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## LETTER OF TRANSMITTAL

TO: DON HANKINS  
USFWS

SUBJECT: CALPINE Mitigation  
EBRPD Comments

SUBJECT: 6 - Pages + FAX Cover

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EAST BAY REGIONAL



PARK DISTRICT



January 4, 2002

Mr. Doug Davy  
 Project Manager  
 Foster Wheeler Environmental Corporation  
 3947 Lennane Drive, Suite 200  
 Sacramento, CA 95834

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Dear Mr. Davy,

Pat O'Brien  
General Manager

Included is a list of technical comments from me and Mark Taylor, Supervisor of Hayward Regional Shoreline, on the *Wetland Mitigation Plan for the Russell City Energy Center* (the "Plan"). These comments are specific to the Plan and do not represent the entirety of comments from the East Bay Regional Park District (the "District") on the proposed energy center. This submission includes editorial and substantive comments related to the Plan and also includes comments on the *Predator Perching Deterrent and Monitoring Plan*.

Additionally, District staff has received a copy of the letter from the Regional Water Quality Control Board (RWQCB) dated January 3, 2002, on the mitigation plan. In general, we agree with the comments presented by the RWQCB that address the lack of substantial detail from which to judge success and adequacy of the Plan.

1. Comments specific to the Wetland Mitigation Plan:

- a. Page 9, 1<sup>st</sup> paragraph under Hydrology: The document shows no detail of the "containment curbing" that will adequately address the 100-year storm event. Therefore, it is difficult to judge its adequacy.
- b. Page 9, 2<sup>nd</sup> paragraph under Hydrology: What are the parameters under which the water quality will be judged before release?
- c. Page 11, under "Area 1" and "Area 2": the document does not include salt marsh harvest mouse (SMHM) as a species for which habitat is provided. The entire area, with the exception of perhaps the seasonal pond and panes, is SMHM habitat. This omission generates a misconception of the existing value of this portion of the WMA parcel and potentially, the impacts resulting from the restoration and RCEC facility construction and operation.
- d. Page 12, 1<sup>st</sup> paragraph under Habitat and Species Composition: the last line, "However, surveys in March...", appear to suggest that the applicants

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- surveyed the mitigation parcel in the Spring for rare plants, or, are you extrapolating from the plant surveys on the power plant site?
- e. Page 16, 2nd paragraph under E. Present and Proposed Uses: The Freshwater marsh should be included as one of the "Other important natural resources..." in the last line.
  - f. The document flip flops between Hayward Regional Shoreline Park and Hayward Shoreline Regional Park. The correct term should be *Hayward Regional Shoreline*.
  - g. Page 26, 2nd paragraph: *Spartina* should be changed to *Spartina alterniflora* in this and the proceeding paragraph to identify the specific non-native species of concern.
  - h. Page 26, under B. Monitoring Plan: It is impossible to determine if "20%" increase in "*native species cover or pickleweed*" is adequate as a success criteria without seeing the details of baseline surveys and maps showing the distribution and density of the existing habitat.
  - i. Page 27: Project Funding. Does "implementation" of the project include the anticipated five-year monitoring period or will this responsibility be endowed to the District? I believe that a \$400,000 endowment will not satisfy the needs of managing this parcel. Management must also include at a minimum, public safety, predator management, meetings and coordination with other agency staff, development of management agreements and annual reports, financial accounting and reporting, mosquito abatement costs, levee repair, dredging, patrol, litter removal and contingency efforts.
  - j. Page 6, 3<sup>rd</sup> paragraph under Hydrology: The statement, "The site itself currently drains into the adjacent Waste Management Property and the City of Hayward storm water retention pond". The City of Hayward property (north of the flood control channel) contains a seasonal pond that collects rainwater, not storm water and is (hydrologically) separated from the Waste Management parcel by a low berm. The Waste Management parcel drains through a drainage inlet into the Flood Control channel. The seasonal pond has no drains or storm water inlets. A storm water retention pond is designed and managed for the holding of storm water and that shallow seasonal pond has never been specifically managed for anything. It does provide habitat for shorebirds and waterfowl.
  - k. Page 11, Under "Existing Functions and Values of Mitigation Area, Area 1, second line: portions of the City of Hayward storm water retention pond," see above comments as they relate to correctly identifying the *seasonal pond*, not *storm water retention pond*.
  - l. Page 14, 2<sup>nd</sup> paragraph: EBRPD trapping records for the salt marsh harvest mouse (SMHM) at Hayward Shoreline are all from the SMHM preserve which is 100% pickleweed habitat. While there is published data supporting the use of upland/wetland ecotones and transitional areas, the SMHM is primarily found in diked and tidal marshes dominated by pickleweed.

