

# **Appendix A: Clean Water Act Section 401 Water Quality Certification**

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**Central Valley Regional Water Quality Control Board**

30 September 2016

Michael Preston Evans  
Contra Costa County Communities, LLC  
1500 Willow Pass Court  
Concord, CA 94520

CERTIFIED MAIL  
91 7199 9991 7035 8365 0678

***CLEAN WATER ACT SECTION 401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION; CONTRA COSTA COUNTY COMMUNITIES, LLC, GILBERT PROPERTY PROJECT (WDID#5B07CR00178), CONTRA COSTA COUNTY***

This Order responds to the 2 February 2016 application submitted by Contra Costa County Communities, LLC (Applicant) for the Water Quality Certification of the Gilbert Property Project (Project), permanently impacting 0.82 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-2005-00692) 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:**

1. This Order serves as a Water Quality Certification (Certification) action that is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and Section 3867 of the California Code of Regulations.
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 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 This Certification is no longer valid if the Project (as described) is modified, or coverage under Section 404 of the Clean Water Act has expired.

KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. GREEDON P.E., BCEE, EXECUTIVE OFFICER

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11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | [www.waterboards.ca.gov/centralvalley](http://www.waterboards.ca.gov/centralvalley)

5. All reports, notices, or other documents required by this Certification or requested by the Central Valley Regional Water Quality Control Board (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:**

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>1</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.

The sampling requirements in Table 1 shall be conducted upstream out of the influence of the Project, and 300 feet downstream of the work area. The sampling frequency may be modified for certain projects with written approval from Central Valley Water Board staff.

**Table 1:**

Parameter	Unit	Type of Sample	Minimum Sampling Frequency	Required Analytical Test Method
Turbidity	NTU	Grab <sup>(1)</sup>	Every 4 hours during in-water work	(2, 4)
Settleable Material	mL/L	Grab <sup>(1)</sup>	Every 4 hours during in-water work	(2)
Visible construction related pollutants <sup>(3)</sup>	Observations	Visual Inspections	Continuous throughout the construction period	—

<sup>(1)</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>(2)</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>(3)</sup> Visible construction-related pollutants include oil, grease, foam, fuel, petroleum products, and construction-related, excavated, organic or earthen materials.

<sup>(4)</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.

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.

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<sup>1</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.

5. The Central Valley Water Board adopted a *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised April 2016 (Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Turbidity and settleable matter limits are based on water quality objectives contained in the Basin Plan and are part of this Certification as follows:
  - a) 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.

Appropriate averaging periods may be applied, provided that beneficial uses will be fully protected.
  - b) Activities shall not cause settleable matter to exceed 0.1 mL/L in surface waters as measured in surface waters within the work area.
6. The Applicant shall notify the Central Valley Water Board immediately if the above criteria for turbidity, settleable matter, or other water quality objectives are exceeded.
7. In-water work shall occur during periods of no flow and no precipitation. The Applicant shall perform surface water sampling in accordance with Technical Certification Condition No. 4, if any of the following conditions occur: 1) in-water work is conducted during an unanticipated flow event; 2) Project activities result in any materials reaching surface waters; or 3) Project activities result in the creation of a visible plume in surface waters.
8. Activities shall not cause visible oil, grease, or foam in the receiving water.
9. 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.

10. 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.
11. 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.

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.

12. 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.
13. The use of netting material (e.g., monofilament-based erosion blankets) that could trap aquatic dependent wildlife is prohibited within the Project area.
14. All areas disturbed by Project activities shall be protected from washout and erosion.
15. All temporarily affected areas shall be restored to pre-construction contours and conditions upon completion of construction activities.
16. Hydroseeding shall be performed with California native seed mix.
17. All materials resulting from the Project shall be removed from the site and disposed of properly.
18. This Certification does not allow permanent water diversion of flow from the receiving water. This Certification is invalid if any water is permanently diverted as a part of the project.
19. 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.
20. The Applicant shall obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction

and Land Disturbance Activities Order No. 2009-0009-DWQ for discharges to surface waters comprised of storm water associated with construction activity.

21. The Conditions in this Certification are based on the information in the attached "Project Information Sheet" and the application package. If the actual project, as described in the attached Project Information Sheet and application package, is modified or changed, this Certification is no longer valid until amended by the Central Valley Water Board.
22. The Applicant shall implement each of the mitigation measures specified in the certified Environmental Impact Report 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.
23. 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. 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.
  - (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.
24. To mitigate for the loss of 0.68 acre of agricultural ditch and 0.14 acre of wetland, the Applicant shall purchase a minimum of 0.58 mitigation credits for stream channel habitat and 0.24 mitigation credits for wetland habitat from the East Contra Costa County Habitat Conservancy as required by the United States Army Corps of Engineers for the impacted watershed prior to commencing construction.

## **NOTIFICATIONS AND REPORTS:**

25. 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.
26. 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:**

Peter Minkel, Engineering Geologist  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-8114  
Peter.Minkel@waterboards.ca.gov  
(916) 464-4684

**CALIFORNIA ENVIRONMENTAL QUALITY ACT:**

The City of Oakley is the Lead Agency responsible for compliance with the California Environmental Quality Act for the Gilbert Property Project pursuant to Section 21000 et seq. of the Public Resources Code. The City of Oakley certified the Environmental Impact Report on 13 November 2007. The City of Oakley filed a Notice of Determination with the State Clearinghouse on 15 November 2007 (SCH No. 2007012075).

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

The proposed mitigation measures discussed in the Environmental Impact Report were adopted to avoid and minimize project impacts to State waters and are required by this Certification.

With regard to the remaining impacts identified in the Environmental Impact Report, 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 Contra Costa Communities, LLC, Gilbert Property Project (WDID#5B07CR00178) 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, Contra Costa Communities, LLC'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*, Fourth Edition, revised April 2016.

Any person aggrieved by this action may petition the Regional Water Quality 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 Regional Water Quality 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 Regional Water Quality 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 Internet at: [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 Adam Laputz for:*

Pamela C. Creedon  
Executive Officer

Enclosure: Project Information Sheet

Attachment: Figure 1 – Project Location Map  
Figure 2 – Conceptual Levee Alignment  
Figure 3 – Potential Waters of the U.S. and Wetlands

cc: Distribution List, page 15

## PROJECT INFORMATION SHEET

**Application Date:** 2 February 2016

**Applicant:** Contra Costa Communities, LLC  
1500 Willow Pass Court  
Concord, CA 94520

**Applicant Representative:** Diane Moore  
Moore Biological Consultants  
10330 Twin Cities Road, Suite 30  
Galt, CA 95632

**Project Name:** Gilbert Property Project

**Application Number:** WDID#5B07CR00178

**Date on Public Notice:** 5 February 2016

**Date Application Deemed Complete:** 7 March 2016

**Type of Project:** Development-Residential

**Approved Months of Project Implementation:**  
10 August 2016 through December 2020

**Project Location:** Section 29, Township 2 North, Range 3 East, MDB&M.  
Latitude: 37°59'36.45"N and Longitude: 121°40'22.66" W

**County:** Contra Costa County

**Receiving Water(s) (hydrologic unit):** Dutch Slough, tributary of the San Joaquin River, San Joaquin Hydrologic Basin, San Joaquin 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*, Fourth Edition, revised April 2016 (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 at [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:** Contra Costa Canal is the receiving water for the Gilbert Property Project. The Contra Costa Canal is not listed on the 303(d) list. The most recent list of approved water quality limited segments is found at: [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 Gilbert Property Project (Project) is located at the northeast corner of the intersection of Cypress Road and Sellers Avenue in the City of Oakley (see Figure 1). The Project consists of the development of approximately 121 acres into a residential community consisting of 506 single-family homes, 17 acres of trails, parks, levees and a storm water detention pond.

