APPENDIX K – BIOLOGICAL RESOURCES

BIOLOGICAL RESOURCES REPORT
MT. DIABLO RESOURCE RECOVERY PARK
1300 LOVERIDGE ROAD
PITTSBURG, CONTRA COSTA COUNTY, CA

August 30, 2013

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1.0 INTRODUCTION

This report contains the findings of a reconnaissance-level biological resources assessment that was conducted for the proposed consolidation of the existing 17.5-acre Mt. Diablo Recycling Center and Recycling Center and Transfer Station, and an 18.5-acre property located immediately west and south of the existing recycling center. The newly created 36.0-acre facility will be the site of the expanded Mt. Diablo Resource Recovery Park. The 36.0-acre property constitutes the Study Area for this report.

The project site is located west of Loveridge Road in an industrial area of the City of Pittsburg, Contra Costa County. A project vicinity map (Figure 1) and a site plan (Figure 2) for the proposed project are attached. Highway 4 is approximately 0.5 mile to the south of the project site, and Suisun Bay is approximately 1 mile to the north. The project site is bordered by industrial development to the north, south and east, while an undeveloped property is immediately adjacent to the project site on the west. Kirker Creek, an ephemeral drainage, is located along the southern boundary of the Study Area.

The purpose of this biological resources evaluation is to characterize the habitats that are present within the Study Area, evaluate the impact of the proposed project on biological resources, describe mitigation measures to reduce potential impacts of the project on biological resources, and make recommendations on the need for further surveys needed prior to development. This report was prepared by Mosaic Associates for Garaventa Enterprises.

2.0 PROJECT DESCRIPTION

The proposed project consists of a Conditional Use Permit for the operational expansion and reorganization of the existing Mt. Diablo Recycling Facility (MDRF) and Recycling Center and Transfer Station (RCTS). The expanded facility will be called the Mt. Diablo Resource Recovery Park (MDRRP). The MDRRP will consist of the MDRF, Transfer/Processing Facility, Mixed Construction and Demolition (C&D) Processing Facility, and Organics Processing Facility, which are existing facilities proposed for operational expansion, as well as the proposed development of a Biomass Gasification Unit.

The existing MDRF and RCTS facilities will be expanded by 18.5 acres to include the 3.5-acre former GWF property, the current 5-acre lease area which is already in use by the MDRF, and a proposed 10-acre lease area. The former GWF property has been cleared of previous structures, while the 5-acre lease area is surfaced with compacted gravel and is in use for equipment storage. Proposed uses on the 18.5-acre area will be vehicle and equipment storage. The current 5-acre lease area will also allow commodity bin storage due west of the Material Processing Area. Containerized commodity storage would include roll-off bins full of metal, concrete, dirt, screened fine material, rigid plastics, dry wall, and carpet that have been recovered from the Material Processing Area. The 10-acre lease area will be surfaced with compacted gravel and will continue to drain towards the west. The man-made ditch within the 10-acre lease area will be relocated within the Study Area.

Design of the proposed project will incorporate the applicable Provision C.3 Amendments of the Contra Costa County Clean Water Program's amended National Pollutant Discharge Elimination System (NPDES) Permit.

The project includes the processing of organic materials into compost feedstock and/or anaerobic digestion feedstock. Instead of transporting this anaerobic material feedstock off-site, an anaerobic digestion facility may be sited and operated within the Study Area at a future date.

3.0 METHODS AND LIMITATIONS

Judy Bendix and Grace Vaziri of Mosaic Associates performed a reconnaissance level survey of the 18.5-acre addition on July 26, 2013. Grace Vaziri made an additional reconnaissance-level survey of the rest of the 36.0-acre Study Area on August 20, 2013. The site was surveyed on foot during daylight hours. Plant and animal species detected during the site visit were noted, and are described below in Section 3.1. Surrounding habitats outside the Study Area were scanned with the use of binoculars, but were not physically surveyed.

This biological assessment is based on an evaluation of the proposed project as described on a set of site development plans prepared by Roger J. Wilson, architect, including Figure 2. Sources of information used in this analysis included a review of aerial photos from Google Earth Pro, topographic maps, the East Contra Costa County HCP/NCCP, the Columbia Solar East Contra Costa County HCP Application including a wetland delineation (TRC November 27, 2012 revised February 11, 2013), and jurisdictional determination (San Francisco District Army Corps of Engineers, May 14, 2013), and the Mt. Diablo Recycling Center 5 Acre HCP Application and supplemental report concerning species-specific planning and preconstruction survey requirements (Monk & Associates, September 24, 2008).

4.0 EXISTING CONDITIONS

4.1 Setting

The Study Area consists of a mix of developed uses and undeveloped areas. Figure 3 provides an aerial photograph of the project site showing the existing land use and surrounding areas, and habitats as described below. Acreages of the different land cover types for the Study Area can be found below in Table 1.

The existing 17.5-acre portion of the Study Area is currently developed as the MDRF and RCTS. As shown on Figure 2, the site contains two large interconnected industrial buildings immediately adjacent to Loveridge Road that have a total floor area of 190,804 square feet. Just south of these buildings is the main public parking area, which is accessed by a roadway that connects with Loveridge Road and curves to the northwest around the parking area. This parking area contains a diesel fueling facility. The roadway continues north along the west side of the existing buildings, providing access to the public scales and scale house and self-haul drop-off area. Just south of the parking area is the Green Material Processing Operations Area. This area is unpaved and contains large stockpiles of unprocessed and processed plant materials and equipment such as wheel loaders. To the west is the Mixed Construction and Demolition (C&D)

Processing Area, which contains equipment for sorting and processing C&D materials, a large grinder, two scales and a second scale house, large stockpiles of unprocessed and processed C&D materials, and other equipment for loading and transport.

A second access point from Loveridge Road is located at the northern end of the site, where additional parking is also provided. A third access point from Loveridge Road is located at the southern end of the site and provides access to an adjacent property and a fire lane that stretches to the western boundary. Additionally, a railroad spur is located along the northwestern boundary of the site connecting with the BNSF line located immediately north of the site. A total of 79 parking spaces are currently provided on the project site. Landscaping and/or slatted chain link fencing provide screening along the southern and eastern boundaries of the processing areas, as well as along a portion of the western boundary.

There is a monument sign located at the main entrance to the facility as well as numerous informational, directional and cautionary signs throughout the project site. Pole-mounted lighting is provided along the access road and within the parking area, processing areas, and other outdoor portions of the site.

On-site drainage is controlled through the use of drainage ditches surrounding the perimeter of the facility that direct surface water flows toward the stormwater retention basin located adjacent to the operations pad. The ditches include a landscaped stormwater treatment planter located along the eastern side of the MDRF building and a landscaped stormwater pretreatment bioswale located along the western boundary of the project site (see Figure 2).

The 18.5-acre area to be added to the existing facility includes the former 3.5-acre GWF property, which is mostly paved and has been cleared of previous structures. It is situated directly north of Kirker Creek and supports a landscaped perimeter of non-native eucalyptus trees. The proposed 10-acre lease area is vacant land, including 1.66 acres of unpaved roads and 1.1 acres of a lined, man-made detention basin classified as urban landcover (see Figure 3), 7 acres of ruderal grassland, and a 0.24-acre earthen man-made drainage ditch.

Table 1. Acreages of Existing Land Cover Types in the Study Area

Landcover	Area (acres)
Urban	23.11
Ruderal Grassland	12.00
Kirker Creek	0.65
Man-made drainage ditch	0.24
Total	**36.00**

4.2 Ruderal Grassland

The project site contains 12 acres of ruderal grasslands, of which 12 acres will be subject to permanent disturbance. This acreage includes 5 acres currently covered with gravel that was

previously permitted under the ECCC HCP/NCCP for temporary impacts and 7 acres of ruderal grassland that are currently unused.

The ruderal grasslands on site consist of sparse nonnative vegetation dominated by a mixture of annual grasses and weeds, including black mustard (*Brassica nigra*), Italian thistle (*Carduus pycnocephalus*), stinkweed (*Dittrichia graveolens*), pepperweed (*Lepidium latifolium*), wild radish (*Raphanus sativus*), softchess (*Bromus hordeaceus*), yellow star thistle (*Centaurea solstitialis*), and rat-tail fescue (*Vulpia myuros*). The project site was previously used as a landfill and has on occasion been subject to extensive disturbance. Debris piles, old pipes, and twisted rebar are found throughout the site. The predominant substrate is a loose mixture of rock and non-native, sandy soils.

Small mammal burrows are widely distributed and abundant throughout the ruderal areas. Small mammals observed included black-tailed jackrabbit (*Lepus californicus*), cottontail rabbit (*Sylvilagus bachmani*), and California ground squirrel (*Spermophilus beecheyi*). Western fence lizards (*Sceloporus occidentalis*) were observed in rock and debris piles. Field and meadow birds observed included Brewer's blackbird (*Euphagus cyanocephalus*), black phoebe (*Sayornis nigricans)*, and barn swallow (*Hirundo rustica*). Red-tailed hawk (*Buteo jamaicensis*) was the only predacious bird observed during the site visit. Coyote (*Canis latrans*) sign and trails were observed as well.

4.3 Urban Land Cover

The project site includes 23.11 acres of urban land cover. The urban land cover is comprised of a former power plant operated by GWF Power Systems, an old and apparently unused detention basin in the northern one-third of the site, the buildings and development currently being used as the operating facility of the Mt. Diablo Recycling Facility, a vacant area used for stockpiling ground aggregate, , and a number of 20 foot-wide access roads connecting the features of the site.

The former power plant is directly south of the current Mt. Diablo Recycling Facility. The northern, eastern, and western boundaries of the GWF sites are planted with non-native eucalyptus trees as well as two Fremont cottonwood (*Populus fremontii*) trees. These trees represent potential nesting sites for various passerine birds as well as Swainson's hawk (*Buteo swainsonii*). At the time of the July site visit, the GWF site was undergoing demolition of the power plant that used to occupy the site, and several debris piles and small standing buildings were present. Other than the trees, vegetation in the GWF site is ruderal and includes milk thistle (*Lactuca serriola)*, butcher grass (*Conyza canadensis)*, ripgut brome (*Bromus diandrus*), common mallow (*Malva neglecta*), yellow star-thistle and telegraph weed (*Heterotheca grandiflora)*. Northern mockingbirds (*Mimus polyglottos*) were observed perching and flying through the site.