- m. Page 14, 1<sup>st</sup> paragraph: Add. A Burrowing Owl was seen and photographed nesting in July of 1990 in the flood control channel by Mark Taylor. It was seen foraging in the upland area of Area 2 in the proposed mitigation parcel. Enhancement of this habitat could benefit this species.
- n. Page 14, 2<sup>nd</sup> paragraph under Hydrology: The Caltrans ditch does not connect to Area 2 as is suggested in the document. The ditch stops at the start of the industrial development also known as the Stone Works business.
- o. Page 14, under Hydrology: another reference to the Storm water retention pond should reflect its true nature as a seasonal pond that holds rainwater.
- p. Page 14, under hydrology, last sentence in 3<sup>rd</sup> paragraph: A sentence needs to be added. " Presently, the addition of salt water to the Mouse Preserve is accomplished only on an as-needed basis. This requires the Park District to shut off flow to the Freshwater marsh, and drain the central channel (which requires the opening and closing of 7 tide gates) in order to bring in salt water to the preserve.
- q. Page 15, last sentence of the 1<sup>st</sup> paragraph: "The identity of four 36" tide gates on the southwestern edge of the property and a 48" tide gate on the northwest portion of the property" is incorrect. The four new 36" combination slide/flap gates are located on two 36" culverts, one at each end, not four 36" culverts as is suggested. Also a 36" slide gate is located on the northwest portion of the preserve, not a 48". Figure 3-1 should reflect these changes.
- r. Page 18, 4<sup>th</sup> paragraph under III. Goals of Mitigation: see above comment related to culvert size and number.
- s. Page 19, 2<sup>nd</sup> full paragraph: The statement does not clearly distinguish between the southern levee of the Alameda County Flood Control Channel and the northern levee.
- t. Page 20, Figure 3-1: There are a number of errors. As suggested above, please change the culvert number and sizes to reflect current and planned conditions. The 36" tide gate in the corner of the SMHMP empties into the *central channel*, which is marked incorrectly as the HARD channel. The Caltrans ditch is indicated in blue and is shown connecting to the seasonal freshwater pond. This has not been discussed in the document and would not be desirable, as the Caltrans ditch has very questionable water quality.
- u. Page 25, under A. Implementation Plan: One very important item that has not been mentioned in the plan is the need for a detailed hydrological analysis that will have to be performed in conjunction with the HARD Marsh Restoration Project as the two projects are hydrologically linked. This analysis is critical in order to determine if there will be enough tidal exchange available to satisfy the RCEC project's mitigation goals (i.e. flood the property). If the HARD Marsh plan is not successful in meeting its goals of getting enough water to adequately flush the Mouse Preserve, there will not be enough water to flood the Mitigation parcel. It is possible that change orders will have to be made to the HARD Marsh project, and

- additional permits may be necessary, to develop adequate engineering to satisfy the hydrological goals of the RCEC mitigation plan.
- v. Page 26, 3rd paragraph: *Spartina* and the aquatic herbicide Rodeo. The statement about Rodeo being banned in the Bay Area is incorrect. Rodeo is the only herbicide in California registered for use in controlling *Spartina alterniflora*. The Regional Water Quality Control Board now requires the agencies or interested parties controlling *S. alterniflora* in the Bay Area to obtain a National Pollutant Discharge Elimination System (NPDES) permit before using any herbicide within the *Waters of the United States*.
  - w. Page 26, 3<sup>rd</sup> paragraph, last line: common names for *Lepidium latifolium* and *Dittrichia graveolens* are perennial pepperweed and stinkwort respectively. Both are non- native species and are not grasses.
  - x. Page 27, under D. Management Plan: If the long-term management plan includes the maintenance dredging of channels, who will be responsible for obtaining those permits? Long-term maintenance conditions and permits must be developed within the associated agency permits and five year Monitoring Plan.

