Appendix L: Solano County Airport Land Use Commission Documents

Michael Brandman Associates

COMMENTS ON
SOLANO COUNTY AIRPORT LAND USE COMMISSION STAFF REPORT

OCTOBER 31, 2007

1.1 - Introduction

This document concerns the Solano County Airport Land Use Commission (ALUC) Staff Report calculations, dated October 11, 2007, regarding the Walters Road West Project. The project site is located within the boundaries of the Travis Air Force Base Land Use Compatibility Plan (LUCP). Because the proposed project requires a discretionary land use approval, the Solano County ALUC is required to determine whether the project is consistent with the policies of the Travis Air Force Base LUCP.

The Solano County ALUC was originally scheduled to consider this matter on October 11, 2007. The ALUC issued a Staff Report several days prior to the meeting, stating that the Walters Road West Project was "substantially consistent" with the Travis Air Force Base LUCP policies. However, prior to the hearing, ALUC staff informed the City of Suisun City that its previous, publicly issued recommendation would be changing, and that staff would now be recommending a finding of inconsistency. Because of the short notice, the City of Suisun City requested a continuance. The City's request was granted, and the application for consistency is now scheduled to be heard on November 8, 2007. The following is supplemental information prepared by Michael Brandman Associates addressing the October 11 ALUC staff calculations.

1.2 - Background

1.2.1 - Project Location

The project site is located in Suisun City, Solano County. The project site consists of an approximately 20.8-acre, triangular-shaped lot occupying the northwestern quadrant of the intersection of State Route 12 (SR-12) and Walters Road. The site is bounded by Petersen Road (north), Walters Road (east), and SR-12 (south).

1.2.2 - Project Description

The proposed project consists of the development of approximately 227,019 square feet of commercial uses consisting of a Wal-Mart Supercenter, a sit-down restaurant, and a gas station with convenience store and car wash. The Wal-Mart Supercenter would total approximately 214,919 square feet and include all store components, including a garden center, drive-thru pharmacy, and

grocery. The sit-down restaurant, tenanted by a national chain, would be located west of the Wal-Mart Supercenter and total 8,000 square feet. Alternative uses for the outparcel occupied by the sit-down restaurant include a single-tenant retailer with a use complementary to the Wal-Mart Supercenter, or a multi-tenant building with a variety of general retail and casual food service uses, also complementary to the Wal-Mart Supercenter. A 12-pump gas station with an associated 4,100-square-foot convenience store (possibly co-branded with a national quick-service restaurant) and an automated car wash would be located in the southern portion of the project site near the intersection of SR-12 and Walters Road. A total of 1,014 parking spaces would be provided onsite, with 921 spaces assigned to the Wal-Mart Supercenter, 69 spaces assigned to the restaurant, and 24 spaces assigned to the gas station.

The Draft EIR available on the City of Suisun City's website (www.suisun.com) provides a complete project description.

1.3 - Travis Air Force Base Land Use Compatibility Plan

The Travis Air Force Base LUCP governs land uses around the air base under the jurisdictions of Solano County, Fairfield, Suisun City, Vacaville, and Dixon. The LUCP established six compatibility zones: A, B1, B2, C, D, and Height Review Overlay. Each compatibility zone sets forth specific requirements governing land use, including maximum usage intensity limits, prohibited land uses, and development conditions.

1.3.1 - Zone C Requirements

The Walters Road West project site is located within Zone C of the Travis Air Force Base LUCP. Zone C establishes the following restrictions for non-residential land uses:

- No more than an average of 75 persons per acre for the entire site at any given time
- No more than 300 persons per any individual acre at any given time
- Prohibition on schools, day-care centers, libraries, hospitals, and nursing homes

1.4 - Solano County ALUC Staff Report Calculations

Prior to the October 11, 2007 hearing, a copy of the attachments to the Solano County ALUC Staff Report was provided to the City. The attachments included the calculations used to determine the people-per-acre calculations. These calculations analyzed the proposed project's consistency with the Zone C requirements. The Staff Report attachment calculations found that the proposed project exceeded the maximum site usage intensity (75 persons per acre) and the maximum individual acre usage intensity (300 persons per any individual acre) requirements and, therefore, concluded that the proposed project was inconsistent with the Travis Air Force Base LUCP. Michael Brandman Associates hereby is providing comments on the Staff Report attachment calculations and recommending alternative calculations.

1.4.1 - Staff Report Attachment Calculations

The Staff Report attachment calculations used the Parking Ordinance (or, more accurately, parking capacity) methodology to calculate maximum site usage intensity and maximum individual acre usage intensity. This methodology's procedures are established in Appendix C of the *Solano County Airport Land Use Compatibility Review Procedures* document and uses onsite parking spaces as the basis for calculating the number of people on a given site.

Maximum Site Usage Intensity

As previously mentioned, the project site is 20.8 acres; therefore, multiplying this acreage by 75 persons per acre yields a maximum site usage intensity of 1,560 persons. Citing information provided in the Draft EIR, the Staff Report attachment indicated that there would be 180 employees on the project site for all uses. Assuming an average of 1.2 employees per vehicle, 150 parking spaces would be occupied by employee parking, leaving the remaining 864 spaces for customer parking. The Staff Report attachment assumed that each customer vehicle would contain an average of 1.7 persons, which, when applied to the 864 spaces, would equal 1,469 persons. In total, the Staff Report attachment concluded that a maximum of 1,649 people would be onsite at one time, which equates to an average of 79 persons per acre. The maximum usage intensity limit is 75 persons per acre and, therefore, the City was informed that ALUC staff would conclude that the project was inconsistent with this requirement.

Maximum Individual Acre Usage Intensity

The Staff Report attachment indicated that the Wal-Mart Supercenter would exceed the 300-person-per-acre limit. Citing information provided in the Draft EIR, the Staff Report attachment indicated that there would be 150 employees in the Wal-Mart Supercenter, who would occupy 71 parking spaces assigned to the store, leaving 850 spaces for customers. Assuming all 850 customer spaces were filled with vehicles carrying an average of 1.7 customers each, 1,445 customers would be in the store. In total, the Staff Report attachment concluded that a maximum of 1,595 people would be in the store at one time, which equates to an average of 346 persons per individual acre. The maximum usage intensity limit is 300 persons per individual acre; therefore, the Staff Report attachment concluded the project was inconsistent with this requirement.

1.4.2 - Comments on Calculations

Michael Brandman Associates believes that the persons-per-vehicle assumptions appear to overstate the maximum number of people onsite at a given time. Michael Brandman Associates considers the following assumptions made in the Staff Report calculations to be unreasonable and offers alternative assumptions:

- **Assumptions for Persons per Vehicle:** The assumption of 1.7 customers per vehicle is an estimate provided by Kimley-Horn and Associates. As noted in the accompanying memo, other traffic consultants provided lower estimates of customers per vehicle; therefore, there is disagreement among experts concerning reasonable estimates. The estimates provided by the

traffic consultants range from 1.2 to 1.7 persons per vehicle. The two examples used in Appendix C of the *Solano County Airport Land Use Compatibility Review Procedures* document both use a factor of "1.5 people per space." The estimate of 1.5 persons per vehicle is just above the mid-point of the range identified by the consultants; therefore, it is considered a reasonable estimate of the average vehicle occupancy.

- **Distinction Between Employee and Customer Parking:** The Staff Report makes a distinction between persons per vehicle for employee versus customer parking. The report includes person-per-vehicle assumptions by category: 1.2 employees per vehicle and 1.7 customers per vehicle. Although it is logical to use a lower index for employee parking and higher index for customer parking, there are a number of scenarios in which employee and customer-per-vehicle rates could differ from 1.2 persons and 1.7 persons, respectively. Therefore, the use of a uniform persons-per-vehicle estimate would avoid this potential problem. Moreover, the use of a uniform persons-per-vehicle estimate is consistent with the sample calculation for the parking ordinance methodology provided in Appendix C of the *Solano County Airport Land Use Compatibility Review Procedures* document.

Alternative Maximum Site Usage Parking Calculation

Michael Brandman Associates believes the following factors and assumptions should be used in the calculations for determining project consistency with the maximum site usage intensity requirement of no more than 75 people per acre for the project site.

The Staff Report that went out with the agenda prior to the October 11, 2007 hearing identified the holiday shopping season as the time of maximum site usage; however, it did not account for the parking spaces that would be occupied by the Wal-Mart Supercenter seasonal outdoor sales area during that time. As discussed on Page 3-13 of the Draft EIR, up to 40 spaces would be used for outdoor seasonal sales, which, during the holidays, would consist of Christmas tree sales. Therefore, onsite parking would be reduced from 1,014 spaces to 974 spaces.

In addition, for the reasons previously mentioned, Michael Brandman Associates does not believe that there should be distinctions between employee and customer vehicle occupancy rates. Instead, a uniform rate of 1.5 persons per vehicle should be used in the calculations. This number is slightly above the midpoint within the range of estimates provided by various traffic consultants in the aforementioned memo. In addition, 1.5 persons per vehicle is the assumption provided in the sample calculation for the parking ordinance methodology provided in Appendix C of the *Solano County Airport Land Use Compatibility Review Procedures* document.

With these changes taken into account, the maximum site usage calculation is as follows:

Maximum people permitted onsite per acre (average): 75 persons per acre
Maximum people permitted onsite (average): 75 persons x 20.8 acres = 1,560 persons
Total parking onsite: 1,014 spaces

Reduction for outdoor seasonal sales: 1,014 spaces - 40 spaces = 974 spaces
Number of people onsite: 974 spaces x 1.5 persons per vehicle = 1,461 customers
Maximum usage intensity: 1,461 persons/20.8 acres = **70.24 persons per acre**

As shown above, this alternative parking calculation yields an average of 70.24 persons per acre, which is less than the 75 person-per-acre maximum site-usage-intensity limit for Zone C.

Alternative Maximum Individual Acre Usage Parking Calculation

Michael Brandman Associates believes the following factors and assumptions should be used in the calculations for determining project consistency with the maximum individual acre usage intensity requirement of no more than 300 people per acre.

For the reasons previously mentioned, 40 spaces should be deducted from the Wal-Mart Supercenter parking total because of seasonal outdoor sales, and each vehicle on the project site should be assumed to contain 1.5 persons.

With these changes taken into account, the maximum individual acre usage calculation for the Wal-Mart Supercenter is as follows:

Maximum people permitted per individual acre: 300 persons per acre
Total spaces assigned to Wal-Mart Supercenter: 921 spaces
Reduction for outdoor seasonal sales: 921 spaces - 40 spaces = 881 spaces
Number of people in store: 881 spaces x 1.5 persons per vehicle = 1,321 persons
Maximum individual acre usage intensity: 1,321 persons/4.6 acres = **287.2 persons per acre**

As shown above, this alternative parking calculation yields a maximum individual acre usage intensity of 287.2 persons per acre, which is less than the 300 person-per-acre maximum individual acre limit for Zone C.

1.5 - Concluding Remarks

For the reasons presented in this document, Michael Brandman Associates believes that persuasive substantial evidence exists demonstrating that the proposed project complies with the Travis Air Force Base LUCP's maximum site usage intensity and maximum individual acre usage intensity requirements. Therefore, Michael Brandman Associates respectfully requests that the Solano County ALUC adopt a finding asserting that the proposed project is consistent with the Travis Air Force Base LUCP.

More broadly, the proposed project is consistent with the Solano County ALUC's overriding objectives of protecting public health, safety, and welfare from aviation hazards and protecting Travis Air Force Base from incompatible land uses. The proposed project's commercial retail uses are similar in nature to other commercial land uses near Travis Air Force Base and do not possess any characteristics that would create hazards to aviation. Moreover, the project site has been

contemplated for commercial retail development for more than two decades and is considered a suitable location for commercial land uses because of its adjacency to a major intersection. Therefore, Michael Brandman Associates believes that the proposed project would not have any affect on the operational future of Travis Air Force Base.

Michael Brandman Associates

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Date: October 31, 2007

To: Ron Glas, Solano County Airport Land Use Commission

From: Grant Gruber, Michael Brandman Associates

Subject: Person-Per-Vehicle Estimates

Michael Brandman Associates contacted several traffic-consulting firms to obtain person-per-vehicle estimates. All three traffic-consulting firms have experience preparing traffic studies for Wal-Mart and commercial retail projects in California. Below are the responses provided by each firm:

- **Kimley-Horn and Associates, Inc.:** Jim West stated that vehicle occupancy rates for a Wal-Mart-type land use vary by time of day, but indicated that 1.7 persons per vehicle was a reasonable average.
- **DKS Associates:** Mark Spencer and Cesar Espitia indicated that there are no studies establishing industry-accepted, person-per-vehicle rates by land use.
- **Omni-Means LTD, Engineers and Planners:** Paul Miller stated that vehicle occupancy rates are specific to location and that there are no studies establishing industry-accepted, person-per-vehicle rates by land use; however, he indicated that he would support an estimate of 1.2 to 1.4 persons per vehicle. Omni-Means has provided its comments on letterhead, which is enclosed with this memo.

In summary, there are no industry-accepted, person-per-vehicle rates than can be readily applied to the Walters Road West project, and the ranges of persons-per-vehicle estimates provided by traffic consultants vary between 1.2 persons and 1.7 persons per vehicle.

omni · means
ENGINEERS · PLANNERS

MEMORANDUM

To:	Michael Brandman Associates	**Date:**	October 31, 2007
Attn:	Jason Brandman	**Project:**	Vehicle Occupancy Rates
From:	Todd Tregenza		
Re:	Vehicle Occupancy	**Job No.:**	
		File No.:	AVO Rates, Suisun City
CC:	Grant Gruber		

Vehicle Occupancy Rates: Suisun City

There are many different methods used in deriving AVO rates. According to the Federal Highway Administration, these include trip diaries, surveys, in-person observation and many emerging high-tech methods such as infrared radiation and video[1]. Due to the wide variety of methodologies used to estimate AVO rates, we have presented a range of rates in lieu of a single figure.

Regional, county-based data was obtained from the Bureau of Transportation Statistics[2]. These findings are presented in **Table 1** below. As you can see, there are rates for AVO by county of production and attraction. In Solano County, a production AVO of 1.29 and an attraction AVO of 1.303 was found for Home-Based Shop. For all Solano County trips, production AVO is 1.244 and attraction AVO is 1.245.

TABLE 1
COUNTY-BASED BAY AREA AVO RATES, 1990 BTS

County of Production/ Attraction	Home-Based Work	Home-Based Shop (Other)	Home-Based Social/Rec	Home-Based School	Non-Home-Based (Origin)	Total
San Francisco	1.186 1.255	1.229 1.238	1.383 1.432	1.702 1.760	1.263 1.248	1.263 1.289
San Mateo	1.109 1.088	1.206 1.215	1.468 1.451	2.412 2.483	1.190 1.202	1.236 1.230
Santa Clara	1.073 1.070	1.263 1.263	1.562 1.563	2.676 2.598	1.195 1.194	1.247 1.243
Alameda	1.106 1.095	1.246 1.239	1.439 1.424	2.216 2.132	1.208 1.212	1.247 1.240
Contra Costa	1.084 1.078	1.208 1.205	1.423 1.432	2.456 2.618	1.223 1.218	1.238 1.243
Solano	1.124 1.085	1.290 1.303	1.387 1.363	2.918 3.126	1.202 1.206	1.284 1.280
Napa	1.105 1.109	1.265 1.250	1.423 1.463	2.244 2.174	1.160 1.165	1.244 1.245
Sonoma	1.070 1.050	1.190 1.189	1.660 1.618	2.685 2.450	1.226 1.225	1.242 1.237
Marin	1.082 1.081	1.128 1.122	1.334 1.370	2.061 2.491	1.138 1.135	1.173 1.183
Region	1.097 1.097	1.232 1.232	1.471 1.471	2.373 2.373	1.206 1.206	1.244 1.244

SOURCE: Table 5.4 "County Level Vehicle Occupancy," Bureau of Transportation Statistics

[1] "Improved Vehicle Occupancy Data Collection Methods." Office of Highway Information Management. 1997. Federal Highway Administration: Battelle Memorial Institute. 31 Oct. 2007. <http://www.fhwa.dot.gov/ohim/veh-occ.pdf>

[2] "County Level Vehicle Occupancy." Section 5.4. San Francisco Bay Area 1990 Regional Travel Statistics. 1990. Bureau of Transportation Statistics. 02 Nov. 2007. <http://ntl.bts.gov/DOCS/SF.html>

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Appendix M: Trip Count Adjustments for Schools

Suisun City Wal-Mart Supercenter EIR
Existing AM

Turning Movement Report
Schools AM

Volume	Northbound			Southbound			Eastbound			Westbound			Total
Type	Left	Thru	Right	Left	Thru	Right	Left	Thru	Right	Left	Thru	Right	Volume
#1 Marina Boulevard & Rio Vista Road (SR-12)													
Base	44	42	18	7	29	625	132	674	5	26	1587	30	3219
Added	11	17	50	0	20	47	28	144	5	61	234	0	617
Total	55	59	68	7	49	672	160	818	10	87	1821	30	3836
#2 Sunset Avenue & Pintail Drive													
Base	13	237	33	113	239	17	20	22	10	86	73	150	1013
Added	30	0	0	43	0	0	0	0	43	0	0	82	198
Total	43	237	33	156	239	17	20	22	53	86	73	232	1211
#3 Sunset Avenue & Rio Vista Road (SR-12)													
Base	72	25	7	65	33	320	207	449	35	19	1238	72	2542
Added	0	0	0	0	0	98	64	130	0	0	197	0	489
Total	72	25	7	65	33	418	271	579	35	19	1435	72	3031
#4 Emperor Drive & Pintail Drive													
Base	44	17	31	4	49	46	24	79	36	50	132	4	516
Added	0	0	36	0	0	0	0	34	0	37	68	0	175
Total	44	17	67	4	49	46	24	113	36	87	200	4	691
#5 Emperor Drive & Rio Vista Road (SR-12)													
Base	147	13	13	15	14	198	55	441	39	14	1069	7	2025
Added	77	0	0	0	0	37	36	42	52	0	84	0	328
Total	224	13	13	15	14	235	91	483	91	14	1153	7	2353
#6 Woodlark Drive & Pintail Drive													
Base	17	0	13	0	0	0	0	92	15	52	120	0	309
Added	0	0	0	0	0	0	0	48	6	12	65	0	131
Total	17	0	13	0	0	0	0	140	21	64	185	0	440
#7 Woodlark Drive & Rio Vista Road (SR-12)													
Base	0	0	0	0	0	127	0	469	0	0	963	1	1560
Added	0	0	0	0	0	17	0	42	0	0	67	0	126
Total	0	0	0	0	0	144	0	511	0	0	1030	1	1686
#8 Fulmar Drive & Pintail Drive													
Base	10	0	13	0	0	0	0	76	7	2	58	0	166
Added	14	0	0	0	0	0	0	17	12	0	28	0	71
Total	24	0	13	0	0	0	0	93	19	2	86	0	237
#9 Fulmar Drive/Driveway & Petersen Road													
Base	0	0	0	33	0	0	0	0	0	0	0	21	54
Added	0	0	0	3	0	0	0	0	0	0	0	3	6
Total	0	0	0	36	0	0	0	0	0	0	0	24	60

Suisun City Wal-Mart Supercenter EIR
Existing AM

Volume	Northbound			Southbound			Eastbound			Westbound			Total
Type	Left	Thru	Right	Left	Thru	Right	Left	Thru	Right	Left	Thru	Right	Volume
#10 Walters Road & Air Base Parkway													
Base	195	101	475	5	100	124	137	828	169	177	314	12	2637
Added	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	195	101	475	5	100	124	137	828	169	177	314	12	2637
#11 Walters Road & East Tabor Avenue													
Base	59	584	1	30	318	98	183	5	74	1	2	4	1359
Added	31	0	0	0	0	23	14	0	25	0	0	0	93
Total	90	584	1	30	318	121	197	5	99	1	2	4	1452
#12 Walters Road & Bella Vista Drive													
Base	0	455	20	24	344	25	98	4	9	77	1	91	1148
Added	0	0	6	5	0	4	4	11	0	14	14	7	65
Total	0	455	26	29	344	29	102	15	9	91	15	98	1213
#13 Walters Road & Pintail Drive													
Base	12	399	0	0	388	42	76	0	43	0	0	0	960
Added	21	3	0	0	7	7	3	0	14	0	0	0	55
Total	33	402	0	0	395	49	79	0	57	0	0	0	1015
#14 Walters Road & Montebello Drive													
Base	4	356	34	26	397	8	24	0	24	138	0	31	1042
Added	0	3	3	14	7	0	0	0	0	7	0	21	55
Total	4	359	37	40	404	8	24	0	24	145	0	52	1097
#15 Walters Road & Petersen Road													
Base	6	383	29	23	523	13	4	7	22	32	2	7	1051
Added	3	6	0	0	14	0	0	0	3	0	0	0	26
Total	9	389	29	23	537	13	4	7	25	32	2	7	1077
#16 Walters Road & Main Driveway													
Base	0	418	0	0	569	0	0	0	0	0	0	0	987
Added	0	9	0	0	18	0	0	0	0	0	0	0	27
Total	0	427	0	0	587	0	0	0	0	0	0	0	1014
#17 Walters Road & South Driveway													
Base	0	418	0	0	569	0	0	0	0	0	0	0	987
Added	0	9	0	0	18	0	0	0	0	0	0	0	27
Total	0	427	0	0	587	0	0	0	0	0	0	0	1014
#18 Walters Road & Rio Vista Road (SR-12)													
Base	98	94	4	130	25	414	176	273	20	0	452	148	1834
Added	49	0	0	0	0	18	9	0	33	0	0	0	109
Total	147	94	4	130	25	432	185	273	53	0	452	148	1943

Suisun City Wal-Mart Supercenter EIR
Existing PM

Turning Movement Report
Schools PM

Volume Type	Northbound Left	Northbound Thru	Northbound Right	Southbound Left	Southbound Thru	Southbound Right	Eastbound Left	Eastbound Thru	Eastbound Right	Westbound Left	Westbound Thru	Westbound Right	Total Volume
#1 Marina Boulevard & Rio Vista Road (SR-12)													
Base	26	76	92	31	37	243	489	1868	22	52	1019	28	3983
Added	3	14	41	0	11	11	12	60	3	34	58	0	247
Total	29	90	133	31	48	254	501	1928	25	86	1077	28	4230
#2 Sunset Avenue & Pintail Drive													
Base	21	545	110	23	393	44	43	54	23	89	59	163	1567
Added	15	0	0	21	0	0	0	0	14	0	0	20	70
Total	36	545	110	44	393	44	43	54	37	89	59	183	1637
#3 Sunset Avenue & Rio Vista Road (SR-12)													
Base	67	68	19	237	55	290	615	1265	110	68	708	181	3683
Added	0	0	0	0	0	30	34	67	0	0	61	0	192
Total	67	68	19	237	55	320	649	1332	110	68	769	181	3875
#4 Emperor Drive & Pintail Drive													
Base	76	72	137	5	34	33	58	215	74	38	139	4	885
Added	0	0	14	0	0	0	0	18	0	9	16	0	57
Total	76	72	151	5	34	33	58	233	74	47	155	4	942
#5 Emperor Drive & Rio Vista Road (SR-12)													
Base	110	20	25	10	19	134	287	1065	172	21	812	20	2695
Added	25	0	0	0	0	9	14	26	28	0	27	0	129
Total	135	20	25	10	19	143	301	1091	200	21	839	20	2824
#6 Woodlark Drive & Pintail Drive													
Base	14	0	6	0	0	0	0	230	73	40	133	0	496
Added	0	0	0	0	0	0	0	23	1	3	21	0	48
Total	14	0	6	0	0	0	0	253	74	43	154	0	544
#7 Woodlark Drive & Rio Vista Road (SR-12)													
Base	0	0	0	0	0	96	0	1100	0	0	757	17	1970
Added	0	0	0	0	0	4	0	26	0	0	22	0	52
Total	0	0	0	0	0	100	0	1126	0	0	779	17	2022
#8 Fulmar Drive & Pintail Drive													
Base	12	0	12	0	0	0	0	117	22	21	106	0	290
Added	8	0	0	0	0	0	0	13	9	0	11	0	41
Total	20	0	12	0	0	0	0	130	31	21	117	0	331
#9 Fulmar Drive/Driveway & Petersen Road													
Base	0	0	0	27	0	0	0	0	0	0	0	51	78
Added	0	0	0	1	0	0	0	0	0	0	0	1	2
Total	0	0	0	28	0	0	0	0	0	0	0	52	80

Suisun City Wal-Mart Supercenter EIR
Existing PM

Volume	Northbound			Southbound			Eastbound			Westbound			Total
Type	Left	Thru	Right	Left	Thru	Right	Left	Thru	Right	Left	Thru	Right	Volume
#10 Walters Road & Air Base Parkway													
Base	205	154	390	5	177	199	110	510	219	547	961	17	3494
Added	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	205	154	390	5	177	199	110	510	219	547	961	17	3494
#11 Walters Road & East Tabor Avenue													
Base	76	542	3	7	677	259	190	0	81	2	0	17	1854
Added	12	0	0	0	0	9	10	0	13	0	0	0	44
Total	88	542	3	7	677	268	200	0	94	2	0	17	1898
#12 Walters Road & Bella Vista Drive													
Base	10	482	105	88	581	91	67	2	9	77	6	72	1590
Added	0	0	4	2	0	1	1	9	0	3	7	2	29
Total	10	482	109	90	581	92	68	11	9	80	13	74	1619
#13 Walters Road & Pintail Drive													
Base	62	520	0	0	570	97	77	0	62	0	0	0	1388
Added	9	2	0	0	2	2	2	0	11	0	0	0	28
Total	71	522	0	0	572	99	79	0	73	0	0	0	1416
#14 Walters Road & Montebello Drive													
Base	25	536	130	63	533	36	13	2	12	84	4	33	1471
Added	0	2	2	11	2	0	0	0	0	2	0	9	28
Total	25	538	132	74	535	36	13	2	12	86	4	42	1499
#15 Walters Road & Petersen Road													
Base	33	665	68	44	571	14	9	6	12	31	4	17	1474
Added	1	4	0	0	3	0	0	0	1	0	0	0	9
Total	34	669	68	44	574	14	9	6	13	31	4	17	1483
#16 Walters Road & Main Driveway													
Base	0	766	0	0	614	0	0	0	0	0	0	0	1380
Added	0	5	0	0	4	0	0	0	0	0	0	0	9
Total	0	771	0	0	618	0	0	0	0	0	0	0	1389
#17 Walters Road & South Driveway													
Base	0	766	0	0	614	0	0	0	0	0	0	0	1380
Added	0	5	0	0	4	0	0	0	0	0	0	0	9
Total	0	771	0	0	618	0	0	0	0	0	0	0	1389
#18 Walters Road & Rio Vista Road (SR-12)													
Base	42	64	7	144	84	386	493	515	92	2	346	209	2384
Added	18	0	0	0	0	4	5	0	21	0	0	0	48
Total	60	64	7	144	84	390	498	515	113	2	346	209	2432

Appendix N: Biological Resources Documents

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January 8, 2008

Our File Number: 15CM-130472

Suzanne Bragdon
City Manager
City of Suisun City
City Hall
701 Civic Center Boulevard
Suisun City, CA 94585

Re: Draft Environmental Impact Report for the Walters Road West Project

Dear Ms. Bragdon:

We are writing this letter on behalf of our client, Wal-Mart Stores, Inc. ("Wal-Mart" or "the applicant"). In the summer of 2006, Wal-Mart submitted an application to the City of Suisun City ("City") proposing to develop the 20.8-acre triangular-shaped site on the northwest corner of State Route 12 and Walters Road (Assessor's Parcel Number 0173-280-440) with approximately 227,019 square feet of commercial uses, including a Wal-Mart Supercenter, gas station, and sit-down restaurant ("Project"). The City prepared a Draft Environment Impact Report ("DEIR") for the Project, which the City released for public comment on September 20, 2007.

After the City prepared and released the Project DEIR, we obtained additional information regarding the biological impacts of the Project that we would like to share with the City. This information does not identify a new substantial environmental impact or increase the severity of an impact, but rather provides supplemental information about an existing impact that could result in minor modifications and clarifications to the Final EIR for the Project. It will not change the significance of the biological impact conclusions contained in the DEIR and, in fact, provides substantial evidence to support a finding that the biology impacts from the Project will be less severe than previously anticipated. We obtained this information during the preparation of the following applications: (1) an application for a Section 404 Individual Permit from the United States Army Corps of Engineers ("Army Corps"); (2) a Section 7 consultation request with the United States Fish and Wildlife Service ("USFWS"); (3) an application for a Streambed Alteration Agreement with the California Department of Fish and Game ("CDFG"); and (4) an application to the San Francisco Bay Regional Water Quality Control Board ("RWQCB").

In addition to providing the new information referenced above, we also would like to present some information and clarifications regarding several of the proposed mitigation measures in the Biology Section of the DEIR. We believe, based on information obtained by our biologist and our review of the DEIR, that several of the measures are not proportional to the impacts being

mitigated or need clarification. The proposed mitigation should be tailored to meet regulatory performance standards taking into consideration the current condition of the site and the quality of the mitigation to be procured. As a result of the more detailed site specific information we have obtained, we believe that the mitigation proposed in the DEIR can, and should be, tied more specifically to the performance standards rather than relying on general mitigation ratios. A thorough discussion of this issue is included below and evidence to support our recommendations is included in the attached aforementioned applications and Biological Assessment prepared for the applications, which are provided under Attachment 1.

Finally, we have included more detailed information about the proposed mitigation bank where the Project likely will purchase credits to satisfy its obligations under CEQA and under other various federal and state laws.

Mitigation Bank Information:

The Project has identified the North Suisun Mitigation Bank as having available, appropriate credits for the Project to purchase. The North Suisun Mitigation Bank is located north of Highway 12 and south of the Travis Air Force Base, or in the immediate vicinity of the Project site.[1] The Bank has credits available for vernal pool creation, vernal pool preservation and seasonal wetlands. The superior land at this mitigation bank will ensure the viability of the vernal pool crustaceans and the functions and values of the wetlands. The North Suisun Mitigation Bank also provides habitat for Contra Costa Goldfields, Heckard's Peppergrass, Alkali Milk-Veth, Brittlescale, and Carquinez Goldbush.

As discussed in detail below, the Project site contains only isolated, low-functioning features so mitigating off-site at the North Suisun Mitigation Bank or another agency approved mitigation bank with similar quality habitat will provide the highest quality mitigation. Land in the mitigation bank, or similar agency approved mitigation bank is superior in quality, better managed and monitored, and actively preserved in comparison to the Project site. Purchasing credits at such a mitigation bank will ensure no-net-loss of wetlands or critical habitat as well as ensure that the ability of species to survive and recover will not be diminished.

The Army Corps recently proposed a new mitigation rule that supports the approach of mitigating off-site in a mitigation bank and demonstrates the long-term, higher value of aquatic resources and species habitat found at such a site as compared to the resources located on the Project site.[2] The proposed new rule encourages the expansion of mitigation banking because it is a reliable and verifiable method of wetland replacement. According to the Army Corps, unlike other

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[1] Information on the North Suisun Mitigation Bank provided under Attachment 2.

[2] Proposed rule provided under Attachment 3.

forms of wetland replacement, the wetland restoration credits generated by banks are tied to demonstrated achievement of project goals. Banks are a multi-resource agency process that brings more expertise and collaboration into the planning, approval, and oversight of banked wetland restoration. Banks are more likely than traditional wetland replacement projects to achieve desired long-term outcomes and to create wetland sites that are protected in perpetuity by organizations dedicated to resource conservation. Furthermore, the new rule was specifically designed to improve the Army Corp's ability to ensure no-net-loss of wetlands.

Mitigation Measures BIO-1a & b:

Proposed Mitigation Measures BIO-1a & b are designed to mitigate impacts to special status plant species. As discussed in the DEIR, the only special status plant species found on-site during previously-conducted focused plant surveys[3] is the pappose tarplant. This mitigation measure requires the applicant to conduct another survey and if pappose tarplant is found on-site, the applicant must develop and implement a salvage and recovery plan for individuals prior to initiation of construction activities. We concur that this mitigation measure will reduce any impacts to the pappose tarplant to a less than significant level.

The mitigation measure also provides for alternative mitigation in the event the USFWS and/or the CDFG reject the previously-conducted focused plant surveys. In that case, the applicant must either conduct new focused surveys or assume the presence of all of the special status plant species for which the Project site has the potential habitat to support such species. If the applicant assumes the presence of all special status plant species, then the applicant must purchase credits at an off-site mitigation bank at no less than a 3:1 ratio. Given the site conditions and the previous surveys, we believe that this mitigation measure is not proportional to the Project's potential impacts to the special status plants and is not necessary to reduce this potential impact to a less than significant level.

Given its location, the Project site has the potential for the following federally-listed plant species to occur on-site: Contra Costa goldfields, San Joaquin Valley orcutt grass, and Showy Indian clover. As described in the Biological Assessment, however, the Project site is not suitable for San Joaquin Valley orcutt grass or Showy Indian clover. The site is also only marginally suitable for Contra Costa goldfields because it lacks isolated mound and intermound complexes and the predominance of native plant species. (Biological Assessment p. 2 and CDFG Streambed Alteration Agreement Application p. 12.). While a 2.4-acre portion of the Project site does fall within designated critical habitat for Contra Costa goldfields, as discussed in more detail below, this area does not qualify as critical habitat because it does not contain the Primary Constituent

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[3] As noted on page 4.3-25 of the DEIR, focused plant surveys were conducted in the spring and summer of 2006 and the spring of 2007

Elements for Contra Costa goldfields. Moreover, the Project site is occupied by invasive species and is largely fragmented from other suitable habitat by Walters Road and surrounding development. The marginal quality of the site is corroborated by the failure of the focused plant surveys to locate any Contra Costa goldfields. (Biological Assessment p. 3-4.) In fact, these surveys conducted substantiate the absence of these federally-listed plant species.

Several plants with a California Native Plant Society ("CNPS") listing of 1B have the potential to occur on-site. The focused plant surveys found that the only plant with a CNPS-1B listing present on-site is the pappose tarplant.

Given the absence of any special status plant species on-site coupled with the fact that even if the plant species were present on-site, the site would represent a relatively isolated occurrence of the species in a setting which is largely surrounded by urban development and therefore unlikely to represent a long-term viable population, the proposed mitigation ratio of 3:1 is not proportional to the potential impact. If it were determined that the Project site contained any of the special status species or if presence of any such species was assumed, the purchase of mitigation credits at a USFWS and CDFG approved mitigation bank at a ratio of at least 1:1 will more than offset any impact to plant species. The purchase of credits from a mitigation bank would ensure that the special status plant species are preserved and managed in perpetuity at a site which is appropriate for such species. As the USFWS has repeatedly recognized in such documents as *Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon* (U.S. Fish and Wildlife Service, Dec. 2005)("*Recovery Plan*"[4]), the long term viability of such species is greatly enhanced when large blocks of suitable and occupied habitat is preserved and managed in perpetuity. This allows for protection of the species from loss, fragmentation, degradation, and alteration of habitat, the primary threat to such species. (*Recovery Plan* at III-7.) In contrast to the proposed mitigation bank credits, the marginal habitat found on the Project site is not protected from loss, is currently fragmented from existing populations and is subject to degradation from adjacent incompatible uses.

As such, the DEIR should be revised to ensure that impacts to special status plant species are fully offset and the Project would not diminish the survival and recovery of the species by providing a minimum mitigation ratio of 1:1 if the applicant presumes the presence of all special status plant species. This is adequate to reduce any potentially significant impact to special status plant species to a less than significant level. Information and data collected in the Biological Assessment supports this conclusion.

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[4] The *Recovery Plan* is available at
http://www.fws.gov/sacramento/es/recovery_plans/vp_recovery_plan_links.htm.

To tailor the mitigation to meet regulatory performance standards taking into consideration the current condition of the site and the quality of the mitigation to be procured and tying the mitigation specifically to the performance standards rather than relying on general mitigation ratios, we propose the following language be inserted into the final EIR to ensure that all potential impacts to special status plant species are mitigated to a level of less than significant:

> *Mitigation BIO-1b*: In the event that CDFG or USFWS rejects some or all of the previously performed special status plant focused surveys, the Project shall either (1) retain a qualified botantist to perform new focused surveys to reconfirm the conclusions of the original surveys; or (2) assume the presence of ~~all of the~~ special-status plant species at issue and carry out offsite mitigation for such species through the purchase of credits at an agency-approved mitigation bank at ~~no less than a 3:1 ratio through an agency-approved mitigation bank~~ (a level determined by CDFG and/or USFWS to be sufficient to fully offset impacts to the special status plants and not diminish the survival and recovery of the species, but at a minimum equal to or greater than at a 1:1 ratio, which ensures the Project will not have a substantial adverse effect on the species or substantially reduce the number or restrict the range of the species.

Mitigation Measure BIO-3:

Proposed Mitigation Measure BIO-3 is designed to mitigate for impacts to riparian habitat and other sensitive natural communities. It requires the applicant to mitigate for the loss of riparian habitat by purchasing credits at an off-site mitigation bank at no less than a 1:1 ratio.

As explained in the DEIR, the Project site contains an approximately 1,025-foot long drainage ditch that is a water of the United States and a water of the state. The ditch conveys runoff from the residential neighborhood on the north side of Petersen Road south via a culvert under State Route 12 that ultimately empties into Hill Slough south of the Project site. (DEIR p. 4.3-2.[5]) The ditch has been colonized by disturbance-tolerant forbs and emergent vegetation. (DEIR p. 4.3-2.) Wetland vegetation dominates the bed of the ditch and the banks of the ditch are vegetated with disturbance-tolerant, non-native forbs and grasses. (DEIR p. 4.3-2.) The ditch provides vegetative cover for wildlife within the ditch, but not along the top of the bank. (DEIR p. 4.3-2.)[6]

Although the DEIR correctly describes the ditch as set forth above, based upon further investigation, it is factually incorrect to conclude that the Project will have a potentially significant impact on "riparian habitat." The Army Corps of Engineers concluded that the ditch was

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[5] All references to the DEIR are provided under Attachment 4.

[6] Pictures of the ditch are in the CDFG Streambed Alteration Agreement application, provided under Attachment 1.

a seasonal wetland, not "riparian habitat," which means this conclusion is factually inaccurate. Moreover, "riparian habitat" under federal and state regulatory schemes means "a type of habitat occurring along the bank of a water course or other water body typically consisting of water tolerant trees and shrubs such as alder, cottonwood, and willows. Many riparian areas occur as bands of vegetation along a water course, often called riparian corridors."[7] As the DEIR states, there is no vegetative cover for wildlife along the top of the bank. (DEIR p. 4.3-2.) As a result, the Project would have a potentially significant impact on wetlands (i.e., the habitat in the ditch) but not on "riparian habitat."

This proposed change corrects an unintended drafting error in the text of the Draft EIR that created an impression that the drainage ditch met the regulatory definition of "riparian habitat." It is not a substantive change in the conclusions of the EIR's analysis. As such, the DEIR should be revised to acknowledge the Project will have no impact on "riparian habitat" as none exists on the site and remove Mitigation Measure BIO-3 since no mitigation for "riparian habitat" is required. Any mitigation to address the culvertization and loss of the drainage feature is set out in Mitigation Measure BIO-4.

> ~~*Mitigation BIO-3*: Loss of riparian habitat within the drainage ditch will be mitigated by the applicant's purchase of credits at an agency-approved mitigation bank within the region. The chosen mitigation bank must have credits available for riparian habitats. Final mitigation ratios will be negotiated with regulatory agencies during the permit acquisition process, but in any event, the level of compensation must be commensurate with no less than a 1:1 replacement ratio. Alternatively, if the USACE, CDFG, and/or the RWQCB require mitigation in some other format as part of its permitting mandates, that mitigation may be substituted if it can be demonstrated that it is at least commensurate with a 1:1 replacement ratio.~~

Mitigation Measure BIO-4:

Proposed Mitigation Measure BIO-4 is designed to mitigate for impacts to wetlands. It requires the applicant to mitigate for the loss of seasonal wetlands by purchasing credits at an off-site mitigation bank at no less than a 2:1 ratio. While we understand that there are many cases where a 2:1 ratio would be appropriate to ensure that a Project's impacts to aquatic resources is fully mitigated, we do not believe this holds true here given our further investigation into the functions and values of the site's wetlands and additional specification regarding the Project's proposed mitigation measures. This information, which is described below, indicates that a 2:1 mitigation ratio is not proportional to the Project's impact given the low functionality and value of the wetlands on-site and the high value of the proposed mitigation.

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[7] http://www.coastal.ca.gov/wetrev/wetglos.html.

As stated in the DEIR, the Project site contains approximately 2.946 acres of jurisdictional seasonal wetlands. Further investigation of the site's wetlands has shown that these features provide only minimal functions and values. Functions of wetlands can be defined broadly as all the processes and manifestations of processes that occur in wetlands (National Research Council 1995). Most of the functions described for wetlands can be grouped into three broad categories: hydrologic, biogeochemical, and maintenance of habitat and food webs (National Research Council 1995). Society determines the value of wetland functions although not all functions are necessarily assigned a value by society. The value that society assigns is usually associated with goods and services that society recognizes. Societal perceptions of a function can change over time although the particular function remains constant.