The Applicant will build a levee surrounding the development to protect against a 200-year flood (see Figure 2). Construction of the levee will fill 0.68 acre of agricultural ditches (AD-1 as shown on Figure 3). In addition, mass grading of the development will fill 0.14 acre of created wetland (CW-1, CW-2, AD-2, AD-3, AD-4, and AD-5 as shown on Figure 2). Construction of the levee and mass grading of the development will require approximately 2,065 cubic yards of clean fill being placed into waters of the United States. Filling of the agricultural ditches and wetlands will occur when the agricultural ditches and wetlands are dry.

No dewatering will occur within the Project area. No wet concrete will be placed into the waters of the United States. The Project will permanently impact 0.82 acre of waters of the United States.

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

**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 and settleable matter 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 2,065 cubic yards of clean soil will be placed into 0.82 acre of waters of the United States.

**Dredge Volume:** None

**California Integrated Water Quality System Impact Data:** The Project will permanently impact 0.14 acre of wetland habitat and 0.68 acre of stream bed habitat from fill activities.

**Table 2: Impacts from Fill Activities**

Aquatic Resource Type	Temporary			Permanent					
				Physical Loss of Area			Degradation of Ecological Condition Only		
	Acres	Cubic-yards	Linear-feet	Acres	Cubic-yards	Linear-feet	Acres	Cubic-yards	Linear-feet
Wetland	--	--	--	0.14	1,870	--	--	--	--
Stream Channel	--	--	--	0.68	195	--	--	--	--

**United States Army Corps of Engineers File Number:** SPK-2005-00692

**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 determined that a Lake or Streambed Alteration Agreement is not needed.

**Possible Listed Species:** Delta smelt, Longfin smelt, Sacramento splittail, Chinook salmon, Pacific lamprey, Vernal pool fairy shrimp, and Vernal pool tadpole shrimp.

**Status of CEQA Compliance:** The City of Oakley certified an Environmental Impact Report on 13 November 2007. The City of Oakley filed a Notice of Determination with the State Clearinghouse on 15 November 2007 (SCH No. 2007012075).

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:** To mitigate for the loss of 0.68 acre of agricultural ditch and 0.14 acre of wetland, the Applicant shall purchase a minimum of 0.58 mitigation credits for stream channel habitat and 0.24 mitigation credits for wetland habitat from the East Contra Costa County Habitat Conservancy as required by the United States Army Corps of Engineers for the impacted watershed prior to commencing construction. At a minimum, compensatory mitigation must achieve a ratio of 1:1 for permanent impacts. The Corps of Engineers determined that 0.58 acre stream channel and 0.24 acre of wetland mitigation credit purchase through the East Contra Costa Habitat Conservancy meets a ratio of 1:1 for permanent impacts.

**Table 3 Compensatory Mitigation for Permanent Physical Loss of Area**

Aquatic Resource Type	Comp Mitigation Type			Units		Established	Re-established	Rehabilitated	Enhanced	Preserved	Unknown
	In-Lieu	Mit. Bank	Permittee Responsible	AC (Acres)	LF (Linear Feet)						
Wetland	--	xx	--	0.24	--	--	--	--	--	--	--
Stream Channel	--	xx	--	0.58	--	--	--	--	--	--	--
<b>TOTAL</b>	--	xx	--	0.82	--	--	--	---	--	--	--

**Application Fee Provided:** Total fees of \$4,649.00 have been submitted to the Central Valley Water Board as required by Section 3833(b)(3)(A) and Section 2200(a)(3) of the California Code of Regulations.

**DISTRIBUTION LIST**

Dylan Van Dyne (SPK-2015-00692)  
United States Army Corps of Engineers  
Sacramento District Headquarters  
1325 J Street, Room 1350  
Sacramento, CA 95814-2922

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

Bill Jennings  
CA Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, CA 95204

Bill Orme (Electronic Copy Only)  
State Water Resources Control Board  
Stateboard401@waterboards.ca.gov

Jason A. Brush (Electronic Copy Only)  
United States Environmental Protection Agency  
R9-WTR8-Mailbox@epa.gov

Diane Moore (Electronic Copy Only)  
Moore Biological Consultants  
moorebio@softcom.net



