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## Central Valley Regional Water Quality Control Board

9 August 2021

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### **CLEAN WATER ACT SECTION 401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION; WESTGATE VENTURES, BURROUGHS AND CITY OF OAKLEY RESIDENTIAL DEVELOPMENT PROJECT (WDID#5B07CR00238), CONTRA COSTA COUNTY**

This Order responds to the 14 May 2021 application submitted by WestGate Ventures (Applicant) for the Water Quality Certification of the Burroughs and City of Oakley Residential Development Project (Project), permanently impacting 0.148 acre of waters of the United States.

This Order serves as certification of the United States Army Corps of Engineers' Regional General Permit 1 (SPK-2005-00824) under Section 401 of the Clean Water Act, and a Waste Discharge Requirement under the Porter-Cologne Water Quality Control Act and State Water Board Order 2003-0017-DWQ.

#### **WATER QUALITY CERTIFICATION STANDARD CONDITIONS<sup>1</sup>:**

- 1. This Water Quality Certification (Certification) is not valid until coverage under Section 404 of the Clean Water Act is obtained. If the Project, including the area of impact (as described) is modified through this process, this Certification will not be valid until amended by the Central Valley Regional Water Quality Control Board (Central Valley Water Board).**
2. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to Section 3855(b) of the California Code of Regulations, and the application specifically

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<sup>1</sup> For compliance with Code of Federal Regulations, title 40, section 121.7, subdivision (d), please see the final enclosure to this Order.

identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. The validity of any non-denial Certification action shall be conditioned upon total payment of the full fee required under Section 3860(c) of the California Code of Regulations.
4. This Certification is no longer valid if the Project (as described) is modified, or coverage under Section 404 of the Clean Water Act has expired.
5. All reports, notices, or other documents required by this Certification or requested by the Central Valley Water Board shall be signed by a person described below or by a duly authorized representative of that person.
  - (a) For a corporation: by a responsible corporate officer such as: 1) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function; 2) any other person who performs similar policy or decision-making functions for the corporation; or 3) the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
  - (b) For a partnership or sole proprietorship: by a general partner or the proprietor.
  - (c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.
6. Any person signing a document under Standard Condition number 5 shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

**TECHNICAL CERTIFICATION CONDITIONS<sup>2</sup>:**

In addition to the above standard conditions, the Applicant shall satisfy the following:

1. The Applicant shall notify the Central Valley Water Board in writing seven (7) days in advance of the start of any work within waters of the United States.
2. Except for activities permitted by the United States Army Corps of Engineers under Section 404 of the Clean Water Act, soil, silt, or other organic materials shall not be placed where such materials could pass into surface water or surface water drainage courses.
3. The Applicant shall maintain a copy of this Certification and supporting documentation (Project Information Sheet) at the Project site during construction for review by site personnel and agencies. All personnel (employees, contractors, and subcontractors) performing work on the proposed Project shall be adequately informed and trained regarding the conditions of this Certification.
4. The Applicant shall perform surface water sampling<sup>3</sup>:
  - a) when performing any in-water work;
  - b) in the event that Project activities result in any materials reaching surface waters; or
  - c) when any activities result in the creation of a visible plume in surface waters.

Monitoring and reporting requirements identified in Table 1 are consistent with the Central Valley Water Board's authority to investigate the quality of any waters of the state and require necessary monitoring and reporting pursuant to Water Code sections 13267 and 13383. Water Code section 13267 authorizes the regional boards to require any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste to provide technical or monitoring program reports required by the regional board. Water Code section 13383 authorizes the regional boards to establish monitoring, inspection, entry, reporting, and other recordkeeping requirements, as authorized by Water Code section 13160, for any person who discharges, or proposes to discharge, to navigable waters. The burden of preparing these reports, including costs, are reasonable in relation to the need for and benefits from obtaining the reports. The reports confirm that the measures required under this order are sufficient to protect beneficial uses and water quality objectives. The sampling requirements in Table 1 shall be conducted by taking a sample of the ambient conditions before work begins in the work area, and sampling during work in the work area. The sampling

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<sup>2</sup> For compliance with Code of Federal Regulations, title 40, section 121.7, subdivision (d), please see the final enclosure to this Order.

<sup>3</sup> Sampling is not required in wetlands, where the entire wetland is being permanently filled; provided there is no outflow connecting the wetland to surface waters.

frequency may be modified for certain projects with written approval from Central Valley Water Board staff.

**Table 1: Sample Type and Frequency Requirements**

<b>Parameter</b>	<b>Unit</b>	<b>Type of Sample</b>	<b>Minimum Sampling Frequency</b>	<b>Required Analytical Test Method</b>
Turbidity	NTU	Grab <sup>4</sup>	Every 4 hours during in-water work	5, 6
Visible construction related pollutants <sup>7</sup>	Observations	Visual Inspections	Continuous throughout the construction period	NA

Surface water sampling shall occur at mid-depth. A surface water monitoring report shall be submitted within two weeks of initiation of in-water construction, and every two weeks thereafter. In reporting the sampling data, the Applicant shall arrange the data in tabular form so that the sampling locations, date, constituents, and concentrations are readily discernible. The data shall be summarized in such a manner to illustrate clearly whether the Project complies with Certification requirements. The report shall include surface water sampling results, visual observations, and identification of the turbidity increase in the receiving water applicable to the natural turbidity conditions specified in the turbidity criteria below.

If no sampling is required, the Applicant shall submit a written statement stating, "No sampling was required" within two weeks of initiation of in-water construction, and every two weeks thereafter.

