Walnut Creek Energy, LLC
3 MacArthur Place, Suite 100
Santa Ana, CA 92707

Walnut Creek Energy Park

April 24, 2012

DOCKET
05-AFC-2C
DATE APR 24 2012
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Ms. Joan Walter, Compliance Project Manager
California Energy Commission
Systems Assessment and Facilities Siting Division
1516 Ninth Street MS 15
Sacramento, CA 95814-5504

Subject: **Walnut Creek Energy Park - Docket No. 05-AFC-2C**
Petition for Minor Modification – Industrial Wastewater Discharge Connection

Dear Ms. Walter:

Walnut Creek Energy, LLC (WCE) (a wholly owned subsidiary of Edison Mission Energy) petitions the California Energy Commission to modify the certification for Walnut Creek Energy Park (WCEP) (05-AFC-02C). WCE has prepared this Petition to Modify (Petition) in order to obtain the CEC's authorization for the WCEP to incorporate the proposed minor modifications to the Project description. These changes are necessary in order to facilitate the Project's industrial wastewater discharge connection to the nearby Sanitation Districts of Los Angeles County (LACSD) sewer system. This Petition has been prepared in accordance with California Code of Regulations, Title 20, Public Utilities and Energy, Section 1769.

As described in the attached Petition, WCE does not suggest any revisions to the Conditions of Certification set forth in the February 2008 certification for WCEP. With adherence to the Conditions of Certification, the WCEP, as modified, will not cause significant adverse impacts to the environment and will not cause environmental impacts substantially different than those addressed in the Commission Decision.

Should you have any questions or require additional information related to this submittal, please contact me at (714) 513-8091.

Sincerely,

Heather MacLeod

cc: Jenifer Lee, Walnut Creek Energy, LLC
Alexis Utvich, AECOM
Doug Hahn, CH2M Hill

Attachment

WCEP File: 14.05.07

Request for Approval of Minor Project Modification No. 7

Industrial Wastewater Discharge Connection

for the

Walnut Creek Energy Park™

City of Industry, California

(05-AFC-2C)

Submitted to the:

California Energy Commission

Submitted by:

Walnut Creek Energy, LLC

With Technical Assistance by:

CH2MHILL

Denver, Colorado

April 2012

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Acronyms and Abbreviations

AFC	Application for Certification
CCR	California Code of Regulations
CEC	California Energy Commission
COC	Condition of Certification
CBO	Chief Building Officer
DPW	Department of Public Works
EME	Edison Mission Energy
kV	kilovolt (1,000 volts)
LACSD	Sanitation Districts of Los Angeles County
LORS	laws, ordinances, regulations, and standards
NPDES	National Pollutant Discharge Elimination System
SWPPP	Storm Water Pollution Prevention Plan
WCE	Walnut Creek Energy, LLC
WCEP	Walnut Creek Energy Park

Executive Summary

Walnut Creek Energy, LLC (WCE) (an indirect, wholly owned subsidiary of Edison Mission Energy) petitions the California Energy Commission (CEC) to modify the certification for Walnut Creek Energy Park (WCEP) (05-AFC-02C). Therefore WCE has prepared this Petition to Modify (Petition) in order to obtain the CEC's authorization for the WCEP to incorporate the following proposed minor modifications to the Project description. These changes are necessary in order to facilitate the Project's industrial wastewater discharge connection to the nearby Sanitation Districts of Los Angeles County (LACSD) sewer system.

The Project's intended connection point to LACSD's sewer is located on a City of Industry (City)-owned parcel adjacent to the west side of the original Project licensed boundary (Figure 1). At the time the AFC was prepared, it was believed that the connection point to LACSD's trunk sewer line for industrial wastewater discharge was located within the property line for the WCEP Site. However, field verification during construction has shown that the manhole that will serve as a connection point to the trunk sewer for industrial wastewater discharge is located just outside the property line for the WCEP Site at the southwest corner. Since the proposed wastewater connection point is just outside the Project boundary, it is in an area that was not included in the initial CEC licensing process. More specifically, the wastewater connection point within the City parcel is located adjacent to the Project site (less than ten feet from the property boundary) and in proximity to a constructed swale, which connects via a ditch and culvert to the nearby San Jose Creek. As such the constructed swale may be considered a Jurisdictional Water of the State and/or US.

In order to address the status of the affected area from a Biological Resource and jurisdictional perspective, WCE performed a Jurisdictional Evaluation of the affected area, as reported in the *Walnut Creek Energy Park Jurisdictional Evaluation (AECOM, March 9, 2012)*. In preparation of this Petition, CH2M HILL has relied on the analysis and conclusions presented in the evaluation, a copy of which has been included as Attachment 1 to this Petition. The results of the evaluation, as well as the proposed protective measures to be implemented for Biological Resources and Soil and Water Resources during construction of the wastewater connection, are discussed in more detail in Sections 2.0 and 3.0 of this Petition.

The area where the proposed industrial wastewater connection is located is approximately 100' from edge of the constructed swale, and is comprised of nonnative grassland (upland) habitat and disturbed habitat. Based on AECOM's jurisdictional evaluation, the affected area does not present wetland hydrology, and therefore is not a federally jurisdictional wetland.

WCE does not suggest any revisions to the Conditions of Certification set forth in the February 2008 certification for the WCEP. With adherence to the Conditions of Certification, the WCEP, as modified, will not cause significant adverse impacts to the environment and will not cause environmental impacts substantially different than those addressed in the Commission Decision.

SECTION 1.0

Introduction

1.1 Overview of Modifications

Walnut Creek Energy, LLC (WCE) petitions the California Energy Commission (CEC) to modify the certification for Walnut Creek Energy Park (WCEP) (05-AFC-02C). The Application for Certification (AFC) for this project was filed in 2005 (WCE, 2005) and the facility received CEC certification on February 27, 2008 (CEC, 2008).