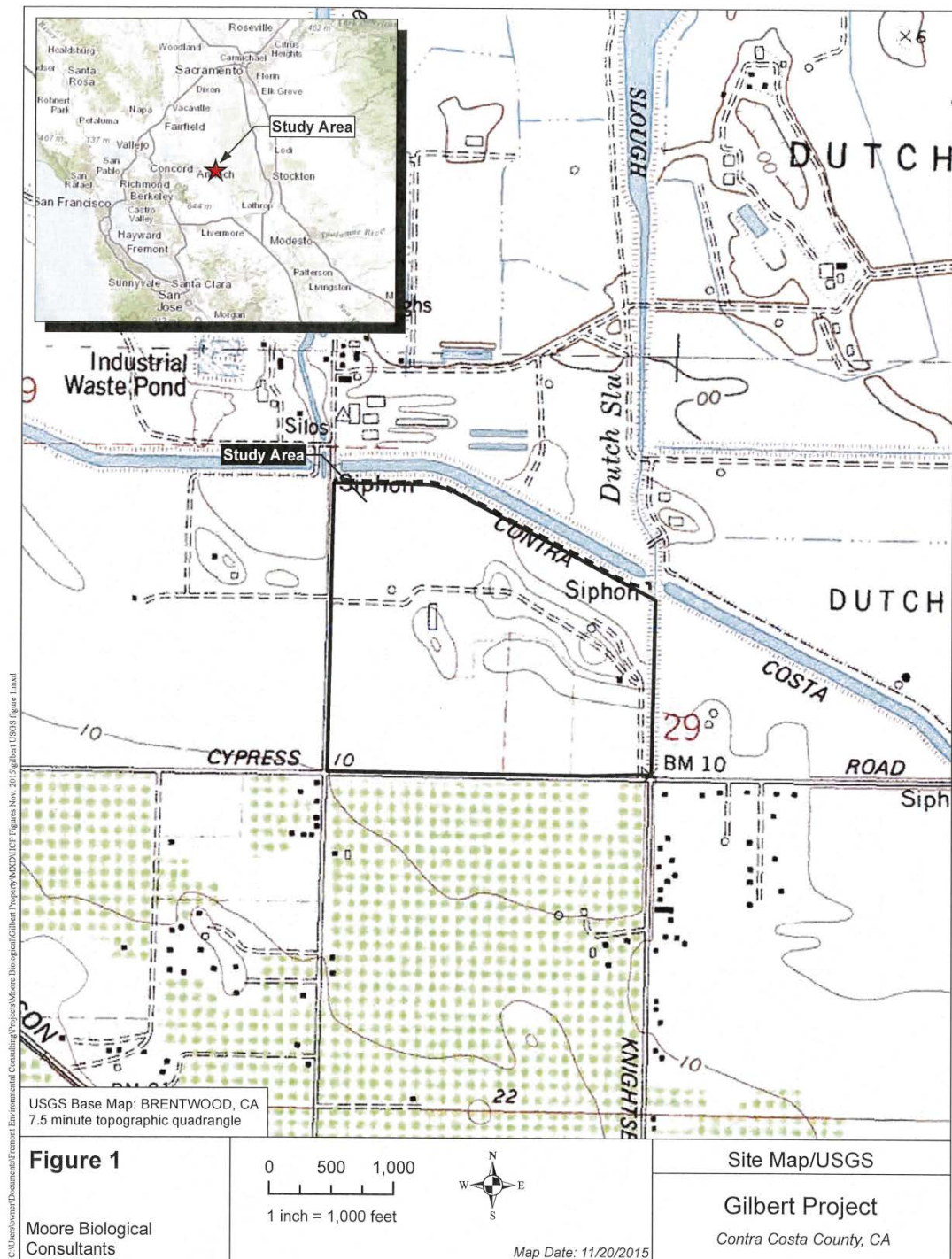


Figure 1 – Project Location Map



FIGURE 2b. LEVEE IMPROVEMENT PLANS

Figure 2 – Conceptual Levee Alignment





## **Appendix B: Cultural Resources Determination**

**OFFICE OF HISTORIC PRESERVATION  
DEPARTMENT OF PARKS AND RECREATION**

1725 23<sup>rd</sup> Street, Suite 100  
SACRAMENTO, CA 95816-7100  
(916) 445-7000 Fax: (916) 445-7053  
calshpo@parks.ca.gov  
www.ohp.parks.ca.gov



August 10, 2015

In reply refer to: BUR\_2015\_0708\_001

Ms. Anastasia T. Leigh  
Regional Environmental Officer  
Bureau of Reclamation  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825-1898

Re: National Historic Preservation Act (NHPA) Section 106 Consultation for the Gilbert Parcel Inclusion, Contra Costa County, California (14-SCAO-031)

Dear Ms. Leigh:

Thank you for your letter dated July 8, 2015, requesting my review and comment with regard to the proposed inclusion request for the Gilbert parcel by the Contra Costa Water District (CCWD) into the Central Valley Project (CVP) service area. The Bureau of Reclamation (Reclamation) is consulting with me pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800 (as amended 8-05-04).. The inclusion is requested to facilitate the development of the parcel from agricultural use to a residential subdivision, as outlined in the City of Oakley General Plan. Along with your consultation letter, you also provided the following document:

- *Historic Survey Report, Gilbert Property Project (Basin Research Associates, March 2014).*

Under the proposed inclusion, CVP water will be provided by the CCWD for use within the Gilbert parcel, where up to 506 residential units will be constructed on a 120-acre parcel in Oakley, California. The development plans for the 120-acre parcel will also include trails, a 5-acre park, levees, a 5-acre storm water detention pond, a 24-acre commercial zone, and other infrastructure improvements associated with the development.

Reclamation has determined that the area of potential effects (APE) for this undertaking consists of the entire 120-acre parcel which encapsulates the entire development project and includes all ground-disturbing activities associated with project implementation, construction staging areas, and access routes. The vertical APE varies depending upon construction activity and extends to a maximum depth of 15 feet below the existing ground surface.

The cultural resources identification effort included a records search, cultural resources survey, and Native American coordination performed by Basin Research Associates (Consultant), and Native American consultation initiated by Reclamation. A records search completed on April 14, 2014 indicated that three previously identified properties were contained within the Gilbert parcel APE. A portion of the Central Shuey/Golden State Dairy (P-07-002996), an early 20<sup>th</sup> century dairy operation that was later bisected by the Contra Costa Canal (CCC), was identified within the APE.

The Golden State Dairy and adjacent properties have been identified as contributing elements to the 1,166-acre Dutch Slough Rural Historic Landscape (DSRHL), which has previously been determined eligible for inclusion in the National Register of Historic Places under Criterion A in December, 2013. Also identified within the APE is the CCC (P-07-002695) a Reclamation CVP facility constructed in 1937, which has also previously been identified as eligible for inclusion in the National Register of Historic Places. The consultant conducted a cultural resources pedestrian survey in 2013 to update the survey and subsurface investigations conducted in 2006. The field investigations did not result in the identification of additional properties within the APE.

The Native American Heritage Commission (NAHC) was contacted by the consultant in January 2006 to request a search of the Sacred Lands File for known sacred sites in the project area and to request a list of Native American organizations and individuals who may have knowledge of cultural resources within the APE. NAHC records indicated that no previously identified sacred lands or areas of cultural importance are located within the APE. Reclamation initiated consultation with the Lone Band of Miwok Indians, the Ohlone Costanoan Esslen Nation, the Muwekma Ohlone Indian Tribe of the San Francisco Bay Area, the Ohlone Indian tribe, and the Indian Canyon Band of Costanoan/Mutsen Indians. No comments have been received to date and Native American consultation efforts have not resulted in the identification of potential historic properties within the APE.

Basin Research Associates evaluated the buildings or structures located on the Gilbert parcel and recommended that due to a lack of integrity, none of them are eligible for inclusion in the National Register, either as individual properties or as contributors to the DSRHL. However, several of the landscaping features are recommended as contributing to the DSRHL, including: (1) an internal unpaved road that runs east-to-west through the center of the property and historically provided access to the barns, corrals, and buildings, (2) the internal divisions within the project parcel of a hill located across the central portion of the site and graded fields north and south of the hill, (3) an internal ditch system that branches off the Little Dutch Slough (at the east edge of the property) and goes around the north side of the hill, and (4) open fields with vegetation related to agricultural land uses, e.g., grazing, crops.

Reclamation applied the criteria of adverse effect to the two historic properties identified within the APE, the CCC and portion of the DSRHL. Reclamation found that only a portion of the outside toe of the berm of the CCC is within the APE and the effects resulting from the proposed undertaking will not affect any of the characteristics that make the CCC eligible for the National Register. With regard to the eligible contributors to the DSRHL within the APE, Reclamation has found that their removal will constitute an adverse effect pursuant to 36 CFR 800.5(d)(2).

Reclamation is requesting my review and comment on the delineation of the APE and the appropriateness of their historic properties identification efforts. Furthermore, Reclamation is requesting consensus with their determination that the landscape features on the Gilbert parcel are contributing features of the DSRHL, and is seeking my concurrence with their finding of adverse effect to historic properties. After reviewing your submission I have the following comments:

- Pursuant to 36 CFR 800.4(a)(1), I have no objections to the APE as defined.
- Pursuant to 36 CFR 800.4(b), I find that Reclamation has made a reasonable and good faith effort to identify historic properties within the area of potential effects.

