CALENDAR ITEM
C25

A 7 05/24/12
W 26528
S 2 N. Lavoie

GENERAL LEASE – PUBLIC AGENCY USE

APPLICANT:
United States Fish and Wildlife Service

AREA, LAND TYPE, AND LOCATION:
Sovereign land in the Napa River and Dutchman Slough, near Vallejo, Solano County.

AUTHORIZED USE:
Construction of a new temporary sediment offloading facility and a dredged material slurry pipeline.

LEASE TERM:
3 years, beginning May 24, 2012.

CONSIDERATION:
The public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

SPECIFIC LEASE PROVISIONS:
1. Lessee and Lessor acknowledge that, as of the effective date of this Lease, the final design and construction plans have not been completed and the final location of the facilities authorized under this Lease has not been determined. Two adjacent alternative Lease Area Parcels are described in the attached Exhibit A, Land Description. Prior to the start of construction Lessee shall submit to Lessor the final project design and construction plans detailing the Lease Area Parcel the facilities will occupy. Upon that submission, the Lease Area Parcel not to be occupied by the facilities shall be deleted from Exhibit A, Land Description, of the lease.

2. The lease includes specific provisions for construction activities.

OTHER PERTINENT INFORMATION:

1. Applicant owns or has the right to use the upland adjoining the lease premises.

2. The Applicant is proposing the offloading facility on State land as an element of a larger overall restoration project involving use of State land and U.S. Fish and Wildlife Service-owned land near Highway 37 in Vallejo. The project, known as the Cullinan Ranch Restoration Project, is located on a diked upland and seasonal wetland area within the San Pablo Bay National Wildlife Refuge and adjacent to the Napa Sonoma Marsh Restoration Project. Cullinan Ranch covers approximately 1,575 acres of historically estuarine tidal marsh which was diked and reclaimed for agriculture in the late 1800s. The Project is an effort to increase suitable habitat in San Pablo Bay to support endandered species such as salt marsh harvest mouse, California clapper rail, Delta smelt, and anadromous salmonids in the larger San Francisco Bay ecosystem. This project will restore the site to its previous tidal marsh condition through reintroduction of tidal circulation and the process of natural sedimentation benefiting at-risk fish and wildlife species. The proposed project will consist of levee improvements, upland site modification, levee lowering, and construction of breaches to restore the hydrologic connection between Cullinan Ranch and Dutchman and South Sloughs.

3. The Applicant will construct the facilities at one of the two proposed parcels as described on Exhibit A. One of the parcels is more advantageous from an access standpoint, but requires a longer pipeline. The other parcel is more difficult to access but requires less piepline and would not require the pipeline to cross Dutchman Slough. Once the final parcel is chosen based on contractor consultation and cost, the Applicant will provide final design and construction plans. At such time the alternative unutilized parcel shall be forfeited by the Applicant, and no longer included in the lease.

4. This short-term offloading project will include acceptance of up to 405,000 cubic yards of suitable dredged material meeting wetland and surface criteria set by the San Francisco Bay Regional Water Quality Control Board and U.S. Fish and Wildlife Service. This material will be utilized for the creation of approximately 50 acres of tidal plain marsh habitat for the endangered salt marsh harvest mouse. The facilities are being constructed to receive the sediment material with delivery by scows which will be held in place adjacent to the offloader by three temporary mooring

piles. The stationary offloader will be on a floating platform held in position by two stake supports (spuds). The material will then be slurried and pumped to Cullinan Ranch through a High Density Polyethylene (HDPE) pipeline. The pipeline will float on the surface of the water along the edge of Dutchman Slough and will be anchored with small dead weight anchors to prevent wandering. If the pipeline crosses a navigable area, weights will be used to hold down and anchor the pipe to the bottom of the channel so boat traffic can proceed unimpeded. The Applicant will place warning signs as navigational aids in areas of boat traffic. Once the offloading is concluded, all facilities will be removed.

5. A Joint Document EIR, State Clearinghouse No. 2007092004, was prepared for this project by the California Department of Fish and Game (DFG) and certified on April 22, 2010. The Commission staff has reviewed such document and Mitigation Monitoring Program prepared in conformance with the provisions of CEQA (Pub. Resources Code, §21081.6) and adopted by the lead agency.

6. However, the current proposal for a sediment offloading facility in the Napa River and associated dredge material pipeline in Dutchman Slough was not explicitly analyzed in the certified EIR, which proposed an offloading facility within an upland area adjacent to Dutchman Slough and the restoration site. The offloading facility location has since been modified to allow a wider range of dredge scows to access the facility, increasing the likelihood of receipt of dredge materials.

7. After review of the changes in the Project, staff has determined that the changes do not constitute "substantial changes" or "new information of substantial importance" as defined in section 15162, subdivision (a) of the State CEQA Guidelines, and so has concluded that preparation and circulation of a subsequent or supplemental EIR are not required. Staff has instead prepared an addendum to the EIR pursuant to the State CEQA Guidelines section 15164. The addendum relies on substantial evidence to demonstrate that no new significant environmental effects, nor any substantial increases in the severity of previously identified effects, will result from the Project changes. This addendum is contained in Exhibit D, attached hereto.

8. The California State Lands Commission (CSLC or Commission) is responsible for mitigating the environmental impacts related only to lands or resources subject to the CSLC's jurisdiction. The Mitigation Monitoring Program set forth in Exhibit C addresses these environmental impacts.

9. Findings made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15091, 15096) are contained in Exhibit E, attached hereto.

10. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq., but such activity will not affect those significant lands. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

APPROVALS OBTAINED:

U.S. Fish and Wildlife Service, National Marine Fisheries Service, San Francisco Bay Regional Water Quality Control Board.

FURTHER APPROVALS REQUIRED:

U.S. Army Corps of Engineers, San Francisco Bay Conservation and Development Commission, California Department of Fish and Game.

EXHIBITS:

A**.** Land Description
B**.** Site and Location Map
C. Mitigation Monitoring Program
D. Addendum to the EIS/EIR
E. CEQA Findings

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that an EIR, State Clearinghouse No. 2007092004, was prepared for this Project by DFG and certified on April 22, 2010, that an addendum to the EIR was prepared by the Commission pursuant to the provisions of CEQA, and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as set forth in Exhibit C, attached hereto.

Adopt the Findings, made in conformance with California Code of Regulations, Title 14, sections 15091 and 15096, subdivision (h), as contained in Exhibit E, attached hereto.

SIGNIFICANT LANDS INVENTORY FINDING:

Find that this activity is consistent with the use classification designated by the Commission for the land pursuant to Public Resources Code section 6370 et seq.

AUTHORIZATION:

Authorize issuance of a General Lease – Public Agency Use to the U.S. Fish and Wildlife Service beginning May 24, 2012, for a term of three years, for the construction of a new temporary sediment offloading facility and pipeline on one of two parcels as described in Exhibit A, and as shown on Exhibit B attached (for reference purposes only); removal of unused parcel from lease upon notification from Applicant and prior to construction; consideration to be the public use and benefit, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interest.

EXHIBIT A

W 26528

LAND DESCRIPTION

Two parcels of tide and submerged land situate in the beds of the Dutchman Slough and Napa River, Solano County, State of California, said parcels lying adjacent to Solano County Swamp and Overflow Survey 569 on file at the Sacramento office of the California State Lands Commission, and being more particularly described as follows:

PARCEL 1 (PROPOSED PIPELINE)

A parcel of all that tide and submerged land lying in the beds of the Dutchman Slough and the Napa River, beginning at a point having CCS83, Zone 2 coordinates: Northing (y) = 1806810.34 feet and Easting (x) = 6476128.20 feet, which bears North 26°25'38" West 6491.54 feet from NGS monument PID JT0321 having CCS83, Zone 2 coordinates: Northing (y) = 1800997.16 feet and Easting (x) = 6479017.32 feet; thence from said point of beginning the following thirty one (31) courses:

(1) South 24°02′31″ East 75.97 feet,
(2) North 75°19′48″ West 150.14 feet,
(3) North 17°07′13″ East 328.05 feet,
(4) South 82°06′02″ East 113.91 feet,
(5) South 76°56′54″ East 301.96 feet,
(6) South 73°09′18″ East 433.13 feet,
(7) South 70°33′13″ East 223.00 feet,
(8) South 66°53′57″ East 1178.75 feet,
(9) South 76°39′21″ East 316.78 feet,
(10) South 89°30′24″ East 331.84 feet,
(11) North 83°19′52″ East 760.18 feet,
(12) North 82°09′51″ East 646.70 feet,
(13) North 00°07′14″ East 308.41 feet,
(14) South 89°18′27″ East 328.41 feet,
(15) South 00°07′14″ West 500.26 feet,
(16) North 89°18′27″ West 328.41 feet,
(17) North 00°07′14″ East 88.34 feet,
(18) South 80°12′46″ West 472.71 feet,
(19) South 85°16′37″ West 340.12 feet,
(20) South 85°16′58″ West 563.74 feet,
(21) South 87°33′18" West 317.94 feet,
(22) North 78°19′42″ West 423.05 feet,
(23) North 67°01′49″ West 439.24 feet,
(24) North 66°40′38″ West 427.83 feet,
(25) North 66°31′32″ West 215.30 feet,
(26) North 69°55′51″ West 252.88 feet,
(27) North 70°44′46″ West 153.71 feet,
(28) North 70°26′42″ West 118.83 feet,

(29) North 75°17′40″ West 271.96 feet,
(30) North 75°27′17″ West 234.28 feet, and
(31) South 17°07′13″ West 190.45 feet to the point of beginning.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Marks of the Dutchman Slough and the Napa River.

ALSO EXCEPTING THEREFROM any portion lying landward of the Agreed Boundary Line along the south bank of the Dutchman Slough as described in BLA 142 on file at the Sacramento office of the California State Lands Commission.

The BASIS OF BEARINGS of this description is the California Coordinate System of 1983, Zone 2 (2007.00). All distances are grid distances.

PARCEL 2 (PROPOSED ALTERNATE PIPELINE)

A parcel of all that tide and submerged land lying in the beds of the Dutchman Slough and the Napa River, beginning at a point having CCS83, Zone 2 coordinates: Northing (y) = 1806589.13 feet and Easting (x) = 6476680.63 feet, which bears North 22°40'42" West 6060.55 feet from NGS monument PID JT0321 having CCS83, Zone 2 coordinates: Northing (y) = 1800997.16 feet and Easting (x) = 6479017.32 feet; thence from said point of beginning the following twenty four (24) courses:

(1) North 73°49′44″ West 640.21 feet,
(2) North 12°30′30″ East 132.28 feet,
(3) South 74°40′32″ East 788.47 feet,
(4) South 68°57′48″ East 1329.18 feet,
(5) South 77°52′52″ East 484.48 feet,
(6) South 88°29′50″ East 480.51 feet,
(7) North 85°08′02″ East 630.14 feet,
(8) South 66°57′32″ East 246.71 feet,
(9) South 45°41′55″ East 113.40 feet,
(10) North 54°42′58″ East 296.04 feet,
(11) South 35°51′22″ East 500.26 feet,
(12) South 54°42′58″ West 328.41 feet,
(13) North 79°43′02″ West 162.16 feet,
(14) North 26°39′12″ West 297.21 feet,
(15) North 56°44′50″ West 342.31 feet,
(16) North 82°39′51″ West 185.11 feet,
(17) South 86°13′43″ West 224.07 feet,
(18) South 82°54′45″ West 478.53 feet,
(19) South 89°06′31″ West 262.71 feet,
(20) North 77°21′56″ West 437.59 feet,
(21) North 72°03′32" West 263.88 feet,
(22) North 70°12′49″ West 191.81 feet,

(23) North 66°26′24″ West 760.27 feet, and
(24) North 77°27′43″ West 299.31 feet to the point of beginning.

EXCEPTING THEREFROM any portion lying landward of the Ordinary High Water Marks of the Dutchman Slough and the Napa River.

ALSO EXCEPTING THEREFROM any portion lying landward of the Agreed Boundary Line along the south bank of the Dutchman Slough as described in BLA 142 on file at the Sacramento office of the California State Lands Commission.