The functionality and value of a wetland is based on several factors used by the Army Corps to evaluate the magnitude of a project's impact on a wetland and to determine the appropriate mitigation for an impact on the wetland. The following is a discussion of these factors and corresponding information regarding the wetlands on the Project site. (See Army Corps Section 404 Individual Permit Application p. 9-13 for further information regarding the functions discussed below.)

1) Ground Water Discharge: The Project is likely to have minor effects to ground water recharge as a result of the loss of wetlands. However, the amount of ground water recharge that the wetlands are currently able to perform is limited due to the perching of water above the surface. While the ditch does convey runoff from the Project site south to Hill Slough it, and the other wetland features, only allows for seasonal water percolation - year round ground water recharge does not occur.

2) Flood Storage and Desynchronization: The Project is not anticipated to have any changes to flood water storage. The existing ditch stores and transports stormwater during winter storm events and during the summer due to irrigation runoff. The Project would culvert the existing ditch and maintain these functions.

3) Sediment/Toxicant Retention: The Project will reduce the sediment/toxicant retention functions of the site. The watershed for the wetlands consists of residential development to the north of Petersen Road. The ditch filters some amount of sediment and toxicants from stormwater runoff but the ditch's linear and narrow characteristics limit this function.

4) Nutrient Retention/Transformation: The Project will result in the loss of all nutrient retention and transformation qualities within the wetland drainage channel and seasonal wetlands.

5) Nutrient Retention/Export: The Project site will no longer function in the production of nutrients.

6) Aquatic Diversity/Abundance: The Project would permanently impact aquatic diversity and abundance as the site does support seasonal wetland habitat in which a limited variety of aquatic organisms reside.

7) Fish/Shellfish Habitat: The Project would not impact fish/shellfish habitat since the wetlands on-site are intermittent and shallow and lack they appropriate habitat for fish/shellfish.

8) Wildlife Habitat: The Project site overall supports three habitat types: disked non-native annual grasslands, ditch, and seasonal wetland. These habitats may support nesting and foraging raptor species, small rodents, and other common urban wildlife. All habitat would be lost, but given the size of the Project site and the abundant habitat southeast of the Project site, any wildlife using the Project site could easily relocate to southeast of the Project site.

9) Endangered Species: Vernal pool crustaceans have been identified with the potential to occur on-site. Dry- and wet-season surveys for large branchiopods did not find any evidence that these species occupy the wetlands on the Project site and therefore they have been determined to be absent. A 2.4-acre isolated sliver of the Project site, however, overlaps with USFWS designated critical habitat for the vernal pool fairy shrimp and the vernal pool tadpole shrimp. Focused surveys were also conducted for the Delta green beetle since they typically occupy the margins of vernal pools. Focused surveys did not find suitable habitat for the beetle and the density and species composition of the grassland plant community on-site, along with the limited occurrence of the necessary soils and playa pools, makes it impossible for the species to breed on-site. Further, no endangered or federally-listed plant species were identified in the Project area and the site does not contain the Primary Constituent Elements to qualify for protected critical habitat (a portion of the site lies within designated USFWS critical habitat for Contra Costa goldfields).

10) Consumptive Recreation: The Project site is not subject to general public access and/or recreational use.

11) Non-Consumptive Recreation: The Project is not anticipated to have any impacts to non-consumptive recreation.

12) Uniqueness/Heritage: The Project site is not known to have any cultural or historic resources.

13) Ecological Integrity/Fragmentation: The Project would not impact ecological integrity or fragment wildlife habitat as development already exists on two of the Project's three sides.

To offset the impacts to these low quality wetlands, the Project is proposing to purchase wetland mitigation credits from the North Suisun Mitigation Bank, a high value wetland area that is managed and maintained by Wildlands. As is described further above, this mitigation bank has undergone rigorous review by federal and state resource agencies and provides high value and high functioning wetlands that will be maintained and managed in perpetuity.

Given that the functions and values of the site's wetlands are of very low quality, purchase of mitigation credits from the North Suisun Mitigation Bank will ensure that the functions and values of the wetlands are fully replaced. Replacement at a 1:1 ratio will ensure that there is a no-net loss of aquatic resources in the region in terms of both acreage and functions and values. Purchasing credits at this ratio would reduce the Project's impacts on wetlands to a less than significant level.

To tailor the mitigation to meet regulatory performance standards taking into consideration the current condition of the site and the quality of the mitigation to be procured and tying the mitigation specifically to the performance standards rather than relying on general mitigation ratios, we request that the EIR be revised to include the following mitigation measure:

> *Mitigation BIO-4*: Loss of seasonal wetland habitat within the property boundaries shall be mitigated by the applicant's purchase of credits at the North Suisun Mitigation Bank or other equivalent ~~an~~ agency approved mitigation bank in the region. The chosen mitigation bank must have credits available for seasonal wetlands or vernal pool/grassland habitats. The level of compensation must be ~~commensurate with no less than a 2:1 replacement ratio, given the sensitive nature of these wetlands as potential vernal pool invertebrate habitat~~ sufficient to fully replace the functions and values of the wetlands and ensure no net loss of wetland habitat in terms of both acreage and functions and values or at a ratio no less than a 1:1 ratio, which will reduce any substantial adverse effect on seasonal wetland habitat. The purchasing of offsite wetland habitat at the North Suisun Mitigation Bank or an alternative agency approved mitigation bank will provide for the long-term conservation of higher-quality wetland habitat that may otherwise be developed and contribute to the protection of the region's aquatic resources.
>
> Alternatively, if the USACE, CDFG and/or the RWQCB require mitigation in some other format as part of its permitting mandate, the mitigation may be substituted if it can be demonstrated that it is ~~at least commensurate with a 2:1 replacement ratio~~ sufficient to fully replace the functions and values of the wetland and ensure no net loss of wetland habitat in terms of both acreage and functions and values, or at a replacement value no less than 1:1, which will reduce any substantial adverse effect on seasonal wetland habitat.

Mitigation Measure BIO-5b:

Proposed Mitigation Measure BIO-5b is designed to mitigate for impacts to critical habitat. It requires that if the USFWS determines that the Project would adversely affect critical habitat areas then the applicant must mitigate for the loss of critical habitat by purchasing credits at an agency approved mitigation bank at no less than a 3:1 ratio.

As stated in the DEIR, the southeastern portion of the Project site is within USFWS designated critical habitat for vernal pool tadpole shrimp, vernal pool fairy shrimp, and Contra Costa goldfields. (DEIR p. 4.3-31.) Not all areas within designated critical habitat are, however, considered critical habitat. Only those areas that contain the Primary Constituent Elements required by the species—those physical and biological features, as defined in the Federal Register, that a species needs to survive and reproduce—are considered critical habitat. Therefore, of the 2.4-acre area that falls within the USFWS designation, only approximately 0.059 acres may qualify as critical habitat and only for vernal pool crustaceans.

> Contra Costa Goldfields: The Project site does not contain the Primary Constituent Elements for Contra Costa goldfields. This is so because: (a) the two on-site aquatic features that fall within the designated critical habitat area are not characterized by the isolated mounds and intermound complex required for critical habitat but rather the wetlands are characterized by linear swales that empty into a drainage ditch that carries water off-site; and (b) only one of the two on-site aquatic features contain depressional features, including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years (the other aquatic feature contains only some of the aforementioned parameters). Additionally, focused plant surveys failed to locate any Contra Costa goldfields. (Biological Assessment p. 3-4.)

> Vernal Pool Crustaceans: The vast majority of the 2.4-acre designated critical habitat area consists of disked upland areas that do not contain any habitat for vernal pool crustaceans. Of the two aquatic features within the 2.4-acre area, one is a ditch that does not contain any of the Primary Constituent Elements for either vernal pool fairy shrimp or vernal pool tadpole shrimp. In fact, the ditch carries urban nuisance runoff year round and as a result, it has emergent wetland vegetation even in the driest years. Moreover, this feature is not a source of hydrology for the remaining wetlands on the site, which are isolated from the ditch by an area of fill. The other aquatic feature may provide some habitat for vernal pool crustaceans but ground

disturbing activities and potentially short inundation periods reduce the potential for large branchiopod use of the feature.[8] Therefore, this feature, which is approximately 0.059 acres, may meet the criteria for critical habitat for vernal pool fairy shrimp and vernal pool tadpole shrimp. (Biological Assessment p. 12-14.)

The Project will not result in any direct effects to, or jeopardize, the survival of the vernal pool fairy shrimp or vernal pool tadpole shrimp since none exist on the site. Further, since the site is not currently occupied and since the Project proposes mitigation that would result in a net increase in vernal pool crustacean habitat, the Project will not appreciably diminish the chances of survival or appreciably diminish the chances of recovery of either species. Given the project will have at most minimal impacts to critical habitat, the applicant proposes to purchase credits at an off-site mitigation bank at the following ratios to mitigate the loss of critical habitat:

> Critical Habitat Wetlands Preservation	3:1
> Critical Habitat Wetlands Creation	1:1
> Critical Habitat Uplands	1:1

As the USFWS determined in *the Programmatic Formal Endangered Species Consultation on Issuance of 404 Permits for Projects with Relatively Small Effects on Listed Vernal Pool Crustaceans within the Jurisdiction of the Sacramento Field Office, California* (Service File No. 1-1-96-F-1)("*Programmatic Consultation*"[9]), impacts to less than 1 acre of vernal pool crustacean habitat can be mitigated through the purchase of creation and preservation credits at an approved mitigation bank. The Programmatic Consultation requires that relatively minor impacts to vernal pool crustacean habitat can be mitigated through the purchase of preservation credits at an approved mitigation bank at a 2:1 ratio and the purchase of 1:1 creation credits at a mitigation bank. Alternatively, mitigation can be provided through preservation and creation of habitat at a site other than an approved mitigation bank if it is provided at a higher level.[10] The project is proposing to

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[8] The feature did not pond during the 2006/2007 wet-season and the biologist concluded that based upon his experience, the feature is unlikely to pond for a sufficient duration in even the best rainfall years.

[9] The *Programmatic Consultation* is provided under Attachment 5.

[10] We are not suggesting that the Project will be approved under the programmatic consultation as that document does not cover potential impacts to critical habitat. However, the discussion in the *Programmatic Consultation* is evidence of the level of mitigation required to mitigate impacts to the species and critical habitat.

mitigate impacts to critical habitat at a level higher than required in the Programmatic Consultation to ensure that any such impact is fully mitigated.

The mitigation proposed herein is consistent with the goals and objectives of the USFWS's 2005 *Recovery Plan* for vernal pool species in the Solano-Colusa Vernal Pool Region. The *Recovery Plan* identifies a recovery strategy that includes goals and objectives regarding: habitat protection; adaptive habitat management, restoration, creation, and monitoring; status surveys; and research, participation, and outreach. The *Recovery Plan* also recommends preservation of a specific percent of suitable vernal pool habitat within areas that are identified as core zones for listed species and a percentage of known occurrences within each such area. Below is a discussion of how the Project meets the goals and objectives of the *Recovery Plan*. (See Biological Assessment p. 16-18 for further discussion of this issue.)

- Habitat Protection: The Project is consistent with the *Recovery Plan's* goals and objectives regarding habitat protection. The *Recovery Plan* identifies the protection of vernal pool habitats in large blocks that include local watershed, vernal pool complexes, and appropriate upland buffers as a major component of the identified recovery strategy for vernal pool crustaceans and recommends focusing such efforts within identified core areas. The Project proposes to purchase mitigation credits from a USFWS-approved mitigation bank that is within the Solano-Colusa Core Area. The *Recovery Plan* also seeks to preserve 80% of the known occurrences of the vernal pool species. Since the Project site does not contain any species, it meets this goal as well. Finally, another goal of the *Recovery Plan* is to preserve 85% of the vernal pool fairy shrimp and 95% of the vernal pool tadpole shrimp suitable habitat. The Project will do this by offsetting the Project's impacts to the minimally potentially suitable vernal pool habitat (0.059 acres) through the purchase of creation credits at a 1:1 ratio, preservation credits at a 3:1 ratio, and upland critical habitat preservation credits at a 1:1 ratio.

- Adaptive Habitat Management, Restoration, and Monitoring: The Project is consistent with the *Recovery Plan's* goals and objectives regarding adaptive management and monitoring of vernal pool crustacean habitat. The Project proposes to purchase mitigation credits from a mitigation bank that has an approved habitat management and monitoring plan in place. Therefore, the Project will contribute to the percentage of vernal pool habitat that is actively managed for listed crustaceans within the Solano-Colusa Core Area.

- Status Surveys: The Project is consistent with the *Recovery Plan's* goals and objectives regarding the collection of data to provide measures of population viability of the listed species. By contributing to a mitigation bank, the

Project will contribute to the ability of conservation organizations to conduct multi-year assessments of localized populations of vernal pool crustaceans.

- Research: The Project is consistent with the *Recovery Plan's* goals and objectives regarding obtaining additional information to help inform the identification of recovery strategies and actions. The Project will have no impact on this research.

- Participation and Outreach: The Project is consistent with the *Recovery Plan's* goals and objectives regarding establishment of a recovery implementation team to coordinate recovery efforts. The project will have no impact on this team.

As such, the EIR should be revised to reflect the aforementioned proposed mitigation ratios. This would result in a less than significant impact to critical habitat.

To tailor the mitigation to meet regulatory performance standards taking into consideration the current condition of the site and the quality of the mitigation to be procured and tying the mitigation specifically to the performance standards rather than relying on general mitigation ratios, we suggest that the following language be inserted into the EIR:

> *Mitigation BIO-5b*: If USFWS does not concur with the request for a mapping revision for the critical habitat designation, prior to any ground-disturbing activities, USFWS shall be consulted pursuant to Section 7 for vernal pool tadpole shrimp and vernal pool fairy shrimp, and Contra Costa goldfields critical habitat designations. If USFWS determines that the project will not have an adverse effect on designated critical habitat, no further action is required. If USFWS determines that the development of the proposed project would ~~result in the adverse modification of designated critical habitat because the project site is unoccupied, no further action is required. If USFWS determines that the development of the proposed project would result in the adverse modification critical habitat areas, the project applicant shall mitigate for the loss of critical habitat by purchasing credits at an agency approved mitigation bank at no less than a 3:1 ratio.~~ adversely effect designated critical habitat for vernal pool crustaceans, the project applicant shall ensure the Project will not result in adverse modification to critical habitat for the vernal pool fairy shrimp or vernal pool tadpole shrimp by mitigating for the loss of critical habitat through the purchase of credits at an agency approved mitigation bank at a no less than 3:1 ratio for critical habitat wetlands preservation, 1:1 for critical habitat wetlands creation, and 1:1 critical habit uplands preservation or at other ratios determined by the agency to be required to ensure that the project does not appreciably diminish the chances of survival or recovery of the species or have a substantial adverse effect on the species by substantially reducing the number or restricting the range of the species.

If USFWS determines that the development of the proposed Project would adversely effect ~~result in the adverse modification of one or more designated~~ Contra Costa goldfields critical habitat ~~area~~, the Project applicant shall mitigate for the loss of critical habitat by purchasing credits at an agency-approved mitigation bank at no less than a 3:1 ratio to ensure that the Project does not appreciably diminish the chances of survival or recovery of the species or have a substantial adverse effect on the species by substantially reducing the number or restricting the range of the species.

Mitigation Measure BIO-8:

Proposed Mitigation Measure BIO-8 mitigates for impacts due to conflicts between the Project and any adopted habitat conservation plan. It requires the applicant to pay mitigation fees to the City in accordance with the Solano Multi-Species Habitat Conservation Plan.

The Solano Multi-Species Habitat Conservation Plan has not been adopted, which means the Project impacts do not meet the DEIR's standard of significance for this impact, which is "[c]onflict with an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan." (DEIR p. 4.3-24, emphasis added.) We agree that it is appropriate for the DEIR to consider and discuss the Solano Multi-Species Habitat Conservation Plan, however, the DEIR should be revised to conclude that since the Solano Multi-Species Habitat Conservation Plan has not yet been adopted, the Project cannot conflict with it, and therefore the Project will have no impact.

The DEIR should also be revised to reflect that the Project does not require mitigation to reduce the impact to a less than significant level. If the Solano Multi-Species Habitat Conservation Plan was adopted, the Project would be required to pay the fee in accordance with it, and the Project would not be required to purchase credits at off-site mitigation banks to mitigate for the specific impacts to species, wetlands, and critical habitat described above. That is the purpose of a habitat conservation plan. If this mitigation measure is not eliminated, the Project will be required to mitigate its impacts twice—once when it purchases credits at off-site mitigation banks and again when it pays the Solano Multi-Species Habitat Conservation Plan fee.

Finally, even though the Solano Multi-Species Habitat Conservation Plan has not yet been adopted, the Project is consistent with the draft Plan. The draft Plan designates the Project site for development of the type proposed and such development is authorized to take endangered, threatened, rare, and other protected species and habitats.

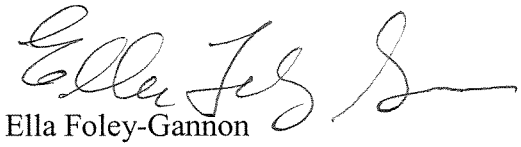
As such, the DEIR should be revised to conclude that the Project will have no impact with respect to the Solano Multi-Species Habitat Conservation Plan and Mitigation Measure BIO-8 should be removed as no mitigation is necessary.

~~*Mitigation BIO-8:* At the time building permits are sought, the applicant shall pay mitigation fees to the City of Suisun City in accordance with the provisions of the Solano Multi-Species Habitat Conservation Plan. If the plan fee program is not in place at the time building permits are sought, the applicant shall provide an equivalent fee to a City determined habitat fund.~~

* * * * * * * * * *

We thank you for your consideration of these comments and please feel free to contact us with any questions.

Very truly yours,



Ella Foley-Gannon

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:FEF\400651737.5

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Date: January 8, 2008

To: Suzanne Bragdon, City Manager

From: Robert Francisco, Michael Brandman Associates

Subject: Proposed Changes to Biological Resources Mitigation Measures

---

Michael Brandman Associates has reviewed the proposed changes to the biological resources mitigation measures contained in the Walters Road West Draft Environmental Impact Report, dated September 20, 2007 and provides the following comments:

Mitigation Measures BIO-1a & b

Based on a review of the information provided by the applicant, the habitat does not appear to support plant species beyond the papoose tarplant and therefore we concur that mitigating at a 3:1 ratio for all potential species is excessive in the event that some of the plants are presumed to be present. Taking into account temporal loss, fragmentation of habitat, and other biological factors a lower ratio can be justified from a biological perspective in the unlikely event that protocol level surveys were not accepted. The proposal by the applicant seems reasonable given the quality of the habitat.

Based on the review of the information provided, we concur with the assertion that the site does not likely support habitat for the other potentially listed plant species. Given that Contra Costa goldfields are fairly readily identifiable by a qualified botanist, we concur with the assertion that they are not likely present on site. However, we cannot say that the site is not critical habitat for the species as it is located within the boundaries of the designated critical habitat. Based on the information provided by the applicant it appears that the site does not contain the primary constituent, but the USFWS will need to determine whether the site does support the primary constituent elements and therefore constituent critical habitat. Even so, we believe that the proposed language creating new narrative performance standards, combined with a minimum ratio of one to one, will ensure that adequate mitigation will occur in the event that USFWS does determine that the primary constituents are present.

Mitigation Measure BIO-3

Based on the characterization provided by the applicant we concur that an error was made in describing the habitat along the drainage feature as riparian. As such, mitigation for riparian habitat is not appropriate.

Mitigation Measure BIO-4

Wetland functions can be quantified where wetland values are subjective. In this case, we have not reviewed any quantifiable data that documents the assertion that the functions are low. In fact, we do not believe such data is available. Rather it has been asserted that because of the nature of the features, if we were to quantify them they would likely be low. Based on our review we agree with this assertion.

Based on a more subjective analysis combined with professional opinion, MBA would concur, based on the information provided by the applicant, that these wetlands are not high value. If the actual functions were to be quantified, they would score relatively poorly. That said, the appropriate ratio is a subjective determination as to which reasonable biologists may disagree. For that reason, we are comfortable with a lower ratio (but a minimum of 1:1) but only because of the enforceable narrative performance standards that were developed as part of the recommended changes to the measure. With these new narrative standards, we regard the modified measure as being as environmentally protective as the original measure.

MBA concurs that a ratio of 1:1 or greater at an approved mitigation bank would result in a net improvement in wetland functions and values compared with the on-site wetlands that will be lost and that such a ratio would be sufficient to mitigate impacts to wetlands at a less than a significant level.

Mitigation Measure BIO-5b

Based on the biological information presented by the applicant, MBA concurs that the actual potential habitat for listed crustacean species within the designated critical habitat is less then the total 2.4 acres of Waters of the U.S. We have not independently verified these acres, but according to the applicant, the isolated feature that could support these species is quantified at 0.059 acres.

The proposed mitigation ratios have been previously established by the USFWS as appropriate and we concur.

Based on the negative surveys, it appears that the potential critical habitat located on the site is unoccupied. Dry sampling is considered accurate when conducted by a qualified biologist and given the negative findings along with the presumed short inundation period, we concur that presence in unlikely. Therefore, the applicants proposed mitigation for the likely unoccupied potential habitat area seems appropriate. As with the proposed changes to measure BIO-4, however, we are relying on the new narrative performance standard

language, combined with the modified *minimum* ratios, in order to ensure that the ultimate mitigation required will be as stringent as what was contemplated in the Draft EIR.

Mitigation Measure BIO-8

No comment as this in not a biological issue and the mitigation measure was not intended to capture other species not described in specific mitigation areas. Thus, elimination of this measure will *not* have the effect of leaving unmitigated any significant effects to any biological resources

BIOLOGICAL ASSESSMENT

FOR

CRITICAL HABITAT FOR THE VERNAL POOL TADPOLE SHRIMP AND VERNAL POOL FAIRY SHRIMP

FOR THE

WALTERS ROAD DEVELOPMENT PROJECT

SOLANO COUNTY, CALIFORNIA

Prepared for:

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NOVEMBER 2007

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ATTACHMENT 4 HABITAT ASSESSMENT FOR THE DELTA GREEN GROUND BEETLE

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This report should be cited as: Olberding Environmental, Inc. November 2007. *Biological Assessment for Critical Habitat for the Vernal Pool Tadpole Shrimp and the Vernal Pool Fairy Shrimp, Walters Road Development Project, Solano County, California*. Prepared for Wal-Mart Stores, Inc. c/o Robert A. Karns and Associates, Fairfield, California.

EXECUTIVE SUMMARY

This biological assessment presents material that would assist the United States Fish and Wildlife Service (USFWS) in evaluating potential project-related impacts to listed species and their designated critical habitats. Designated critical habitats are found on a portion of the Walters Road Property (Property) located in Solano County, California. The Walters Road Development Project (Project) is proposed for the Property.

Dry and wet-season surveys for special-status branchiopods (Helm 2007) on the Property were negative for the vernal pool fairy shrimp *(Branchinecta lynchi)* and the vernal pool tadpole shrimp *(Lepidurus packardi)*, as well as the conservancy fairy shrimp (*Branchinecta conservatio*). Designated critical habitat for Contra Costa goldfields (*Lasthenia conjuguns)* over laps with site; however, the site does not contain the physical or biological features necessary to support the survival and reproduction of the species. Contra Costa goldfields, as well as other federally-listed plant species, were absent during rare plant surveys. The Property does not fall within critical habitat for the Conservancy fairy shrimp.

However, approximately 2.4 acres of the southeast corner of the Property is within critical habitat for the vernal pool fairy shrimp and the vernal pool tadpole shrimp. A small 0.059-acre area of wetland habitat that could potentially support special-status invertebrate species is present within the portion of the Property included in designated critical habitat. Project construction will impact all existing wetland and upland habitat in the 2.4 acres of designated critical habitat. Proposed mitigation measures associated with the Project are described within this document, and include the purchase of wetland mitigation credits at an approved mitigation bank within designated critical habitat for vernal pool species. The proposed Project is reviewed in sufficient detail to determine the extent that the Project's activities may impact the two special-status invertebrate species' critical habitat. This assessment includes a review of previously prepared biological reports/information, pertinent literature, and a description of existing habitat characteristics within and in the vicinity of the Property. This document will show that the proposed Project will not jeopardize the continued existence of any federally designated species; nor will it adversely modify any designated critical habitat.

1.0 INTRODUCTION

This document is intended to provide the information necessary for agency review of activities related to the development of the Walters Road Development Project (Project), a retail development Project located in Solano County, California. The Project applicant is Wal-Mart Stores, Inc., through their engineers Todd Anderson from Robert A. Karns & Associates. The proposed Project is to occur on 20.8 acres of undeveloped land located in southern Suisun City (Attachment 1, Figures 1 & 2).

The Project has been reviewed for potential impacts to wetlands and waters of the United States. Development of the site will require the placement of fill into a total of 2.996 acres of jurisdictional wetlands and waters regulated by the U.S. Army Corps of Engineers (Corps). Approximately 2.686 acres of seasonal wetlands would be permanently filled and 0.310 acres of drainage channel habitat identified as wetland would be placed within a culvert in association with the planned development. As a result of the fill into jurisdictional wetlands, the applicant has applied for an Individual Permit under Section 404 of the Clean Water Act. Because the impact area for the proposed Project overlaps with a portion of designated critical habitat for federally listed species, a consultation under Section 7 of the Endangered Species Act will be required.

The purpose of this biological assessment is to review the proposed Project in sufficient detail to determine to what extent the proposed action may affect any of the threatened or endangered, species or their designated critical habitats which have been determined to potentially occur on the site. This biological assessment is prepared in accordance with legal requirements set forth under Section 7 of the Endangered Species Act (16 U.S.C. 1536 (c)).

1.1 Threatened, Endangered, Proposed Threatened or Proposed Endangered Species

The federally-listed species that have the potential occur on the Property, as determined by the California Department of Fish and Game CNDDB (CDFG 2007a, b, c and d) include:

Contra Costa goldfields (*Lathenia conjugens)* - Endangered
San Joaquin Valley orcutt grass (*Orcutta inaequalis*) – Threatened
Showy Indian clover (*Trifolium amoenum*) - Endangered
Delta green ground beetle (*Ambystoma californiense*) **-** Threatened
Conservancy fairy shrimp (*Branchinecta conservatio*) - Endangered
Vernal pool fairy shrimp (*Branchinecta lynchi*) **–** Threatened
Vernal pool tadpole shrimp (*Lepidurus packardi*) - Endangered

Habitat on the Property is not suitable for the San Joaquin Valley orcutt grass or showy Indian clover, and is only marginally suitable for Contra Costa goldfields. Plant surveys conducted in the spring and summer of 2006, an optimum climate year for these species within the region, documented their absence. This report has been included as Attachment 2. The site was also examined by biologists on April 11, April 23, May 3 and May 24, 2007 during field work on the Property and Contra Costa goldfields were absent. Due to the lack of suitable habitat within the Property and documented absence of the species and/or its necessary habitat, it was determined that

the proposed Project would not affect Contra Costa goldfields, San Joaquin Valley orcutt grass, or showy Indian clover. (Olberding 2006)

Marginally suitable habitat for all three shrimp species can be found on the Property. Dry and wet-season large branchiopod surveys of the Property, conducted in January, February, March, and May 2007, by Dr. Brent Helm of Helm Biological Consulting (2007) were negative for the conservancy fairy shrimp, vernal pool fairy shrimp, and the vernal pool tadpole shrimp. The Property was also reviewed for the presence of the Delta green ground beetle habitat by Entomological Consulting Services (2007) and suitable habitat was not present. After review of the survey results, it was determined that the proposed Project would not affect the conservancy fairy shrimp, vernal pool fairy shrimp, vernal pool tadpole shrimp, or the Delta green ground beetle because the species are not present (Helm 2007, Entomological Consulting Services 2007). Both reports have been included as Attachment 3 and Attachment 4 to this biological assessment.

1.2 Critical Habitat

Branchiopods

According to maps published in the Federal Register (USFWS 2006e) a 2.4-acre sliver of the Property along the southeastern edge falls within Unit 16A of the designated critical habitat for the vernal pool fairy shrimp and Unit 11D of designated critical habitat for vernal pool tadpole shrimp. Of these 2.4 acres, 0.059 acres of Wetland 10, as seasonal wetland, and 0.007 acres of Wetland 12, a perennial wetland ditch, fall within the designated critical habitat boundaries. Wetland 10 may qualify as critical habitat; however, Wetland 12 does not contain the necessary requirements to support special status branchiopods. Construction of the proposed Project will completely fill the 0.059 acres of wetland and surrounding 2.34 acres of upland areas within the 2.4 acres of critical habitat in the Project boundaries; therefore, it has been determined that the Project may adversely effect critical habitat for the vernal pool fairy shrimp and vernal pool tadpole shrimp.

The proposed Project occurs immediately west of, but not within, Unit 3 of designated critical habitat for conservancy fairy shrimp.

Contra Costa Goldfields

The same 2.4 acres of the proposed Project also falls within Unit 4C of the designated critical habitat for Contra Costa goldfields; however, the primary constituent element (PCE) requirements have not been met. The PCEs of critical habitat for Contra Costa goldfields are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils

are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

On-site wetlands occurring within the critical habitat for Contra Costa goldfields are characterized by linear swales that empty to a drainage canal that carries water off site in a southerly direction. The linear swales on the western side of the site, falling within the critical habitat designation are not characterized by the isolated mound and intermound complex required for critical habitat. These swales are uniformly sized and are oriented north to south, roughly corresponding to past disking or deep ripping activities. It also appears the site was graded to drain to the south and empty into the drainage channel such that a mound and intermound complex does not occur. Due to these factors it appears the site does not satisfy the PCE (i), which requires isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

PCE (ii) addresses depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years. Features meeting the parameters of PCE (ii) are inundated on a seasonal basis and they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands. After analysis of PCE (ii) it appears that Wetland 12 with its emergent vegetation does meet this criteria, and Wetland 10 only meets some of the parameters described therein. Wetland 10 has underlying soils that are restrictive in nature allowing for the inundation of the wetlands for long enough duration to support vernal pool plant species. However, this wetland and all other wetlands on site do not support a predominance of native wetland plant species, as we determined in the rare plant survey that occurred in 2006, a wet year. The non-native species are not excluded and are more common in the wetlands than the native plants species characteristically found in vernal pools. Due to the dominance of non-natives within the wetlands on the site it appears that the PCE (ii) is not satisfied.

Based on the failure of the site to meet PCE (i) and all of the parameters of PCE (ii), the site should not be considered to contain critical habitat for Contra Costa goldfields. Additionally, focused rare plant surveys in 2006 failed to locate any Contra Costa goldfields during their blooming period. Therefore, it has been determined that the Project will not effect critical habitat for Contra Costa goldfields.

1.3 Consultation to Date

While no Section 7 consultation has been initiated, the applicant and the USFWS have had previous consultations. Olberding Environmental submitted a letter to the USFWS on August 23, 2007, requesting clarification on the critical habitat boundaries. In a letter dated October 3, 2007, the USFWS responded, indicating that the critical habitat designation did extend onto the subject Property.

2.0 PROJECT SITE DESCRIPTION

2.1 Location

The approximately 20.8-acre parcel evaluated for this report is situated immediately north of Highway 12, south of Peterson Road, and west of Walters Road in Solano County, California. Attachment 1, Figure 1 depicts the regional location of the survey area within the San Francisco Bay region. Attachment 1, Figure 2 illustrates the vicinity of the survey area in relationship to Suisun City. Attachment 1, Figure 3 identifies the location of the survey area on the USGS 7.5 Quadrangle map for Denverton. An aerial photograph of the Property has been included as Attachment 1, Figure 4.

Access to the Property is attained by taking the Highway 12 exit east from Interstate 80. Follow Highway 12 east for approximately 5.25 miles. The Property is situated immediately north of the intersection of Highway 12 and Walters Road, and extends west from Walters Road.

2.2 Present and Past Property Use

The Property forms a triangle with Highway 12 forming the southern boundary, Peterson Road forming the northern boundary, and Walters Road forming the eastern boundary. A constructed drainage ditch bisects the Property in a north to south direction. The drainage ditch occurs approximately 500 feet west of Walters Road. This drainage ditch was identified to the east of center of the Property and functions to collect and drain stormwater runoff from Petersen Road and a residential neighborhood to the north through a large culvert under Highway 12. The constructed drainage ditch is eventually tributary to Hill Slough located approximately 0.5 miles south of the Property. The Property is situated at approximately 20 feet above sea level, with elevations decreasing slightly in a west to east direction.

Fill has been historically deposited over a large portion of the Property west of the drainage ditch. The fill is approximately 1.5 to 2 feet higher in elevation than the surrounding areas. This area of fill prevents water from draining from the western portion of the site, creating ponded areas within the shallow depressions that were observed throughout this area. These depressions were saturated at the time of Olberding Environmental's March 2006 reconnaissance survey and April 2006 special-status plant survey. The site is comprised primarily of non-native annual grasslands that are disked on a bi-annual basis. Near the northwest corner of the Property is an area where the annual grassland habitat has been disturbed by vehicle traffic.

Surrounding land use is a mixture of housing developments and undeveloped annual grasslands. Lands to the immediate north, west, and south of the Property have all been developed, and are comprised of single-family homes. Immediately east of the Property are two undeveloped lots, but lands to the north and northeast of these have also been developed with single-family homes and a sports complex. Lands to the southeast of the Property consist of a large expanse of undeveloped annual grasslands.

2.3 On-Site Aquatic Features

A total of 2.996 acres of wetlands were identified within the established Property boundaries, as is shown in Table 1.

TABLE 1
Wetlands on Walters Road Property

Location	Feature Type	Acreage
Wetland 1	Seasonal Wetland	0.065
Wetland 2	Seasonal Wetland	0.018
Wetland 3	Seasonal Wetland	0.219
Wetland 4	Seasonal Wetland	0.379
Wetland 5	Seasonal Wetland	0.007
Wetland 6	Seasonal Wetland	0.041
Wetland 7	Seasonal Wetland	0.012
Wetland 8	Seasonal Wetland	0.038
Wetland 9	Seasonal Wetland	0.091
Wetland 10	Seasonal Wetland	1.452
Wetland 11	Seasonal Wetland	0.192
Wetland 12	Wetland Drainage Swale	0.433
Wetland 13	Seasonal Wetland	0.049
Total Wetlands		**2.996**

A vegetated drainage ditch and twelve seasonal wetlands were identified across the Property. All thirteen features meet the Corps criteria for wetlands. These features were observed to be dominated by hydrophytic vegetation, had primary and secondary hydrology indicators and contained hydric soils. The hydrology feeding these wetlands originates mostly from intercepted rainfall, except in the case of the vegetated drainage ditch, which receives urban runoff from the neighboring developments. Wetlands 1 through Wetland 11 and Wetland 13 are seasonal adjacent wetlands containing a mix of native and non-native wetland plant species. Wetland 12 is a constructed

drainage ditch, containing a defined bed and bank, sign of scouring, drift lines and flowing water at the time of the survey. The ditch is also identified on the USGS quadrangle map as a dashed blue line feature which is tributary to Hill Slough Creek to the south. Hill Slough enters the northern portion of Suisun Slough and the delta. However, wetland vegetation was also observed to dominate the channel bottom. Due to the presence of wetland vegetation, hydric soils and the presence of primary indicators of hydrology, the constructed ditch is classified as a perennial wetland.

2.4 Proposed Action

2.4.1 Proposed Project

The Project involves the development of the 20.8-acre site with a retail and dining venue. The four main elements of the development include: 1) a nearly 215,000-square foot retail store; 2) a proposed 1.05 acre fuel station with related uses; 3) a proposed 8,000-square foot sit-down restaurant; and 4) associated parking and infrastructure to support the commercial development. The fuel station and restaurant are currently proposed uses for Parcel A and B; however, the parcels may be developed with any use that is consistent with the City of Suisun City's General Commercial zoning for the site.

Project construction will entail mass grading of the site, the replacement of an existing drainage ditches with an underground culvert, and the construction of road improvements along Highway 12. Within the interior of the site, the Project will require the construction of buildings, associated structures and road access throughout. Project construction will include filling of 2.996 acres of existing waters and wetlands present within the Property, which requires authorization from the US Army Corps of Engineers through a Section 404 Individual Permit.

Construction will be initiated, and all grading activities will be completed, during the dry-season such that all potential runoff from the site will be contained by erosion control measures. To prevent erosion and siltation from occurring during construction, the Project would be constructed in accordance with an erosion control plan and grading plan conditions developed for the Project. The plan will also designate best management practices that will be implemented during construction. As required, measures could include installing silt fences, hay bales, water bars, and/or ground covers, to control erosion. The Project would be constructed during the dry period of the year and reduce the potential for siltation or erosion problems. Stabilization measures may include mulching and reseeding following construction.

2.4.2 Proposed Mitigation

As on-site mitigation is not possible or desirable for habitat continuity, the applicant has proposed to mitigate for impacts to wetlands through the purchase of mitigation credits at the North Suisun Mitigation Bank, which is three miles east of the Project in designated critical habitat for vernal pool fairy shrimp and vernal pool tadpole shrimp. As shown in Table 2, impacts to on-site wetlands within critical habitat will be mitigated by purchasing wetland preservation credits at a three-to-one ratio and creation credits at a one-to-one ratio. On-site impacted uplands within critical habitat will be mitigated through the purchase of preservation credits at a one-to-one ratio. On-site impacts to

wetlands outside critical habitat will be mitigated through the purchase of creation credits at a one-to-one ratio.

TABLE 2 Proposed Mitigation through Mitigation Bank for Walters Road Development Project			
Habitat	**Impacted Acreage**	**Mitigation Ratio**	**Purchased Acreage**
Critical Habitat Wetlands (preservation)	0.059	3:1	0.177
Critical Habitat Wetlands (creation)	0.059	1:1	0.059
Critical Habitat Uplands (preservation)	2.341	1:1	2.341
Jurisdictional Wetlands outside of Critical Habitat (creation)	2.930	1:1	2.930
Total Acreage Purchased			**5.507**

2.5 Definition of Action Area

The action area is defined by the limits of impacts associated with ground disturbance, changes to surface water and ground water quantity and quality, air quality impacts, lighting effects, and noise disturbance. The limits of ground disturbance are based upon the approximate limit of grading provided by the project engineer, which encompasses the entire site. Changes to surface water quality and quantity, as well as ground water quality and quantity will only occur within the Property. Air quality impacts are anticipated to be minimal, localized within the immediate project footprint, and associated with the construction phase of the proposed Project. During construction, lighting effects and noise disturbance will affect nearby areas outside of the immediate Property; however these areas are already developed. Stockpiling and staging areas will be confined to the Property. Material sources and waste sites are not known at this time. Mitigation for the fill of wetlands within critical habitat on the Property will occur at an approved vernal pool mitigation bank within the region; the mitigation site is therefore not included within the action area.

Based upon this analysis, the action area consists of the entire Property as defined by Walters Road on the east, Highway 12 on the south, and Peterson Road on the North. The western boundary tapers to a point between Highway 12 and Peterson Road for which a fence line defines the extent of work.

3.0 SPECIAL-STATUS INVERTEBRATE SPECIES AND DESIGNATED CRITICAL HABITAT

This section summarizes the biology, documented sightings, and potential Project related impacts to vernal pool tadpole shrimp *(Lepidurus packardi),* vernal pool fairy shrimp *(Branchinecta lynchi)* and Conservancy fairy shrimp *(Branchinecta conservatio),* and their designated critical habitats. The vernal pool tadpole shrimp is a federally-listed endangered species. The vernal pool fairy shrimp and the Conservancy fairy shrimp are federally listed threatened species. The search and review of the CNDDB database reports revealed the nearby occurrence of special-status invertebrate species, which could potentially occur in the seasonal wetland habitats supported by the Property. The CNDDB database and background data were reviewed for the Denverton, Fairfield South, Fairfield North, and Elmira 7.5 minute quadrangles. A map showing the locations of special-status invertebrate species reported in the vicinity of the Property is included as Attachment 1, Figure 5.

3.1 Conservancy Fairy Shrimp *(Branchinecta conservatio)*

The conservancy fairy shrimp is a crustacean that is typically found in highly turbid, large vernal pools with a minimum of 19 days of continuous inundation. Locomotion is accomplished by the beating movements of the 11 pairs of swimming legs they carry on their underside. They swim or glide upside down. Fairy shrimp feed on algae, bacteria, micro invertebrates, and detritus. Eggs are either carried in a brood sac on the abdomen of the female, or dropped to the bottom of the pool. Eggs become encysted during dry summer months, and as vernal pools begin to fill with water during the following rainy season, cysts begin to hatch. The conservancy fairy shrimp is found in six disjunct populations that are distributed through California. In Solano County they are found in the Jepson Prairie. Threats to this species include development and agriculture.

