



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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DOCKET
09-AFC-4

DATE 05/16/11

RECD. 05/16/11

APPLICATION FOR CERTIFICATION FOR THE
OAKLEY GENERATING STATION PROJECT

DOCKET No. 09-AFC-4

ERRATA TO THE PRESIDING MEMBER'S PROPOSED DECISION

After reviewing the comments submitted by the parties on or before May 12, 2011, we incorporate the following changes to the April 12, 2011 Presiding Member's Proposed Decision (PMPD):

INTRODUCTION

1. ***Page 7, Add Second Paragraph Under "Public Comment" to read as follows:***

Intervenor Sarvey filed written comments questioning whether the project has rapid start up capability. The substantial, credible evidence submitted by Staff and Applicant, respectively, establishes that the project will be designed as a base-load facility with the added capabilities of rapid startup. (See, e.g., Exs. 1 and 300, **Executive Summary, Project Description, Project Alternatives, Air Quality, and Power Plant Efficiency.**)

Sarvey further argues 1) that "the Commission Certification process does not evaluate the potential economic impact of the project or need for the project" and 2) that his Exhibit 400 "conclusively showed that the OGS is not needed at this time." The record and discussions contained in the PMPD, including but not limited to those within the **Project Description, Project Alternatives, Greenhouse Gas Emissions, and Socioeconomics** sections are based on the Applicant's and Staff's credible evidence and assess the project's economic impacts, environmental benefits, and the need for new generation and new transmission technologies in the immediate future and beyond in order to maintain adequate supplies to satisfy electricity needs.

PROJECT DESCRIPTION

2. ***Page 1, First Paragraph, Second Sentence, change to read as follows:***
CCGS proposes to construct, initially own, and operate a natural gas-fired, combined-cycle electrical generating facility located in northeastern Contra Costa County at ~~6000~~5950 Bridgehead Road in the City of Oakley.

3. ***Page 6, Last Bullet, change to read as follows:***

- Connection to an existing onsite sanitary sewer pipeline located in Main Street via a new 0.44-mile force-main in Bridgehead Road. (Exs. 1, pp. 2-1, 2-13 - 2-25; 300, pp. 3-2 - 3-4.)

4. ***Page 13, Second Paragraph, First Sentence, change to read as follows:***

Following commencement of project operation, if the conditions outlined in Condition of Certification SOIL&WATER-4 are met, the project owner will file a Petition For Amendment with the Commission to ~~and within 18 months of compliance with requirements set forth in Condition of Certification~~ **SOIL&WATER-4**, the project shall use recycled water from Ironhouse Sanitary District or another entity capable of providing recycled water, as the project's primary water supply for project operations including all process and landscape irrigation.

5. ***Page 13, Third Paragraph, Second Sentence, change to read as follows:***

The wastewater, consisting of process and sanitary wastewater, will discharge to the ISD sewer system by way of an existing ISD new sewer line to be located in Bridgehead Road.

ALTERNATIVES

6. ***Page 15, Under "Agency and Public Comments," add a final paragraph to read as follows:***

In written comments on the PMPD, Intervenor Sarvey asserts that the project is not on a "brownfield" site as that term is defined by the two authorities selected and cited by him. However, as was made clear during Sarvey's cross-examination of Staff during the March 25, 2011 evidentiary hearing, Staff stated that it used the term "brownfield" to refer to previously disturbed land. (3/25/11 RT 67.) The evidence establishes that the project will be sited on previously disturbed land.

TRANSMISSION SYSTEM ENGINEERING

7. ***Page 5, Third Category Condition title, change to read as follows:***

Category B C (N-2) Conditions

8. Page 15, Third Paragraph, change to read as follows:

With implementation of mitigation measures similar to the Conditions of Certification **TRANS-1 and TRANS-3** in the Traffic and Transportation section of this Decision, any potential impacts to traffic and transportation that would be less than significant.

9. Page 19, Finding 5, First Sentence, change to read as follows:

The interconnection of the OGS Project will cause new transmission line overloads under normal conditions on five identified 230-kV transmission lines; under Category B (N-1) conditions on six identified 230-kV transmission lines, and, under Category B C (N-2) conditions on six identified 230-kV transmission lines.