- I agree that the proposed undertaking will have no effect to the CCC.
- I agree with your finding that the proposed undertaking will have an adverse effect on the landscape features in the Gilbert parcel which have been identified as contributing features of the DSRHL. **I concur with your finding of adverse effect to historic properties.**

Thank you for seeking my comments and considering historic properties as part of your project planning. I look forward to continuing this consultation to resolve adverse effects to historic properties. If you have any questions, please contact Patrick Riordan of my staff at (916) 445-7017 or [Patrick.Riordan@parks.ca.gov](mailto:Patrick.Riordan@parks.ca.gov) or Kathleen Forrest at (916) 445-7022 or [Kathleen.Forrest@parks.ca.gov](mailto:Kathleen.Forrest@parks.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to be 'J. Polanco', with a long horizontal line extending to the right.

Julianne Polanco  
State Historic Preservation Officer



# United States Department of the Interior

BUREAU OF RECLAMATION  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825-1898

IN REPLY REFER TO:

MP-153  
ENV-3.00

JUL 08 2015

SPECIAL DELIVERY – HAND-DELIVERED

Ms. Julianne Polanco  
State Historic Preservation Officer  
Office of Historic Preservation  
1725 23<sup>rd</sup> Street, Suite 100  
Sacramento, CA 95816

Subject: National Historic Preservation Act (NHPA) Section 106 Consultation for the Gilbert Parcel Inclusion, Contra Costa County, California (14-SCAO-031)

Dear Ms. Polanco:

The Bureau of Reclamation is initiating consultation under Title 54 USC § 306108, formerly and commonly known as Section 106 of the NHPA, and its implementing regulations found at 36 CFR § 800, for the proposed project located in the City of Oakley, Contra Costa County, California (Figure 1, Enclosure 1). Reclamation is proposing to approve an inclusion request for the Gilbert parcel by the Contra Costa Water District (CCWD) into the Central Valley Project (CVP) service area. The inclusion is required to facilitate the development of the parcel from agricultural use to a residential subdivision, as outlined in the City of Oakley General Plan. Reclamation determined that the approval of the inclusion is an undertaking as defined in 36 CFR § 800.16(y) and a type of activity that has the potential to cause effects on historic properties under 36 CFR § 800.3(a). We are entering into consultation with you on this undertaking and requesting concurrence on our finding of adverse effect to historic properties affected.

The proposed Gilbert parcel inclusion consists of a 120-acre parcel located within the City of Oakley in the northeastern portion of Contra Costa County. The Gilbert parcel is bounded by the Contra Costa Canal to the north, Sellers Avenue to the west, an unimproved road/levee and Little Dutch Slough to the east, and Cypress Road to the south. Under the proposed inclusion, CVP water will be provided by the CCWD to the Diablo Water District for use within the Gilbert parcel, where up to 506 residential units will be constructed. The 120-acre parcel will also include trails, a 5-acre park, levees, a 5-acre storm-water detention pond, a 24-acre commercial zone, and infrastructure improvements necessary to accommodate the new development.



The area of potential effects (APE) for the undertaking consists of the entire 120-acre parcel, the legal description for which is NW¼, Section 29, T. 2 N., R. 3 E., Mt. Diablo Baseline and Meridian as depicted on the Brentwood 7.5' U.S. Geological Survey topographic quadrangle (Figure 2, Enclosure 1). The vertical APE will not exceed 15 feet below the surface.

Pursuant to the regulations at 36 CFR § 800.3(f)(2), Reclamation identified the Ione Band of Miwok Indians as a federally recognized tribe that might attach religious and cultural significance to historic properties in the APE. Reclamation sent a letter to this tribe, pursuant to 36 CFR § 800.4(a)(4), inviting their participation in the Section 106 process and requesting their assistance in identifying cultural resources eligible for listing on the National Register of Historic Places (National Register) and sites of religious and cultural significance. Reclamation also identified the Ohlone Costanoan Esselen Nation, the Muwekma Ohlone Indian Tribe of the San Francisco Bay Area, the Ohlone Indian Tribe, and the Indian Canyon Band of Costanoan/Mutsun Indians as organizations that may have knowledge or concerns regarding historic properties in the APE. Pursuant to 36 CFR § 800.4(a)(3), Reclamation also sent letters to these organizations requesting assistance in the identification of sites which may be eligible for listing on the National Register. No comments have been received to date. Reclamation will work with these Indian tribes and organizations to address their concerns, should any arise, and will notify your office as appropriate.

In an effort to identify historic properties, a Historic Property Survey Report was completed by consultants Basin Research Associates (Basin) on behalf of Castle Companies and Assigns, a housing project developer that is no longer involved with the project, and CCWD, the inclusion applicant. A new housing developer, DeNova Homes, has made the current inclusion request to CCWD. Prior to the involvement of DeNova Home, the Basin (2014) report was transmitted to both Castle Companies and Assigns and CCWD. Reclamation has reviewed and commented on the report and determined that it meets Reclamation's needs for Section 106 compliance; therefore, it is submitted in support of the CCWD's current inclusion request. The identification efforts and recommended findings are documented in the enclosed report titled *Historic Property Survey Report (Revised) – Gilbert Property Project* (Basin Research Associates - March 2014) (Enclosure 2).

Briefly summarizing the report, there are no prehistoric archaeological sites identified within the APE through a records search at the Northwest Information Center (NWIC), nor were any noted during pedestrian survey, or observed through subsurface presence/absence testing (12 backhoe test units completed in 2006). Overall, the archaeological sensitivity for the immediate project area is considered "low" (Basin 2014:25). With regard to historic-era cultural resources, through the NWIC records search and other background research, Basin determined that the APE consists of lands that were previously part of the Central Shuey/Golden State Dairy (P-07-002996), an early 20<sup>th</sup> century operation that was later bisected by the Contra Costa Canal (CCC), a Reclamation CVP facility constructed in 1937. The CCC was identified in the records search as P-07-002695 (Basin 2014: 26).

The historic boundaries of the Golden State Dairy, the former Burroughs Brothers Dairy, and some adjacent areas both north and south of the CCC, along with lands encompassing the former Emerson Dairy to the west of the Gilbert Parcel, comprise the 1,166-acre Dutch

Slough Rural Historic Landscape (DSRHL) [Refer to Figure 3 and Form 1 in Basin 2014, enclosed]. The DSRHL was originally identified during an earlier cultural resources inventory associated with the California Department of Water Resources (DWR) Dutch Slough restoration and development project, which requires an U.S. Army Corps of Engineers (Corps) permit. The DWR project is confined to lands north of the CCC.

In conjunction with the DWR project, Hill and Dobkin (2006, revised 2008, submitted to you by the Corps) completed a Historic American Landscape Survey (HALS) and recommended the DSRHL both north and south of the CCC as eligible for inclusion in the National Register under Criterion A, as a rare surviving dairy landscape in the San Francisco Bay Area, with a period of significance from 1913 to 1955. In October 2013, the Corps determined, with SHPO concurrence, that the DSRHL with its contributing elements was eligible for the National Register as recommended (SHPO Reference No. COE\_2013\_1104\_001) (Enclosure 3).