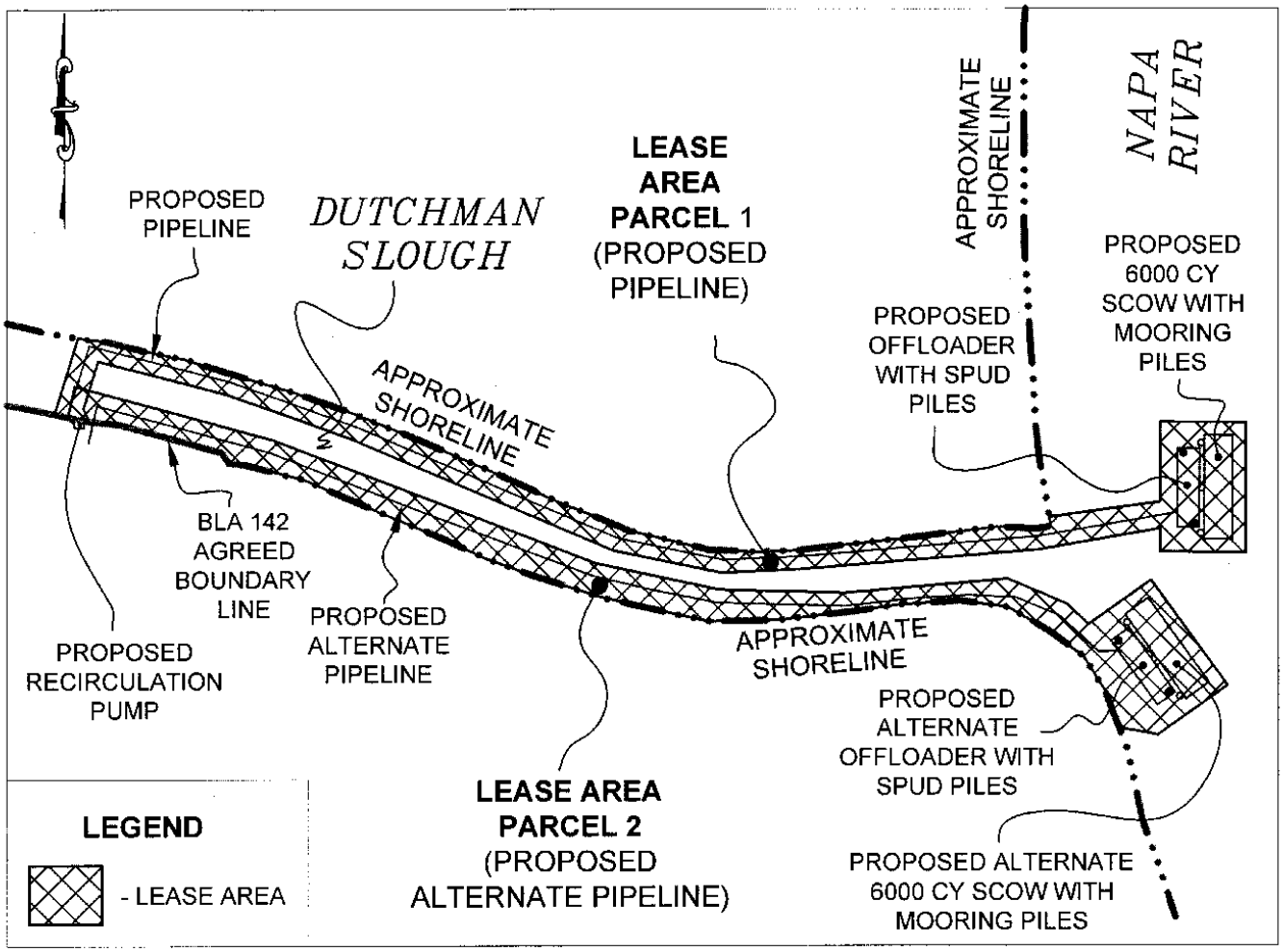
The BASIS OF BEARINGS of this description is the California Coordinate System of 1983, Zone 2 (2007.00). All distances are grid distances.

END OF DESCRIPTION

Prepared 05/03/2012 by the California State Lands Commission Boundary Unit.

NO SCALE

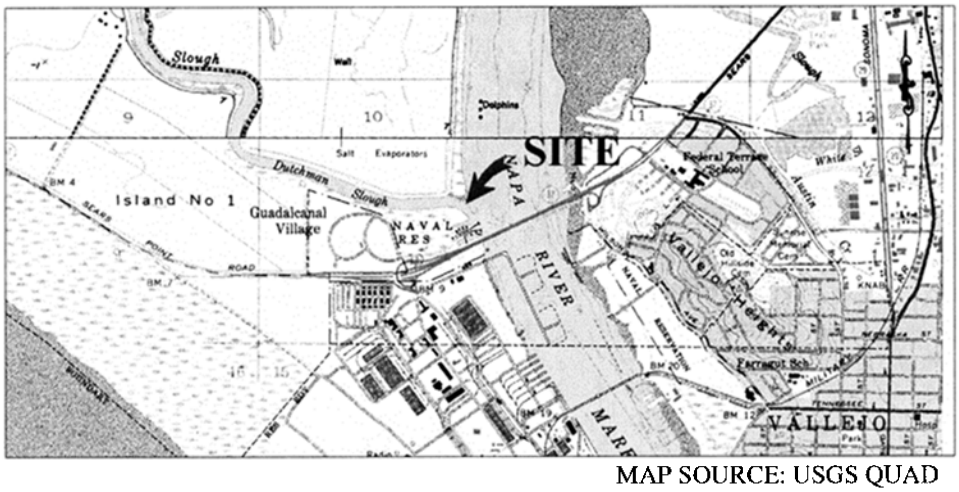
SITE



DUTCHMAN SLOUGH AND NAPA RIVER ADJACENT TO CULLINAN RANCH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

W 26528
US FISH AND WILDLIFE SERVICE
GENERAL LEASE - PUBLIC AGENCY USE
SOLANO COUNTY

JWP 05/02/12

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
BIO-4: Acoustic Impacts on Special-Status Birds from Construction	**MM BIO-4.1. Avoid Disturbance to California Clapper Rail and Black Rail Habitat During their Breeding Period.** Construction within tidal marsh habitat along Dutchman and South Sloughs shall not occur during the nesting season for both species from February 1st to July 31st. If construction must occur during this period, pre-construction surveys shall be performed by a qualified biologist in coordination with the USFWS and CDFG. Surveys will be based on USFWS-approved survey methodology and will result in a determination of the presence or absence of rails in or within 250 feet of the construction area. If rails are determined to be present, coordination with the USFWS will be initiated to determine what, if any, additional mitigation measures may be required to allow construction to proceed.	Off-loading Facility Area	Compliance monitoring	USFWS / CDFG	During construction of off-loading facility
BIO-39: Aquatic Acoustic Impacts from Construction	**MM BIO-6.1: Avoid Construction that Could Affect Tidal Aquatic Habitats when Salmonid Species are Known to Occur.** Construction activities that could affect tidal aquatic habitats with the Dutchman Slough, South Slough, and Napa River shall not take place during periods when salmon species could be present, including migration period. If construction activities must occur during periods when salmon species could be present, the USWFS shall consult with NMFS and CDFG to determine what, if any, additional mitigation measures may be required.	Off-loading Facility Area	Compliance monitoring	USFWS / CDFG	During construction of off-loading facility
N-2: Construction Noise	**MM N-2.1: Implement Noise Reducing Construction Practices.** In order to reduce noise levels during construction activities, the construction contractor shall implement, but not exclusively, the following noise-reduction practices. o Use mufflers on all construction equipment, generators, and vehicles; o Locate construction equipment staging areas as far	Off-loading Facility Area	Compliance monitoring	USFWS / CDFG	During construction of off-loading facility

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	away from any identified wildlife foraging, nesting or breeding habitats on the Site; o Relocate stationery construction equipment if wildlife foraging, nesting or breeding habitats cannot be moved away from the noise source; o Install temporary barriers around stationery construction noise sources if required; o Shut off idling equipment when not in use; o Reschedule construction activity outside breeding seasons for species whose mating is dependent on vocalization; o Schedule construction activities to start before nesting season and discourage use of the property by nesters that may abandon nest after construction starts; and o Schedule activities after nesting season is over to avoid nest abandonment.				
AQ-2: Construction Emissions	**MM AQ-2.1. Implement BAAQMD Standards to Control PM_{10} Emissions during Construction**. Basic Control Measures – The following controls shall be implemented during construction activities. o Water all active construction areas at least twice daily. o Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard. o Pave, apply water three times daily, or apply (nontoxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites. o Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites. o Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.	Off-loading Facility Area	Compliance monitoring	USFWS / CDFG	During construction of off-loading facility

Potential Impact	Mitigation Measure	Location	Monitoring/ Reporting Action	Agency Responsible	Timing
	o Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more). o Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.). o Limit traffic speeds on unpaved roads to 15 mph. o Install sandbags or other erosion control measures to prevent silt runoff to public roadways. o Replant vegetation in disturbed areas as quickly as possible. The following Optional Control Measures may be implemented during construction activities to further reduce emissions of PM10 pollutants. o Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the Site. o Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas. o Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph. o Limit the area subject to excavation, grading, and other construction activity at any one time.				
CR-3: Disturbance of Cultural Resources	**MM CR-3.1. Stop Work if Subsurface Cultural Deposits are Encountered during Construction Activities**. If previously unknown subsurface historic or archaeological artifacts are encountered during deep earth-moving construction activities, work shall halt and the San Pablo Bay National Wildlife Refuge manager shall be immediately notified. A regional archaeologist or similarly qualified individual (under the approval of the USFWS) shall assess the deposits before work resumes in the discovery area.	Off-loading Facility Area	Compliance monitoring	USFWS / CDFG	During construction of off-loading facility

EXHIBIT D – CULLINAN RANCH RESTORATION PROJECT

CSLC ADDENDUM

ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE CULLINAN RANCH RESTORATION PROJECT

SOLANO AND NAPA COUNTIES

SCH # 2007092004

Addendum Prepared for
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202
by
URS Corporation (1333 Broadway, Suite 800 Oakland, CA 94612)
and
Ducks Unlimited

(Final EIR Prepared for
California Department of Fish and Game
by
Ducks Unlimited)

1.0 INTRODUCTION

The California State Lands Commission (CSLC), as a responsible agency under the California Environmental Quality Act (CEQA), has prepared this Addendum to the Cullinan Ranch Restoration Project (Project or Preferred Restoration Alternative) Final Environmental Impact Statement / Environmental Impact Report (EIS/EIR) (SCH # 2007092004), prepared and certified by the U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG). The USFWS and CDFG are the lead agencies for the Project under the National Environmental Policy Act (NEPA) and CEQA, respectively.

The Project requires the placement of dredge material for the creation of approximately 50 acres of tidal plain marsh habitat. To acquire the dredge material, the Project, as described in the certified Final EIS/EIR, originally included a dredge material off-loading facility (OLF) within an upland area adjacent to Dutchman Slough and the Cullinan Ranch restoration site; since then, however, the Project managers have determined that an OLF on the Napa River, rather than on the relatively narrow and sinusoidal Dutchman Slough, would be accessible to a wider range of scows and barges and would increase the likelihood of receipt of dredge material. Consequently, USFWS, as the Project proponent, has proposed to construct the OLF in the Napa River rather than Dutchman Slough; also, because the Napa River location is not directly adjacent to the restoration site, the OLF would include a dredge material pipeline anchored to the bed of Dutchman Slough to pump the dredge material from the Napa River to the restoration site itself. The modified OLF is subject to all other limitations set forth in the Final EIS/EIR and in the Conditions of Approval imposed by CDFG.

Because the new site for the OLF is State sovereign lands under the jurisdiction of the CSLC, USFWS has applied to the CSLC for a lease of the proposed area. To meet CEQA requirements for CSLC's consideration of the lease, CSLC staff has prepared this Addendum to the Project EIS/EIR to analyze the potential impacts of the modifications to the OLF.

This Addendum compares the Project modifications, referred to in this Addendum as the "Modified OLF," with the Project as originally analyzed to determine if the Modified OLF would result in any new or substantially more severe significant environmental impacts, as compared to the conclusions in the Final EIS/EIR.

