



**CH2M HILL**  
2485 Natomas Park Drive  
Suite 600  
Sacramento, CA 95833-2937  
**Tel 916.920.0300**  
**Fax 916.920.8463**

June 18, 2010

Ms. Felicia Miller  
Project Manager  
California Energy Commission  
1516 Ninth Street  
Sacramento, CA 95814

Subject: Oakley Generating Station Project (09-AFC-4)  
Wetland E Management Plan - Updated June 2010

Dear Ms. Miller:

Attached are three (3) hard copies of the Wetland E Management Plan - Updated June 2010 that was submitted to California Department of Fish and Game on June 18, 2010.

If you have any questions, please contact me at (916) 286-0278.

Sincerely,  
CH2M HILL

  
Douglas M. Davy, Ph.D.  
AFC Project Manager

Attachment

cc: POS List  
Project File

<b>DOCKET</b>	
<b>09-AFC-4</b>	
DATE	<u>JUN 18 2010</u>
RECD.	<u>JUN 18 2010</u>



**CH2M HILL**  
2485 Natomas Park Drive  
Suite 600  
Sacramento, CA 95833  
**Tel 916.920.0300**  
**Fax 916.920.8463**

June 17, 2010

Liam Davis  
California Department of Fish and Game  
Region 3  
P.O. Box 47  
Yountville, CA 94558

Subject: Wetland E Management Plan for the Oakley Generating Station – Updated  
June 2010

Dear Mr. Davis:

The attached Wetland E Management Plan has been revised to remove the public access features as agreed to during our telephone conversation on May 20, 2010. The public access features removed include the parking spaces, picnic table, footpath, interpretive signage, and road signage.

In addition to the revisions to the plan features, the revised management plan includes the enhancement goals, objectives, and performance standards of the proposed management plan.

If you have any questions regarding the revisions to the Wetland E Management Plan please contact me at (916) 286-0278.

Sincerely,

CH2MHILL

A handwritten signature in blue ink, appearing to read "Douglas M. Davy".

Douglas M. Davy, Ph.D  
Project Manager

cc: California Energy Commission Docket Log 09-AFC-04

## Wetland E Management Plan for the Oakley Generating Station – Updated June 2010

**PREPARED FOR:** Liam Davis, California Department of Fish and Game  
Randi Adair, California Department of Fish and Game

**PREPARED BY:** Virginia Dains  
Debra Crowe, CH2M HILL  
Russ Huddleston, CH2M HILL

**COPIES:** Jim McLucas, Radback Energy, Inc.  
Greg Lamberg, Radback Energy, Inc.  
Scott Galati, Galati | Bleck, LLP  
Douglas Davy, CH2M HILL

**DATE:** June 17, 2010

The Oakley Generating Station (OGS) (formerly the Contra Costa Generating Station) is a combined-cycle, natural-gas-fired power plant proposed by Radback Energy, Inc. (Radback). The OGS will be located on a portion of the former DuPont Corporation (DuPont) manufacturing facility site in Oakley, Contra Costa County, California. The project site is located at the intersection of Bridgehead Road and Wilbur Avenue, approximately 3,000 feet south of the San Joaquin River. Adjacent to and downstream of the OGS site, and part of the project parcel, is a 1.60-acre conservation easement area that encompasses a 0.62-acre freshwater marsh wetland. This wetland has been identified as the “Wetland E Mitigation Area” in documents submitted by DuPont to the U.S. Army Corps of Engineers (USACE). Wetland E was placed under conservation easement in January 1997 (File #97 005086) by DuPont as a mitigation measure for development elsewhere on the bank of the San Joaquin River.

As discussed during the California Department of Fish and Game’s (CDFG) visit to the OGS site on November 9, 2009, it is possible to enhance the functions and values of Wetland E by proposing and incorporating enhancement measures that have the potential to improve the existing wetland and upland habitats. The proposed enhancement measures have been included as part of this Wetland E management plan. The management plan includes an assessment of the historical land use at the Wetland E site, an assessment of the Consistency of the OGS with the 1997 Conservation Easement, and provides a detailed discussion of the proposed Wetland E enhancements. The plan also introduces the proposed conditions of certification expected to be included as part of the California Energy Commission (CEC) license and the enhancement goals, objectives, and performance standards of the proposed management plan.

The management plan is being submitted to the CDFG for approval prior to submitting to the CEC. If approved by the CDFG, it is expected the proposed enhancements will be incorporated as CEC Conditions of Certification and will be enforced by the CEC throughout the 30-year lifetime of the project.

## Project Background

Currently, the Wetland E easement area collects stormwater runoff from a 25-acre area located to the east and south of the easement. Because the OGS will occupy the majority of the 25 acres of easement runoff area, Radback proposes to maintain the existing water quality and hydraulic flow to the Wetland E easement area after the project is built. To accomplish this goal, Radback and its engineering design consultant, Black & Veatch Engineering, designed a stormwater management system for the OGS and submitted the plan to the CDFG on August 13, 2009. The management system was designed so that (1) the quality of stormwater draining into the wetland is not negatively affected, and (2) the OGS will not adversely alter the flow of stormwater into the wetland.

## Historical Land Use

The wetland area associated with the easement parcel was constructed in 1996 as mitigation for wetland impacts associated with the Lauritzen Yacht Harbor area. Based on a review of historical aerial photographs the area has been active farmland since 1939. Historical aerial photographs of the proposed project area and adjacent mitigation wetland site taken between 1939 and 2005 are included in Attachment A. There are no wetlands in the area shown on the U.S. Fish and Wildlife Service National Wetland Inventory Maps (Attachment B). Soils in the project area and adjacent easement area have been mapped as Delhi Sand, which is a deep, somewhat excessively drained soil with a sandy texture generally to a depth of 70 inches (NRCS, 1977). This mapped soil unit has no rating for flooding or ponding frequency (NRCS, 2009a) and is not included on the hydric soils list for California (NRCS 2009b). Based on this information it appears this mitigation wetland has been constructed in what was previously upland.

## Consistency with the 1997 Conservation Easement

The stated purpose of the 1997 conservation easement is to “retain forever in a natural condition and to prevent any use of the property that will significantly impair or interfere with the conservation values of the property.” The CDFG (the easement grantee) has the right to prevent any activity on or use of the property that is inconsistent with the habitat conservation purposes in the easement. Activities specifically prohibited include unseasonal watering, off-road vehicles, grazing, and surface entry for exploration and extraction of minerals. The grantee may allow public access to the property for scientific research and interpretive purposes. A copy of the easement is included in Attachment C.