5. The Central Valley Water Board adopted a *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fifth Edition, revised May 2018 (Basin Plan) that designates beneficial uses, establishes water quality objectives,

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<sup>4</sup> Grab samples shall not be collected at the same time each day to get a complete representation of variations in the receiving water.

<sup>5</sup> Pollutants shall be analyzed using the analytical methods described in 40 Code of Federal Regulations Part 136, where no methods are specified for a given pollutant, the method shall be approved by Central Valley Water Board staff.

<sup>6</sup> A hand-held field meter may be used, provided the meter utilizes a USEPA-approved algorithm/method and is calibrated and maintained in accordance with the manufacturer's instructions. A calibration and maintenance log for each meter used for monitoring shall be maintained onsite.

<sup>7</sup> Visible construction-related pollutants include oil, grease, foam, fuel, petroleum products, and construction-related, excavated, organic or earthen materials.

and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Turbidity limits are based on water quality objectives contained in the Basin Plan and are part of this Certification as follows:

- a) Waters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.
- b) Activities shall not cause turbidity increases in surface water to exceed:
  - i. where natural turbidity is less than 1 Nephelometric Turbidity Units (NTUs), controllable factors shall not cause downstream turbidity to exceed 2 NTUs;
  - ii. where natural turbidity is between 1 and 5 NTUs, increases shall not exceed 1 NTU;
  - iii. where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent;
  - iv. where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs; and
  - v. where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

In determining compliance with the above limits, appropriate averaging periods may be applied provided that beneficial uses will be fully protected. Averaging periods may only be used with prior permission of the Central Valley Water Board Executive Officer.

For Delta waters, the general objectives for turbidity apply subject to the following: except for periods of storm runoff, the turbidity of Delta waters shall not exceed 50 NTUs in the waters of the Central Delta and 150 NTUs in other Delta waters.

6. The Applicant shall notify the Central Valley Water Board immediately if the above criteria for turbidity or other water quality objectives are exceeded.
7. Activities shall not cause visible oil, grease, or foam in the receiving water.
8. Refueling of equipment within the floodplain or within 300 feet of the waterway is prohibited. If critical equipment must be refueled within 300 feet of the waterway, spill prevention and countermeasures must be implemented to avoid spills. Refueling areas shall be provided with secondary containment including drip pans and/or placement of absorbent material. No hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, or other construction-related potentially hazardous substances should be stored within a floodplain or within 300 feet of a waterway. The Applicant must perform frequent inspections of construction equipment prior to

utilizing it near surface waters to ensure leaks from the equipment are not occurring and are not a threat to water quality.

9. The Applicant shall develop and maintain onsite a project-specific Spill Prevention, Containment and Cleanup Plan outlining the practices to prevent, minimize, and/or clean up potential spills during construction of the Project. The Plan must detail the Project elements, construction equipment types and location, access and staging and construction sequence.
10. Raw cement, concrete (or washing thereof), asphalt, drilling fluids, lubricants, paints, coating material, oil, petroleum products, or any other substances which could be hazardous to fish and wildlife resulting from or disturbed by project-related activities, shall be prevented from contaminating the soil and/or entering waters of the United States.
11. The discharge of petroleum products, any construction materials, hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, raw cement, concrete, asphalt, paint, coating material, drilling fluids, or other construction-related potentially hazardous substances to surface water and/or soil is prohibited. In the event of a prohibited discharge, the Applicant shall notify the Central Valley Water Board Contact within 24-hours of the discharge pursuant to section 13271 of the Water Code, which requires immediate notification of the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of Title 2 of the Government Code. "Hazardous materials" is defined under Health and Safety Code section 25501.
12. If installation or relocation of utility lines is anticipated, the Applicant shall develop a Utility Work Plan prior to commencement of dry and wet utility construction. The Utility Work Plan must cover all phases of the certified project that will impact waters of the United States and shall be consistent with this Certification. The Utility Work Plan shall include the types of dry and wet utilities to be removed and installed, method and duration of activities, structure configuration, construction materials, equipment, erosion and sediment controls, and a map or drawing indicating the location(s) of utility work, as related to any waters of the United States, in the Project area.

Should the methodology for utility work include directional drilling, the Utility Work Plan shall incorporate a Directional Drilling Plan to address potential frac-outs. The Directional Drilling Plan shall include, but not be limited to, a description of directional drilling activities, dry and wet utility routes, crossing locations and methods, and other geotechnical considerations (i.e., surficial overburden deposits, clays and shales, bedrock formations, hydrogeology), and a reporting procedure should any level of discharge from a frac-out occur, regardless of the discharge size.

The Directional Drilling Plan must be stamped by a California Registered Geologist or Engineer.

The Utility Work Plan and Directional Drilling Plan must be made available to Central Valley Water Board staff upon request.