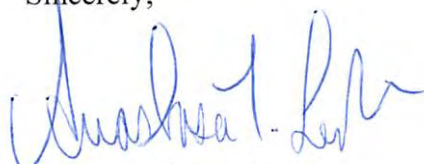
Basin evaluated the buildings or structures located on the Gilbert parcel and recommended that due to lack of integrity, none of them are eligible for inclusion in the National Register, either as individual properties or as contributors to the DSRHL (Basin 2014: 27-30). Basin evaluated the landscaping features using the HALS evaluation outlined in Hill and Dobkin (2006, revised 2008) and identified similar land uses, patterns of spatial organization, responses to the natural environment, and cultural traditions that characterize the DSRHL. In addition, Basin recommended a number of landscaping features as contributing to the DSRHL including (1) an internal unpaved road that runs east-to-west through the center of the property and historically provided access to the barns, corrals, and buildings, (2) the internal divisions within the project parcel of a hill located across the central portion of the site and graded fields north and south of the hill, (3) an internal ditch system that branches off the Little Dutch Slough (at the east edge of the property) and goes around the north side of the hill, and (4) open fields with vegetation related to agricultural land uses, e.g., grazing, crops. (Basin 2014:34-35). Reclamation agrees with these recommendations.

As identified in the records search, the CCC (P-07-002695) has already been determined eligible for inclusion in the National Register. A previously proposed undertaking for the CCC Encasement Project, which proposed piping the first 4 miles of the CCC, was determined to be an adverse effect to the CCC and mitigation-level documentation was completed in 2006 for this undertaking. The Gilbert parcel is adjacent to the portion of the CCC that is currently being piped.

Reclamation applied the criteria of adverse effect to the two historic properties in the APE, the CCC and portion of the DSRHL. The only portion of the CCC within the APE includes the outside toe of its berms, which will only nominally be impacted during the construction of the levees on the perimeter of the Gilbert parcel. This activity will not affect any of the characteristics that make the CCC eligible for the National Register. As it has already been mitigated in the vicinity of the current APE for an ongoing encasement project, Reclamation finds that no effect to the property will result for the current undertaking. In regards to the eligible contributors to the DSRHL within the APE, Reclamation finds their removal will constitute an adverse effect pursuant to 36 CFR §800.5(d)(2).

We invite your comments on the delineation of the APE and the appropriateness of the historic properties identification efforts. We also request your consensus with our determination that the landscape features on the Gilbert parcel are contributing features of the DSRHL and ask for your concurrence with our finding of adverse effect to historic properties. Reclamation plans to submit a draft Memorandum of Agreement to your office and negotiate terms on how to resolve adverse effects to the Gilbert parcel within the DSRHL pursuant to 36 CFR §800.6. Please contact Ms. BranDee Bruce, Architectural Historian, at 916-978-5039 or [bbruce@usbr.gov](mailto:bbruce@usbr.gov), if you have any questions, comments, or concerns regarding this undertaking.

Sincerely,



Anastasia T. Leigh  
Regional Environmental Officer

Enclosures - 3

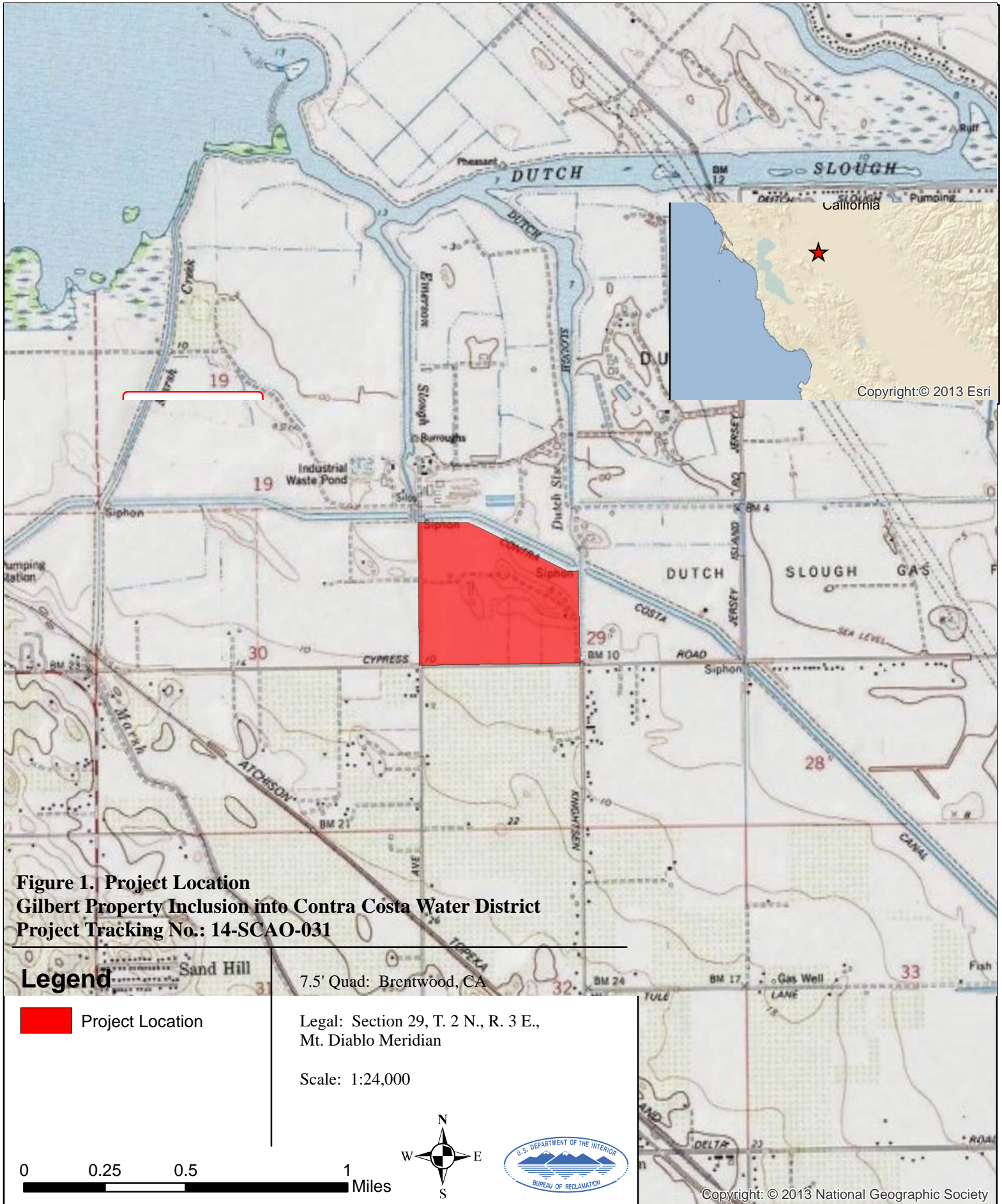
References:

2006 *Historic Architecture/Landscape Report for the Dutch Slough Restoration Project, City of Oakley, Contra Costa County, California*. Prepared for Grassetti Environmental Consulting. Revised December 2008. On file, Basin Research Associates, San Leandro; on file Bureau of Reclamation, Sacramento.