In order to maintain consistency with the 1997 conservation easement, Radback and its engineering design consultant, Black & Veatch, have designed a stormwater management system for the OGS so that (1) the quality of stormwater draining into the wetland is not negatively affected, and (2) the OGS will not adversely alter the flow of stormwater into the wetland. Additionally, the OGS stormwater management design will incorporate the following measures, which are designed to enhance the functions and values of the mitigation wetland. These measures will be consistent with the intended purpose and restrictions of the easement for this property. An outline of the Wetland E conservation easement and other existing utility easements are presented in Figure 1. The proposed enhancement plan features associated with OGS are presented in Figure 2.

## Proposed Habitat Improvements

- **Plant upland dune vegetation (~0.3 acre)** – This area is currently dominated by non-native grasses and herbs including noxious weeds. Locally collected and grown revegetation stock will be planted, maintained, and monitored for success for 5 years. Perennial herbs and shrubs will be planted as nursery-grown plugs on 2- to 3-foot centers and clustered by species. Native annual seed mixtures will be hand broadcast in the interspaces. Noxious weeds including pampas grass, yellow star thistle, and Russian thistle will be removed from the site. Replacement plantings will include native upland dune species (similar to the species in the Antioch Dunes National Wildlife Refuge) such as *Lupinus albifrons*, *Eriogonum nudum auriculatum*, *Lotus scoparius*, *Eschscholzia californica*, *Senecio douglasii*, *Gutierrezia californica*, *Heterotheca grandiflora*, *Clarkia unguiculata*, and *Croton californica*.
- **Replace non-native trees with coast live oak** – Introduced trees such as almond and tree-of-heaven will be removed and replaced with coast live oak.
- **Block overflow drain into the preserve** – This drain comes from the DuPont concrete retention pond north of the preserve area. It receives drainage from industrial site surfaces of asphalt and concrete.
- **Include native plants in the landscape screening plan required as a condition of certification by the CEC** – A fast-growing landscape screen will consist of 15-gallon coast live oak (to be approved), underlain by 10-gallon evergreen shrubs (*Arctostaphylos manzanita*, *Fremontodendron californicum*, *Heteromeles arbutifolia* and *Myrica californica*), and 3-gallon plantings of small thorny evergreen shrubs (*Rosa californica* and *Mahonia pinnata*).

The landscape screen will be planted on a newly constructed 3:1 slope just east of the preserve between the facility perimeter fence and the preserve boundary.

## Enhancement Goals, Objectives, and Performance Standards

### Goal 1: Re-establish native vegetation.

#### **Objective 1: Replace non-native trees (almond, tree-of-heaven) with coast live oak**

##### **Performance criteria**

- 75 percent survivorship of planted coast live oaks by the fifth year. Plants will be replaced as needed to meet this objective, and will be monitored for five years.
- No watering or maintenance other than weed control after year 3.
- Surviving trees shall show leader growth for 2 out of the last 3 years of monitoring.

#### **Objective 2: Establish 0.30 acres of native upland dune shrubs and herbs.**

##### **Performance criteria**

- 75 percent survivorship of planted upland dune shrubs by the fifth year.
- No watering or maintenance other than weed control after year 3.
- A naturally regenerating community of native annual herbs will be established without reseeded for 2 out of the last 3 years.

**Objective 3: Control noxious weeds (pampas grass, Russian thistle).****Performance criterion**

- Less than 5 percent cover in invasive exotics (Cal-IPC Rating High) in 5 years.

**Goal 2: Maintain wildlife habitat value and wildlife use****Objective 1: Maintain wetland hydrology for amphibians, aquatic invertebrate, and waterfowl****Performance criterion**

- No significant change in the duration or extent of wetland ponding compared to pre-project conditions

**Objective 2: Maintain wetland vegetation for foraging and nesting cover****Performance criterion**

- No significant change in species composition or cover of wetland vegetation compared to pre-project conditions as determined by standard vegetation sampling techniques.

**Bioswale Outlets**

The outlets of two bioswales arising from the northern and southern halves of the OSG site are shown in Figure 2. The outfall structures will consist of a rock pad constructed outside the wetlands preserve. In addition to the use of bioswales, the drainage design is currently being revised to include a detention pond. The inclusion of a detention pond will allow for increased management of the water released from the bioswale outlets during large rain events, thereby reducing the risk for excessive runoff and flooding of the pond during large rain events.

The hydrology of the preserve will be monitored pre- and post-construction to ensure the watershed yield is sufficient to maintain wetland conditions in the preserve. If necessary, a drainage pipe under the bioswale can be added if a drop in wetland hydrology from current conditions is noted during post-construction monitoring.

**Post-construction Monitoring Plan**

A detailed monitoring plan will be developed to ensure that existing hydrology and water quality are maintained post construction. The plan will be prepared upon project approval and will include the following components:

- Monitoring methods
- Planting design
- Responsible parties
- Long-term management and maintenance requirements
- Contingency plan
- Funding source

Enhancements of the wetland easement parcel will commence concurrently with the initiation of the OGS project. Baseline hydrologic studies will begin prior to construction.

## References

California Invasive Plant Council. 2007. California Invasive Plant Inventory, 2007 Inventory update (pdf). Available on line at: <http://www.cal-ipc.org/ip/inventory/index.php>

Natural Resource Conservation Service (NRCS) 1977. Soil Survey of Contra Costa County. United States Department of Agriculture.