North of the GWF site is the Mt. Diablo Recycling Facility. The Mt. Diablo Recycling Facility includes the proposed Biomass Gassification Unit, a Mixed C&D Processing Area, a Green Material Processing Operations Area, the Mt. Diablo Recycling Center and a Recycling Center and Transfer Station. These areas are all currently developed and supporting the operations of the

MDRF. Rock doves (*Columba livia*) and Brewer's blackbirds were observed roosting and flying through these developed, urban portions of the site.

4.4 Kirker Creek and Man-made Drainage Ditch

The site includes a section of Kirker Creek located directly to the south of the former GWF power plant. Kirker Creek is an ephemeral third-order creek. Although Kirker Creek is normally dry April through November, irrigation and urban runoff keeps some areas of the creek wet throughout the year. An existing roadway is located north of the creek, and the northern bank of the creek within the Study Area is lined with rock riprap. The streambed is vegetated with both native and non-native vegetation. There was no standing water in the streambed at the time of the survey, but a small volume of water was observed flowing into the channel from a drainage pipe on the mid-slope of the north bank, just within the western boundary of the Study Area.

A mixture of native and nonnative vegetation grow in Kirker Creek. The dominant cover at the top-of-slope, in the streambed, and along the access road to the north of the channel is wild oat (*Avena fatua*) telegraph weed, prickly Russian thistle (*Salsola tragus*) and common mallow (*Malva neglecta*). Several castor bean shrubs (*Ricinus communis*) were present on the riprapped bank. In the streambed underneath the area of water discharge from the GWF site is a thickly vegetated stand of wild oat, umbrella sedge (*Cyperus eragrostis),* curly dock (*Rumex crispus*), dallisgrass (*Paspalum dilatatum),* rough cocklebur (*Xanthium strumerium*), peppergrass, and American sloughgrass (*Bechmannia syzgachne*). One Northern mockingbird was observed perching in Kirker Creek.

No development of Kirker Creek is proposed. While riparian trees and shrubs west and east of the Study Area provide habitat for a variety of wildlife species, within the Study Area, the limited and ruderal nature of the vegetation established along the creek limit its habitat value.

Near the northern boundary of the site, surrounded by ruderal grassland, is a man-made drainage ditch. The earthen drainage ditch conveys storm water runoff from the recycling facility. Approximately 650 linear feet of the ditch are present within the Study Area. Runoff enters the ditch from a culvert at the west edge of the recycling facility and flows west until the ditch empties into a seasonal freshwater marsh approximately 0.25-mile west of the Study Area. Vegetation inside the ditch was sparse, but included black mustard (*Brassica nigra),* ripgut brome, wild oat, Italian thistle (*Carduus pycnocephalus),* fiddle dock (*Rumex pulcher),* rabbitsfoot grass (*Polypogon monspeliensis*), umbrella sedge, and several large clumps of peppergrass rooted in the bottom of the ditch. Also noted in the drainage ditch were carcasses of birds and rabbits, which indicates the presence of coyote. The drainage ditch will be relocated within the Study Area.

5.0 SPECIAL-STATUS SPECIES AND NATURAL COMMUNITIES

Several species of plants and animals within the state of California have low populations, limited distributions, or both. Such species may be considered "rare" and are vulnerable to extirpation as the state's human population grows and the habitats these species occupy are converted to agricultural and urban uses. State and federal laws have provided the California Department of

Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) with a mechanism for conserving and protecting the diversity of plant and animal species native to California. A number of native plants and animals have been formally designated as threatened or endangered under state and federal endangered species legislation. Others have been designated as "candidates" for such listing. Still others have been designated as "species of special concern" by the CDFW. The California Native Plant Society (CNPS) has developed its own set of lists of native plants considered rare, threatened or endangered (CNPS 2010). Collectively, these plants and animals are referred to as "special-status species."

5.1 Special-status Plants

The extensive development and history of past disturbance within the Study Area precludes the potential presence of special-status plants.

5.2 Special-status Animals

Potentially occurring special-status animals include burrowing owl (*Athene cunicularia*), Swainson's hawk, and golden eagle (*Aquila chrysaetos*). All three species are covered by the ECCC HCP/NCCP. The site does not lie within the range of the San Joaquin kit fox (*Vulpes macrotis mutica*), nor does it provide suitable habitat for other special-status species such as the California tiger salamander (*Ambystoma californiense*) or California red-legged frog (*Rana draytonii*). The absence of suitable breeding habitat for California tiger salamander and California red-legged frog on site or in the surrounding landscape, and the extensive development surrounding the Study Area effectively isolate it from suitable habitat for these species in the region.

Western Burrowing Owl

Western burrowing owl is a California Species of Special Concern. They require habitat with open, well-drained terrain, sparse vegetation, and underground burrows available for use throughout their entire life cycle (Klute et al. 2003). The birds most commonly live in burrows created by California ground squirrels. Burrowing owls feed opportunistically on arthropods, small mammals, birds, amphibians, and reptiles. The presence of California ground squirrel burrows and low-growing ruderal grassland habitat onsite provide suitable nesting and foraging habitat for burrowing owls. One burrowing owl was observed approximately 1,000 feet west of the Study Area during a planning survey for the Columbia Solar project on October 30, 2012 (TRC November 27, 2012 revised February 11, 2013).

No burrowing owls or sign (whitewash, pellets or feathers associated with a burrow) were observed during the present survey.

Swainson's Hawk

The Swainson's hawk is a state listed threatened species pursuant to the California Endangered Species Act, Title 14, California Code of Regulations. The hawk is generally a summer visitor to California, however, there is a small population of Swainson's hawks that remain resident in California year-round. Swainson's hawks inhabit open to semi-open areas at low to middle elevations in valleys, dry meadows, foothills, and level uplands (Kochert 1986). It nests almost exclusively in trees and will nest in almost any tree species that is at least 10 feet tall and located

along drainages and in wetlands, or in windbreaks in fields and around farmsteads. Swainson's hawks have been documented nesting in cottonwoods, oaks, eucalyptus, and black walnut (Schlorff et al. 1984, CNDDB records). Foraging habitats are generally low-growing row or field crops, dry-land and irrigated pastures, and open habitats with short vegetation and small mammals. Agricultural areas are often preferred over natural grassland habitats because of the increased presence of prey in these artificially-constructed areas. The trees on-site and along Kirker Creek off-site may provide marginally suitable nesting habitat for Swainson's hawk. One Swainson's hawk was reported to have been observed by URS biologists on April 26, 2010, and reported in the July 8, 2010 ECCC HCP/NCCP Planning Survey Report for Site L-A Material Stockpile project (TRC November 27, 2012 revised February 11, 2013). The approximate location reported in the TRC report was approximately 1 mile northwest of the Study Area.

No Swainson's hawks were observed during the present survey.

Golden Eagle

The golden eagle is a fully protected bird species under state and federal law. It occurs across North America and is a resident breeder within the ECCC HCP/NCCP inventory area. Golden eagles use nearly all terrestrial habitats of the western states except densely forested areas, and tend to favor open grasslands and oak savannah. The birds nest in secluded cliffs with overhanging ledges, and large trees including oak species, pine, eucalyptus, and western sycamore. (Hunt et al. 1998). Golden eagles prey mostly on rabbits, hares, and rodents but will also consume other vertebrates and carrion. The ruderal grassland on-site represents potential foraging habitat for golden eagles, and the large, non-native eucalyptus trees on the perimeter of the GWF site may represent potential, if marginal, nesting habitat for Golden eagles. Two golden eagles (one adult, one immature) were observed by TRC biologists during surveys for the Columbia Solar project, approximately 850 feet west of the Study Area (TRC November 27, 2012 revised February 11, 2013). The adult was reported to have been observed perching on the fence along the southern edge of the project site, while the immature eagle was reported to have circled the trees south of the site. No courtship or nesting behaviors were reported by the TRC biologists.

No golden eagles were observed during the present survey.

5.3 Special-Status Natural Communities

Special-status natural communities are those that are considered rare in the region, support special-status plant or wildlife species, or receive regulatory protection (*i.e.*, Section 404 and 401 of the Clean Water Act, the CDFW Section1600 *et seq.* of the California Fish and Game Code, and/or the Porter-Cologne Act). In addition, the California Natural Diversity Data Base (CNDDB) has designated a number of communities as rare; these communities are given the highest inventory priority (Holland 1986, CDFG 2011).

The delineation of waters of the U.S. for the Columbia Solar project that was prepared by TRC (December 2012) for the western portion of the Study Area, including the section of the man-made ditch on site, and the jurisdictional determination by the USACE concluded that there were no wetlands or other waters present within the area surveyed that were subject to the USACE

authority under Section 404 of the federal Clean Water Act. Based on observations made during the current site survey, the only potentially jurisdictional feature within the Study Area (not included in the TRC delineation) is the section of Kirker Creek south of the former GWF facility. Since no impacts to Kirker Creek are proposed, a delineation of waters of the U.S. for this feature has not been conducted.

Other than the section of Kirker Creek within the Study Area, there are no special-status natural communities present in the Study Area.

6.0 RELEVANT GOALS, POLICIES, AND LAWS

6.1 Threatened and Endangered Species

State and federal "endangered species" legislation has provided CDFW and the USFWS with a mechanism for conserving and protecting plant and animal species of limited distribution and/or low or declining populations. Permits may be required from both the CDFW and USFWS if activities associated with a proposed project will result in the "take" of a listed species. "Take" is defined by the state of California as "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill" (California Fish and Game Code, Section 86). "Take" is more broadly defined by the federal Endangered Species Act to include "harm" (16 USC, Section 1532(19), 50 CFR, Section 17.3). Furthermore, the CDFW and the USFWS are responsible agencies under the California Environmental Quality Act (CEQA). Both agencies review CEQA documents in order to determine the adequacy of their treatment of endangered species issues and to make project-specific recommendations for their conservation.