This Petition has been prepared in order to obtain the CEC's authorization for the WCEP to incorporate minor modifications to the Project description. These modifications are necessary in order to facilitate the Project's industrial wastewater discharge connection to the Sanitation Districts of Los Angeles County (LACSD) 42-inch[1] diameter trunk sewer line. At the time the AFC was prepared, it was believed that the connection point to LACSD's trunk sewer line for industrial wastewater discharge was located within the property line for the WCEP Site. However, field verification during construction has shown that the manhole that will serve as a connection point to the trunk sewer for industrial wastewater discharge is located just outside the property line for the WCEP Site at the southwest corner (Figure 1). The industrial wastewater connection point is located immediately west of the Project site and near a constructed swale on a City of Industry (City) owned parcel, therefore this Petition includes suggested protective measures for the Biological Resources located in the area. This Petition also briefly discusses potential impacts to Soil and Water Resources during construction and operation.

This Petition for Modification contains all of the information that is required pursuant to the CEC's Siting Regulations (California Code of Regulations [CCR] Title 20, Section 1769, Post Certification Amendments and Changes). The information necessary to fulfill the requirements of Section 1769 is contained in Sections 1.0 through 6.0, as summarized in Table 1.1-1.

TABLE 1.1-1
Informational Requirements for Post-Certification Modifications

Section 1769 Requirement	Section of Petition Fulfilling Requirement
(A) A complete description of the proposed modifications, including new language for any conditions that will be affected	Section 2.0 - Proposed modifications Sections 3.1 to 3.15 - Proposed changes to Conditions of Certification, if necessary, are located at the end of the technical section
(B) A discussion of the necessity for the proposed modifications	Section 1.3
(C) If the modification is based on information that was known by the petitioner during the certification proceeding, an explanation why the issue was not raised at that time	Section 1.3

[1] The CEC Final Decision (CEC, 2008) references a 48-inch diameter LACSD trunk sewer; however, field verification during construction has shown that the trunk sewer line is 42-inch diameter. In addition, at the time the AFC was prepared it was believed that a 4-inch connection would be made to the LACSD trunk sewer line, but the connection will be 8-inch.

TABLE 1.1-1
Informational Requirements for Post-Certification Modifications

Section 1769 Requirement	Section of Petition Fulfilling Requirement
(D) If the modification is based on new information that changes or undermines the assumptions, rationale, findings, or other bases of the final decision, an explanation of why the change should be permitted	Sections 1.4, 3.1
(E) An analysis of the impacts the modification may have on the environment and proposed measures to mitigate any significant adverse impacts	Section 3.1
(F) A discussion of the impact of the modification on the facility's ability to comply with applicable laws, ordinances, regulations, and standards;	Section 3.1
(G) A discussion of how the modification affects the public	Section 4.0
(H) A list of property owners potentially affected by the modification	Section 5.0
(I) A discussion of the potential effect on nearby property owners, the public and the parties in the application proceedings.	Section 6.0

1.2 Ownership of the Facility Property

WCE will own the WCEP, and is an indirect, wholly-owned subsidiary of Edison Mission Energy (EME). EME is an independent power developer, owner, and operator engaged in the business of owning or leasing, operating, and selling energy and capacity from electric power generation facilities. The proposed industrial wastewater connection is on City property and will require an easement from the City, which WCE is currently obtaining.

1.3 Necessity of Proposed Changes

The Siting Regulations require a discussion of the necessity for the proposed revision to WCEP certification and whether the modification is based on information known by the petitioner during the certification proceeding (Title 20, CCR, Sections 1769 [a][1][B] and [C]). These modifications are necessary in order to comply with the Industrial Wastewater discharge permit issued by LACSD for the Project's wastewater discharge connection to the LACSD sewer system. These changes are described in more detail in Sections 2.0 and 3.0.

1.4 Consistency of Changes with Certification

The Siting Regulations also require a discussion of the consistency of the proposed project revision with the applicable laws, ordinances, regulations, and standards (LORS) and whether the modifications are based on new information that changes or undermines the assumptions, rationale, findings, or other basis of the final decision (Title 20, CCR Section 1769 [a][1][D]). If the Project is no longer consistent with the certification, the Petition must provide an explanation why the modification should be permitted.

The proposed project revisions are consistent with all applicable LORS. This Petition is not based on new information that changes or undermines any basis for the Final Decision. The findings and conclusions contained in the Commission Decision for WCEP (CEC, 2008) are still applicable to the project, as modified.

1.5 Summary of Environmental Impacts

The CEC Siting Regulations require that an analysis be conducted to address the potential impacts the proposed modifications may have on the environment, and proposed measures to mitigate any potentially significant adverse impacts (Title 20, CCR, Section 1769 [a][1][E]). The regulations also require a discussion of the impact of the modification on the facility's ability to comply with applicable LORS (Section 1769 [1][a][F]). Section 3.0 of this Petition includes a discussion of the potential environmental impacts associated with the modifications, as well as a discussion of the consistency of the modification with LORS. Section 3.0 also includes updated environmental baseline information if changes have occurred since the AFC that would have a bearing on the environmental analysis of the Petition. Section 3.0 concludes that there will be no significant environmental impacts associated with implementing the actions specified in the Petition and that the Project as modified will comply with all applicable LORS.

1.6 Conditions of Certification

The addition of the new proposed industrial wastewater construction areas for the WCEP identified in this petition would require no changes to the CEC Conditions of Certification, as described in the Commission Decision for the WCEP.

1.7 References

AECOM. 2012. Walnut Creek Energy Park Jurisdictional Evaluation. Report prepared for WCE. Prepared by AECOM. March 9, 2012.

Geosyntec Consultants, 2011. Walnut Creek Energy Park Project General Permit Storm Water Pollution Prevention Plan. Prepared for Kiewit Power. Prepared by Geosyntec Consultants. April.

California Energy Commission (CEC). 2008. Final Commission Decision on Walnut Creek Energy Park. California Energy Commission, Sacramento, California. February.

State Water Resources Control Board (SWRCB). 1999. National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activities Water Quality Order 99-08-DWQ.

Walnut Creek Energy, LLC (WCE). 2005. Application for Certification for the Walnut Creek Energy Park. Submitted to the California Energy Commission. Submitted by Walnut Creek Energy, LLC, a wholly owned subsidiary of Edison Mission Energy.

SECTION 2.0

Description of Project Modifications

This section includes a description of the proposed project modifications, consistent with CEC Siting Regulations (Title 20, CCR, Section 1769 [a][1][A]). This Petition proposes to add and implement protective measures for Biological Resources to facilitate the Project's connection to LACSD's wastewater discharge connection point.