2.0 PROJECT BACKGROUND AND MODIFIED PROJECT DESCRIPTION

2.1 MAY 2010 PROJECT APPROVAL

On July 15, 2002 a Notice of Intent to prepare an Initial Study was published in various newspapers in the San Francisco Bay Area. During the preparation of the Initial Study it was determined that the scope of the Project would require an Environmental Impact Report (EIR). On September 6, 2007, a Notice of Intent to prepare a joint Environmental Impact Statement (EIS) / EIR was published to satisfy the requirements of the California Environmental Quality Act (CEQA). The EIS/EIR analyzed two different restoration alternatives (the Preferred Restoration Alternative and the Partial Restoration Alternative), as well as the "No Project Alternative" mandated by CEQA. On May 2, 2008, a Notice of Completion of the Draft EIS/EIR was published. One public hearing was held on May 30, 2008, to accept comments. Eight comment letters (including emails) were received from Federal, State, and local governments and individuals. All verbal comments from the public hearing and written comments received by USFWS or CDFG were considered in the Final EIS/EIR. The Final EIS/EIR included all revisions and was released in April 2009. The CDFG then certified the Final EIS/EIR pursuant to CEQA on April 22, 2010, and approved the Preferred Restoration Alternative. Subsequently, on May 27, 2010, the California Wildlife Conservation Board, an independent Board within CDFG, approved funding for the Project.

2.2 PROPOSAL TO MODIFY THE PROJECT

The proposed Modified OLF would allow dredgers to berth their off-loaders near the confluence of Dutchman Slough and the Napa River (see attached drawings). Dredge material from the off-loaders would be pumped through the dredge material pipeline onto the Cullinan Ranch restoration site. This material would be utilized for the creation of approximately 50 acres of tidal plain marsh habitat, specifically designed to benefit the federally-endangered salt marsh harvest mouse.

Under the Modified OLF, USFWS proposes to construct a floating platform that is approximately 6,000 square feet (ft^2). A larger 200 ft x 400 ft OLF zone would encompass the OLF and the work area around it. The platform, onto which dredge material would be unloaded, would be held in position with two spuds 18-24 inches (in.) in diameter. Conceptual approximate locations are shown in Figure 1. Additionally, up to three temporary mooring piles may be driven to accommodate scows and barges. These piles would be either pipe steel or wooden marine piles, typically used for this application. Appropriate signage and night lighting will be placed on the OLF, spuds and moorings in accordance with the requirements of the U.S. Coast Guard.

Material that meets the existing dredge beneficial use criteria developed during the previous authorization and described in the Final EIS/EIR would be transported to the OLF by scow or tug-towed barge. The scows and barges are likely to range in total capacity from 800 to 3,000 cubic yards (CY). Current channel depths and navigational hazards in the Napa River would probably functionally limit the size of any vessel to a capacity of less than 4,000 CY, although the Project description identifies 6,000 CY as the upper threshold to accommodate the full potential range. The material would be slurried and pumped to the restoration site via a slurry pump ranging in capacity from 3000-6000 gallons per minute (GPM). Decant water from the

slurry would be transported back to the OLF through a booster pump at the restoration site, effectively creating a closed loop. Depending on the percentage of suspended solids in the slurry and pump operating capacity, the OLF would be able to off-load approximately 500 tons of sediment per hour.

River water would be required to initially prime the pump and pipeline, as well as for cooling the system while in operation. Some make-up water from the Napa River may also be required to augment the decant water during operation. This water would be drawn from the Napa River using a 50 GPM pump, through fish screens that comply with National Marine Fisheries Service (NMFS) and CDFG guidelines.

The slurried material would be transported from the OLF to the restoration site in a High Density Polyethylene (HDPE) pipeline, which would most likely be 18 in. in diameter or less. The recirculation water would be run through a parallel pipeline which also would be 18 in. in diameter or less. HDPE material is extremely durable, flexible, inert and slightly buoyant. The pipe is assembled by heat fusion to form a continuous pipeline which can be towed to the worksite. The pipeline would float on the water surface along the edge of Dutchman Slough and would be anchored to the bottom with small dead weight anchors, such as concrete blocks, to prevent wandering. If the pipeline is in an area of boat traffic, signs and/or lights would be affixed as navigational aids. If the pipe crosses a navigable area, weights would be used to hold down and anchor the pipe to the bottom of the channel so boat traffic could proceed unimpeded.

Once off-loading operations are completed, recirculating water would be flushed through the HDPE pipeline and onto the restoration site. Napa River water would be utilized to flush the pipeline, and when flushing water meets background levels of the Napa River (i.e. becomes clear at the point of discharge into the restoration site), the pipeline would then be disconnected at both ends; this would ensure that only water of ambient Napa River quality is discharged back into the Napa River via gravity flow.

The two potential site locations are shown on the attached schematic. The North site is more accessible to scows and barges, but would require a longer length of pipeline. The alternate South site is more difficult to access, but requires a shorter pipeline, and would not involve the pipeline crossing Dutchman Slough. Because the difference in environmental impacts between the two alignments is expected to be negligible, allowing for either alternative would provide flexibility to the contractor in final design without increasing the Project's impacts. Levee top placement for the pipeline was considered but, because it would require construction in potential habitat for the federally endangered California clapper rail and salt marsh harvest mouse, the alignment was ultimately rejected.

Because the Modified OLF would be located in the Napa River, which was not included in the Project Area analyzed in the Final EIS/EIR, **Mitigation Measure BIO-6.1,** which restricts construction activities during periods when salmon species could be present, would need to be modified to include the Napa River. as set forth below:

> **Mitigation Measure BIO-6.1: Avoid Construction that Could Affect Tidal Aquatic Habitats when Salmonid Species are Known to Occur.** Construction activities that could affect tidal aquatic habitats within Dutchman and South Sloughs and the Napa River shall not take place during periods when salmon species could be present, including migration periods. If construction activities must occur during periods when salmon species could be present,

the USWFS shall consult with NMFS and CDFG to determine what, if any, additional mitigation measures may be required.