13. Silt fencing, straw wattles, or other effective management practices must be used along the construction zone to minimize soil or sediment along the embankments from migrating into the waters of the United States through the entire duration of the Project.
14. The use of netting material (e.g., monofilament-based erosion blankets) that could trap aquatic dependent wildlife is prohibited within the Project area.
15. All areas disturbed by Project activities shall be protected from washout and erosion.
16. All temporarily affected areas shall be restored to pre-construction contours and conditions upon completion of construction activities.
17. Hydroseeding shall be performed with California native seed mix.
18. All materials resulting from the Project shall be removed from the site and disposed of properly.
19. If water is present, the area must be dewatered prior to the start of work.
20. If temporary surface water diversions and/or dewatering are anticipated, the Applicant shall develop and maintain on-site a Surface Water Diversion and/or Dewatering Plan(s). The Plan(s) must be developed prior to initiation of any water diversions. The Plan(s) shall include the proposed method and duration of diversion activities. The Plan(s) must be consistent with this Certification and must be made available to the Central Valley Water Board staff upon request.
21. When work in a flowing stream is unavoidable and any temporary dam or other artificial obstruction is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream, to maintain beneficial uses of waters of the state below the dam. Construction, dewatering, and removal of temporary cofferdams shall not violate Technical Certification Condition 5 of this Certification.
22. If any temporary dam or other artificial obstruction is constructed, the temporary dam or other artificial obstruction shall only be built from clean materials such as sandbags, gravel bags, water dams, or clean/washed gravel which will cause little or no siltation. Stream flow shall be temporarily diverted using gravity flow through temporary culverts/pipes or pumped around the work site with the use of hoses.

23. The Applicant shall apply for a name change or amendment to this Certification should any of the following occur: a) a change in the ownership of all or any portion of the Project; b) any change in the Project description; c) any change involving discharge amounts, temporary impacts, or permanent impacts; or d) amendments, modifications, revisions, extensions, or changes to the United States Army Corps of Engineers' Regional General Permit 1, the United States Fish and Wildlife Service decision document(s), or the California Department of Fish and Wildlife Streambed Alteration Agreement.
24. The Applicant shall implement each of the mitigation measures specified in the approved Mitigated Negative Declaration for the Project, as they pertain to biology, hydrology and water quality impacts as required by Section 21081.6 of the Public Resource Code and Section 15097 of the California Code of Regulations.
25. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law, including pursuant to Water Code sections 13368 and 13385. The applicability of any state law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to ensure compliance with this Certification.
- (a) If the Applicant or a duly authorized representative of the Project fails or refuses to furnish technical or monitoring reports, as required under this Certification, or falsifies any information provided in the monitoring reports, the applicant is subject to civil liability, for each day of violation, and/or criminal liability pursuant to Water Code sections 13368 and/or 13385.
- (b) In response to a suspected violation of any condition of this Certification, the Central Valley Water Board may require the Applicant to furnish, under penalty of perjury, any technical or monitoring reports the Central Valley Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
- (c) The Applicant shall allow the staff of the Central Valley Water Board, or an authorized representative(s), upon the presentation of credentials and other documents, as may be required by law, to enter the Project premises for inspection, including taking photographs and securing copies of project-related records, for the purpose of assuring compliance with this Certification and determining the ecological success of the Project.
26. The Permittee shall provide compensatory mitigation for the permanent loss of 0.148 acre of wetland habitat by purchasing a commensurate value of wetland habitat credits from the East Contra Costa County Habitat Conservation Plan In-Lieu Fee Program.



A copy of the fully executed agreement for the purchase of mitigation credits shall be provided to the Central Valley Water Board prior to the initiation of work.

The Permittee shall retain responsibility for providing the compensatory mitigation and long-term management until Central Valley Water Board staff has received documentation of the credit purchase and the transfer agreement between the Permittee and the seller of credits.

#### **NOTIFICATIONS AND REPORTS:**

27. The Applicant shall provide a Notice of Completion (NOC) no later than 30 days after the Project completion. The NOC shall demonstrate that the Project has been carried out in accordance with the Project description in the Certification and in any approved amendments. The NOC shall include a map of the Project location(s), including final boundaries of any on-site restoration area(s), if appropriate, and representative pre and post construction photographs. Each photograph shall include a descriptive title, date taken, photographic site, and photographic orientation.
28. The Applicant shall submit all notifications, submissions, materials, data, correspondence, and reports in a searchable Portable Document Format (PDF). Documents less than 50 MB must be emailed to: [centralvalleysacramento@waterboards.ca.gov](mailto:centralvalleysacramento@waterboards.ca.gov). In the subject line of the email, include the Central Valley Water Board Contact, Project name, and WDID number as shown in the subject line above. Documents that are 50 MB or larger must be transferred to a disk and mailed to the Central Valley Water Board Contact.

#### **STORM WATER QUALITY CONDITIONS:**

The Applicant shall also satisfy the following additional storm water quality conditions:

1. During the construction phase, the Applicant must employ strategies to minimize erosion and the introduction of pollutants into storm water runoff. These strategies must include the following:
  - a) the Storm Water Pollution Prevention Plan must be prepared during the Project planning and design phases and implemented, as appropriate, before construction; and
  - b) an effective combination of erosion and sediment control Best Management Practices (BMPs) must be implemented and adequately working prior to the rainy season and during all phases of construction.
2. The Applicant must minimize the short and long-term impacts on receiving water quality from the Project by implementing the following post-construction storm water management practices and as required by local agency permitting the Project, as appropriate:

- a) minimize the amount of impervious surface;
  - b) reduce peak runoff flows;
  - c) provide treatment BMPs to reduce pollutants in runoff;
  - d) ensure existing waters of the state (e.g., wetlands, vernal pools, or creeks) are not used as pollutant source controls and/or treatment controls;
  - e) preserve and where possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands, and buffer zones;
  - f) limit disturbances of natural water bodies and natural drainage systems caused by development (including development of roads, highways, and bridges);
  - g) use existing drainage master plans or studies to ensure incorporation of structural and non-structural BMPs to mitigate the projected pollutant load increases in surface water runoff;
  - h) identify and avoid development in areas that are particularly susceptible to erosion and sediment loss, or establish development guidance that protects areas from erosion/ sediment loss; and
  - i) control post-development peak storm water run-off discharge rates and velocities to prevent or reduce downstream erosion, and to protect stream habitat.
3. The Applicant shall ensure that all development within the Project provides verification of maintenance provisions for post-construction structural and treatment control BMPs as required by the local agency permitting the Project. Verification shall include one or more of the following, as applicable:
- a) the developer's signed statement accepting responsibility for maintenance until the maintenance responsibility is legally transferred to another party; or
  - b) written conditions in the sales or lease agreement that require the recipient to assume responsibility for maintenance; or
  - c) written text in Project conditions, covenants and restrictions for residential properties assigning maintenance responsibilities to a home owner's association, or other appropriate group, for maintenance of structural and treatment control BMPs; or
  - d) any other legally enforceable agreement that assigns responsibility for storm water BMPs maintenance.

**CENTRAL VALLEY WATER BOARD CONTACT:**

Angela Nguyen-Tan  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-8114  
[Angela.Nguyen-Tan@waterboards.ca.gov](mailto:Angela.Nguyen-Tan@waterboards.ca.gov)  
(916) 464-0335

**CALIFORNIA ENVIRONMENTAL QUALITY ACT:**

City of Oakley Community Development Department is the Lead Agency responsible for compliance with the California Environmental Quality Act for the Burroughs and City of Oakley Residential Development Project pursuant to Section 21000 et seq. of the Public Resources Code. City of Oakley Community Development Department approved the Mitigated Negative Declaration on 25 May 2021. The City of Oakley Community Development Department filed a Notice of Determination with the State Clearinghouse on 27 May 2021 (SCH No. 2021040251).

The Central Valley Water Board is a responsible agency for the project. The Central Valley Water Board has determined that the Mitigated Negative Declaration is in accordance with the requirements of the California Environmental Quality Act.

The Central Valley Water Board has reviewed and evaluated the impacts to water quality identified in the Mitigated Negative Declaration. The mitigation measures discussed in the Mitigated Negative Declaration to minimize project impacts to State waters are required by this Certification.

With regard to the remaining impacts identified in the Mitigated Negative Declaration, the corresponding mitigation measures proposed are within the responsibility and jurisdiction of other public agencies.

**WATER QUALITY CERTIFICATION:**

I hereby issue an Order certifying that any discharge from the WestGate Ventures, Burroughs and City of Oakley Residential Development Project (WDID#5B07CR00238) will comply with the applicable provisions of Section 301 ("Effluent Limitations"), Section 302 ("Water Quality Related Effluent Limitations"), Section 303 ("Water Quality Standards and Implementation Plans"), Section 306 ("National Standards of Performance"), and Section 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. Through this Order, this discharge is also regulated under State Water Resources Control Board Water Quality Order No. 2003-0017 DWQ "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification (General WDRs)."

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in compliance with the conditions of this Certification, WestGate Ventures's application package, and the attached Project Information Sheet; and b) compliance with all applicable requirements of the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fifth Edition, revised May 2018.

Any person aggrieved by this action may petition the State Water Resources Control Board to review the action in accordance with California Water Code Section 13320 and California Code of Regulations, Title 23, Section 2050 and following. The State Water Resources Control Board must receive the petition by 5:00 p.m., 30 days after the date of this action, except that if the thirtieth day following the date of this action falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Resources Control Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the State Water Resources Control Board's [Water Quality Petitions webpage](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) ([http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)) or will be provided upon request.

*Original Signed By James Marshall for:*

Patrick Pulupa  
Executive Officer

Enclosures: Project Information Sheet  
Compliance with Code of Federal Regulations, Title 40, Section 121.7,  
Subdivision (D)

Attachments: Figure 1 – Project Location Map  
Figure 2—Impacts to Aquatic Resources

cc: Distribution List, page 15

## PROJECT INFORMATION SHEET

**Application Date:** 14 May 2021

**Applicant:** Adam Tennant  
WestGate Ventures  
2551 San Ramon Valley Blvd,#224  
San Ramon, CA 94583

**Applicant Representative:** Emily Mathews  
Zentner Planning and Ecology  
155 Filbert Street, Suite 206  
Oakland, CA 94607

**Project Name:** Burroughs and City of Oakley Residential Development Project

**Application Number:** WDID#5B07CR00238

**Date on Public Notice:** 9 July 2021

**Date Application Deemed Complete:** 20 July 2021

**Date All Information Received:** 21 July 2021

**Type of Project:** Residential

**Approved Months of Project Implementation:** The Project will be constructed 1 June through 30 April or as otherwise required by the United States Fish and Wildlife Service, National Marine Fisheries, or Department of Fish and Wildlife.

**Project Location:** Section 29, Township 2 North, Range 3 East, MDB&M.  
Latitude: 37.99307° N and Longitude: 121.668248° W

**County:** Contra Costa County

**Receiving Water(s) (hydrologic unit):** Unnamed wetland, San Joaquin Hydrologic Basin, San Joaquin Delta Hydrologic Unit #544.00

**Water Body Type:** Wetland

**Designated Beneficial Uses:** The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fifth Edition, revised May 2018 (Basin Plan) has designated beneficial uses for surface and ground waters within the region. Beneficial uses that could be impacted by the project include, but are not limited to: Municipal and Domestic Water Supply (MUN); Agricultural Supply (AGR); Industrial Supply (IND); Hydropower Generation (POW); Groundwater Recharge (GWR); Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat

(WARM); Cold Freshwater Habitat (COLD); Preservation of Biological Habitats of Special Significance (BIOL); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); and Wildlife Habitat (WILD). A comprehensive and specific list of the beneficial uses applicable for the project area can be found on the Central Valley Water Board's [Basin Planning webpage](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/index.shtml) ([http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/index.shtml)).