AIR QUALITY

10. Page 16, Last Paragraph and Page 17 ,Continuing Paragraph, change to read as follows:

BAAQMD Rule 2-2-302 establishes an offset ratio for OGS of 1.15 to 1 for NOX. BAAQMD allows VOC offsets to be used to offset emission increases of NOX. BAAQMD offset requirements for VOC for OGS are at a ratio of one-to-one. (Ex. 300, p. 4.1-34.) The District's offset ratios are in accord with Energy Commission Staff's opinion ~~policy as established by the precedential Avenal Energy Plant Project (08-AFC-1) Decision,~~⁷ recognizing the necessity of reducing emission reductions for all nonattainment pollutants and their precursors at a minimum overall one-to-one ratio. (Ex. 4300, pp. 4.1-33 - 4.1-34, 4.1-36.)

11. Page 20, Third Paragraph, Third Sentence, change to read as follows:

As a result, BAAQMD has no adopted implementation plan for particulate matter but, by ~~2010~~ December 2012 BAAQMD must submit to ARB and the U.S. EPA a separate plan demonstrating how the region will comply with the federal PM2.5 standard by no later than 2019. (Ex. 300, p. 4.1-38.)

12. Page 24, Second Paragraph, Last Sentence, change to read as follows:

Finally, we note that compliance with BAAQMD Condition AQ-15 will limit ammonia emissions to no more than 5 ,000 parts per million and thereby reduce to less than significant levels any related impacts.

13. Page 24, Last Paragraph, change to read as follows:

We are persuaded, however, that the Lauritzen Yacht Harbor/ Driftwood Marina concerns warrant investigation and possible remediation but that such action would need to be initiated by Lauritzen Yacht Harbor or Driftwood Marina.

14. Page 25, Finding 5, change to read as follows:

5. The project NO_x and VOC emissions would contribute to existing violations of state and federal ambient air quality standards for ozone. Compliance with Condition of Certification **AQ-SC7** will mitigate the ozone impact to a less than significant level.

15. Page 25, Finding 6, change to read as follows:

6. The PM₁₀ and PM_{2.5} emissions and the PM₁₀/PM_{2.5} precursor emissions of SO_x will contribute to the existing violations of state PM₁₀ and state and federal PM_{2.5} ambient air quality standards. Compliance with Condition of Certification AQ-SC8 will ensure that a separate mitigation program administered by BAAQMD ~~or additional offsets beyond those required by BAAQMD~~ would provide reductions in sufficient quantities to offset these emissions at least a one-to-one ratio.

16. Page 45, Condition of Certification AQ-25, Lines Seven through 12, change to read as follows:

....and to establish the emissions factors to be used to demonstrate compliance with ~~AQ-42(d) and AQ-42(e)~~ **AQ-43(d) and AQ-43(e)**; and while each Gas Turbine is operating at minimum load to determine compliance with **AQ-15(c)** and **AQ-15(d)**; and to verify the accuracy of the continuous emission monitors required in **AQ-21**.

WORKER SAFETY/FIRE PROTECTION

17. Page 11, Verification to WORKER SAFETY-5, change to read as follows:

Verification: At least 30 days prior to the start of construction, the project owner shall submit to the CPM proof that the owner has acquired or arranged delivery of a portable automatic external defibrillator (AED) for use exists on site during demolition, construction, and commissioning, and a copy of the training and maintenance program for review and approval.

HAZARDOUS MATERIALS MANAGEMENT

- 18. Page 32, Condition of Certification HAZ-10, and Verification, change to read as follows:**

HAZ-10 The project owner shall notify the CPM in writing of any new safety and/or reliability legislation, rules, regulations, or standards adopted for natural gas ~~transmission and distribution~~ pipelines by the CPUC, National Transportation Safety Board, or U.S. Department of Transportation or any other agency with jurisdiction during OGS pipeline construction or during OGS operation that are applicable to the OGS Project natural gas pipeline. The project owner shall notify the Compliance Program Manager (CPM) of the regulations and thereafter, by the time prescribed by the CPM, shall consult with PG&E and the CPM regarding the project's feasible compliance with and implementation of the measures if they are applicable to OGS Project natural gas pipelines or distribution pipelines that are applicable to the OGS Project natural gas pipelines.