# RECLAMATION

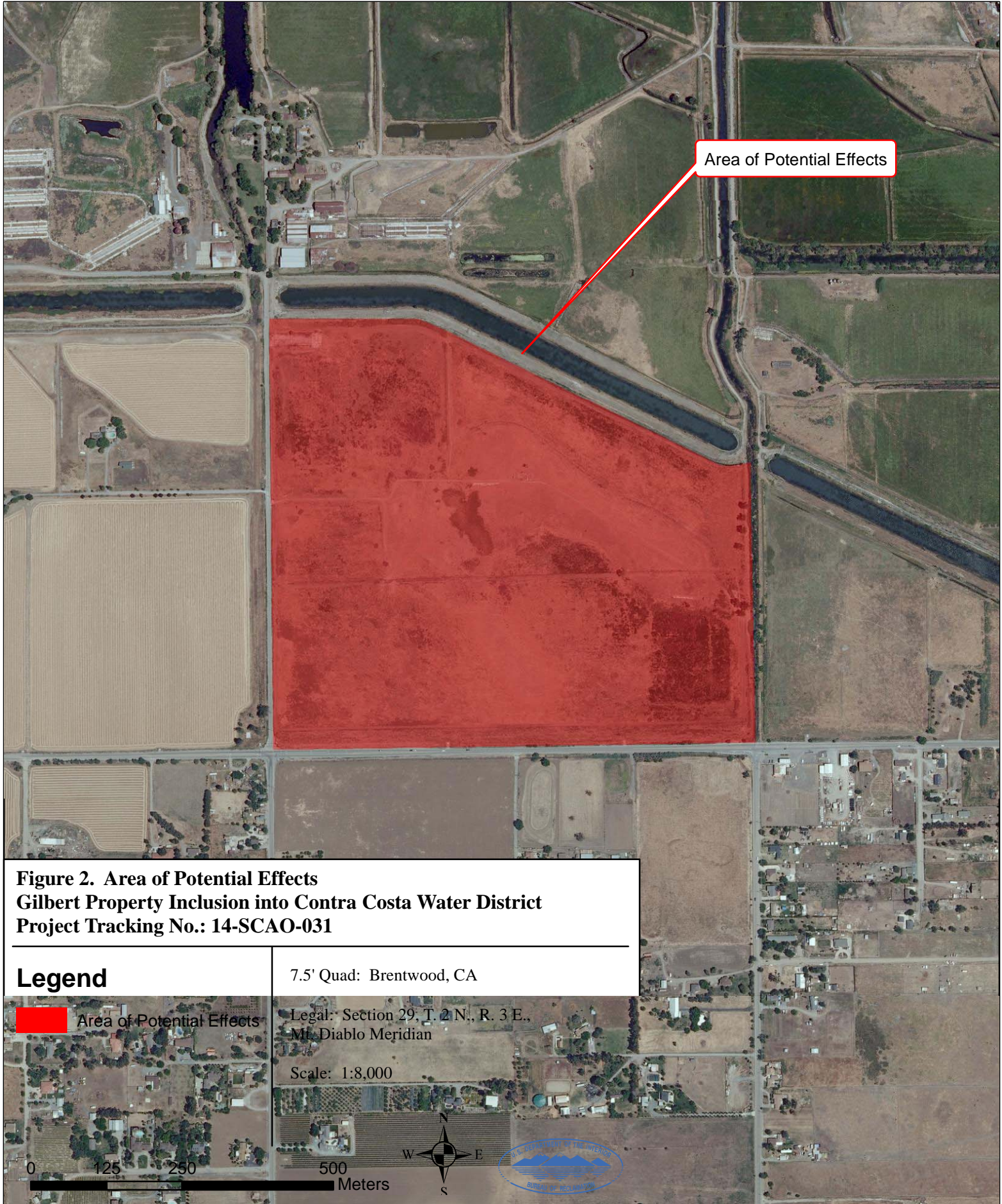
*Managing Water in the West*





# RECLAMATION

*Managing Water in the West*



## **Appendix C: Memorandum of Agreement**



**FINAL**  
**MEMORANDUM OF AGREEMENT AMONG**  
**THE BUREAU OF RECLAMATION,**  
**THE UNITED STATES ARMY CORPS OF ENGINEERS AND THE**  
**CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**  
**REGARDING THE RESOLUTION OF ADVERSE EFFECTS TO THE**  
**DUTCH SLOUGH RURAL HISTORIC LANDSCAPE ON THE GILBERT**  
**PARCEL, CONTRA COSTA COUNTY, CALIFORNIA**

**Whereas**, the Bureau of Reclamation (Reclamation) has established that the proposed inclusion of the Gilbert Parcel into the Contra Costa Water District (CCWD)'s service area in Oakley, California, requires Reclamation's approval and compliance with Title 54 U.S.C. § 306108, formerly and commonly known as Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), and its implementing regulations found at 36 CFR Part 800, as this action constitutes an Undertaking with the potential to affect historic properties, as defined in 36 CFR § 800.3(a); and

**Whereas**, the Undertaking will affect waters of the United States, and, in compliance with Section 404 of the Clean Water Act (33 U.S.C. § 1344), will require a permit from the United States Army Corps of Engineers, Sacramento District (Corps), whose permit area is wholly contained within the Area of Potential Effects (APE) for the Undertaking; and

**Whereas**, Reclamation, in consultation with the California State Historic Preservation Officer (SHPO), has established the APE, which includes both Reclamation and the Corps Undertakings, as defined at 36 CFR § 800.16(d), to be the Gilbert parcel, subject to the inclusion request made by Contra Costa Water District (CCWD) to include the boundaries of a new development into their service area; and

**Whereas**, the Corps has designated Reclamation as the Lead Federal Agency for the Undertaking under Section 106 of the NHPA (54 U.S.C. § 306108), and will be a Signatory to this Memorandum of Agreement (MOA); and

**Whereas**, Reclamation has consulted with the Ione Band of Miwok Indians, the Indian Canyon Mutsun Band of Costanoan Indians, the Muwekma Ohlone Indian Tribe of the San Francisco Bay Area and the Ohlone Costanoan Esselen Nation, for which no historic properties of religious and cultural significance have been identified to date; and

**Whereas**, a cultural resources survey report of the Gilbert parcel has identified contributing components of the Dutch Slough Rural Historic Landscape (DSRHL), which is eligible for listing in the National Register of Historic Places (National Register) as a historic dairying landscape district, which is present within the APE (Attachment 1: Figures 1 and 2); and

---

MOA Regarding Adverse Effects to the Dutch Slough Rural Historic Landscape on the Gilbert Property, Contra Costa County, California

44  
45 **Whereas**, Reclamation determined, in consultation with the SHPO, that the proposed  
46 inclusion of the Gilbert parcel into the CCWD's service area would result in construction  
47 activities that would remove all remaining contributing components of the DSRHL and  
48 will result in an adverse effect to the DSRHL; and

49  
50 **Whereas**, Reclamation has consulted with the SHPO and notified the Advisory Council  
51 on Historic Preservation (ACHP) of the adverse effects in accordance with 36 CFR Part  
52 800 and the ACHP has chosen not to participate in the consultation by letter on  
53 September 13, 2016, pursuant to 36 CFR § 800.6(a) (1) (iii); and

54  
55 **Whereas**, CCWD, as the wholesale water provider for the Gilbert Parcel, has applied to  
56 Reclamation to approve an inclusion into CCWD's service area, and Reclamation has  
57 invited CCWD to sign this MOA as an Invited Signatory; and

58  
59 **Whereas**, DeNova Homes (Developer), the current developer of the Gilbert parcel and  
60 requesting party for the proposed inclusion and the Corps' permit applicant, is responsible  
61 for providing all documentation necessary to comply with NHPA and has been invited to  
62 sign this MOA as an Invited Signatory; and

63  
64 **Whereas**, the Gilbert Parcel is located within the corporate boundaries of the City of  
65 Oakley (City) and subject to the planning and zoning powers of the City as the local land  
66 use authority, and Reclamation has invited the City to be a Concurring Party to this  
67 MOA; and

68  
69 **Whereas**, the definitions listed in 36 CFR § 800.16 are applicable throughout this MOA;

70  
71 **Now, Therefore**, Reclamation, the Corps, the SHPO, CCWD, and the Developer agree  
72 that the Undertaking shall be implemented according to the following stipulations in  
73 order to take into account the effects of the Undertaking on historic properties.