**303(d) List of Water Quality Limited Segments:** An Unnamed Wetland is the receiving water for the Burroughs and City of Oakley Residential Development Project. The wetland not listed on the 303(d) list. The most recent list of approved water quality limited segments is found on the State Water Resources Control Board's [Impaired Water Bodies webpage](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml) ([http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2012.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml)).

**Project Description:** The Burroughs and City of Oakley Residential Development Project (Project) is located at the northeast corner of E. Cypress Road and Knightsen Ave in Oakley. The Project consists of grading the site to prepare the Project site for development of residential housing development. The Project will construct 208 single family homes, road and ancillary features and will preserve and enhance the portion of Little Dutch Slough and adjacent buffer within the project area.

No dewatering will occur within the Project area. No wet concrete will be placed into the wetland. The Project will permanently impact 0.148 acre of waters of the United States.

**Preliminary Water Quality Concerns:** Construction activities may impact surface waters with increased turbidity.

**Proposed Mitigation to Address Concerns:** The Applicant will implement Best Management Practices to control sedimentation and erosion. This Certification requires all work to be conducted during periods of no flow. In the event that project activities result in any materials reaching surface waters or unanticipated in-water work occurs, the Applicant will conduct turbidity testing. During this testing, the Applicant will stop work if Basin Plan criteria are exceeded or observations indicate an exceedance of a water quality objective.

All temporary affected areas will be restored to pre-construction contours and conditions upon completion of construction activities to provide 1:1 mitigation for temporary impacts.

**Excavation/Fill Area:** Approximately 119 cubic yards of clean soil will be placed into 0.148 acre of waters of the United States.

**Dredge Volume:** Not Applicable

**California Integrated Water Quality System Impact Data:** The Project will permanently impact 0.148 acre of wetland habitat from fill activities.

**Table 2: Total Project Fill/Excavation Permanent Physical Loss of Area Impact Quantity**

<b>Aquatic Resource Type</b>	<b>Acres</b>	<b>Cubic Yards</b>	<b>Linear Feet</b>
Wetland	0.148	119	

**United States Army Corps of Engineers File Number:** SPK-2005-00824

**United States Army Corps of Engineers Permit Type:** Regional General Permit 1

**California Department of Fish and Wildlife Lake or Streambed Alteration**

**Agreement:** The Applicant applied for a Lake or Streambed Alteration Agreement on 12 April 2021.

**Possible Listed Species:** Swainson's hawk, Giant garter snake, golden eagle, Western burrowing owl

**Status of CEQA Compliance:** The City of Oakley Community Development Department approved the Mitigated Negative Declaration on 25 May 2021. The City of Oakley Community Development Department filed a Notice of Determination with the State Clearinghouse on 27 May 2021 (SCH No. 2021040251).

The Central Valley Water Board will file a Notice of Determination with the State Clearinghouse as a responsible agency within five (5) days of the date of this Certification.

**Compensatory Mitigation:** The Permittee shall purchase compensatory mitigation for the authorized impact to 0.148 acre of wetland habitat by purchasing a commensurate value of wetland habitat credits from the East Contra Costa County In-Lieu Fee Program.

A copy of the fully executed agreement for the purchase of mitigation credits shall be provided to the Central Valley Water Board prior to the initiation of work.

The Permittee shall retain responsibility for providing the compensatory mitigation and long-term management until Central Valley Water Board staff has received documentation of the credit purchase and the transfer agreement between the Permittee and the seller of credits.

**Table 3: Compensatory Mitigation for Permanent Physical Loss of Area by Method** [Establishment (Est.), Re-establishment (Re-est.), Rehabilitation (Reh.), Enhancement (Enh.), Preservation (Pres.), Unknown]

<b>Aquatic Resource Type</b>	<b>Mitigation Type</b>	<b>Units</b>	<b>Est.</b>	<b>Re-est.</b>	<b>Reh.</b>	<b>Enh.</b>	<b>Pres.</b>	<b>Unknown</b>
Wetland	ILF	Acres						0.148

**Application Fee Provided:** \$2,066.00 was received on 20 July 2021. The remaining application fee balance of \$696.00 based on total Project impacts was received on 21 July 2021. The fee amount was determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as category A - Fill & Excavation Discharges (fee code 84)



**DISTRIBUTION LIST**

Hailey Price (SPK-2005-00824)  
United States Army Corps of Engineers  
Sacramento District Headquarters  
Regulatory Division  
SPKRegulatoryMailbox@usace.army.mil

Department of Fish and Wildlife, Region 2(Electronic Copy Only)  
R2LSA@wildlife.ca.gov