Verification: Within 15 days of the adoption of any new safety and/or reliability legislation, rules, regulations, or standards for natural gas ~~transmission and distribution~~ pipelines that are applicable to the OGS natural gas pipeline, the project owner shall provide the CPM with a written copy of the rule.

BIOLOGICAL RESOURCES

- 19. Page 3, First Paragraph, First Sentence, change to read as follows:**

Except for 1.4 miles of the transmission line route and 12 related towers, the project is within the jurisdiction of the ~~ECCC/NCCP~~ ECCC HCP/NCCP.

- 20. Page 5, Fourth Paragraph, change to read as follows:**

Northern harriers, Loggerhead shrikes, Swainson's hawk, burrowing owls, and other bird species protected by Fish and Game codes and the Migratory Bird Treaty Act could potentially nest or forage ~~within~~ in the project area. Construction of the projects could disrupt nesting behaviors or otherwise adversely affect reproductive success of species protected by CDFG Fish and Games codes or the Migratory Bird Treaty Act. Western red bat, pallid bat, and other bat species could also potentially roost or forage within the project area. Conditions of Certification **BIO-9, BIO-10, BIO-11, and BIO-12** outline a number of impact avoidance and minimization measures for all of these bird and bat species, including specific measures for burrowing owls, bats, and Swainson's hawks based on prescribed agency guidelines.

21. Page 6, Fourth Paragraph, Fifth Sentence, change to read as follows

As discussed above, to minimize impacts to nesting birds and roosting bats during construction, we have adopted Conditions of Certification **BIO-9** and **BIO-10**. With the steps outlined in these conditions, noise and vibration impacts from normal project construction would be temporary and less than significant. (Ex. 300, pp. 4.2-36 – 4.2-37.)

22. Page 11, Third Paragraph, change to read as follows:

To ensure that mitigation occurs as expected, we have modified Staff-proposed Condition of Certification **BIO-24** **20** to require the project owner to obtain an annual report from the California Wildlife Foundation (or other approved entity) documenting how each annual payment was used. The project owner must submit the report to the Energy Commission's compliance staff. This reporting requirement allows the Energy Commission to monitor implementation of **BIO-20** and if necessary, ~~require the project owner to directly undertake the mitigation activities if the funds are not being spent as required.~~ Thus, the evidence establishes that **BIO-20** addresses Weiss's stated accountability concerns.

23. Page 11, Fifth Paragraph, change to read as follows:

We are further persuaded by the Applicant's and Staff's evidence that implementation of the management activities funded by annual payment toward the operating budget of Antioch Dunes NWR (as ~~calculated using the above equation and~~ described in Staff-proposed Conditions of Certification **BIO-20**) would mitigate adverse impacts to Antioch Dunes NWR and the Antioch Dunes evening primrose, Contra Costa wallflower, and Lange's metalmark butterfly from noxious weed proliferation exacerbated by OGS's contribution to nitrogen deposition. Impacts would be less than significant with the proposed mitigation.

24. Page 16, Third Column, Fourth Row, change to read as follows:

Golden eagles, White-tailed kite, and other bird species that may use the site are California Fully Protected species. Condition of Certification ~~**BIO-8**~~ **BIO-9** provides for pre-construction nest surveys, protective buffers, and monitoring if nests are found, and Condition of Certification **BIO-7** limits off-site disturbance.

25. Page 18, Third Paragraph, change to read as follows:

During the March 15, 2011 continued hearing and again in written comments on the PMPD, USFWS reiterated these concerns and questioned the adequacy of the monetary mitigation required by **BIO-20**, as proposed by Staff in the Final Assessment. USFWS would like OGS to directly undertake these mitigation activities. Notably, the April 28, 2011 letter commenting on the PMPD does not identify any PMPD error or misstatement; rather, it restates USFWS concerns

that OGS will result in impacts to the endangered Lange's metalmark butterfly, endangered Contra Costa wallflower, endangered Antioch Dunes evening primrose, and designated critical habitat for the plant species.