The Project's intended 8-inch connection point to the LACSD sewer is located on a City-owned parcel adjacent to the west side of the original Project licensed boundary (less than ten feet from the property boundary). At the time the AFC was prepared, it was believed that the connection point to LACSD's trunk sewer line for industrial wastewater discharge was located within the property line for the WCEP Site. However, field verification during construction has shown that the manhole that will serve as a connection point to the trunk sewer for industrial wastewater discharge is located just outside the property line for the WCEP Site at the southwest corner. Since the proposed wastewater connection point is just outside the Project boundary, it is in an area that was not included in the Project description in the initial CEC licensing process. More specifically, the wastewater connection point within the City parcel is located adjacent to the site in proximity to a constructed swale, which connects via a ditch and culvert to the nearby San Jose Creek. As such the constructed swale may be considered a Jurisdictional Water of the State and/or US.

WCE does not suggest any revisions to the Conditions of Certification set forth in the February 2008 certification for the WCEP. With adherence to the Conditions of Certification and the proposed protective measures, the WCEP, as modified, will not cause significant adverse impacts to the environment and will not cause environmental impacts substantially different than those addressed in the Commission Decision. No Conditions of Certification will be changed, therefore no new language is proposed. Design drawings for this work are currently under review by the Chief Building Officer (CBO). The minor changes discussed in this Petition will not have any effect on submitted drawings.

SECTION 3.0

Environmental Analysis of Proposed Project Modifications

The proposed modifications to the WCEP would be limited to those activities related to the industrial wastewater connection. As a result, the environmental analysis for all of the environmental disciplines does not differ significantly from that described in the AFC, and the impacts associated with this Petition would be less than significant. The environmental analysis for the following environmental disciplines would not differ significantly from the AFC and Supplement IV:

- Air Quality
- Cultural Resources
- Hazardous Materials Management
- Land Use
- Noise
- Paleontological Resources
- Public Health
- Socioeconomics
- Traffic and Transportation
- Visual Resources
- Waste Management
- Worker Safety and Fire Protection

For the environmental discipline of Biological Resources, a jurisdictional evaluation and verification by technical resource experts was undertaken in order to confirm that the proposed wastewater connection construction areas would not change the environmental analysis presented in the AFC. Section 3.1 below describes the additional jurisdictional evaluation performed and the proposed protective measures. Section 3.2 discusses potential impacts associated with Soil and Water Resources. The proposed modifications do not require changes to the Conditions of Certification.

3.1 Biological Resources

The Commission Decision determined that the WCEP would not have significant impacts on Biological Resources. Pursuant to this proposed Petition, the implementation of biological resource protective measures is not expected to have a significant impact on Biological Resources.

3.1.1 Environmental Baseline Information

This Petition does not require changes to the Environmental Baseline Information as described in the AFC. There have been no significant changes that would alter the analysis or conclusions for Biological Resources.

3.1.2 Environmental Consequences

The proposed implementation of biological protective measures during construction of the industrial wastewater connection is not expected to cause any significant change to Biological Resources, as discussed in the AFC. In preparation of the WCEP AFC, no issues or significant impacts were identified for Biological Resources, and as such, no Conditions of Certification for Biological Resources were issued by the CEC for construction or operation of the WCEP.

Jurisdictional Evaluation Results

A Biological Resources site reconnaissance survey and Jurisdictional Evaluation of the proposed industrial wastewater connection construction area was conducted on February 21, 2012 by AECOM, as reported in the *Walnut Creek Energy Park Jurisdictional Evaluation (AECOM, March 9, 2012)*, is included as Attachment 1.

According to AECOM (2012), the survey area for the jurisdictional evaluation is composed of upland habitat consisting of nonnative grassland and disturbed habitat. The constructed swale eventually turns into a ditch vegetated with disturbed habitat, and ultimately connects to a culvert occurring at the northernmost portion of the survey area. The majority of the swale/ditch feature is occupied by upland vegetation, is composed of nonhydric soil, and does not present wetland hydrology. Moreover, the constructed ditch and swale do not exhibit indicators of an ordinary high water mark. Please refer to the Jurisdictional Evaluation report in Attachment 1 for additional discussion, maps and photos.

The swale/ditch feature located on adjacent City-owned property does not represent a jurisdictional water of the U.S. However, the offsite swale/ditch feature and its vegetative component may potentially be considered a jurisdictional water of the state under the regulatory administration of the California Department of Fish and game (CDFG) and the Regional Water Quality Control Board (RWQCB) (AECOM 2012). Therefore WCE has proposed 100% avoidance of the swale/ditch feature. Implementation of the following proposed protective measures and best management practices (BMPs) will help to ensure avoidance.

Proposed Protective Measures and Best Management Practices (BMPs)

In order to avoid the swale/ditch feature and associated vegetative components, the Areas of Avoidance specified in the *Walnut Creek Energy Park Jurisdictional Evaluation* (AECOM, 2012) will be fenced off prior to ground disturbing activities or construction staging. The drainage ditch and Areas of Avoidance are shown on Figure 9 of Attachment 1.

In order to comply with the Migratory Bird Treaty Act (MBTA), any tree removal between January 1 and August 31 or between March 1 and August 31, will avoid impacts to raptors and songbirds protected under the MBTA, respectively. Pursuant to the MBTA, construction activities during the nesting season could adversely affect breeding birds through direct take or indirectly through disruption or harassment. Should removal of a tree/s be unavoidable during the nesting seasons defined above, the following measures will be implemented.

- A pre-construction clearance survey would be conducted by a qualified biologist for nesting raptors prior to the start of construction between January 1 and August 31 and for migratory birds prior to the start of construction between March 1 and August 31. Should an active raptor nest be observed in the tree slated for removal or within 300 feet of the WCEP site, a qualified biologist would determine whether or not construction activities could potentially disturb nesting raptors and implement appropriate measures (e.g., on-site monitor, timing restriction) to adequately protect the active nest. Should an active songbird nest be observed in the tree slated for removal or within 75 feet of the WCEP site, a qualified biologist would determine whether or not construction activities could potentially disturb the nesting songbird and implement appropriate measures (e.g., on-site monitor, timing restriction) to adequately protect nesting songbirds.
- Any nests found in or adjacent to disturbance areas would be flagged and the area immediately around the nest protected from construction disturbance and equipment. Depending on the location of the active nest, construction activities would not be affected by nests on site; rather the protection and monitoring of the nesting birds would allow construction activities to continue. The nests would be monitored by a qualified biological monitor and the results included in the monthly compliance reports to the Energy Commission Compliance Unit.

