

California Native Plant Society

East Bay Chapter

P.O. Box 5597, Elmwood Station, Berkeley, CA 94705

November 16, 2011

Demian Hardman
Contra Costa County
Department of Conservation and Development
651 Pine Street, 4th Floor
Martinez, CA 94553

County File #: LP052096

Dear Mr. Hardman:

The California Native Plant Society, East Bay Chapter (EBCNPS), appreciates the opportunity to comment on the *Draft Environmental Impact Report (DEIR) for the proposed Creekside Memorial Park Cemetery*. The California Native Plant Society is a statewide non-profit organization that works to protect California's native plant heritage and preserve it for future generations. The Society's mission is to increase the understanding and appreciation of California's native plants and to preserve them in their natural habitat. We promote native plant appreciation, research, education, and conservation through our 5 statewide programs and 33 regional chapters in California. The East Bay Chapter covers Alameda and Contra Costa Counties and represents some 1200 members.

Pursuant to the mission of protecting California's native flora and vegetation, EBCNPS submits the following comments for the DEIR:

General Considerations

EBCNPS has published a Guidebook to the Botanical Priority Protection Areas of the East Bay. The County should have a copy of this guidebook on file as it was handed out at the May 16th 2011 scoping meeting for the proposed "New Farm" development which is being planned just north of this proposed cemetery development. These fifteen protection areas (BPPAs) have been selected as those areas within Alameda and Contra Costa Counties that contain high value botanical resources that should be protected. The guidebook was created with the expert advice of many professional botanists to aid city and county planners in locating important native plant species and communities. The proposed project is located within the "East Dublin and Tassajara" BPPA and is thus of major concern to EBCNPS. This area is recognized by CNPS for priority protection because it contains one of the last remaining matrices of grasslands and vernal pools that once characterized the greater Livermore Valley. The alkaline valley bottoms and Northern Claypan Vernal Pools of this area support rare plant species including Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*), San Joaquin spearscale (*Atriplex joaquiniana*) and Saline clover (*Trifolium depauperatum* var. *hydrophilum*) as well as locally rare plant species (see Dianne Lake's EBCNPS rare plants list cited in DEIR). Among these species, Congdon's tarplant and San Joaquin spearscale (both CNPS list IB) have been identified on site and will be directly impacted by this project.



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Rampant development of the areas surrounding this BPPA has made conservation of these sensitive natural communities even more important.

Specific Considerations

- Issues with Cemetery Location -

EBCNPS disagrees with the DEIR's description on page 2.0-15 of the "urgent need for additional cemetery space" in the Tri Valley Area. The April 30th 2010 letter to the planning department from Bill and Holly Newman points out the flaws with the applicant's calculations of future cemetery need. Based on the revised figures provided in the letter, the need for a 60 acre facility designed for a capacity of 100,000 bodies over the next century seems very limited in this area of the county.

Also, the location of such a large Cemetery facility on the uneven and hilly terrain of this site seems illogical. This site will require filling of a flat area in a flood zone, removal of a hilltop to provide this fill and to create further level land for burial plots, and removal and irrigation of sensitive alkaline habitat containing CEQA protected species that requires a summer dry season to exist. Furthermore, the proposed location currently acts as an important wildlife corridor that if removed, would decrease the habitat value of neighboring Hidden Valley Open Space and the adjacent conservation easements for the Windemere and Alamo Creek developments. The DEIR fails to consider the issue of conservation easement devaluation and fragmentation as part of the "Wildlife Corridors and Habitat Fragmentation" section on page 3.4-22. A location closer to the populations it will serve and on flatter (preferably already irrigated) ground would better suit a cemetery of this magnitude.

- Proposed "Habitat Enhancement" is Inappropriate for the Site -

EBCNPS is concerned that the proposed Habitat Enhancement described in the Conceptual Landscape Plan and illustrated in figures 2.0-6 and 2.0-7 shows too many trees and recommends plantings at too high a density to be supported at this site. Furthermore, this "enhancement" will result in the destruction of 1.19 acres of Alkaline grassland which provides habitat for both the Congdon's tarplant and the San Joaquin spearscale. A further .8 acres of this sensitive natural community would be impacted through construction of the entry road. Due to the destructive nature of this "enhancement," we recommend reconsidering the tree plantings and focusing instead on avoidance of the Alkaline grassland areas of the site or if applicable, enhance the grassland rather than creating an artificial oak woodland and riparian woodland.