6.2 Migratory Birds

State and federal law also protect most bird species. The Migratory Bird Treaty Act (MBTA: 16 U.S.C., scc. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, their occupied nests and eggs.

6.3 Birds of Prey

Birds of prey are also protected in California under provisions of the State Fish and Game Code, Section 3503.5, (1992), which states that it is "unlawful to take, possess, or destroy any birds in the order Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto." Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered "taking" by the CDFG.

6.4 Waters of the U.S. and State

Section 404 of the Clean Water Act (CWA) of 1972 regulates activities that result in the discharge of dredged or fill material into waters of the U.S., including wetlands. The primary intent of the CWA is to authorize the U.S. Environmental Protection Agency (EPA) to regulate water quality through the restriction of pollution discharges. The U.S. Army Corps of Engineers

(USACE) has the principal authority to regulate discharges of dredged or fill material into waters of the U.S.

Pursuant to Section 401 of the Clean Water Act, an applicant for a federal permit to conduct any activity which may result in discharge into navigable waters in California must provide a certification from the Regional Water Quality Control Board (RWQCB) that such discharge will comply with the state water quality standards (Cal. Code Regs. tit. 23, §§3830 *et seq*.).

Under the Porter-Cologne Water Quality Control Act (Cal. Water Code §§13000-14920), the RWQCB is authorized to regulate the discharge of waste that could affect the quality of the State's waters. "Waste" is broadly defined by the Porter-Cologne Act to include "sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature…." (Cal. Water Code §13050).

The CDFW exercises jurisdiction over wetland and riparian resources associated with rivers, streams, and lakes under California Fish and Game Code Section 1602. The CDFW has the authority to regulate work that will:

- substantially divert, obstruct, or change the natural flow of a river, stream, or lake;
- substantially change or use any material from the bed, channel, or bank of any river, stream, or lake; or
- deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream or lake.

Areas subject to CDFW's jurisdiction under the Fish and Game Code Section 1602 are usually bounded by the top-of-bank or the outermost edges of riparian vegetation.

Within the Study Area, the man-made ditch was determined to be an "isolated" feature, with no apparent connection to interstate or foreign commerce, consistent with the U.S. Supreme Court decision of January 9, 2001, concerning the *Solid Waste Agency of Northern Cook County v. United States Corps of Engineers*, 531 U.S. 159 (2001). Accordingly, the discharge of fill into this ditch would not be regulated under Section 404 of the federal Clean Water Act. The ditch may however be considered as "waters of the State", subject to regulation by the California Regional Water Quality Control Board, San Francisco Bay Region, Central Coast Region, under the Porter-Cologne Water Quality Control Act, as amended (California Water Code § 1300 *et seq*.).

The portion of Kirker Creek within the Study Area that is inundated in a storm of a 2-year magnitude would likely be classified as a "water of the U.S.". This area as well as the banks of the creek would also be considered a "water of the state". The proposed project however, does not entail any construction within Kirker Creek.

6.5 Local Policies

Local policies pertinent to the proposed project are addressed in the ECCC HCP/NCCP. The HCP/NCCP, enacted June 30, 2000, provides regional conservation and development guidelines to protect natural resources. Specific elements addressed by the HCP/NCCP, including creek setback requirements, covered species, avoidance and minimization measures, and natural communities are addressed below in Section 7.

7.0 POTENTIAL IMPACTS AND MITIGATION MEASURES

Impacts of the project and suggested mitigation measures are listed below. Impacts of the project would be rendered less-than-significant with implementation of the mitigation measures described below.

7. 1 Significance Criteria

CEQA Guidelines section 15065 creates certain "mandatory findings of significance" that function as significance thresholds affecting certain biological resources. Pursuant to that section, a project will have a significant environmental effect if the project would:

- Substantially reduce the habitat of a fish or wildlife species
- Cause a fish or wildlife population to drop below self-sustaining levels
- Threaten to eliminate a plant or animal community
- Substantially reduce the number or restrict the range of an endangered, rare or threatened species.

In addition, based upon the criteria presented in Appendix G of the *CEQA Guidelines,* implementation of the proposed project would have a significant impact if it were to cause any of the following:

- A substantial adverse effect, either directly or through habitat modifications, on any special-status species identified as a candidate, sensitive, or special-status species in local or regional plans, policies or regulations, or by the CDFW or USFWS.
- A substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the CDFW or USFWS.
- A substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.
- Substantial interference with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

- Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

The impact analysis contained in this section assumes that the site will be developed in a manner and scale substantially similar to the depiction on Figure 2, Sheet A.1.2 Mt. Diablo Resource Recovery Park: Proposed Site Plan (Roger J. Wilson, July 30, 2013).

7.2 Impacts to Special-Status Plants

The compacted ruderal vegetation found within vegetated portions of the Study Area is significantly disturbed, and the site is too degraded to support covered and no-take plants addressed in the ECCC HCP/NCCP. Similarly, the site does not support suitable habitat for other rare plants that are not covered by the HCP/NCCP. Accordingly, the proposed project would have no impact on special-status plants, and no further surveys or mitigation are required.

7.3 Impacts to Special-Status Animals, Fully Protected Wildlife Species, or Covered Migratory Birds

Impact BIO-1. The eucalyptus and Fremont cottonwood trees within the Study Area and the cottonwood trees along Kirker Creek west of the Study Area provide suitable nesting habitat for the ECCC HCP/NCCP-covered Swainson's hawk, and marginal nesting habitat for golden eagles. Additional large trees outside the Study Area also provide suitable nesting habitat for Swainson's hawk (within 1,000 feet of the project site) and golden eagle (within 0.5 miles of the project site).

The eucalyptus and cottonwood trees within the Study Area and along Kirker Creek also provide suitable nesting habitat for other species not covered by the HCP/NCCP, including mourning dove, Brewer's blackbird, American crow (*Corvus brachyrhynchos*), and the fully-protected species white-tailed kite (*Elanus caeruleus*).

The ruderal grasslands provide suitable nesting habitat for the HCP/NCCP-covered burrowing owl, and other non-covered species, including red-wing blackbird (*Agelius phoeniceus*), western meadowlark (*Sturnella neglecta*) and killdeer (*Charadrius vociferus*). All of these birds are protected under the Migratory Bird Treaty Act (50 CFR 10.13), and birds of prey are also protected under California Fish and Game Code Sections 3503.5.

Construction of the project will require the removal of the trees within the Study Area, and grading of the ruderal grassland containing ground squirrel burrows. Tree removal and construction disturbance during the nesting season has the potential to result in a "take" of tree- or ground-nesting migratory birds and/or birds of prey or create disturbance that could result in nest abandonment. Grading outside the nesting season for burrowing owls also has the potential

to result in a take of owls if owls were present in underground burrows at the time of construction. (Less than significant with mitigation.)

Mitigation Measure BIO-1.a. Non-covered Migratory Birds and Birds of Prey.
If site disturbance commences between February 15 and August 31, a qualified biologist shall conduct a preconstruction bird nesting survey. If nests of either migratory birds or birds of prey are detected on or adjacent to the site, a no-disturbance buffer (generally 50 feet for passerines and 300 feet for raptors) in which no new site disturbance is permitted shall be observed until August 31, or the qualified biologist determines that the young are foraging independently. The size of the no-disturbance buffer shall be determined by a qualified biologist, and shall take into account local site features and existing sources of potential disturbance. If more than 15 days elapses between the survey and the start of construction, the survey shall be repeated.

Mitigation Measure BIO-1.b. HCP/NCCP-covered Birds
Swainson's Hawk
Prior to any ground disturbance related to the proposed project that occurs during the nesting season (March 15th to September 15th), a qualified biologist will conduct a preconstruction survey no more than one month prior to construction, to establish whether Swainson's hawk nests within 1,000 feet of the project site are occupied. If potentially occupied nests within 1,000 feet are off the project site, then their occupancy will be determined by observation from public roads or by observations of Swainson's hawk activity near the project site.

If nests are occupied, project-related activities within 1,000 feet of occupied nests or nests under construction will be prohibited to prevent nest abandonment. If site-specific conditions or the nature of the covered activity (e.g. steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be used, the HCP/NCCP Implementing Entity will coordinate with the CDFW and the USFWS to determine the appropriate buffer size. If young fledge prior to September 15, project-related activities can proceed normally. If the active nest site is shielded from view and noise from the project site by other development, topography, or other features, the applicant can apply to the HCP/NCCP Implementing Entity for a waiver of this avoidance measure. Any waiver must also be approved by the USFWS and CDFW. While the nest is occupied, project-related activities outside the buffer can take place.

If project construction requires the removal of a tree that has been documented to support a Swainson's hawk nest tree, mitigation by the project proponent will be accomplished by:

- If feasible on-site, planting 15 saplings for every tree lost with the objective of having at least 5 mature trees established for every tree lost according to the requirements listed below.

  AND either

1) Pay the Implementing Entity an additional fee to purchase, plant, maintain, and monitor 15 saplings on the HCP/NCCP Preserve System for every tree lost according to the requirements listed below, OR

2) The project proponent will plant, maintain, and monitor 15 saplings for every tree lost at a site to be approved by the Implementing Entity (e.g., within an HCP/NCCP Preserve or existing open space linked to HCP/NCCP preserves), according to the requirements listed below.