In exercising our exclusive jurisdiction over the project and fulfilling our obligations as CEQA lead agency, we find that ~~The the~~ Preliminary and Final Staff Assessments adequately address USFWS concerns.¹

26. Page 20, Insert Paragraph Above "Findings of Fact," to read as follows:

On April 14, 2011, Staff docketed a letter received from the California Department of Fish and Game (CDFG) pertaining to the Preliminary Staff Assessment and requesting the incorporation of certain modifications into the Final Staff Assessment (FSA). The letter is dated February 11, 2011 but according to email correspondence between Staff and CDFG dated April 14, 2011, it appears that Staff had no prior knowledge of the letter. Although there was no reasonable opportunity for Staff to have addressed the comments in the FSA, we nonetheless assess whether the Final Staff Assessment or PMPD (or both) address CDFG's comments.

CDFG asked that the FSA assert that the take of fully protected species such as the white-tailed kite is prohibited under the California Fish and Game Code and no agency may issue permits, licenses or other approvals that could result in take of a fully protected species. The FSA, at pages including 4.2-12 and 4.2-36, include language substantially similar to CDFG's proposed language.

Regarding the East Contra Costa Habitat Conservation Plan/Natural Communities Conservation Plan (the Plan), CDFG asked that the FSA make clear that participation in the Plan would only address impacts for species covered under the Plan and would not include the species at the Antioch Dunes National Wildlife Reserve (Antioch NWR). Substantially similar language is included in PMPD Biological Resources page 3 and the import of the distinction made by CDFG is further underscored in the FSA and PMPD by the separate analyses pertaining to the Plan and to nitrogen deposition impacts on specified species at the Antioch Dunes NWR.

Also with regard to the Plan, CDFG asked that the FSA specify that both payment of Plan fees and implementation of avoidance and minimization measures are required to fully mitigate impacts to CDFG's comments relate to three topics: discussion relating to fully protected species, OGS participation in

¹ We note that Intervenor Sarvey's written comments on the PMPD suggest the Preliminary and Supplemental Staff Assessments and the PMPD ignore USFWS concerns. As discussed above in this **Biological Resources** section and shown by evidence and comments in the record, including but not limited to, the **Biological Resources** section of the Supplemental Staff Assessment and discussion during the March 15, 2011 hearing with USFWS representative Chris Nagano, USFWS concerns were directly addressed by Staff and the Committee.

the, and nitrogen deposition impacts on Lange's metalmark butterfly, Antioch Dunes evening primrose, and Contra Costa wallflower. The FSA (including at pages 4.2-2, 4.2-59 - 4.2-60) and PMPD (pages 5-6) contain language substantially similar to CDFG's proposed language.

Regarding nitrogen deposition impacts, CDFG first asked that the discussions of project setting better orient readers to the fact that the areas of analysis include off-site habitat beyond the project area, including habitat at the Antioch Dunes NWR. The Biological Resources discussions within the FSA and PMPD make clear that the analysis went beyond the project site and included the Antioch Dunes NWR. CDFG then expressed concern that "the [Preliminary] Staff Assessment does not clearly indicate how the proposed mitigation for nitrogen deposition impacts (Mitigation Measure BIO-19) will address and fully mitigate expected project impacts. The analysis does not describe the management activities that are needed to offset the project's impact; therefore it is unclear whether the proposed financial contribution will be sufficient to address such management needs." As shown by the modifications included in the FSA, which addresses a number of similar concerns raised by USFWS, Staff also adequately addresses this particular CDFG concern.

Notably, CDFG did not opine that Commission staff's proposed mitigation (as presented in the Preliminary Staff Assessment) is inadequate as to the Antioch Dunes NWR. Instead, CDFG stated that *if* the mitigation is inadequate the resulting impact would be an avoidable residual impact, which is not allowed under the California Endangered Species Act (CESA). As discussed in the FSA (including at pages 4.2-53 - 4.2-54), above in this **Biological Resources** section, and summarized in Findings of Fact #8 and #9 below, we determined that the mitigation is adequate and that the project will result in a take or jeopardy of the species at the Antioch NWR as those terms are defined by CESA and the Federal Endangered Species Act.

Finally, CDFG contends that the proposed mitigation "does not take into account loss or degradation of habitat on private lands" attributable to nitrogen deposition, which might affect "local species." However, the evidence of record identifies only three species, all of which are located at the Antioch Dunes NWR that might be affected by project-related nitrogen deposition. We are satisfied that the evidence contains a thorough analysis of project related nitrogen deposition impacts.