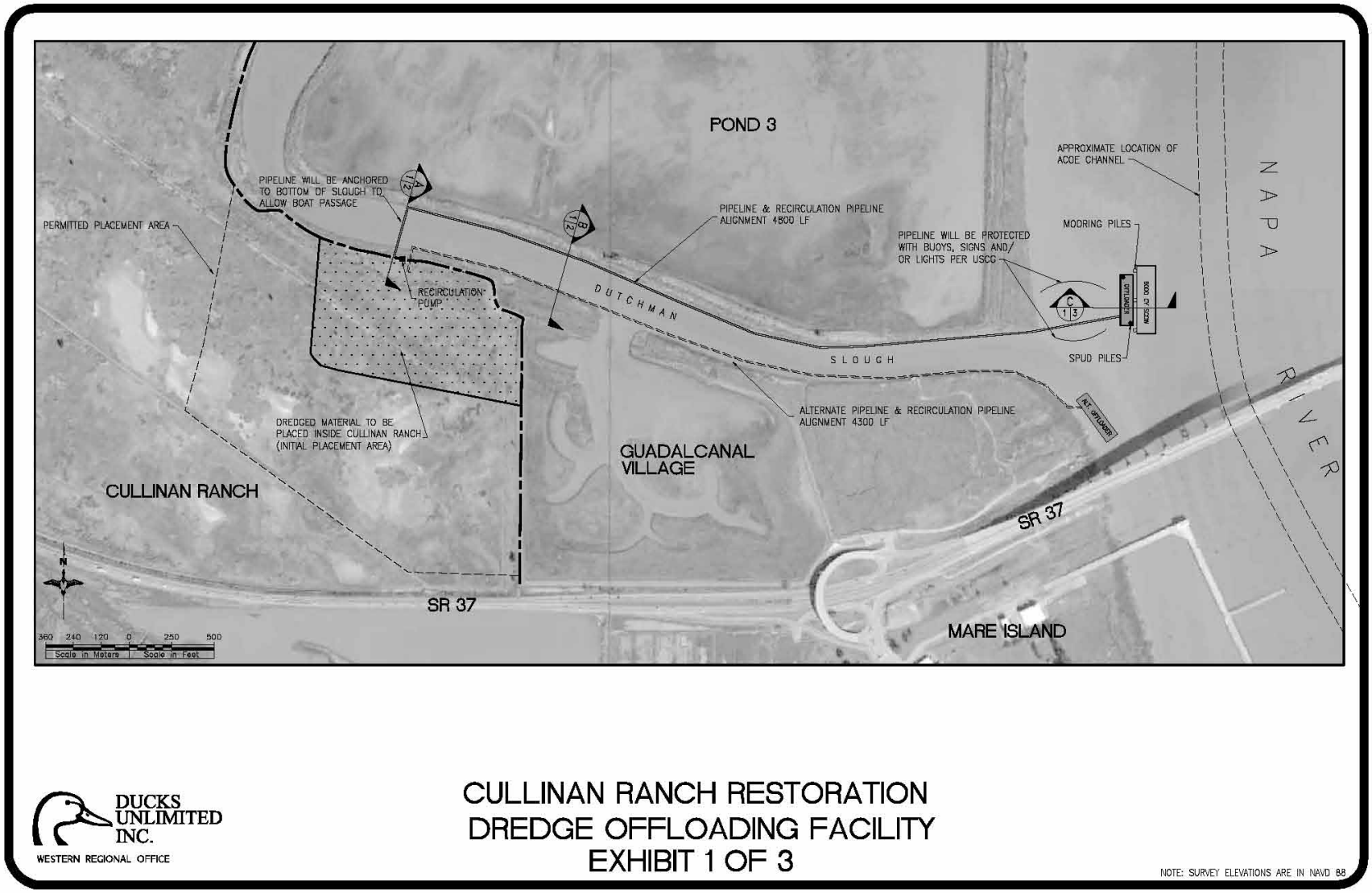


Figure 1. Cullinan Ranch and Modified OLF, Site Plan

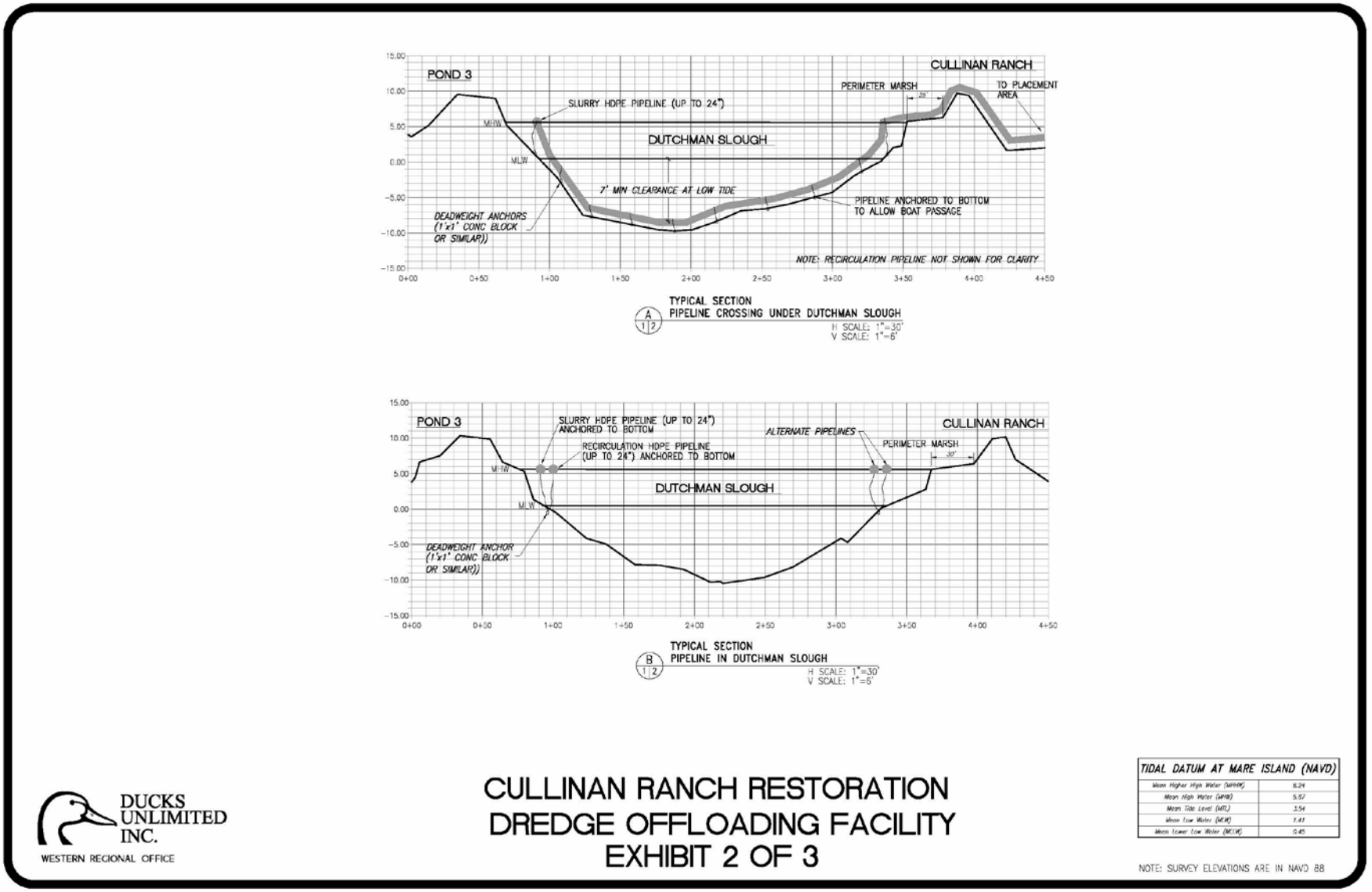


Figure 2. OLF Sediment Pipeline in Dutchman Slough, Typical Section

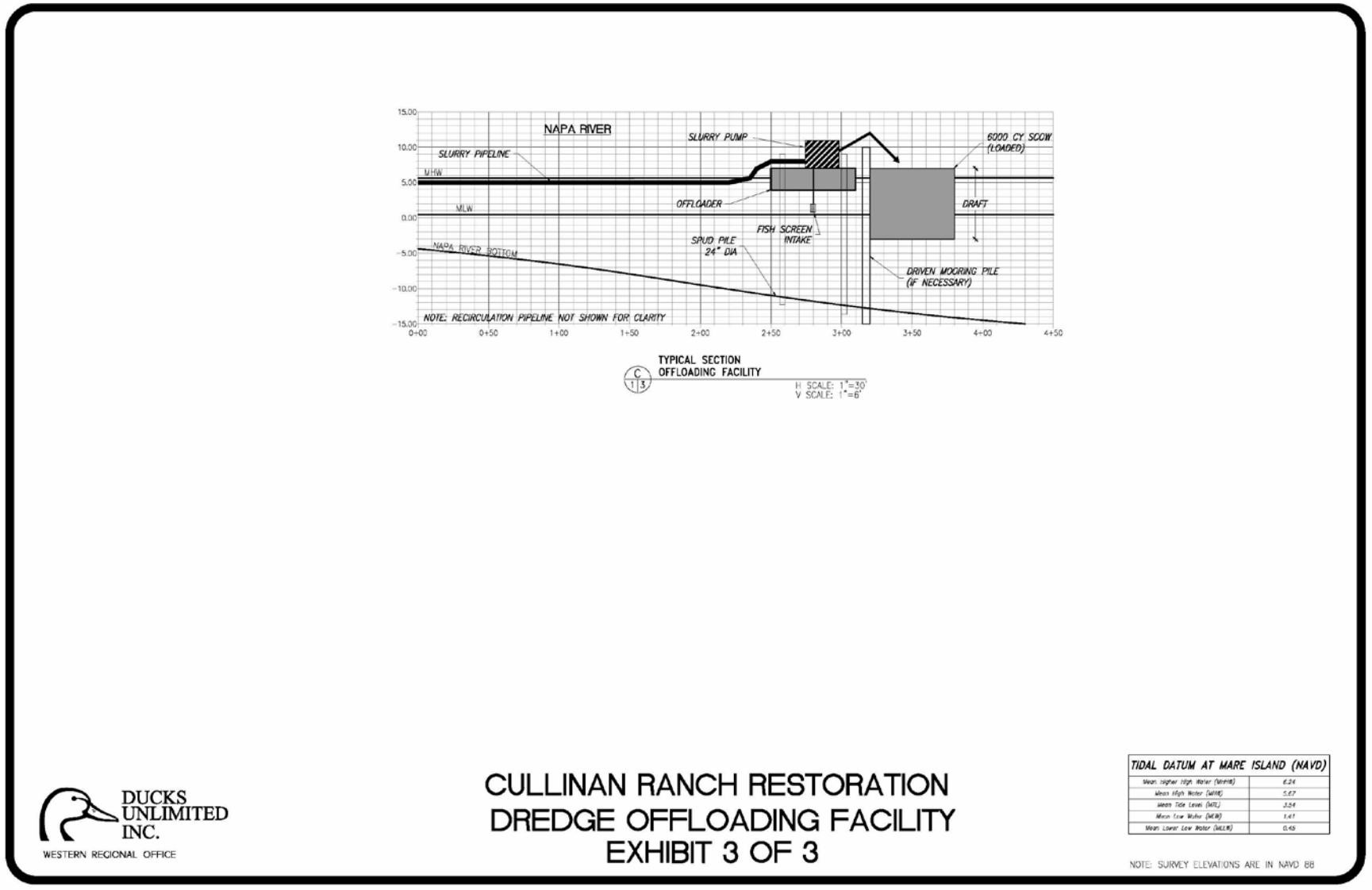


Figure 3. OLF Platform, Pump and Pilings, Typical Section

3.0 CEQA STANDARD FOR AN ADDENDUM

The CSLC has prepared this Addendum pursuant to CEQA and the State CEQA Guidelines.[1] Specifically, State CEQA Guidelines section 15164, subdivision (a) provides that "the lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred" (State CEQA Guidelines, § 15164, subd. (a); see also Pub. Resources Code, § 21166 [providing that no new EIR is required unless "substantial changes are proposed in the project which will require major revisions of the [EIR]"]). An addendum need not be circulated for public review or comment, but must be considered by the agency before making its decision on the project (State CEQA Guidelines, § 15164, subds. (c), (d)).

The conditions listed in section 15162, which would require preparation of a subsequent or supplemental EIR are as follows:

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR, was certified as complete or the Negative Declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

[1] The State CEQA Guidelines are found in California Code of Regulations, Title 14, section 15000 et seq.

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(CEQA Guidelines, § 15162, subd. (a).)

As determined from an analysis of the Modified OLF's potential impacts, as compared to those of the Project analyzed in the Final EIS/EIR, the changes to the Project do not meet any of the section 15162 conditions. Section 4.0, Existing Conditions and Environmental Impact Analysis, below, discusses the Modified OLF's potential impacts to each resource area and considers them in the broader context of the impacts and mitigation identified in the Final EIS/EIR. The analysis then considers the section 15162 conditions and explains why the difference in severity of significant impacts, if any, is not substantial enough to trigger preparation of a subsequent or supplemental EIR.

4.0 EXISTING CONDITIONS AND ENVIRONMENTAL IMPACT ANALYSIS

This Addendum examines the difference in impacts that would result from the Modified OLF as compared to the certified Final EIS/EIR. The Addendum specifically evaluates whether the Project modification would trigger the need for a subsequent or supplemental EIS/EIR pursuant to the State CEQA Guidelines section 15162, subdivision (a). The Addendum examines whether the proposed modifications to the Project could result in any new significant environmental effect or a substantial increase in the severity of a previously identified significant effect due to:

1. Substantial changes proposed in the project;
2. Substantial changes that would occur with respect to the circumstances under which the project is undertaken; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified.

This Addendum relies on the Final EIS/EIR for the Project. For ease of reference, this Addendum follows the general organizational framework used in the Final EIS/EIR.

The proposed change in the OLF location and dredge slurry delivery via HDPE pipeline would not substantially change the on-site impacts of development of the Project, and only has the potential to create impacts during the construction phase.

4.1 ENVIRONMENTAL ISSUES, IMPACTS, AND MITIGATION MEASURES

An Initial Study was prepared as part of the 2008 EIS/EIR process. Based on the detailed analysis contained within the Initial Study, the Project was not anticipated to impact Agricultural Resources, Geology and Soils, Population and Housing, and Public Services; therefore, further discussions were not included in the Final EIS/EIR (see § 15128 of the State CEQA Guidelines).

The Modified OLF would not result in any new significant environmental effect or a substantial increase in the severity of a previously identified significant effect related to agricultural resources, geology and soils, population and housing, or public services due to substantial changes proposed in the Project or substantial changes with respect to Project circumstances; nor is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIS/EIR was certified. Details of the mitigation measures referenced in the following subsections can be found in the full EIS/EIR.

4.1.1 Hydrology and Water Quality

The EIS/EIR analyzed impacts related to hydrology and water quality in Section 3.1. All impacts identified for the Project related to hydrology and water quality were found to be less than significant or have no impact.

The primary concern for hydrology and water quality for the Modified OLF is the potential to increase suspended soils and turbidity (Impacts HYD-10 and HYD-16 in the EIS/EIR) and the potential to discharge contaminants into the waters of the U.S. Bay Delta Estuary (Impacts HYD-9 and HYD-15 in the EIS/EIR). The Final EIS/EIR found these impacts to be less than significant; however, the discussion of these impacts only considered Project operation, and not in-water OLF construction activity.

Any adverse effects of construction activities involved with the Modified OLF would be minimized by appropriate selection of equipment and method in pile-driving and employing standard marine Best Management Practices such as the use of spill prevention kits located on the OLF, the use of catch pans or drop cloths under all equipment utilizing fluids, keeping fuel in double containment systems with positive shut-off values at the nozzles, and the suitable transport of dredge material.

Construction of the Modified OLF would involve only minor disturbance of the beds of the Napa River and Dutchman Slough in placement of spuds and anchors and, potentially, driving of three piles. When operating, the facility would only transport sediment that meets the existing dredge beneficial use criteria, and would only release water back into the Napa River once the water has been diluted to background levels of the River (i.e. becomes clear at the point of discharge into the restoration site). Consequently, implementation of the Modified OLF would not violate any water quality standards or waste discharge requirements or otherwise substantially degrade water quality.

Additionally, because the Modified OLF will only be used to off-load and pump dredge materials, it would not:

- substantially alter the existing drainage pattern of the site or area;
- create or contribute runoff water that would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff;
- place housing or structures within a 100-year flood hazard area;
- expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam; or
- expose people or structures to inundation by seiche, tsunami, or mudflow.

The Modified OLF thus would not result in a new significant environmental effect or a substantial increase in the severity of a previously identified significant hydrologic or water quality impacts due to substantial changes proposed in the Project or its circumstances; nor is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Final EIS/EIR was certified.

4.1.2 Biological Resources

The EIS/EIR analyzed impacts to biological resources in Section 3.2. Several potentially significant impacts to biological resources were identified for the Project:

- BIO-3. Implementation of the Preferred Restoration Alternative could result in the temporary loss of salt marsh harvest mouse habitat and potential mortality of individual salt marsh harvest mice.
- BIO-4. Implementation of the Preferred Restoration Alternative could disturb California clapper rails and black rails.
- BIO-5. Implementation of the Preferred Restoration Alternative could disturb San Pablo song sparrow and result in abandoned nests and mortality of young.

- BIO-6. Implementation of the Preferred Restoration Alternative could result in construction-related mortality of salmonids and other special status fish.
- BIO-14. Implementation of the Preferred Restoration Alternative could result in the potential spreading of invasive non-native species.

The above potentially significant impacts to biological resources associated with the Project can be mitigated to less than significant. These mitigation measures are listed below and are described in detail within the EIS/EIR:

- **Mitigation Measure BIO-3.1: Remove salt marsh harvest mouse habitat and place barrier fencing in buttress levee construction area.**
- **Mitigation Measure BIO-3.2: Slow flood-up of Cullinan Ranch**
- **Mitigation Measure BIO-4.1: Avoid disturbance of clapper rail and black rail habitat during their breeding period.**
- **Mitigation Measure BIO-5.1: Locate and avoid San Pablo song sparrow habitats and nests at the Cullinan Ranch site.**
- **Mitigation Measure BIO-6.1: Avoid construction that could affect tidal aquatic habitats when salmonid species are known occur.**
- **Mitigation Measure BIO-14.1: Prevent spread of perennial pepperweed to uninfested areas.**
- **Mitigation Measure BIO-14.2: Monitor the Cullinan Ranch site for infestation by invasive non-native species.**

The following significant impacts to biological resources associated with the Project cannot be mitigated and are significant and unavoidable impacts:

- BIO-9. Implementation of the Preferred Restoration Alternative would result in placement of permanent fill in jurisdictional wetlands and waters of the U.S.
- BIO-10. Implementation of the Preferred Restoration Alternative would result in permanent loss of mammal habitat and potential mortality of individual mammals.
- BIO-12. Implementation of the Preferred Restoration Alternative would result in loss of habitat for wintering water fowl.
- BIO-13. Implementation of the Preferred Restoration Alternative would result in the loss of foraging habitat for special status bat species.