The following requirements will be met for all planting options:

- Tree survival shall be monitored at least annually for 5 years, then every other year until year 12. All trees lost during the first 5 years will be replaced. Success will be reached at the end of 12 years if at least 5 trees per tree loss survive without supplemental irrigation or protection from herbivory. Trees must also survive for at least three years without irrigation.
- Irrigation and fencing to protect from herbivores may be needed for the first several years to ensure maximum tree survival.
- Native trees suitable for this site should be planted. When site conditions permit, a variety of native trees will be planted for each tree lost to provide trees with different growth rates, maturation, and life span, and to provide a variety of tree canopy structures for Swainson's hawk. This variety will help to ensure that nest trees will be available in the short term (5-10 years for cottonwoods and willows) and in the long term (e.g. valley oak and sycamore). This will also minimize the temporal loss of nest trees.
- Whenever feasible and when site conditions permit, trees should be planted in clumps together or with existing trees to provide larger areas of suitable nesting habitat and to create a natural buffer between nest trees and adjacent development (if plantings occur on the development site).
- Whenever feasible, plantings on the site should occur closest to suitable foraging habitat outside the Urban Development Area (UDA).
- Trees planted in the HCP/NCCP preserves or other approved offsite locations will occur within the known range of Swainson's hawk in the inventory area and as close as possible to high-quality foraging habitat.

<u>Golden Eagle.</u>
Prior to any ground disturbance related to the proposed project, a qualified biologist will conduct a preconstruction survey not more than 1 month prior to construction to establish whether active nests of golden eagle are present within 0.5 mile of the project site. If potentially occupied nests within 0.5 miles are off the project site, then their occupancy will be determined by observation from public roads or by observations of golden eagle activity near the project site.

If active nests are present within 0.5 mile of the project site, project-related activities within 0.5 mile of the nest will be prohibited to prevent nest abandonment. If site-specific conditions

or the nature of the covered activity (e.g. steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be used, the HCP/NCCP Implementing Entity will coordinate with the CDFW and the USFWS to determine the appropriate buffer size. Project-related disturbance may proceed once a qualified biological monitor determines that the nest has failed or that the young birds have fledged.

Western Burrowing Owl.

Prior to any ground disturbance related to the proposed project, a qualified biologist will conduct a preconstruction survey for burrowing owls. The surveys will establish the presence or absence of burrowing owl and/or habitat features and evaluate use by owls in accordance with CDFG survey guidelines (CDFG 2012).

The biologist will survey the proposed disturbance footprint and a 500-foot radius from the perimeter of the proposed footprint to identify burrows and owls. Surveys shall take place near sunrise or sunset in accordance with CDFW guidelines. All burrows or burrowing owls will be identified and mapped. Surveys will take place no more than 30 days prior to construction. During the breeding season (February 1-August 31), surveys will document whether burrowing owls are using habitat in or directly adjacent to any disturbance area. Survey results will be valid only for the season (breeding or nonbreeding) during which the survey is conducted.

If burrowing owls are found during the breeding season, the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance will include establishment of a 250-foot nondisturbance buffer zone surrounding the nest burrow(s). If site-specific conditions or the nature of the covered activity (e.g. steep topography, dense vegetation, limited activities) indicate that a smaller buffer could be used, the HCP/NCCP Implementing Entity will coordinate with the CDFW and the USFWS to determine the appropriate buffer size. Construction may occur during the breeding season if a qualified biologist monitors the nest and determines that the birds have not begun egg-laying and incubation or that the juveniles from the occupied burrows have fledged. During the nonbreeding season (September 1-January 31), the project proponent should avoid the owls and the burrows they are using, if possible. Avoidance will include the establishment of a 160-foot buffer zone surrounding the active burrow(s).

If occupied burrows for burrowing owls cannot be not avoided, passive relocation will be implemented outside the breeding season. Owls should be excluded from burrows in the immediate impact zone and within a 160-foot buffer zone by installing 1-way doors in burrow entrances. These doors should be in place for no less than 48 hours prior to excavation. The project area shall be monitored daily by a qualified biologist for 1 week to confirm that the owl has abandoned the burrow. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation (CDFG 1995). Plastic tubing or a similar structure should be inserted in the burrows during excavation to maintain an escape route for any owls inside the burrow.

7.4 Impacts to Riparian Habitats, Jurisdictional Wetlands, Waters of the U.S. or Waters of the State

Impact BIO-2. The project will not impact any riparian habitat, jurisdictional wetlands or waters of the U.S. The proposed project would however, relocate the man-made ditch to another location within the Study Area. The ditch is an ephemeral feature with little in-channel vegetation. Habitat values associated with this ditch are essentially indistinguishable from the ruderal grassland it traverses. Relocation of the ditch would be considered to be a temporary impact. (Less than significant with mitigation.)

> **Mitigation Measure BIO-2.** Prior to relocation of the ditch, the applicant shall provide documentation to the City of Pittsburg of regulatory approval by the RWQCB and/or CDFW or a determination that the relocation of the ditch would not be regulated under Section 1600 of the California Fish and Game Code, and/or the Porter-Cologne Act. If the RWQCB and/or CDFW determine it is not a water of the State, relocation can be made without further mitigation. If the RWQCB and/or CDFW conclude that it is a water of the State, the discharge of fill associated with relocation of this feature would require authorization from one or both of the state regulatory agencies, and mitigation, including the creation of waters of the State at not less than a 1:1 (impact:mitigation) would be required.

7.5 Interference with Movement of Native Fish, Wildlife, Established Wildlife Corridors

The project will not interfere with the movement of native fish or wildlife, nor will it reduce the suitability of the riparian habitat along Kirker Creek as a movement corridor. No mitigation is required. (No impact)

7.6 Conflict with Local Policies or Ordinances

Any runoff from the proposed project with the potential to enter Kirker Creek must abide by the City of Pittsburg Municipal Code Chapter 15.104: Storm water management plan for Kirker Creek Watershed drainage area.

7.7 Conflict with Local, Regional or Statewide Habitat Conservation Plans

The proposed project is consistent with the HCP/NCCP.

8.0 BIBLIOGRAPHY

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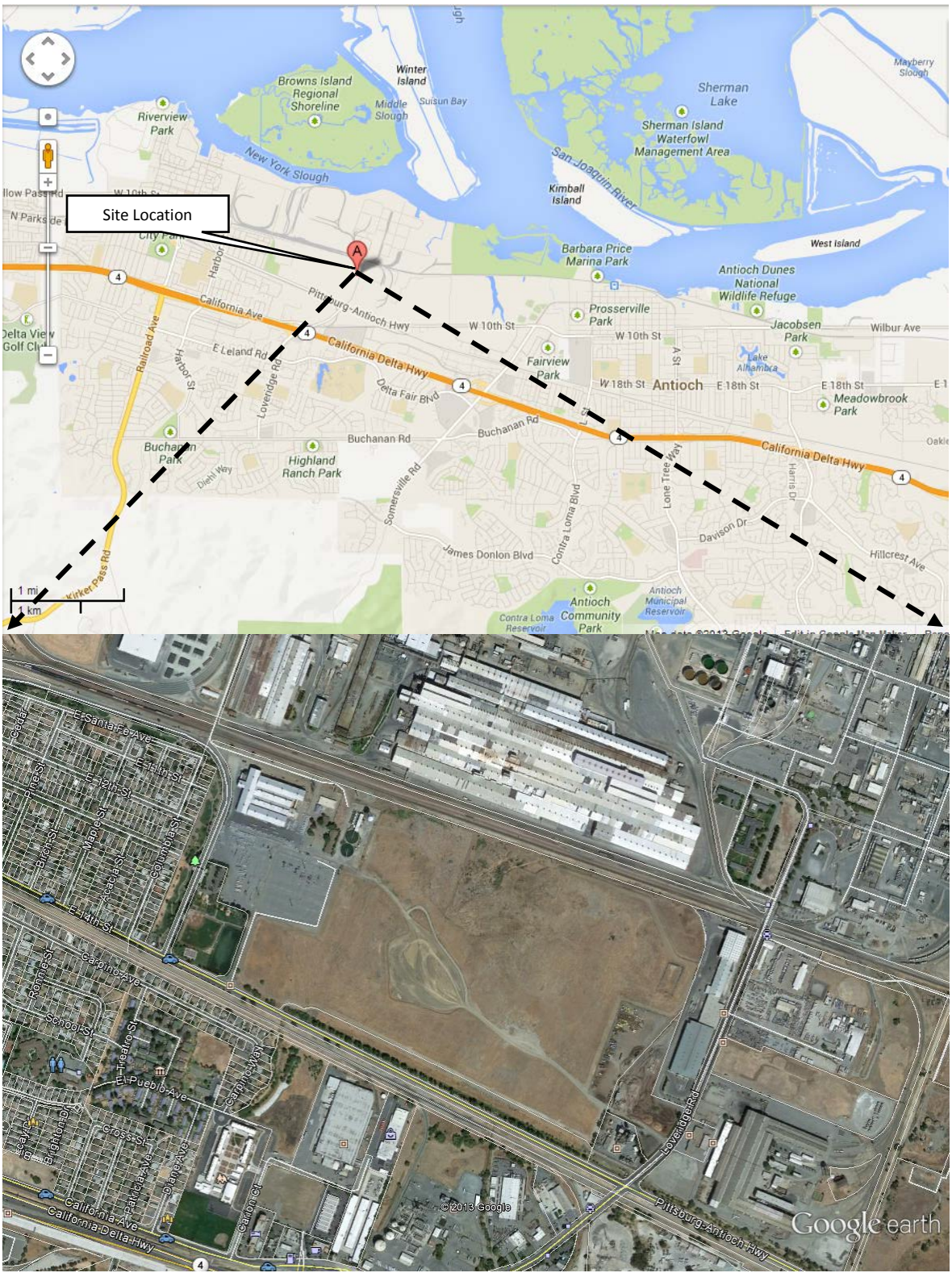


Figure 1. Regional Location Map

Figure 2 will be Figure A1.2 New Site Plan with additional detail added by the project