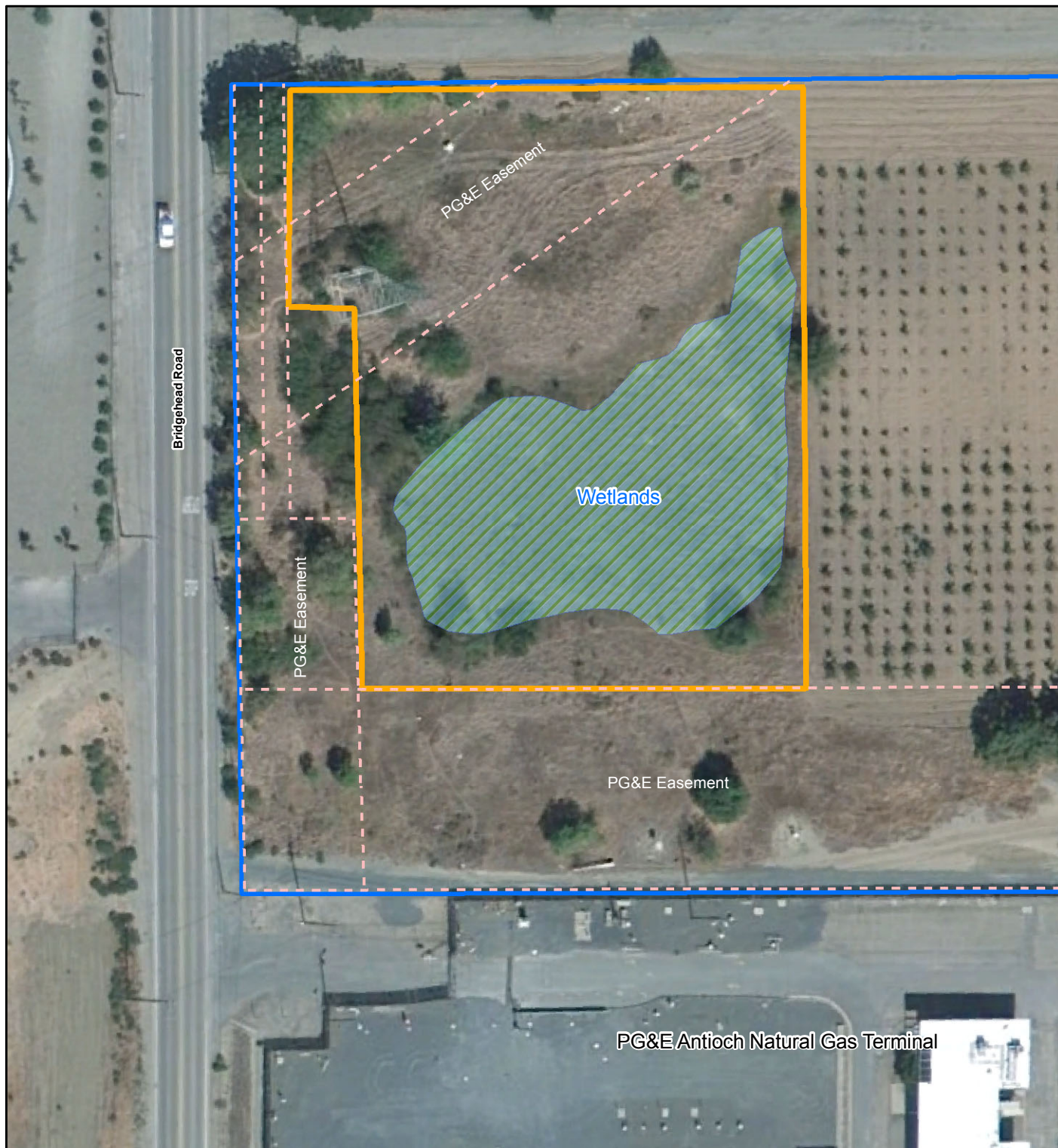
NRCS. 2009a. Web Soil Survey. States Department of Agriculture. Available online at: <http://websoilsurvey.nrcs.usda.gov/app/>

NRCS. 2009b. State Hydric Soils List. United States Department of Agriculture. Available online at: <http://soils.usda.gov/use/hydric/lists/state.html>

## Figures

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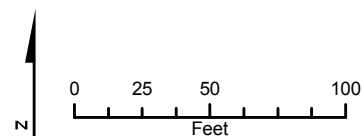




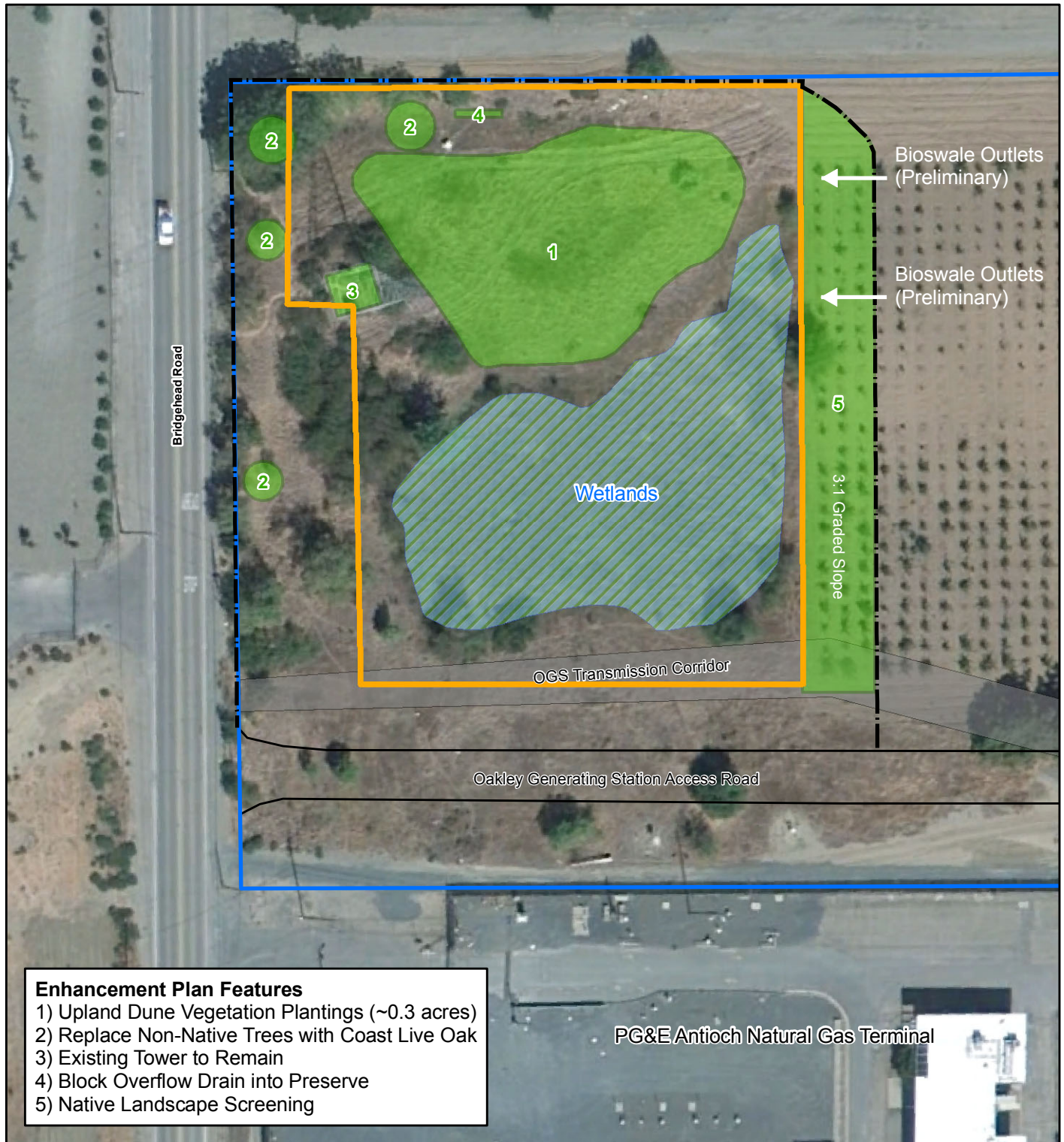
### Legend

- OGS Project Boundary
- Wetland E Preserve
- Wetland E Conservation Easement
- PG&E Easement