The relocated or new facilities to be constructed under the Modified OLF would be the OLF floating platform, spud piles, and moorings located in the Napa River and the dredge slurry HDPE pipeline along Dutchman Slough. Construction of a temporary 6,000 ft^2 floating platform to receive dredge material and the installation of spud and mooring pilings could create additional potential impacts from underwater construction activities that were not previously analyzed in the EIS/EIR.

Environmental and Regulatory Setting

Under the Modified OLF, an additional environmental and regulatory setting has been introduced into the Project due to the newly proposed under water construction activities.

Marine Mammal Protection Act (16 USC 1361-1421h). The Marine Mammal Protection Act, adopted in 1972, makes it unlawful to take or import any marine mammals and/or their products. Under Section 101(a)(5)(D) of this act, an incidental harassment permit may be issued for activities other than commercial fishing that may impact small numbers of marine mammals. An incidental harassment permit covers activities that will have a negligible impact on the impacted species, and does not include activities that may cause injury or death. Amendments to this act in 1994 statutorily defined two levels of harassment. Level A harassment is defined as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal in the wild. Level B harassment is defined as harassment having potential to disturb marine mammals by causing disruption of behavioral patterns including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Special Status Species

The Modified OLF location is on the main channel of the lower Napa River, approximately 3.75 miles upstream of the mouth of the river. The subtidal habitat present at this location is described in Section 3.2.1 of the EIS/EIR. This location has the potential to support several species of special status wildlife.

Special-status fish such as anadromous salmonids, Delta smelt, green sturgeon, and Sacramento splittail have all been recorded in surrounding areas (Figure 3.2-2b of EIS/EIR) and have potential to occur in the Napa River, including the location of the Modified OLF. The tidewater goby is a federally endangered species once known from the area but, because of current conditions, is no longer believed to occur. Anadromous fish including Southern green sturgeon, Central Valley steelhead, Central California coastal steelhead, winter-run and Central Valley spring-run Chinook salmon, and Central California coast Coho salmon, which are federally-listed species, have potential to occur within the lower Napa River, South Slough, and Dutchman Slough. Additionally, the Napa River is critically designated habitat for Central California coast steelhead. The delta smelt, listed as federally threatened, has been found in the Mare Island Strait and the San Pablo Bay during surveys performed in 2006 (CDFG 2006). With the exception of Southern green sturgeon, these special status fish species are unlikely to be present in the lower Napa River outside of migration periods. Although there are no haul-outs for harbor seals (*Phoca vitulina*) or California sea lions (*Zalophus californianus*) on the Napa River, these species may occasionally be present in the lower Napa River during foraging forays.

Environmental Consequences and Mitigation Measures from the Modified OLF

BIO-37. Implementation of the Modified OLF would increase shading of subtidal habitat

Installation of a 6,000 ft^2 OLF floating platform would result in maximum *net* shading of approximately 6,000 ft^2 of subtidal habitat. Shade cast from over-water structures has been shown to reduce the amount of ambient light within the environment beneath the structure and can affect invertebrate and vertebrate community composition, reduce fish prey forage, and alter fish species composition and predator-prey relationships over normal open-water conditions (Nightingale and Simenstad 2001). Decreased light beneath the structures can also have an effect on phytoplankton production and the presence and growth of marine algae.

The new structures would be placed within the Napa River. Waters within the lower Napa River are subject to currents and daily tidal fluctuations which circulate water through the Modified OLF area. No bottom-growing marine algae or eelgrass occur in the vicinity of the Modified OLF area. The daily wave and tidal currents in the Napa River estuary cause high levels of sediments to re-suspend, resulting in turbid water that is naturally limiting to ambient light penetration and phytoplankton production. Water flowing beneath the structure due to tidal currents would limit the duration that phytoplankton cells would be subject to shading conditions. The area of shade that would result from the Project is small relative to the size of the Napa River estuary, and the impact on the food chain is expected to be negligible.

The reduction in light resulting from overwater structures can also create "behavioral barriers" that can deflect or delay fish migration, reduce prey resource production and availability, and alter predator-prey relationships (Nightingale and Simenstad 2001). Many predatory fish, such as striped bass (*Morone saxatilis*), are associated with structures (Haeseker et al., 1996) and could occur within the area associated with the new structure. This could result in a slight increase in predation on larval and young fish in the local Project area. This increase would be most pronounced during high tide, when larger predatory fish move into shallow water to feed. However, larval or young fish would most likely avoid areas that are shaded by the floating platform. Due to the rapid changes in water depths resulting from tidal action, it is unlikely that prey fish would remain in this zone and experience significant increases in predation.

While fish species composition could be somewhat different beneath structures than in open-water conditions, the change due to the Project in overwater structures in the area is not substantial and the potential effect of shading on sensitive species is not expected to constitute an adverse effect. No mitigation is necessary. ***Less-than-significant.***

BIO-38. Implementation of the Modified OLF could cause entrainment or impingement of special status fish species.

Materials transferred to the OLF would be slurried and pumped to the Cullinan Ranch placement area via a slurry pump ranging in capacity from 3000-6000 gallons per minute (GPM). Water would be required to initially prime the pump and pipeline and for cooling while in operation. This water would be supplied through a 50 GPM pump that would draw from the Napa River. Entrapment and impingement of marine organisms would be minimized through the use of a fish screen that would comply with National Marine Fisheries Service (NMFS) and CDFG guidelines. No mitigation is necessary. ***Less-than-significant.***

BIO-39. Implementation of the Modified OLF could increase high-intensity sound impacts on fish and marine mammal species.

On July 8, 2008, the Fisheries Hydroacoustic Working Group (FHWG), whose members include NMFS' Southwest and Northwest Divisions, California, Washington, and Oregon departments of transportation, the CDFG, and the U.S. Federal Highway Administration, issued an agreement for the establishment of interim threshold criteria to determine the effects of high-intensity sound on fish (FHWG, 2008). Although these criteria are not formal regulatory standards, they are generally accepted as viable criteria for underwater noise effects on fish. The criteria were established after extensive review of the most recent analyses of the effect of underwater noise on fish. The FHWG has determined that noise at or above peak noise levels above 206 dB can cause barotrauma to auditory tissues, the swim bladder, or other sensitive organs. Additionally, accumulated sound energy levels (SEL) above 187 dB for large fish and 183 dB for larval (less

than 2 grams body weight) have been determined to be potentially detrimental to fish. A specific criterion has not yet been set by the FHWG for continuous noise, such as vibratory driving.

Levels of harassment for marine mammals are defined in the Marine Mammal Protection Act of 1972. Level A harassment is defined as "[A]ny act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild." Level B harassment is defined as "[A]ny act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including but not limited to migration, breathing, nursing, breeding, feeding or sheltering." Any activities that may result in harassment of marine mammals under these guidelines would require an Incidental Harassment Authorization (IHA) from the NMFS. For impact pile-driving, NMFS defines levels above 190 dB as Level A harassment for seals and sea lions (which could occur in the area). Level B harassment for impact pile-driving is defined as sound levels between 160 dB and 190 dB. For continuous noise, such as vibratory pile-driving the Level B criterion is 120 dB.

When piles are driven with a vibratory hammer, less sound energy is produced than with the impact hammer. Peak sound pressures of 206 dB are not anticipated to occur with the vibratory installation of the piles. It is estimated that every pile would be driven approximately 10 minutes (600 seconds). There would be about 1,800 seconds of operation if all three piles were driven in one day. A conservative assessment assumes all piles strikes are at the same distance to the receiver (i.e., a fish) and all pile strikes produce the maximum SEL. Under this scenario, the accumulated SEL at about 35 ft would be approximately 195 dB. The distance over which the 187 dB accumulated SEL level would be exceeded is about 105 ft. The values have been calculated for a hollow steel pile. If wooden piles are installed, the 187 dB accumulated SEL level would not be exceeded.

With respect to marine mammals, the pile installation would not produce sound levels above the Level A Harassment threshold (190 dB). The Level B Harassment threshold (120 dB) would be exceeded over a distance of up to one mile for steel piles. If wooden piles are installed, the threshold would be exceeded over a distance of 600 feet. However, background underwater sound levels in the lower Napa River are expected to be greater than 120 dB due to regular boat traffic, which may produce sound levels of 150 dB or more (Richardson et. al 1995). As a result, the area over which pile-driving could affect marine mammals would be much less than one mile. Given the short duration of pile-driving (1800 seconds total) and the distribution of marine mammals (no haul outs or other regular use areas on the Napa River) it is unlikely that any marine mammals would experience harassment. No mitigation for underwater sound during pile-driving is necessary for marine mammals.

While vibratory pile-driving would increase noise levels, they would not exceed levels that may cause injury to fish or marine mammals. The noise levels produced may cause temporary hearing shifts or behavioral effects for special status fish. Through implementation of Mitigation Measure BIO-6.1, pile-driving would occur outside of the migration season when the majority of these fish species have potential to be present. Therefore the change due to the Project in sound levels in the area is not substantial and there is no adverse effect on sensitive species. ***Less-than-significant, with implementation of mitigation.***

- **Mitigation Measure BIO-6.1: Avoid Construction that could affect tidal aquatic habitats when salmonid species are known to occur.** Construction activities that could affect tidal aquatic habitats with the Dutchman Slough, South Slough, and Napa River shall not take place during periods when salmon species could be present, including migration period. If construction activities must occur during periods when salmon species could be present, the USWFS shall consult with NMFS and CDFG to determine what, if any, additional mitigation measures may be required.

For these reasons, the Modified OLF would not result in a new significant effect related to biological resources, or a substantial increase in the severity of a previously identified significant effect, due to substantial changes proposed in the Project or substantial changes with respect to Project circumstances; nor is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIS/EIR was certified.

4.1.3 Hazards and Hazardous Waste

The EIS/EIR analyzed impacts related to hazards and hazardous waste in Section 3.3. One potentially significant impact related to hazards and hazardous wastes was identified for the proposed Project:

- HAZ-2. Implementation of the Preferred Restoration Alternative could result in the release of onsite contaminates contained in dredged materials.

The construction and operation of the Modified OLF would not contribute to the movement of potentially contaminated dredge materials sourced *on*site. Although operation of the OLF would introduce dredge materials from offsite, the USFWS would only accept offsite dredge materials that meet established criteria appropriate for top-cover; therefore, the EIS/EIR concluded that the importation of offsite source materials would not create a significant Hazardous Waste impact. Although under the Modified OLF the location of the OLF would change from that originally proposed in the EIS/EIR, the dredge material criteria would not, and the impact would remain less-than-significant.

Driving of three mooring piles and the placement of spuds and weights during construction of the dredge slurry HDPE pipeline and floating platform may temporarily disturb submerged sediment; however, the disturbance would be minor and is not expected to result in a significant release or dispersion of hazardous materials that may occur in riverbed sediment. ***Less-than-significant.***

Environmental Consequences and Mitigation Measures from the Modified OLF

HAZ-6. Implementation of the Modified OLF would inhibit navigation during construction activities.

Under the Modified OLF, the presence of the OLF could potentially constitute a navigation hazard from siting the OLF in the Napa River Appropriate signage and night lighting will be placed on the platform, spuds and moorings in accordance with the requirements of the U.S. Coast Guard. Implementation of the Modified OLF would not alter the ability of the Napa River to function as navigable water during Project construction activities. No mitigation is necessary. ***Less-than-significant.***

For these reasons, the Modified OLF would not result in a new significant effect related to hazards and hazardous materials, or a substantial increase in the severity of a previously identified significant effect, due to substantial changes proposed in the Project or substantial changes with respect to Project circumstances; nor is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIS/EIR was certified.

4.1.4 Land Use, Recreation, and Public Health

The EIS/EIR analyzed impacts related to land use and planning in Section 3.4. One potentially significant impact related to land use, recreation, and public health was identified for the Project:

- LU-5. Implementation of the Preferred Restoration Alternative would result in reduction of existing mosquito breeding habitat due to the introduction of tidal influences into the Cullinan Ranch site.

Construction of the dredge slurry HDPE pipeline and floating platform would involve under- and in-water construction activities, and would have no potential to create new mosquito breeding habitat. Nor does the Modified OLF create new potential inconsistencies with Solano County's General Plan, Napa County's General Plan, the City of Vallejo General Plan, or any other regional plan.