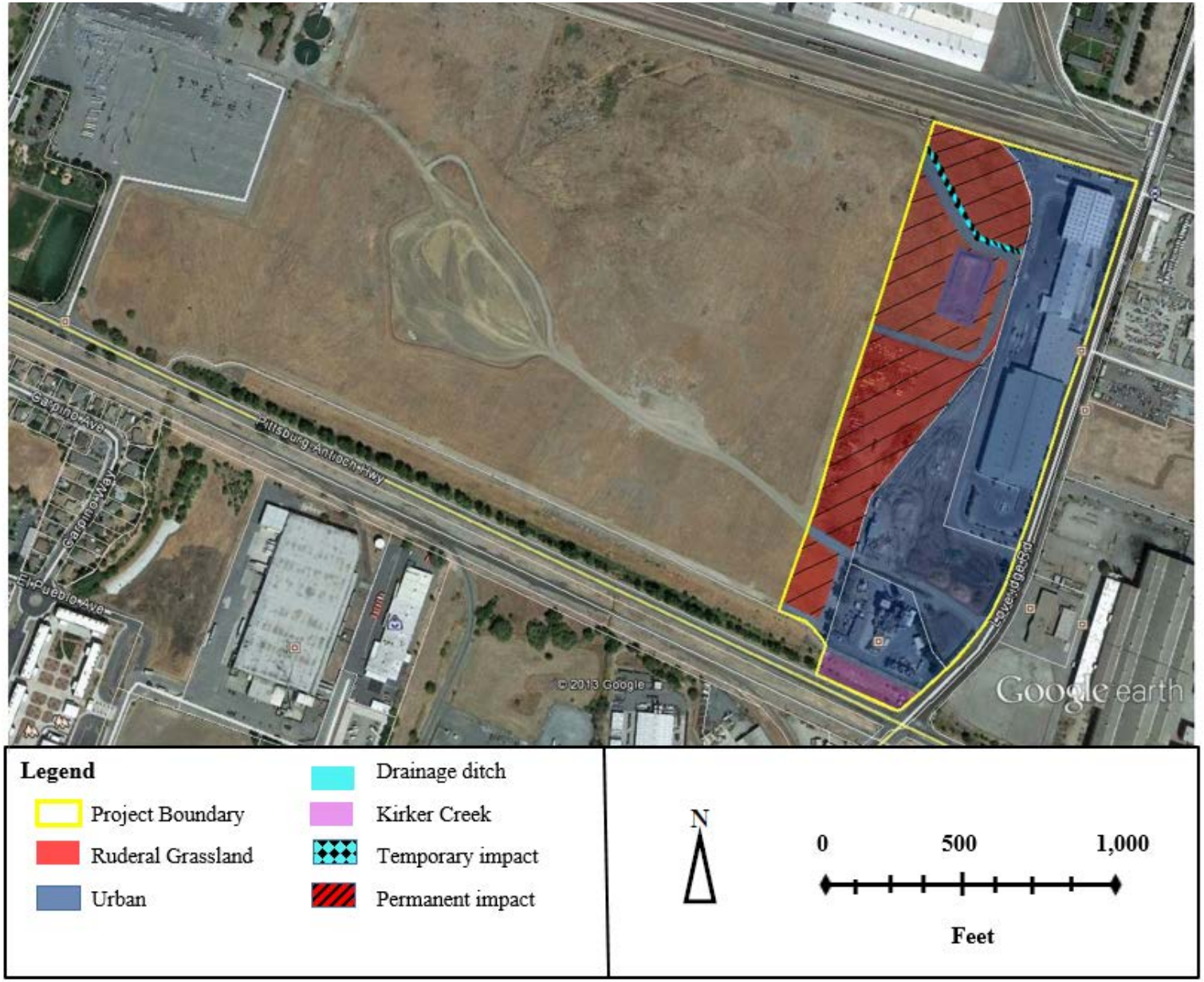


Figure 3a. Field Verified Ground Cover

APPENDIX A. PHOTOS OF THE STUDY AREA

Photo 1. GWF Property, looking southeast from entrance

Photo 2. GWF Property, looking southwest from north corner

Photo 3. Bottom of drainage ditch

Photo 4. Ruderal grassland looking southeast from western corner of project site

Photo 5. Northwest corner of detention basin looking south

Photo 6. Urban road curving around fenced 5 ac. area to the southwest

Photo 7. Ruderal grassland foreground, nonnative eucalyptus trees and Kirker Creek background from northwest corner of southernmost portion of ruderal grassland

Photo 8. Kirker Creek within the Study Area, looking east towards intersection of Loveridge Road and the Pittsburg-Antioch Highway

1mi

Occurrence Count	Scientific Name	Common Name	Federal Listing	State Listing	Rare Plant Rank
1	Apodemia mormo langei	Lange's metalmark butterfly	Endangered	None	
2	Blepharizonia plumosa	big tarplant	None	None	1B.1
1	Branchinecta lynchi	vernal pool fairy shrimp	Threatened	None	
1	Cicuta maculata var. bolanderi	Bolander's water-hemlock	None	None	2B.1
1	Coastal Brackish Marsh	Coastal Brackish Marsh	None	None	
1	Emys marmorata	western pond turtle	None	None	
1	Erysimum capitatum var. angustatum	Contra Costa wallflower	Endangered	Endangered	1B.1
1	Lathyrus jepsonii var. jepsonii	Delta tule pea	None	None	1B.2
3	Lilaeopsis masonii	Mason's lilaeopsis	None	Rare	1B.1
1	Linderiella occidentalis	California linderiella	None	None	
2	Melospiza melodia maxillaris	Suisun song sparrow	None	None	
1	Oenothera deltoides ssp. howellii	Antioch Dunes evening-primrose	Endangered	Endangered	1B.1
1	Reithrodontomys raviventris	salt-marsh harvest mouse	Endangered	Endangered	
1	Spirinchus thaleichthys	longfin smelt	None	Threatened	
2	Symphyotrichum lentum	Suisun Marsh aster	None	None	1B.2

5mi

Occurrence Count	Scientific Name	Common Name	Federal Listing	State Listing	Rare Plant Rank
13	Ambystoma californiense	California tiger salamander	Threatened	Threatened	
3	Amsinckia grandiflora	large-flowered fiddleneck	Endangered	Endangered	1B.1
1	Andrena blennospermatis	Blennosperma vernal pool andrenid bee	None	None	
4	Anniella pulchra pulchra	silvery legless lizard	None	None	
1	Anomobryum julaceum	slender silver moss	None	None	2B.2
1	Anthicus antiochensis	Antioch Dunes anthicid beetle	None	None	
1	Apodemia mormo langei	Lange's metalmark butterfly	Endangered	None	
1	Archoplites interruptus	Sacramento perch	None	None	
5	Arctostaphylos auriculata	Mt. Diablo manzanita	None	None	1B.3
1	Arctostaphylos manzanita ssp. laevigata	Contra Costa manzanita	None	None	1B.2
1	Astragalus tener var. tener	alkali milk-vetch	None	None	1B.2
5	Athene cunicularia	burrowing owl	None	None	
1	Atriplex joaquinana	San Joaquin spearscale	None	None	1B.2
6	Blepharizonia plumosa	big tarplant	None	None	1B.1
1	Branchinecta conservatio	Conservancy fairy shrimp	Endangered	None	
1	Branchinecta lynchi	vernal pool fairy shrimp	Threatened	None	
5	California macrophylla	round-leaved filaree	None	None	1B.1
1	Calochortus pulchellus	Mt. Diablo fairy-lantern	None	None	1B.2
2	Cicuta maculata var. bolanderi	Bolander's water-hemlock	None	None	2B.1
5	Coastal Brackish Marsh	Coastal Brackish Marsh	None	None	
1	Coelus gracilis	San Joaquin dune beetle	None	None	
1	Cryptantha hooveri	Hoover's cryptantha	None	None	1A
1	Efferia antiochi	Antioch efferian robberfly	None	None	
1	Elanus leucurus	white-tailed kite	None	None	
3	Emys marmorata	western pond turtle	None	None	
1	Eriogonum nudum var. psychicola	Antioch Dunes buckwheat	None	None	1B.1
1	Eriogonum truncatum	Mt. Diablo buckwheat	None	None	1B.1
4	Erysimum capitatum var. angustatum	Contra Costa wallflower	Endangered	Endangered	1B.1
1	Eschscholzia rhombipetala	diamond-petaled California poppy	None	None	1B.1
1	Eucerceris ruficeps	redheaded sphecid wasp	None	None	
4	Geothlypis trichas sinuosa	saltmarsh common yellowthroat	None	None	
3	Helianthella castanea	Diablo helianthella	None	None	1B.2
2	Hesperolinon breweri	Brewer's western flax	None	None	1B.2
2	Hypomesus transpacificus	Delta smelt	Threatened	Endangered	
1	Idiostatus middlekauffi	Middlekauff's shieldback katydid	None	None	
1	Lasiurus blossevillii	western red bat	None	None	
1	Lasthenia conjugens	Contra Costa goldfields	Endangered	None	1B.1
7	Laterallus jamaicensis coturniculus	California black rail	None	Threatened	
17	Lathyrus jepsonii var. jepsonii	Delta tule pea	None	None	1B.2
1	Lepidurus packardi	vernal pool tadpole shrimp	Endangered	None	
24	Lilaeopsis masonii	Mason's lilaeopsis	None	Rare	1B.1
7	Limosella australis	Delta mudwort	None	None	2B.1
1	Linderiella occidentalis	California linderiella	None	None	
1	Madia radiata	showy golden madia	None	None	1B.1
1	Malacothamnus hallii	Hall's bush-mallow	None	None	1B.2
24	Masticophis lateralis euryxanthus	Alameda whipsnake	Threatened	Threatened	
1	Melospiza melodia	song sparrow ("Modesto" population)	None	None	
8	Melospiza melodia maxillaris	Suisun song sparrow	None	None	
1	Metapogon hurdi	Hurd's metapogon robberfly	None	None	