27. *Page 27, Verification to Condition of Certification BIO-6, change to read as follows:*

Verification: The project owner shall provide the draft BRMIMP to the CPM at least 60 days prior to start of any site (or related facilities) mobilization. The CPM, in consultation with the East Contra Costa County Habitat Conservancy (Conservancy) (and USFWS and CDFG if they choose to comment), will

determine the BRMIMP's acceptability ~~within forty-five (45) days of receipt~~. If there are any permits that have not yet been received when the BRMIMP is first submitted, these permits shall be submitted to the CPM within five (5) days of their receipt, and the BRMIMP shall be revised or supplemented to reflect the permit condition within 10 days of their receipt by the project owner. Ten days prior to site and related facilities mobilization the revised BRMIMP shall be resubmitted to the CPM.

28. *Page 29, Condition of Certification BIO-7, Bullet 8, change to read as follows:*

Avoid Use of Exotic Pest Plants. Eliminate from landscaping plans any 'List A' California exotic pest plants of concern as defined by ~~the California Exotic Pest Plant Council~~ the California Department of Food and Agriculture (CDFA) and California Invasive Plant Council (Cal-IPC).

29. *Page 30, Condition of Certification BIO-8, Merge the First and Second paragraphs.*

30. *Page 32, Condition of Certification BIO-9, Bullets 3 and 5, change to read as follows:*

3. If active nests are detected during the survey, a no-disturbance buffer zone (protected area surrounding the nest, the size of which is to be determined by the Designated Biologist in consultation with the CPM (in coordination with CDFG, and USFWS) and monitoring plan shall be developed; Consultation with the CPM in coordination with CDFG shall be required for any construction that occurs within 1,000 feet of a Swainson's hawk nest or 1/2 mile of an active golden eagle nest to ensure that no take of Swainson's hawk or golden eagle occurs during project construction. Nest locations shall be mapped using GPS technology and submitted, along with a weekly report stating the survey results, to the CPM. ~~in the Monthly Compliance Reports.~~

5. The Designated Biologist shall monitor the nest until he or she determines that nestlings have fledged and dispersed. Activities that might, in the opinion of the Designated Biologist, disturb nesting activities (e.g., excessive noise above 60 dBA, especially during steam blowing), shall be prohibited within the buffer zone until such a determination is made.

31. *Page 33, Condition of Certification BIO-10, first two paragraphs, change to read as follows:*

BIO-10 The project owner shall conduct a survey for roosting bats within 200 feet of project activities within ~~45~~ 30 days prior to any pre-construction site mobilization, including tree removal. All trees and snags proposed for removal, topping, or pruning shall be marked in the field.

A qualified bat biologist shall conduct a roost assessment of all the marked trees. The biologist shall be approved by the CPM. If no suitable roosting habitat is present, no further action is required.

. . . . If the bat biologist determines, in consultation with the CPM and CDFG and with the approval of the CPM, that there are alternative roost sites used by the maternity colony and young are not present, then no further action is required and tree removal may occur.

32. *Page 35, Verification to Condition of Certification BIO-10, change to read as follows :*

Verification: All mitigation measures and their implementation methods shall be included in the BRMIMP and implemented. The resume of the proposed bat biologist will be submitted to the CPM for approval at least ~~30~~45 days prior to the start of any bat surveys. Implementation of the measures will be reported in the Monthly Compliance Reports by the Designated Biologist. ~~If active roost trees are to be removed, a~~ A written report summarizing the results of the pre-construction survey shall be sent to the CPM and CDFG no less than 15 days prior to the start of pre-construction site mobilization which will include documentation of any active roost trees to be removed. The report shall describe survey methods, including the time, date, and duration of the survey, identity and qualifications of the surveyor(s), and a list of species observed, a figure showing roost locations observed, and proposed mitigation and exclusion measures. Mitigation and exclusion measures must be developed in coordination with the CPM and CDFG, and approved by the CPM prior to initiation of the measures or project activities that would disturb the roost site. Within 10 days of removal of trees with roost sites, the project owner shall submit a report describing the results of the exclusion, mitigation measures, and tree removal.