## 2. Predator Perching Deterrents

- a. Page 1, 1<sup>st</sup> paragraph under Background: Within the statement "*Burrowing owls have been documented as having taken shorebirds chicks*", please change this reference to (J. DiDonato, East Bay Regional Parks District, pers.comm.).
- b. Page 2, top line: within what radius is the applicant claiming that there are "numerous structures providing nesting and roosting"?
- c. Page 2, 2<sup>nd</sup> paragraph: There is adequate information regarding the effects of predators on prey from which to determine potential effects of additional perches. For specific examples regarding burrowing owls and peregrine falcons preying on least terns, see: "Leora Feeney, Alameda Naval Air Station, CA Least Tern Monitoring reports, and Leora Feeney, Oakland Airport Least Tern Monitoring reports (ph. 510-522-8525); contact Mr. Ron Jurek, DFG, Sacramento (916-654-4267) and Mr. Brian Walton, UCSC Predatory Bird Research Group (408-459-2466) regarding raptors preying on endangered species.
- d. Page 2, 3<sup>rd</sup> bullet point: Some birds of prey occupy specialized niches.
- e. Page 3, Monitoring Plan:
  - 1. The initial pre-construction monitoring should identify and monitor the raptorial perching on all available locations. (Choosing an arbitrary six sites, especially by a person unfamiliar with the area, is not a well-designed method). Based on the survey results of the first 30 day period, six to ten sites can be identified as the primary potential perch sites, most likely to support raptor and scavenger perching. All additional perching birds should be recorded during the surveys.

2. Emphasis of the survey should be within the months of March through August, which represents the bulk of the nesting season for the species at risk. During this period, the survey should include visitations at a minimum of 3 days per week.
  3. Time of surveys should include periods within 1 hour after dawn since this is the time most raptor hunting occurs, in addition to the 4 time periods identified. 15 minutes is not an efficient amount of time to survey. This should be increased to 30-45 minutes per period.
  4. All perches and perching raptors/scavengers (and the subset of perches regularly monitored) should be identified and plotted on an aerial photo.
  5. All raptor observations should be included in the final analysis since aerial raptors may perch out of site and not be observed during the survey periods. Incidental information (i.e. locations of whitewash and pellets) should be plotted on the aerial photo.
- f. Page 4, 3<sup>rd</sup> bullet point from top: "Six sites nearest the shoreline...". Are these sites within the project footprint or elsewhere?
- g. Page 4, Point 3: what is the plan for active roosting areas? Will they be detected and managed if necessary?
- h. Appendix A: The list of expected raptors should **not** include osprey (fish predator only), bald eagle (highly unlikely to occur). Add to the list the sharp-shinned hawk, the Cooper's hawk, the merlin and golden eagle that do occur and are known bird predators. Additionally, add white-tailed kite to the list. It is a SMHM predator and may take advantage of additional perches near the harvest mouse habitat.
3. Noise Analysis and Monitoring Plan
- a. Page 2, 3<sup>rd</sup> paragraph: While the species of concern in the Russell City project vicinity do not utilize "song" for breeding purposes, they do utilize vocalizations necessary for breeding and courtship, and as a means to contact juveniles during feeding and dependant stages. In fact, due to the density of vegetation in the surrounding marsh and the lack of visual cues, vocalizations of the clapper rail are the most important aspect of communication for this species. The recognition of an individual's vocalization is the primary process by which least terns and other members of the *Laridae* family (gulls and terns) identify dependant young when returning with food.
  - b. Page 6, Monitoring Program (MP):
    1. Under point 1, the MP fails to clarify the number of monitoring periods but instead quotes "periodic" monitoring as a rate of monitoring periods. *Bi-weekly*
    2. Under point 2, the MP does not identify the specific location(s) or the conditions that identify "areas where current wildlife activity is evident".

3. The MP does not identify which species or group of species that is targeted by the monitoring and the level(s) of sensitivity of different groups of species.
4. Under point 3, the MP does not define the rate of visitation for monitoring purposes but refers to "*periodic visits*".
5. Under point 3, the MP does not identify the model of the noise meter to be used during monitoring (in order to determine its efficiency in recording noise levels).
6. Under point 3, the footnote identifying the "qualified biologist" refers to one "*familiar with the identification of raptorial bird species*". This definition is a footnote obviously copied from the Raptor Perching Deterrent Plan and does not adequately address a biologist's need for familiarity with the group of species utilizing the habitats to be monitored. The biologist should have an extensive amount of experience with shorebirds and other local shoreline species, which will help in the identification of both disturbances and natural behaviors.
7. The MP relies on the analysis of data collected during the construction period and one year after operations have begun. To what will this data be compared? No control or pre-construction data is available. Control and preliminary site data should be collected as a requirement for this plan.
8. Under point 4, the MP fails to identify the "*specific and significant effects*". What effects would generate a notification and how would this affect the construction and operation schedule?

Thank you for the opportunity to comment on these documents. Please feel free to contact me regarding any of the information. Mark and I will be attending the meeting on Tuesday, January 8<sup>th</sup> in Sacramento.

Sincerely,

Joseph E. DiDonato  
Wildlife Program Manager