1	Myrmosula pacifica	Antioch multilid wasp	None	None	
1	Navarretia nigelliformis ssp. radians	shining navarretia	None	None	1B.2
6	Oenothera deltoides ssp. howellii	Antioch Dunes evening-primrose	Endangered	Endangered	1B.1
1	Perdita scitula antiochensis	Antioch andrenid bee	None	None	
3	Perognathus inornatus inornatus	San Joaquin pocket mouse	None	None	
1	Phalacrocorax auritus	double-crested cormorant	None	None	
1	Philanthus nasalis	Antioch specid wasp	None	None	
8	Rana draytonii	California red-legged frog	Threatened	None	
11	Reithrodontomys raviventris	salt-marsh harvest mouse	Endangered	Endangered	
1	Senecio aphanactis	chaparral ragwort	None	None	2B.2
1	Sphecodogastra antiochensis	Antioch Dunes halcitid bee	None	None	
5	Spirinchus thaleichthys	longfin smelt	None	Threatened	
1	Stabilized Interior Dunes	Stabilized Interior Dunes	None	None	
1	Sternula antillarum browni	California least tern	Endangered	Endangered	
25	Symphyotrichum lentum	Suisun Marsh aster	None	None	1B.2
4	Vulpes macrotis mutica	San Joaquin kit fox	Endangered	Threatened	

U.S. Fish & Wildlife Service
Sacramento Fish & Wildlife Office

Federal Endangered and Threatened Species that Occur in or may be Affected by Projects in the Counties and/or U.S.G.S. 7 1/2 Minute Quads you requested

Document Number: 131017025743

Database Last Updated: September 18, 2011

Quad Lists

Listed Species

Invertebrates

Apodemia mormo langei
- Lange's metalmark butterfly (E)

Branchinecta conservatio
- Conservancy fairy shrimp (E)
- Critical habitat, Conservancy fairy shrimp (X)

Branchinecta longiantenna
- longhorn fairy shrimp (E)

Branchinecta lynchi
- Critical habitat, vernal pool fairy shrimp (X)
- vernal pool fairy shrimp (T)

Desmocerus californicus dimorphus
- valley elderberry longhorn beetle (T)

Elaphrus viridis
- delta green ground beetle (T)

Lepidurus packardi
- Critical habitat, vernal pool tadpole shrimp (X)
- vernal pool tadpole shrimp (E)

Fish

Acipenser medirostris
- green sturgeon (T) (NMFS)

Hypomesus transpacificus
- Critical habitat, delta smelt (X)
- delta smelt (T)

Oncorhynchus mykiss
- Central Valley steelhead (T) (NMFS)
- Critical habitat, Central Valley steelhead (X) (NMFS)

Oncorhynchus tshawytscha
- Central Valley spring-run chinook salmon (T) (NMFS)
- Critical Habitat, Central Valley spring-run chinook (X) (NMFS)
- Critical habitat, winter-run chinook salmon (X) (NMFS)
- winter-run chinook salmon, Sacramento River (E) (NMFS)

Amphibians

Ambystoma californiense
- California tiger salamander, central population (T)
- Critical habitat, CA tiger salamander, central population (X)

Rana draytonii
- California red-legged frog (T)
- Critical habitat, California red-legged frog (X)

Reptiles

Masticophis lateralis euryxanthus
Alameda whipsnake [=striped racer] (T)
Critical habitat, Alameda whipsnake (X)

Thamnophis gigas
giant garter snake (T)

Birds

Rallus longirostris obsoletus
California clapper rail (E)

Sternula antillarum (=Sterna, =albifrons) browni
California least tern (E)

Mammals

Reithrodontomys raviventris
salt marsh harvest mouse (E)

Vulpes macrotis mutica
San Joaquin kit fox (E)

Plants

Amsinckia grandiflora
large-flowered fiddleneck (E)

Cirsium hydrophilum var. hydrophilum
Suisun thistle (E)

Cordylanthus mollis ssp. mollis
soft bird's-beak (E)

Erysimum capitatum ssp. angustatum
Contra Costa wallflower (E)
Critical Habitat, Contra Costa wallflower (X)

Lasthenia conjugens
Contra Costa goldfields (E)
Critical habitat, Contra Costa goldfields (X)

Neostapfia colusana
Colusa grass (T)

Oenothera deltoides ssp. howellii
Antioch Dunes evening-primrose (E)
Critical habitat, Antioch Dunes evening-primrose (X)

Sidalcea keckii
Keck's checker-mallow (=checkerbloom) (E)

Proposed Species

Plants

Cirsium hydrophilum var. hydrophilum
Critical habitat, Suisun thistle (PX)

Cordylanthus mollis ssp. mollis
Critical habitat, soft bird's-beak (PX)

Quads Containing Listed, Proposed or Candidate Species:

BRENTWOOD (463B)
ANTIOCH SOUTH (464A)
CLAYTON (464B)
RIO VISTA (480B)
JERSEY ISLAND (480C)
BIRDS LANDING (481A)
DENVERTON (481B)
HONKER BAY (481C)
ANTIOCH NORTH (481D)

County Lists

Contra Costa County

Listed Species

Invertebrates

Apodemia mormo langei
Lange's metalmark butterfly (E)

Branchinecta conservatio
Conservancy fairy shrimp (E)

Branchinecta longiantenna
Critical habitat, longhorn fairy shrimp (X)
longhorn fairy shrimp (E)

Branchinecta lynchi
Critical habitat, vernal pool fairy shrimp (X)
vernal pool fairy shrimp (T)

Desmocerus californicus dimorphus
valley elderberry longhorn beetle (T)

Elaphrus viridis
delta green ground beetle (T)

Lepidurus packardi
vernal pool tadpole shrimp (E)

Speyeria callippe callippe
callippe silverspot butterfly (E)

Syncaris pacifica
California freshwater shrimp (E)

Fish

Acipenser medirostris
green sturgeon (T) (NMFS)

Eucyclogobius newberryi
tidewater goby (E)

Hypomesus transpacificus
Critical habitat, delta smelt (X)
delta smelt (T)

Oncorhynchus kisutch
coho salmon - central CA coast (E) (NMFS)
Critical habitat, coho salmon - central CA coast (X) (NMFS)

Oncorhynchus mykiss
Central California Coastal steelhead (T) (NMFS)
Central Valley steelhead (T) (NMFS)

Critical habitat, Central California coastal steelhead (X) (NMFS)
Critical habitat, Central Valley steelhead (X) (NMFS)

Oncorhynchus tshawytscha
Central Valley spring-run chinook salmon (T) (NMFS)
Critical Habitat, Central Valley spring-run chinook (X) (NMFS)
Critical habitat, winter-run chinook salmon (X) (NMFS)
winter-run chinook salmon, Sacramento River (E) (NMFS)

Amphibians

Ambystoma californiense
California tiger salamander, central population (T)
Critical habitat, CA tiger salamander, central population (X)

Rana draytonii
California red-legged frog (T)
Critical habitat, California red-legged frog (X)

Reptiles

Masticophis lateralis euryxanthus
Alameda whipsnake [=striped racer] (T)
Critical habitat, Alameda whipsnake (X)

Thamnophis gigas
giant garter snake (T)

Birds

Charadrius alexandrinus nivosus
western snowy plover (T)

Pelecanus occidentalis californicus
California brown pelican (E)

Rallus longirostris obsoletus
California clapper rail (E)

Sternula antillarum (=Sterna, =albifrons) browni
California least tern (E)

Strix occidentalis caurina
northern spotted owl (T)

Mammals

Reithrodontomys raviventris
salt marsh harvest mouse (E)

Vulpes macrotis mutica
San Joaquin kit fox (E)

Plants

Amsinckia grandiflora
large-flowered fiddleneck (E)

Arctostaphylos pallida
pallid manzanita (=Alameda or Oakland Hills manzanita) (T)

Calochortus tiburonensis
Tiburon mariposa lily (T)

Castilleja affinis ssp. neglecta
Tiburon paintbrush (E)

Chorizanthe robusta var. robusta
robust spineflower (E)

Clarkia franciscana
Presidio clarkia (E)

Cordylanthus mollis ssp. mollis
soft bird's-beak (E)

Cordylanthus palmatus
palmate-bracted bird's-beak (E)

Erysimum capitatum ssp. angustatum
Contra Costa wallflower (E)
Critical Habitat, Contra Costa wallflower (X)

Hesperolinon congestum
Marin dwarf-flax (=western flax) (T)

Holocarpha macradenia
Critical habitat, Santa Cruz tarplant (X)
Santa Cruz tarplant (T)

Lasthenia conjugens
Contra Costa goldfields (E)
Critical habitat, Contra Costa goldfields (X)

Neostapfia colusana
Colusa grass (T)

Oenothera deltoides ssp. howellii
Antioch Dunes evening-primrose (E)
Critical habitat, Antioch Dunes evening-primrose (X)

Pentachaeta bellidiflora
white-rayed pentachaeta (E)

Sidalcea keckii
Keck's checker-mallow (=checkerbloom) (E)

Streptanthus niger
Tiburon jewelflower (E)

Suaeda californica
California sea blite (E)

Trifolium amoenum
showy Indian clover (E)

Proposed Species

Plants

Cordylanthus mollis ssp. mollis
Critical habitat, soft bird's-beak (PX)

Key:

(E) *Endangered* - Listed as being in danger of extinction.
(T) *Threatened* - Listed as likely to become endangered within the foreseeable future.
(P) *Proposed* - Officially proposed in the Federal Register for listing as endangered or threatened.
(NMFS) Species under the Jurisdiction of the National Oceanic & Atmospheric Administration Fisheries Service. Consult with them directly about these species.
Critical Habitat - Area essential to the conservation of a species.
(PX) *Proposed Critical Habitat* - The species is already listed. Critical habitat is being proposed for it.
(C) *Candidate* - Candidate to become a proposed species.
(V) Vacated by a court order. Not currently in effect. Being reviewed by the Service.
(X) *Critical Habitat* designated for this species

Important Information About Your Species List

How We Make Species Lists

We store information about endangered and threatened species lists by U.S. Geological Survey 7½ minute quads. The United States is divided into these quads, which are about the size of San Francisco.

The animals on your species list are ones that occur within, **or may be affected by** projects within, the quads covered by the list.