Conservancy fairy shrimp are known to occur in the vicinity of the site (Attachment 1, Figure 5). A summary of recorded sightings is listed below:

- In 1996, conservancy fairy shrimp were observed along the south side of Potrero Hills landfill, 0.3 miles south of Highway 12, and approximately one mile south southeast of the Property.
- In 2002, an unspecified number of individuals were noted approximately five miles southwest of Dozier, and approximately four miles east of the Property.

Ground disturbing activities on the Property may have greatly reduced the potential for the occurrence of conservancy fairy shrimp on the Property. The Property does not contain the highly turbid, large vernal pools typical of conservancy fairy shrimp habitat. Neither of the above listed occurrences is likely to be a source population for existing wetlands on site as there is no hydrologic connectivity between these wetlands and the on-site wetlands.

Dry and wet-season surveys conducted in January, February, March, and May 2007 by Dr. Brent Helm (2007) were negative for the conservancy fairy shrimp. The conservancy fairy shrimp is absent from the Property.

3.2 Vernal Pool Fairy Shrimp *(Branchinecta lynchi*)

The vernal pool fairy shrimp is a crustacean that ranges in size from a half- to one-inch long. Fairy shrimp have delicate elongate bodies, large stalked compound eyes, no carapaces, and eleven pairs of swimming legs. They glide gracefully upside down, swimming by beating their legs in a complex, wavelike movement that passes from front to back. Fairy shrimp feed on algae, bacteria, protozoa, rotifers and bits of detritus.

This species inhabits seasonal wetlands such as alkaline pools, intermittent drainages, drainage ditches, oxbows, stockponds, swales and vernal pools with a minimum of 18 days of continuous inundation. The vernal pool fairy shrimp occupies a variety of different vernal pool habitats, from small, clear, sandstone rock pools to large, turbid, alkaline, grassland valley floor pools. Although the species has been collected from large vernal pools, including one exceeding 25 acres, it generally tends to occur in smaller pools. It is most frequently found in pools measuring less than 0.05 acre. These are most commonly in grass or mud bottomed swales, or basalt flow depression pools in unplowed grasslands. Vernal pool fairy shrimp have been observed between early December and early May.

Vernal pool fairy shrimp eggs become encysted during dry periods and hatch when seasonal wetlands refill. Threats to the vernal pool fairy shrimp include loss of habitat, agriculture, foot traffic, and off-road vehicles.

This species is known to occur in the vicinity of the Property (Attachment 1, Figure 5). A summary of recorded sightings is listed below:

- In 1996, they were observed in the Potrero Hill landfill, 0.25 miles south of Highway 12, and one mile southeast of the Property.
- In 2002, an unknown number of individuals were observed in Tolenas, approximately 1.5 miles northwest of the Property.
- In 2001, an unknown number was observed 1.6 miles west northwest of Denverton, 1.35 miles east of the intersection of Branscombe Road and Highway 12, approximately 3.4 miles southeast of the Property.
- In 1999, an unspecified number of shrimp were observed along the north edge of Travis Air Force Base, approximately 3.7 miles northeast of the Property.

The seasonal wetland habitat on the Property is potentially suitable for the vernal pool fairy shrimp. However, dry and wet-season surveys conducted in January, February, March, and May 2007 by Dr. Brent Helm (2007) were negative for the vernal pool fairy shrimp. Additionally, the above listed known occurrences are unlikely to provide a source population for the existing wetlands on site as they are hydrologically isolated from the Property by roads, existing development and/or proximity in the watershed (located downsteam). Based upon the focused species surveys and these considerations, the vernal pool fairy shrimp is considered absent from the Property.

3.3 Vernal Pool Tadpole Shrimp *(Lepidurus packardi*)

This small crustacean (two inches at adulthood) belongs to the family Triopsidae. It has dorsal compound eyes and a large carapace resembling a shield that covers nearly the entire body. Two long appendages project from the last abdominal segment. Tadpole shrimp climb or scramble over objects, as well as plow along or in bottom sediments. They are found in clear to turbid vernal pools and grass bottomed swales with a minimum of 41 days of continuous inundation in unplowed grasslands, climbing over objects or moving along the bottom. The diet is made up of organic matter, fairy shrimp, and other invertebrates. During the summer and fall the vernal pool tadpole shrimp becomes encysted in the dry sediments of vernal pools, becoming active after winter rains.

The vernal pool tadpole shrimp is known from 18 populations in the Central Valley, ranging from east of Redding in Shasta County south to the San Luis National Wildlife Refuge in Merced County, and from a single vernal pool complex located on the San Francisco Bay National Wildlife Refuge in the City of Fremont, Alameda County.

There are numerous occurrences of this species in the vicinity of the Property (Attachment 1, Figure 5). A summary of recorded sightings is listed below:

- In 2000, hundreds of adults were found in a vernal pool along Potrero Hills Lane, 0.5 miles southwest of the intersection of Scalley Road and Highway 12, approximately 1.2 mile south southeast of the Property.
- In 1999, they were observed southeast of the intersection of Highway 12 and Scalley Road, approximately 1.5 miles southeast of the Property.
- In 2002, an unspecified number was observed at Parker Ranch, approximately 1.9 miles north of the Property.
- In 2002, an unknown number was observed approximately 4.2 miles east of the Property.
- In 2002, an unspecified number was observed about 5 miles southwest of Dozier, and approximately 4.4 miles east northeast of the Property.

Wetlands within the Property may potentially provide habitat for the conservancy fairy shrimp if the period of inundation meets or exceeds the 41 day requirement. In 2007, no pools met this requirement or even contained regular periods of any standing water. It is unlikely that even in average rainfall years the small disturbed basins on site would be inundated for the required period to support vernal pool tadpole shrimp. To further this argument, dry and wet-season surveys conducted in January, February, March, and May 2007 by Dr. Brent Helm (2007) were negative for the vernal pool tadpole shrimp. Additionally, the above listed known occurrences are unlikely to provide a source population for the existing wetlands onsite as they are hydrologically isolated from the Property by roads, existing development and/or proximity in the watershed (located downsteam). Based upon the focused species surveys and these considerations, the vernal pool tadpole shrimp is absent from the Property.

3.4 Designated Critical Habitats

According to maps published in the Federal Register (USFWS 2006c), approximately 2.4 acres of the eastern edge of the Property fall within Unit 16A of the designated critical habitat for the vernal pool fairy shrimp and Unit 11D of the designated critical habitat for the vernal pool tadpole shrimp (Attachment 1, Figures 6 through 8). Of these 2.4 acres, 0.059 acres of Wetland 10, as seasonal wetland, and 0.007 acres of Wetland 12, a perennial wetland ditch, fall within the designated critical habitat boundaries. Not all areas within the boundaries of designated critical habitat for a given species are considered critical habitat. Only areas that contain the PCEs required by the species are considered critical habitat. PCEs are those physical and biological features of a feature, as defined within the Federal Register, that a species needs to survive and reproduce.

The PCEs of critical habitat for vernal pool tadpole shrimp are the habitat components that provide:

(i) Topographic features characterized by mounds and swales, and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water for a minimum of 41 days (Helm 1998), in all but the driest years; thereby providing adequate water for incubation, maturation, and reproduction. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(iii) Sources of food, expected to be detritus occurring in the pools, contributed by overland flow from the pools' watershed, or the results of biological processes within the pools themselves, such as single-celled bacteria, algae, and dead organic matter, to provide for feeding.

(iv) Structure within the pools described in PCE (ii), consisting of organic and inorganic materials, such as living and dead plants from plant species adapted to seasonally inundated environments, rocks, and other inorganic debris that may be washed, blown, or otherwise transported into the pools, that provide shelter.

The PCEs of critical habitat for vernal pool fairy shrimp are the habitat components that provide:

(i) Topographic features characterized by mounds and swales, and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in PCE (ii) providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water for a minimum of 18 days (Helm 1998), in all but the driest years; thereby providing adequate

water for incubation, maturation, and reproduction. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(iii) Sources of food, expected to be detritus occurring in the pools, contributed by overland flow from the pools' watershed, or the results of biological processes within the pools themselves, such as single-celled bacteria, algae, and dead organic matter, to provide for feeding.

(iv) Structure within the pools described in PCE (ii), consisting of organic and inorganic materials, such as living and dead plants from plant species adapted to seasonally inundated environments, rocks, and other inorganic debris that may be washed, blown, or otherwise transported into the pools, that provide shelter.

The vast majority of the 2.4 acres within designated critical habitat are composed of disked upland areas which do not include any habitat for vernal pool crustaceans. Of the two aquatic features, Wetland 12 is a ditch that doesn't contain the physical and biological features necessary to support the survival and reproduction of the species. In contrast to the requirement in PCE ii for the vernal pool fairy shrimp and PCE i for the vernal pool tadpole shrimp, the ditch carries urban nuisance runoff year round and as a result has emergent wetland vegetation even in the driest of years. Additionally, this wetland is not a source for hydrology for the remaining wetlands on site. Water within the ditch is generally self-contained. It serves to drain Wetlands 10 and 11 during wet periods. However, the remaining wetlands on site are isolated from the ditch by an area of fill during most years, as they would only drain into the ditch during rare and unusually heavy rainfall events. No wetlands receive water from this feature.

Wetland 10, however, may provide some habitat for vernal pool crustaceans in some years. Ground disturbing activities and potentially short inundation periods reduce the potential for large branchiopod use of Wetland 10. PCE ii for the vernal pool fairy shrimp specifies that vernal pools remain continuously inundated for a minimum of 18 days for the vernal pool fairy shrimp. PCE i for the vernal pool tadpole shrimp specifies continuous inundated for 41 days for the vernal pool tadpole shrimp. As stated in the Helm 2007 report, in the 2006/2007 wet-season, only Wetland 12 on the Property ponded water during his surveys; Wetland 10 did not pond water. While it is acknowledged that 2006/2007 was a low rainfall year, Brent Helm thought it was unlikely this wetland would pond water for sufficient duration in even the best rainfall years. This opinion is based upon his experience with crustacean habitats within the area and a comparison with how this and other sites functioned in 2006/2007. Furthermore, this area of designated critical habitat is biologically separated from the rest of the critical habitat by Walters Road to the east, and is surrounded by existing development to the north, west and south. This reduces the possibility of repopulation of the ponds through dispersal from occupied ponds within critical habitat, and it eliminates the possibility that this site can serve as a linkage to other potential vernal pool crustacean habitat. However, without hydrological studies to document the period of inundation in average rainfall years in Wetland 10, it must be assumed that this wetland could potentially meet the requirement laid out in the PCEs in some years. Therefore, 0.059 acres of Wetland 10 is assumed to meet the criteria for critical habitat for vernal pool fairy and tadpole shrimps. Construction of the proposed Project will completely fill the 0.059 acres of wetland and surrounding 2.334 acres of

upland areas within the 2.4 acres of critical habitat, which is assumed to provide potential habitat to for these species.

The Property occurs immediately west of Unit 3 of the designated critical habitat for the conservancy fairy shrimp (Attachment 1, Figure 9) (USFWS 2006c). The proposed Project will not affect conservancy fairy shrimp critical habitat.

4.0 ENVIRONMENTAL BASELINE

An Olberding Environmental biologist conducted a reconnaissance-level survey to determine habitat types and suitability for the Conservancy fairy shrimp, vernal pool tadpole shrimp and the vernal pool fairy shrimp on March 3, 2006 through out the entire Property. Additional habitat surveys were conducted on September 5, 2006 when the wetlands dried out to evaluate the presence of habitat that could support breeding adults and encysted eggs. Potentially suitable habitat was identified on site. In 2007, Dr. Brent Helm (Helm), a branchiopod expert, was asked to further review the wetlands for suitability. He determined that a total of 17 basins were potential habitat, including the wetlands mapped as Corps jurisdictional wetland and three basins identified by Helm. The wetland drainage swale was excluded as potential habitat because it contained year-round urban nuisance flow from the adjacent development.

The Property has poor drainage due to soils with high clay content. Drainage on the western portion of the site is further constrained by the presence of fill situated west of the drainage. The current land management of the site consists of annual disking which reduces the quality of the wetland habitat for vernal pool crustaceans. Disking results in the turning of the soil such that the surface layers may be buried or partially buried on an annual basis. The egg cysts from vernal pool crustaceans lie on the soil surface and if buried will not be able to hatch when inundated. For vernal pool crustaceans to hatch they must be within a few millimeters of the soil surface. Thus, site disking results in the reduction in the number of cysts that are able to hatch once the pools on site are inundated with rain water. Yearly disking would reduce the population of vernal pool crustaceans over the long term due to the successive reduction in cysts that are close enough to the soil surface to hatch.

Additionally, disking results in subtle changes to wetland hydrology that further affects the hatching of vernal pool crustaceans. The disked soils take longer to become inundated due to the loose texture of the soil. Water must penetrate into the entire disked layer before ponding can occur in the wetland areas. Depending upon the depth of disking, the inundation of the wetlands may be delayed until water saturation is attained throughout the entire disked layer in the vicinity of the wetland. Increased rainfall from historic quantities would be required to produce sufficient periods of inundation for the crustaceans' life cycle. The overall effect of disking on the wetland feature's hydrology is the reduction in the inundation period. A shortened inundation period within the wetland can reduce the vernal pool crustacean population as the completion of the life cycle may not be achieved. Vernal pool crustaceans may not be able to reach maturity after hatching, and the number of eggs which are laid by mature and breeding fairy shrimp can be reduced.

In summary, the site currently supports wetland habitat which may have been potentially suitable for vernal pool crustaceans, but the habitat quality has been reduced by current disking and farming practices. Evidence from the 2006/2007 rainfall year suggests that the site may not meet the required inundation periods, which would severely limit the reproductive ability of vernal pool crustacean species that may populate the site. As hydrologic studies have not been undertaken for the Property, the average period of inundation is uncertain. Therefore, it is assumed that the wetlands may contain adequate inundation periods in some years.

5.0 EFFECTS OF THE PROPOSED ACTION

5.1 Direct Effects

Critical habitat for vernal pool species are negatively affected by a number of human activities including habitat loss due to urbanization and agricultural activities, filling of wetland habitat, flood control projects, and the introduction of exotic species. Habitat loss and fragmentation is the largest threat to the survival and recovery of vernal pool species. Habitat loss generally is a result of urbanization and agricultural conversion. Habitat loss also occurs in the form of habitat alteration and degradation as a result of changes to natural hydrology, invasive species, incompatible grazing regimes, including insufficient grazing for prolonged periods; infrastructure projects (e.g., roads, water storage and conveyance, utilities), recreational activities (e.g., off-highway vehicles and hiking), erosion, climatic and environmental change, and contamination.

Development of the site could directly affect both these species by permanently eliminating 2.4 acres of potentially suitable habitat within designated critical habitat. Of those 2.4 acres, only 0.059 wetland acres are potentially suitable for breeding.

Special-status invertebrate species are absent from the Property (Helm 2007); development of the Property will result in no effect to individuals of listed special-status invertebrate species.

5.2 Indirect Effects

Potential indirect effects to designated critical habitat for vernal pool crustaceans were not identified for the Project. The site is geographically isolated by Walters Road from other known locations of listed vernal pool crustaceans and no overland flow of water occurs which would result in the transfer of cysts or hatched fairy shrimp to or from the site. Additionally, the site does not provide any linkage to other potential habitat as it is surrounded by development on three of its sides.

5.3 Interrelated Effects

Interrelated actions are those actions that are part of the primary action and dependent upon that primary action for their justification. An example of this would be the expansion of roadways to accommodate increased traffic to the development. As all interrelated components, specifically road expansion, of the commercial development are included with this action, no other interrelated effects are anticipated as a result of development of the Property because all new road construction will be

considered under the primary action.

5.4 Interdependent Effects

Interdependent actions are those actions that have no independent utility apart from the primary action. Construction, maintenance, and use of a road required to access the development is an example of an interdependent effect. All interdependent effects have been included in the proposed action. No other interdependent effects are anticipated as a result of development of the Property.

5.5 Cumulative Effects

The cumulative effects of the development Project include the ongoing development of lands which support or could potentially support listed vernal pool crustaceans. As development along the Highway 12 corridor continues to move east from Suisun City additional lands that could potentially support listed vernal pool crustaceans could potentially be developed to the east of the Walters Road site. The development of the site minorly contributes to the total loss of grassland and wetland habitat in the region and the loss of potential habitat for the listed vernal pool crustaceans discussed in this document.

6.0 DETERMINATION OF EFFECT

We conclude that development of the Property will not result in direct effects to the vernal pool fairy shrimp, vernal pool tadpole shrimp or Conservancy fairy shrimp because they are absent from the Property. We also conclude that the Project won't lead to jeopardy of any of these species because they are not present on the Property.

Construction of the proposed Project will directly impact approximately 2.4 acres of unoccupied designated critical habitat for the vernal pool fairy shrimp and the vernal pool tadpole shrimp. Implementation of the proposed mitigation measures included preservation of vernal pool habitat and upland areas, and creation of vernal pool habitat all within designated critical habitat will result in a net increase of vernal pool crustacean habitat within designated critical habitat. As the site is not currently occupied, implementation of the proposed project will not will not appreciably diminish the chances of survival of either the vernal pool fairy shrimp or the vernal pool tadpole shrimp.

The proposed Project will also not appreciably diminish the chances of recovery of either vernal pool crustacean as it is consistent with the overall goal and objectives of the Service's 2005 recovery plan for vernal pool species for Solano-Colusa Vernal Pool Region. The recovery plan identifies a recovery strategy that includes: (1) habitat protection (2) adaptive habitat management, restoration, creation and monitoring; (3) status surveys; and (4) research, participation and outreach. The recovery plan also recommends preservation of a specific percent of suitable vernal pool habitat within areas that are identified as core zones for listed species and a percentage of known occurrences within each such area. Following is a description of the way in which the proposed Project addresses each component of this strategy:

Habitat Protection

The Recovery Plan identifies the protection of vernal pool habitats in large blocks that include local watershed, vernal pool complexes and appropriate upland buffers as a major component of the identified recovery strategy for vernal pool crustaceans and recommends focusing such efforts within identified core areas. By purchasing preservation and creation credits from a Service approved mitigation bank that is located within the Solano-Colusa Core Area, the proposed Project contributes to the efforts to preserve large areas of quality vernal pool habitat. The proposed Project would not eliminate any occurrence of a listed vernal pool crustacean and therefore would be consistent with the Recovery Plan's goal of preserving 80% of the known occurrences of vernal pool fairy shrimp and vernal pool tadpole shrimp. The proposed Project would also meet the Recovery Plan's goal of preserving 85% of the vernal pool fairy shrimp suitable habitat and 95% of the vernal pool tadpole shrimp suitable habitat by offsetting the Project's impacts to the minimal potentially suitable vernal pool habitat (0.0059) through the purchase of creation credits from an approved mitigation bank at 1:1 ratio and preservation credits at a 3:1 ratio and the preservation of upland critical habitat areas at a 1:1 ratio. The impacts to the critical habitat are minimal as they represent only 0.00002% of vernal pool critical habitat in Solano County.

Adaptive Habitat Management, Restoration and Monitoring

The Recovery Plan identifies adaptive management and monitoring of vernal pool crustacean habitat as a critical component of a recovery strategy for these species. By purchasing credits at a mitigation bank that has an approved habitat management and monitoring plan in place, the proposed Project will contribute to the percentage of vernal pool habitat that is actively managed for listed crustaceans within the Solano-Colusa Core Area.

Status Surveys

The Recovery Plan identifies the collection of data to provide measures of population viability of the listed species. By contributing to a mitigation bank, the proposed Project will contribute to the ability of conservation organizations to conduct multi-year assessments of localized populations of vernal pool crustaceans.

Research

The Recovery Plan identifies a number of issues on which additional information would help inform the identification of recovery strategies and actions. As an individual project, the proposed Project will have no impact on the research necessary to support recovery of vernal pool crustaceans.

Participation and Outreach

The Recovery Plan recommends that establishment of a recovery implementation team to coordinate recovery efforts. The proposed Project will have no impact on the establishment of such a team. After reviewing the current status of the vernal pool tadpole shrimp and the vernal pool fairy shrimp, the environmental baseline for the proposed Project area, the effects of the proposed Project, and the cumulative effects, we conclude that the proposed Project will not result in adverse modification to critical habitat as it will contribute to the recovery of the species by managing in perpetuity existing and created vernal habitat within the Solano-Colusa Core Area. These mitigation measures will fully offset the proposed Project's minimal impacts to unoccupied critical habitat that is hydrologically isolated from other occupied areas and surrounded on three sides by development.

7.0 RESPONSIBLE PARTIES

The Project applicant and land owner of the development site is:

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c/o Robert A. Karn & Associates
707 Beck Avenue
Fairfield, California 94533
Contact: Todd Anderson

The environmental consultant overseeing implementation of the mitigation measures is:

Olberding Environmental, Inc.
Wetland Regulatory Consultants
1390 Willow Pass Road, Suite 370
Concord, California 94520-7975
Contact: Jeff Olberding
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(925) 825-2112 fax

8.0 REFERENCES

California Department of Fish and Game Natural Diversity Data Base, computer listings and map locations of historic and current recorded occurrences of special-status species and natural communities of special concern for USGS 7.5 minute quadrangle maps: Denverton, Fairfield South, Fairfield North, and Elmira. July 2007.

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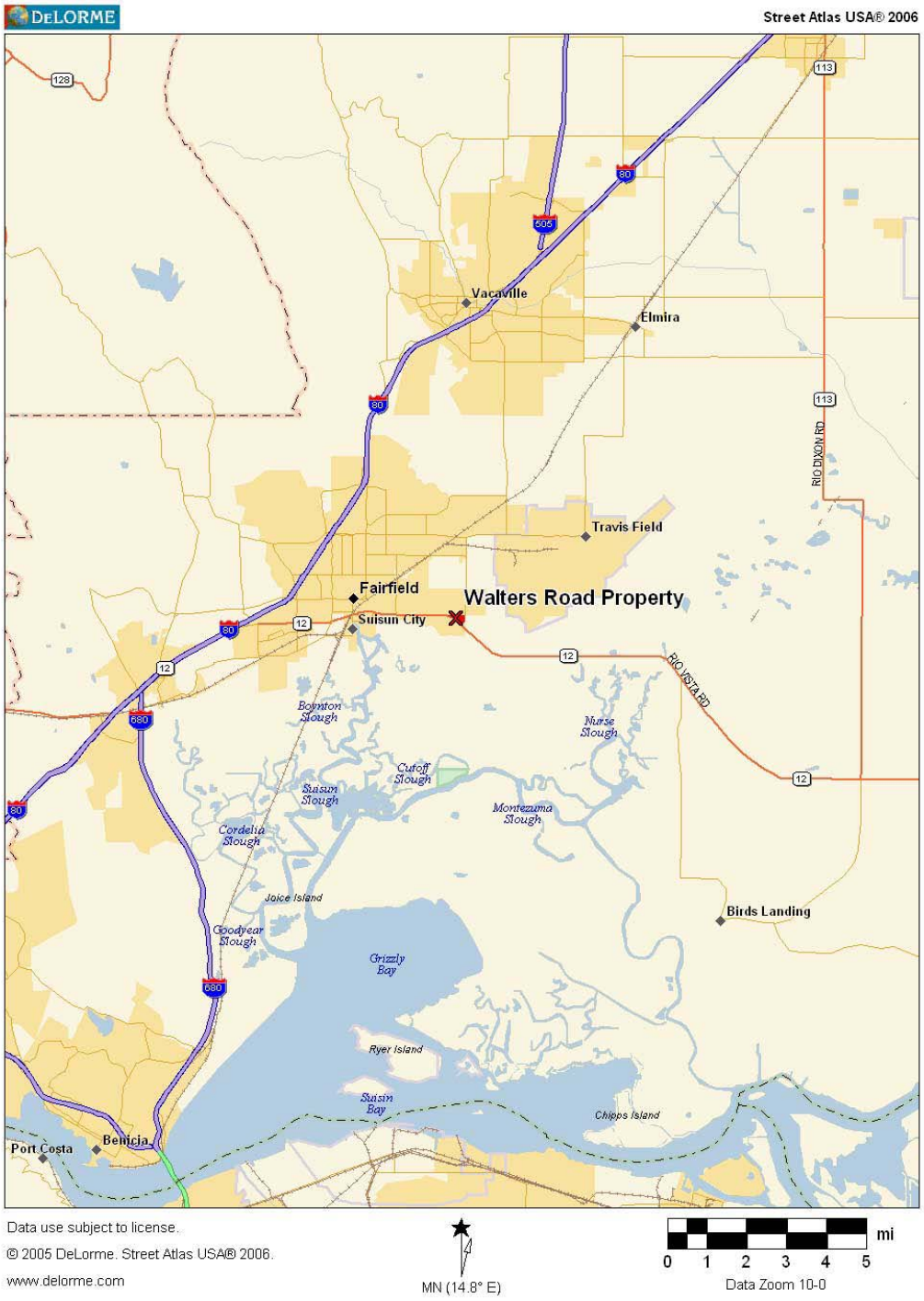
ATTACHMENTS

ATTACHMENT 1
FIGURES

Figure 1	**Regional Map**
Figure 2	**Vicinity Map**
Figure 3	**USGS Quadrangle Map**
Figure 4	**Aerial Photograph**
Figure 5	**Map of CNDDB Reports of Special-Status Species**
Figure 6	**Critical Habitat Map for Vernal Pool Tadpole Shrimp**
Figure 7	**Critical Habitat Map for Vernal Pool Fairy Shrimp**
Figure 8	**Critical Habitat Overlay with Property**
Figure 9	**Critical Habitat Map for Conservancy Fairy Shrimp**

Figure 1
Regional Map



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This document is not intended for detail design work.

Figure 1
Regional Map of the Walters Road Property
Solano County, California

Figure 2
Vicinity Map

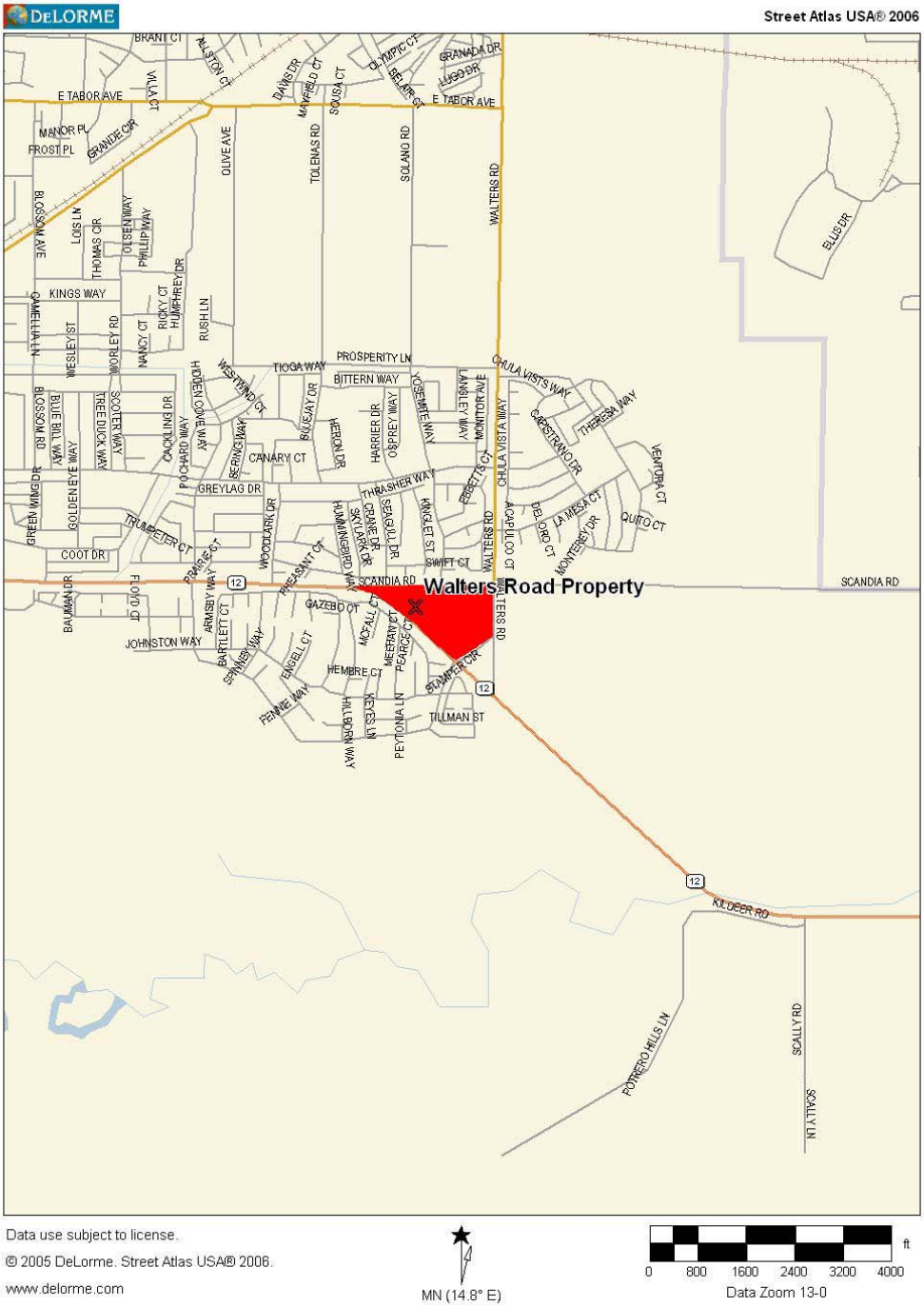

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Figure 2
Vicinity Map of the Walters Road Property
Solano County, California

Figure 3
USGS Quadrangle Map

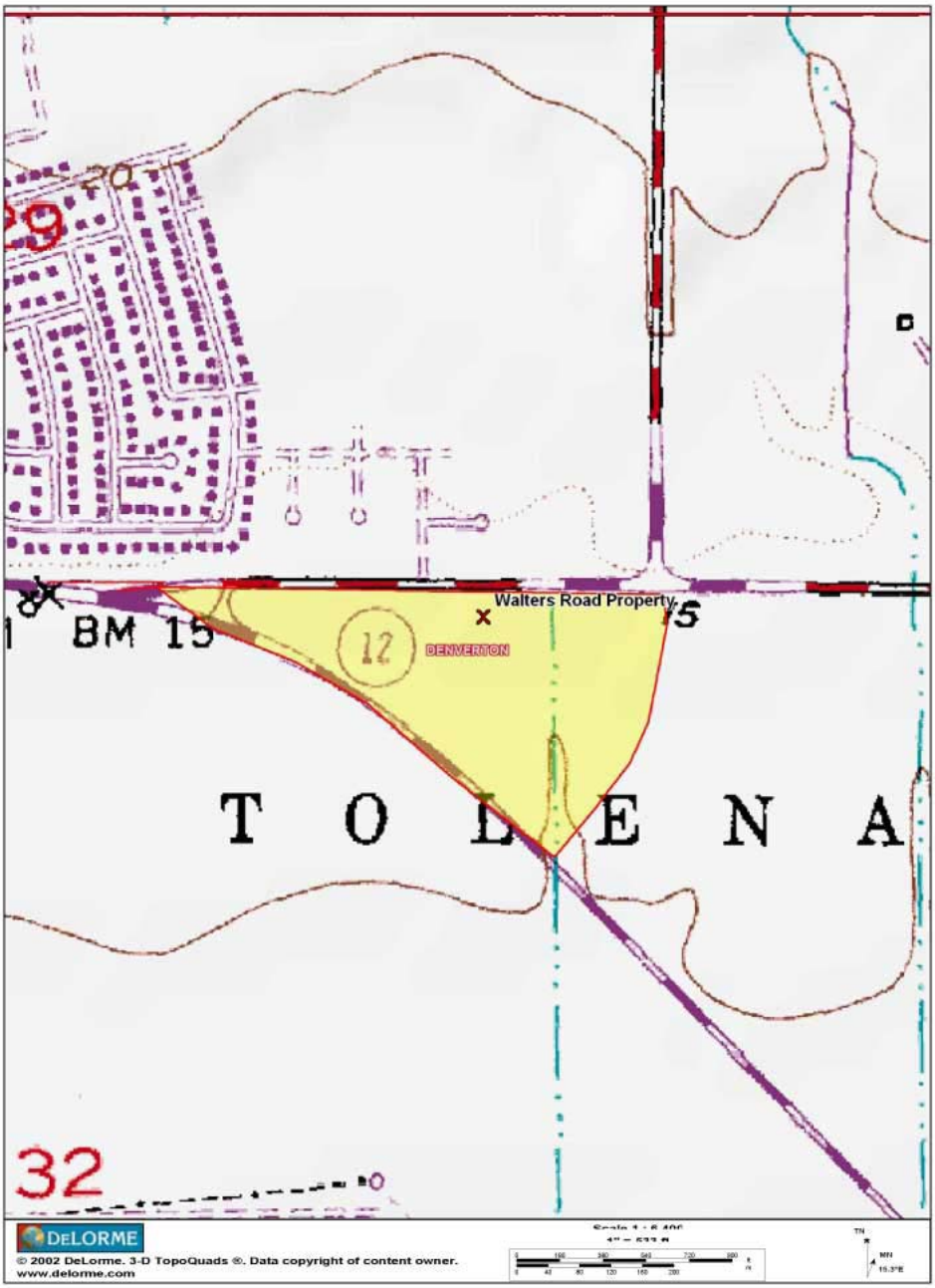

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Figure 3
USGS Quadrangle Map of Walters Road Property
Solano County, California

Figure 4
Aerial Photograph

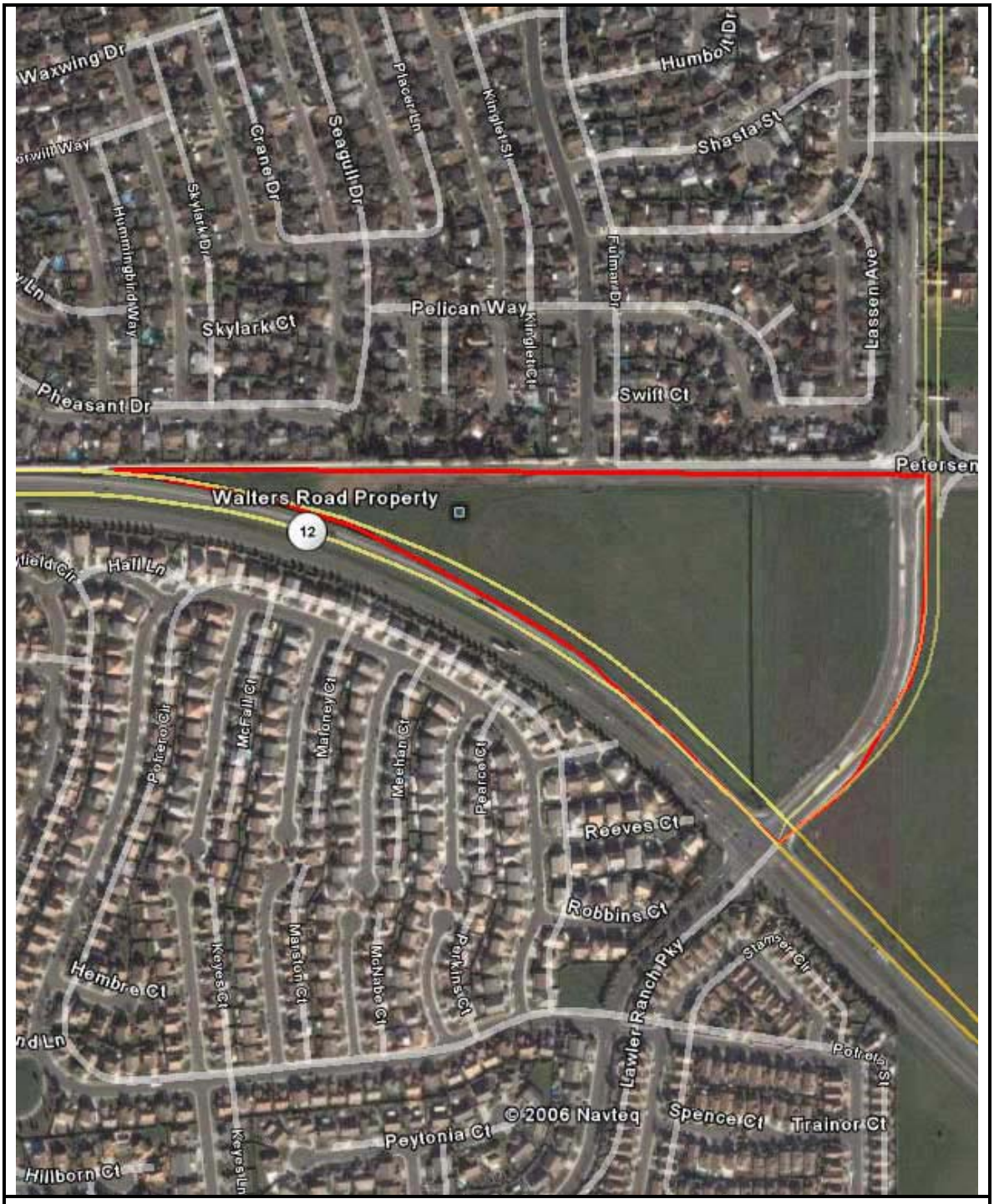

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Figure 4
Aerial Photograph of Walters Road Property
Solano County, California

Figure 5
Map of CNDDB Reports of Special-Status Species

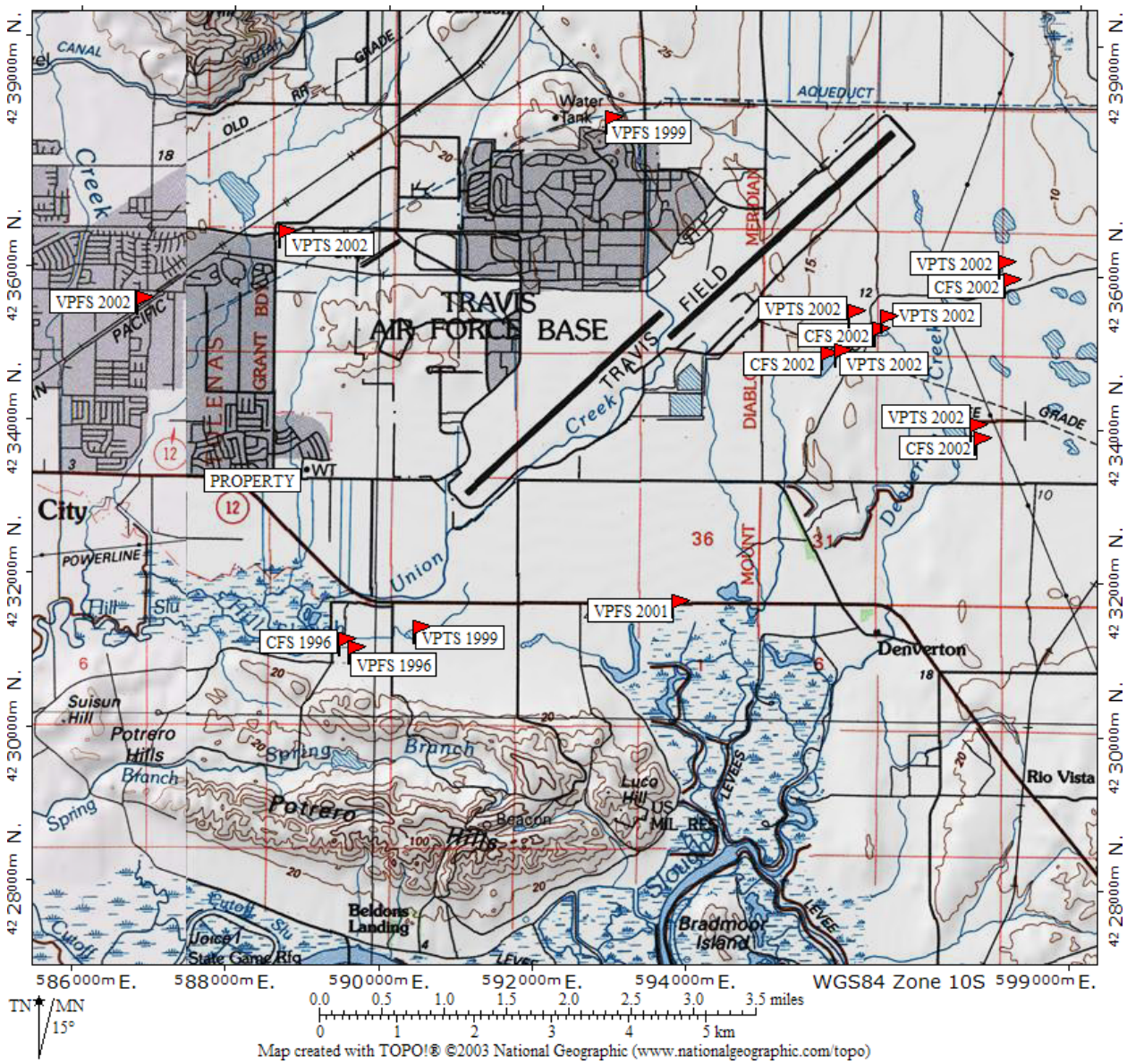

Figure 5
CNDDB Map of Invertebrates in the Vicinity of the Property (CFS=Conservancy Fairy Shrimp; VPFS=Vernal Pool Fairy Shrimp; VPTS= Vernal Pool Tadpole Shrimp)

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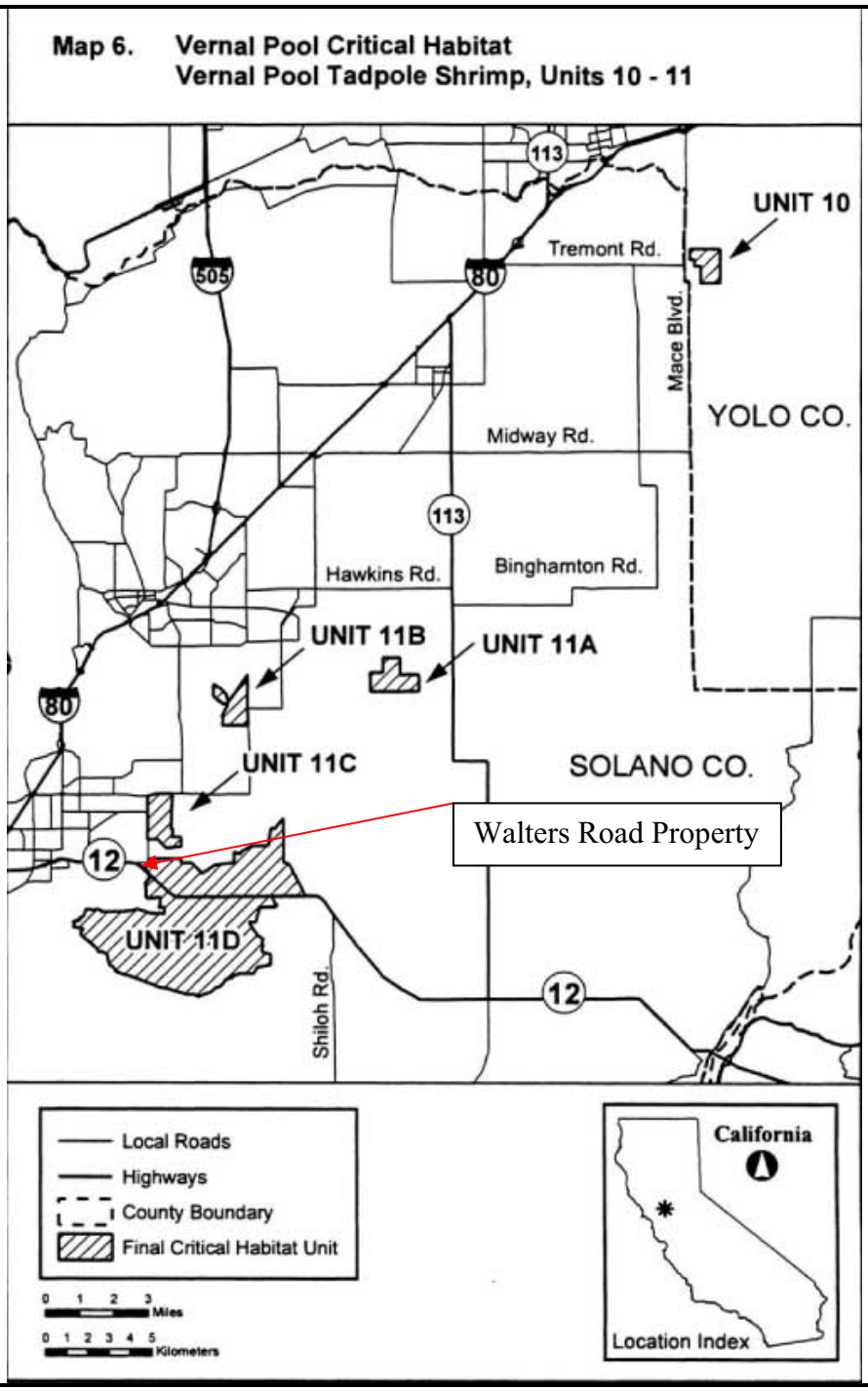
Figure 6
Critical Habitat Map for Vernal Pool Tadpole Shrimp



Olberding Environmental, Inc.
1390 Willow Pass Road, Suite 370
Concord, CA 94520
Phone: (925) 825-2111

This document is not intended for detail design work.