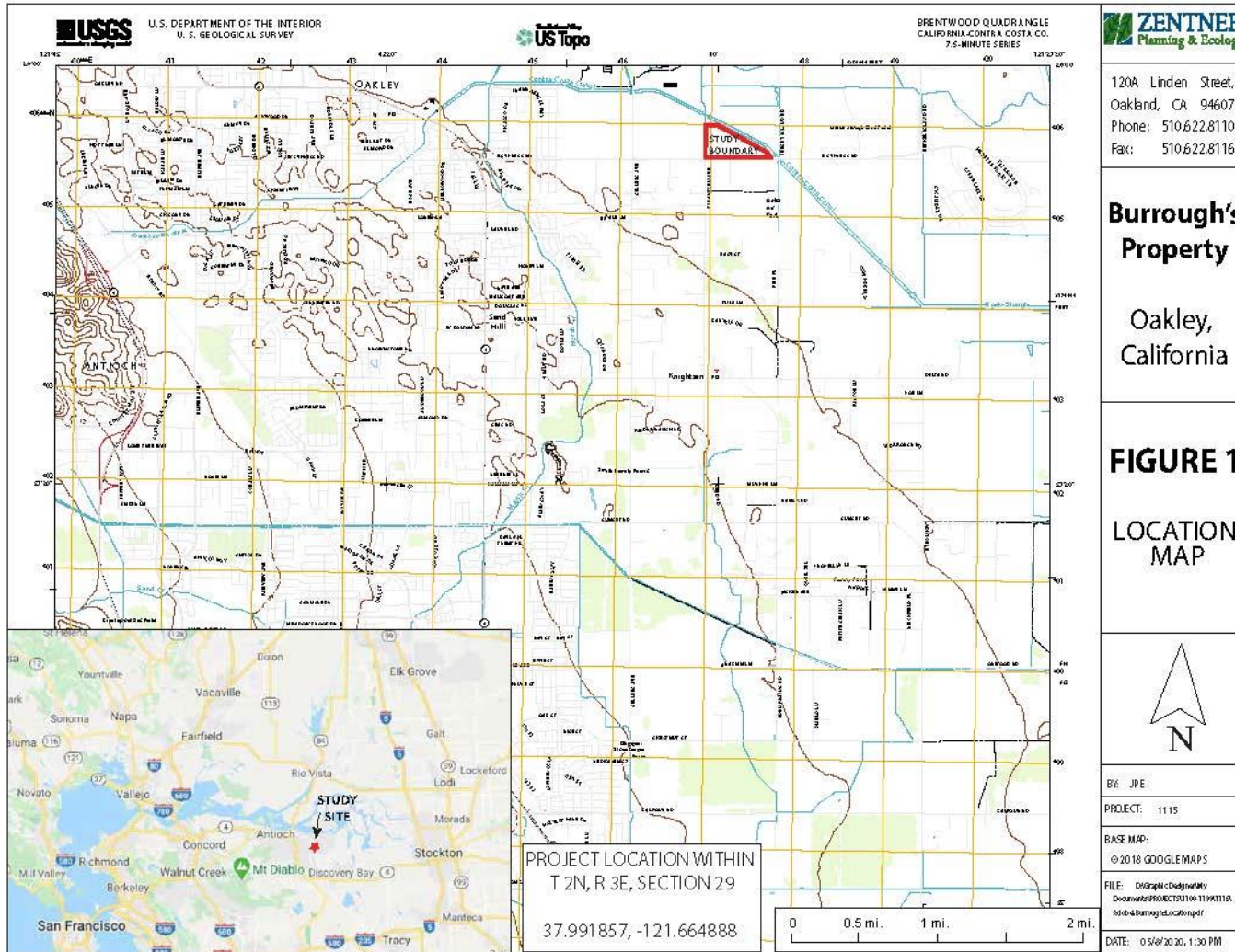
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**Burrough's  
 Property**

Oakley,  
 California

**FIGURE 1  
 LOCATION  
 MAP**



BY: JPE  
 PROJECT: 1115  
 BASE MAP:  
 © 2018 GOOGLEMAPS  
 FILE: D:\Grip\c\bdg\m\w\w\Documents\PROJECT\1115\119931115\_318-4\Burroughs\_Location.pdf  
 DATE: 05/20/20, 1:30 PM

PROJECT LOCATION WITHIN  
 T 2N, R 3E, SECTION 29  
 37.991857, -121.664888

0 0.5 mi. 1 mi. 2 mi.

**Figure 1 – Project Location Map**



Figure 2 – Impacts to Aquatic Resources Map

## **COMPLIANCE WITH CODE OF FEDERAL REGULATIONS, TITLE 40, SECTION 121.7, SUBDIVISION (D)**

The purpose of this Attachment is to comply with Code of Federal Regulations, title 40, section 121.7, subdivision (d), which requires all certification conditions to provide an explanation of why the condition is necessary to assure that any discharge authorized under the certification will comply with water quality requirements, and a citation to federal, state, or tribal law that authorizes the condition.

### **I. General Justification for Certification Conditions**

Pursuant to Clean Water Act section 401 and California Code of Regulations, title 23, section 3859, subdivision (a) the Central Valley Water Board, when issuing water quality certifications, may set forth conditions to ensure compliance with applicable water quality standards and other appropriate requirements of state law. Under Water Code section 13160, the State Water Resources Control Board is authorized to issue water quality certifications under the Clean Water Act and has delegated this authority to the executive officers of the regional water quality controls boards for projects within the executive officer's region of jurisdiction. (Cal. Code Regs., tit. 23, § 3838.)

The conditions within the Order are generally required pursuant to the Central Valley Water Board's Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fifth Edition, May 2018 (Basin Plan), which was adopted and is periodically revised pursuant to Water Code section 13240. The Basin Plan includes water quality standards, which consist of existing and potential beneficial uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies. For instance, the Basin Plan includes water quality objectives for oil and grease, pH, sediment, and turbidity, which ensure protection of beneficial uses.