- Fish and other aquatic species appear on your list if they are in the same watershed as your quad or if water use in your quad might affect them.
- Amphibians will be on the list for a quad or county if pesticides applied in that area may be carried to their habitat by air currents.
- Birds are shown regardless of whether they are resident or migratory. Relevant birds on the county list should be considered regardless of whether they appear on a quad list.

Plants

Any plants on your list are ones that have actually been observed in the area covered by the list. Plants may exist in an area without ever having been detected there. You can find out what's in the surrounding quads through the California Native Plant Society's online Inventory of Rare and Endangered Plants.

Surveying

Some of the species on your list may not be affected by your project. A trained biologist and/or botanist, familiar with the habitat requirements of the species on your list, should determine whether they or habitats suitable for them may be affected by your project. We recommend that your surveys include any proposed and candidate species on your list. See our Protocol and Recovery Permits pages.

For plant surveys, we recommend using the Guidelines for Conducting and Reporting Botanical Inventories. The results of your surveys should be published in any environmental documents prepared for your project.

Your Responsibilities Under the Endangered Species Act

All animals identified as listed above are fully protected under the Endangered Species Act of 1973, as amended. Section 9 of the Act and its implementing regulations prohibit the take of a federally listed wildlife species. Take is defined by the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any such animal.

> Take may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or shelter (50 CFR §17.3).

Take incidental to an otherwise lawful activity may be authorized by one of two procedures:

- If a Federal agency is involved with the permitting, funding, or carrying out of a project that may result in take, then that agency must engage in a formal consultation with the Service.

  During formal consultation, the Federal agency, the applicant and the Service work together to avoid or minimize the impact on listed species and their habitat. Such consultation would result in a biological opinion by the Service addressing the anticipated effect of the project on listed and proposed species. The opinion may authorize a limited level of incidental take.

- If no Federal agency is involved with the project, and federally listed species may be taken as part of the project, then you, the applicant, should apply for an incidental take permit. The Service may issue such a permit if you submit a satisfactory conservation plan for the species that would be affected by your project.

  Should your survey determine that federally listed or proposed species occur in the area and are likely to be affected by the project, we recommend that you work with this office and the California Department of Fish and Game to develop a plan that minimizes the project's direct and indirect impacts to listed species and compensates for project-related loss of habitat. You should include the plan in any environmental documents you file.

Critical Habitat

When a species is listed as endangered or threatened, areas of habitat considered essential to its conservation may be designated as critical habitat. These areas may require special management considerations or protection. They provide needed space for growth and normal behavior; food, water, air, light, other nutritional or physiological requirements; cover or shelter; and sites for breeding, reproduction, rearing of offspring, germination or seed dispersal.

Although critical habitat may be designated on private or State lands, activities on these lands are not restricted unless there is Federal involvement in the activities or direct harm to listed wildlife.

If any species has proposed or designated critical habitat within a quad, there will be a separate line for this on the species list. Boundary descriptions of the critical habitat may be found in the Federal Register. The information is also reprinted in the Code of Federal Regulations (50 CFR 17.95). See our Map Room page.

Candidate Species

We recommend that you address impacts to candidate species. We put plants and animals on our candidate list when we have enough scientific information to eventually propose them for listing as threatened or endangered. By considering these species early in your planning process you may be able to avoid the problems that could develop if one of these candidates was listed before the end of your project.

Species of Concern

The Sacramento Fish & Wildlife Office no longer maintains a list of species of concern. However, various other agencies and organizations maintain lists of at-risk species. These lists provide essential information for land management planning and conservation efforts. More info

Wetlands

If your project will impact wetlands, riparian habitat, or other jurisdictional waters as defined by section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act, you will need to obtain a permit from the U.S. Army Corps of Engineers. Impacts to wetland habitats require site specific mitigation and monitoring. For questions regarding wetlands, please contact Mark Littlefield of this office at (916) 414-6520.

Updates

Our database is constantly updated as species are proposed, listed and delisted. If you address proposed and candidate species in your planning, this should not be a problem. However, we recommend that you get an updated list every 90 days. That would be January 15, 2014.

Common Name	Family	Lifeform	Rare Plant Rank	State Rank	Global Rank	CESA	FESA	Elevation High (meters)	Elevation Low (meters)	CA Endemic
alkali milk-vetch	Fabaceae	annual herb	1B.2	S2	G2T2	None	None	60	1	T
heartscale	Chenopodiaceae	annual herb	1B.2	S2.2?	G3T2	None	None	560	0	T
crownscale	Chenopodiaceae	annual herb	4.2	S3.2	G4T3	None	None	590	1	T
brittlescale	Chenopodiaceae	annual herb	1B.2	S2.2	G2Q	None	None	320	1	T
San Joaquin spearscale	Chenopodiaceae	annual herb	1B.2	S2	G2	None	None	835	1	T
big tarplant	Asteraceae	annual herb	1B.1	S1	G1	None	None	505	30	T
round-leaved filaree	Geraniaceae	annual herb	1B.1	S2	G2	None	None	1200	15	F
soft bird's-beak	Orobanchaceae	annual herb (hemiparasitic)	1B.2	S1	G2T1	CR	FE	3	0	T
Bolander's water-hemlock	Apiaceae	perennial herb	2B.1	S2	G5T3T4	None	None	200	0	F
small-flowered morning-glory	Convolvulaceae	annual herb	4.2	S3.2	G3	None	None	700	30	F
Hoover's cryptantha	Boraginaceae	annual herb	1A	SH	GH	None	None	150	9	T
dwarf downingia	Campanulaceae	annual herb	2B.2	S2	G2	None	None	445	1	F
Antioch Dunes buckwheat	Polygonaceae	perennial herb	1B.1	S1	G5T1	None	None	20	0	T
Mt. Diablo buckwheat	Polygonaceae	annual herb	1B.1	S2	G2	None	None	350	3	T
Contra Costa wallflower	Brassicaceae	perennial herb	1B.1	S1	G5T1	CE	FE	20	3	T
diamond-petaled California poppy	Papaveraceae	annual herb	1B.1	S1	G1	None	None	975	0	T
fragrant fritillary	Liliaceae	perennial bulbiferous herb	1B.2	S2	G2	None	None	410	3	T
Carquinez goldenbush	Asteraceae	perennial shrub	1B.1	S1	G1	None	None	20	1	T
Contra Costa goldfields	Asteraceae	annual herb	1B.1	S1	G1	None	FE	470	0	T
Delta tule pea	Fabaceae	perennial herb	1B.2	S2.2	G5T2	None	None	4	0	T
Mason's lilaeopsis	Apiaceae	perennial rhizomatous herb	1B.1	S2	G2	CR	None	10	0	T
Delta mudwort	Scrophulariaceae	perennial stoloniferous herb	2B.1	S2	G4G5	None	None	3	0	F
showy golden madia	Asteraceae	annual herb	1B.1	S2	G2	None	None	1215	25	T
Colusa grass	Poaceae	annual herb	1B.1	S2	G2	CE	FT	200	5	T
Antioch Dunes evening-primrose	Onagraceae	perennial herb	1B.1	S1	G5T1	CE	FE	30	0	T
bearded popcorn-flower	Boraginaceae	annual herb	1B.1	S2	G2	None	None	274	0	T
sweet marsh ragwort	Asteraceae	perennial herb	4.2	S2S3	G4G5	None	None	2800	0	F
Suisun Marsh aster	Asteraceae	perennial rhizomatous herb	1B.2	S2	G2	None	None	3	0	T

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET, 16TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103-1398

REPLY TO
ATTENTION OF

MAY 14 2013

Regulatory Division

SUBJECT: File Number 2013-00033S

Mr. Mike Farmer
10680 White Rock Road, Suite 100
Rancho Cordova, CA 95670

Dear Mr. Farmer:

This correspondence is in reference to your submittal of January 16, 2013, on behalf of Columbia Solar Energy, LLC, requesting an approved jurisdictional determination of the extent of navigable waters of the United States and waters of the United States occurring on the approximately 115 acre property owned by USS-POSCO Industries and leased by Columbia Solar Energy, LLC. The site is located at 900 Loveridge Road, in the City of Pittsburg, Contra Costa County, California (APN 073-200-021-1).

All proposed discharges of dredged or fill material occurring below the plane of ordinary high water in non-tidal waters of the United States; or below the high tide line in tidal waters of the United States; and within the lateral extent of wetlands adjacent to these waters, typically require Department of the Army authorization and the issuance of a permit under Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*). Waters of the United States generally include the territorial seas; all traditional navigable waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide; wetlands adjacent to traditional navigable waters; non-navigable tributaries of traditional navigable waters that are relatively permanent, where the tributaries typically flow year-round or have continuous flow at least seasonally; and wetlands directly abutting such tributaries. Where a case-specific analysis determines the existence of a "significant nexus" effect with a traditional navigable water, waters of the United States may also include non-navigable tributaries that are not relatively permanent; wetlands adjacent to non-navigable tributaries that are not relatively permanent; wetlands adjacent to but not directly abutting a relatively permanent non-navigable tributary; and certain ephemeral streams in the arid West.

All proposed structures and work, including excavation, dredging, and discharges of dredged or fill material, occurring below the plane of mean high water in tidal waters of the United States; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in non-tidal waters designated as navigable waters of the United States, typically require Department of the Army authorization and the issuance of a permit under Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*). Navigable waters of the United States generally include all waters subject to the ebb and flow of

the tide; and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce.

The enclosed delineation map Titled "USACE file # 2013-00033S Jurisdictional Determination, Columbia Solar Energy" dated 3/20/2013, in 1 sheet depicts the extent and location of wetlands and other waters of the United States within the boundary area of the site that are **not** subject to U.S. Army Corps of Engineers' regulatory authority under Section 404 of the Clean Water Act. These particular intrastate water bodies are considered to be isolated with no apparent connection to interstate or foreign commerce. This approved jurisdictional determination is presumed to be consistent with the U.S. Supreme Court decision of January 9, 2001, concerning the *Solid Waste Agency of Northern Cook County v. United States Corps of Engineers*, 531 U.S. 159 (2001) ("SWANCC"). In the SWANCC decision, the Court invalidated, at least, portions of the Migratory Bird Rule as a sole nexus to the Commerce Clause, and ruled that the U.S. Army Corps of Engineers had exceeded its statutory authority in exerting jurisdiction over non-navigable isolated, intrastate waters that did not provide some other interstate or foreign commerce use (33 C.F.R § 328.(a)(3)). These delineated wetlands and other waters, however, may be considered as "waters of the State," and, therefore, subject to regulation by the California Regional Water Quality Control Board, San Francisco Bay Region, Central Coast Region, under the Porter-Cologne Water Quality Control Act, as amended (California Water Code § 1300 *et seq.*).