**Figure 1**  
**Wetland E Preserve**  
**Existing Easements**  
 June 2010



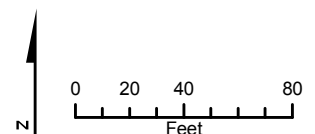




## Legend

- Green Vinyl Coated Cyclone Fence
- Wetland E Conservation Easement
- OGS Project Boundary
- OGS Transmission Corridor
- Enhancement Plan Feature
- Wetland E Preserve

**Figure 2**  
**Wetland E Preserve**  
**Wetland E Enhancement Plan**  
 June 2010



**Attachment A**  
**Historical Aerial Photographs**

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INQUIRY #: 2559610.5

YEAR: 1939

| = 555'







INQUIRY #: 2559610.5

YEAR: 1949

| = 655'







INQUIRY #: 2559610.5

YEAR: 1958

| = 555'







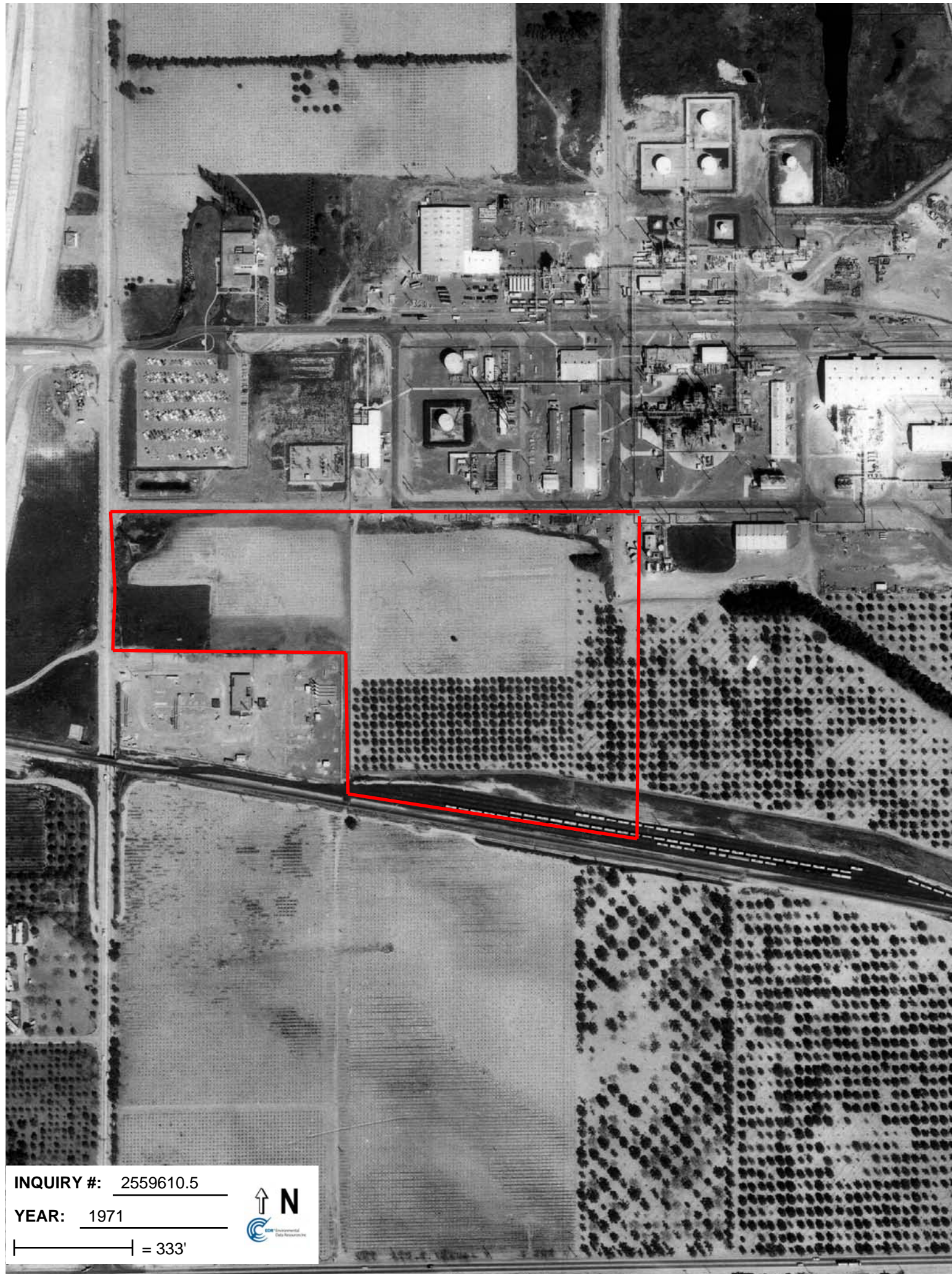
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YEAR: 1965

| = 333'







INQUIRY #: 2559610.5

YEAR: 1971

| = 333'