For these reasons, the Modified OLF would not result in a new significant environmental effect or a substantial increase in the severity of a previously identified significant impact to Land Use Policy regulations, habitat conservation plan or natural community conservation plan and could not have been known with the exercise of reasonable diligence at the time the EIS/EIR was certified.

4.1.5 Visual Quality

The EIS/EIR analyzed visual quality impacts in Chapter 3.5. All potential impacts identified for the Project related to visual quality were found to be less than significant or have no impact.

The primary concern for visual quality under the Modified OLF is the potential impacts caused during construction activities. These impacts were analyzed for the proposed Project under Impact VQ-1, VQ-2 and VQ-4 and were found to be less than significant due to the temporary nature of construction activities.

In accordance with the requirements of the U.S. Coast Guard, appropriate signage and night lighting will be placed on the floating platform, spuds and moorings to ensure nautical safety. The night lighting from the Modified OLF would be of the same intensity and temporary duration as construction impacts analyzed within the original EIS/EIR.

For these reasons, the Modified OLF would not result in a new significant environmental impacts or a substantial increase in the severity of a previously identified significant effect related to social or economic due to substantial changes proposed in the Project or substantial changes with respect to Project circumstances; nor is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIS/EIR was certified.

4.1.6 Transportation

The EIS/EIR analyzed impacts to transportation in Section 3.6. Two potentially significant impacts related to transportation were identified for the Project:

- TR-2. Implementation of the Preferred Restoration Alternative could diminish overall traffic operations along Highway 37 or its approaches during importing operations.
- TR-3. Construction of access lanes to and from Highway 37 could result in temporary traffic congestion along Highway 37.

The Modified OLF would not cause changes in traffic and transportation associated with construction traffic as analyzed in the certified EIS/EIR. Therefore, the Modified OLF would not

- cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system;
- cause an exceedance of a level of service standard established by the county;
- substantially increase hazards due to a design feature or incompatible uses;
- result in inadequate emergency access, would not result in inadequate parking capacity; or
- conflict with adopted policies, plans, or programs supporting alternative transportation.

For these reasons, the Modified OLF would not result in a new significant environmental effect or a substantial increase in the severity of a previously identified significant effect related to traffic and transportation due to substantial changes proposed in the Project or substantial changes with respect to Project circumstances; nor is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIS/EIR was certified.

4.1.7 Noise

The EIS/EIR analyzed noise impacts in Section 3.7. One potentially significant impact related to transportation was identified for the Project:

- N-2. Implementation of the Preferred Restoration Alternative would result in temporary increases in noise levels to more than 65 dBA during construction activities.

Construction of the dredge slurry HDPE pipeline, floating platform, and spud and mooring piles would create a new above-ground and in-water noise source due to the vibration hammering of mooring piles; however, the intermittent and temporary nature of the activities would not increase temporary noise levels during construction activities above levels analyzed within the original EIS/EIR analysis.

For these reasons, and given the temporary nature of the modified construction noise impacts, the Modified OLF, with incorporation of mitigation measures already identified in the EIS/EIR would not result in a new significant environmental effect or a substantial increase in the severity of a previously identified significant effect related to noise due to substantial changes proposed in the Project, substantial changes with respect to Project circumstances; nor is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Board certified the EIS/EIR.

Mitigation Measure N-2.1 identified in the EIS/EIR would be implemented to the extent that it applies to pipeline construction to reduce these potential impacts to less than significant. ***Less-than-significant, with implementation of mitigation.***

- **Mitigation Measure N-2.1: Implement Noise Reducing Construction Practices.** In order to reduce noise levels during construction activities, the construction contractor shall implement, but not exclusively, the following noise-reduction practices.
    - Use mufflers on all construction equipment, generators, and vehicles;
    - Locate construction equipment staging areas as far away from any identified wildlife foraging, nesting or breeding habitats on the Site;
    - Relocate stationery construction equipment if wildlife foraging, nesting or breeding habitats cannot be moved away from the noise source;
    - Install temporary barriers around stationery construction noise sources if required;
    - Shut off idling equipment when not in use;
    - Reschedule construction activity outside breeding seasons for species whose mating is dependent on vocalization;
    - Schedule construction activities to start before nesting season and discourage use of the property by nesters that may abandon nest after construction starts; and
    - Schedule activities after nesting season is over to avoid nest abandonment.

With implementation of this mitigation measure, impacts to noise from construction of the Modified OLF would be less than significant. All other contributions to noise would remain the same as analyzed in the EIS/EIR.

4.1.8 Air Quality

The EIS/EIR analyzed impacts to air quality in Section 3.8. One potentially significant air quality impact was identified for the proposed Project:

- AQ-2. Construction activities proposed under the Preferred Restoration Alternative would be temporary in duration, but may still cause adverse air quality impacts.

Construction of the Modified OLF would be subject to the same potential air quality impacts during construction as the original proposed Project. Mitigation Measure AQ-2.1 identified in the EIS/EIR would be implemented to the extent that it applies to the Modified OLF to reduce these potential impacts to less than significant. ***Less-than-significant, with implementation of mitigation.***

- **Mitigation Measure AQ-2.1: Implement BAAQMD Standards to Control PM10 Emissions during Construction.** Basic Control Measures – The following controls shall be implemented during construction activities.
    - Water all active construction areas at least twice daily.
    - Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.

- Pave, apply water three times daily, or apply (nontoxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
- Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more).
- Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
- Limit traffic speeds on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.

The following Optional Control Measures may be implemented during construction activities to further reduce emissions of PM10 pollutants.

- Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the Site.
- Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas.
- Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.
- Limit the area subject to excavation, grading, and other construction activity at any one time.

With implementation of these mitigation measures, impacts to air quality from construction of the Modified OLF would be less than significant. All other contributions to air quality emissions would remain the same as analyzed in the EIS/EIR.

As a result, the Modified OLF would not result in a new significant environmental effect or a substantial increase in the severity of a previously identified significant effect related to emissions of criteria pollutants due to substantial changes proposed in the Project or substantial changes with respect to Project circumstances; nor is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Board certified the EIS/EIR.

4.1.9 Utilities and Service Systems

The EIS/EIR analyzed utilities and service systems impacts in Section 3.9. All potential impacts identified for the Project related to utilities and service systems were found to have no impact.

The Modified OLF would have no potential to necessitate the construction of new or expanded water or wastewater treatment facilities, require new water supplies, or create excessive solid waste. Implementation of the Modified OLF would not result in any new or substantially more

severe environmental impacts associated with utilities and service systems as already analyzed for the Project in the EIS/EIR.

For these reasons, the Modified OLF would not result in a new significant environmental effect or a substantial increase in the severity of a previously identified significant impact related to utilities and service systems due to substantial changes proposed in the Project or substantial changes with respect to Project circumstances; nor is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIS/EIR was certified.

4.1.10 Socioeconomics and Environmental Justice

The EIS/EIR analyzed Socioeconomics and Environmental Justice impacts in Section 3.10. All impacts identified for the Project related to socioeconomics and environmental justice were found to be less than significant or have no impact.

The Cullinan Ranch Site does not contain any urban development; the closest urban areas to the Cullinan Ranch Site are Mare Island and the City of Vallejo, located approximately two miles to the east. There are no businesses, permanent or temporary residents or community centers located on the site. Additionally, no minority or low-income populations inhabit the Cullinan Ranch Site or are located directly adjacent to the site. Thus, there would be no significant social or economic impacts, and the anticipated physical effects of the proposed Project would not result in disproportionately high, adverse human health or environmental impacts. Therefore, the Modified OLF would have no new significant social or economic impacts.

For these reasons, the Modified OLF would not result in a new significant environmental impacts or a substantial increase in the severity of a previously identified significant effect related to socioeconomics due to substantial changes proposed in the Project or substantial changes with respect to Project circumstances; nor is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Board certified the EIS/EIR.

4.1.11 Cultural Resources

The EIS/EIR analyzed impacts to cultural resources in Section 3.11. A potentially significant impact to cultural resources was identified for the Project:

- CR-3. Implementation of the Preferred Restoration Alternative could potentially affect subsurface historic or archaeological artifacts.

Proposed earth moving activities such as dredging and excavating could result in the inadvertent discovery of significant subsurface deposits of historic or archaeological artifacts at the Cullinan Ranch Site, which could be disturbed by construction activities. Mitigation Measure CR-3.1 identified in the EIS/EIR would be implemented to reduce these potential impacts to less than significant. ***Less-than-significant, with implementation of mitigation.***

- **Mitigation Measure CR-3.1: Stop work if subsurface cultural deposits are encountered during construction activities.** If previously unknown subsurface historic or archaeological artifacts are encountered during deep earth-moving construction activities, work shall halt and the San Pablo Bay National Wildlife Refuge manager shall be immediately notified. A

regional archaeologist or similarly qualified individual (under the approval of the USFWS) shall assess the deposits before work resumes in the discovery area.

As a result, the Modified OLF would not result in a new significant effect or a substantial increase in the severity of a previously identified significant effect related to cultural resources due to substantial changes proposed in the Project or substantial changes with respect to Project circumstances; nor is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIS/EIR was certified.

4.1.12 Cumulative Impacts

The EIS/EIR analyzed cumulative impacts as part of the topical analyses described above, and determined that the Cullinan Ranch Restoration would result in beneficial effects to the biological environment and preclude development of the restoration site for other intensive land uses. The Modified OLF would not result in new or substantially more severe cumulative effects, as the only physical changes compared to the Project as evaluated in the EIS/EIR are the addition of construction of a dredge slurry HDPE pipeline and spud and mooring piles for the Modified OLF.

For the reasons described above, the Modified OLF would not result in any new significant cumulative impacts due to substantial changes proposed in the Project or substantial changes with respect to Project circumstances; nor is there new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIS/EIR was certified**.**

4.1.13 Significant and Unavoidable Impacts

The certified EIS/EIR resulted in identification of significant and unavoidable impacts that cannot be mitigated to a less-than-significant level. Specifically, restoring the site to tidal wetland habitat would result in the following significant and unavoidable impacts: permanent loss of seasonal wetland habitat; permanent filling of jurisdictional wetlands and waters of the United States; loss of foraging habitat for raptor and special status bats; and loss of habitat for wintering fowl. These impacts are discussed in detail in *3.2 Biological Resources* of the EIS/EIR. The Modified OLF would not result in any new significant or unavoidable impacts that cannot be mitigated to a less-than-significant level.

4.1.14 Irreversible and Irretrievable Commitments of Resources

Section 15127, subdivision (c) of the CEQA Guidelines requires an EIS/EIR to discuss significant irreversible changes that would result from implementation of the Project analyzed within the EIS/EIR and this Addendum. Implementation of the Project, including the Modified OLF, would result in the irreversible commitment to nonrenewable energy sources (e.g., petroleum products, natural gas, and electricity) needed to construct the restoration components. Restoration of Cullinan Ranch would not, however, result in an irreversible commitment of resources (such as conversion to an urban developed use), as the site could conceivably be converted to other land uses in the future.

4.1.15 Relationship Between Short-Term Uses of the Environmental and the Maintenance and Enhancement of Long-Term Productivity

Under the implementation of the previously proposed Project and the Modified OLF, short-term uses of the environment that would occur include the impacts on existing wetlands and upland habitat. As described in *3.2 Biological Resources* of the EIS/EIR, construction would result in the loss of wetland and upland habitat that presently exists and provide foraging and breeding habitat for a variety of fish and wildlife species. Conversely, in the long term, the site is expected to be substantially more productive for special status and the associated habitat values, through the restoration of tidal wetlands habitats on the site.

5.0 CONCLUSION

For the reasons described in this Addendum, approval of the Modified OLF would not meet any of the conditions identified in CEQA Guidelines section 15162 subdivision (a) requiring preparation of a subsequent EIR or supplement to an EIR.

6.0 REFERENCES

California Department of Fish and Game. 2006. Bay Delta Region 20mm Delta Smelt.

www.delta.dfg.ca.gov/data/20mm/

Haeseker, S.L., J.T. Carmichael, and J.E. Hightower, 1996. Summer distribution and condition of striped bass within Albemarle Sound, North Carolina. Transactions of the American Fisheries Society 125:690–704.

Nightingale, B. and C. A. Simenstad (2001). Executive Summary-Overwater Structures: Marine Issues White Paper. Washington State Transportation Center (TRAC), Washington State Department of Transportation. Seattle, Washington.

Richardson, W.J., C.R. Greene, Jr., C.I. Malme, and D.H. Thomson. 1995. Marine Mammals and Noise. San Diego: Academic Press. 576 pp.