The enclosed delineation map further depicts the extent and location of wetlands and other waters of the United States within the boundary area of the site that are **not** subject to U.S. Army Corps of Engineers' regulatory authority under Section 404 of the Clean Water Act. These particular intrastate water bodies are considered to lack a significant nexus effect with traditional navigable water. This approved jurisdictional determination is presumed to be consistent with the U.S. Supreme Court decision of June 19, 2006, concerning *Rapanos v. United States*, 126 S. Ct. 2208 (2006) ("Rapanos"). In the Rapanos decision, the Court determined, in part, that jurisdiction may not be asserted over certain categories of waters that lack a "significant nexus" effect with traditional navigable water. These delineated wetlands and other waters, however, may be considered as "waters of the State," and, therefore, subject to regulation by the California Regional Water Quality Control Board, San Francisco Bay Region, Central Coast Region, under the Porter-Cologne Water Quality Control Act, as amended (California Water Code § 1300 *et seq.*).

The enclosed delineation map further depicts the extent and location of non-tidal drainage ditches within the boundary area of the site that is **not** subject to U.S. Army Corps of Engineers' regulatory authority under Section 404 of the Clean Water Act. Waters of the United States do not generally include non-tidal drainage and irrigation ditches excavated on dry land; artificially irrigated areas which would revert to upland, if the irrigation ceased; artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water, and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;

artificial reflecting or swimming pools, or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons; and water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel, unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of a waters of the United States (51 Fed. Reg. 41,217; Nov. 13, 1986). Based on a case-by-case analysis, the U.S. Army Corps of Engineers may elect to not exert jurisdiction over these categories of water bodies. This, however, may be considered as a "waters of the State," and, therefore, subject to regulation by the California Regional Water Quality Control Board, San Francisco Bay Region, North Coast Region, under the Porter-Cologne Water Quality Control Act, as amended (California Water Code § 1300 *et seq.*).

You are advised that the approved jurisdictional determination may be appealed through the U.S. Army Corps of Engineers' *Administrative Appeal Process*, as described in 33 C.F.R. Part 331 (65 Fed. Reg. 16,486; Mar. 28, 2000), and outlined in the enclosed flowchart and *Notification of Administrative Appeal Options, Process, and Request for Appeal* (NAO-RFA) Form. If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to this office for reconsideration of this decision. If you do not provide new information to this office, you may elect to submit a completed NAO-RFA Form to the Division Engineer to initiate the appeal process; the completed NAO-RFA Form must be submitted directly to the Appeal Review Officer at the address specified on the NAO-RFA Form. You will relinquish all rights to a review or an appeal, unless this office or the Division Engineer receives new information or a completed NAO-RFA Form within 60 days of the date on the NAO-RFA Form. If you intend to accept the approved jurisdictional determination, you do not need to take any further action associated with the Administrative Appeal Process.

You may refer any questions on this matter to Nina Cavett-Cox of my Regulatory staff by telephone at 415-503-6765 or by e-mail at Christina.Cavett-Cox@usace.army.mil. All correspondence should be addressed to the Regulatory Division, South Branch, referencing the file number at the head of this letter.

The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner, while preserving and protecting our nation's aquatic resources.

If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website: http://www.spn.usace.army.mil/regulatory/.

Sincerely,

Jane M. Hicks
Chief, Regulatory Division

Enclosures

Copy Furnished (w/ encls):

Kevin Johnson
Columbia Solar Energy, LLC
5000 Hopyard Road, Suite 480
Pleasanton, CA 94588

Copies Furnished (w/ encl 1 only):

CA RWQCB, Oakland, CA
U.S. EPA, San Francisco, CA

Legend

- Project Site Boundary
- Existing 115kV
- Existing Railroad

Interconnection Alternatives

Northern Alternative	GWF Alternative
Project Substation	Project Substation
Potential POI	Potential POI
115 kV Gen-tie Line	

N

0 500 1,000
Feet

Columbia Solar Energy

Figure 1: Project Overview Map
Revised:
November 09 2012

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Columbia Solar Energy, LLC	File No. 2013-00033S	Date: 5/7/2013
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
✓	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the DISTRICT ENGINEER for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this Notice and return the Notice to the DISTRICT ENGINEER. Your objections must be received by the DISTRICT ENGINEER within 60 days of the date of this Notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your NOTICE, the DISTRICT ENGINEER will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the DISTRICT ENGINEER will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the DISTRICT ENGINEER for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this NOTICE and sending the NOTICE to the DIVISION ENGINEER. This Notice must be received by the DIVISION ENGINEER within 60 days of the date of this Notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this Notice sending the Notice to the DIVISION ENGINEER. This Notice must be received by the DVISION ENGINEER within 60 days of the date of this Notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this Notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this Notice and sending the Notice to the DIVISION ENGINEER. This Notice must be received by the DIVISION ENGINEER within 60 days of the date of this Notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

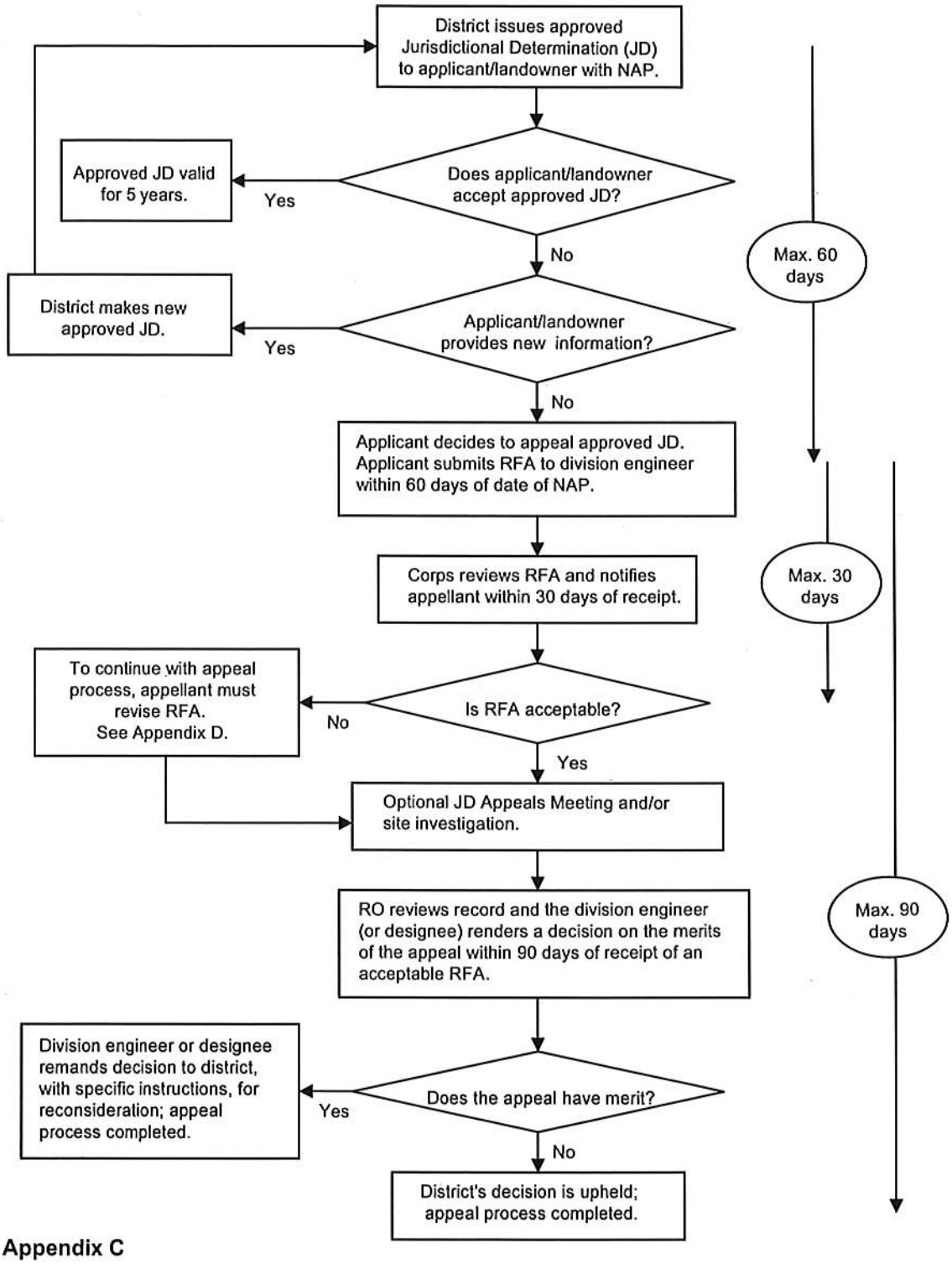
POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact: Cameron L. Johnson, Chief, South Branch, Regulatory Division U.S. Army Corps of Engineers, San Francisco District 1455 Market Street, 16th Floor, Attn: CESPN-R-S San Francisco, CA 94103-1398 Tel. (415) 503-6773 FAX (415) 503-6690	If you only have questions regarding the appeal process you may also contact: Thomas J. Cavanaugh, Appeal Review Officer U.S. Army Corps of Engineers, South Pacific Division 1455 Market Street, 20th Floor, Attn: CESPD-PDS-O San Francisco, CA 94103-1399 Tel. (415) 503-6574 FAX (415) 503-6646

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number:

Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C