33. *Page 41, Condition of Certification BIO-15, Second List Item, change to read as follows:*

2. ~~ESA~~ Wildlife exclusion fencing will be installed to protect the riparian habitat along East Antioch Creek in the vicinity of the intersection of the transmission line right-of-way as described under Giant garter snake avoidance and minimization measures (see **BIO-16**).

34. *Page 42, Verification to Condition of Certification BIO-16, Second Sentence, change to read as follows*

The Designated Biologist or a representative approved by the CPM, in consultation with the East Contra Costa County Habitat Conservancy (Conservancy), CDFG, and USFWS, must survey the construction area within potential GGS habitat no more than 24 hours prior to the initiation of pre-

construction site mobilization ~~construction~~ in the vicinity the GGS habitat along East Antioch Creek.

35. Page 43, Condition of Certification BIO-17, change to read as follows:

BIO-17 The following measures, developed in cooperation with East Contra Costa County Habitat Conservancy (Conservancy) shall be implemented to avoid and minimize impacts to California tiger salamander.

1. Wildlife exclusion fencing and silt fencing shall be installed to protect Wetland D, Wetland E, and Wetland F. "Sensitive Resource Area" signage shall also be installed at each wetland prior to pre-construction site mobilization

36. Page 46, Condition of Certification BIO-20 and Verification, change to read as follows:

BIO-20 The project owner shall provide an annual payment to California Wildlife Foundation or other third-party approved by USFWS to assist in noxious weed management and its effects at the Antioch Dunes National Wildlife Refuge. Management activities funded may include but are not limited to: captive breeding and release of Lange's metalmark butterfly; propagation and transplantation of naked-stem buckwheat, Contra Costa wallflower, and Antioch Dunes evening primrose; noxious weed eradication using grazing animals, hand tools, and/or appropriate mechanical equipment. The first annual payment shall be no less than \$5,000.78.

Each subsequent annual payment shall be adjusted for inflation in accordance with the Employment Cost Index – West or its successor, as reported by the U.S. Department of Labor's Bureau of Labor Statistics. Payment shall be made annually for the duration of project operation.

The project owner also shall request an annual report from the California Wildlife Foundation or other third-party approved by USFWS documenting how each annual payment required hereunder was used and applied to assist in noxious weed management at the Antioch Dunes National Wildlife Refuge. The project owner shall provide copies of such reports to the CPM within 30 days after receipt. If the CPM determines that the USFWS has determined that the funds are not being applied as specified by this condition,

then the project owner or an agent of the owner shall contract with another third party approved by the USFWS to directly implement noxious weed management until the CPM receives verifiable proof that the California Wildlife Foundation ~~or other approved agency~~ is using the funds as required.

Verification: No later than 30 days following the start of project operation, the project owner shall provide written verification to the CPM, USFWS, and CDFG that the first-annual payment was made to California Wildlife Foundation or other third-party approved by USFWS in accordance with this Condition of Certification. The project owner shall provide evidence that it has specified that its annual payment to California Wildlife Foundation or other third-party approved by USFWS can be used only to assist in noxious weed management and remediation of its effects (e.g., activities to support continued survival of Lange's metalmark butterfly, Contra Costa wallflower, and Antioch Dunes evening primrose) at the Antioch Dunes National Wildlife Refuge as directed by USFWS.

Thereafter, within 30 days after each anniversary date of the commencement of project operation, the project owner shall provide written verification to the CPM, USFWS, and CDFG that payment has been made to the California Wildlife Foundation or other third-party approved by USFWS in accordance with this Condition of Certification. This verification shall be provided annually for the operating life of the project.

37. *Page 47, Verification to Condition of Certification, BIO-21, change to read as follows:*

Verification: A copy of the receipt of payment issued to Conservancy, verifying the funds have been paid, shall be provided to the CPM within 30 days prior to ~~site or related facilities pre-construction site~~ mobilization.

38. *Page 47, Condition of Certification BIO-22, change to read as follows:*

Verification: Within five business days of its receipt, and prior to pre-construction site mobilization, the project owner shall submit to the CPM a copy of the East Contra Costa County Habitat Conservancy's Certificate of Inclusion (permit) and verify that the permit terms and conditions are incorporated into the BRMIMP and will be implemented

39. **Page 47, Condition of Certification BIO-23 and Verification, change to read as follows:**

BIO-23 The project owner shall provide ~~the CPM with~~ a copy of any U.S. Fish and Wildlife permit issued for the OGS project (e.g., Incidental Take Permit). ~~requirements, within 15 days from the date any such permit or permit amendment issues.~~ The terms and conditions contained in the permit shall be incorporated into the project's BRMIMP and implemented by the project owner.