EXHIBIT E – CULLINAN RANCH RESTORATION PROJECT

STATEMENT OF FINDINGS

INTRODUCTION

The California State Lands Commission (CSLC), acting as a responsible agency under the California Environmental Quality Act (CEQA), makes these findings to comply with CEQA as part of its discretionary approval to authorize issuance of a lease to the U.S. Fish and Wildlife Service (USFWS) for use of sovereign lands for a proposed dredge material off-loading facility associated with the Cullinan Ranch Restoration Project (Project). (See generally Pub. Resources Code, § 21069; State CEQA Guidelines, § 15381.)[1] The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

The CSLC is a responsible agency under CEQA for the Project because the CSLC must approve a lease for the Project to go forward and because the California Department of Fish and Game (CDFG), as the CEQA lead agency, has the principal responsibility for approving the Project and has completed its environmental review under CEQA. The CDFG, along with the USFWS, the lead agency under the National Environmental Policy Act (NEPA), analyzed the environmental impacts associated with the Project in an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) (State Clearinghouse [SCH] No. 2007092004). In April 2010, the CDFG certified the EIR, adopted a Project Mitigation Monitoring and Reporting Program, made Findings, adopted a Statement of Overriding Considerations (SOC), and approved the Project.

The Project is an effort to increase suitable habitat in San Pablo Bay to support endangered species such as salt marsh harvest mouse, California clapper rail, Delta smelt, and anadromous salmonids in the larger San Francisco Bay ecosystem. To this end, the Project involves restoring the entire Cullinan Ranch area to tidal wetland. Tidal action would be restored to approximately 1,575 acres of diked baylands by constructing four levee breaches to create a habitat continuum including: subtidal channels, intertidal marsh, and upland wetland ecotone to benefit estuarine biota such as birds, fishes and small mammals. The intent is to re-establish wildlife corridors and connectivity of habitats at the landscape scale. The Project would also offer new recreational and educational opportunities on the Project site.

Since the certification of the EIS/EIR, USFWS, the Project proponent, has determined that the dredge material offloading facility and sediment pipelines (OLF) associated with

[1] CEQA is codified in Public Resources Code section 21000 et seq. The State CEQA Guidelines are found in Title 14 of the California Code of Regulations section 15000 et seq.

the Project, originally sited upland of Dutchman Slough, would be more accessible to scows and barges transporting dredge materials if it were located in the wider Napa River, on State sovereign lands under the management authority of the CSLC. Consequently, In January 2012, USFWS submitted an application for a new General Lease – Public Agency Use that would permit that part of the proposed Project; however, because the location and design of the OLF as currently proposed has not been analyzed under CEQA, CSLC staff has prepared an Addendum to the EIS/EIR pursuant to State CEQA Guidelines section 15164 for the OLF.

The proposed OLF would consist of a floating platform of approximately 6,000 square feet eheld in position with two spuds 18-24 inches in diameter. Additionally, up to three temporary mooring piles (either steel pipe or wood marine piles) may be driven to accommodate scows and barges. The OLF would also include a High Density Polyethylene (HDPE) pipeline, likely 18 inches in diameter or less, anchored to the bed of Dutchman Slough, that would transport sediment from the platform to the restoration site. Dredge material that meets dredge beneficial use criteria as described in the Final EIS/EIR would be slurried and pumped from the platform to the restoration site at 3,000 to 6,000 gallons per minute. All OLF structures would be removed after sufficient material has been supplied to the restoration site.

The USFWS and CDFG determined that the Project could have significant environmental effects on the following environmental resources:

- Transportation
- Air Quality
- Cultural Resources
- Noise
- Hazardous Waste
- Biological Resources

Of those six resources areas, the Addendum clarified that the construction and operation of the OLF could have significant environmental effects on Biological Resources, Noise, Air Quality and Cultural Resources.

In certifying the EIR and approving the Project, CDFG imposed various mitigation measures for Project-related significant effects on the environment as conditions of Project approval and concluded that Project-related impacts would be substantially lessened with implementation of mitigation measures. Even with identified mitigation, some impacts to Biological Resources were considered significant and unavoidable and, as a result, CDFG adopted a SOC (see Attachment A); however, the significant and unavoidable impacts identified in the EIS/EIR—such as increased loss of seasonal wetlands, permanent fill in jurisdictional wetlands, and loss of raptor and bat foraging habitat, wintering waterfowl habitat and mammal habitat—all would result from conversion of the restoration site to tidal wetlands habitat, and so are outside the jurisdiction and approval authority of the CSLC.

As a responsible agency, the CSLC complies with CEQA by considering the lead agency's EIR together with the CSLC Addendum and reaching its own conclusions on whether, how, and with what conditions to approve a project. In so doing, the CSLC

may require changes in a project to lessen or avoid the effects, either direct or indirect, of that part of the project which the CSLC will be called on to carry out or approve. In order to ensure the identified mitigation measures and/or project revisions are implemented, the CSLC adopts the Mitigation Monitoring Program as set forth in Exhibit C as part of its Project approval.

FINDINGS

The CSLC's role as a responsible agency affects the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each public agency that approves a project for which an EIR has been certified that identifies one or more significant impacts on the environment. (Pub. Resources Code, § 21081, subd. (a); State CEQA Guidelines, § 15091, subd. (a).) Because the EIS/EIR certified by CDFG for the Project identifies potentially significant impacts that fall within the scope of the CSLC's approval, the CSLC makes the Findings set forth below as a responsible agency under CEQA. (CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund.* v. *Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.)

While the CSLC must consider the environmental impacts of the Project as set forth in the USFWS and CDFG's EIS/EIR and the CSLC Addendum, the CSLC's obligation to mitigate or avoid the direct or indirect environmental impacts of the Project is limited to those parts which it decides to carry out, finance, or approve (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g)). Accordingly, because the CSLC's exercise of discretion involves only the issuance of a surface lease for the OLF, the CSLC is responsible for considering only the environmental impacts related to lands or resources subject to the CSLC's jurisdiction. With respect to all other impacts associated with implementation of the Project, the CSLC is bound by the legal presumption that the EIR fully complies with CEQA.

The CSLC has reviewed and considered the information contained in the Project EIS/EIR and the CSLC Addendum. All significant adverse impacts of the Project identified in the EIR/EIS and CSLC Addendum relating to the CSLC's approval of a General Lease – Public Agency Use, which would authorize USFWS's Project activities on State sovereign land in the Napa River and Dutchman Slough, are included herein and organized according to the resource affected. These Findings, which reflect the independent judgment of the CSLC, are intended to comply with CEQA's mandate that no public agency shall approve or carry out a project for which an EIR has been certified that identifies one or more significant environmental effects unless the agency makes written findings for each of those significant effects. The possible findings on each significant effect are:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment;

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency;

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.[2]

These Findings are based on the information contained in the EIS/EIR, the CSLC Addendum, and information provided to CSLC staff by USFWS staff and one of its contractors for the Project, Ducks Unlimited, all of which is contained in the administrative record. The mitigation measures are briefly described in these Findings; more detail on the mitigation measures is included in the USFWS and CDFG's EIS/EIR.

The CSLC is the custodian of the record of proceedings upon which its decision is based. The location of the CSLC's record of proceedings is in the Sacramento office of the CSLC, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825.

I. IMPACTS REDUCED TO LESS THAN SIGNIFICANT LEVELS WITH MITIGATION

The following impacts from construction and use of the OLF were determined in the EIS/EIR and CSLC Addendum to be potentially significant absent mitigation: BIO-4, BIO-39, N-2, AQ-2, AQ-4, and CR-3. After application of mitigation, however, the impacts were determined to be less than significant.

A. BIOLOGICAL RESOURCES

CEQA FINDING NO. BIO-4

Impact: **BIO-4. Acoustic Impacts on Special-Status Birds from Construction.** Implementation of the Modified OLF could Disturb California Clapper Rails and Black Rails.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

California clapper rails and black rails may be present while construction activities are taking place along the outboard levees of Dutchman and South Sloughs. Individuals of the species, including nesting young and nest eggs, could be directly harmed by noisy construction equipment or by removal of suitable habitat along the outboard levees. Disturbance of these species through either construction equipment noise or direct removal of suitable habitat would constitute an adverse effect.

To mitigate this potential impact to less than significant, **Mitigation Measure BIO-4.1** shall be implemented.

[2] See Public Resources Code section 21081, subdivision (a) and State CEQA Guidelines section 15091, subdivision (a).

- **Mitigation Measure BIO-4.1: Avoid Disturbance to California Clapper Rail and Black Rail Habitat During their Breeding Period.** Construction within tidal marsh habitat along Dutchman and South Sloughs shall not occur during the nesting season for both species from February 1st to July 31st. If construction must occur during this period, pre-construction surveys shall be performed by a qualified biologist in coordination with the USFWS and CDFG. Surveys will be based on USFWS-approved survey methodology and will result in a determination of the presence or absence of rails in or within 250 feet of the construction area. If rails are determined to be present, coordination with the USFWS will be initiated to determine what, if any, additional mitigation measures may be required to allow construction to proceed.

LEVEL OF SIGNIFICANCE AFTER MITIGATION

With the mitigation described above, this impact is reduced to a less than significant level.

CEQA FINDING NO. BIO-39

Impact: **BIO-39. Aquatic Acoustic Impacts from Construction.** Implementation of the Modified Project Conditions could increase high-intensity sound impacts on fish and marine mammal species.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Up to three mooring piles may be installed as part of the Project to accommodate scows and barges delivering dredge material at the OLF. The piles would be installed by vibratory hammer, which would produce underwater noise at levels that could potentially disturb or injure special-status fish or marine mammal species in the area. On July 8, 2008, the Fisheries Hydroacoustic Working Group (FHWG), whose members include NMFS' Southwest and Northwest Divisions, California, Washington, and Oregon departments of transportation, the CDFG, and the U.S. Federal Highway Administration, issued an agreement for the establishment of interim threshold criteria to determine the effects of high-intensity sound on fish. Although these criteria are not formal regulatory standards, they are generally accepted as viable criteria for underwater noise effects on fish. The criteria established after extensive review of the most recent analyses of the effect of underwater noise on fish. The FHWG has determined that noise at or above peak noise levels above 206 decibels (dB) can cause barotrauma to auditory tissues, the swim bladder, or other sensitive organs. Additionally, accumulated sound energy levels (SEL) above 187 dB for large fish and 183 dB for larval (less than 2 grams body weight) have been determined to be potentially detrimental to fish. A specific criterion has not yet been set by the FHWG for continuous noise, such as vibratory driving.

Levels of harassment for marine mammals are defined in the Marine Mammal Protection Act of 1972. Level A harassment is defined as "[A]ny act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild." Level B harassment is defined as "[A]ny act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including but not limited to migration, breathing, nursing, breeding, feeding or sheltering." Any activities that may result in harassment of marine mammals under these guidelines would require an Incidental Harassment Authorization (IHA) from the NMFS. For impact pile driving NMFS defines levels above 190 dB as Level A harassment for seals and sea lions (which could occur in the area). Level B harassment for impact pile driving is defined as sound levels between 160 dB and 190 dB. For continuous noise, such as vibratory pile driving the Level B criterion is 120 dB.

When piles are driven with a vibratory hammer, less sound energy is produced than with the impact hammer. Peak sound pressures of 206 dB are not anticipated to occur with the vibratory installation of the piles. It is estimated that every pile would be driven approximately 10 minutes or 600 seconds. There would be about 1,800 seconds of operation if all three piles were driven in one day. A conservative assessment assumes all piles strikes are at the same distance to the receiver (i.e., a fish) and all pile strikes produce the maximum SEL. Under this scenario, the accumulated SEL at about 35 feet would be approximately 195 dB. The distance over which the 187 dB accumulated SEL level would be exceeded is about 105 feet. The values have been calculated for a hollow steel pile. If wooden piles are installed, the 187 dB accumulated SEL level would not be exceeded.

No significant underwater noise impacts to marine mammals are expected to occur. Given the short duration of pile driving (1800 seconds total) and the distribution of marine mammals (no haul outs or other regular use areas on the Napa River) it is unlikely that any marine mammals would experience harassment. No mitigation for underwater sound during pile driving is necessary for marine mammals.

While vibratory pile driving would increase noise levels, they would not exceed levels that may cause injury to fish or marine mammals. The noise levels produced may cause temporary hearing shifts or behavioral effects for special status fish. Through implementation of **Mitigation Measure BIO-6.1**, pile driving would occur outside of the migration season when the majority of these fish species have potential to be present.