- Conceptual Landscaping Plan Concerns -

EBCNPS recommends minimizing irrigation and fertilizer use wherever possible for this project. Irrigation to support ornamental landscaping features such as exotic trees and lawns will have impacts to alkaline habitat beyond the project area. Increased water levels during the summer dry season due to irrigation will favor invasive weeds and could



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potentially affect alkaline habitat in areas beyond the project site. The use of xeriscaping in the upper garden is less harmful than irrigation and could possibly be appropriated in the lower areas in lieu of the proposed irrigated landscaping. EBCNPS recommends that for any landscaping, local ecotypes of native species are used. Using local ecotypes of natives minimizes the possibility of genetic pollution. Using plants with local genetics is especially important for rare natives such as the Congdon's tarplant which many biologists believe is undergoing initial evolutionary divergence in this area (see page 17 of our BPPA guidebook on file with the County). If ornamental species must be used, species that are proven to not be invasive should be selected for use. Also, a weed management plan needs to be included in the EIR since the ground disturbance and irrigation proposed for this project will provide an opportunity for invasive species to colonize the project site, potentially impacting rare natural communities such as the alkaline grassland present in the project area. The potential for this invasion is a significant impact due to this project and it needs to be mitigated for in the EIR.

- Need for Funding and Monitoring Plan for Conservation Easement -

The conservation easement proposed as mitigation for this project's impacts needs a funding and monitoring plan to be considered feasible. To ensure that funding for management and monitoring of this easement is available during and after this project, the EIR should provide a description of how the goals of this easement will be realized, including a funding and monitoring plan.

- Avoidable Special Status Plant Impacts and Inadequate Mitigation -

Two special status plant species (Congdon's tarplant and San Joaquin spearscale) have been identified in areas planned for development. The construction of the entrance road will result in the removal of .8 acres of alkaline habitat where both Congdon's tarplant and San Joaquin spearscale have been identified. A further 1.2 acres of alkaline habitat will be impacted as a result of the proposed "riparian enhancement." The direct impacts to these protected species can be completely avoided if the DEIR takes these rare communities into consideration and moves the entrance road to a less damaging location away from the alkaline area. Similarly, the "riparian enhancement" can be revised to minimize damage to alkaline habitat, providing an opportunity for real habitat enhancement rather than the dense and ecologically infeasible tree planting that is being proposed.

In the event that impacts to these special status species are unavoidable, a replacement ratio of 1:1 is unacceptable. The California Department of Fish and Game recommends a minimum 3:1 ratio of replacement habitat for these species. Transplantation is an unreliable mitigation technique and will be especially infeasible in the case of these plants that require very specific conditions in order to survive. If off-site mitigation is to be provided, the EIR needs to list the potential sites where this mitigation could be implemented and describe what this mitigation will consist of. In order to claim that impacts to these species will be "Less than Significant After Mitigation" the EIR needs to



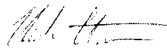
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be revised to provide detailed and feasible mitigation techniques. As it is now, these impacts remain significant and unmitigated.

EBCNPS looks forward to continuing to follow this project and commenting in the future. If you have any questions, please call me at 510-734-0335 or email me at conservation@ebcnps.org

Sincerely,



Mack Casterman
Conservation Analyst
California Native Plant Society, East Bay Chapter



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POLICY ON TRANSPLANTING Adopted December 1989

Native plants, plant communities and their habitats on public and private lands are subject to increasing development and use pressures. Little scientific information is available on the long-term success of transplanting to mitigate impacts on the plants. The preponderance of evidence to date demonstrates that transplanting naturally occurring wild plants does not represent a successful method of long-term conservation.

Therefore –The California Native Plant Society requests all responsible agencies and persons involved with the maintenance of biological diversity and rare plant protection to:

1. Develop and implement alternate strategies of plant and plant community protection that are realistic, well documented through long term monitoring, and aimed at the continued success of establishing and enhancing viable populations of rare plants, plant communities, and their habitats, and
2. Use transplanting of such plants only as a mitigation method of last recourse.

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STATEMENT OPPOSING TRANSPLANTATION AS MITIGATION FOR IMPACTS TO RARE PLANTS

July 9, 1998

The California State Legislature enacted the Native Plant Protection Act (NPPA) in 1977. The NPPA identifies wide-ranging and broad categories of activities on private lands that could result in the take (killing) of state-listed plants. These activities include: (1) agricultural operations or management practices including clearing of land, (2) land clearing for fire control, (3) timber operations in accordance with a legal timber harvesting plan, (4) mining assessment work, (5) performance by a public agency or public utility of its obligation to provide service to the public, (6) removal of listed plants from (a) a canal, (b) lateral ditch, (c) building site, (d) road, or (e) other right of way by the owner of the land. Few land use or management activities fall outside of these categories. Under one interpretation of Section 1913 of the NPPA, landowners who wish to engage in any of the aforementioned activities, and who have been informed by the California Department of Fish and Game (Department) of the presence of state-listed plants on their property, need only provide 10 day notice and give the Department the opportunity to salvage the plants before proceeding. This would be the sole mitigation required for destruction of listed plants or their habitat in these cases.