Figure 6
Critical Habitat for the Vernal Pool Tadpole Shrimp in the Vicinity of the Property
Solano County, California

Figure 7
Critical Habitat for the Vernal Pool Fairy Shrimp

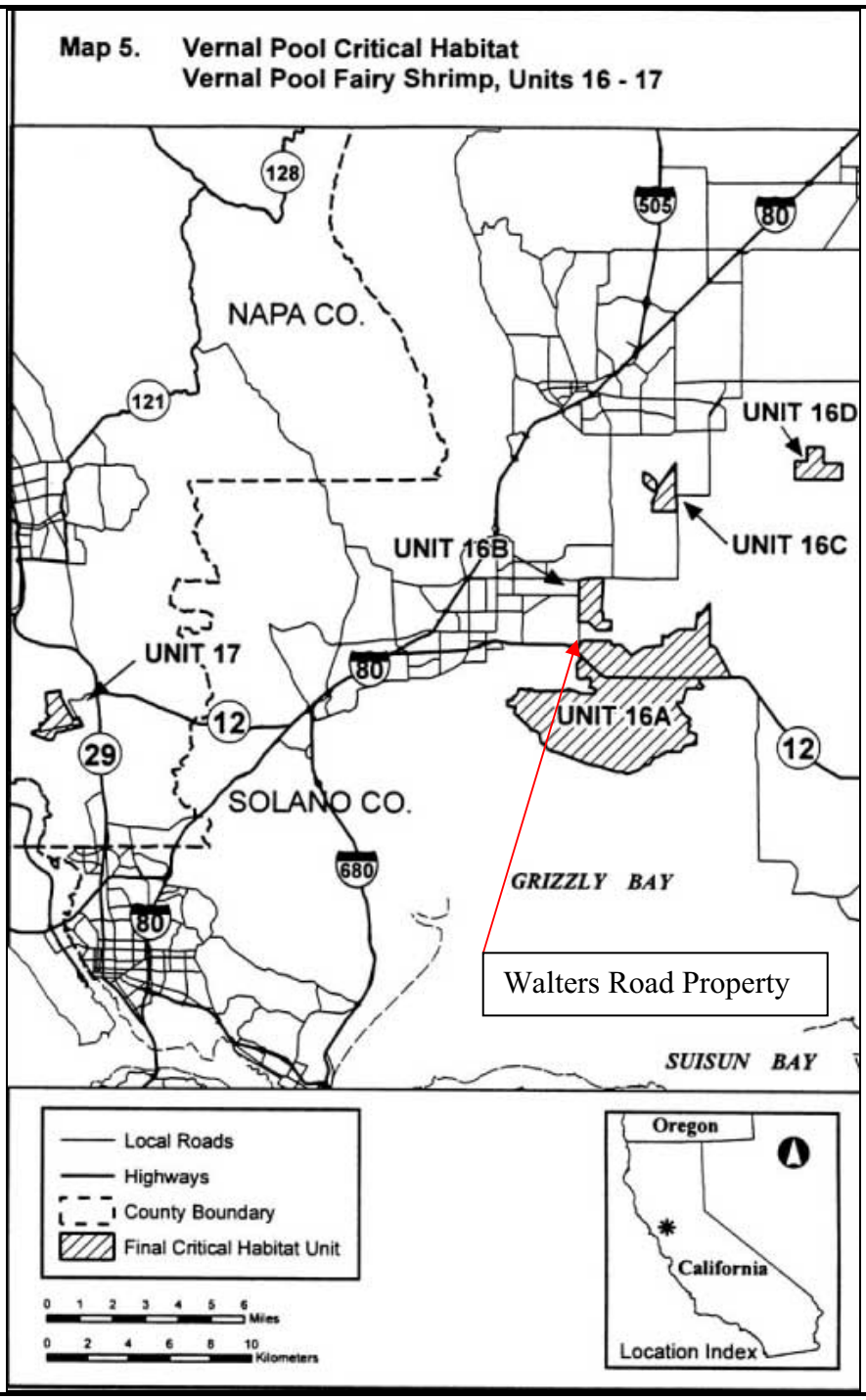


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Figure 7
Critical Habitat for the Vernal Pool Fairy Shrimp in the Vicinity of the Property
Solano County, California

Figure 8
Critical Habitat Overlay with Property

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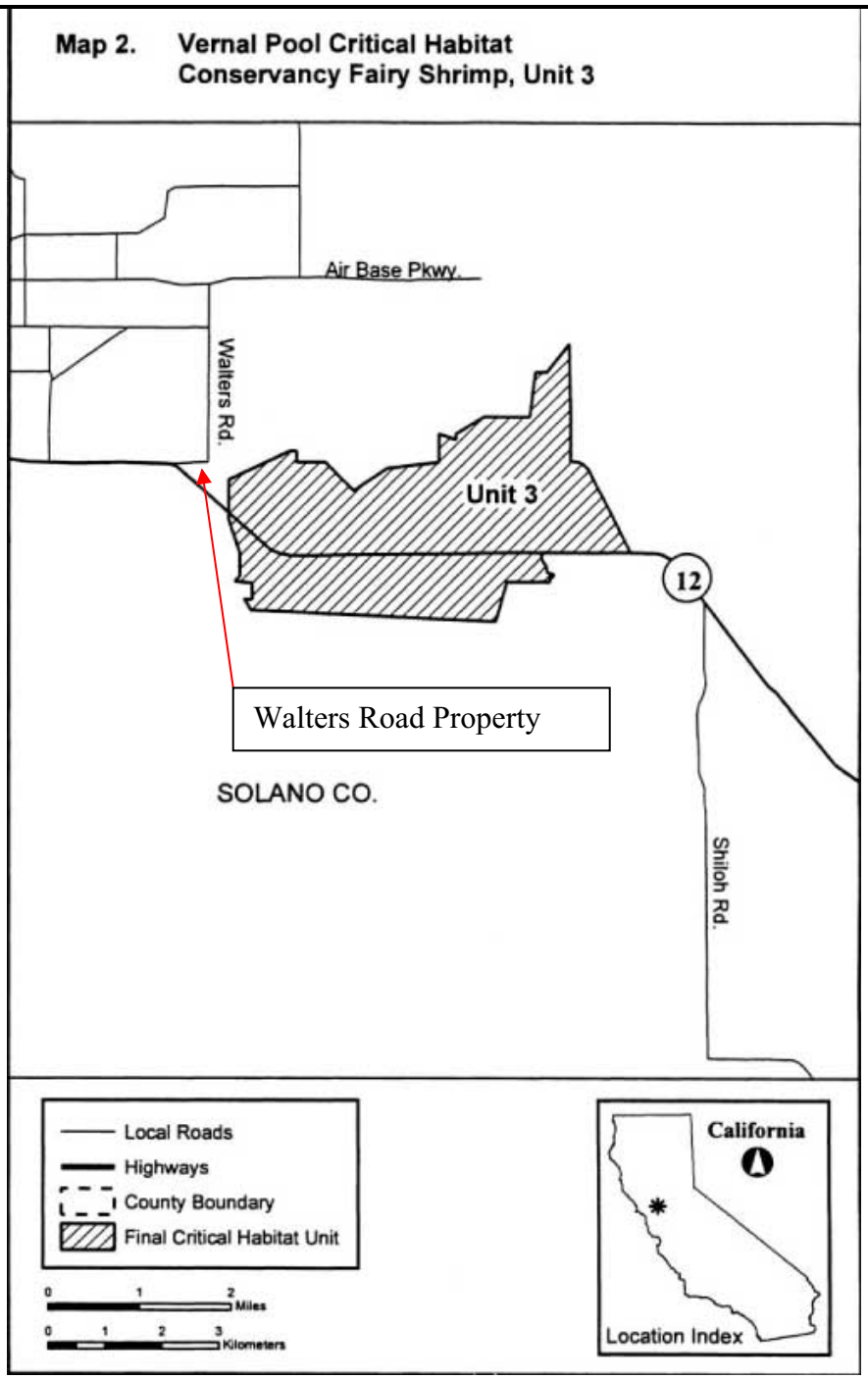
This document is not intended for detail design work.

Figure 8
Critical Habitat overlain on Wetland Delineation
Walters Road Development Project
Solano County, California

Figure 9
Critical Habitat for Conservancy Fairy Shrimp



Mapmart 2004

Olberding Environmental, Inc.
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Phone: (925) 825-2111

This document is not intended for detail design work.

Figure 9
Critical Habitat for the Conservancy Fairy Shrimp in the Vicinity of the Property
Solano County, California

ATTACHMENT 2
2006 SPECIAL-STATUS PLANT SURVEY REPORT

ATTACHMENT 3
FEDERALLY-LISTED LARGE BRANCHIPOD SAMPLING REPORT

ATTACHMENT 4
HABITAT ASSESSMENT FOR THE DELTA GREEN GROUND BEETLE

ATTACHMENT 5
SITE PHOTOGRAPHS

Photo 1. Annual grassland habitat. View facing northwest from near the center of the Property.

Photo 2. View of the ditch, taken facing north from midway along the ditch.

Olberding Environmental, Inc.
Walters Road Property – January 2006

Photo 3. Fill dirt placed on the Property has prevented water from draining from the western portion of the site. View facing south from near the northwest corner of the site.

Photo 4. Potential seasonal wetland habitat on the western portion of the site. View facing southwest from the center of the Property. Photo taken after rainfall event.

U.S. ARMY CORPS OF ENGINEERS
SECTION 404
INDIVIDUAL PERMIT APPLICATION

FOR THE

WALTERS ROAD DEVELOPMENT PROJECT

SOLANO COUNTY, CALIFORNIA

Prepared for:

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OCTOBER 2007

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This report should be cited as: Olberding Environmental, Inc. October 2007. *Section 404 Individual Permit Application for the Walters Road Development Project, Solano County, California.* Prepared for Wal-Mart Stores, Inc., c/o Robert A. Karn & Associates, Fairfield, California.

1.0 INTRODUCTION

This document is intended to provide the information necessary for agency review of activities related to the development of the Walters Road Development Project (Project), a retail development project located in Solano County, California. The Project applicant is Wal-Mart, through their engineers Todd Anderson from Robert A. Karns & Associates. The proposed Project is to occur on 20.8 acres of undeveloped land located in southern Suisun City (Attachment 1, Figures 1 & 2). The Project occurs within the Denverton 7.5 minute USGS quadrangle map (Attachment 1, Figure 3).

The Project has been reviewed for potential impacts to wetlands and waters of the United States. Development of the site will require the placement of fill into a total of 2.996 acres of jurisdictional wetlands and waters regulated by the U.S. Army Corps of Engineers (Corps). Approximately 2.686 acres of wetland swale that would be permanently filled and 0.310 acres of drainage channel habitat identified as wetland would be placed within a culvert in association with the planned development. Grading is proposed on the entire project site such that the fill of all jurisdictional areas is necessary to construct the Project.

Permanent impacts to Corps jurisdictional wetlands/waters will be mitigated at a 1:1 ratio on off site mitigation lands. A total of 2.996 acres of jurisdictional wetlands will be mitigated with the purchase of 2.996 acres of wetland habitat that will be created, preserved, and managed by an approved mitigation bank to compensate for losses of jurisdictional habitat at the development site.

This document is organized as follows: Section 1 discusses the specific Project components. Section 2 provides an introduction to the Project and information specifically requested in the most recent application for a Department of the Army permit. Section 3 discusses potential environmental impacts.

1.1 Project Summary

The Project involves the development of the 20.8-acre site with a retail and dining venue. The four main elements of the development include: 1) a nearly 215,000-square foot Wal-Mart retail store; 2) a proposed 1.05 acre fuel station with related uses; 3) a proposed 8,000-square foot sit-down restaurant; and 4) associated parking and infrastructure to support the commercial development. The fuel station and restaurant are currently proposed uses for Parcel A and B; however, the parcels may be developed with any use that is consistent with the General Commercial zoning for the site.

Wal-Mart Supercenter: The main project element consists of the construction of an approximately 214,919 square foot (sf) Wal-Mart Supercenter on about 18.34 acres. (Note: The enclosed building floor area is 200,831 square feet without the outdoor portion of the garden center.) The new Wal-Mart will contain a grocery component of about 45,370 square feet, including a 34,475 square foot grocery sales area and a 10,895 square foot grocery support area. The new Wal-Mart will also contain a garden center of approximately 24,653 square feet (including 14,089 square feet of hard-fenced outdoor garden center and a customer pick-up and loading area). Along the front of the Supercenter will be a series of small internal "shops" occupying a total floor area of approximately

7,007 square feet. Some of these spaces will be occupied by Wal-Mart services such as optical and pharmacy, while others will be leased to non-Wal-Mart vendors and service providers (e.g., bank, hair salon, dry cleaners, etc.), although specific vendors have not yet been identified. A total of 921 parking stalls are proposed for the Wal-Mart. The new Supercenter will be open 24 hours per day, seven days per week.

Fuel Station—Parcel A: Parcel A of the subject site is 1.05 acres and will contain a full-service gas station and related uses. Components of the operation include a 4,100 square foot retail building; a minimum six fueling islands; car wash and required parking. Housed within the 4,100 square foot building will be the gas station sales operations and a convenience market. A co-branded quick service restaurant may also be included within the 4,100 square foot building. Located apart from the retail building and the fueling islands is the drive-through car wash facility. A total of 24 parking spaces are proposed for the Parcel A uses.

Sit-Down Restaurant—Parcel B: Parcel B is 1.40 acres and will contain an 8,000 square feet of building intended for a sit-down restaurant use together with required parking. Alternate uses for the building include a single-tenant general retailer with a use complementary to the anchor tenant, or a multi-tenant building with a variety of general retail and casual food service uses also complementary to the anchor tenant. A total of 69 parking spaces are proposed for the Parcel B restaurant use.

Parking and Internal Circulation: The proposed Project would provide 1,014 parking spaces onsite. The proposed Project would exceed the City of Suisun City's Zoning Ordinance minimum parking requirements by 110 spaces. Drive aisles would link the three Project components with the access points on Walters Road and Petersen Road. Drive aisles would range from 25 to 52 feet in width. Designated crossing areas would also be located in front of the Wal-Mart Supercenter to alert drivers of the potential of crossing pedestrians.

1.2 Project Background

The Project will be constructed on a roughly triangularly-shaped property, with Highway 12 forming the southern boundary, Petersen Road forming the northern boundary, and Walters Road forming the eastern boundary. A 1,025-foot long drainage ditch bisects the Project in a north to south direction, approximately 500 feet west of Walters Road. The drainage ditch conveys surface runoff from portions of the property, Petersen Road and the residential development to the north, to Hill Slough located approximately 0.5 miles south of the property.

The property is situated at approximately 20 feet above sea level, with elevations decreasing slightly in a west to east direction. Fill has previously been deposited over a large portion of the property west of the drainage ditch. The mound of fill is approximately 1.5 to 2 feet higher in elevation than the surrounding areas. This area of fill prevents water from draining from the western portion of the site, creating ponded areas within the shallow depressions that were found throughout this area. These depressions were inundated at the time of the reconnaissance survey in May of 2006. The site supports non-native annual grasslands that are disked on a bi-annual basis. Near the northwest

corner of the property is an area where the annual grassland habitat has been disturbed by vehicle traffic, indicating that this are was recently used as a staging area for nearby construction.

The property supports three habitat types: non-native annual grassland, ditch, and seasonal wetland (Attachment 5: Site photographs). The drainage ditch has been colonized by disturbance tolerant forbs and emergent vegetation. With the exception of a solitary cottonwood tree (*Populus fremontii*), both the drainage ditch and surrounding grasslands lack any tree or shrub cover. Within the drainage ditch there are also several sapling willow and cottonwood trees that are approximately three feet tall.

Surrounding land use is a mixture of housing developments and undeveloped annual grasslands. Lands to the immediate north, west, and south of the property have all been developed with single family homes. Immediately northeast of the property are two undeveloped lots, but lands to the north and northeast of these small lots have also been developed with single family homes and a sports complex. Lands to the east and southeast of the property consist of a large expanse of undeveloped annual grasslands associated with the Travis Air Force Base management area (east of Walters Road).

2.0 SUPPLEMENTAL INFORMATION FOR CORPS PERMIT APPLICATION

This section provides the Department of the Army Permit Application and information requested in Blocks 13 and 15-25 of the most recent (February 1994) application form. It includes information concerning the:

1) name of all water bodies directly impacted by the activity (Block 13);

2) location of the proposed Project and directions to the site (Blocks 15-17);

3) nature of the activity (Block 18);

4) proposed Project purpose (Block 19);

5) reason(s) for the discharge (Block 20);

6) types(s) of material being discharged and the amount of each type (Block 21);

7) surface areas of wetlands and other waters (Block 22);

8) portions of the work already complete (Block 23);

9) names and addresses of adjoining property owners (Block 24); and

10) approval or denials by other agencies (Block 25).

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT (33 CFR 325)	OMB APPROVAL NO. 0710-003 Expires October 1996

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, D.C. 20503. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Routine Uses: Information provided on this form will be used in evaluating the application for a permit. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
2006-303520N			

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME WAL-MART STORES, INC. (contact: John E. Clarke, Regional Vice President)	8. AUTHORIZED AGENT'S NAME AND TITLE *(an agent is not required)* Mr. Jeff Olberding Wetland Regulatory Scientist
6. APPLICANT'S ADDRESS c/o Todd Anderson Robert A. Karn & Associates 707 Beck Avenue Fairfield, California 94533	9. AGENT'S ADDRESS OLBERDING ENVIRONMENTAL, INC. 1390 Willow Pass Road, Suite 370 Concord, California 94520-7975
7. APPLICANT'S PHONE NOS. W/AREA CODE	10. AGENT'S PHONE NOS. W/AREA CODE
a. Business (707) 435-9999 b. Fax (707) 435-9988	a. Business (925) 825-2111 b. Fax (925) 825-2112

11. **STATEMENT OF AUTHORIZATION**

I hereby authorize, Jeff Olberding to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

APPLICANT'S SIGNATURE — DATE 10-19-07

APPROVED

NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE *(see instructions)*

WALTERS ROAD DEVELOPMENT PROJECT

13. NAME OF WATERBODY, IF KNOWN *(if applicable)* Adjacent Wetlands	14. PROJECT STREET ADDRESS *(if applicable)* Near the intersection of Walters Road and Petersen Road Fairfield, California
15. LOCATION OF PROJECT Solano County (COUNTY) — California (STATE)	

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN, *(see instructions)*

SEE ATTACHED DOCUMENT

17. DIRECTIONS TO THE SITE -

SEE ATTACHED DOCUMENT

18. Nature of Activity (Description of project, include all features)

SEE ATTACHED DOCUMENT

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

SEE ATTACHED DOCUMENT

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge

SEE ATTACHED DOCUMENT

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards

SEE ATTACHED DOCUMENT

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

SEE ATTACHED DOCUMENT

23. Is Any Portion of the Work Already Complete? Yes ____ No X IF YES, DESCRIBE THE COMPLETED WORK

24. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (if more than can be entered here, please attach a supplemental list).

SEE ATTACHED DOCUMENT

25. List of Other Certifications or Approvals/Denials Received from other Federal, State or Local Agencies for Work Described in This Application.

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED

SEE ATTACHED DOCUMENT

*Would include but is not restricted to zoning, building and flood plain permits

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

10-19-07 — SIGNATURE OF APPLICANT (John E. Clarke, Regional Vice President) — DATE

11-12-07 — SIGNATURE OF AGENT — DATE

APPROVED LEGAL

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

2.2 Water Bodies Impacted (Block 13)

Results of the jurisdictional delineation identified the presence of potentially regulated wetlands and waters of the U.S. within the Project's boundaries. A constructed drainage ditch was identified in the center of the property which functions to collect and drain stormwater runoff from Petersen Road and a residential neighborhood to the north. Water is transported south of the property through a large culvert under Highway 12. The constructed drainage ditch is eventually tributary to Hill Slough located approximately 0.5 miles south of the property. While the intended purpose of the constructed ditch is to convey stormwater runoff away from the Property, the ditch was observed to contain a bottom dominated by wetland vegetation. The presence of wetland vegetation results in the ditch being identified as a wetland rather than a water of the U.S.

In addition to the vegetated drainage ditch, twelve additional seasonal wetland features were identified on the property. Based on the field survey and analysis of data it was determined that all the features contain characteristics of wetlands. The vegetation in the seasonal wetlands consists of hydrophytes (wetland vegetation), primary indicators of wetland hydrology were observed, and soils were dark in chroma in comparison to uplands. The criteria for vegetation, hydrology and soils were met within the wetland features. Based on the results of the May 2006 field survey and the Corps field verification on February 14, 2007, it was determined that there are 2.996 acres of jurisdictional wetlands located on the property.

Table 1
Water Bodies Impacted

Wetland/Waters (Type)	Existing (Acres)	Impacted (Acres)
Adjacent Wetlands	2.686	2.686
Wetland Drainage Channel	0.310	0.310
Total	**2.996**	**2.996**

2.3 Location of the Property and Directions to the Site (Blocks 15-17)

The approximately 20.8-acre parcel evaluated for this document is situated immediately north of Highway 12, south of Petersen Road, and west of Walters Road in Solano County, California. Access to the Property is attained by taking the Highway 12 exit east from Interstate 80. Follow Highway 12 for approximately 5.25 miles. The property is situated immediately north of the intersection of Highway 12 and Walters Road.

2.4 Nature of the Activity (Block 18)

The activity consists of the development of 20.8 acres which includes grassland habitat and wetland/waters of the U.S. Permanent fill of 2.996 acres of jurisdictional wetlands will occur as a result of development. The placement of fill into jurisdictional wetlands is required to accommodate

the proposed development project at the identified location which consists of an infill parcel. No temporary impacts will be accrued due to the complete development of the site. No onsite preservation of wetlands or waters is proposed. Mitigation is proposed off site at a 1:1 ratio to directly replace the habitat functions and values that exist at the development location.

2.5 Proposed Project Purpose (Block 19)

The basic project purpose is a commercial development. The overall project purpose is to construct a commercial development within the limits of Suisun City that will provide for a Wal-Mart retail store, fuel station, sit down restaurant and associated parking.

2.6 Reason(s) for the Discharge (Block 20)

To achieve maximum site development and use the land efficiently, the permanent fill of all wetlands is proposed as indicated below in Table 2.

Table 2
Reason for Discharge

Discharge Activity	Total Area of Discharge	Permanent (Acres)	Temporary (Acres)
Adjacent Wetlands	2.686	2.686	0.00
Wetland Drainage Channel	0.310	0.310	0.00
Total	2.996	2.996	0.00

2.7 Type(s) and Amounts of Material Being Discharged (Block 21)

Discharge material would consist of approximately 13,000 cubic yards of permanent clean earthen fill spread over the entire Project site. It is estimated that 2,000 cubic yards of that fill will be discharged directly into the jurisdictional wetlands. An additional 1,500 cubic yards of culvert and related fill materials will be discharged into the wetland drainage channel.

Table 3
Types and Amounts of Material Being Discharged

Location of Discharge Activity	Type of Material	Area (Acres)	Approximate Amount (Cubic Yards)
Adjacent Wetlands	Earthen Fill	2.686	2,000
Wetland Drainage Channel	Culvert Pipe	0.310	1,500
Total		**2.996**	**3,500**

2.8 Surface Areas of Wetlands and Other Waters of the United States (Block 22)

A wetland delineation was conducted by Olberding Environmental, Inc., in May 2006. The wetland delineation indicated that wetlands under the jurisdiction of the Corps were present within the property as well as wetlands under the jurisdiction of the Regional Water Quality Control Board.

Table 4
Surface Area of Wetlands and Other Waters of the United States

Location	Wetlands(Acres)	Waters (Acres)
Adjacent Wetland	2.686	0.00
Wetland Drainage Channel	0.310	0.00
Total	**2.996**	**0.00**

Impacts associated with the development of the Property would amount to 2.996 acres of permanent fill which would be mitigated through the purchase of mitigation credits at the North Suisun Mitigation Bank. Wetland mitigation will result in the purchase of 2.996 acres of vernal pool seasonal wetland habitat to compensate for the loss of 2.686 acres of adjacent wetland and 0.310 acres of wetland drainage channel.

Table 5
Summary of Impacts/Mitigation to "Jurisdictional Wetlands"

ACTIVITY/HABITAT TYPE	ACRES
Impacts to Wetlands at the Walters Road Development Site	
Permanent Impacts to Wetlands	2.996
Temporary Impacts to Wetlands	0.00
Total Acres of Wetlands Proposed to be Impacted	**2.996**
Proposed Mitigation of Wetlands	
Wetland Creation (Acreage Credits to be Purchased)	2.996
Total Acres of Created Habitat	**2.996**

2.9 Portions of the Project Already Completed (Block 23)

No portions of the Project have been completed at this time.

2.10 Names and Addresses of Adjoining Property Owners (Block 24)

Names and addresses of adjoining property owners are provided in Attachment 4.

2.11 Approvals or Denials by Other Agencies (Block 25)

No federal approvals are required other than the issuance of a Clean Water Act Section 404 permit.

Two state approvals are being sought. A copy of this permit application will be forwarded to the San Francisco Regional Water Quality Control Board for approval of 401 Water Quality certification. This action is being considered under an Individual Permit for 2.996 acres of permanent fill. A Streambed Alteration Agreement application is being obtained from the California Department of Fish and Game.

The Project requires the following entitlements/permits from the City of Suisun City: site plan review, parcel map, use permit, zoning administrator approval, sign permit, encroachment permit, grading permit, building permit, mechanical permit, plumbing permit, electrical permit, fire systems permit, and fencing permit. The Solano County Airport Land Use Commission must also make a Determination of Consistency.

3.0 POTENTIAL ENVIRONMENTAL IMPACTS

The discussion of impacts that follows is intended to address the particular environmental functions normally of particular concern to the Corps as a result of its role in protecting wetlands and other special aquatic sites.

3.1 Ground Water Discharge

The wetlands and drainage channel function in a limited capacity in ground water recharge/discharge ability of the property. The wetlands on the Project site perform a small amount of recharge function only during the rainy season. The amount of ground water recharge is limited due to the perching of water above the surface. The drainage channel is part of the local drainage system and conveys seasonal runoff south to Hill Creek Slough. The proposed would result in the fill of the entire area containing the jurisdictional wetlands within the confines of the Project. This would eliminate ground water recharge over the length of the existing channel and within the wetlands. A small decrease in ground water recharge would occur as result of the Project because the channels currently allow only for seasonal water percolation. However, the channel and associated wetlands are strictly seasonal in nature such that year round ground water recharge does not occur. Minor effects to groundwater recharge would occur as a result of Project implementation.

3.2 Flood Storage and Desynchronization

Year round water runoff is transported from the development to the north of the site to Hill Creek Slough to the south through the wetland drainage channel. During storm events the wetland drainage channel becomes inundated with runoff from the watershed to the north and water fills the channel from bank to bank under heavy rainfall conditions. Water storage occurs during winter storm events and during the summer due to irrigation runoff.

The Project would result in the culvertization of the existing wetland drainage channel to maintain its current function in transporting flood and irrigation water flows to Hill Creek Slough. The site drainage plans will be constructed to maintain the capacity of the channel and its ability to discharge into downstream systems. A culvert system will be used that will convey the current water volumes plus all anticipated volumes generated by the development Project. The construction of the proposed Project would occur during the late summer and early fall months when water flows are at their lowest level within the channel. Coffer dams would be used to dewater the channel and water would be pumped around the work area for only the time necessary to complete the underground culvert construction. No changes to flood water storage are anticipated to occur as result of the Project. Stormwater desynchronization would not occur as the underground culvert system would be constructed and operational prior to the onset of the rainy season.

3.3 Sediment/Toxicant Retention

The watershed for the wetland drainage channel consists of residential development to the north of Peterson Road. The residential subdivisions include paved roadways and housing development that could potentially contribute to the sediment and toxicant loads within the channel. The wetland drainage channel does act to filter some amount of sediment and toxicants from stormwater runoff but its linear and narrow characteristics limit this function. The runoff from the watershed which passes through the wetland drainage channel is small, but the fill of the channel and wetlands would eliminate the existing sediment and toxicant reduction that occurs on the Project. Sediment and toxicant retention would no longer occur along the length of the wetland drainage channel within the Project due to the passing of seasonal flows through corrugated metal or concrete culvert pipes. Therefore, it is expected that the sediment/toxicant retention functions will be reduced by the Project.

Construction of the development Project would temporarily eliminate vegetative cover on the Project. If not protected by interim erosion control measures these areas would be subject to erosion in the winter, increasing the sediment load in stormwater runoff. Since erosion control measures are to be included in the Project design, no increase in sediment or decrease in water quality is anticipated due to on site construction.

3.4 Nutrient Retention/Transformation

The proposed Project will result in the loss of all nutrient retention and transformation qualities within the wetland drainage channel and seasonal wetlands.

3.5 Nutrient Production/Export

The project site currently produces nutrients in the form of seeds, vegetative materials and insect populations, all of which are utilized by local wildlife. Construction activities would permanently impact this production. The 20.8 acres proposed for development will no longer function in the production of nutrients due to grading of all habitats on site.

3.6 Aquatic Diversity/Abundance

A total of 2.996 acres of wetlands (a combination of jurisdictional wetlands and wetland drainage channel) will be impacted as a result of the proposed Project. These areas consist of a constructed drainage channel where waters flow nearly year round and seasonal wetlands which are inundated ephemerally during the rainy season. The site supports seasonal wetland habitat in which a limited variety of aquatic organisms reside. All aquatic organisms that use the wetland drainage channel and seasonal wetland will be impacted. The abundance of aquatic organisms would be permanently decreased as a result of construction. Permanent impacts to both the aquatic diversity and abundance would result from project development.

3.7 Fish/Shellfish Habitat

The site does not contain habitat that could support fish or shellfish habitat. The wetland drainage channel and seasonal wetlands on site are intermittent and shallow. The wetland drainage may potentially hold water year round but the shallow nature of summer time conditions eliminates the potential for fish or shellfish habitat. The site lacks the appropriate habitat for all fish and shellfish. No impacts to fish or shell fish habitat will occur as a result of this development project.

3.8 Wildlife Habitat

In classifying the habitat types on the Property, generalized plant community classification schemes were used (Sawyer and Keeler-Wolf 1995). The final classification and characterization of the habitat types of the study area were based on field observations. The Property supports three habitat types: disked non-native annual grassland, ditch, and seasonal wetland. A row of mature Monterey pine trees (*Pinus radiata*) can be found along the northern site boundary, north of Peterson Road. These habitats may support nesting and foraging raptor species, small rodents and other common urban wildlife. All wildlife habitats would be lost as a result of the proposed Project. However, the habitat on this property is abundant in just south east of the property, across Walters Road. Any wildlife using the site could easily relocate to these nearby areas.

3.9 Endangered Species

The Project was reviewed for its impacts to endangered species and their designated critical habitats. Vernal pool crustaceans have been identified with the potential to occur on the property consisting of: the conservancy fairy shrimp *(Branchinecta conservatio)*, the vernal pool fairy shrimp *(Branchinecta lynchi)* and the vernal pool tadpole shrimp *(Lepidurus packardi)*. Focused wet and

dry season surveys for large branchiopods did not find any evidence that these species occupy the wetlands on the property; therefore they have been determined to be absent (Helm 2007). Maps published in the Federal Register (USFWS 2006e) show that the Property overlaps, in part, with approximately 2.4 acres of designated critical habitat for the vernal pool fairy shrimp and the vernal pool tadpole shrimp. The area represents an isolated sliver of habitat to the west of Walters Road. Guidance from the USFWS indicates that this designation was intentional. Even though surveys have determined the absence of any fairy shrimp species, the presence of designated critical habitat will necessitate consultation with USFWS under Section 7 of the Endangered Species Act for adverse affects to 2.4 acres of designated critical habitat.

The Delta green ground beetle occupies the margins of vernal pools and therefore was reviewed for its potential to occur on the property. Focused surveys performed in February of 2007 by Entomological Consulting Services, Ltd. did not find suitable habitat for the beetle. The density and species composition of the grassland plant community on site, along with the limited occurrence of the necessary soils and playa pools, makes it impossible for the species to breed within the Project's limits.

No endangered plant species were identified in the project area. Three plants that are federally listed as endangered or threatened have the potential to occur on site: Contra Costa goldfields, San Joaquin Valley orcutt grass, and showy indian clover. Focused surveys for special-status plant species were performed on April 26, May 8 and 24, June 7, and July 7 2006. Surveys were performed during the identified blooming period for all plants listed above. Results of the spring/summer surveys resulted in the identification of the pappose tarplant a CNPS 1B listed species. This species is not listed by either the federal or state as a special-status plants. No federally protected plant species were identified. Maps published in the Federal Register (USFWS 2006e) indicate that 2.4 acres on the eastern margin of the property fall within the boundaries of Unit 4C of the designated critical habitat for Contra Costa goldfields. However, this property does not contain the necessary primary constituent elements to qualify for protected critical habitat as it lacks the predominance of native plant species that is required in the goldfield's primary constituent element (ii). It also does not provide a defined mound and intermound complex as required by primary constituent element (i). Therefore, the site is not considered critical habitat.

Other than the above discussed species, no other federally protected species are expected to occur within the property based upon the CNDDB list of occurrences and the existing wildlife habitat.

As per the above discussion, the proposed Project will not affect any federally-listed species. The effects of the proposed project on designated critical habitat for the vernal pool fairy shrimp and vernal pool tadpole shrimp are discussed further in the Biological Assessment for this Project, dated November 2007.

3.10 Consumptive Recreation

The project site is not subject to general public access and or recreational use. No impacts to consumptive recreation will occur as a result of site development.

3.11 Non-Consumptive Recreation

Impacts to non-consumptive recreation are not expected.

3.12 Uniqueness/Heritage

In response to cultural issues, as required under 33 CFR 325, App. C, a cultural resource assessment has been preformed on the subject property. Documentation of the results of the assessment is available in Appendix D: Cultural Resource Assessment, which was published in the City of Suisun City's Draft Environmental Impact Report (DEIR) dated September 20, 2007. As per this report, no cultural or historical resources are known to occur on the site. A copy of this section of the DEIR can be provided upon request, or can be down loaded from the City of Suisun City's website: http://www.ci.suisun-city.ca.us/Data/PlanDocs/WM_DEIR/Appendices/Appendix%20D%20-%20Cultural%20Resources%20Assessment.pdf.

3.13 Ecological Integrity/Fragmentation

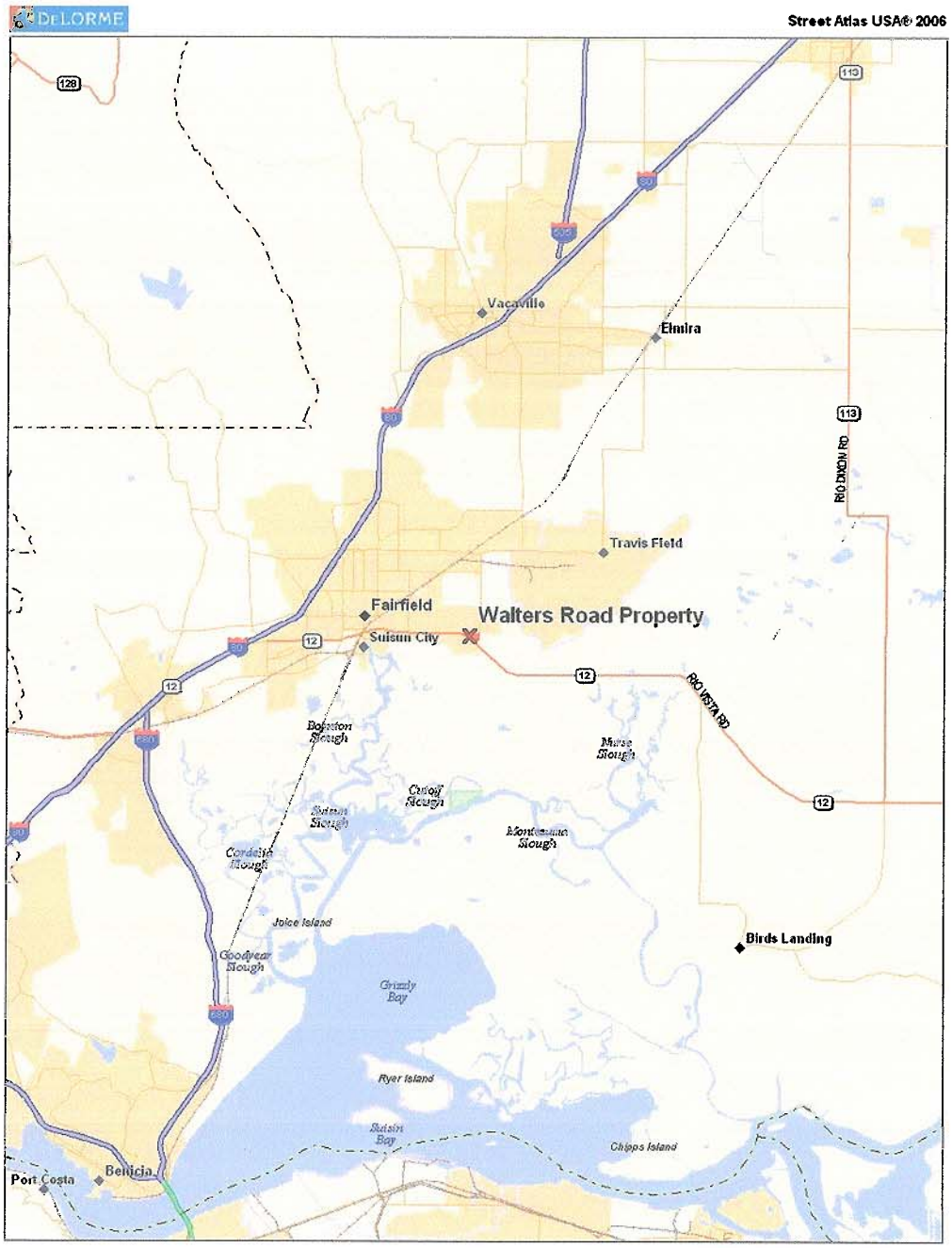
As the Project is an in-fill development project (development already exists on two of the Project's three sides), the Project would not result in impacts to ecological integrity or fragment wildlife habitat.