## 74 75 **Stipulations**

76  
77 Reclamation will ensure that the following measures are carried out:

### 78 79 **I. Deliverables**

#### 80 81 **A. Historic American Landscape Survey (HALS) Documentation**

- 82  
83 1. Reclamation will coordinate with the National Park Service (NPS) to determine  
84 the level of effort for HALS that will be required to mitigate the portion of the  
85 DSRHL within the project APE. The preparers of the HALS documentation  
86 shall have a minimum of 5 years of demonstrated experience preparing Historic



American Building Survey (HABS), Historic American Engineering Record (HAER), and/or HALS submissions, including having previous submissions accepted by the NPS. The photographer shall also have a minimum of 5 years of demonstrated experience preparing HABS/HAER/HALS photographs that have been accepted by the NPS. Reclamation will communicate the required effort and stipulated professional qualifications in writing to all signatory parties. HALS documentation will be submitted in accordance with the HALS program procedures. Reclamation will communicate final submission of the HALS documentation to the NPS, in writing to all Signatories and Invited Signatories.

2. The Developer, utilizing the existing historic documentation used for compliance with Section 106 for this undertaking, will ensure that those reports are reformatted to conform to HALS standards per the NPS guidelines.
3. The Developer, with direction from Reclamation and the NPS, will document the portion of the DSRHL within the boundaries of the Gilbert parcel using large format photography following the guidelines for HALS documentation standards.
4. Final submission of the HALS documentation will follow the process outlined by the NPS. After Reclamation has submitted the final HALS documentation to the NPS, Reclamation will notify Signatories and Invited Signatories that the stipulation has been completed.
5. Reclamation will provide a copy of the final HALS documentation to a historical archive accessible to the public with facilities for storing archival photographs, such as the East Contra Costa County Historical Society, in Oakley, or the Contra Costa County Historic Society in Martinez. Reclamation will also provide the California State Department of Water Resources (DWR), with a copy of all mitigation completed under this MOA, in order to make it available for them to utilize in any mitigation they may require for a separate project that is impacting other portions of the DSRHL. Under this MOA, DWR is under no obligation to use the information that Reclamation provides.

#### B. Education and Interpretation

1. The Developer will develop an interpretive display to be installed at the approximately 4-acre park that will be constructed in the middle of the development, subject to review and approval by the City as the local land use agency. This display will include a plaque (or series of panels) detailing the history of the Gilbert parcel, including but not limited to its use as a dairying landscape and its inclusion as part of the DSRHL.

- i. Within 6 months after the HALS documentation has been completed, design of the plaque/panels will be completed.
- ii. The proposed design will be submitted to Reclamation, who will distribute to the Signatories and Invited Signatories, who will have 30 days to comment on the design. Any comments on the design will be sent to Reclamation, who will respond to the Developer in writing. The Developer may proceed to the next step if the Signatories and Invited Signatories fail to reply within the specified time frame.
- iii. Once comments have been received and addressed by the Developer, the design will be resubmitted to Reclamation to distribute to the Signatories and Invited Signatories, who will have 15 days to accept the revised design. If there is a dispute on the design, the dispute resolution process in Stipulation IV will be followed. However, if the design is approved, the Developer will proceed with fabrication of the interpretive display.

## **II. Notice to Proceed**

- A. Upon execution of the MOA and prior to the start of construction, the Developer will proceed with preparing the photographs for HALS level documentation pursuant to the level of effort provided by the NPS. The NPS will review the photographic documentation prior to the preparation of the rest of the HALS documentation. NPS will notify Reclamation, in writing, if the photographic documentation is sufficient for use in the HALS documentation. Reclamation will notify the Developer of this acceptance and at that point they can proceed with land-disturbing activities.

## **III. Post-Review Discoveries**

- B. Post-Review Discovery of Cultural Resources. If any cultural materials are encountered during the Undertaking's implementation, all work within 50 feet of the find will halt and Reclamation's authorized official will be immediately notified. Reclamation will continue consultation pursuant to 36 CFR § 800.13, post review discoveries, to identify and evaluate any potential historic properties and to avoid, minimize, or mitigate any adverse effects to such properties.
- C. Post-Review Discovery of Human Remains on Non-Federal Lands. If human remains are encountered during construction on non-Federal lands, work in that area must be halted within 100 feet of the discovery and the appropriate County Coroner's Office must be immediately contacted pursuant to California Public Resources Code (PRC) Section 7050.5. If the remains are determined to be that of Native American origin, the Developer will be required to follow procedures

established in California PRC 5097 and to contact California's Native American Heritage Commission.

#### **IV. Dispute Resolution**

Should any Signatory or Invited Signatory to this MOA object at any time to any actions proposed or to the manner in which the terms of the MOA are implemented, Reclamation shall notify the other parties to this MOA and consult with the objecting party to resolve the objection. If Reclamation determines, within 15 days after consultation begins, that such objection cannot be resolved, Reclamation will either:

- A. Forward all documentation relevant to the dispute, including Reclamation's proposed resolution, to the ACHP. The ACHP shall provide Reclamation with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, Reclamation shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, Invited Signatories, and Concurring Parties, and provide them with a copy of this written response. Reclamation will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, Reclamation may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, Reclamation shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories, Invited Signatories, and Concurring Parties to the MOA and provide them and the ACHP with a copy of such written response.
- C. Reclamation's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remains unchanged.

#### **V. Amendments**

- A. This MOA may be amended when such an amendment is agreed to in writing by all Signatory and Invited Signatory parties. The Amendment will be effective on the date the Signatories have signed and executed the Amended MOA. This Amended MOA will be filed with the ACHP.
- B. Should the Developer transfer its ownership interest in the Gilbert Parcel to another entity before completion of the deliverables with Stipulations I.A and I.B. above and the new owner intends to proceed with the Undertaking, then the Developer will transfer its responsibilities under this MOA to the new owner. The transfer of responsibilities from the Developer to the new owner will be memorialized by an Amendment to this MOA.