Recent regulatory proposals by the Department, statements by the California Attorney General, and activities in the courts and the state legislature, signal that NPPA's provisions on transplantation may soon become the major, possibly the only, form of "protection" from unlimited take for all state-listed plant taxa. For these reasons, it has become necessary to review the reasons why reliance on transplantation to conserve state-listed plant species is not only unlikely to succeed, but is likely to contribute to further declines of these taxa, possibly to widespread extinctions. Transplantation is rarely successful in establishing rare plants at new locations. A study by the Department itself (Fiedler, 1991) found that, even under optimum conditions with ample time for planning, transplantation was effective in only 15% of cases studied. Other reviews (e.g. Allen, 1994; Howald, 1996) have found similar problems. There are many reasons for this poor success rate:

1. we often know very little about the biology of rare plants. We may not be aware of all the intricate habitat requirements of each listed species. Rare plants are often specialists that exploit a particular and unusual combination of habitat attributes. They may require a particular soil type, set of pollinators, mycorrhizal fungi or other associate species, aspect, hydrological regime, microclimate or some combination of these or other factors for survival.
2. suitable transplantation or propagation sites may not be available, particularly with only 10 days notice.
3. digging up, transporting, and replanting plants, bulbs, rhizomes or seeds imposes a tremendous stress on a plant. They can easily die in the process.
4. scientifically-tested, reliable methods for salvage, propagation, translocation or transplantation are not available for many rare species.
5. areas where the impacted taxon is already present are often at the carrying capacity of the habitat, and the introduction of transplanted individuals into the existing population will disrupt the equilibrium of that population and will not increase the viability of the taxon.
6. the 10 day notice provision means that landowners can require the Department to salvage plants at any time of the year, including times that are inappropriate for physical disruption of the plant. Annual species may not even be visible at some times of the year.



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Transplantation can also cause problems at the target site. Genetic contamination can occur if the plant being transplanted can exchange genetic material with local taxa. Disturbance at the target site may facilitate invasion by non-native invasive species.

For all of these reasons, the California Native Plant Society (CNPS) does not recognize off-site compensation as appropriate mitigation for project impacts and opposes the use of salvage and transplantation as mitigation for impacts to rare and listed plants (California Native Plant Society Rare Plant Scientific Advisory Committee, 1991). The undersigned individuals, botanical societies and organizations oppose the use of transplantation as the primary means of conservation of rare plant species.

Signed,

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President
California Native Plant Society

Barbara Ertter, Ph.D.
Chair, CNPS Rare Plant Scientific Advisory Committee
Curator of Western North American Flora*
University and Jepson Herbaria
University of California, Berkeley

Ann Dennis, Ph.D.
CNPS Vice President for Rare Plants
Plant Ecologist*
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Carol C. Baskin, Ph.D.
President
Botanical Society of America

*Titles and affiliations are for identification purposes only. This letter does not necessarily represent the positions of the referenced institutions.

Literature Cited

Allen, W. H. 1994. Reintroduction of endangered plants: biologists worry that mitigation may be considered an easy option in the political and legal frameworks of conservation. *Bioscience* 44(2): 65-8.

California Native Plant Society Rare Plant Scientific Advisory Committee. 1991. *Mitigation Guidelines Regarding Impacts to Rare, Threatened and Endangered Plants*. California Native Plant Society, Sacramento, CA.

Fiedler, P. 1991. *Mitigation related transplantation, translocation and reintroduction projects involving endangered and threatened and rare plant species in California*. California Department of Fish and Game, Sacramento, CA. 82 pp.

Howald, A.M. *Translocation as a mitigation strategy: lessons from California*. In: D.A. Falk, C.I. Miller, and M. Olwell eds. *Restoring Diversity: Strategies for Reintroduction of Endangered Plants*. Island Press, Washington, DC.



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Addendum

to CNPS comments on proposed regulations implementing Chapter 6, Article 2 of the California Endangered Species Act (CESA) pertaining to take of listed species incidental to routine and ongoing agricultural activities.

Regarding the definition of routine and ongoing agricultural activities, please note that a recent ruling by the U.S. Ninth Circuit Court of Appeals addressed "normal agricultural activity" in the context of federal regulation of wetland destruction on agricultural lands in California. The Court found that "normal agricultural activity" explicitly did not include (1) activities that bring an area into farming or (2) where modifications to the hydrological regime are necessary. (*Borden Ranch Associates and Angelo K. Tsakopoulos v. U.S. Army Corps of Engineers and U.S. Environmental Protection Agency*, summary Judgement finding for the U.S., Filed June 9, 1998). Although this occurred in a completely different jurisdiction and context than these regulations, the definition of "routine and ongoing" agricultural activities in the Proposal and the ED is clearly inconsistent with this court's interpretation of "normal agricultural activity".

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