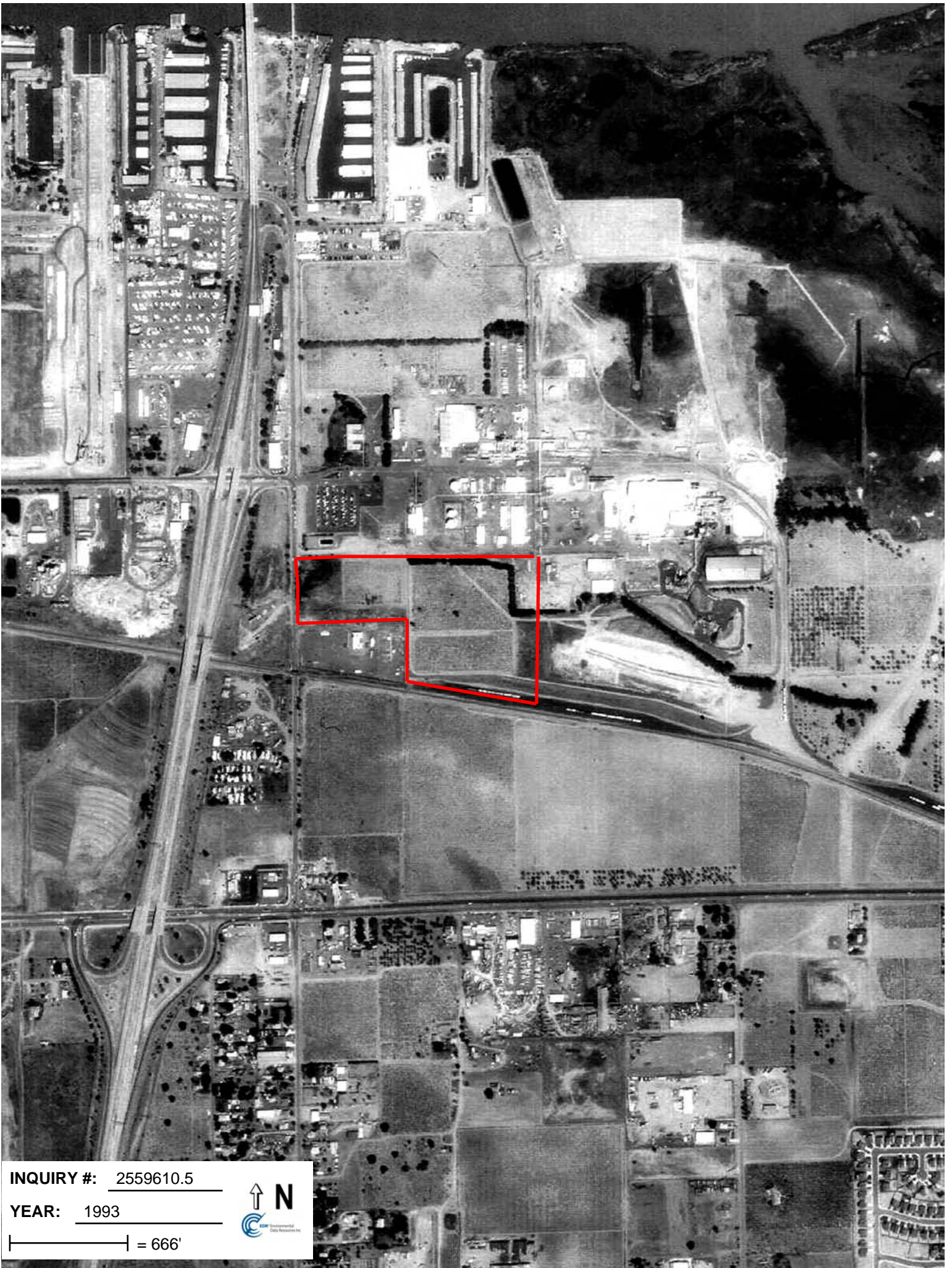
INQUIRY #: 2559610.5

YEAR: 1984

| = 690'







INQUIRY #: 2559610.5

YEAR: 1993

| = 666'







INQUIRY #: 2559610.5

YEAR: 1998

| = 666'







**INQUIRY #:** 2559610.5

**YEAR:** 2005

| = 604'

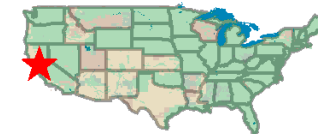




**Attachment B**  
**National Wetland Inventory Maps**

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# National Wetland Inventory Map - Oakley Generating Station



## Legend

### Ohio\_wet\_scan

- 0
- 1
- Out of range
- Interstate
- Major Roads
- Other Road
- Interstate
- State highway
- US highway
- Roads
- Cities
- USGS Quad Index 24K
- Lower 48 Wetland Polygons
- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine
- Lower 48 Available Wetland Data
- Non-Digital
- Digital
- No Data
- Scan
- NHD Streams
- Counties 100K
- States 100K
- South America
- North America



Scale: 1:12,708

Map center: 38° 0' 37" N, 121° 45' 0" W

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

**Attachment C**  
**Copy of 1997 Conservation Easement**

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Nov. 18. 2008 4:19PM

Return to:

Department of Fish & Game  
Legal Affairs Division  
1416 Ninth St. 12th floor  
P.O. Box 944209  
Sacramento, Ca. 95814-2090

97 005086

JAN 10 1997

AT 1 O'CLOCK P. M.  
CONTRA COSTA COUNTY RECORDS  
STEPHEN L. WEIR  
COUNTY RECORDER

FEE:

39.00 pd

Document Title(s)

EASEMENT

3pc

RECORDED AT REG No. 1611F P. 1

Lauritzen Yacht

Harbor

13



## CONSERVATION EASEMENT GRANT

THIS CONSERVATION EASEMENT GRANT is made this 23 day of 12, 1996, by E. I. DuPont de Nemours and Company ("Grantor"), in favor of California Department of Fish and Game ("Grantee").

### WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property hereinafter described in Exhibit "A" attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the Property possesses wildlife and native habitat values (collectively, "conservation values") of great importance to Grantor, the people of Contra Costa County and the people of the State of California; and

WHEREAS, the Department of Fish and Game has, pursuant to the Fish and Game Code section 182, jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable population of those species; and

WHEREAS, Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Property in accordance with the terms of this Conservation Easement for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and Civil Code section 815, et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever in a natural condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, including without limitation, those involving the preservation and enhancement of native species and conservation purposes of this Easement.

2. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

(a) To preserve and protect the conservation values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and to otherwise enforce the terms of this Easement; provided that Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the habitat conservation purposes of this easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

(d) All mineral, air and water rights required to protect and to sustain the biological resources of the easement lands.

(e) All present and future development rights.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the habitat conservation purposes of this Easement is prohibited. Without limiting the generality of the foregoing, unseasonal watering, use of herbicides, rodenticides, or weed abatement activities, incompatible fire protection activities and any and all other uses which may adversely affect the preservation purposes of this Easement are prohibited. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the biological values of the land. Grantor shall not authorize the use by Grantor, Grantor's agents, or any third party of off-road vehicles, grazing or surface entry for exploration or extraction of minerals.

4. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited herein and are not inconsistent with the purpose of this Easement.

5. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within fifteen (15) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a fifteen (15) days period, fail to begin curing such violation with the fifteen (15) day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances required immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of Civil Code section 815, et seq., are incorporated herein by this reference and this grant is made subject to all of the rights and remedies set forth therein. If at any time in the future Grantor or any subsequent transferee uses or threatens to use such lands for purposes not in conformance with the stated conservation purposes contained herein, notwithstanding Civil Code 815 et seq., the California Attorney General has standing as the interested party in any proceeding affecting this Easement.

5.1 Costs of Enforcement. Any costs incurred by the prevailing party in action taken to enforce the terms of this Agreement, including, without limitation, costs of suit and attorneys' fees shall be borne by the loser of any such action.

5.2 Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the

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event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

**5.3 Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

**6. Access.** This agreement does not convey a general right of access to the public; however, access for scientific research and interpretive purposes shall be reserved to the Grantee or to the designee of the Grantee.

**7. Costs of Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind including transfer costs, costs of title and documentation review, expenses incurred from other state agency reviews, and costs related to the ownership, operation, upkeep, and maintenance of the Property.

**7.1 Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

**7.2 Hold Harmless.** Grantor shall hold harmless, indemnify and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expense, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties, and (2) the existence or administration of this Easement. Grantee shall hold harmless, indemnify, and defend Grantor and its members, directors, officers, employees, agents, and contractors and their heirs, personal representatives, successors and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expense, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or death of any person, or physical damages to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties, and (2) the existence or administration of the Easement.