In order to further avoid impacts to the vegetative component of the swale/ditch feature and to local biological resources, the following protective measures and BMPs will be implemented during construction of the site and related facilities:

- A qualified Biological Resources Monitor meeting the following requirements will be used to assist with monitoring and mitigation activities during construction activities:
  - Bachelor's Degree in biological sciences, zoology, botany, ecology, or a closely related field;
  - Three years of experience in field biology or current certification of a nationally recognized biological society, such as The Ecological Society of America or The Wildlife Society; and
  - At least one year of field experience with biological resources found in or near the project area.
- A construction SWPPP (Geosyntec Consultants, 2011) has been prepared and includes temporary best management practices (BMPs) to be implemented during construction activities. Temporary BMPs may include revegetation, slope stabilization, construction of berms and ditches, and sediment barriers such as straw wattles and/or silt fences to prevent sediment discharges from the site and linear corridors.
- All construction activities will be performed in accordance with the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activities Water Quality Order 99-08-DWQ (SWRCB, 1999) requiring the implementation of BMPs to control sediment and other pollutants mobilized from construction activities.
- Contractor encroachment into avoidance areas will be restricted (including the staging/operation of heavy equipment or casting of excavation materials).

- Where working areas are proximate to the manmade swale, appropriate physical barriers adequate to prevent the flow or discharge of sediment into the swale will be constructed and maintained between working areas and the swale. Erosion control and sediment detention devices (e.g., well-anchored sandbag cofferdams, straw bales, or silt fences) will be incorporated into the project design and implemented at the time of construction, as necessary. These devices will be in place during construction activities—and after, if necessary—for the purposes of avoiding sediment impact to surrounding aquatic features. These devices will be placed at all locations where the likelihood of sediment input exists.
- In accordance with the WCEP SWPPP/DESCP, no oily or greasy substances originating from the contractors' operations or asphalt or concrete will be allowed to enter or to be placed where they would later enter the swale.
- Covers or dust suppressants will be applied to soil storage piles and to disturbed areas that remain inactive for more than two weeks and during the rainy season.
- Consistent with the existing project SWPPP, temporary soil stabilization and erosion control measures will be implemented throughout the defined rainy season (October 15 through April 15). BMPs will be implemented prior to the start of the rainy season and will be inspected prior to forecasted storm events, during extended rain events, and after storm events that cause runoff from the construction site.
- During the rainy season, as needed and consistent with the SWPPP/DESCP, temporary erosion controls will be implemented at the draining perimeter of the disturbed soil areas, at the toe of slopes, at storm drain inlets, and at outfall areas.
- The manmade swale will be protected to prevent discharge of sediments, debris, and wastes associated with construction activities from entering the watercourses. BMPs could include directing water away from work areas, using covers or platforms to collect debris if working over water, and placing stockpiles away from the swale.
- Non-stormwater discharges into the swale will be prohibited. Examples of prohibited discharges common to construction activities include the following:
  - Vehicle and equipment wash water, including concrete washout water
  - Slurries from concrete cutting, asphalt grinding, and paving operations
  - Slurries from concrete or mortar mixing operations
  - Runoff from dust control applications of water
  - Sanitary and septic wastes
  - Chemical leaks and/or spills of any kind including, but not limited to, petroleum, paints, cure compounds, etc.
- Ensure that all trash and food-related trash is disposed of in closed containers and removed at least once a week. Following construction, trash and construction debris will be removed from work areas and disposed of at an approved waste disposal site.
- Prohibit feeding of wildlife by staff and subcontractors.

- Prohibit non-security-related firearms or weapons on site.
- Prohibit pets on site.
- Minimize use of rodenticides and herbicides in the Project area. All users of approved rodenticides and herbicides shall observe label requirements and other restrictions per federal and state legislation.

3.1.3 Mitigation Measures

The impacts on Biological Resources as a result of the implementation of Biological Resource protective measures are less than significant, and will, therefore, not require additional mitigation measures.

3.1.4 Consistency with LORS

The proposed addition to the WCEP of the new industrial wastewater connection construction area will remain consistent with all applicable LORS related to Biological Resources.

3.1.5 Conditions of Certification

The proposed addition to the WCEP of the new industrial wastewater connection construction area will not require changes to the Conditions of Certification for Biological Resources.

3.2 Soil and Water Resources

The Commission Decision determined that the WCEP would not have significant impacts on Soil and Water Resources. Pursuant to this proposed Petition, the implementation of work to facilitate the new industrial wastewater connection construction is not expected to have a significant impact on Soil and Water Resources.

3.2.1 Environmental Baseline Information

This Petition does not require changes to the Environmental Baseline Information as described in the AFC. There have been no significant changes that would alter the analysis or conclusions for Soil and Water Resources.

3.2.2 Environmental Consequences

The construction of the industrial wastewater connection is not expected to cause any significant change to Soil and Water resources, as discussed in the AFC. In preparation of the WCEP AFC, no issues or significant impacts were identified for Soil and Water resources. As such the work associated with facilitating the industrial wastewater connection to the nearby manhole will not result in any new or unforeseen impacts or the need for additional mitigation measures.

Activities related to the Project modifications addressed in this Petition would not result in any new cumulative impacts to Water and Soil Resources, and would still comply with all applicable Soil and Water Resources LORS. The Project will still avoid potentially significant adverse impacts by incorporating the new proposed work area into the preparation and implementation of the various construction and operating plans. This includes compliance

with the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, amending and implementing the existing construction Storm Water Pollution Prevention Plan (SWPPP) for the new area, and development and implementation of the operations SWPPP in accordance with the NPDES General Permit for Discharges of Storm Water Associated with Industrial Activity. It was determined in preparation of the WCEP AFC that construction and operation of the Project would not affect surface water and groundwater supplies and quality, lead to accelerated erosion and sedimentation, exacerbate flooding by impairing drainage conditions, or allow wastewater to be discharged in a manner that would degrade surface or ground water quality, and the changes addressed in this Petition will not alter those conclusions.