- **Mitigation Measure BIO-6.1: Avoid Construction that could affect tidal aquatic habitats when salmonid species are known to occur.** Construction activities that could affect tidal aquatic habitats with the Dutchman Slough, South Slough, and Napa River shall not take place during periods when salmon species could be present, including migration period. If construction activities must occur during periods when salmon species could be present, the USWFS shall consult with NMFS and CDFG to determine what, if any, additional mitigation measures may be required.

LEVEL OF SIGNIFICANCE AFTER MITIGATION

With the mitigation described above, this impact is reduced to a less than significant level.

B. NOISE

CEQA FINDING NO. N-2

Impact: **N-2. Construction Noise.** Implementation of the Modified OLF would Result in Temporary Increases in Noise Levels to more than 65 A-weighted decibels (dBA) during Construction Activities.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Construction of the OLF could result in increases in noise levels exceeding 65 dBA at distances up to 1,000 feet, and exceeding 75 dBA at distances up to 200 feet due to construction equipment activity, particularly pile driving. As described in the EIS/EIR, the likely sensitive receptors at the construction site would be wildlife species and construction workers. The nearest land uses that could be exposed to construction noise are located approximately two miles to the east from the restoration site. Furthermore, the existing ambient noise levels in the area are approximately 63 dBA with the majority attributed to traffic noise from Highway 37. Furthermore, noise associated with construction activities would cease upon installation of the OLF. Due to the short-term nature of construction activities, and the lack of noise-sensitive land uses within and directly adjacent to the Project area, temporary noise effects due to construction activities are not considered adverse. However, the relatively high levels of noise that could result from the temporary use of construction equipment in close range to wildlife species' nesting, foraging or breeding habitats would contribute a short-term adverse effect on wildlife species inhabiting the Cullinan Ranch Site.

To minimize this effect to less than significant, **Mitigation Measure N-2.1** shall be implemented during construction activities.

- **Mitigation N-2.1: Implement Noise Reducing Construction Practices.** In order to reduce noise levels during construction activities, the construction contractor shall implement, but not exclusively, the following noise-reduction practices.
    - Use mufflers on all construction equipment, generators, and vehicles;
    - Locate construction equipment staging areas as far away from any identified wildlife foraging, nesting or breeding habitats on the Site;
    - Relocate stationery construction equipment if wildlife foraging, nesting or breeding habitats cannot be moved away from the noise source;

- Install temporary barriers around stationery construction noise sources if required;
- Shut off idling equipment when not in use;
- Reschedule construction activity outside breeding seasons for species whose mating is dependent on vocalization;
- Schedule construction activities to start before nesting season and discourage use of the property by nesters that may abandon nest after construction starts; and
- Schedule activities after nesting season is over to avoid nest abandonment.

LEVEL OF SIGNIFICANCE AFTER MITIGATION

With the mitigation described above, this impact is reduced to a less than significant level.

C. AIR QUALITY

CEQA FINDING NO. AQ-2

Impact: **AQ-2. Construction Emissions**. Implementation of the Project, including the OLF, would Result in Construction-Related Emissions of PM_{10}.

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Project construction activities would be temporary in duration, but may still cause adverse air quality impacts. The primary pollutant of concern during construction related activities is Particulate Matter with diameter ≤ 10 micrometers (PM_{10}). Typically, construction-related emissions come from a variety of activities including: grading, excavation, roadbuilding and other earthmoving activities, travel by construction equipment, especially on unpaved surfaces, and exhaust from construction equipment. PM_{10} emissions from construction activity can vary considerably depending on factors such as the level of activity, the specific operations taking place, and weather and soil conditions Construction-related emissions may cause substantial increases in localized concentrations of PM_{10}. According to the emissions calculations prepared for the Project, construction-related emissions of PM_{10} are expected to total 1.2 tons per year, which is less than one percent of the total emissions generated for PM_{10} in the entire San Francisco Bay Area Air Basin in 2000.

New facilities to be constructed as part of the OLF would be the dredge slurry HDPE pipeline and floating platform, including spuds and mooring piles. Construction of the

dredge slurry HDPE pipeline and floating platform would be subject to the same potential air quality impacts during construction as the original proposed project.

To the extent that it applies to construction of the OLF, **Mitigation Measure AQ-2.1** would contribute to bringing the Project into compliance with the Bay Area Air Quality Management District's (BAAQMD) guidelines regarding construction activities.

- **Mitigation Measure AQ-2.1: Implement BAAQMD Standards to Control PM_{10} Emissions during Construction.** Basic Control Measures – The following controls shall be implemented during construction activities.
    - Water all active construction areas at least twice daily.
    - Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
    - Pave, apply water three times daily, or apply (nontoxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
    - Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
    - Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.
    - Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more).
    - Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
    - Limit traffic speeds on unpaved roads to 15 mph.
    - Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
    - Replant vegetation in disturbed areas as quickly as possible.

    The following Optional Control Measures may be implemented during construction activities to further reduce emissions of PM10 pollutants.

    - Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the Site.
    - Install wind breaks, or plant trees/vegetative wind breaks at windward side(s) of construction areas.
    - Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.
    - Limit the area subject to excavation, grading, and other construction activity at any one time.

LEVEL OF SIGNIFICANCE AFTER MITIGATION

With the mitigation described above, this impact is reduced to a less than significant level.

D. CULTURAL RESOURCES

CEQA FINDING NO. CR-3

Impact: **CR-3. Disturbance of Cultural Resources.** Implementation of the OLF could Potentially Affect Subsurface Historic or Archaeological Artifacts

Finding(s): (1) Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant environmental effect as identified in the EIR.

FACTS SUPPORTING THE FINDING(S)

Proposed earth moving activities such as dredging and excavating could result in the inadvertent discovery of significant subsurface deposits of historic or archaeological artifacts at the OLF site in the Napa River and Dutchman Slough, which could be disturbed by construction activities. This is considered a potentially significant impact.

Implementation of **Mitigation Measure CR-3.1** would minimize this impact by providing specific steps to follow in the event of the discovery of cultural resources during construction.

- **Mitigation Measure CR-3.1: Stop Work if Subsurface Cultural Deposits are Encountered during Construction Activities.** If previously unknown subsurface historic or archaeological artifacts are encountered during deep earth-moving construction activities, work shall halt and the San Pablo Bay National Wildlife Refuge manager shall be immediately notified. A regional archaeologist or similarly qualified individual (under the approval of the USFWS) shall assess the deposits before work resumes in the discovery area.

LEVEL OF SIGNIFICANCE AFTER MITIGATION

With the mitigation described above, this impact is reduced to a less than significant level.

ATTACHMENT A

CALIFORNIA DEPARTMENT OF FISH AND GAME

STATEMENT OF OVERRIDING CONSIDERATIONS

Adopted April 2010

Statement of Overriding Considerations

Statement of Overriding Considerations

The Department recognizes that the project would have several potentially significant, unavoidable impacts on the environment associated with the short-term construction and breaching activities at the site. These are:

- Implementation of the Preferred Restoration Alternative would result in the Conversion of Seasonal Wetland Habitat to Tidal Marsh Habitat
- Implementation of the Preferred Restoration Alternative would result in placement of Permanent Fill in Jurisdictional Wetlands and Waters of the U.S.
- Implementation of the Preferred Restoration Alternative would result in Permanent Loss of Mammal Habitat and Potential Mortality of Individual Mammals
- Implementation of the Preferred Restoration Alternative would result in Loss of Foraging Habitat for some Raptor Species
- Implementation of the Preferred Restoration Alternative would result in Loss of Habitat for Some Species of Wintering Waterfowl
- Implementation of the Preferred Restoration Alternative would result in the Loss of Potential Foraging Habitat for Special Status Bat Species

These impacts are outweighed by the benefits offered by habitat enhancement and public access in particular the region-wide and statewide environmental benefits of the proposed project per Section 15093 (a) and are considered acceptable. The Department's mission is protecting, conserving, and perpetuating native fish, plants and wildlife, including endangered species and game animals for their aesthetic, intrinsic, ecological, educational, and economic values. Furthermore, while these impacts are potentially significant compared to the current baseline condition, it is likely that these potential impacts would be of lesser magnitude with the project than under the No Project condition. The No Project alternative could result in flooding of the site due to the failure of already deteriorating levees along Dutchman and South Slough. If these levees were to fail then the site would be rapidly inundated and there is the potential for adverse impacts to wildlife at the site, and safety risks to Highway 37 and to Pond 1. Tidal inundation of the Cullinan Ranch Site would cause flooding and erosion along Highway 37 and CDFG Pond 1. Substantial evidence has been compiled in the record, including the following documents, as a basis for this Statement of Overriding Considerations.

- Cullinan Ranch Restoration Project Final Environmental Statement/Impact Report (April 2009)
- Cullinan Ranch Restoration Project Draft Environmental Impact Statement/Report (April 2008)
- Monitoring and Adaptive Management Plan for the Cullinan Ranch Unit of San Pablo Bay NWR (April 2010)
- Cullinan Ranch Restoration Project Biological Assessment (October 16, 2009)

In addition the project has region-wide and statewide significance in that it promotes the expansion of tidal marsh and other habitat for sensitive species and is consistent with the following plans and studies:

- San Francisco Bay Plan
- San Francisco Estuary Project Comprehensive Conservation and Management Plan
- Baylands Ecosystem Habitat Goals Report
- Ecosystem Restoration Program Plan
- Long-Term Management Strategy for Disposal of Dredged Sediments in San Francisco Bay
- Draft Tidal Marsh Recovery Plan
- Delta Smelt (*Hypomesus transpacificus*) Final Critical Habitat Alameda, Contra Costa, Sacramento, San Joaquin, Solano, and Yolo Counties, California.

Under Section 15093 (b), the Department utilized the following supporting factors in its decision-making process. Over 92% of historic tidal marshes in San Francisco Estuary have been lost. The Cullinan Ranch site was historically tidal marsh. Restoration to tidal marsh is consistent with the regional plans detailed above because implementation will restore tidal marsh to Cullinan Ranch, will help recover state and federally listed species, and will help meet regional habitat and species recovery goals. Cullinan Ranch was purchased by the Service using funding provided for protection of endangered species (Endangered Species Act, 1973), specifically to provide habitat for salt marsh harvest mouse, California clapper rail, and other Federally Threatened or Endangered Species.

Seasonal wetlands are a valuable component of the ecosystem, but are not geographically suited to the project site. Seasonal wetlands only occur on the project site because the Service ceased pumping the site dry to encourage development of interim habitat during the project planning phase. Maintaining seasonal wetlands on the project site would be inconsistent with historical condition, would involve costly repairs and upgrades to the failing levee system, continued mosquito abatement and invasive plant species control, with high rates of concomitant chemical use, and would be infeasible in the context of current projections of sea level rise.
The site has subsided by five to six feet as a result of diking and agriculture activities.

The continued restoration of tidal marsh within the project area will implement restoration priorities set in the landmark Habitat Goals Report, providing tidal flats for shorebird use, restoring tidal marsh to much of the historic distribution, and preserving and enhancing seasonal wetland, transition, riparian, and upland habitat types to the benefit of myriad waterfowl species, and to rare and special status species of amphibians, mammals, birds, insects, and plants. The San Francisco Bay Plan and the San Francisco Estuary Comprehensive Conservation and Management Plan call for restoration of diked baylands to tidal action to replace lost historic wetlands. The Ecosystem Restoration Program Plan calls for improving ecological health of the Bay-Delta watershed by restoring habitat, ecosystem function, and native species. By restoring tidal marsh in its historic location to benefit native, and particularly threatened and endangered fish and wildlife species, while also improving ecosystem function through landscape-level integration with neighboring Department and Caltrans mitigation projects, restoration of Cullinan Ranch helps meet the objectives of this plan. Restoration may include beneficial reuse of dredged sediment if clean material is available and funding allows, thus the project is consistent with the Long-term Management Strategy for Disposal of Dredged Sediments in San Francisco Bay. The Draft Tidal Marsh Recovery Plan specifically addresses recovery of habitats and species that would be directly benefited by this project: estuarine tidal marsh, transition habitat, California clapper rail, and salt marsh harvest mouse. The project site will improve channel habitat and connectivity for the pelagic delta smelt towards the physiological limits of their range and will assist in recovery of the species, though the site is not designated as critical habitat.