216  
217 **VI. Termination**  
218

- 219 A. If any Signatory or Invited Signatory to this MOA determines that its terms will  
220 not or cannot be carried out, that party shall immediately consult with the other  
221 parties to attempt to develop an Amendment per Stipulation VI above. If within  
222 thirty (30) days an Amendment cannot be reached, any Signatory may terminate  
223 the MOA upon written notification to the other Signatories.  
224
- 225 B. Once the MOA is terminated, and prior to work continuing on the Undertaking,  
226 Reclamation will either (a) continue consultation to resolve the adverse effects  
227 pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the  
228 comments of the ACHP under 36 CFR § 800.7. Reclamation shall notify the  
229 Signatories as to the course of action it will pursue.  
230

231 **VII. Duration of the MOA**  
232

- 233 A. Unless terminated pursuant to Stipulation VI, above, this MOA will be in effect  
234 until Reclamation, in consultation with the other Signatories and Invited  
235 Signatories, determines that all of its terms have been satisfactorily fulfilled, not  
236 to exceed five (5) years from the execution of the MOA. Reclamation will  
237 promptly provide the other Signatories and Invited Signatories with written  
238 notice of its determination that all terms have been fulfilled and of termination of  
239 the MOA. At that time, this MOA will terminate and have no further force or  
240 effect.  
241
- 242 B. If the Signatories agree to extend the MOA term, the MOA will be amended  
243 pursuant to Stipulation V. The Signatories shall consult on extending the term of  
244 the MOA on a date not less than six months prior to the fifth anniversary of the  
245 MOA execution. If the Signatories determine that the MOA will not be extended  
246 through amendment, the MOA shall expire as outlined above or be terminated  
247 pursuant to Stipulation VI.  
248  
249

250 **EXECUTION** of this MOA by Reclamation, the Corps, and the SHPO and  
251 implementation of its terms evidence that Reclamation has taken into account the effects  
252 of this Undertaking on historic properties and afforded the ACHP an opportunity to  
253 comment.  
254

Signatures for the Memorandum of Agreement:

**SIGNATORY PARTY:**

BUREAU OF RECLAMATION

By:  **ACTING FOR**  
David Murillo, Regional Director, Mid-Pacific Region

Date: 4/24/17

**SIGNATORY PARTY:**

UNITED STATES ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

By: 

Date: 24 January 2017

Michael S. Jewell, Chief, Regulatory Division

**SIGNATORY PARTY:**

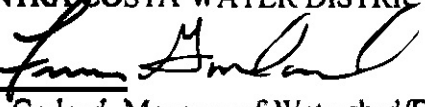
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By:   
Julianne Polanco, State Historic Preservation Officer

Date: 31 Jun 2017

285 **INVITED SIGNATORY PARTY:**

286 **CONTRA COSTA WATER DISTRICT**


287  
288 By:   
289 \_\_\_\_\_  
290 Fran Garland, Manager of Watershed/Environmental Planning

Date: 2-1-17 \_ \_



293 **INVITED SIGNATORY PARTY:**

294  
295 DENO HOMES (Developer)

296  
297 By:   
298 David Sanson

Date: 1/26/17

**CONCURRING PARTY:**

CITY OF OAKLEY

By: \_\_\_\_\_

*Debra H. Matney*

Date: \_\_\_\_\_

*1/24/17*



# RECLAMATION

*Managing Water in the West*

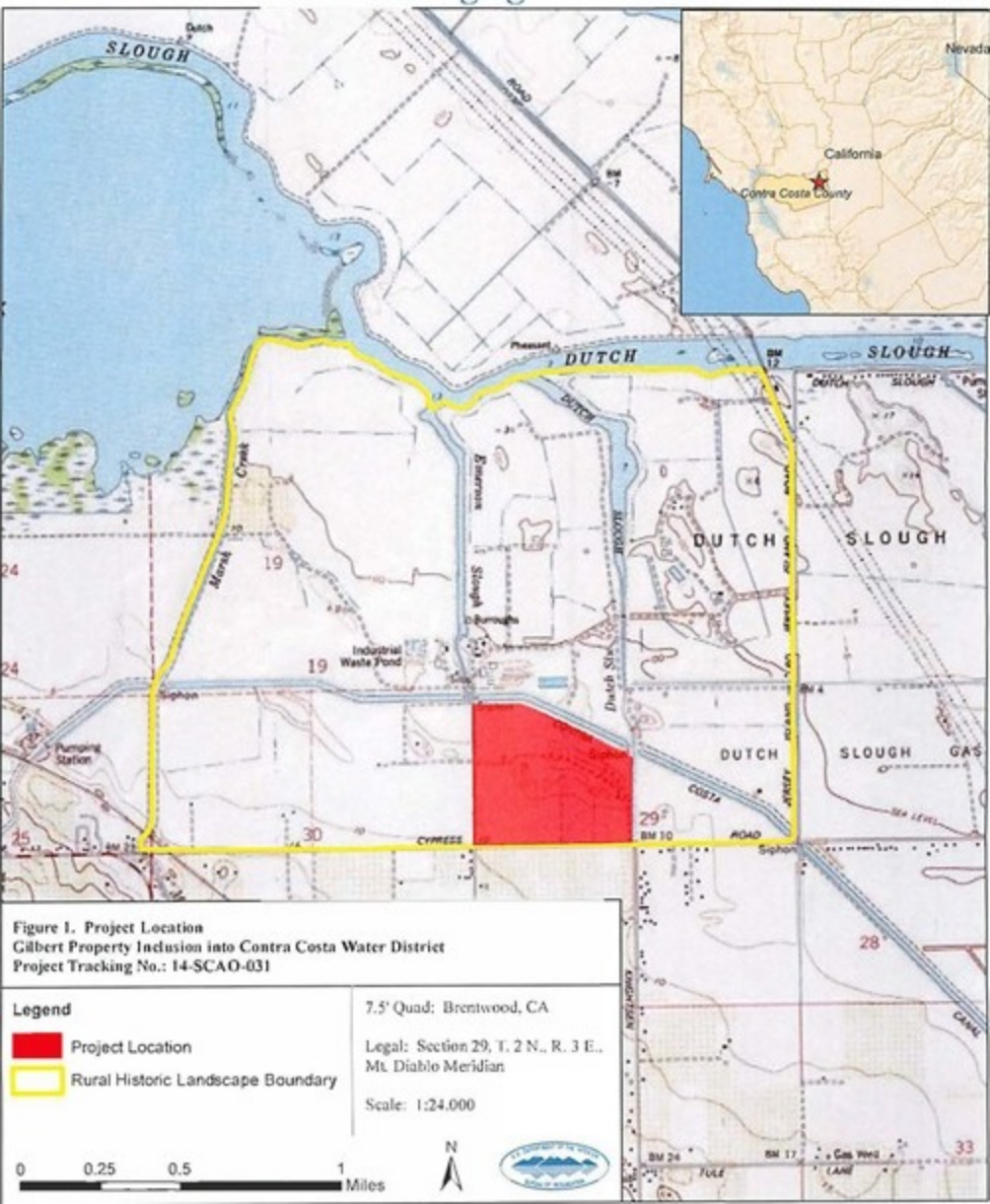


Figure 1. Project Location  
 Gilbert Property Inclusion into Contra Costa Water District  
 Project Tracking No.: 14-SCAO-031

## Legend

- Project Location
- Rural Historic Landscape Boundary

7.5' Quad: Brentwood, CA

Legal: Section 29, T. 2 N., R. 3 E.,  
 Mt. Diablo Meridian

Scale: 1:24,000

0 0.25 0.5 1 Miles



# RECLAMATION

*Managing Water in the West*