3.2.3 Mitigation Measures

The impacts on Soil and Water resources resulting from construction of the industrial wastewater connection are less than significant, and will, therefore, not require additional mitigation measures.

3.2.4 Consistency with LORS

The proposed addition to the WCEP of the new industrial wastewater connection construction area will remain consistent with all applicable LORS related to Soil and Water Resources.

3.2.5 Conditions of Certification

The proposed addition to the WCEP of the new industrial wastewater connection construction area will not require changes to the Conditions of Certification for Soil and Water Resources.

3.3 LORS

The Commission Decision certifying the WCEP project concluded that the project is in compliance with all applicable LORS. The Project, as modified, will continue to comply with all applicable LORS.

SECTION 4.0

Potential Effects on Public and Property Owners

This section addresses potential effects of the Project changes proposed in this Petition on nearby property owners, the public, and parties in the application proceeding, pursuant to CEC Siting Regulations (Title 20, CCR, Section 1769 [a][1][G] and [I]).

The Project, as modified, will not differ significantly in potential effects on adjacent land owners, compared with the Project as previously proposed. The Project, therefore, would have no adverse effects on nearby property owners, the public, or other parties in the application proceeding.

The proposed change described in this m will have no effect on the public and property owners beyond what was originally approved by the CEC[2]. Changes to project components will result in no greater impacts on the public and property owners than those analyzed during project licensing. Therefore, impacts on the public and property owners are expected to be the same as those analyzed during the license proceeding for the Project.

[2] CEC Siting Regulations Section 1769(a)(1)(G) and (I)

SECTION 5.0

List of Property Owners

This section lists the property owners in accordance with the CEC Siting Regulations (Title 20, CCR, Section 1769[a][1][H]). The Project, as modified, will not differ significantly in potential effects on adjacent land owners, compared with the Project as previously proposed. The Project, therefore, would have no adverse effects on nearby property owners, the public, or other parties in the application proceeding.

The list of property owners within 1,000 feet of the proposed project provided in the AFC has not changed as a result of the modifications to the Project. Therefore, the list of property owners within 1,000 feet of the Project is incorporated by reference from the AFC.[3]

[3] CEC Siting Regulations Section 1769(a)(1)(H).

Figures

FIGURE 1
INDUSTRIAL WASTEWATER CONNECTION
WALNUT CREEK ENERGY PARK
CITY OF INDUSTRY, CALIFORNIA

CH2MHILL

DEN \\COBRA\PROJ\WALNUT_CREEK_ENERGY_PARK\GIS\MAPFILES\FIG1_WASTEWATER_CONNECTION.MXD BALDRIDG 4/18/2012 4:07:54 PM

ATTACHMENT 1

Walnut Creek Energy Park Jurisdictional Evaluation

AECOM
1420 Kettner Boulevard
Suite 500
San Diego, CA 92101
www.aecom.com

619.233.1454 tel
619.233.0952 fax

March 9, 2012

Jenifer Lee
Managing Director, Environmental
Edison Mission Energy
3 MacArthur Place, Suite 100
Santa Ana, California 92707

Re: Walnut Creek Energy Park Jurisdictional Evaluation

Dear Ms. Lee:

Introduction

Edison Mission Energy (EME) proposes to construct an 8-inch connection to a manhole on Los Angeles County Sanitation District's existing 42-inch trunk sewer as part of the Walnut Creek Energy Park (WCEP) project. The tie-in work will occur on property owned by the City of Industry (City) (Assessor's Parcel Number 8242-013-002), which is located directly west of the WCEP site (Figure 1 [all figures referred to in this letter report are located within Attachment A]).

On February 21, 2012, ecologist and regulatory specialist Joshua Zinn (AECOM) performed a site visit and field survey within the survey area to assess the potential presence of jurisdictional waters and determine adequate avoidance measures to potential jurisdictional waters prior to EME performing the proposed sewer tie-in within the survey area (Figure 2).

Prefield Survey

Prior to conducting the field assessment for potential jurisdictional waters of the U.S. and state (including wetlands), Mr. Zinn reviewed historical land use of the survey area, local and regional climactic data, and areas with topographical configurations and vegetative signatures occurring within the survey area that may suggest the presence of potential jurisdictional waters of the U.S. and state at the time of the field survey. This information was evaluated by consulting the following available sources:

- 7.5-minute Baldwin Park Quadrangle (USGS 1966)
- The web-based National Hydrography Dataset (USGS 2012)
- 2010 aerial maps of the Proposed Project survey area (U.S. Department of Agriculture [USDA] National Agriculture Imagery Program) (USDA 2010)
- The web-based National Wetlands Inventory Wetlands Mapper (USFWS 2012)

- The web-based California Environmental Resources Evaluation System (CERES), California Wetlands Information System Wetland Databases and Inventories (CERES 2012)
- The web-based Information Center for the Environment (U.C. Davis 2012a)
- The web-based California Soil Resource Lab (U.C. Davis 2012b)
- The web-based National List of Hydric Soils (NRCS 2012a)
- The web-based Natural Resource Conservation Service (NRCS) Web Soil Survey (NRCS 2012b)
- The web-based Soil Survey Geographic Database (SSURGO) (NRCS 2012c)
- The web-based U.S. General Soil Map (STATSGO) (NRCS 2012d)
- The web-based California Watershed Portal (CalEPA 2012)
- The web-based California Watershed Network (CWN 2012)
- The web-based Office of Water Programs, Water Quality Planning Tool (CSUS 2012)
- The web-based Digital Watershed (USEPA 2012)
- The web-based Western Regional Climate Center (WRCC 2012)
- The web-based National Weather Service Climate Office (NOAA 2012a)
- The web-based National Weather Service Telecommunications Operations Center (NOAA 2012b)

Field Assessment

After pre-filed analysis was completed, a field assessment was conducted within the survey area utilizing the latest federal and state guidance and methodologies, including but not limited to:

a. *Corps of Engineers Wetlands Delineation Manual* (1987 Manual) (Environmental Laboratory 1987)

b. *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)* (2008 Supplement) (Environmental Laboratory 2008)[1]