ATTACHMENTS

ATTACHMENT 1
FIGURES

Figure 1 Regional Map
Figure 2 Vicinity Map
Figure 3 USGS Quadrangle Map
Figure 4 Aerial Photograph
Figure 5 Development Site Map

Figure 1
Regional Map

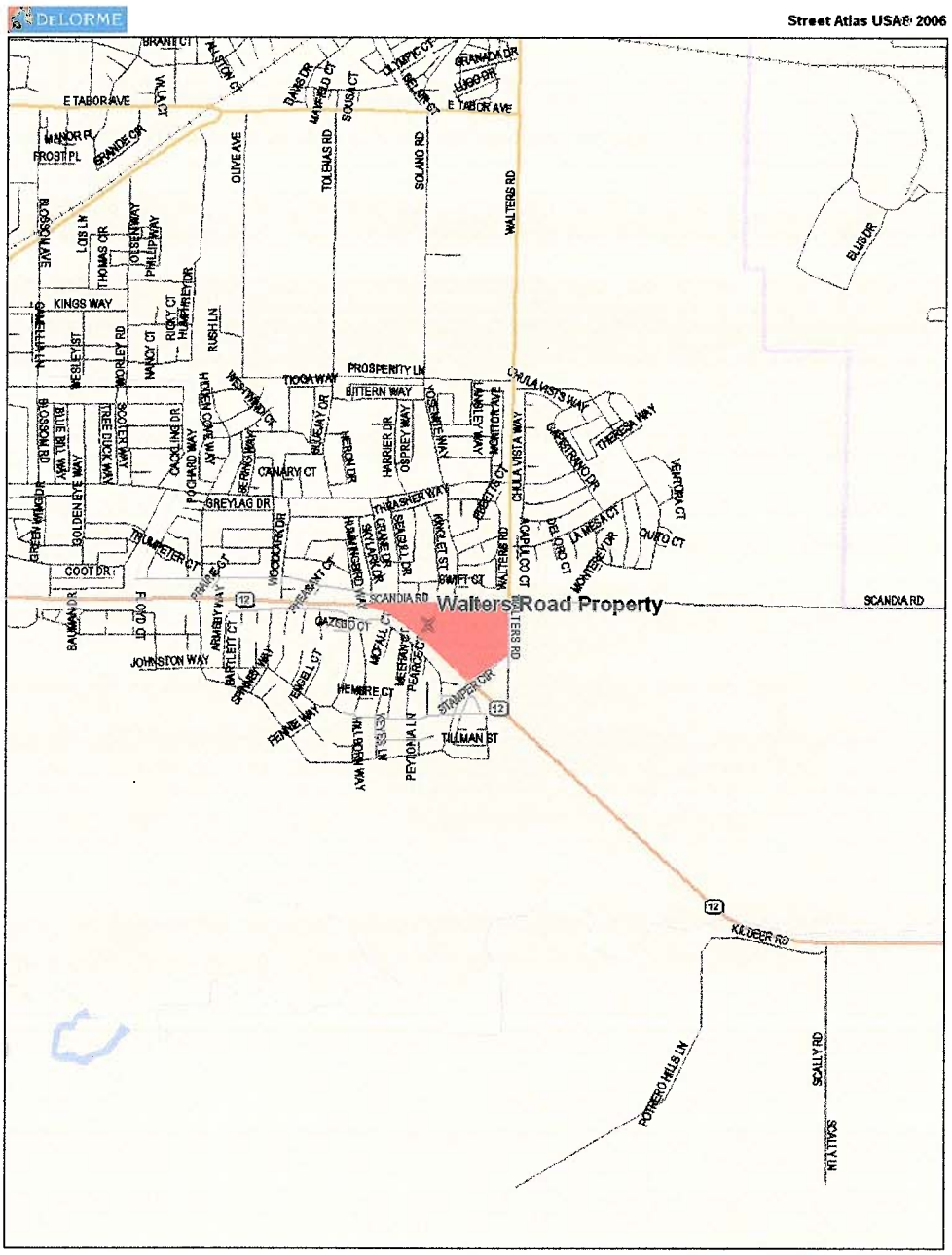


Olberding Environmental, Inc.
1390 Willow Pass Road, Suite 370
Concord, CA 94520
Phone: (925) 825-2111

This document is not intended for detail design work.

Figure 1
Regional Map of the Walters Road Project
Solano County, California

Figure 2
Vicinity Map



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This document is not intended for detail design work.

Figure 2
Vicinity Map of the Walters Road Project
Solano County, California

Figure 3
USGS Quadrangle Map

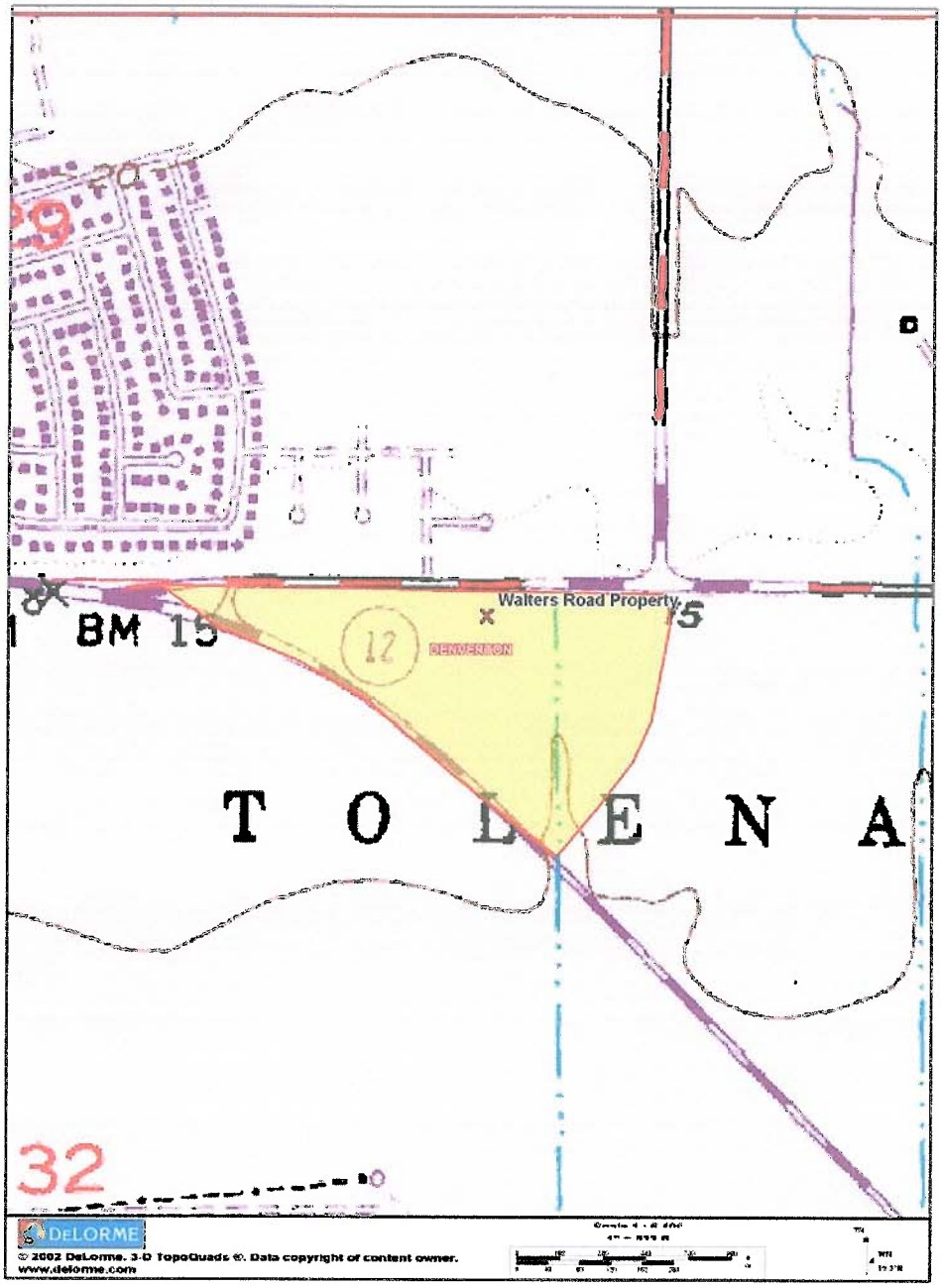

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Figure 3
USGS Quadrangle Map of
Walters Road Project
Denverton USGS quadrangle
Solano County, California

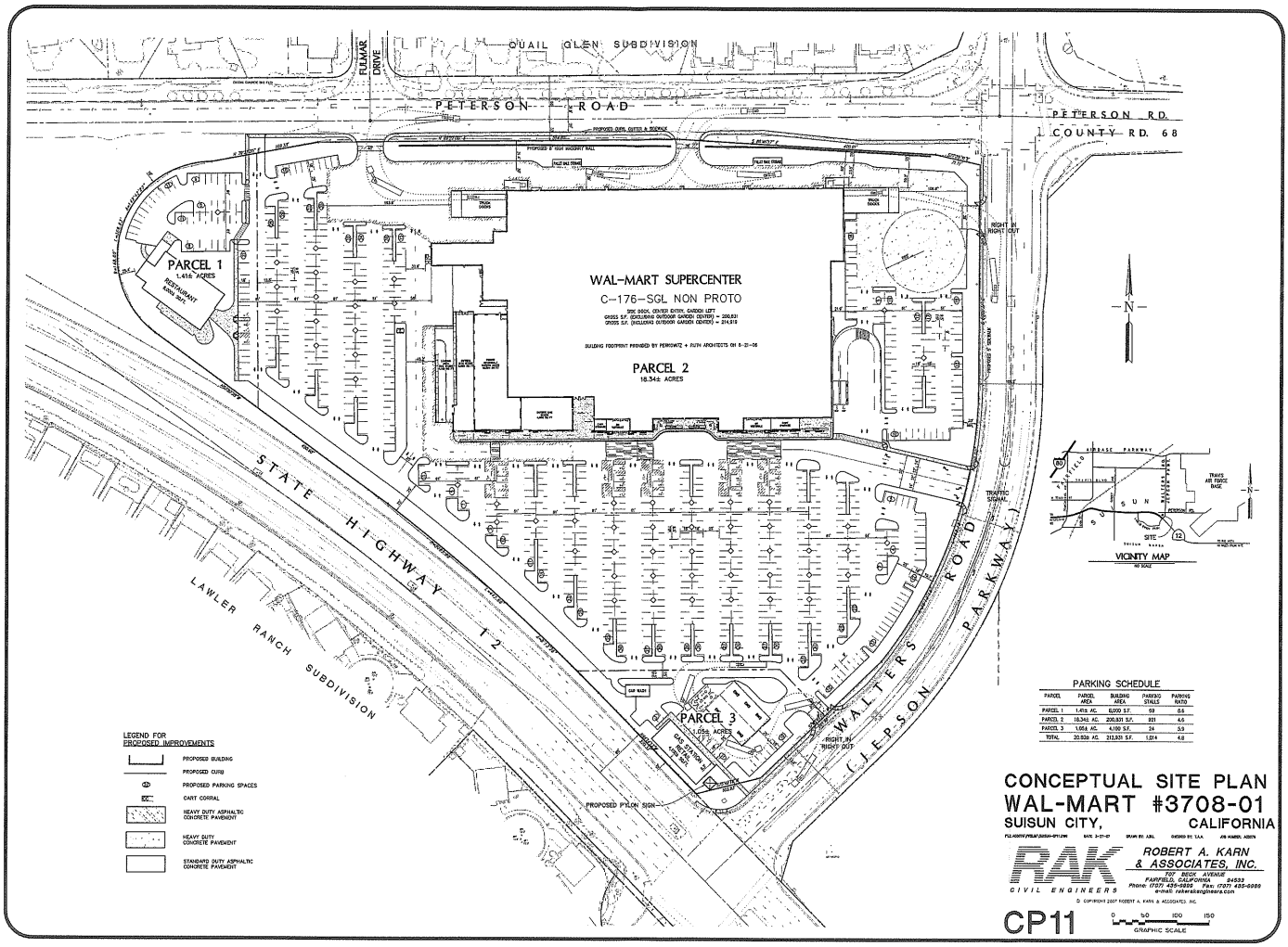
Figure 4
Aerial Photograph

Olberding Environmental, Inc.
1390 Willow Pass Road, Suite 370
Concord, CA 94520
Phone: (925) 825-2111

This document is not intended for detail design work.

Figure 4
Aerial Photograph of Walters Road Project
Solano County, California

Figure 5
Development Site Map



PARKING SCHEDULE

PARCEL	PARCEL AREA	BUILDING AREA	PARKING STALLS	PARKING RATIO
PARCEL 1	1.41± AC.	6,000 S.F.	59	0.6
PARCEL 2	16.34± AC.	200,831 S.F.	921	4.6
PARCEL 3	1.05± AC.	4,150 S.F.	24	0.5
TOTAL	20.80± AC.	210,831 S.F.	1,004	4.8

CONCEPTUAL SITE PLAN
WAL-MART #3708-01
SUISUN CITY, CALIFORNIA

FILE:4008TH/PREL#/SUISUN-SPP1.DWG DATE: 3-21-07 DRAWN BY: ABEL CHECKED BY: TAA JOB NUMBER: 4008TH

RAK
CIVIL ENGINEERS
ROBERT A. KARN & ASSOCIATES, INC.
707 DECK AVENUE
FAIRFIELD, CALIFORNIA 94533
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e-mail: rakengineers.com

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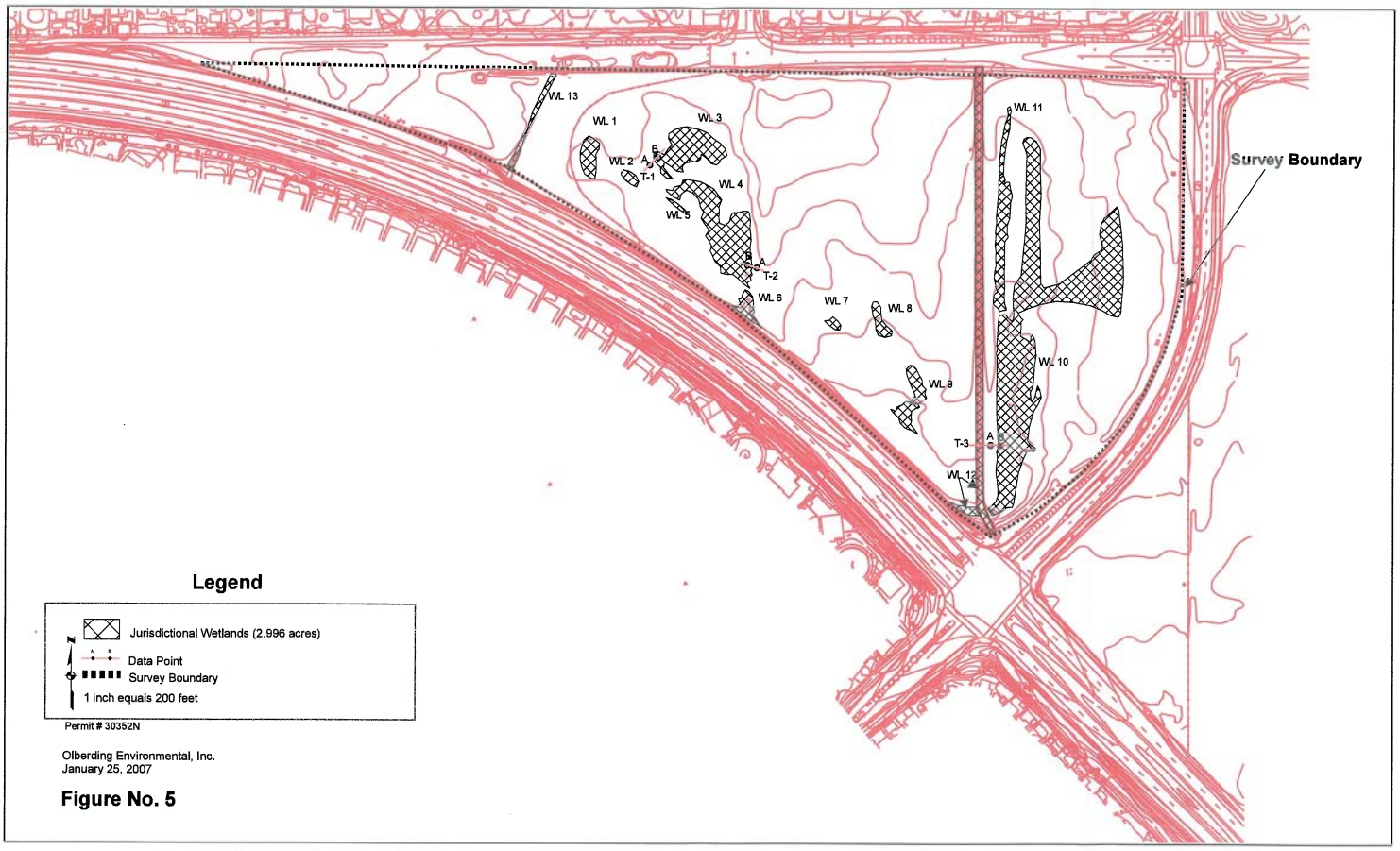
CP11

ATTACHMENT 2
CORPS JURISDICTIONAL DELINEATION

Walters Road Wetland Delineation Map



Legend

- Jurisdictional Wetlands (2.996 acres)
- Data Point
- Survey Boundary
- 1 inch equals 200 feet

Permit # 30352N

Olberding Environmental, Inc.
January 25, 2007

Figure No. 5

ATTACHMENT 3
APPLICABILITY OF THE 21 PUBLIC INTEREST FACTORS LISTED IN 33 CFR 325.3 (c) (1) TO THE PROJECT

Applicability of the 21 Public Interest Factors listed in 33 CFR 325.3 (c) (1) to the Walters Road Development Project	
Public Interest Factor	**Project Impact**
1. Conservation	Impacts associated with Project implementation would be minimized by undertaking construction in late spring. Site grading will occur when the potential for site runoff is at the lowest such that no sedimentation occurs.
2. Economics	The Project will have a positive economic impact. Business will be generated by the development of the Wal-Mart complex. The local economy will benefit from increases in sales of goods and services.
3. Aesthetics	Construction and grading activities required to implement the Project would not result in adverse impacts to the area=s aesthetic quality. Tractor use is short term on the site. The construction of the Wal-Mart center would be consistent with other land uses found along Highway 12 in Suisun City.
4. General environmental concerns	Environmental concerns include the minimization of disturbance to wildlife species and habitat during construction. However, these impacts will be mitigated through best management practices.
5. Wetlands	Permanent impacts would occur to 2.996 acres of wetlands. Mitigation off site at an approved bank site will result in the creation of 2.996 acres of seasonal wetland habitat.
6. Historic properties	In response to cultural issues, as required under 33 CFR '325, App. C, no prehistoric or cultural materials are expected to be significantly impacted within the project boundary.
7. Fish and wildlife values	All wildlife values associated with the grassland and wetland habitat on the site will be eliminated. There will be a permanent loss of approximately 20.8 acres of grassland habitat from wildlife use.
8. Flood hazards	The proposed Project would not increase flood hazards.
9. Floodplain values	Implementation of the proposed Project would not alter the current floodplain values.
10. Land use	Land uses changes will consist of the conversion of undeveloped grassland to retail uses.
11. Navigation	The proposed Project would not have an impact on navigation. The wetland drainage and seasonal wetlands are not navigable.
12. Shoreline erosion and accretion	No impacts will occur to shoreline areas.

Applicability of the 21 Public Interest Factors listed in 33 CFR 325.3 (c) (1) to the Walters Road Development Project	
13. Recreation	There are no anticipated impacts to recreation.
14. Water supply and conservation	There will be an increase in water demand resulting from retail, restaurant and fueling station operations.
15. Water quality	Impacts to water quality include potential temporary and minor increases in sedimentation to downstream watersheds. This impact will be minimized by constructing the Project during the dryer summer months and use of erosion control measures. Post construction erosion control and vegetation planting will stabilize soils on the site.
16. Energy needs	The proposed retail development project will increase energy demands in the area.
17. Safety	The proposed Project will not have an effect of safety.
18. Food and fiber production	**N/A**
19. Mineral needs	**N/A**
20. Property ownership	**N/A**
21. General needs and welfare of the people	The proposed project is desirable to meet retail shopping needs of the local community.

ATTACHMENT 4
ADJOINING PROPERTY OWNERS

Walter & D.C. Bennett
328 Perkins Court
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John R. & Wei-shien Travis
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Joanna Grivetti
324 Perkins Court
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Oscar & Elizabeth Luna
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James Arthur Wright, Jr.
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Michael & Lenor Kelly
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Sang Saephanh
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Jason Zhao
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Ramon & Cecilia Ibarra
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Christopher & K. Carr
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Suisun City, CA 94585

Belinda Motley
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Clem & Rosemarie Brown
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Vincent Thomas
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Susan Jayubo
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Susan Horton
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Nora & Angela Bohannon
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Suisun City, CA 94585

Jacinto & Theresa Solon
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Joseph Longo
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Cesar & Grilda Avila
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Jeffrey & Gail Garcia
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Ray & Vivian Espiritu
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Virgilio & Alma Arguel
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Bobby Owens
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Suisun CA 94585

Willie Turner
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Suisun CA 94585

Daisy & Zozimo Baroja
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Rosa Ramirez
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Suisun CA 94585

Alexis & Rizalina Guerrero
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Steven & Z.G. Schumaker
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Suisun CA 94585

Raymond & September Ford
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Suisun CA 94585

Carl & Pennie Toney
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Suisun CA 94585

Creighton & Deborah Carrow
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Michael Vance
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Suisun CA 94585

Walter & Dorothy Harris
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Suisun City, CA 94585

Dorothy Peralta
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Suisun CA 94585

Avtar & Harbans Pabla
413 Maloney Court
Suisun City, CA 94585

Shalan & Liby Ziadeh
400 Meehan Court
Suisun CA 94585

Rolitz & Liezl Agustin
417 Maloney Court
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Manfred Bester
401 Maloney Court
Suisun City, CA 94585

Frank & Lula Ruth
421 Maloney Court
Suisun City, CA 94585

Vichet & V. Jirasritumrong
425 Maloney Court
Suisun City, CA 94585

Frank & Carmelita Costa
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Suzy Singh
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Gary Manaoat
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Jeffrey & Angelina Galloway
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Nelson & R.M. Jemera
430 Pearce Court
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Steven & Cassandra Carter
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Edward & S.J. Hollenshead
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Maite & Ricardo Ramirez
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Yolanda Marenco
405 Meehan Court
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Kamal Naser
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Jose & Susan Wheelock
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Suisun City, CA 94585

Hung & Chimgmy Lam
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Emma & C.O. Bautista
413 Meehan Court
Suisun City, CA 94585

Evelyn & Joe Antes
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Mark Hagen
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Suisun City, CA 94585

Holly & Rene Conse
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Suisun City, CA 94585

Deanna & Shawn Kacer
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Kenneth Terrado
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Guy & Beverly Gardner
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Hong Doan
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Suisun City, CA 94585

David & Debi Foley
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Turhan & Gloria Burton
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Suisun City, CA 94585

Lawrence Handy
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August & A.K. Parkham
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Suisun City, CA 94585

David & Teresa Ferentheil
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Suisun City, CA 94585

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Filemon & Terri Baca
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Daniel & Kathleen Bellem
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Suisun City, CA 94585

Samuel & K.A. Mendoza
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Alexander & R.V. Santos
417 Pearce Court
Suisun City, CA 94585

Christopher Dennis
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Michael & Denise Mauk
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Thomas Rojas
1216 Pheasant Drive
Suisun City, CA 94585

Raymond & Anita Weaver
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Suisun City, CA 94585

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Santa Rosa, CA 95404

Roger & Joyce Stump
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Fairfield, CA 94533

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Troy, VA 22974

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Fernando Parra
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Vivian Green
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Neil & Janet Robertson
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Scott & Kristen Heitman
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Emilio & Shirley Perez
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Anthony Strain-Flores
520 Seagull Drive
Suisun City, CA 94585

JP Morgan Chase Bank
519 Seagull Drive
Suisun City, CA 94585

Kathy Lawton
518 Seagull Drive
Suisun City, CA 94585

Jerry Carter
521 Seagull Drive
Suisun City, CA 94585

Reginald Hodge
516 Seagull Drive
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Marina Lawson
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John & Emilia Hakins
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Joseph & P.M. Dawson
1221 Pheasant Drive
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James & Cindy Jagger
1213 Pheasant Drive
Suisun City, CA 94585

Dennis & Toni Harvey
1223 Pheasant Drive
Suisun City, CA 94585

Marion & Sandra Williams
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Darrel Hansen
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Robert & P.K. Trinidad
1217 Pheasant Drive
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Jose & Socorro Rosas
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Aaron Buoncristiani
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Robin-nae Kan
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Forrest & Dawn Smith
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Suisun City, CA 94585

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Larry & Linda Boyd
505 Shrike Court
Suisun City, CA 94585

Othel Lamont Crenshaw
503 Shrike Court
Suisun City, CA 94585

Jack & Rebecca Collins
506 Kinglet Court
Suisun City, CA 94585

Ernesto & Petronila Ordonio
501 Shrike Court
Suisun City, CA 94585

Pablo & Maria Valez
508 Kinglet Court
Suisun City, CA 94585

Jean Marquez
500 Kinglet Court
Suisun City, CA 94585

James Evans
510 Kinglet Court
Suisun City, CA 94585

William & K.S. Rabska
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Jane Edwards
509 Kinglet Court
Suisun City, CA 94585

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Suisun City, CA 94585

Jimmy & Sulema Arian
505 Kinglet Court
Suisun City, CA 94585

Timothy & Bonnie Stubbs
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Suisun City, CA 94585

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Steven & Linda Pruitt
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Elmer Cuaresma
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Thomas & E.K. Morley
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James Thornton
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Wesley Lawrence
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Luz Chuck
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Richard & Mary Graham
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Ruby Allen
1417 Klamath Drive
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James Ballard
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510 Lassen Ave
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Ivo Lynn & Janice Hallowes
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Andrew Lumpkins
501 Yuba Court
Suisun City, CA 94585

Quentin Piper
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Suisun City, CA 94585

Eleanor Thomas
503 Yuba Court
Suisun City, CA 94585

Brian & Debra Deschaine
1426 Pelican Way
Suisun City, CA 94585

Charles McGee
505 Yuba Court
Suisun City, CA 94585

Leslie & Geri Hubbard
1424 Pelican Way
Suisun City, CA 94585

Sherry & Charles Jensen
506 Yuba Court
Suisun City, CA 94585

Thomas & J.M. Meissner
1422 Pelican Way
Suisun City, CA 94585

Renee Wooldridge
504 Yuba Court
Suisun City, CA 94585

Guy & Tamara Fuller
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Suisun City, CA 94585

Timothy & D.L. Shephard
1404 Pelican Way
Suisun City, CA 94585

Marlon Saravia
1412 Pelican Way
Suisun City, CA 94585

Doris & Theaphelus Thompson
1403 Pelican Way
Suisun City, CA 94585

Thomas & Janis Shoopman
1410 Pelican Way
Suisun City, CA 94585

Tyrone Angel
1405 Pelican Way
Suisun City, CA 94585

Camilo & S.O. Hormigas
1408 Pelican Way
Suisun City, CA 94585

John & Rhonda Colombo
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Suisun City, CA 94585

Pedro Perez
1409 Pelican Way
Suisun City, CA 94585

Paul & Connie Hames
1419 Pelican Way
Suisun City, CA 94585

Jeff Lee
1411 Pelican Way
Suisun City, CA 94585

Jose & Ella Valencia
1421 Pelican Way
Suisun City, CA 94585

Carol Owens
1413 Pelican Way
Suisun City, CA 94585

Juan & Wiltrud Torres
1423 Pelican Way
Suisun City, CA 94585

Joseph Nesbit
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Suisun City, CA 94585

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Bernard Slack
1427 Pelican Way
Suisun City, CA 94585

Maria & Rogelio Almanza
1429 Pelican Way
Suisun City, CA 94585

Debra Sandidge
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Alfred & Jacqualyn Anderson
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Suisun City, CA 94585

Maria Ivy Rodriguez
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Suisun City, CA 94585

Miguel & Jennifer Ochoa
521 Lassen Ave
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Simon Lau
1203 Mayfield Circle
Suisun City, CA 94585

Norrie &Ida Gardiner
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Suisun City, CA 94585

E.C. & Emilita Revese
1207 Mayfield Circle
Suisun City, CA 94585

Omar & O.L. Salvador
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Suisun City, CA 94585

Jared & Chelsea Alvarez
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Andrew & A.M. Stefenoni
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Alonso & Joanna Duarte
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Mark & Judy Reyes
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Carla Ramsay
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Jocelyn Sandhu
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Jackie Robinson
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Jaime Galvan
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Ferdinand Dial
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Raymond & V.W. Robinson
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Merdado & Mirella Ortiz
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Ergilita Sancho
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Kurt Johnson
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Atha Mallare
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Suisun City, CA 94585

Dossie Harper
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Suisun City, CA 94585

Tony & Ofelia Azucena
809 Gazebo Court
Suisun City, CA 94585

Cleophis Jermany
800 Gazebo Court
Suisun City, CA 94585

Carol & Antonio Strong
805 Gazebo Court
Suisun City, CA 94585

Anthony & Monica Foster
804 Gazebo Court
Suisun City, CA 94585

Hsui Huei & Alice Cheng
801 Gazebo Court
Suisun City, CA 94585

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Suisun City, CA 94585

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361 Mayfield Circle
Suisun City, CA 94585

Robert & Ulma Francis
325 Mayfield Circle
Suisun City, CA 94585

Lawrence Dillahunty
365 Mayfield Circle
Suisun City, CA 94585

Ernestine & Mark Walton
348 Mayfield Circle
Suisun City, CA 94585

Santos Pagtakhan
369 Mayfield Circle
Suisun City, CA 94585

Brenda Richardson
353 Mayfield Circle
Suisun City, CA 94585

Dien Bui
373 Mayfield Circle
Suisun City, CA 94585

Salvador Aldana
357 Mayfield Circle
Suisun City, CA 94585

Leonardo & Kiyozu Molloy
377 Mayfield Circle
Suisun City, CA 94585

Brenda Williams
381 Mayfield Circle
Suisun City, CA 94585

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1313 Hall Lane
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Clodualdo & E.V. Viojan
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Eugene & Belen Brennan
1221 Potrero Circle
Suisun City, CA 94585

Kevin & Annelyn Ison
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Brenda Bagbe
1225 Potrero Circle
Suisun City, CA 94585

Jose Flores
1309 Hall Lane
Suisun City, CA 94585

Felix & G.C. Wilson
1229 Potrero Circle
Suisun City, CA 94585

Denise Yanagawa
1233 Potrero Circle
Suisun City, CA 94585

Victor & Pamela Gressot
1248 Potrero Circle
Suisun City, CA 94585

Dolores Kirtdoll
1237 Potrero Circle
Suisun City, CA 94585

Beverly Johnson
421 McFall Court
Suisun City, CA 94585

Arturo Segura
1241 Potrero Circle
Suisun City, CA 94585

Paula Frederickson
1240 Potrero Circle
Suisun City, CA 94585

Wells Fargo Bank
1245 Potrero Circle
Suisun City, CA 94585

Eileen & Robert Noguera
1236 Potrero Circle
Suisun City, CA 94585

Kerry Davis
1249 Potrero Circle
Suisun City, CA 94585

Weizhi Sun
1232 Potrero Circle
Suisun City, CA 94585

Isagani & C.C. Tolentino
1228 Potrero Circle
Suisun City, CA 94585

Jeffrey & A.K. Whittet
450 McFall Court
Suisun City, CA 94585

Ronald Forsythe
1224 Potrero Circle
Suisun City, CA 94585

Jessica Dubon
446 McFall Court
Suisun City, CA 94585

Deutsche National Bank
1220 Potrero Circle
Suisun City, CA 94585

Jeffrey Barsch
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Suisun City, CA 94585

Lisa Morgan
1216 Potrero Circle
Suisun City, CA 94585

Francisco & Alicia Cardenas
438 McFall Court
Suisun City, CA 94585

Roanls Dunn
1212 Potrero Circle
Suisun City, CA 94585

Robert & Nina Cooper
434 McFall Court
Suisun City, CA 94585

Noime & Manuel Ventenilla
39 Belhaven Ave
Daly City, CA 94015

Doanld & Monika Evans
408 McFall Court
Suisun City, CA 94585

Terrance & N.L. McDermott
424 McFall Court
Suisun City, CA 94585

Harvey Queen
413 McFall Court
Suisun City, CA 94585

Curtis & Krisada Cookston
420 McFall Court
Suisun City, CA 94585

Floyd Hicks
417 McFall Court
Suisun City, CA 94585

Cristina Arcilla
416 McFall Court
Suisun City, CA 94585

Rickey & Beverly Johnson
421 McFall Court
Suisun City, CA 94585

Frederick & M.H. Aleman
412 McFall Court
Suisun City, CA 94585

Michael & Mary Mendoza
425 McFall Court
Suisun City, CA 94585

Dinh Vo
429 McFall Court
Suisun City, CA 94585

Michael & L.M. Provencher
449 McFall Court
Suisun City, CA 94585

May Rebischung
433 McFall Court
Suisun City, CA 94585

Segundino & L.P. Obedoza
453 McFall Court
Suisun City, CA 94585

Hector & Elba Sanchez
437 McFall Court
Suisun City, CA 94585

Samuel Rosales
441 McFall Court
Suisun City, CA 94585

Arnold & Chirissa Sioco
445 McFall Court
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ATTACHMENT 5
SITE PHOTOS

Photo No. 1. Annual grassland habitat. View facing northwest from near the center of the property.

Photo No. 2. View of the ditch, taken facing north from midway along the ditch.

Olberding Environmental, Inc.
Walters Road Project – January 2006

Photo No. 3. Fill dirt placed on the property has prevented water from draining from the western portion of the site. View facing south from near the northwest corner of the site.

Photo No. 4. Potential seasonal wetland habitat. View facing southwest from the center of the property.

Olberding Environmental, Inc.
Walters Road Project – January 2006

ATTACHMENT 6
DRAFT PUBLIC NOTICE

DRAFT PUBLIC NOTICE

1. **INTRODUCTION:** Wal-Mart, c/o Todd Anderson, engineer from Robert A. Karns & Associates, 707 Beck Avenue, Fairfield, California 94533, (707) 435-9999, has applied to the United States Army Corps of Engineers (Corps), through their agent Olberding Environmental, Inc (Olberding Environmental) (Point of contact: Jeff Olberding, 1390 Willow Pass Road, Suite 370, Concord, California 94520, 925-825-2111), for a Department of the Army Individual Permit to construct the Walters Road Development Project. The proposed Project is to occur on 20.8 acres of undeveloped land located in southern Suisun City, Solano County, California (Figures 1 through 3). The project purpose is to construct and operate commercial retail development. The project would cause the permanent loss of 2.996 acres of jurisdictional wetlands and waters. The duration of authorization, should the project be accepted, would be for five years from the date of permit issuance. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. Section 1344).

2. **PROPOSED PROJECT:**
   Project Site: The Walters Road Development Project (Project) will be constructed on a roughly triangularly-shaped property, with Highway 12 forming the southern boundary, Petersen Road forming the northern boundary, and Walters Road forming the eastern boundary. A 1,025-foot long drainage ditch bisects the Property in a north to south direction, approximately 500 feet west of Walters Road. The drainage ditch conveys surface runoff from portions of the property, Petersen Road and the residential development to the north, to Hill Slough located approximately 0.5 miles south of the property.

   The property is situated at approximately 20 feet above sea level, with elevations decreasing slightly in a west to east direction. Fill has previously been deposited over a large portion of the property west of the drainage ditch. The mound of fill is approximately 1.5 to 2 feet higher in elevation than the surrounding areas. This area of fill prevents water from draining from the western portion of the site, creating ponded areas within the shallow depressions that were found throughout this area. These depressions were inundated at the time of the reconnaissance survey in May of 2006. The site supports non-native annual grasslands that are disked on a bi-annual basis. Near the northwest corner of the property is an area where the annual grassland habitat has been disturbed by vehicle traffic, indicating that this are was recently used as a staging area for nearby construction.

   The property supports three habitat types: non-native annual grassland, ditch, and seasonal wetland. The drainage ditch has been colonized by disturbance tolerant forbs and emergent vegetation. With the exception of a solitary cottonwood tree (*Populus fremontii*), both the drainage ditch and surrounding grasslands lack any tree or shrub cover. Within the drainage ditch there are also several sapling willow and cottonwood trees that are approximately three feet tall.

Surrounding land use is a mixture of housing developments and undeveloped annual grasslands. Lands to the immediate north, west, and south of the property have all been developed with single family homes. Immediately northeast of the property are two undeveloped lots, but lands to the north and northeast of these small lots have also been developed with single family homes and a sports complex. Lands to the east and southeast of the property consist of a large expanse of undeveloped annual grasslands associated with the Travis Air Force Base management area (east of Walters Road).

Project Description: The Project involves the development of the entire 20.8-acre site with a retail and dining venue, as shown in Figure 4. The four main elements of the development include: 1) a nearly 215,000-square foot Wal-Mart retail store; 2) a proposed 1.05 acre fuel station with related uses; 3) a proposed 8,000-square foot sit-down restaurant; and 4) associated parking and infrastructure to support the commercial development. The fuel station and restaurant are currently proposed uses for Parcel A and B; however, the parcels may be developed with any use that is consistent with the General Commercial zoning for the site.

Wal-Mart Supercenter: The main project element consists of the construction of an approximately 214,919 square foot (sf) Wal-Mart Supercenter on about 18.34 acres. (Note: The enclosed building floor area is 200,831 square feet without the outdoor portion of the garden center.) The new Wal-Mart will contain a grocery component of about 45,370 square feet, including a 34,475 square foot grocery sales area and a 10,895 square foot grocery support area. The new Wal-Mart will also contain a garden center of approximately 24,653 square feet (including 14,089 square feet of hard-fenced outdoor garden center and a customer pick-up and loading area). Along the front of the Supercenter will be a series of small internal "shops" occupying a total floor area of approximately 7,007 square feet. Some of these spaces will be occupied by Wal-Mart services such as optical and pharmacy, while others will be leased to non-Wal-Mart vendors and service providers (e.g., bank, hair salon, dry cleaners, etc.), although specific vendors have not yet been identified. A total of 921 parking stalls are proposed for the Wal-Mart. The new Supercenter will be open 24 hours per day, seven days per week.

Fuel Station—Parcel A: Parcel A of the subject site is 1.05 acres and will contain a full-service gas station and related uses. Components of the operation include a 4,100 square foot retail building; a minimum six fueling islands; car wash and required parking. Housed within the 4,100 square foot building will be the gas station sales operations and a convenience market. A co-branded quick service restaurant may also be included within the 4,100 square foot building. Located apart from the retail building and the fueling islands is the drive-through car wash facility. A total of 24 parking spaces are proposed for the Parcel A uses.

Sit-Down Restaurant—Parcel B: Parcel B is 1.40 acres and will contain an 8,000 square feet of building intended for a sit-down restaurant use together with required parking. Alternate uses for the building include a single-tenant general retailer with a use complementary to the anchor tenant, or a multi-tenant building with a variety of general retail and casual food service uses also complementary to the anchor tenant. A total of 69 parking spaces are proposed for the Parcel B restaurant use.