**7.3 Condemnation.** The habitat conservation purposes are presumed to be the best and most necessary public use as defined at CCP section 1240.680 notwithstanding CCP section 1240.690 and 1240.700.

**8. Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under Civil Code section 815, et seq. (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out and notice of such restrictions

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shall be recorded in the county where the property is located. In the event the Grantee makes an assignment of this easement in accordance with this Paragraph, and that organization is subsequently deemed not to qualify under section 170(h), or any successor provision then applicable, and the Grantor is subject to additional taxes or penalties because of this disqualification, then the Grantee shall reimburse the Grantor for such taxes, penalties and costs.

9. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the intent to transfer of any interest at least fifteen (15) days prior to the date of such transfer. Grantee shall have the right to approve all subsequent transfers to insure that all subsequent claimants or transfers have notice of the included restrictions. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

10. Estoppel Certificates. Upon request by Grantor, Grantee shall within fifteen (15) days execute and deliver to Grantor any document, including estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

11. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: E.I. DuPont de Nemours  
Corporate Real Estate  
P. O. Box 80011  
Wilmington, DE 19880-0011

To Grantee: Department of Fish and Game  
Region 2  
Rancho Cordova, California

Department of Fish and Game  
Legal Affairs Division  
1416 Ninth St., 12th Floor  
P. O. Box 944209  
Sacramento, CA 95814-2090

or to such other address as either party from time to time shall designate by written notice to the other.

12. Recordation. Grantor shall promptly record this instrument in the official records of Contra Costa County, California and immediately notify the Grantee through the mailing of a conformed copy of the recorded easement. Grantee may rerecord it at any time as may be required to preserve its rights in this Easement.

### 13. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose Civil Code section 815, et seq. if any provision in this

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Instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(e) No forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Successors. The Covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(g) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(h) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties, each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS WHEREOF Grantor and Grantee have entered into this Easement the day and year first above written.


GRANTOR: E.I. DUPONT DE NEMOURS  
AND COMPANY

GRANTEE: CALIFORNIA DEPARTMENT  
OF FISH AND GAME

By:



Title:



By:



Title:

FISH AND GAME WARREN 379

Nov. 18. 2008 4:22PM

No. 1611 P. 7.

STATE OF Delaware )  
COUNTY OF New Castle )

On December 23, 1956, before me, the undersigned Notary Public, personally came and appeared William A. Sullivan, who being first duly sworn, deposed and said that he is Man. Corporate Real Estate, of E.I. DuPont de Nemours and Company, a Delaware corporation and that he executed and delivered the above and foregoing instrument by authority of the board of directors of said corporation, and he acknowledged that the said instrument is the free act and deed of said corporation, executed for the purposes and consideration therein expressed.

Julie B. Dawson  
Notary Public

Julie B. Dawson, Notary Public  
My Commission Expires January 16, 1996

LEGAL DESCRIPTION

Lauritzen Yacht Harbor  
DuPont Property Mitigation Area

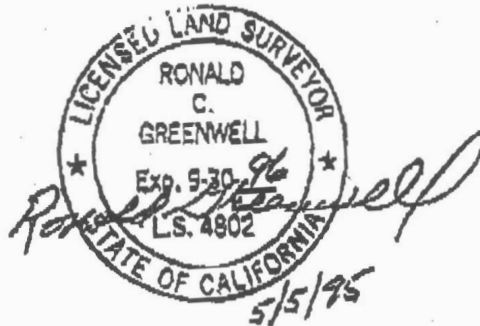
Conservation Easement

A portion of the Northwest 1/4 of Section 22, Township 2 North, Range 2 East, Mount Diablo Base and Meridian, described as follows:

A portion of that certain parcel of land described as Parcel One in the deed from Helen L. Diethelm, et al., to E.I. du Pont de Nemours and Company recorded July 26, 1955 in Book 2578 of Official Records at Page 378 in the Office of the County Recorder of Contra Costa County, described as follows:

Beginning on the east line of the right-of-way described as Strip 2 reserved in the deed from Pacific Gas and Electric Company to E.I. du Pont de Nemours and Company recorded July 9, 1957 in Book 3010 of Official Records at Page 476 in the Office of the County Recorder of Contra Costa County at the northwest corner of the right-of-way described in the deed from E.I. du Pont de Nemours and Company to Pacific Gas and Electric Company recorded April 5, 1961 in Book 3839 of Official Records at Page 172 in the Office of the County Recorder of Contra Costa County; thence from said point of beginning and along said east line and northerly prolongation thereof North 0° 15' 00" East, 189.60 feet to a point; thence from said point North 89° 45' 00" West, 29.89 feet to the east line of the right-of-way described as Strip 1 in the deed from E.I. du Pont de Nemours and Company to Pacific Gas and Electric Company recorded July 9, 1957 in Book 3010 of Official Records at Page 488 in the Office of the County Recorder of Contra Costa County; thence along said east line North 0° 15' 00" East, 113.40 feet to a point; thence from said point and leaving said east line South 89° 45' 00" East, 248.74 feet to a point; thence from said point South 0° 15' 00" West, 303.00 feet to the north line of said Pacific Gas and Electric Company right-of-way (3839 OR 172); thence along said north line North 89° 45' 00" West, 218.85 feet to the point of beginning.

Containing an area of 1.600 acres, more or less.



1059110  
05/04/95

Nov. 18. 2008 4:22PM - REGARDING PROPOSED STREAM OR LAKE ALTERATION

Page 1 of 1

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department and Gilbert Cosio Jr. representing Lauritzen Yacht Harbor of Sacramento, State of California, hereinafter called the operator, is as follows:

WHEREAS, pursuant to Division 2, Chapter 6 of California Fish and Game Code, the operator, on the 28th day of February 1996, notified the Department that he intends to substantially divert or obstruct the natural flow of, or substantially change the bed, channel, or bank of, or use material from the streambed of, the following water: unnamed pond, in the County of Contra Costa, State of California, S 15 T 2N R 2E.

WHEREAS, the Department (represented by Carolyn Doody) has made an inspection of subject area on the 28th day of March, 1996, and has determined that such operations may substantially adversely affect existing fish and wildlife resources including: migratory birds

THEREFORE, the Department hereby proposes measures to protect fish and wildlife during the operator's work. The operator hereby agrees to accept the following recommendations as part of his work: Numbers 11, 21 and 22 from the list of recommendations on the back of this page and the following special recommendations:

1. All work in or near the stream or lake shall be confined to the period Mar. 1, 1996 to Dec. 31, 1996

This Agreement renews Streambed alteration agreement No. II-405-94  
All mitigation measures and requirements of that agreement are binding  
in this agreement. Attach copies of this renewal to all copies of  
agreement No. II-405-94.

The operator, as designated by the signature on this agreement, shall be responsible for the execution of all elements of this agreement. A copy of this agreement must be provided to contractors and subcontractors and must be in their possession at the work site.