[1] It should be noted that the 1987 Manual and 2008 Regional Supplement are guidance documents for delineating waters in the form of wetlands only.

c. USACE *Wetland Plants of Specialized Habitats in the Arid West* (Lichvar and Dixon 2007)

d. *A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States: A Delineation Manual* (Lichvar and McColley 2008)[2]

e. *Review and Synopsis of Natural and Human Controls on Fluvial Channel Processes in the Arid West Channels* (Lichvar and Field 2007)

f. *Distribution of Ordinary High Water Mark (OHWM) Indicators and their Reliability in Identifying the Limits of "Waters Of The United States" in Arid Southwestern Channels* (Lichvar et al. 2006)

g. All applicable USACE Regulatory Guidance Letters (RGLs) for other waters[3]

h. All applicable state law and resource codes

i. *Classification of Wetland and Deepwater Habitats of the United States* (Cowardin et al. 1979)

j. *A Review of Stream Processes and Forms in Dryland Watersheds* (CDFG 2010)

These guidance manuals were used to determine the presence or absence of potential jurisdictional waters and/or wetlands occurring within the survey area. A post-field assessment was also conducted to compare and confirm with the pre-field assessment.

Jurisdictional Assessment Results

The survey area is composed of nonnative grassland (upland) habitat and disturbed habitat (Figure 3). The primary potential aquatic feature occurring within the survey area is a constructed swale that transforms into a ditch (which the disturbed habitat occupies) and connects to a culvert occurring at the northernmost portion of the survey area (the terminus of the survey area [Figure 4]). Photopoint locations and orientations of the representative photos taken during the field delineation are included in Figure 5. Detailed field photos, which are included to document the ambient conditions at the time of the formal field assessment, are included in Figures 6 through 8.

Potential Jurisdictional Waters of the U.S.

The swale/ditch feature is overwhelmingly occupied upland vegetation and is composed of nonhydric soil and does not present wetland hydrology. Therefore, no federally jurisdictional wetland (as defined by federal definitions, guidance manuals, and regulations [e.g., 33 CFR

[2] Datasheets from this field delineation manual were used as guidance documents for this delineation and are not included in this JDLR.
[3] RGL 88-06; RGL 05-05.

328.3(b), 40 CFR 230.3(t), the 1987 Manual, and the 2008 Supplement]) occurs within the survey area.

The constructed ditch and swale do not exhibit indicators of an ordinary high water mark (OHWM [33 CFR 328.3[e]) and are therefore not considered a jurisdictional water of the U.S. in the form of an "other water." However, as noted above, within the northernmost portion of the survey area is a 3-foot-wide culvert that connects the constructed ditch to San Jose Creek. This culvert feature is a potential jurisdictional water of the U.S (in the form of "other waters" [33 CFR 328.3[a][3]). However, only the intake portion (or approximately 2 linear feet) of the culvert occurs within the survey area.

Although this swale/ditch feature occurring within the survey area can be considered an aquatic-related feature, it cannot be considered as a potential jurisdictional water of the U.S. because federal regulatory definitions and jurisdiction do not extend to swales (or erosional features [e.g., gullies, small washes]) with low volume, infrequent or short duration flow). Additionally, upland ditches (such as this feature) excavated wholly in and draining only uplands are also generally not considered a jurisdictional water of the U.S. unless there is a surface water connection between an adjacent wetland and a traditional navigable water (which is not the case within the survey area).

Potential Jurisdictional Waters of the State

The swale/constructed ditch feature *may* not be considered potential jurisdictional waters of the state because this feature *may* not meet the definition of a state water under the regulatory administration of:

California Department of Fish and Game (CDFG)

- Division 2, Chapter 6 California Fish and Game Code (CFGC) Section 1600 *et seq*. (e.g., bed, channel, or bank of any river, stream, or lake designated by CDFG in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit)

- Division 5, Chapter 1, Section 45, and Division 2, Chapter 1, Section 711.2(a) (e.g., the associated riparian habitat upon which existing fish or wildlife resource depend for continued viability)

- CCR Title 14 Section 720 CFGC (e.g., Designation of Waters of Department Interest)

Regional Water Quality Control Board (RWQCB)

- Division 7, California Water Code (CWC) Section 13050(e) *et seq*. (Porter-Cologne Water Quality Control Act) (e.g., this aquatic-related related feature of

swale/constructed ditch *may* not likely meet the definition for "waters of the state" as it is a finite feature, ranging in approximately 230 linear feet, which begins in upland and ends in upland only connected by a culvert). Additionally, this feature is not historically occurring within the survey area as the swale/ditch is a constructed feature.

- CWC Section 13240 (The Water Quality Control Plan for Los Angeles Region Basin (RWQCB 1994) Chapter 3 designates the water quality objectives necessary to ensure the reasonable protection of the beneficial uses and this feature likely presents no beneficial uses as described in CWC Section 13050[f].)

- CWC Section 13260(a)(1) (There is no proposed discharge into designated waters of the state from this project.)

It should be noted that this swale/ditch feature and its vegetative component *may* potentially be considered a jurisdictional water of the state under the regulatory administration of CDFG and RWQCB. Therefore, avoidance is recommended (see Discussion, below and Figure 4).

Discussion

For this proposed project it is recommended that avoidance to all *potential* jurisdictional waters occur and no encroachment (and/or removal of overstory vegetation [e.g., trees]) take place within the disturbed habitat (which occupies the swale/ditch and the southeastern area surrounding the swale/ditch). By virtue of the disturbed habitat being composed of established trees *and* this vegetation community representing a potential riparian component to San Jose Creek, the removal of any of these trees *may* trigger:

1. The Migratory Bird Treaty Act (MBTA). The MBTA which is administered by CDFG and the U.S. Fish and Wildlife Service (USFWS). The MBTA restricts the killing of migratory birds or destruction of active migratory bird nests and/or eggs. Although no permit is issued under the MBTA, for some projects CDFG/USFWS has required preactivity surveys to locate nests if vegetation removal is to occur during the breeding season for raptors and migratory birds (generally February 1 through July 31). If this is not possible, then they have required a qualified biologist to conduct a survey prior to construction to determine the presence or absence of nests and the potential need for additional measures to avoid direct impacts to nesting birds.