Parking and Internal Circulation: The proposed project would provide 1,014 parking spaces onsite. The proposed project would exceed the City of Suisun City's Zoning Ordinance minimum parking requirements by 110 spaces. Drive aisles would link the three project components with the access points on Walters Road and Petersen Road. Drive aisles would range from 25 to 52 feet in width. Designated crossing areas would also be located in front of the Wal-Mart Supercenter to alert drivers of the potential of crossing pedestrians.

Purpose and Need: The basic project purpose is a commercial development. The overall project purpose is to construct a commercial development within the limits of Suisun City that will provide for a Wal-Mart retail store, fuel station, sit down restaurant and associated parking. The applicant states that the Project is needed to increase sales tax revenue to the City of Suisun, increase employment opportunities and increase retail opportunities within the City limits.

Impacts to Corps of Engineers Jurisdiction: The project site contains 2.686 acres of jurisdictional wetlands and 0.310 acres of jurisdictional wetland drainage ditch (see Figure 5). All 2.996 acres of jurisdiction features will be filled as a result of the Project. Discharge material would consist of approximately 13,000 cubic yards of permanent clean earthen fill spread over the entire Project site. It is estimated that 2,000 cubic yards of that fill will be discharged directly into the jurisdictional wetlands. An additional 1,500 cubic yards of culvert and related fill materials will be discharged into the wetland drainage channel.

Mitigation: Impacts associated with the development of the Property would amount to 2.996 acres of permanent fill which would be mitigated through the purchase of mitigation credits at the North Suisun Mitigation Bank. Wetland mitigation will result in the purchase of 2.996 acres of seasonal wetland habitat to compensate for the loss of 2.686 acres of adjacent wetland and 0.310 acres of wetland drainage channel.

3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

NEPA: National Environmental Policy Act of 1969 (NEPA): The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. seq.), the Council on Environmental Quality's Regulations (40 C.F.R. Parts 1500-1508), and the Corps' Regulations (33 C.F.R. Part 230 and Part

325, Appendix B). Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 1455 Market Street, San Francisco, California 94103-1398.

Endangered Species Act of 1973 (ESA): Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat.

The Corps is reviewing the Project for its impacts to federally protected species and its designated critical habitat. Information submitted by the applicant finds that there are no endangered or threatened species within the Project area. Potential impacts to designated critical habitat are currently being reviewed. Should it be determined that the proposed Project may adversely affect a designated critical habitat, the Corps will initiate a formal consultation with the USFWS in accordance with Section 7(a)(2) of the Endangered Species Act.

Magnuson-Stevens Fisheries Conservation and Management Act: The NMFS and several interagency fisheries councils have designated specific water bodies as Essential Fish Habitat (EFH) in accordance with the Magnuson-Stevens Fisheries Conservation and Management Act. Due to the absence of EFH on the project site, no consultation for EFH will be completed.

Clean Water Act of 1972 (CWA):

a. Water Quality: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. The applicant has provided the Corps with evidence that he has submitted a valid request for State water quality certification to the San Francisco Bay Regional Water Quality Control Board. No Corps permit will be granted until the applicant obtains the required water quality certification. The Corps may assume a waiver of water quality certification if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act. Those parties concerned with any water quality issue that may be associated with this project should write to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, by the close of the comment period of this Public Notice.

b. Alternatives: Evaluation of this proposed activity's impact includes application of the guidelines promulgated by the Administrator of the Environmental

Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). An evaluation has been made by this office under the guidelines and it was determined that the proposed project is not water dependent. The applicant has not submitted an Analysis of Alternatives and has been informed that such an Analysis is required and will be reviewed for compliance with the guidelines.

National Historic Preservation Act of 1966 (NHPA): Based on a review of survey data on file with various City, State and Federal agencies, no historic or archeological resources are known to occur in the project vicinity. If unrecorded resources are discovered during construction of the project, operations will be suspended until the Corps completes consultation with the State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act.

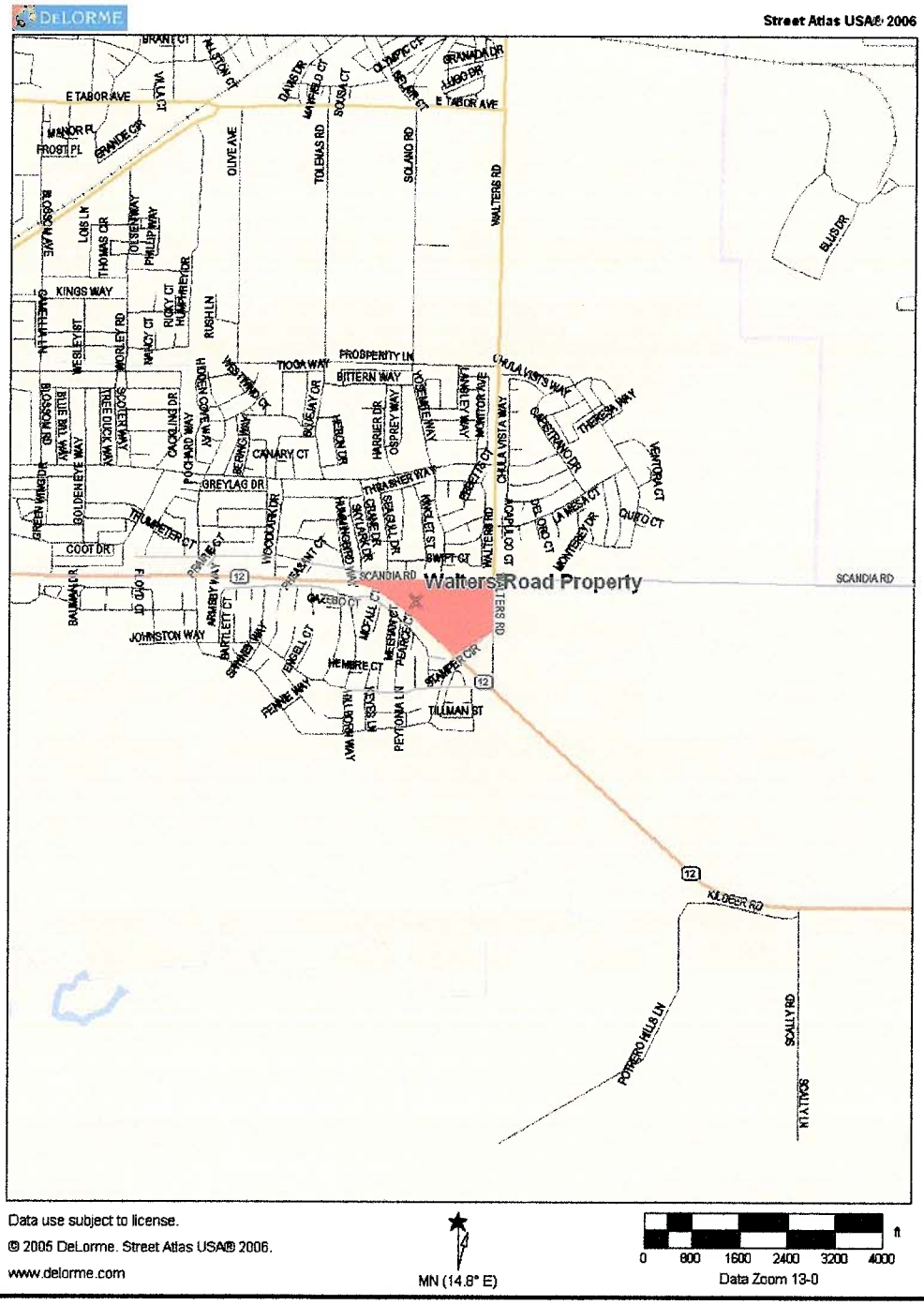
Coastal Zone Management Act of 1972 (CZMA): Section 307(c) of the Coastal Zone Management 6 Act of 1972, as amended (16 U.S.C. 1456(c)), requires a non-Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to furnish a certification that indicates the activity conforms with the State's coastal zone management program. Generally, no federal license or permit will be issued until the appropriate State agency has concurred with the certification statement or has waived its right to do so. The project does not occur in the coastal zone, and a preliminary review by the USACE indicates that the project would not likely affect coastal zone resources. This presumption on effect, however, remains subject to a final determination by the California Coastal Commission.

4. **PUBLIC INTEREST EVALUATION:** The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

5. **CONSIDERATION OF COMMENTS:** The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps

to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the proposed activity.

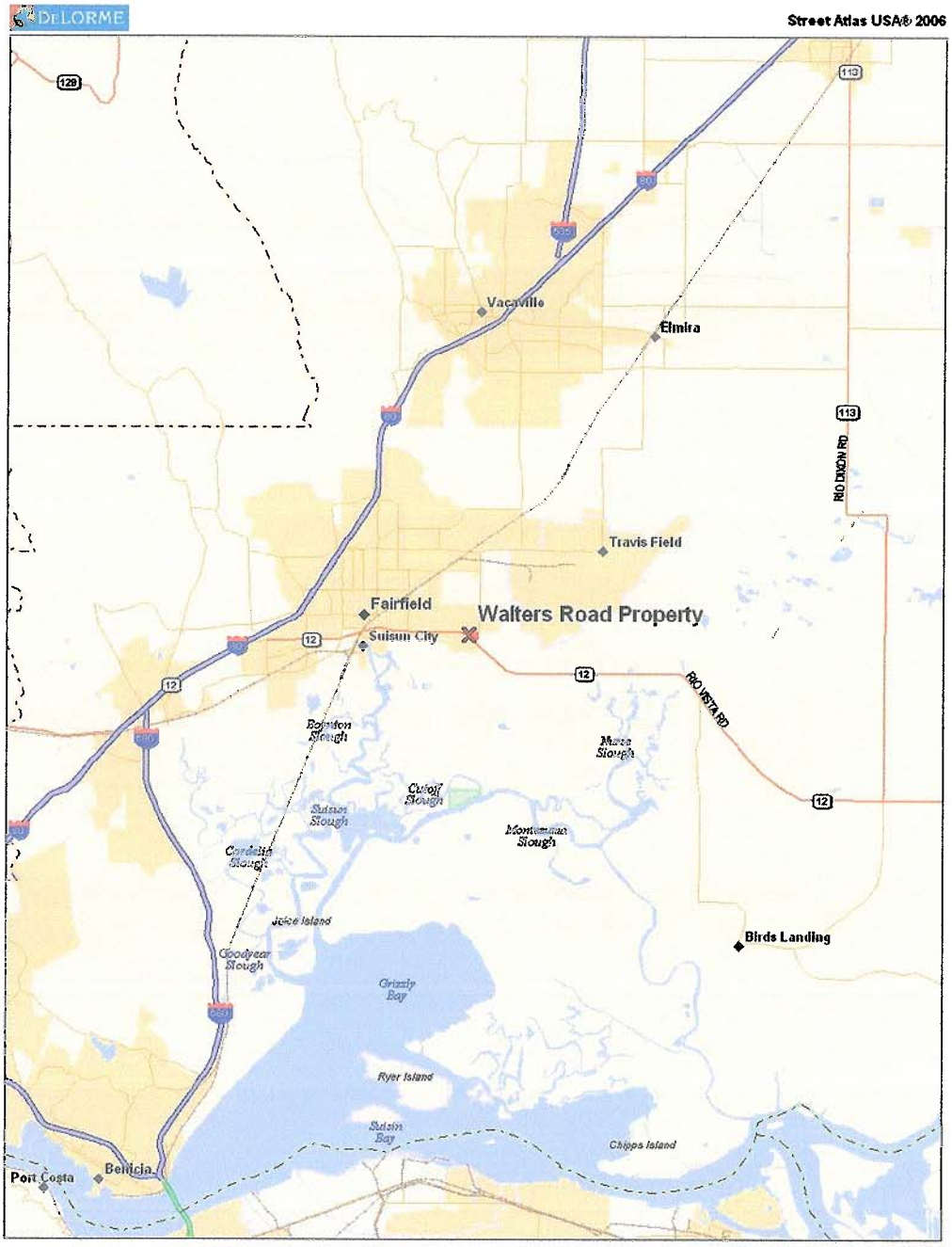
6. **SUBMISSION OF COMMENTS:** Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 1455 Market Street, San Francisco, California 94103-1398. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting Beth Dyer of our office at telephone 415-503-6780 or E-mail: Elizabeth.Dyer@usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.



Olberding Environmental, Inc.
1390 Willow Pass Road, Suite 370
Concord, CA 94520
Phone: (925) 825-2111

This document is not intended for detail design work.

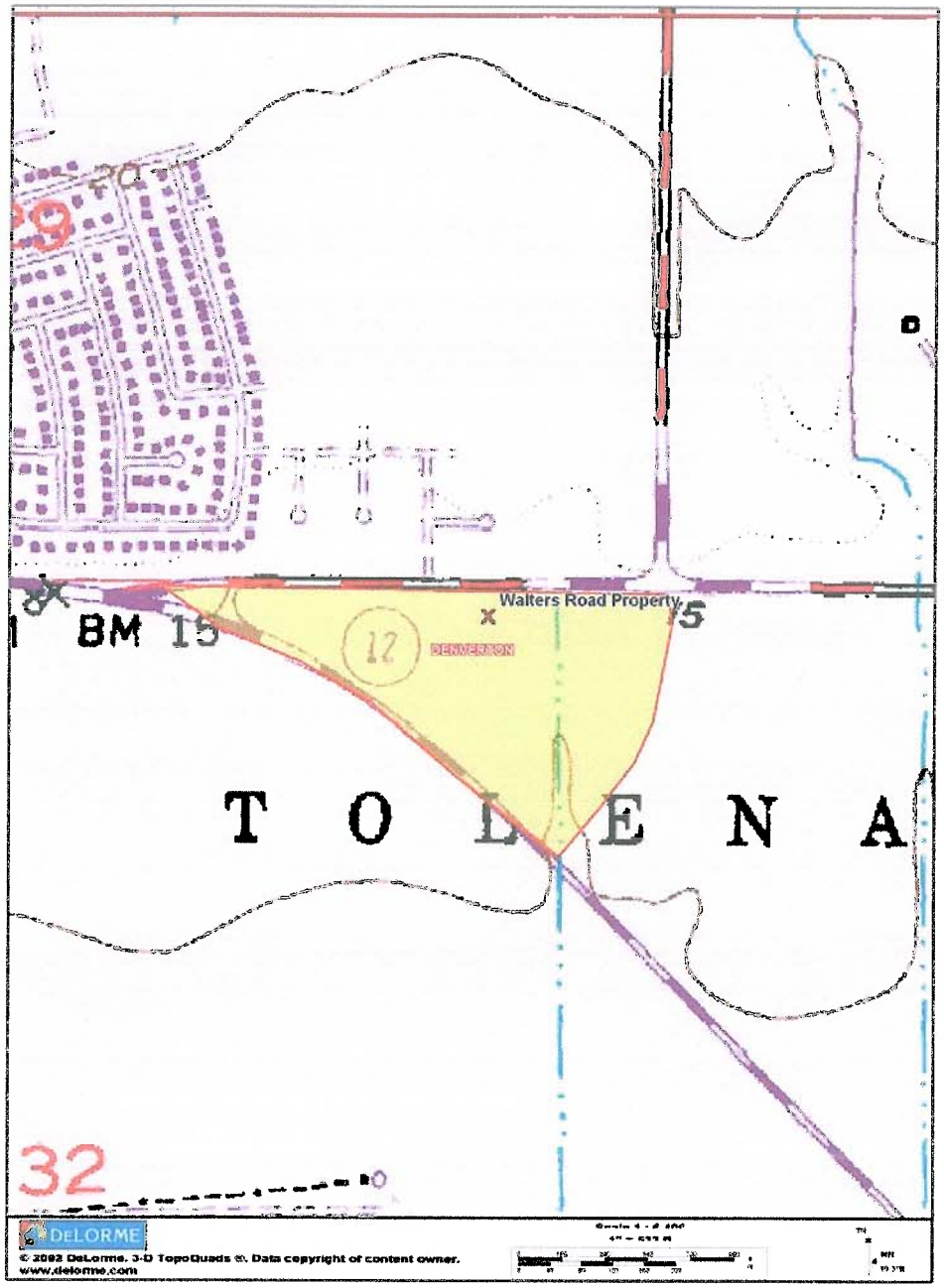
Figure 2
Vicinity Map of the Walters Road Property
Solano County, California



Olberding Environmental, Inc.
1390 Willow Pass Road, Suite 370
Concord, CA 94520
Phone: (925) 825-2111

This document is not intended for detail design work.

Figure 1
Regional Map of the Walters Road Property
Solano County, California



Olberding Environmental, Inc.
1390 Willow Pass Road, Suite 370
Concord, CA 94520
Phone: (925) 825-2111

This document is not intended for detail design work.

Figure 3
USGS Quadrangle Map of
Walters Road Property
Denverton USGS quadrangle
Solano County, California

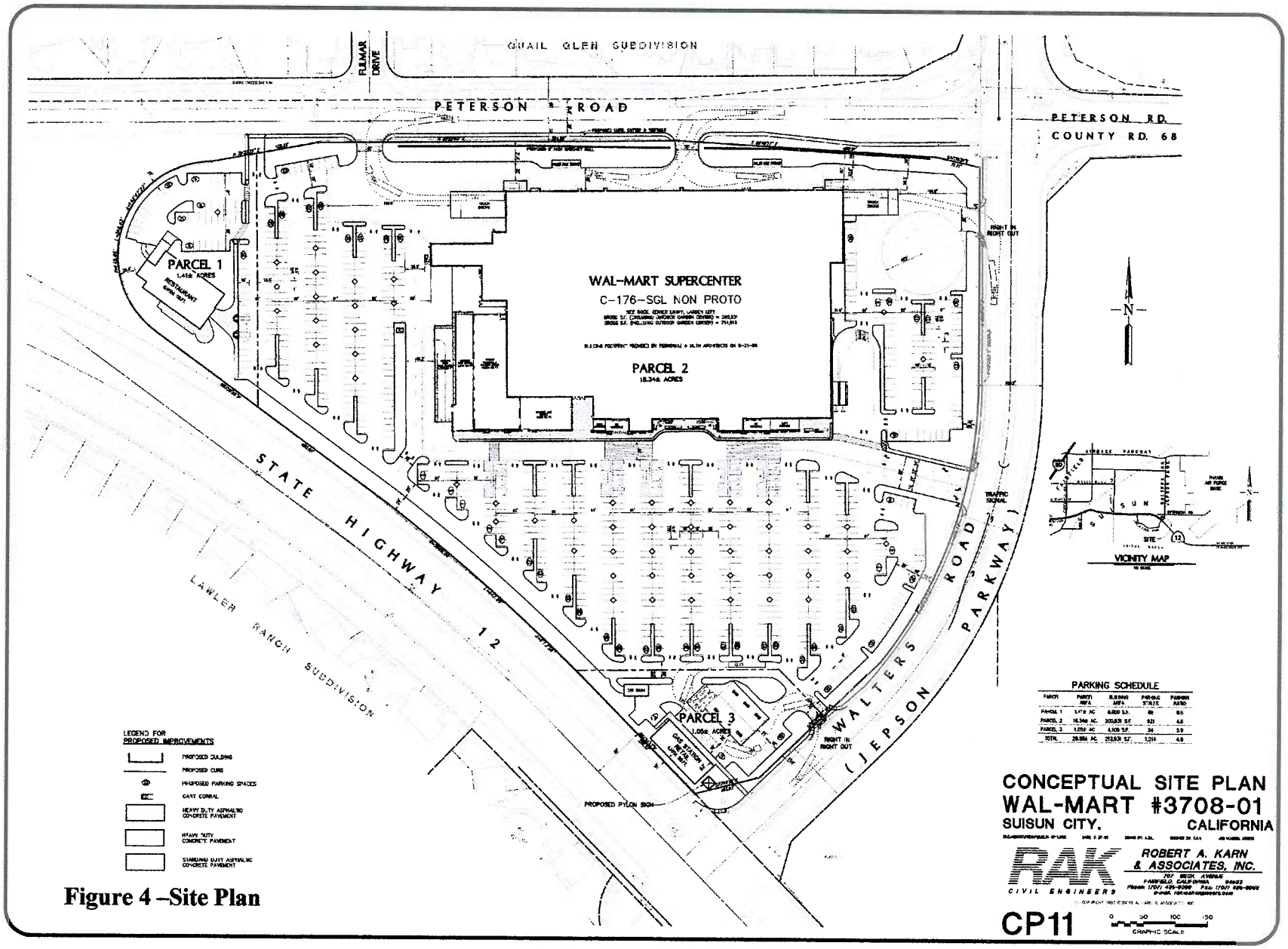


Figure 4 –Site Plan

Walters Road Wetland Delineation Map

Permit # 30352N

Olberding Environmental, Inc.
January 25, 2007

Figure No. 5

CALIFORNIA DEPARTMENT OF FISH AND GAME STREAMBED ALTERATION AGREEMENT APPLICATION

FOR THE

WALTERS ROAD DEVELOPMENT PROJECT

SOLANO COUNTY, CALIFORNIA

Prepared for:

WAL-MART
c/o Robert A. Karn & Associates
707 Beck Avenue
Fairfield, California 94533

Phone: (707) 435-9999 – FAX (707) 435-9988
Contact: Todd Anderson

Prepared by:

OLBERDING ENVIRONMENTAL, INC.
Wetland Regulatory Consultants
1390 Willow Pass Road, Suite 370
Concord, California 94520

Phone: (925) 825-2111 – FAX (925) 825-2112
Contact: Jeff Olberding

OCTOBER 2007

CALIFORNIA DEPARTMENT OF FISH AND GAME STREAMBED ALTERATION AGREEMENT APPLICATION

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Contact: Jeff Olberding

OCTOBER 2007

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Figure 2	Vicinity Map
Figure 3	USGS 7.5 Quadrangle Map
Figure 4	Aerial Photograph
Figure 5	Jurisdictional Delineation Map
Figure 6	Site Plan

ATTACHMENT 2 SITE PHOTOGRAPHS

This report should be cited as: Olberding Environmental, Inc. October 2007. *California Department of Fish and Game Streambed Alteration Agreement Application for the Walters Road Development Project, Solano County, California.* Prepared for Wal-Mart, c/o Robert A. Karn & Associates, Fairfield, California

FOR DEPARTMENT USE ONLY				
Date Received	Amount Received	Amount Due	Date Complete	Notification No.
	$	$		

STATE OF CALIFORNIA

DEPARTMENT OF FISH AND GAME

NOTIFICATION OF LAKE OR STREAMBED ALTERATION

Complete EACH field, unless otherwise indicated, following the enclosed instructions and submit ALL required enclosures. Attach additional pages, if necessary.

1. APPLICANT PROPOSING PROJECT

Name	John Clarke		
Business/Agency	Wal-Mart Stores, Inc.		
Street Address	c/o Todd Anderson, Robert A. Karn & Associates, 707 Beck Street		
City, State, Zip	Fairfield, California, 94533		
Telephone	(707) 435-9999	Fax	(707) 435-9988
Email	tanderson@rakengineers.com		

2. CONTACT PERSON (*Complete only if different from applicant*)

Name	Jeff Olberding (Olberding Environmental, Inc.)		
Street Address	1390 Willow Pass Road, Suite 370		
City, State, Zip	Concord, California, 94520		
Telephone	(925) 825-2111	Fax	(925) 825-2112
Email	jeff@olberdingenv.com		

3. PROPERTY OWNER (*Complete only if different from applicant*)

Name	McNellis Partners (Contact: John McNellis)		
Street Address	914 Waverly Street		
City, State, Zip	Palo Alto, California 94301		
Telephone	(650) 853-3900	Fax	
Email			

4. PROJECT NAME AND AGREEMENT TERM

A. Project Name	Walters Road Development Project (also called Walters Road West Project)
B. Agreement Term Requested	☑ Regular (*5 years or less*) ☐ Long-term (*greater than 5 years*)

C. Project Term		D. Seasonal Work Period		E. Number of Work Days
Beginning (*year*)	Ending (*year*)	Start Date (*month/day*)	End Date (*month/day*)	
2008	2010	12/01	08/01	270.00

5. AGREEMENT TYPE

Check the applicable box. If box B, C, D, or E is checked, complete the specified attachment.		
A.	☑ Standard *(Most construction projects, excluding the categories listed below)*	
B.	☐ Gravel/Sand/Rock Extraction (*Attachment A*)	*Mine I.D. Number:* _____
C.	☐ Timber Harvesting (*Attachment B*)	THP *Number:* _____
D.	☐ Water Diversion/Extraction/Impoundment (*Attachment C*)	*SWRCB Number:* _____
E.	☐ Routine Maintenance (*Attachment D*)	
F.	☐ DFG Fisheries Restoration Grant Program (FRGP)	*FRGP Contract Number:* _____
G.	☐ Master	
H.	☐ Master Timber Harvesting	

6. FEES

Please see the current fee schedule to determine the appropriate notification fee. Itemize each project's estimated cost and corresponding fee. *Note: The Department may not process this notification until the correct fee has been received.*

	A. Project	B. Project Cost	C. Project Fee
1	Walters Road Development Project	$17,000,000.00	$4,000.00
2			
3			
4			
5			
		D. Base Fee *(if applicable)*	
		E. TOTAL FEE ENCLOSED	$4,000.00

7. PRIOR NOTIFICATION OR ORDER

A. Has a notification previously been submitted to, or a Lake or Streambed Alteration Agreement previously been issued by, the Department for the project described in this notification?

☐ Yes (*Provide the information below*) ☑ No

Applicant: _____ Notification Number: _____ Date: _____

B. Is this notification being submitted in response to an order, notice, or other directive ("order") by a court or administrative agency (including the Department)?

☑ No ☐ Yes (*Enclose a copy of the order, notice, or other directive. If the directive is not in writing, identify the person who directed the applicant to submit this notification and the agency he or she represents, and describe the circumstances relating to the order.*)

☐ *Continued on additional page(s)*

8. PROJECT LOCATION

A. Address or description of project location.

(*Include a map that marks the location of the project with a reference to the nearest city or town, and provide driving directions from a major road or highway*)

The 20.8-acre parcel is situated immediately north of Highway 12, south of Peterson Road, and west of Walters Road in Solano County, California. Attachment 1, Figure 1 depicts the regional location of the survey area within the San Francisco Bay region. Attachment 1, Figure 2 illustrates the vicinity of the survey area in relationship to Suisun City. Attachment 1, Figure 3 identifies the location of the survey area on the USGS 7.5 Quadrangle map for Denverton. An aerial photograph of the Property has been included as Attachment 1, Figure 4.

Access to the Property is attained by taking the Highway 12 exit east from Interstate 80. Follow Highway 12 east for approximately 5.25 miles. The Property is situated immediately northwest of the intersection of Highway 12 and Walters Road and extends west from Walters Road.

☐ *Continued on additional page(s)*

B. River, stream, or lake affected by the project.	Unnamed wetland drainage channel and adjacent seasonal wetlands
C. What water body is the river, stream, or lake tributary to?	Hill Slough Creek
D. Is the river or stream segment affected by the project listed in the state or federal Wild and Scenic Rivers Acts?	☐ Yes ☑ No ☐ Unknown
E. County	Solano

F. USGS 7.5 Minute Quad Map Name	G. Township	H. Range	I. Section	J. ¼ Section
Denverton	5N	1W	33	NW

☐ *Continued on additional page(s)*

K. Meridian (*check one*)	☐ Humboldt ☑ Mt. Diablo ☐ San Bernardino

L. Assessor's Parcel Number(s)

0173-280-440

☐ *Continued on additional page(s)*

M. Coordinates (*If available, provide at least latitude/longitude or UTM coordinates and check appropriate boxes*)

Latitude/Longitude	*Latitude:* N 38 14.329	*Longitude:* W 121 58.781'	
	☑ Degrees/Minutes/Seconds	☐ Decimal Degrees	☐ Decimal Minutes
UTM	*Easting:*	*Northing:*	☐ Zone 10 ☐ Zone 11
Datum used for Latitude/Longitude or UTM	☐ NAD 27	☑ NAD 83 or WGS 84	

9. PROJECT CATEGORY AND WORK TYPE *(Check each box that applies)*

PROJECT CATEGORY	NEW CONSTRUCTION	REPLACE EXISTING STRUCTURE	REPAIR/MAINTAIN EXISTING STRUCTURE
Bank stabilization – bioengineering/recontouring	☐	☐	☐
Bank stabilization – rip-rap/retaining wall/gabion	☐	☐	☐
Boat dock/pier	☐	☐	☐
Boat ramp	☐	☐	☐
Bridge	☐	☐	☐
Channel clearing/vegetation management	☐	☐	☐
Culvert	☑	☐	☐
Debris basin	☐	☐	☐
Dam	☐	☐	☐
Diversion structure – weir or pump intake	☐	☐	☐
Filling of wetland, river, stream, or lake	☑	☐	☐
Geotechnical survey	☐	☐	☐
Habitat enhancement – revegetation/mitigation	☐	☐	☐
Levee	☐	☐	☐
Low water crossing	☐	☐	☐
Road/trail	☐	☐	☐
Sediment removal – pond, stream, or marina	☐	☐	☐
Storm drain outfall structure	☐	☐	☐
Temporary stream crossing	☐	☐	☐
Utility crossing : Horizontal Directional Drilling	☐	☐	☐
Jack/bore	☐	☐	☐
Open trench	☐	☐	☐
Other *(specify)*:	☐	☐	☐

10. PROJECT DESCRIPTION

A. Describe the project in detail. Photographs of the project location and immediate surrounding area should be included.

- Include any structures (e.g., rip-rap, culverts, or channel clearing) that will be placed, built, or completed in or near the stream, river, or lake.
- Specify the type and volume of materials that will be used.
- If water will be diverted or drafted, specify the purpose or use.

Enclose diagrams, drawings, plans, and/or maps that provide all of the following: site specific construction details; the dimensions of each structure and/or extent of each activity in the bed, channel, bank or floodplain; an overview of the entire project area (i.e., "bird's-eye view") showing the location of each structure and/or activity, significant area features, and where the equipment/machinery will enter and exit the project area.

In summary, the Project involves the development of the 20.8-acre site with a retail and dining venue. The main elements of the development include: 1) a new Wal-Mart store; 2) a proposed fuel station with related uses; 3) a proposed sit-down restaurant; and 4) associated parking and infrastructure to support the commercial development . (The fuel station and restaurant are the currently proposed uses in conjunction with the Wal-Mart store; however, the sub-parcels may be developed with any use that is consistent with the General Commercial zoning for the site.) A vegetated drainage ditch and twelve seasonal wetlands were identified across the property for a total of 2.996 acres of regulated and isolated wetlands. Fill of all wetlands on site is proposed to achieve site development, for which mitigation is proposed at a 1:1 ratio. 2.996 acres of mitigation credit will be purchased at North Suisun Mitigation Bank or other nearby, approved mitigation bank.

Please see supplemental information for more detail.

☑ *Continued on additional page(s)*

B. Specify the equipment and machinery that will be used to complete the project.

The project will be completed with the use of all types of earth moving equipment including scrapers, bull dozers, excavators, compactors, and end dump trucks which will deposit clean fill into the target areas.

☐ *Continued on additional page(s)*

C. Will water be present during the proposed work period (specified in box 4.D) in the stream, river, or lake (specified in box 8.B).	☑ Yes ☐ No (*Skip to box 11*)
D. Will the proposed project require work in the wetted portion of the channel?	☑ Yes (*Enclose a plan to divert water around work site*) ☐ No

11. PROJECT IMPACTS

A. Describe impacts to the bed, channel, and bank of the river, stream, or lake, and the associated riparian habitat. Specify the dimensions of the modifications in length (linear feet) and area (square feet or acres) and the type and volume of material (cubic yards) that will be moved, displaced, or otherwise disturbed, if applicable.

See supplemental information.

☑ *Continued on additional page(s)*

B. Will the project affect any vegetation? ☑ Yes (*Complete the tables below*) ☐ No

Vegetation Type	Temporary Impact	Permanent Impact
Seasonal wetland (Herbaceous annual and perennial species)	Linear feet: _____ Total area: _____	Linear feet: _____ Total area: 2.686
Drainage channel with emergent vegetation	Linear feet: _____ Total area: _____	Linear feet: 1050 Total area: 0.31

Tree Species	Number of Trees to be Removed	Trunk Diameter (range)
Populus fremontii	1	8-10 inches

☐ *Continued on additional page(s)*

C. Are any special status animal or plant species, or habitat that could support such species, known to be present on or near the project site?

☑ Yes *(List each species and/or describe the habitat below)* ☐ No ☑ Unknown

Papoose tarplant, a CNPS List 1B plant, exists on site. 2.4 acres of designated federal critical habitat for Vernal Pool Fairy Shrimp and Vernal Pool Tadpole Shrimp may occur on site.

☐ *Continued on additional page(s)*

D. Identify the source(s) of information that supports a "yes" or "no" answer above in Box 11.C.

Biological Resources Analysis Report

☐ *Continued on additional page(s)*

E. Has a biological study been completed for the project site?

☑ Yes (*Enclose the biological study*) ☐ No

Note: A biological assessment or study may be required to evaluate potential project impacts on biological resources.

F. Has a hydrological study been completed for the project or project site?

☐ Yes (*Enclose the hydrological study*) ☑ No

Note: A hydrological study or other information on site hydraulics (e.g., flows, channel characteristics, and/or flood recurrence intervals) may be required to evaluate potential project impacts on hydrology.

12. MEASURES TO PROTECT FISH, WILDIFE, AND PLANT RESOURCES

A. Describe the techniques that will be used to prevent sediment from entering watercourses during and after construction.

To prevent erosion and siltation from occurring during construction, the Project would be constructed in accordance with an erosion control plan and a grading plan with conditions developed specifically for the Project. The plan will also designate best management practices that will be implemented during construction. As required, additional measures would include installing silt fences, hay bales, water bars, and/or ground covers, to control erosion. The Project would be constructed during the dry period of the year and reduce the potential for siltation or erosion problems. Stabilization measures may include mulching and reseeding following construction.

☐ *Continued on additional page(s)*

B. Describe project avoidance and/or minimization measures to protect fish, wildlife, and plant resources.

No avoidance measures are anticipated as necessary to construct this project.

☐ *Continued on additional page(s)*

C. Describe any project mitigation and/or compensation measures to protect fish, wildlife, and plant resources.

Wetland mitigation for the Project will include the purchase of off-site mitigation bank credits at a 1 to 1 ratio for a total of 2.996 acres.

☐ *Continued on additional page(s)*

13. PERMITS

List any local, state, and federal permits required for the project and check the corresponding box(es). Enclose a copy of each permit that has been issued.

A. San Francisco Bay Regional Water Quality Control Board 401 Certification ☑ Applied ☐ Issued

B. U.S. Army Corps of Engineers Individual Permit ☑ Applied ☐ Issued

C. City of Suisun City Grading Permit ☐ Applied ☐ Issued

D. Unknown whether ☐ local, ☐ state, or ☐ federal permit is needed for the project. (*Check each box that applies*)

☐ *Continued on additional page(s)*

14. ENVIRONMENTAL REVIEW

A. Has a draft or final document been prepared for the project pursuant to the California Environmental Quality Act (CEQA), National Environmental Protection Act (NEPA), California Endangered Species Act (CESA) and/or federal Endangered Species Act (ESA)?

☑ Yes (*Check the box for each CEQA, NEPA, CESA, and ESA document that has been prepared and enclose a copy of each*)

☐ No (*Check the box for each CEQA, NEPA, CESA, and ESA document listed below that will be or is being prepared*)

☐ Notice of Exemption	☐ Mitigated Negative Declaration	☐ NEPA document (*type*): _____
☐ Initial Study	☑ Environmental Impact Report	☐ CESA document (*type*): _____
☐ Negative Declaration	☐ Notice of Determination *(Enclose)*	☐ ESA document (*type*): _____
☐ THP/ NTMP	☐ Mitigation, Monitoring, Reporting Plan	

B. State Clearinghouse Number (*if applicable*)	2006072026		
C. Has a CEQA lead agency been determined?	☑ Yes (*Complete boxes D, E, and F*)	☐ No (*Skip to box 14.G*)	
D. CEQA Lead Agency	City of Suisun City		
E. Contact Person	Heather McCollister, Comm. Dev. Dir.	F. Telephone Number	(707) 421-7335

G. If the project described in this notification is part of a larger project or plan, briefly describe that larger project or plan.

N/A

☐ *Continued on additional page(s)*

H. Has an environmental filing fee (Fish and Game Code section 711.4) been paid?

☐ Yes (*Enclose proof of payment*) ☑ No (*Briefly explain below the reason a filing fee has not been paid*)

The lead agency has not made a final determination of CEQA compliance yet. DEIR was published on September 20, 2007.

Note: If a filing fee is required, the Department may not finalize a Lake or Streambed Alteration Agreement until the filing fee is paid.

15. SITE INSPECTION

Check one box only.

☐ In the event the Department determines that a site inspection is necessary, I hereby authorize a Department representative to enter the property where the project described in this notification will take place at any reasonable time, and hereby certify that I am authorized to grant the Department such entry.

☑ I request the Department to first contact (*insert name*) Jeff Olberding at (*insert telephone number*) (925) 825-2111 to schedule a date and time to enter the property where the project described in this notification will take place. I understand that this may delay the Department's determination as to whether a Lake or Streambed Alteration Agreement is required and/or the Department's issuance of a draft agreement pursuant to this notification.

16. DIGITAL FORMAT

Is any of the information included as part of the notification available in digital format (i.e., CD, DVD, etc.)?

☑ Yes (Please enclose the information via digital media with the completed notification form)

☐ No

17. SIGNATURE

I hereby certify that to the best of my knowledge the information in this notification is true and correct and that I am authorized to sign this notification as, or on behalf of, the applicant. I understand that if any information in this notification is found to be untrue or incorrect, the Department may suspend processing this notification or suspend or revoke any draft or final Lake or Streambed Alteration Agreement issued pursuant to this notification. I understand also that if any information in this notification is found to be untrue or incorrect and the project described in this notification has already begun, I and/or the applicant may be subject to civil or criminal prosecution. I understand that this notification applies only to the project(s) described herein and that I and/or the applicant may be subject to civil or criminal prosecution for undertaking any project not described herein unless the Department has been separately notified of that project in accordance with Fish and Game Code section 1602 or 1611.

Signature of Applicant or Applicant's Authorized Representative

Date: 10-19-07

John E. Clarke, Regional Vice President

Print Name

Approved as to legal terms only
by Mona Basso
WAL-MART LEGAL DEPT.
Date: 10-16-07

SUPPLEMENTAL INFORMATION:

10A. Project Description

Proposed Uses

The Project involves the development of the 20.8-acre site with a retail and dining venue. The four main elements of the development include: 1) a nearly 215,000-square foot Wal-Mart retail store; 2) a proposed 1.05 acres fuel station with related uses; 3) a proposed 8,000-square foot sit-down restaurant; and 4) associated parking and infrastructure to support the commercial development. The fuel station and restaurant are currently proposed uses for Parcel A and B; however, the parcels may be developed with any use that is consistent with the General Commercial zoning for the site

Wal-Mart Supercenter: The main project element consists of the construction of an approximately 214,919 square foot (sf) Wal-Mart Supercenter on about 18.34 acres. (Note: The enclosed building floor area is 200,831 square feet without the outdoor portion of the garden center.) The new Wal-Mart will contain a grocery component of about 45,370 square feet, including a 34,475 square foot grocery sales area and a 10,895 square foot grocery support area. The new Wal-Mart will also contain a garden center of approximately 24,653 square feet (including 14,089 square feet of hard-fenced outdoor garden center and a customer pick-up and loading area). Along the front of the Supercenter will be a series of small internal "shops" occupying a total floor area of approximately 7,007 square feet. Some of these spaces will be occupied by Wal-Mart services such as optical and pharmacy, while others will be leased to non-Wal-Mart vendors and service providers (e.g., bank, hair salon, dry cleaners, etc.), although specific vendors have not yet been identified. A total of 921 parking stalls are proposed for the Wal-Mart. The new Supercenter will be open 24 hours per day, seven days per week.

Fuel Station—Parcel A: Parcel A of the subject site is 1.05-acre and will contain a full-service gas station and related uses. Components of the operation include a 4,100 square foot retail building; a minimum six fueling islands; car wash and required parking. Housed within the 4,100 square foot building will be the gas station sales operations and a convenience market. A co-branded quick service restaurant may also be included within the 4,100 square foot building. Located apart from the retail building and the fueling islands is the drive-through car wash facility. A total of 24 parking spaces are proposed for the Parcel A uses.

Sit-Down Restaurant—Parcel B: Parcel B is 1.40 acres and will contain an 8,000 square feet of building intended for a sit-down restaurant use together with required parking. Alternate uses for the building include a single-tenant general retailer with a use complementary to the anchor tenant, or a multi-tenant building with a variety of general retail and casual food service uses also complementary to the anchor tenant. A total of 69 parking spaces are proposed for the Parcel B restaurant use.

Parking and Internal Circulation: The proposed project would provide 1,014 parking spaces onsite. The proposed project would exceed the City of Suisun City's Zoning Ordinance minimum parking requirements by 110 spaces. Drive aisles would link the three project components with the access points on Walters Road and Petersen Road. Drive aisles would range from 25 to 52 feet in width. Designated crossing areas would also be located in front of the Wal-Mart Supercenter to alert drivers of the potential of crossing pedestrians.