If the operator's work changes from that stated in the notification specified above, this agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this agreement and with other pertinent Code Sections, including but not limited to Fish and Game Code Sections 5650, 5652 and 5948, may result in prosecution.

Nothing in this agreement authorizes the operator to trespass on any land or property, nor does it relieve the operator of responsibility compliance with applicable federal, state, or local laws or ordinances.

THIS AGREEMENT IS NOT INTENDED AS AN APPROVAL OF A PROJECT OR OF SPECIFIC PROJECT FEATURES BY THE DEPARTMENT OF FISH AND GAME. INDEPENDENT REVIEW AND RECOMMENDATIONS WILL PROVIDED BY THE DEPARTMENT AS APPROPRIATE ON THOSE PROJECTS WHERE LOCAL, STATE, OR FEDERAL PERMITS OR OTHER ENVIRONMENTAL REPORTS ARE REQUIRED.

agreement becomes effective on signature of document

operator

Gilbert Cosio Jr.  
LAURITZEN YACHT HARBOR  
ENGINEERING CONSULTANT

organization

MURRAY BURN & KENLEN

MAY 10, 1996

Carolyn Doody

Department Representative

Title Fish and Game Warden 379

Department of Fish and Game, State of California

Date 3/28/96



Nov. 18, 2008 4:23PM

NO. 1611ION P. 10

Page 1 of 3

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Gilbert Cosio Jr. representing Lauritzen Yacht Harbor of Sacramento, State of California, hereinafter called the operator, is as follows:

WHEREAS, pursuant to Division 2, Chapter 6 of California Fish and Game Code, the operator, on the 21<sup>st</sup> day of July, 1994, notified the Department that he intends to substantially divert or obstruct the natural flow of, or substantially change the bed, channel, or bank of, or use material from the streambed of, the following water: unnamed pond, in the County of Contra Costa, State of California, S 15 T 2N R 2E.

WHEREAS, the Department (represented by Carolyn Doody) has made an inspection of subject area on the 8<sup>th</sup> day of August, 1994 and has determined that such operations may substantially adversely affect existing fish and wildlife resources including: migratory birds.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife during the operator's work. The operator hereby agrees to accept the following recommendations as part of his work: Numbers 13, 21 and 22 from the list of recommendations on the back of this page and the following special recommendations:

1. All work in or near the stream or lake shall be confined to the period Nov. 1, 1994 through Oct. 31, 1995

2.) SPECIAL RECOMMENDATIONS CONTINUED ON ATTACHED PAGE 2

The operator, as designated by the signature on this agreement, shall be responsible for the execution of all elements of this agreement. A copy of this agreement must be provided to contractors and subcontractors and must be in their possession at the work site.

If the operator's work changes from that stated in the notification specified above, this agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this agreement and with other pertinent Code Sections, including but not limited to Fish and Game Code Sections 5650, 5652 and 5948, may result in prosecution.

Nothing in this agreement authorizes the operator to trespass on any land or property, nor does it relieve the operator of responsibility compliance with applicable federal, state, or local laws or ordinances.

THIS AGREEMENT IS NOT INTENDED AS AN APPROVAL OF A PROJECT OR OF SPECIFIC PROJECT FEATURES BY THE DEPARTMENT OF FISH AND GAME. INDEPENDENT REVIEW AND RECOMMENDATIONS WILL PROVIDED BY THE DEPARTMENT AS APPROPRIATE ON THOSE PROJECTS WHERE LOCAL, STATE, OR FEDERAL PERMITS OR OTHER ENVIRONMENTAL REPORTS ARE REQUIRED.

This agreement becomes effective on signature of document

Operator

Gilbert Cosio Jr.  
LAURITZEN YACHT HARBOR  
ENGINEERING CONSULTANT

Organization

MURRAY BURNS & KENLEN

Nov. 1, 1994

Carolyn Doody

Department Representative

Title Fish and Game Warden 379

Department of Fish and Game, State of California

Date 10/17/94



STREAMBED ALTERATION AGREEMENT No. II-405-94

2.) This Agreement covers only those activities described in Notification No. II-405-94. This involves the fill of an isolated pond in the middle of the Lauritzen Yacht Harbor's parking area. This is comprised of 0.80 acres of open water and 0.08 acres of wetland vegetation.

3.) In order to offset project impacts, the Operator shall create one acre of freshwater marsh habitat. All mitigation measures noted in the Lauritzen Yacht Harbor Mitigation Plan submitted to the Department shall be incorporated into this Agreement, including the following requirements.

4.) The mitigation habitat shall be created prior to, or concurrent with, the filling of the pond.

5.) The monitoring period for the mitigation site shall be a minimum of five years.

6.) The success criteria for the freshwater marsh shall require the cover of dominant wetland species to equal or exceed 50 percent. If this is not achieved within the five years, monitoring and remedial measures shall continue until the 50 percent cover is obtained.

7.) The mitigation site shall be publicly recorded with specific deed restrictions that protect the wetland habitat in perpetuity. This language shall be approved by the Department prior to recording.

8.) Only clean fill material shall be used for the project.

9.) The Department reserves the right to enter the project site at any time during operations in order to ensure compliance with this agreement.

10.) This agreement does not constitute or imply the existence of any water right.




11.) Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the State. Any of these materials, placed within or where they may enter a stream, by the Operator or any party working under contract or with the permission of the Operator, shall be removed immediately.

13.) The Department reserves the right to suspend and/or revoke this agreement if the Department determines that circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. Failure to comply with the terms of this agreement.
- b. The information provided by the Operator in support of the Notification is determined to be incomplete or inaccurate.
- c. When new information becomes available to the Department representative that was not known when preparing the original terms of the agreement.
- d. The project as described in the Notification has changed or conditions affecting fish and wildlife resources change.