Verification: The project owner shall submit to the CPM a copy of the USFWS permit within 15 days of issuance by the USFWS. At this time, the project owner shall also verify that the permit terms and conditions are incorporated into the BRMIMP and will be implemented.

SOIL AND WATER RESOURCES

40. **Page 16, First Paragraph, First Line, change to read as follows:**

...constituents ~~would~~ may be outside of the ISD wastewater discharge requirements.

41. **Page 19, Second Paragraph, change to read as follows:**

Provided that OGS converts to a recycled water supply, implementation of SOIL&WATER-4 will address Staff's concerns regarding Diablo Water District's increased freshwater (Delta water under the CVP and groundwater) use to meet the needs of OGS as well as existing and future DWD customers.

42. **Page 20, Third Paragraph, change to read as follows:**

The evidence further establishes ~~that~~ the remote likelihood of a seiche, or tsunami to impact the site, and that current predictions of ~~or~~ sea level rise are below site grades. (Ex. 300, p. 4.9-30.)

43. **Pages 33-34, DELETE Conditions of SOIL&WATER-8 and SOIL& WATER-9.**

LAND USE

44. **Page 1, Sixth Bullet, change to read as follows**

- Conflicting with any applicable land use plan, policy, or regulation of an agency with jurisdiction, or that would normally have jurisdiction, over the project.

This includes, but is not limited to, a General Plan, ~~community or specific plan,~~ ~~local coastal program,~~ ~~airport land use compatibility~~ redevelopment plan, or zoning ordinance; or

45. Page 4, Replace Land Use Figure 1 with attached figure.

46. Page 6, First paragraph, Last sentence, change to read as follows:

DuPont prepared Phase I and Phase II Environmental Site Assessments for a portion of the property – the Western Development Area (WDA) – that contains the project site.

47. Page 6, Third Paragraph, Second Sentence, change to read as follows:

... however, the City has not officially rezoned the property.

48. Page 6, Fifth Paragraph, change to read as follows:

~~Land Use Figure 3~~ below shows the land use zoning designations of the OGS site and surrounding lands. In view of the redevelopment designation and the pending DuPont Specific Plan, the figure depicts the OGS site as Redevelopment Agency Planned Development. As discussed above, the city has not formally rezoned the project site; therefore, the applicable zoning for the OGS site is Contra Costa County's H-I zoning designation.

49. Page 7, Delete Land Use Figure 3

50. Page 8, Second Paragraph, change to read as follows:

The transmission line traverses land in ~~both~~ under the jurisdiction of Contra Costa County, the City of Oakley, and the City of Antioch. As a result, the transmission line alignment includes several different land use designations. In the County and the City of Oakley, these general plan designations are mostly Public/Semi-Public and Commercial, respectively. The portion of the line within county lands is not within a county zoning designation, and the city's zoning designations for the remaining portions of the transmission line are Light Industrial (L-I) and Retail Business (R-B).

51. Page 8, Last Paragraph, First Sentence, change to read as follows:

Based on data obtained from the California Department of Conservation Farmland Mapping and Monitoring Program (FMMP), the majority of the project site is located on land designated as Farmland of Statewide Importance, with areas designated as Urban and Built-Up Land.

52. Page 12, Second Paragraph, change to read as follows:

As discussed above, the OGS site is within the City of Oakley and portions of the transmission line traverse areas within the City of Antioch. The project site has not officially been rezoned by the City of Oakley, so the property continues to have the H-I zoning designation established by Contra Costa County. Therefore, the county's and the cities' General Plans and zoning ordinances are the primary laws governing local land use.

53. Page 13, Second Paragraph, Eighth Line, change as follows:

... the City would likely require a variance to allow the project's building height to exceed 200-100 feet.