The State Water Board's Antidegradation Policy, "Statement of Policy with Respect to Maintaining High Quality Waters in California," Resolution No. 68-16, requires that the quality of existing high-quality water be maintained unless any change will be consistent with the maximum benefit to the people of the state, will not unreasonably affect present or anticipated future beneficial uses of such water, and will not result in water quality less than that prescribed in water quality control plans or policies. The Antidegradation Policy further requires best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and the highest water quality consistent with maximum benefit to the people of the state will be maintained. The Basin Plan incorporates this Policy. The Basin Plan incorporates this Policy. The state Antidegradation Policy incorporates the federal Antidegradation Policy (40 C.F.R. § 131.12 (a)(1)), which requires "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

The State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Dredge or Fill Procedures), adopted pursuant to Water Code sections 13140 and 13170, authorize approval of dredge or fill projects only if the demonstrations set forth in Section IV.B.1 of the Dredge or Fill Procedures have been satisfied.

California Code of Regulations, title 23, sections 3830 et seq. set forth state regulations pertaining to water quality certifications. In particular, section 3856 sets forth information that must be included in water quality certification requests, and section 3860 sets forth standard conditions that shall be included in all water quality certification actions.

Finally, Water Code sections 13267 and 13383 authorize the regional and state boards to establish monitoring and reporting requirements for persons discharging or proposing to discharge waste.

## **II. Specific Justification for Standard Certification Conditions**

1. This is a standard condition that “shall be included as conditions of all water quality certification actions” pursuant to California Code of Regulations, title 23, section 3860(a). This condition places the permittee on notice that the certification action may be modified or revoked following administrative or judicial review.

2. This is a standard condition that “shall be included as conditions of all water quality certification actions” pursuant to California Code of Regulations, title 23, section 3860(b). This condition clarifies the scope of the certification’s application.

3. This is a standard condition that “shall be included as conditions of all water quality certification actions” pursuant to California Code of Regulations, title 23, section 3860(c). This fee requirement condition is also required pursuant to California Code of Regulations, section 3833(b).

4 & 5. These conditions are required pursuant to Water Code section 13267, which requires any person discharging waste that could affect the quality of waters to provide to the Central Valley Water Board, under penalty of perjury, any technical or monitoring program reports as required by the Central Valley Water Board. The signatory requirements are also consistent with 40 C.F.R. section 122.22.

## **III. Specific Justification for Technical Certification Conditions**

1. This condition is required to provide the Central Valley Water Board necessary project information and oversight to ensure project discharges are complying with applicable Basin Plan requirements. This reporting requirement is consistent with the Central Valley Water Board’s authority to investigate the quality of any waters of the state and require necessary monitoring and reporting pursuant to Water Code sections 13267 and 13383.

2. This condition is required pursuant to Water Code section 13264, which prohibits any discharge that is not specifically authorized in this Order. This condition ensures material will not impair surface waters, adversely affect beneficial uses, or result in exceedances of water quality objectives in the Basin Plan, including for sediment. (Basin Plan, Section 3.1.15.) Among other requirements, Section IV.B.1 of the Dredge or Fill Procedures requires that Project impacts will not cause or contribute to a degradation of waters or violate water quality standards.

3. This condition ensures any agent of the Permittee is aware of Order requirements. Such conditions within the Order are necessary to ensure that all activities will comply with applicable water quality standards and other appropriate requirements (33 U.S.C. § 1341; Cal. Code Regs., tit. 23, section 3859, subd. (a)) and cannot be adhered to if the Permittee's agents are unaware of applicable requirements. These conditions are necessary to ensure compliance with applicable water quality objectives and protection of beneficial uses found in the Basin Plan, adopted pursuant to Water Code section 13240, and detailed in the Order.

4. Monitoring and reporting requirements identified in Table 1 are consistent with the Central Valley Water Board's authority to investigate the quality of any waters of the state and require necessary monitoring and reporting pursuant to Water Code sections 13267 and 13383.

5. This condition related to compliance with water quality objectives, including for Oil and Grease (Basin Plan Section 3.1.10), Turbidity (Basin Plan Section 3.1.21), pH (Basin Plan Section 3.1.11), and designated beneficial uses is required pursuant to the Central Valley Water Board's Basin Plan. The Basin Plan's water quality standards consist of existing and potential beneficial uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies. The Antidegradation Policy requires that the quality of existing high-quality water be maintained unless any change will be consistent with the maximum benefit to the people of the state, will not unreasonably affect present or anticipated future beneficial uses of such water, and will not result in water quality less than that prescribed in water quality control plans or policies. The Antidegradation Policy further requires best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and the highest water quality consistent with maximum benefit to the people of the state will be maintained.

6. This condition is required to provide the Central Valley Water Board necessary project information and oversight to ensure project discharges are complying with applicable water quality objectives under the Basin Plan. This reporting requirement is consistent with the Central Valley Water Board's authority to investigate the quality of any waters of the state and require necessary monitoring and reporting pursuant to Water Code sections 13267 and 13383.

7. This condition is required to assure that the discharge from the Project will comply with water quality objectives established for surface waters, including for Oil and



Grease, Turbidity, and pH, and ensure protection of beneficial uses. (Basin Plan, Sections 3.1.10, 3.1.11, 3.1.21; Dredge or Fill Procedures, Section IV.B.1.)

8. Monitoring and reporting requirements identified in Table 1 are consistent with the Central Valley Water Board's authority to investigate the quality of any waters of the state and require necessary monitoring and reporting pursuant to Water Code sections 13267 and 13383.

9. This condition is required to assure that the Project will comply with water quality objectives established for surface waters, including for Oil and Grease, and ensure protection of beneficial uses. (Basin Plan, Section 3.1.10; Dredge or Fill Procedures, Section IV.B.1.)