**Operator-**

CE   
(signature)

LAURITZEN YACHT SERVICE  
ENGINEER AG CONSULTANT

MURRAY BURNS & KIEHLER

November 1, 1924

Carolyn Doodie  
Department Representative

Fish and Game Warden 379

Department of Fish & Game,  
State of California

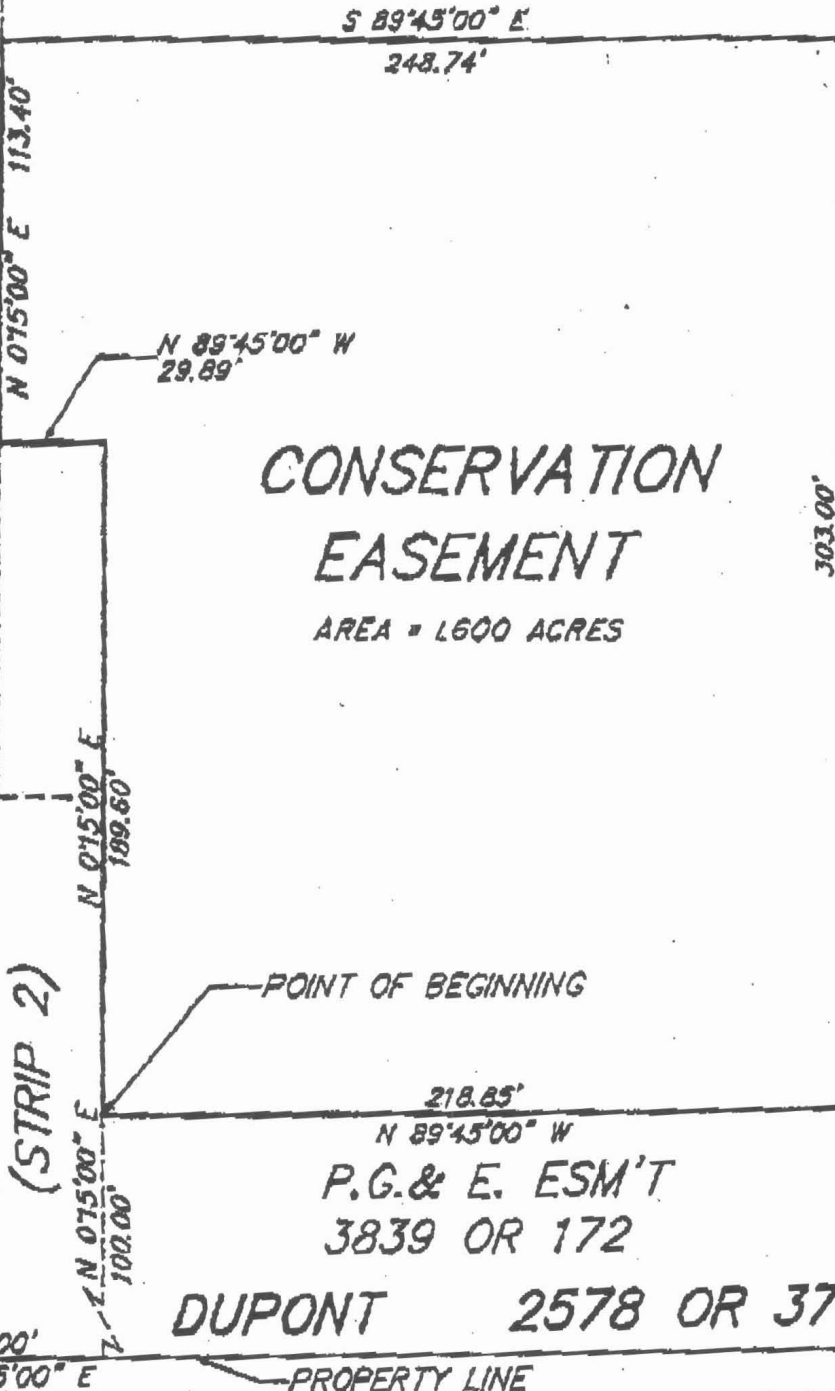
10/17/94

Nov. 18, 2008 4:24PM

BRIDGEHEAD ROAD (60' WIDE)

P.G. & E. ESM'T 3010 OR 488 (STRIP 1)

P.G. & E. ESM'T 3010 OR 476 (STRIP 2)



# CONSERVATION EASEMENT

AREA = 1600 ACRES

POINT OF BEGINNING

P.G. & E. ESM'T 3839 OR 172

DUPONT 2578 OR 378

P.G. & E. 2268 OR 596

PREPARED BY  
**PGA**  
 DONALD GREENWELL & ASSOCIATES, INC.  
 LAND SURVEYING & DEVELOPMENT  
 10 SOUTH LAKE DRIVE, SUITE 1  
 ANTIOCH, CALIFORNIA 94509  
 TEL: (510) 778-0886  
 FAX: (510) 778-7160

CONSERVATION EASEMENT  
 LAURITZEN YACHT HARBOR  
 DUPONT PROPERTY MITIGATION AREA

ANTIOCH

CALIFORNIA

DRAWN BY	RC
APPROVED BY	RC
SCALE	1"=80'
SHEET	05-05-05
REV	DATE



**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](http://WWW.ENERGY.CA.GOV)**

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

**Docket No. 09-AFC-4  
PROOF OF SERVICE  
(Revised 6/15/2010)**

**APPLICANT**

Greg Lamberg, Sr. Vice President  
RADBACK ENERGY  
145 Town & Country Drive, #107  
Danville, CA 94526  
[Greg.Lamberg@Radback.com](mailto:Greg.Lamberg@Radback.com)

**APPLICANT'S CONSULTANTS**

Douglas Davy  
CH2M HILL  
2485 Natomas Park Drive, Suite 600  
Sacramento, CA 95833  
[ddavy@ch2m.com](mailto:ddavy@ch2m.com)

**COUNSEL FOR APPLICANT**

Scott Galati  
Galati & Blek, LLP  
455 Capitol Mall, Suite 350  
Sacramento, CA 95814  
[sgalati@gb-llp.com](mailto:sgalati@gb-llp.com)

**INTERESTED AGENCIES**

California ISO  
*E-mail Preferred*  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

**INTERVENORS**

**\*Robert Sarvey**  
501 W. Grantline Road  
Tracy, CA 95376  
[Sarveybob@aol.com](mailto:Sarveybob@aol.com)

**ENERGY COMMISSION**

JAMES D. BOYD  
Vice Chair and Presiding Member  
[jboyd@energy.state.ca.us](mailto:jboyd@energy.state.ca.us)

ROBERT B. WEISENMILLER  
Commissioner and Associate Member  
[rweisenm@energy.state.ca.us](mailto:rweisenm@energy.state.ca.us)

Kourtney Vaccaro  
Hearing Officer  
[KVaccaro@energy.state.ca.us](mailto:KVaccaro@energy.state.ca.us)

**\*Felicia Miller**  
Siting Project Manager  
[fmiller@energy.state.ca.us](mailto:fmiller@energy.state.ca.us)

Kevin Bell  
Staff Counsel  
[kbell@energy.state.ca.us](mailto:kbell@energy.state.ca.us)

Jennifer Jennings  
Public Adviser  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

### DECLARATION OF SERVICE

I, Mary Finn, declare that on June 18, 2010, I served and filed copies of the Attached OGS Wetland E TM updated June 2010. 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: [\[http://www.energy.ca.gov/sitingcases/contracosta/index.html\]](http://www.energy.ca.gov/sitingcases/contracosta/index.html). The document has 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:**

- ☒ sent electronically to all email addresses on the Proof of Service list;
- ☐ by personal delivery;
- ☐ 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:**

- ☒ **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](mailto: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.

  
\_\_\_\_\_  
Mary Finn