11A. Describe impacts to bed, channel, bank of the river, stream, or lake, and the associated riparian habitat. Specify the dimensions of the modifications in length (linear fee) and area (square feet or acres) and the type and volume of material (cubic yards) that will be moved, displaced or otherwise disturbed, if applicable.

Imported earthen fill material will be used to fill the 2.996 acres of seasonal wetlands on the Property. The seasonal wetlands on the site will be filled by standard site grading in preparation for development. Trucks will be used to haul 13,000 cubic yards of clean earthen fill into the site. Heavy earth moving equipment will be used to spread fill across the site and the anticipated volume of material that will cover the wetlands would amount to approximately 2,000 cubic yards of earth.

The wetland drainage ditch on the site will be dewatered through the use of coffer dams, and all water will be pumped around the ditch to accommodate the over excavation necessary to install the storm drain system. Concrete storm drain pipes approximately 4 feet in diameter will be installed along the existing channel alignment after soils are prepared for construction and properly stabilized. The alignment will be backfilled and development will occur across the site. Approximately 1,050 linear feet of the channel will be affected by the construction of the culvert system and approximately 1,500 cubic yards of fill consisting of a combination of earthen fill and culvert pipe will be necessary for construction.

Erosion and siltation controls will be used and maintained during and after construction to prevent fill and sediments from entering the creeks located downstream from the Property. To prevent erosion and siltation from occurring, all exposed soils will be permanently stabilized following construction. Soil stabilization measures will likely include installing silt fencing and reseeding the construction area after all earth work is completed.

11C. Are any special status animal or plant species, or habitat that could support such species, known to be present on or near the project site?

Special-Status Plants

No endangered plant or animal species were identified in the project area. Several plants with a California Native Plant Society listing of 1B were included as potentially occurring on site: alkali milk-vetch, heartscale, brittlescale, San Joaquin spearscale, pappose tarplant, hispid bird's-beak, recurved larkspur, dwarf downingia, Carquinez

goldenbush, Contra Costa goldfields, legenere, Baker's navarettia, San Joaquin Valley orcutt grass, bearded popcorn flower, showy Indian clover, and saline clover. Additional focused surveys for special-status plant species were performed on April 26, May 8 and 24, June 7, and July 7 2006. Surveys were performed during the identified blooming period for all plants listed above. Results of the spring/summer surveys resulted in the identification of the pappose tarplant a CNPS 1B listed species. This species is not listed by either the federal or state as a special-status plants. Directed surveys for Contra Costa goldfields during the aforementioned time periods resulted in negative findings for the site. Reference populations of Contra Costa Goldfields were field verified during the survey period to ensure the plants blooming period was covered. Extant populations within 1.5 miles of the site were confirmed during the survey period while no Contra Costa Goldfields were observed on the Property.

Maps published in the Federal Register (USFWS 2006e) indicate that 2.4 acres of the Property may fall inside the boundaries of Unit 4C of the designated critical habitat for Contra Costa Goldfields, a federal Endangered species. However, this property does not contain the necessary primary constituent elements to qualify for protected critical habitat as it lacks the predominance of native plant species that is required in the goldfield's primary constituent element (ii). It also does not provide a defined mound and intermound complex as required by primary constituent element (i). Therefore, the site is not considered goldfield critical habitat.

Special-Status Wildlife

Vernal pool crustaceans have been identified with the potential to occur on the Property consisting of: the Conservancy fairy shrimp *(Branchinecta conservatio)*, the vernal pool fairy shrimp *(Branchinecta lynchi)* and the vernal pool tadpole shrimp *(Lepidurus packardi)*. The vernal pool fairy shrimp is federal Threatened species and the vernal pool tadpole shrimp is a federal Endangered species. Wet and dry season surveys were conducted in the fall of 2006 produced negative findings for all vernal pool crustaceans; therefore these species have been determined absent. However, maps published in the Federal Register (USFWS 2006e) indicate that 2.4 acres of the Property may fall inside the boundaries of the designated critical habitat for the vernal pool fairy shrimp and the vernal pool tadpole shrimp. It is unclear if this isolated sliver of habitat to the west of Walters Road was intentionally mapped by the USFWS; guidance from the USFWS has been sought. The property is currently being reviewed for the presence of the necessary primary constituent elements to constitute critical habitat.

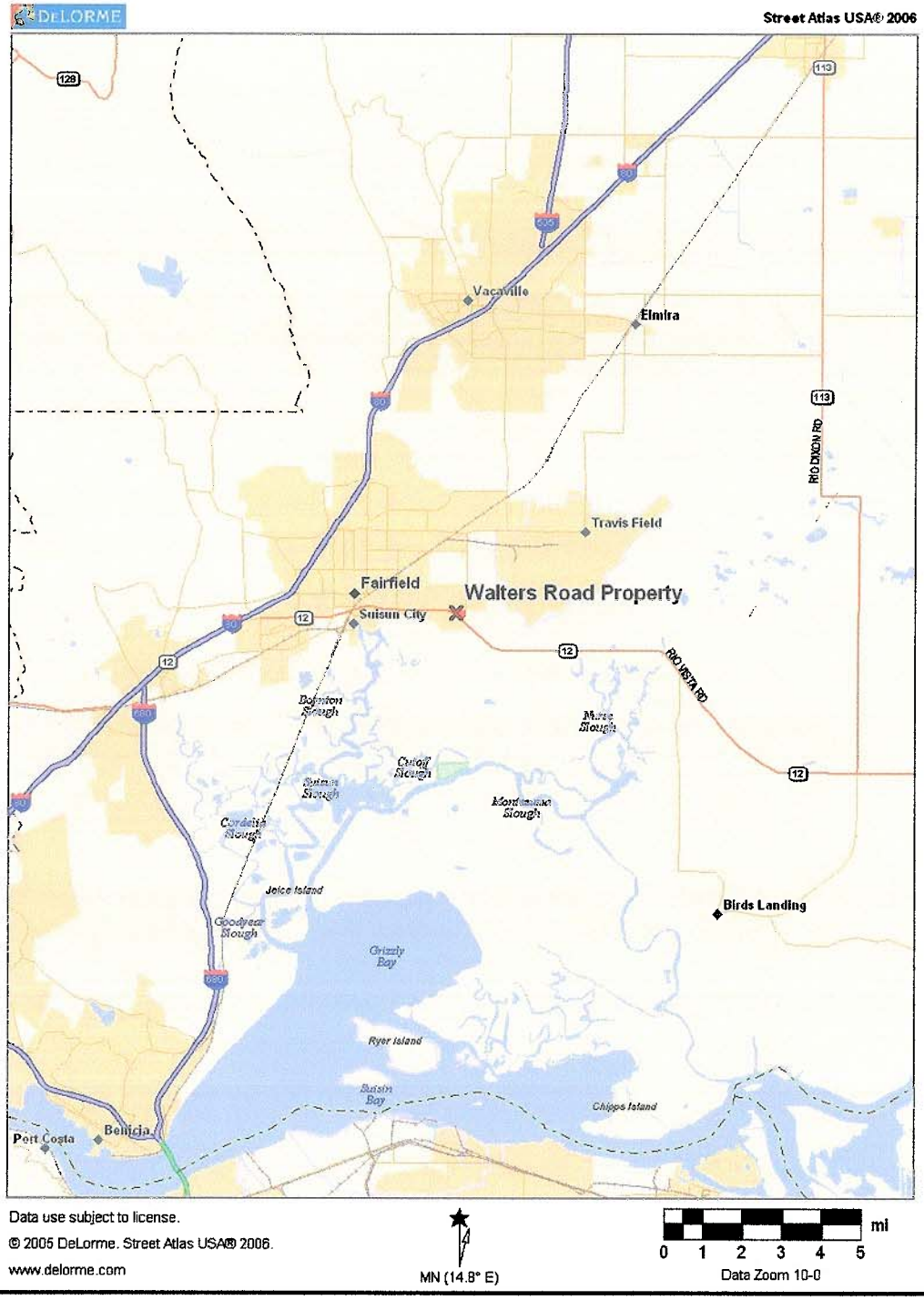
Several protected raptor species have the potential to occur in the vicinity of the Property, including the burrowing owl, Swainson's hawk, northern harrier, white-tailed kite, red-tailed hawk, and American kestrel. The annual grassland habitat is considered suitable foraging habitat for all of these species, however, the site lacks suitable nesting habitat for any of these species.

ATTACHMENTS

ATTACHMENT 1
FIGURES

Figure 1	**Regional Map**
Figure 2	**Vicinity Map**
Figure 3	**USGS Quadrangle Map**
Figure 4	**Aerial Photograph**
Figure 5	**Site Plan**
Figure 6	**Jurisdictional Delineation Map**

Figure 1
Regional Map

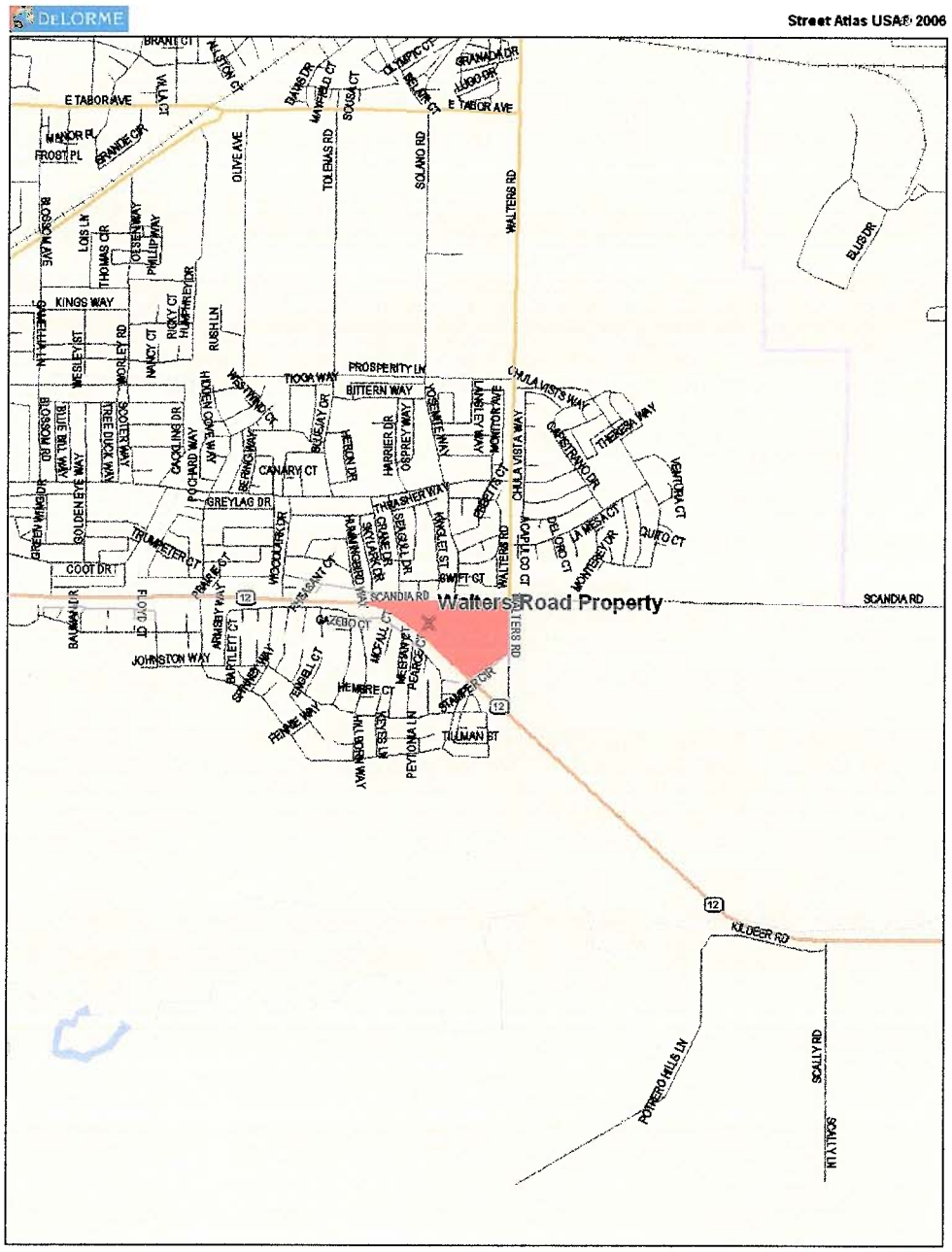


Olberding Environmental, Inc.
1390 Willow Pass Road, Suite 370
Concord, CA 94520
Phone: (925) 825-2111

This document is not intended for detail design work.

Figure 1
Regional Map of the Walters Road Property
Solano County, California

Figure 2
Vicinity Map



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Concord, CA 94520
Phone: (925) 825-2111

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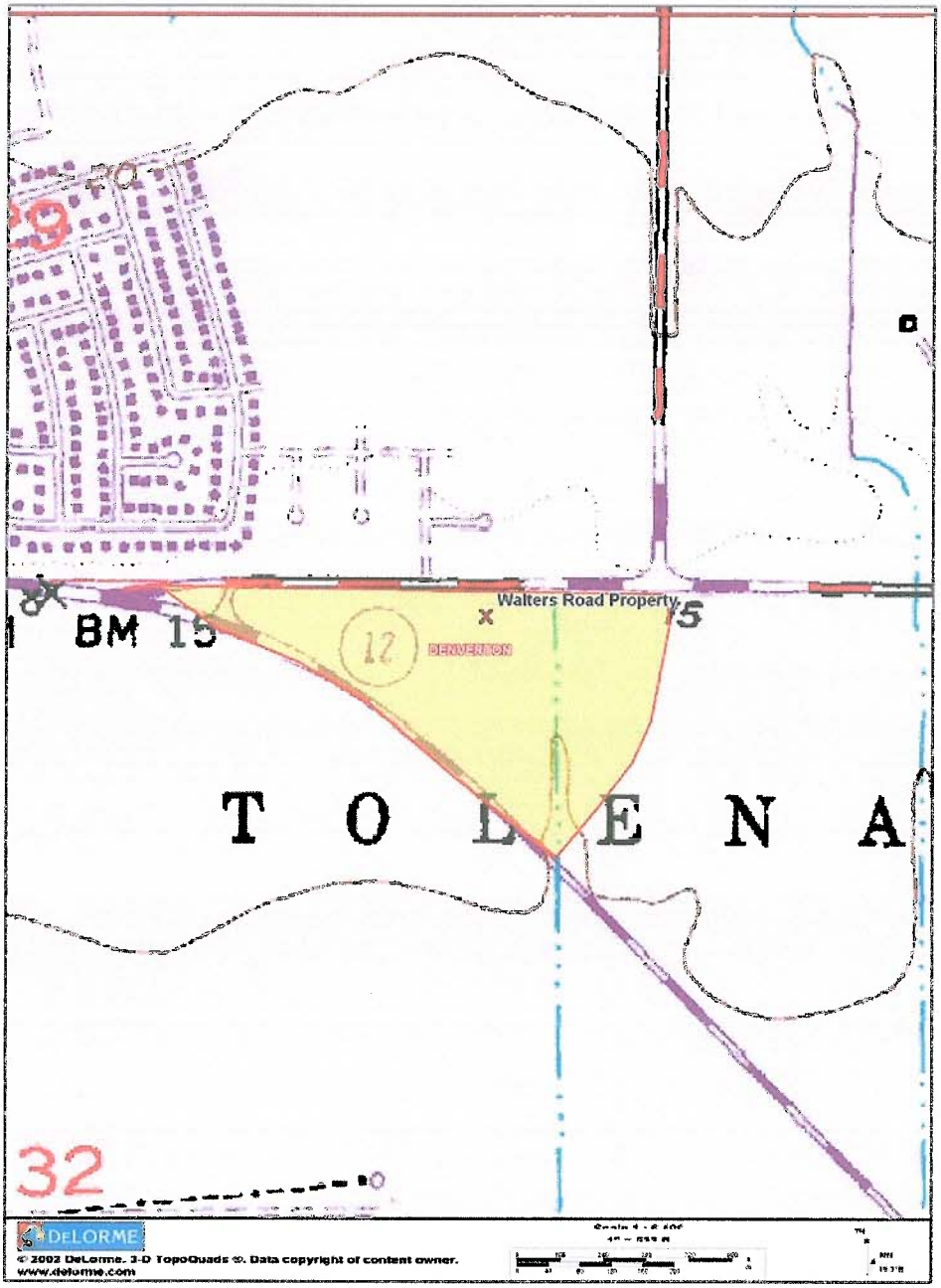
Figure 2
Vicinity Map of the Walters Road Property
Solano County, California

Figure 3
USGS Quadrangle Map



Olberding Environmental, Inc.
1390 Willow Pass Road, Suite 370
Concord, CA 94520
Phone: (925) 825-2111

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Figure 3
USGS Quadrangle Map of Walters Road Property
Solano County, California

Figure 4
Aerial Photograph

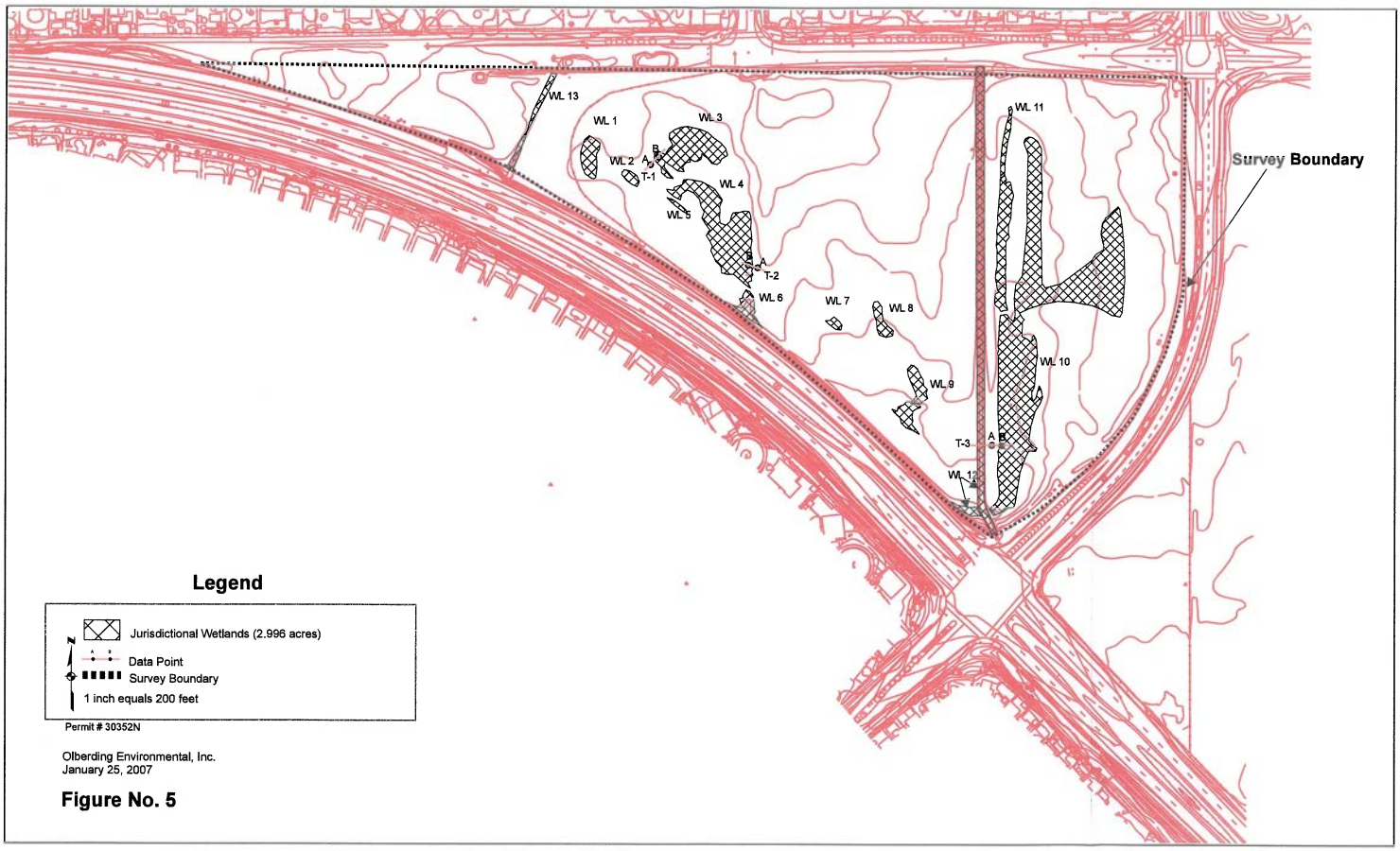
Olberding Environmental, Inc.
1390 Willow Pass Road, Suite 370
Concord, CA 94520
Phone: (925) 825-2111

This document is not intended for detail design work.

Figure 4
Aerial Photograph of Walters Road Property
Solano County, California

Figure 5
Jurisdictional Delineation Map

Walters Road Wetland Delineation Map

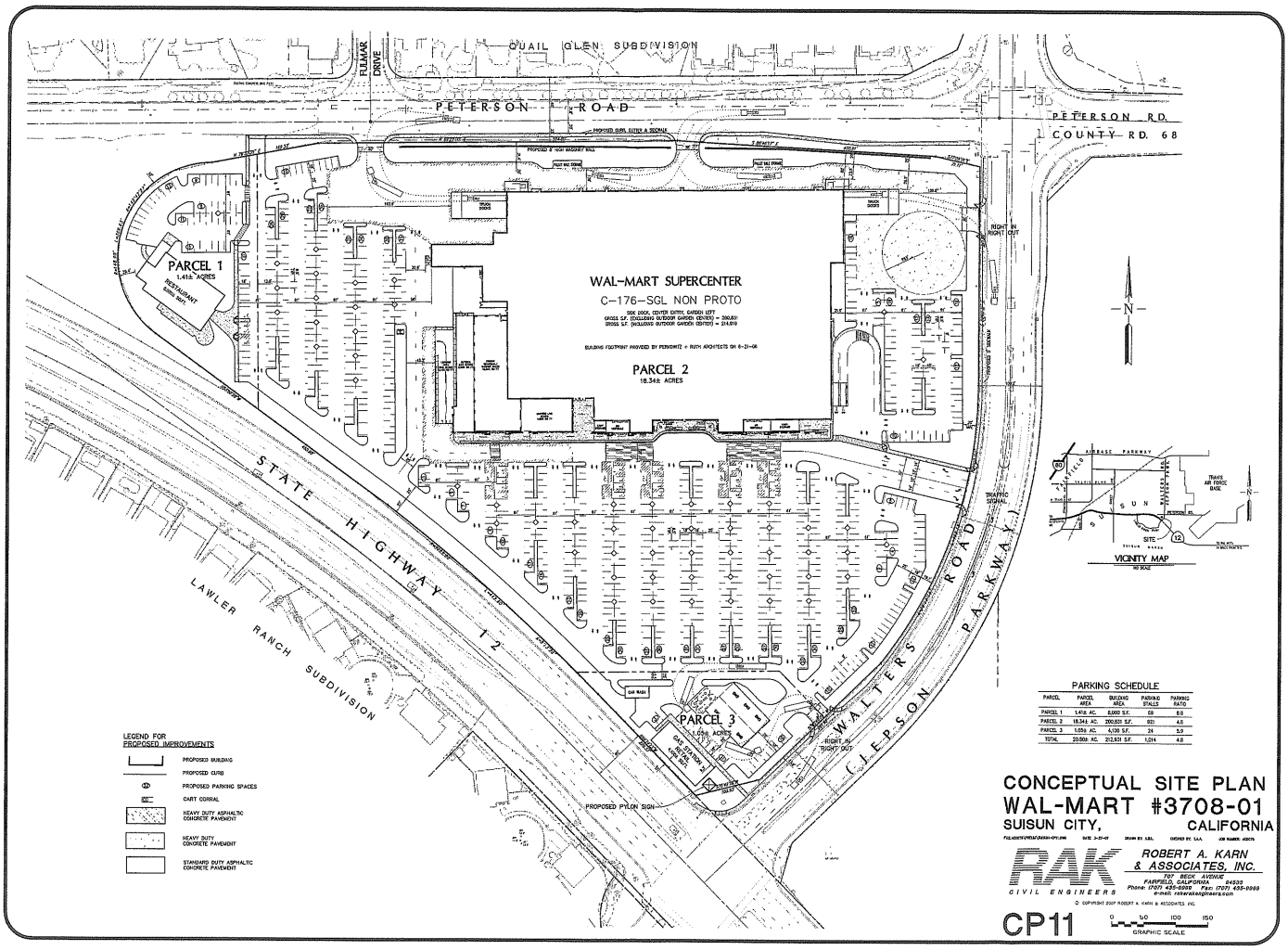


Permit # 30352N

Olberding Environmental, Inc.
January 25, 2007

Figure No. 5

Figure 6
Site Plan



PARKING SCHEDULE

PARCEL	PARCEL AREA	BUILDING AREA	PARKING STALLS	PARKING RATIO
PARCEL 1	1.41± AC.	6,000 S.F.	59	9.8
PARCEL 2	18.34± AC.	200,933 S.F.	921	4.6
PARCEL 3	1.09± AC.	4,700 S.F.	34	5.8
TOTAL	20.84± AC.	212,633 S.F.	1,014	4.8

ATTACHMENT 2
SITE PHOTOGRAPHS

Photo No. 1. Photo exhibits annual grassland habitat thick with vetch. View facing north from near the center of the Property.

Photo No. 2. View of drainage ditch, taken facing north from midway along the ditch in January.

Olberding Environmental, Inc.
Walters Road Property– January and May 2006

Photo No. 3. Potential seasonal wetland inundated in January 2006 View facing southwest from the center of the Property

Photo No. 4. Same pool in May exhibiting vernal pool type flora. View facing north from south edge of pool.

Olberding Environmental, Inc.
Walters Road Property– January and May 2006

Photo No. 5. Photo exhibits Wetland No 1 beyond second fence line where the light green signature occurs.

Photo No. 6. Overview of wetlands on western side of drainage ditch . Wetlands are distinguished by the lighter green signature.

Olberding Environmental, Inc.
Walters Road Property– January and May 2006

SAN FRANCISCO BAY
REGIONAL WATER QUALITY CONTROL BOARD
APPLICATION

FOR THE

WALTERS ROAD
DEVELOPMENT PROJECT

SOLANO COUNTY, CALIFORNIA

Prepared for:

WAL-MART
c/o Robert A. Karn & Associates
707 Beck Avenue
Fairfield, California 94533

Phone: (707) 435-9999 – FAX (707) 435-9988
Contact: Todd Anderson

Prepared by:

OLBERDING ENVIRONMENTAL, INC.
Wetland Regulatory Consultants
1390 Willow Pass Road, Suite 370
Concord, California 94520

Phone: (925) 825-2111 – FAX (925) 825-2112
Contact: Jeff Olberding

OCTOBER 2007

TABLE OF CONTENTS

I. APPLICATION FOR 401 WATER QUALITY CERTIFICATION AND/OR REPORT OF WASTE DISCHARGE 1

II. SUPPLEMENTAL INFORMATION 5

III. DREDGE AND FILL FEE CALCULATOR 7

ATTACHMENTS

ATTACHMENT 1 FIGURES

Figure 1	Regional Map
Figure 2	Vicinity Map
Figure 3	USGS 7.5 Quadrangle Map
Figure 4	Aerial Photograph
Figure 5	Jurisdictional Delineation Map
Figure 6	Site Plan

ATTACHMENT 2 SITE PHOTOGRAPHS

This report should be cited as: Olberding Environmental, Inc. October 2007. *San Francisco Bay Regional Water Quality Control Board Application for the Walters Road Development Project, Solano County, California.* Prepared for Wal-Mart, c/o Robert A. Karn & Associates, Fairfield, California

STATE OF CALIFORNIA – CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD
1515 CLAY STREET, SUITE 1400
OAKLAND, CALIFORNIA 94612

APPLICATION FOR 401 WATER QUALITY CERTIFICATION AND/OR REPORT OF WASTE DISCHARGE

(FORM R2C502-E)

1. APPLICANT'S NAME Wal-Mart Stores, Inc. (John E. Clarke, Regional VP)	4. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required) Jeff Olberding, Wetland Regulatory Scientist
2. APPLICANT'S ADDRESS C/O Todd Anderson (Robert A. Karn & Associates) 707 Beck Street Fairfield, California 94533	5. AGENT'S ADDRESS Olberding Environmental, Inc. 1390 Willow Pass Road, Suite 370 Concord, Ca 95420
3. APPLICANT'S PHONE & FAX NOS. (email optional) 707-435-9999 Phone 707-435-9988 Fax Tanderson@Rakengineers.Com	6. AGENT'S PHONE & FAX NOS. (email optional) 925-825-2111 Phone 925-825-2112 Fax Jeff@Olberdingenv.Com

7. STATEMENT OF AUTHORIZATION

I hereby authorize Jeff Olberding to act on my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

10-19-07

APPLICANT'S SIGNATURE — DATE

John E. Clarke, Regional Vice President

(This must be signed by the Applicant, not the authorized agent)

APPROVED AS TO LEGAL FORM

PROJECT OR ACTIVITY INFORMATION

8. PROJECT NAME OR TITLE (See Instructions.)
Walters Road Development Project (also known as Walters Road West Project)

9. NAME OF AFFECTED WATERBODY(IES) (See instructions.) Unnamed Drainage And Seasonal Wetlands	10. PROJECT STREET ADDRESS (if applicable)

11. LOCATION OF PROJECT

Solano	Suisun City	Region 2 – San Francisco Bay
COUNTY	CITY/TOWN (or unincorporated)	REGIONAL WATER BOARD REGION

12. OTHER LOCATION DESCRIPTIONS (watershed, latitude & longitude, river mile, etc. Attach map. See instructions.)
Suisun Marsh Watershed, N 38 14.329' and W 121 58.781'. See attached maps, Figures 1 through 4.

13. DIRECTIONS TO THE SITE
Access to the Property is attained by taking the Highway 12 exit east from Interstate 80. Follow Highway 12 for approximately 5.25 miles. The Property is situated immediately northwest of the intersection of Highway 12 and Walters Road.

14. PROJECT PURPOSE (Describe the reason or purpose for the overall project. See instructions.)
The basic project purpose is a commercial development. The overall project purpose is to construct a commercial development within the limits of Suisun City that will provide for a Wal-Mart retail store, fuel station, sit down restaurant and associated parking.

15. DESCRIPTION OF ACTIVITY AND ENVIRONMENTAL IMPACTS (Provide a full, technically accurate description of the entire activity and associated environmental impacts. See instructions.)

Please see attached description.

16. AVOIDANCE OF IMPACTS (Describe efforts to avoid and minimize impacts to waters of the State. See instructions.)

To prevent erosion and siltation from occurring during construction, the Project would be constructed in accordance with an erosion control plan and a grading plan with conditions developed specifically for the Project. The plan will also designate best management practices that will be implemented during construction. As required, additional measures would include installing silt fences, hay bales, water bars, and/or ground covers, to control erosion. Grading would be constructed during the dry period of the year to reduce the potential for siltation or erosion problems. Stabilization measures may include mulching and reseeding following construction.

17. ENVIRONMENTAL DOCUMENTS (list any non-CEQA environmental documents that have been prepared for the project and/or the project site. Provide the date of the document and the name of the individual, firm, or agency that prepared it. Provide a copy of delineations and endangered species surveys. See instructions.)

Biological Resource Analysis Report, July 2007, Olberding Environmental, Inc..

Jurisdictional Delineation Report, May 2006, Olberding Environmental, Inc.

DREDGE & FILL INFORMATION

18. The following items must be completed for each action where fill or other material will be temporarily (T) or permanently (P) discharged to a wetland or other waterbody, and where material will be dredged from a waterway (add additional pages as necessary). Provide a map showing the location of each action (See instructions):

Map Location Number	LOCATION (show on plan & indicate waterbody)	REASON FOR ACTION (See instructions)	AMOUNT AND TYPE OF MATERIAL (in cubic yards, see instructions)	SURFACE AREA OF FILL (in acres and/or linear feet; specify (T) or (P); see instructions)
Fig 5	Wetland Drainage Ditch (Corps Regulated)	underground culvert installation	culvert pipe - 1,500 cy	0.310 (P)
Fig 5	Adjacent Wetlands (Corps Regulated)	development fill	clean dirt-2,000 cy	2.686 (P)

MITIGATION

19. MITIGATION (Describe the size, type, and functions, and values of the proposed mitigation. Describe success criteria, monitoring, and long-term funding, management, and protection of the mitigation site. Attach a Mitigation Plan if needed. See instructions and contact Regional Board staff for additional assistance.)

Mitigation for 2.996 acres of wetland fill will consist of the purchase of wetland credit at the North Suisun Mitigation Bank, or other approved mitigation bank that services the Project area. The ratio for mitigation is proposed at 1:1 for a total purchase of 2.996 acres.

CEQA

20. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) Documents: Indicate the status of CEQA documents prepared for the project (see instructions).

TYPE OF DOCUMENT	STATUS	DATE COMPLETED (or expected to be complete)	TYPE OF DOCUMENT	STATUS	DATE COMPLETED (or expected to be complete)
Initial Study	-Choose One-		Notice of Preparation	-Choose One-	
Draft Environmental Impact Report	Complete	Sept 20, 2007	Final Environmental Impact Report	-Choose One-	
Negative Declaration	-Choose One-		Mitigated Negative Declaration	-Choose One-	
Notice of Categorical Exemption Exemption Number:	-Choose One-		Notice of Statutory Exemption Exemption Number:	-Choose One-	
Other (describe)	-Choose One-				
Notice of Determination*	-Choose One-		*Note: A Notice of Determination or Notice of Exemption from the Lead Agency is required before a certification or waiver can be issued.		

Lead Agency: City of Suisun City **Contact:** Heather McCollister **Telephone:** 707-421-7335

State Clearing House Number: 2006072026

ADDITIONAL INFORMATION

21. HAS ANY PORTION OF THE WORK BEEN INITIATED? YES ☐ NO ☒

IF YES, DESCRIBE THE INITIATED WORK, and explain why it was initiated prior to obtaining a permit. Indicate whether any enforcement action has been taken against the project.

22. HAS A FEDERAL AGENCY OR THE APPLICANT PROVIDED PUBLIC NOTICE OF THIS APPLICATION FOR WATER QUALITY CERTIFICATION?

Federal Agency: YES ☐ NO ☒ **Date:** **Type of Notification:** **Agency Name and Contact:**

Applicant: YES ☐ NO ☒ **Date:** **Type of Notification:** **Media Name and Contact:**

IF PUBLIC NOTICE HAS NOT BEEN MADE, provide the name, address, and phone number (if available) of adjacent property owners, lessees, etc., and any other parties known to be interested in the project:

Public Notice will be made by the USACE in association with the 404 permit application processing.

23. OTHER PERMITS (List other local, state or federal licenses, permits, and agreements that will be required for any construction, operation, maintenance, or other actions associated with the project. Attach copies of all draft or final documents. See instructions.)

AGENCY	CONTACT (with phone number)	TYPE OF APPROVAL	PERMIT OR ID NUMBER	DATE APPLIED	STATUS	DATE OF ACTION
US Corps of Engrs.	Elizabeth Dyer	Individual Permit		11/20/07	In Review	
Ca Dept Fish Game	Sandy Brunson	Streambed Alteration		11/20/07	In Review	
US Fish Wildlife	Michelle Tovar	Biological Opinion			-Choose One-	
-Choose One-					-Choose One-	
-Choose One-					-Choose One-	
City of Suisun City		Grading Permit			-Choose One-	
Other or Local Agency					-Choose One-	
Other or Local Agency					-Choose One-	
Other or Local Agency					-Choose One-	

24. OTHER PROJECTS (List and describe other projects implemented or planned that are related to the proposed project, or that may impact the same waterbody. See instructions. Add additional sheets if necessary.)

PROJECT NAME	DESCRIPTION	WATERBODY AND WATERSHED	DATE IMPLEMENTED/PLANNED
N/A			

25. Application is hereby made for a permit or permits to authorize the work described in this application. I certify, under penalty of perjury, that this application is complete and accurate to the best of my knowledge. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

10-19-07 | 11-12-07

SIGNATURE OF APPLICANT | DATE | SIGNATURE OF AGENT | DATE

John E. Clarke, Regional Vice President

The application must be signed by the person who desires to undertake the proposed activity (Applicant) or a duly authorized agent if the statement in Block 7 has been filled out and signed.

Attach fee deposit (see Instructions page 7) and any additional documents and submit this application to:

SFBRWQCB
Attention: 401 Water Quality Certification
1515 Clay Street, Suite 1400
Oakland, CA 94612

Note: This form, FORM R2C502-E, was designed for electronic use as a Microsoft Word document or template. For assistance using this form or to relay suggestions on how it may be improved, please call 510-622-2330. If you would like a standard, non-electronic form, please call 510-622-2300 and request 401 Application FORM R2C502 – Non-electronic version.

Approved as to legal terms only
by Mary Baass
WAL-MART LEGAL DEPT.
Date: 10-16-07

II. SUPPLEMENTAL INFORMATION:

15. Description of Activity and Environmental Impacts

Proposed Activity

The Project involves the development of the 20.8-acre site with a retail and dining venue. The four main elements of the development include: 1) a nearly 215,000-square foot Wal-Mart retail store; 2) a proposed 1.05 acres fuel station with related uses; 3) a proposed 8,000-square foot sit-down restaurant; and 4) associated parking and infrastructure to support the commercial development. The fuel station and restaurant are currently proposed uses for Parcel A and B; however, the parcels may be developed with any use that is consistent with the General Commercial zoning for the site. See Figure 6 for the Site Plan.

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Parking and Internal Circulation: The proposed project would provide 1,014 parking spaces onsite. The proposed project would exceed the City of Suisun City's Zoning Ordinance minimum parking requirements by 110 spaces. Drive aisles would link the three project components with the access points on Walters Road and Petersen Road. Drive aisles would range from 25 to 52 feet in width. Designated crossing areas would also be located in front of the Wal-Mart Supercenter to alert drivers of the potential of crossing pedestrians.

Environmental Impacts

Imported earthen fill material will be used to fill the 2.996 acres of seasonal wetlands on the Property. The seasonal wetlands on the site will be filled by standard site grading in preparation for development. Trucks will be used to haul 13,000 cubic yards of clean earthen fill into the site. Heavy earth moving equipment will be used to spread fill across the site and the anticipated volume of material that will cover the wetlands would amount to approximately 2,000 cubic yards of earth.

The wetland drainage ditch on the site will be dewatered through the use of coffer dams, and all water will be pumped around the ditch to accommodate the over excavation necessary to install the storm drain system. Concrete storm drain pipes approximately 4 feet in diameter will be installed along the existing channel alignment after soils are prepared for construction and properly stabilized. The alignment will be backfilled and development will occur across the site. Approximately 1,050 linear feet of the channel will be affected by the construction of the culvert system and approximately 1,500 cubic yards of fill consisting of a combination of earthen fill and culvert pipe will be necessary for construction.

Erosion and siltation controls will be used and maintained during and after construction to prevent fill and sediments from entering the creeks located downstream from the Property. To prevent erosion and siltation from occurring, all exposed soils will be permanently stabilized following construction. Soil stabilization measures will likely include installing silt fencing and reseeding the construction area after all earth work is completed.