2. A Lake and Streambed Alteration Agreement with CDFG. Pursuant to Section 1600 *et seq*. of the CFGC, CDFG is authorized to regulate any activity that would alter the flow, bed, channel, or bank of streams and lakes. Jurisdictional waters of the state regulated by CDFG include the channel bed and bank of a lake, river, or stream. In practice, CDFG usually extends its jurisdictional limit to the top of the bank of a stream or lake, or to the continuous outer edge of its riparian extent, whichever is wider.

Potential Impacts

No impacts to federally jurisdictional waters of the U.S. and state are anticipated as a result of proposed project activities if avoidance to any potential jurisdictional water of the state is employed within the survey area during the proposed activity (e.g., sewer line tie-in). Please review Figure 4 for the area and extent of avoidance (which is the area and extent occupied by nonnative grassland occurring within the survey area).

Permit Requirements

No authorizations or permits for regulated activities in potential jurisdictional waters are anticipated if avoidance is employed during the proposed project. Please refer to Figure 9 for the location of project elements.

Summary

1. Potential jurisdictional waters of the U.S. (only in the form of "other waters") occur within the northernmost portion of the survey area and are represented by the culvert intake.

2. Potential jurisdictional waters of the state do not likely occur within the survey area (for the rationales discussed above). However, it is plausible that the resource agencies (e.g., CDFG and/or RWQCB) *may* assert over the swale/ditch feature. Therefore, avoidance of the swale/ditch feature and its vegetative component is recommended in order to proceed with the proposed project and not require any authorizations or permitting from these resource agencies. Please see Figure 4 for the recommended avoidance area(s).

3. The removal of any established tree(s) within the survey area may trigger the MBTA.

Please contact me at (619) 764-6829 or joshua.zinn@aecom.com with any questions or requests concerning this matter.

Sincerely,

Joshua Zinn
Ecologist and Regulatory Specialist

Attachment A – Figures:
Figure 1 – Vicinity Map
Figure 2 – Survey Area
Figure 3 – Vegetation Communities

Figure 4 – Potential Jurisdictional Waters and Avoidance Area
Figure 5 – Photopoint Locations
Figure 6 – Representative Photographs 1 and 2
Figure 7 – Representative Photographs 3 and 4
Figure 8 – Representative Photographs 5 and 6
Figure 9 – Project Elements

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ATTACHMENT A

FIGURES

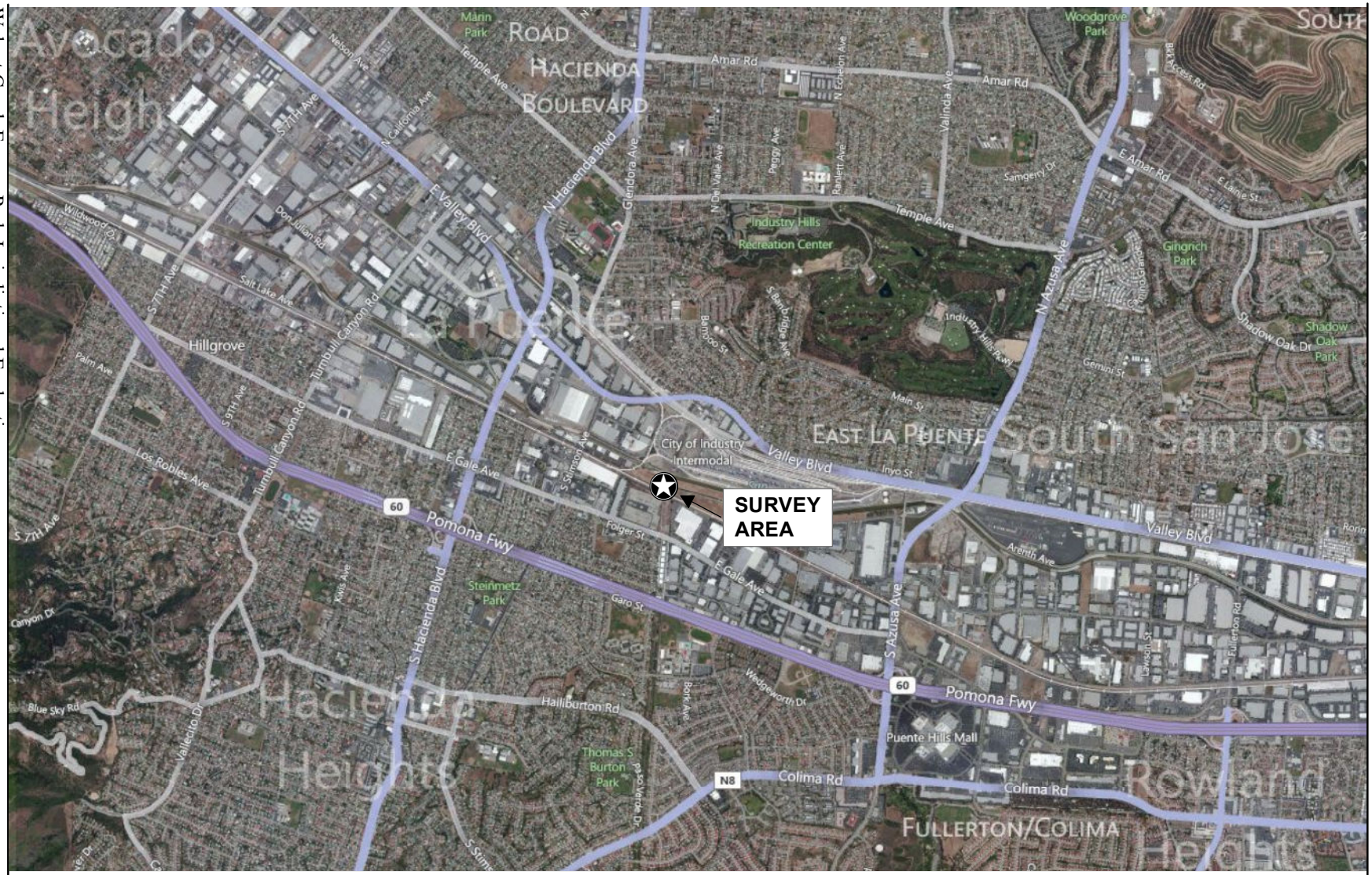

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Figure 1
Vicinity Map

Walnut Creek Energy Park Jurisdictional Evaluation

Source: Aerials Express 2010

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Scale: 1:1,200; 1 inch = 100 feet

