be or has been created, the amount then on hand and the method, scheme, or plan of continuing and adding to the fund to show that the cemetery will be maintained so as not to become a public nuisance.

88-2.404 Application – Action by board of adjustment or board of supervisors.

- (a) In granting any permit, the board of adjustment, or, on appeal, the board of supervisors shall review the location, design, and layout of the proposed cemetery and may condition the permit on requirements as to design, location, layout screening, and design of entrances and exits as the board of adjustment or the board of supervisors finds reasonably necessary to protect the health, safety, and welfare of the people of the county and to protect property values and the orderly and economic development of land in the neighborhood.

- (b) A permit shall be denied if the board of adjustment or, on appeal, the board of supervisors finds that:
- (1) The establishment or maintenance of the proposed cemetery or the extension of an existing cemetery will or may jeopardize or adversely affect the public health, safety, comfort, or welfare; or
 - (2) The establishment, maintenance, or extension will or may reasonably be expected to be a public nuisance; or
 - (3) The establishment, maintenance, or extension will tend to interfere with the free movement of traffic or with the proper protection of the public through interference with the movement of police, ambulance, or fire equipment and thus interfere with the convenience of the public or the protection of the lives and the property of the public; or
 - (4) The applicant, through the proposed endowment fund or otherwise, cannot demonstrate adequate financial ability to establish or maintain the proposed cemetery so as to prevent the proposed cemetery from becoming a public nuisance; or
 - (5) The proposed cemetery is not consistent with the general plan of the county or the orderly development and growth of the county.

88-2.602 Uses – Incidental. The following uses of the premises are authorized as incidental uses in connection with the operation and maintenance of a cemetery:

- (1) An office building for administration of cemetery affairs;
- (2) Maintenance sheds or buildings for storage of equipment and supplies used in connection with the maintenance and operation of the cemetery grounds;
- (3) Greenhouse for the propagation of plants used in connection with maintenance of the cemetery grounds;
- (4) Caretaker's residence. (Ord. 1513; prior code Section 8317)

88-2.604 Uses – Permittable. In addition the uses included within the definition of "cemetery" contained in Section 82-4.218, land use permits may be granted, at the time of initial application or by subsequent application, pursuant to the provisions of Sections 26-2.1602 and 26-2.208 [note – there is no 26-2.208 but there is a 26-2.2008] for the following uses:

- (1) Crematory or calcinatory;
- (2) Mortuary;
- (3) Sale of markers;
- (4) Sale of caskets;
- (5) Sale of flowers or decorations;
- (6) Manufacture and sale of liners and/or vaults. (Ord. 1513: prior code Section 8318).

Appendix 2: Applicable State of California Health and Safety Codes

Source: <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=hsc>

Division 7. Dead Bodies.

Part 1. General Provisions.

Chapter 1. Definitions. Sections 7000-7025.

Section 7003. “Cemetery” means either of the following:

- (a) Any of the following that is used or intended to be used and dedicated for cemetery purposes:
 - (1) A burial park, for earth interments.
 - (2) A mausoleum, for crypt or vault interments.
 - (3) A crematory and columbarium, for cinerary interments.
- (b) A place where six or more human bodies are buried.

Division 8. Cemeteries.

Part 3. Private Cemeteries.

Chapter 1. General Provisions. Sections 8250-8253.

Section 8252. It is unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within this state except by means of a corporation or limited liability company duly organized for these purposes.

Appendix 3: Attachments documenting issues with the proposed cemetery

Newman 6/17/2010 - Newman, Bill and Holly, June 17, 2010, to Demian Hardman, Contra Costa County Department of Conservation and Development, Applicant for proposed Creekside Memorial Park Cemetery, County File No. LP 052096.

Newman 6/14/2010 – Newman, Bill and Holly, June 14, 2010, to Demian Hardman, Contra Costa County Department of Conservation and Development, Financial viability concerns with the proposed Creekside Memorial Park Cemetery, County File No. LP 052096.

Newman 3/2/2010 – Newman, Bill and Holly, March 2, 2010, to Demian Hardman, Contra Costa County Department of Conservation and Development.