10 & 11. These conditions require measures to prevent, minimize, and/or clean up potential construction spills, including from construction equipment. For instance, fuels and lubricants associated with the use of mechanized equipment have the potential to result in toxic discharges to waters of the state in violation of the Basin Plan. (Basin Plan, Section 3.1.20; Dredge or Fill Procedures, Section IV.B.1.)

12-15. These conditions are required to assure that discharges comply with applicable water quality objectives under the Basin Plan, adopted under section 13240 of the Water Code, including for pH, oil and grease, and toxic substances. (Basin Plan, Sections 3.1.10, 3.1.11, 3.1.20; Dredge or Fill Procedures, Section IV.B.1.) Additionally, the notification and reporting requirements in the event of an accidental discharge of hazardous materials are required pursuant to section 13271 of the Water Code, which requires immediate notification of the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of Title 2 of the Government Code. "Hazardous materials" is defined under Health and Safety Code section 25501. These reports related to accidental discharges ensure that corrective actions, if any, that are necessary to minimize the impact or clean up such discharges can be taken as soon as possible.

16 & 17. These conditions assure that the Project will comply with water quality objectives established for surface waters, including for sediment, suspended material, and settleable material, and ensure protection of beneficial uses. (Basin Plan, Sections 3.1.15, 3.1.16, 3.1.17; Dredge or Fill Procedures, Section IV.B.1.)

18. This condition is required to assure protection of beneficial uses within the Basin Plan. (Basin Plan, Section 2.1; Dredge or Fill Procedures, Section IV.B.1.)

19. This condition is required to assure that the Project will comply with water quality objectives established for surface waters, including for sediment, and ensure protection of beneficial uses. (Basin Plan, Section 3.1.15; Dredge or Fill Procedures, Section IV.B.1.)

20-22. These conditions require restoration to pre-project conditions consistent with the Dredge or Fill Procedures' temporary impacts provisions and to prevent continuing discharges to surface waters not in compliance with the Basin Plan. (See Basin Plan, Sections 3.1.15, 3.1.21; Dredge or Fill Procedures section IV.A.2(d) & B.4.)

23-28. These conditions related to dewatering and water diversion are required to assure protection of beneficial uses and compliance with applicable water quality objectives within the Basin Plan. (Basin Plan, Section 2.1; Dredge or Fill Procedures, Section IV.B.1.) Work in waters of the state and temporary diversions must not cause exceedances of water quality objectives; accordingly, these conditions require implementation of best practicable treatments and controls to prevent pollution and nuisance, and to maintain water quality consistent with the Basin Plan, Antidegradation Policy, and Dredge or Fill Procedures. Conditions related to monitoring and reporting are required to provide the Central Valley Water Board necessary project information and oversight to ensure project discharges are complying with applicable Basin Plan requirements. These monitoring and reporting requirements are consistent with the Central Valley Water Board's authority to investigate the quality of any waters of the state and require necessary monitoring and reporting pursuant to Water Code sections 13267 and 13383.

29. Authorization under this Order is granted based on the application information submitted, including identification of the legally responsible party. This condition is necessary to confirm whether the new discharger wishes to assume legal responsibility for compliance with this Order. If not, the original discharger remains responsible for compliance with this Order. Pursuant to Water Code section 13260, subdivision (c), each person discharging waste, or proposing to discharge waste shall file a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge. Pursuant to Water Code section 13264, subdivision (a), the Permittee is prohibited from initiating the discharge of new wastes, or making material changes to the character, volume, and timing of waste discharges authorized herein without filing a report required by Water Code section 13260 or its equivalent for certification actions under California Code of Regulations, title 23, section 3856.

30. This condition is required pursuant to California Code of Regulations, title 23, section 3856, subdivision (e), which requires that copies be provided to the Central Valley Water Board of "any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included."

31. Authorization under the Order is granted based on the application submitted. The Permittee is required to detail the scope of project impacts in a complete application pursuant to California Code of Regulations, title 23, section 3856, subdivision (h). Pursuant to Water Code section 13260, subdivision (c), each person



discharging waste, or proposing to discharge waste shall file a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge. Pursuant to Water Code section 13264, subdivision (a), the Permittee is prohibited from initiating the discharge of new wastes, or making material changes to the character, volume, and timing of waste discharges authorized herein without filing a report required by Water Code section 13260 or its equivalent for certification actions under California Code of Regulations, title 23, section 3856.

32. This condition is required to provide the Central Valley Water Board necessary project information and oversight to ensure project discharges are complying with applicable water quality objectives under the Basin Plan. These monitoring and reporting requirements are consistent with the Central Valley Water Board's authority to investigate the quality of any waters of the state and require necessary monitoring and reporting pursuant to Water Code sections 13267 and 13383. Additionally, this condition places the Permittee on notice of any violations of Order requirements pursuant to Water Code sections 13268 and/or 13385. Finally, the condition related to site access requirements is authorized pursuant to the Central Valley Water Board's authority to investigate the quality of any waters of the state within its region under Water Code sections 13267, subdivision (c), and 13383.

33 & 34. These reporting and notification conditions are required to provide the Central Valley Water Board necessary project information and oversight to ensure project discharges are complying with applicable Basin Plan requirements. These monitoring and reporting requirements are consistent with the Central Valley Water Board's authority to investigate the quality of any waters of the state and require necessary monitoring and reporting pursuant to Water Code sections 13267 and 13383.