Figure 2
Survey Area

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Walnut Creek Energy Park Jurisdictional Evaluation

Source: Bing Maps 2010

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Figure 3
Vegetation Communities

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Walnut Creek Energy Park Jurisdictional Evaluation

Source: Bing Maps 2010

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Scale: 1:1,200; 1 inch = 100 feet

Figure 4
Potential Jurisdictional Waters and Avoidance Area

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Walnut Creek Energy Park Jurisdictional Evaluation

Source: Aerials Express 2010

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Scale: 1:1,200; 1 inch = 100 feet

Figure 5
Photopoint Locations

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Photograph 1: Looking northeast at San Jose Creek (outside of survey area).

Photograph 2: Looking northeast at culvert that connects drainage ditch to San Jose Creek. Note: this is the only potential federal water that occurs within the survey area.

Figure 6
Representative Photographs 1 and 2

Photograph 3: Looking southwest at constructed swale at compacted dirt service road. There is no culvert connecting this constructed swale to the drainage ditch. Note: area is populated by upland vegetation and debris.

Photogarph 4: Looking southwest at close-up of constructed drainage ditch. Note: ditch is populated by nonnative invasive vegetation (pictured is castorbean [Ricinus communis] which is assigned a Facultative Wetland indicator status [e.g., usually occurs in non-wetlands (estimated probability 67%-99%), but occasionally found on wetlands [estimated probability 1%-33%]).

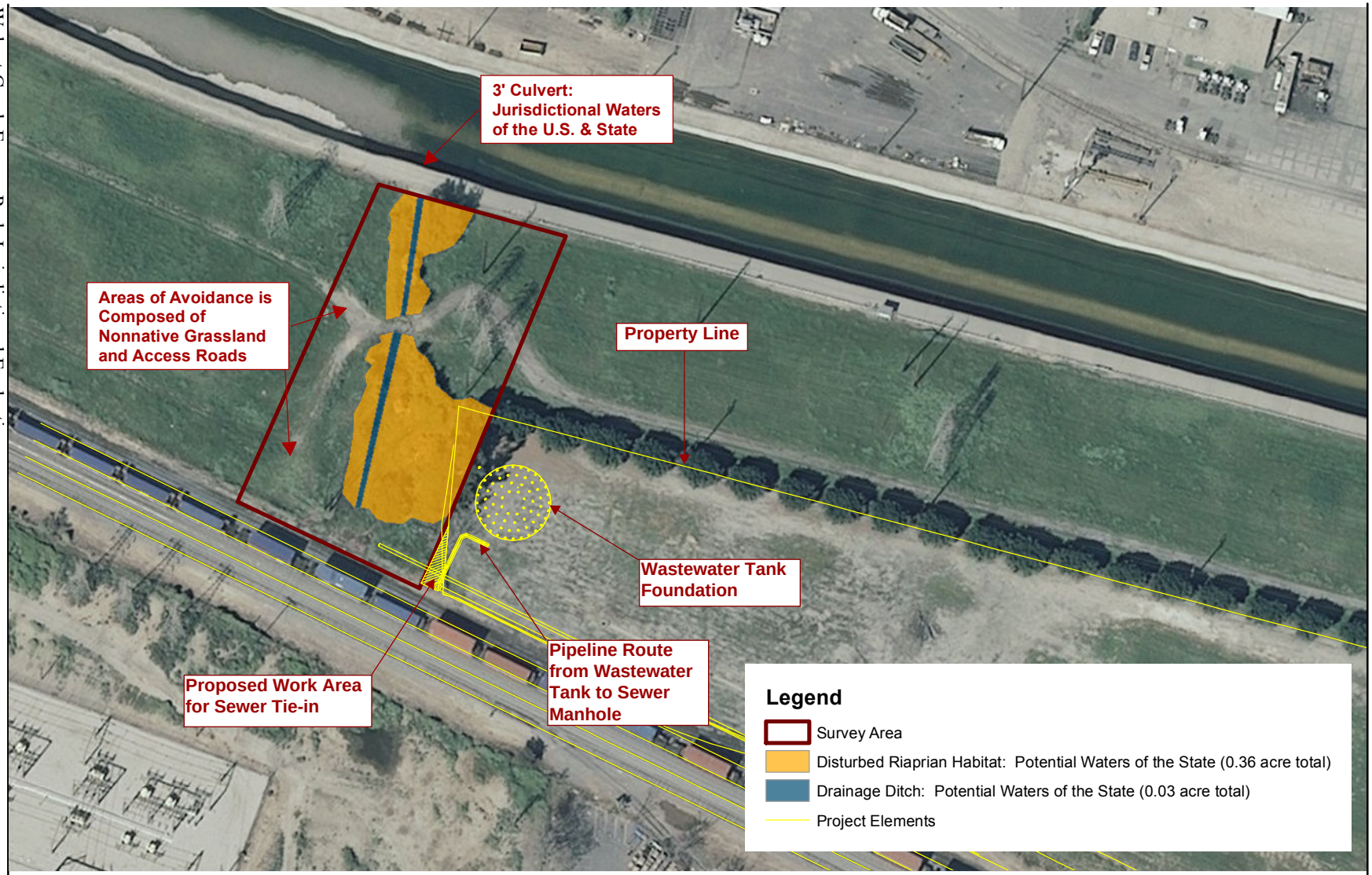
Figure 7
Representative Photographs 3 and 4

Photograph 5: Looking northeast at nonnative grassland and disturbed habitat (composed of *Ailanthus altissima, Washingtonia robusta, Ricinus Communis, Shinus molle, Schinus terebinthifolius*, and *Ceratonia siliqua*) occupying the drainage ditch.

Photograph 6: Looking northeast at nonnative grassland and inception of swale.

Figure 8
Representative Photographs 5 and 6

Walnut Creek Energy Park Jurisdictional Evaluation



Source: Bing Maps 2010

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Figure 9
Project Elements

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