54. Page 13, Insert a Paragraph Between the Existing Second and Third Paragraphs, to read as follows:

The foregoing land use analysis and the analyses included throughout this Decision (See, e.g., **Traffic and Transportation, Visual Resources, Socioeconomics**), further establish that granting a CUP and height variance to the OGS Project would be consistent with the City's standards. For instance, the following conditions must exist prior to approval of a variance:

1. That any variance authorized shall not constitute a grant of special privilege inconsistent with the limitations of other properties in the vicinity and the respective land use district in which the subject property is located;
2. That because of special circumstances applicable to the subject property because of its size, shape, topography, location or surroundings, the the strict application of the respective zoning regulations is found to deprive the subject property of rights enjoyed by other properties in the vicinity and within the identical land use district;
3. That any variance authorized shall substantially meet the intent and purpose of the respective land use district in which the property is located.

For a CUP to issue, the following findings must be made:

1. That the site for the proposed use is adequate in size and shape to accommodate the use and all yards, spaces, walls and fences, parking loading, landscaping and other features required by this title to adapt the use with land and uses in the neighborhood;
2. That the site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use;

3. The proposed use will be arranged, designed, constructed, operated and maintained so as to be compatible with the intended character of the area and shall not change the essential character of the area from that intended by the general plan and the applicable zoning ordinances;
4. That the proposed use provides for the continued growth and orderly development of the community and is consistent with the various elements and objectives of the general plan;
5. That the proposed use, including any conditions attached thereto, will be established in compliance with the applicable provisions of CEQA.

55. *Page 28, Add Finding 6, to read as follows:*

6. The cumulative implementation of the planned developments would result in the conversion of lands that are currently in agricultural production to urban land uses; however, project-related cumulative land use impacts would be less than significant.

TRAFFIC AND TRANSPORTATION

56. *Page 12, First Bullet, change to read as follows:*

- Adopt and implement provisions for monitoring intersection operations to ensure that construction-related vehicles must avoid the intersections of Main Street/Bridgehead Road (4:00 p.m. – 6:00 p.m.) and Wilbur Avenue/Bridgehead Road (7:00 a.m. – 9:00 a.m. and 4:00 p.m. – 6:00 p.m.) ensuring no deterioration of the existing LOS performance standard to minimize degradation of the LOS performance standard to the maximum extent feasible.

57. *Page 24, Finding 7, change to read as follows:*

Compliance with the Conditions of Certification, including **TRANS-1** through **TRANS-4** and **TRANS-5**, will ensure that the OGS Project complies with applicable LORS

NOISE AND VIBRATION

58. *Page 3, Insert the following text and attached figure between the second and third paragraphs.*

The Applicant conducted continuous ambient noise monitoring at 12 locations to determine the level of noise in the project area. The locations are shown below

in Noise Figure 1. However, long-term (24 hours or more) measurements were collected at only three locations.

VISUAL RESOURCES

59. Page 6, Section b, KOP 1, Second Sentence, change to read as follows:

While the impact to KOP 1 could be adverse, the evidence establishes that placing landscape screening trees along the project's perimeter ~~and along the Bridgehead Road east frontage~~ will reduce impacts to below a level of significance. (Ex. 300, pp. 4.12-13 - 4.12-14.) We have included this mitigation in Condition of Certification **VIS-2**.

60. Condition of Certification VIS-1, delete list item "f."

Dated: May 16, 2011 at Sacramento, California.



JAMES D. BOYD
Vice Chair and Presiding Member
Oakley AFC Committee



CARLA PETERMAN
Commissioner and Associate Member
Oakley AFC Committee



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION
FOR THE *OAKLEY GENERATING STATION***

**Docket No. 09-AFC-4
PROOF OF SERVICE
(Revised 4/5/2011)**

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DECLARATION OF SERVICE

I, RoseMary Avalos, declare that on May 16, 2011, I served and filed copies of the attached ERRATA TO THE PRESIDING MEMBER'S PROPOSED, dated May 16, 2011. The original document filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:

<http://www.energy.ca.gov/sitingcases/oakley/index.html>.

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(Check all that Apply)

FOR SERVICE TO ALL OTHER PARTIES:

- X sent electronically to all email addresses on the Proof of Service list;
 by personal delivery;
 X by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses **NOT** marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

- X sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

OR

- depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 09-AFC-4
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Original Signed By:
RoseMary Avalos
Hearing Adviser's Office