III. DREDGE AND FILL FEE CALCULATOR

DREDGE AND FILL FEE CALULATOR [1] v8 11/30/2006

This fee schedule is based on California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200(a)(3). TO CALCULATE FEE: Enter the "Discharge Size" in Section A or, if the project qualifies, check the check-box in Section B according to the

A. FEES BASED ON DISCHARGE SIZE

	FEE CATEGORY	RATE	DISCHARGE SIZE		FEE	
(i)	**Fill & Excavation[2] Discharges.** Size of the discharge area as expressed in	**Discharge Area Acres x $2150**	3.00		$ 6,450.00	**Categories (i)-(iii) will be charged an additional Base Fee amount of $500 which is included in the total below.**
	To Non-Federal Waters (per fee cat. iv)	Discharge Area Acres x $2150 x 2	0		$ -	
(ii)	**Dredging Discharges (except Sand Mining-see (v) below)[3]** Dredge volume expressed in Cubic Yards.	**Dredge Volume CY x $0.08**	0		$ -	
	To Non-Federal Waters (per fee cat. iv)	Dredge Volume CY x $0.08 x 2	0		$ -	
(iii)	**Channel and Shoreline Discharges.** Discharge length shall be reported in Linear Feet. Includes linear discharges to drainage features and shorelines, e.g., bank stabilization, revetment, and channelization projects.	**Discharge Length Feet x $5.00**	0	$ -	$ -	
		Discharge Area Acres x $2150	0	$ -		
	To Non-Federal Waters (per fee cat. iv)	Discharge Length Feet x $5.00 x 2	0	$ -	$ -	
		Discharge Area Acres x $2150 x 2	0	$ -		
(iv)	**Discharges to Non-federal (e.g. "Isolated") Waters.** Discharges to waters or portions of waterbodies not regulated as "waters of the United States", including waters determined to be "isolated" pursuant to the findings of *Solid Waste Agency of Northern Coo*					

B. FEES BASED ON FLAT FEE CATEGORIES

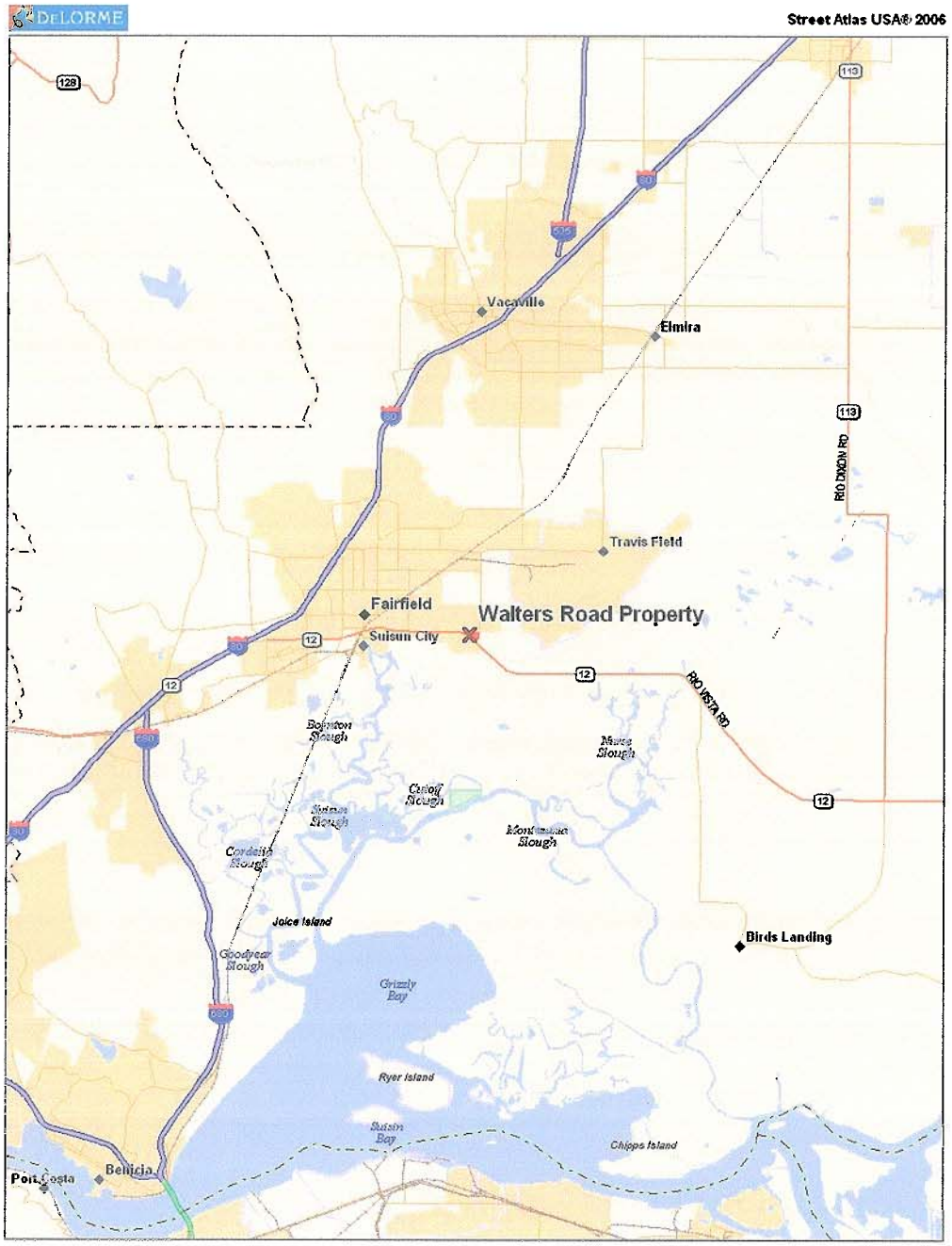
(v)	**Sand Mining Dredging Discharges.**	$800 Flat fee	Check if Applicable		$ -
(vi)	**Low Impact Discharges.**	$500 Flat fee.	Check if Applicable		$ -
(vii)	**Restoration Projects.** Projects undertaken for the sole purpose of restoring or enhancing the	$500 Flat fee	Check if Applicable		$ -
(viii)	**General Orders.** Projects which are required to submit notification of a proposed	$60 Flat Fee	Check if Applicable		$ -
	TOTAL FEE FOR ALL CATEGORIES Includes $500 Base Price for C				$ 6,950.00

ATTACHMENTS

ATTACHMENT 1
FIGURES

Figure 1	**Regional Map**
Figure 2	**Vicinity Map**
Figure 3	**USGS Quadrangle Map**
Figure 4	**Aerial Photograph**
Figure 5	**Jurisdictional Delineation Map**
Figure 6	**Site Plan**

Figure 1
Regional Map



Olberding Environmental, Inc.
1390 Willow Pass Road, Suite 370
Concord, CA 94520
Phone: (925) 825-2111

This document is not intended for detail design work.

Figure 1
Regional Map of the Walters Road Property
Solano County, California

Figure 2
Vicinity Map

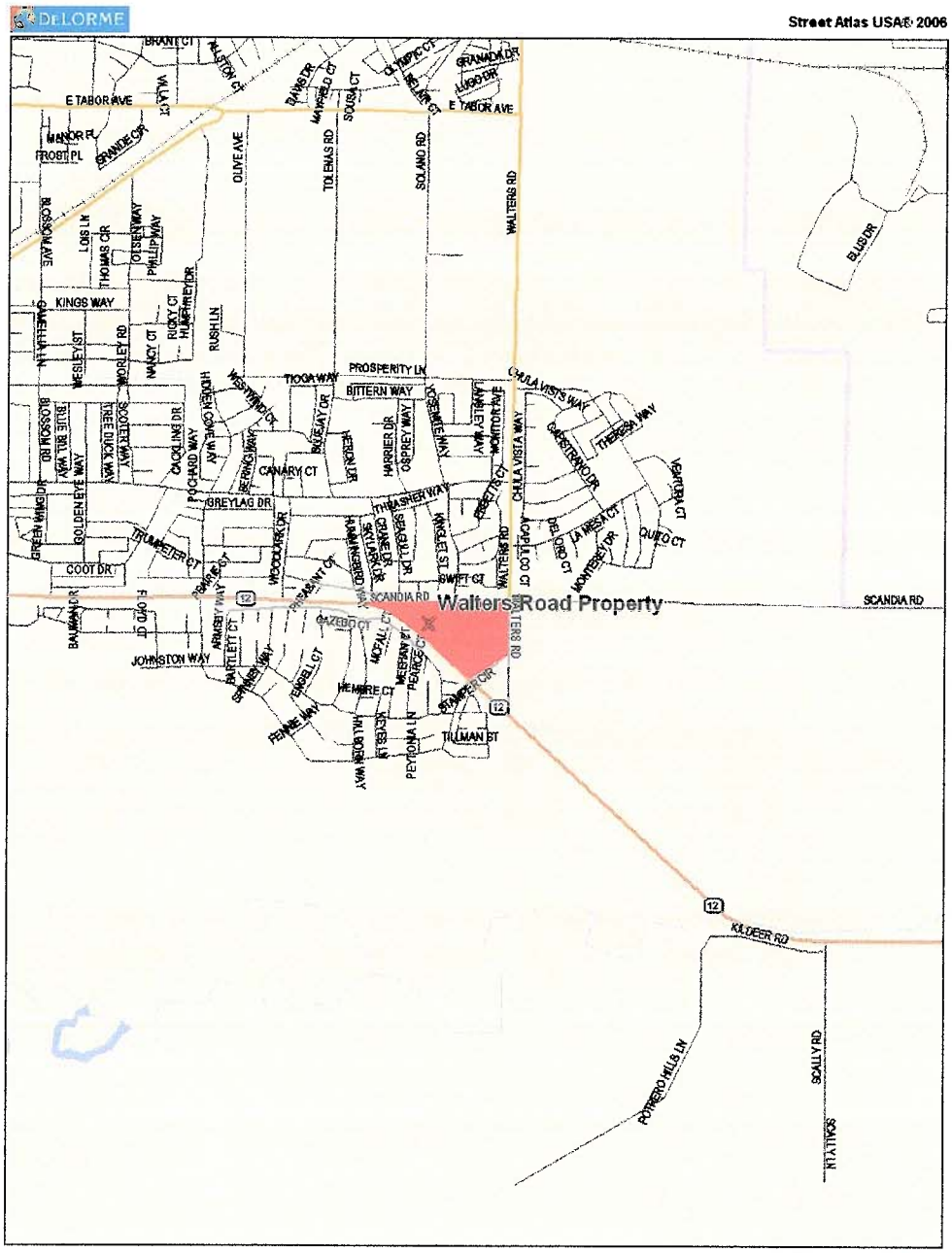


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Figure 2
Vicinity Map of the Walters Road Property
Solano County, California

Figure 3
USGS Quadrangle Map

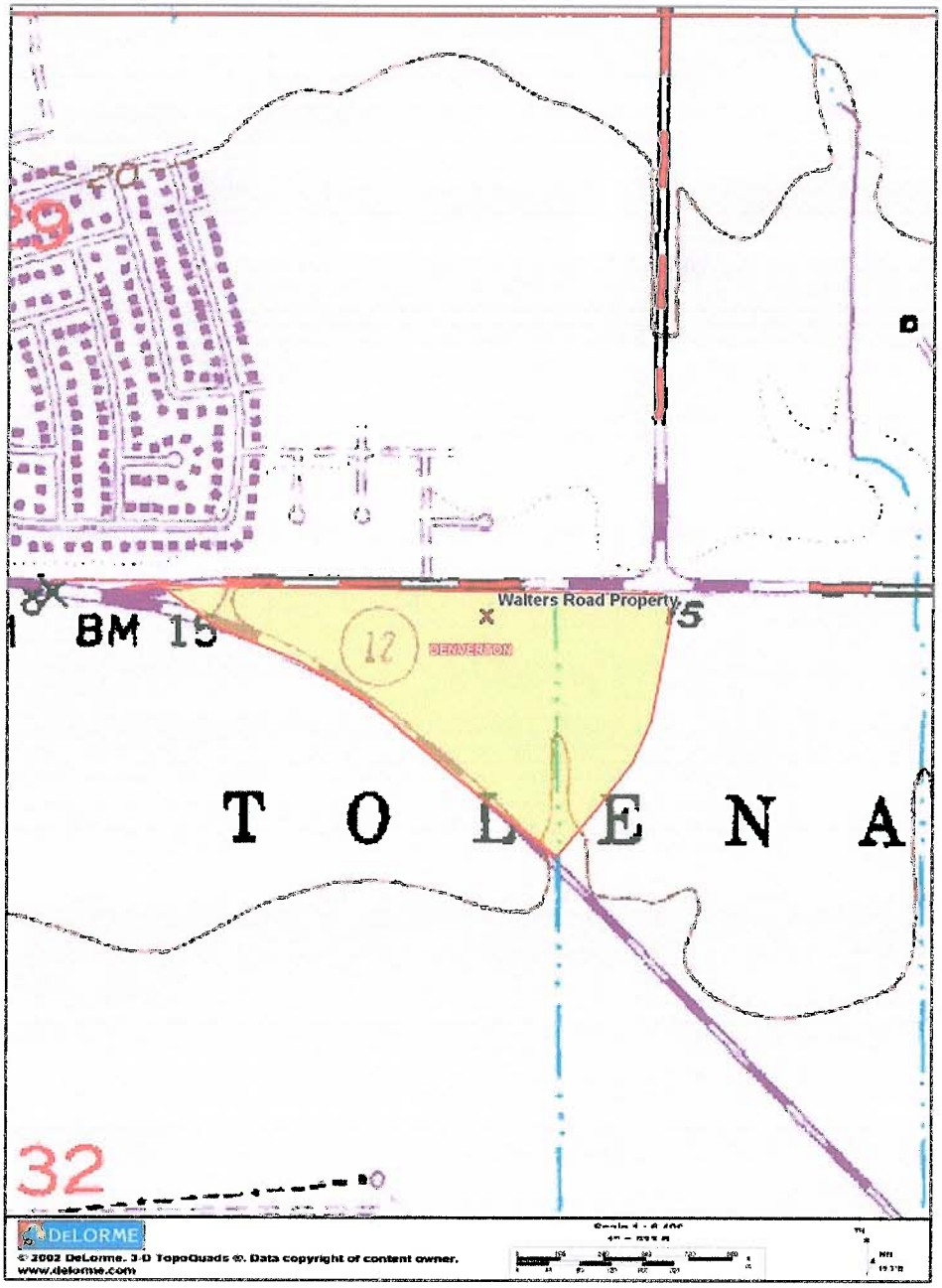

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Figure 3
USGS Quadrangle Map of Walters Road Property
Solano County, California

Figure 4
Aerial Photograph

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Figure 4
Aerial Photograph of Walters Road Property
Solano County, California

Figure 5
Site Plan

Walters Road Wetland Delineation Map

Legend

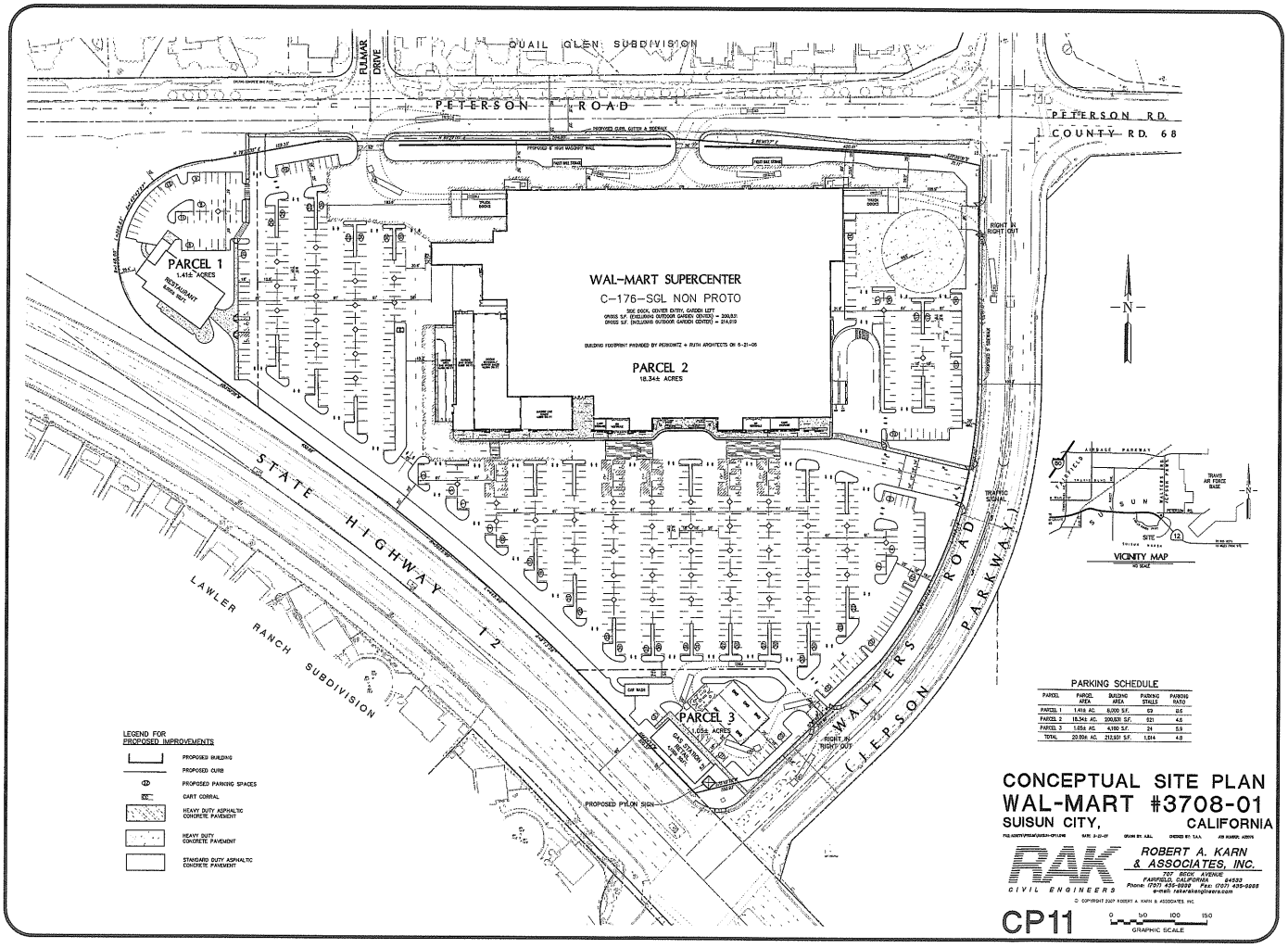
- Jurisdictional Wetlands (2.996 acres)
- Data Point
- Survey Boundary
- 1 inch equals 200 feet

Permit # 30352N

Olberding Environmental, Inc.
January 25, 2007

Figure No. 5

Figure 6
Jurisdictional Delineation Map


QUAIL GLEN SUBDIVISION
PLUMAR DRIVE
PETERSON ROAD
PETERSON RD.
COUNTY RD. 68
PARCEL 1
1.41± ACRES
RESTAURANT
WAL-MART SUPERCENTER
C-176-SGL NON PROTO
BUILDING FOOTPRINT PROVIDED BY PERKOWITZ + RUTH ARCHITECTS ON 5-21-06
PARCEL 2
18.34± ACRES
PARCEL 3
1.05± ACRES
CAR WASH
STATE HIGHWAY 12
LAWLER RANCH SUBDIVISION
WALTERS ROAD
PETERSON PARKWAY
RIGHT IN
RIGHT OUT
TRAFFIC SIGNAL
PROPOSED PYLON SIGN
N
VICINITY MAP
SITE
TRAVIS AIR FORCE BASE
LEGEND FOR PROPOSED IMPROVEMENTS
PROPOSED BUILDING
PROPOSED CURB
PROPOSED PARKING SPACES
CART CORRAL
HEAVY DUTY ASPHALTIC CONCRETE PAVEMENT
HEAVY DUTY CONCRETE PAVEMENT
STANDARD DUTY ASPHALTIC CONCRETE PAVEMENT
PARKING SCHEDULE
PARCEL | PARCEL AREA | BUILDING AREA | PARKING STALLS | PARKING RATIO
PARCEL 1 | 1.41± AC. | 6,000 S.F. | 69 | 0.6
PARCEL 2 | 18.34± AC. | 206,600 S.F. | 921 | 4.5
PARCEL 3 | 1.05± AC. | 4,100 S.F. | 24 | 5.9
TOTAL | 20.80± AC. | 212,937 S.F. | 1,014 | 4.8
CONCEPTUAL SITE PLAN
WAL-MART #3708-01
SUISUN CITY, CALIFORNIA
RAK
CIVIL ENGINEERS
ROBERT A. KARN & ASSOCIATES, INC.
707 BECH AVENUE
FAIRFIELD, CALIFORNIA 94533
Phone: (707) 435-9999 Fax: (707) 435-9988
e-mail: rak@rakengineers.com
© COPYRIGHT 2007 ROBERT A. KARN & ASSOCIATES, INC.
CP11
0 50 100 150
GRAPHIC SCALE

ATTACHMENT 2
SITE PHOTOGRAPHS

Photo No. 1. Photo exhibits annual grassland habitat thick with vetch. View facing north from near the center of the Property.

Photo No. 2. View of drainage ditch, taken facing north from midway along the ditch in January.

Olberding Environmental, Inc.
Walters Road Property– January and May 2006

Photo No. 3. Potential seasonal wetland inundated in January 2006 View facing southwest from the center of the Property

Photo No. 4. Same pool in May exhibiting vernal pool type flora. View facing north from south edge of pool.

Olberding Environmental, Inc.
Walters Road Property– January and May 2006

Photo No. 5. Photo exhibits Wetland No 1 beyond second fence line where the light green signature occurs.

Photo No. 6. Overview of wetlands on western side of drainage ditch . Wetlands are distinguished by the lighter green signature.

Olberding Environmental, Inc.
Walters Road Property– January and May 2006

MITIGATION BANK ENABLING INSTRUMENT
NORTH SUISUN MITIGATION BANK

This Bank Enabling Instrument (hereinafter "BEI") regarding the establishment, use, operation and maintenance of the North Suisun Mitigation Bank (hereinafter "Bank or NSMB") is made and entered into by and among Wildlands, Inc. (hereinafter, "Bank Owner"), and those members of the Mitigation Bank Review Team (hereinafter "MBRT") that elect to become signatories (hereinafter referenced jointly as "Parties), with reference to the following:

Section I: Preamble

A. Purpose: The purpose of this BEI is to establish guidelines and responsibilities for the establishment, use, operation and maintenance of the Bank. The Bank is available to be used for off-site compensatory mitigation for unavoidable impacts to waters of the United States, including wetlands, which result from activities authorized under Section 404 of the Clean Water Act (hereinafter §404); impacts to federally-listed threatened or endangered species under §7 and 10a of the Endangered Species Act (hereinafter §7" and §10a respectively) and/or occupied habitat; impacts to waters of the, United States, including wetlands, which result from activities authorized by the National Resource Conservation Service under the Swampbuster provisions of the Food Security Act (hereinafter "FSA"); provided the Bank meets all requirements applicable for mitigation with respect to a particular project and that mitigation through use of a bank is authorized by the appropriate authority.

B. Location and Ownership of Parcel: Whereas, Bank Owner is the sole owner ("Property Owner") of the approximately 611.75 acre site ("Overall Property") in Solano County, east of the city of Fairfield (**Exhibit B**). The site is located between Creed Road on the north and State Route 12 on the south and is situated just west of Denverton Road. 608.75 acres of the Overall Property will be included in the Bank Lands (**Exhibit A**). Bank Owner may buy adjacent properties for inclusion in the NSMB at a future date. If purchased, such properties will be added to the North Suisun Mitigation Bank by addendum.

C. Project Description: Whereas, under this BEI, and in accordance with the *North Suisun Mitigation Bank Operations and Management Plan, and the North Suisun Mitigation Bank Mitigation and Monitoring Plan and the North Suisun Special Status Species Management Plan* (included as **Exhibit C** and incorporated herein by reference), herein after referred to as the "Plans", the Bank Owner may preserve, restore, and then maintain the following types of habitat:

1. Corps Jurisdictional Freshwater Wetlands/Waters of the United States; vernal pool, vernal pool/vernal swale complex, playa vernal pool, vernal drainage.

2. Habitat(s) of Endangered and Threatened Species listed under the federal ESA; and
3. Habitat(s) of Endangered and Threatened Species listed under the CESA.

The enhanced and restored habitats of the Bank shall consist of a total of approximately 608.75 acres, as described in the Summary Table of Acreages and Credit Availability (**Exhibit D**).

Section II: Stipulations

A. Baseline Condition: The Bank Lands are currently as described in the Plans (**Exhibit C**)

B. Establishment and Use of Credits: It is anticipated that, in accordance with the provisions of this BEI, Credits will be available to be used as off-site mitigation in accordance with all applicable requirements.

C. Composition of the Mitigation Bank Review Team (MBRT): The members of the Mitigation Banking Review Team (MBRT) consist of:

U.S. Army Corps of Engineers, San Francisco District (USACE);
U.S. Army Corps of Engineers, Sacramento District (USACE)
U.S. Fish and Wildlife Service, Sacramento office, (USFWS);
U.S. Environmental Protection Agency, Region 9 (USEPA);
Regional Water Quality Control Board San Francisco Bay Region, (RWQCB)
California Department of Fish and Game, Central Coast Region, (CDFG)

D. Disclaimer: This BEI does not in any manner limit the statutory authorities and responsibilities of the signatory parties, but is, instead, an implementation of such statutory authorities and responsibilities.

E. Exhibits: The following Exhibits are incorporated as appendices to this BEI:

1. "Exhibit A", Legal Description of the Bank Property;

2. "Exhibit B", Vicinity Map and Location Map of the Overall Property;

3. "Exhibit C", *North Suisun Mitigation Bank Mitigation and Monitoring Plan (Separately known as: "M&M Plan"), North Suisun Mitigation Bank Operations and Management Plan (Separately known as: "O&M Plan"), and the North Suisun Mitigation Bank Special Status Species Management Plan, (Separately known as: SSSMP), (Collectively known as: "Plans")*, and all subsequent revisions and addenda thereto, as identified by the MBRT;

"Appendix C-1", Biological Resources Survey Report;
"Appendix C-2", Vernal Pool Mitigation Design Considerations;

4. "Exhibit D", *Summary of Habitat Preservation and Restoration Acreages and Credits*;

5. "Exhibit E"
   Table E-1-Financial Assurances Table
   Table E-2-Land Management Costs and Endowment Worksheet
   Table E-3-BEI Interim Target Amounts
   Table E-4-Endowment Contribution Amount per Credit;

6. "Exhibit F", Conservation Easement;

7. "Exhibit G", Title Report and Property Assurances Form;

8. "Exhibit H", Level 1 Environmental Contaminants Survey;

9. "Exhibit I", Service Area Maps;

10. "Exhibit J", Credit Purchase Agreements, Acknowledgment of Sale of Credits, Credits, Credit Ledger, Payment Transmittal Form, Invoicing Instructions and a Payee Form for Depositing and Withdrawal of Endowment Funds;

11. "Exhibit K", Cultural Resources Study.

F. Definitions:

1. "Anniversary Date" means the date of the last signature on this BEI.

2. "Bank" means the Mitigation Bank established pursuant to this BEI.

3. "Bank Closure" means the date that: mature wetland habitat has been established consistent with the Performance Criteria in the Plans; and either (a) the last authorized Bank Credit has been transferred; or (b) the Bank Owner sends the MBRT members written notice stating that the Bank Owner is closing the Bank.

4. "Bank Lands" means the portion of the Overall Property on which the Bank has been established and will be protected under a conservation easement.

5. "Bank Owner" means the party that proposes, establishes, and then operates the Bank.

6. "BEI" or Bank Enabling Instrument means this document.

7. "CDFG" means the California Department of Fish and Game, a subdivision of the California Resources Agency.

8. "CEQA" means the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.; guidelines for implementation at California Public Resources Code Sections 15000 et seq.); including all regulations promulgated pursuant to that Act.

9. "CESA" means the California Endangered Species Act (California Fish and Game Code Sections 2050 et seq.), including all regulations promulgated pursuant to that Act.

10. "Conservation Easement" means a recorded conservation easement established to conserve biological resources, and which imposes certain habitat management obligations for the Bank lands.

11. "Construction Security" means a performance bond or letter of credit established to insure completion of the habitat construction in the amount of 100% of the estimated construction costs (reference **Exhibit E-1** for estimate of Construction Security amount). The Construction Security shall be established prior to the start of construction. The Construction Security will be released upon submittal of as-built drawings.

12. "Covered Species" means endangered and threatened species and any additional species which are determined by the Parties to be adequately conserved as a result of implementation of this BEI, including all life stages and associated habitat, as set forth in the Plans. The term "Covered Species" does not have the same meaning in this document as it does when used in connection with "Habitat Conservation Plan" or "HCP".

13. "Credit" is a measure of habitat function relative to a given unit of areal measurement (i.e., acres), such that one Credit is equal to one unit of the given areal measurement at full habitat function. The measure of function is typically indexed to the number of wetland acres restored, enhanced, created, or preserved. The methodology for assessing Credits varies based on habitat and species type. The methodologies used for this Bank are shown in **Exhibit D.**

14. "Endowment Deposit" means the amount per endowment Credit deposited into the Management Endowment Fund for purposes of perpetually endowing the long-term management of the Mitigation Bank Lands for the benefit of biological resources. These amounts vary based on habitat and species type. The amounts for this Bank are shown in **Exhibit E-4.**

15. "ESA" means the federal Endangered Species Act (16 U.S.C. 1531 et seq.), including all regulations promulgated pursuant to that Act.

16. "Habitat Conservation Plan" and "HCP" mean conservation plans prepared pursuant to Section 10(a) (2) (A) of the ESA (16 U.S.C. Section 1539(a) (2) (A)).

17. "Habitat Establishment Period" means the period of time between habitat construction and when the constructed habitat achieves the final Performance Standards.

18. "Interim Management Period" means the period of time prior to full funding of the Management Endowment Fund, when the Bank Owner shall be responsible for all costs and any management obligations to be performed in accordance with this BEI, the Conservation Easement, and the Management Plans, which include; the North Suisun Mitigation Bank Mitigation and Monitoring Plan, North Suisun Mitigation Bank Operations and Management Plan, and the North Suisun Special Status Species Management Plan (**Exhibit C**).

19. "Interim Management Security" means a dedicated interest-bearing account to be established by Bank Owner, and held in trust by CDFG, concurrent with execution of this Agreement and funded with fees collected from the sale or conveyance of the first three credits in an amount equal to the estimated annual management costs of the Bank as set forth in **Exhibit E-2**, adjusted for inflation based upon CPI, for used as a contingency fund for management, maintenance and monitoring of the Bank until the Endowment Fund is fully funded, at which time the Interim Management Security may be terminated and all funds (excepting interest retained by Bank Owner) shall be transferred to the Endowment Fund for management of the Bank for one year consistent and in accordance with this BEI, the Conservation Easement, and the Plans.

20. "Interim Target Amounts" means the minimum funds projected to be in the Management Endowment Fund on each of the 2nd – 9th anniversary dates of the execution of this BEI, as set forth in **Exhibit E-3**.

21. "Long-Term Management Period" means the period of time commencing upon the Management Endowment Fund becoming fully funded when the interest earnings from the Management Endowment Fund can be used in accordance with this BEI, the Conservation Easement, and the Management Plans, which include; the North Suisun Mitigation Bank Mitigation and Monitoring Plan, North Suisun Mitigation Bank Operations and Management Plan, and the North Suisun Special Status Species Management Plan (**Exhibit C**), to pay for management obligations for the Bank Lands.

22. "Management Endowment Fund" means an investment fund maintained by CDFG as a non-wasting endowment to be used exclusively for the management of the Bank Lands in accordance with the Plans and the Conservation Easement. The term "non-wasting" shall mean that some of the interest generated from the Management Endowment Fund is re-invested into the endowment so that the purchasing power does not fall behind inflation.

23. "Mitigation Bank Review Team" (MBRT) means an interagency group of Federal, State and/or local agency representatives which oversee the establishment, use and operation of a mitigation bank.

24. "Parties" means all signatories of this BEI.

25. "Plans" means the *North Suisun Mitigation Bank Operations and Management Plan* (*O&M Plan*), and the *North Suisun Mitigation Bank Mitigation and Monitoring Plan* (*M&M Plan*), and the *Special Status Species Management Plan* (*SSSMP*), collectively that have been prepared for this Bank.

26. "NEPA" means the National Environmental Policy Act (42 USC 4321 *et seq.*).

27. "Performance Security" means an account funded by the Bank Owner in the amount of 15% of the construction cost. The Performance Security assures achievement of the Performance Standards in accordance with the Plans and shall be released to Bank Owner upon achievement of the Performance Standards.

28. "Performance Standards" means the standards defined in Exhibit C, Mitigation and Monitoring Plan, Table 2, Section 5, by which the constructed wetland habitats are considered successful based on meeting the defined, measurable standards related to hydrologic and vegetative parameters.

29. "Overall Property" means the real property held in fee title by Property Owner, upon which the Bank shall be established.

30. "Property Assessment Form" means a form submitted by the Bank Owner summarizing any title restrictions, exceptions or encumbrances on the Bank Lands.

31. "Property Owner" means Bank Owner or the person(s) or party that has fee title over the Property.

32. "Service Area" means the geographic area within which impacts that occur may be mitigated through use of Credits at the Bank consistent with the BEI.

33. "Special Status Species Management Plan" (SSSMP), means the management and implementation plan for the preservation and recovery of special status species prepared for this Bank.

34. "Success Criteria" means the criteria established in the Plans which are used to measure the success of the constructed habitat(s). Also referred to as "Performance Standards".

35. "USACE" means the United States Army Corps of Engineers, an agency of the Department of the Army.

36. "USFWS" means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.

Section III: Authorities

A. Federal:

1. Clean Water Act (33 USC 1251 *et seq.*);
2. Rivers and Harbors Act (33 USC 403)
3. National Environmental Policy Act (42 USC 4321 *et seq.*),
4. Endangered Species Act (16 USC 1531 *et seq.*);
5. Fish and Wildlife Coordination Act (16 USC 661 *et seq.*);
6. National Historic Preservation Art (16 USC 470);
7. Swampbuster provisions of the Food Security Act;
8. Executive Order 11990; Protection of Wetlands;
9. Executive Order 11988; Floodplain Management;
10. Regulatory Programs of the U.S. Army Corps of Engineers, Final Rule (33 CFR Parts 320-330);
11. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230);

12. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, Section 404(b)(1) Guidelines; and

13. Federal Guidance for the Establishment, Use, Operation of Mitigation Banks (60 FR 58605 *et seq.*, hereinafter "Guidelines").

B. State:

1. California Environmental Quality Act (Pub. Res. Code 1121000 et seq.);

2. California Endangered Species Act (Fish & Game Code 112050 et seq.);

3. California Natural Community Conservation Planning Act (Fish & Game Code 112800 et seq.);

4. Streambed Alteration Agreements (Fish & Game Code §1600 *et seq.*);

5. Sacramento-San Joaquin Valley Mitigation Bank Act of 1993 (Fish & Game Code '1775 *et seq.*); and

6. Official Policy on Conservation Banks, April 7, 1995, by California Resources Agency and California Environmental Protection Agency, jointly.

NOW, THEREFORE, THE PARTIES AGREE TO THE FOLLOWING:

Section IV: Establishment of the Bank

A. Bank Owner's Performance under the BEI: The Bank Owner agrees to perform all necessary work, in accordance with the provisions of this BEI, to establish the habitat, as proposed in **Exhibit C**, until it is demonstrated to the satisfaction of the MBRT that the Bank complies in all respects with all conditions contained herein.

B. Environmental Documentation and Permitting: To the extent not already obtained, the Bank Owner will be responsible for preparing and obtaining all appropriate environmental documentation, permits or other authorizations needed to establish and maintain the Bank, which may consist of the following:

1. CEQA compliance;

2. ESA (Section 7 or Section 10) compliance;

3. CESA compliance; and

4. Clean Water Act compliance (Sections 401, 402, and 404).

C. Modification of the Plans: Establishment of the Bank will be performed as described in **Exhibit C,** and the credits will become available in accordance with the schedule specified in V: F., of the BEI. In the event that the Bank Owner determines that modifications must be made in the Plans to ensure successful establishment of habitat within the Bank, or in order to comply with specific permits or other authorizations needed to establish the Bank, the Bank Owner shall submit a written request for such modification to the MBRT. The Bank Owner shall then implement all modifications approved by the MBRT. Documentation of implemented modifications shall be made consistent with subsection IV: F, *infra.*

D. Financial Assurance Requirements. The Bank Owner agrees to provide the following financial assurances over the life of the Bank and at Bank Closure, for the periods noted:

1. Construction Security: If Bank Owner has not transferred any Bank Credits for wetland creation prior to construction; no Construction Security will be required. If any wetland creation credits have been sold prior to construction, Bank Owner shall furnish the MBRT with a Construction Security in the amount of 100% of the cost of construction. (**Exhibit E-1**) The Construction Security shall be in the form of a letter-of-credit. The cost of construction shall be the amount set forth in the construction contract entered into by Bank Owner. The Construction Security shall assure performance of Bank Owner's obligation to construct the habitats in accordance with this BEI. The Construction Security shall be released upon Bank Owner's completion of such construction, as evidenced by:

   a) The submission of the as-built drawings, per subsection IV: F, *infra*; and

   b) Verified by a subsequent on-site inspection involving some, or all, of the members of the MBRT.

2. Performance Security: During the Habitat Establishment Period, the Bank Owner shall also furnish the MBRT with a Performance Security (**Exhibit E-1**) in the amount of 15% of the cost of construction. The "Performance Security" provides financial assurance that the habitat shall meet the Performance Standards in accordance with the Plans. The Performance Security shall be released to Bank Owner upon attainment and maintenance of the final Performance Standards, as evidenced by the submittal of a monitoring report to the MBRT and the verification by the USACE of a jurisdictional wetland delineation.

3. Interim Management Security. As a condition of establishment of this Bank and before full funding of the Management Endowment Fund at the Target Amount, as shown in **Exhibit E-3**, Bank Owner shall deposit funds with the CDFG, other than Endowment Deposits, that are collected from the sale or conveyance of the first fifteen percent of Bank Credits into a dedicated, interest bearing "Interim Management Security" (**Exhibit E-1**) account, in an amount the Parties agree is sufficient to fund monitoring, management and maintenance of the Bank for one full year as set forth as Annual Cost in **Exhibit E-2**, as a contingency fund that may not be expended except by agreement of the MBRT and must be replenished by the Bank Owner within one year if expended, except for in the case of a Force Majeure or other event beyond the Bank Owner's control as specified under subsection VIII:A.1-3 *infra*. In the event that the Interim Management Security is not fully funded by the Year 1 Anniversary Date, within thirty (30) days thereafter, Bank Owner shall deposit into the Interim Management Security the difference between the balance of the Interim Management Security and the total amount required to fully fund the Interim Management Security account. Upon full funding of the Management Endowment Fund the Interim Management Security account shall be terminated as specified under subsection IV:D.4.(c) *infra*.

4. Management Endowment Fund. During the period of Credit sales, the Bank Owner shall make deposits into a non-wasting "Management Endowment Fund" held by CDFG in order to assure long-term maintenance of the Bank in perpetuity (Management Endowment Fund). The term "non-wasting" shall mean that some of the interest generated from the Management Endowment Fund is re-invested into the endowment so that the purchasing power does not fall behind inflation. The Parties agree that the 10-year Anniversary Date of this BEI shall be established as the Final Target Date for achieving full funding of the Management Endowment Fund at the "Final Target Amount" as specified in **Exhibit E-3**. "Interim Target Amounts" have been established for years 2-9 Anniversary Dates ("Interim Target Dates"), as set forth in **Exhibit E-3**. In the event that any of the Target Amounts are not achieved by the applicable Target Date through the sales of Credits, within thirty (30) days thereafter, Bank Owner shall deposit into the Management Endowment Fund the difference between the amount in the Management Endowment Fund derived from Credit sales and the Target Amount.

   a) An Endowment Deposit shall be made with each Credit sold in an amount to be determined based upon habitat and species, (**Exhibit E-4**) multiplied by the number of Credits transferred. In the event that the Final Target Amount is achieved prior to the

Final Target Date, Endowment Deposits associated with the sale of Credits shall cease.

b) Funds deposited in the Endowment Fund shall be held by CDFG. The endowment funds shall be expended and the management activities should be conducted in accordance with this BEI, the Plans, and with the Conservation Easement (**Exhibit F**), described in subsection IV: E, *infra*.

c) Upon achievement of the Final Target Amount, as identified in **Exhibit E-3**, the Interim Management Security may be terminated and all funds (excepting interest retained to increase principle according to CPI index for inflation, and remaining interest refunded to the Bank Owner) shall be transferred to the Management Endowment Fund for management of the Bank for one year consistent and in accordance with this BEI, the Conservation Easement, and the Plans.

E. Legal Assurances: Subsequent to the signing of this BEI, the Bank shall be established and authorized to sell credits upon recordation of a Conservation Easement covering the Bank Lands, and receipt of same recorded Conservation Easement by the members of the MBRT. The Conservation Easement shall be held by a third party approved by the MBRT in accordance with this Section:

1. Prior to the transfer or sale of Bank Credits, the Bank Owner shall deliver to the designated third party Conservation Easement holder with a copy to all members of the MBRT, the following:

   a) A duly executed and acknowledged Conservation Easement in the form attached hereto as **Exhibit F** (the "Conservation Easement") and a detailed map of the lands covered by the Conservation Easement (the "Bank Lands") (The Easement shall establish a covenant on the Bank Lands, protecting it in perpetuity as wetlands and wildlife habitat); and,
   b) A current title report and Property Assurances Form in the form attached hereto as **Exhibit G** and a Level I environmental contaminants survey covering the Bank Lands (**Exhibit H**).

2. Upon review of the title report and contaminants survey, and written acceptance of the Bank by the MBRT through signature on this BEI, the Conservation Easement shall be recorded as soon as possible. Property Owner shall provide all parties with copies of the recorded Conservation Easement within 30 days of its recording. All parties shall use reasonable efforts to cooperate in the expeditious recordation of the conveyance documents.

3. Property Owner shall pay all fees and recording charges associated with the conveyance of the Conservation Easement on Property.

4. The conveyance by Property Owner hereunder shall be subject to any and all existing rights of way, easements, encumbrances, and other matters reflected in **Exhibit G** attached hereto.

F. As-Built Drawings: The Bank Owner agrees to submit as-built drawings, with accurate maps of the constructed habitat no later than 60 calendar days following completion of the re-vegetation associated with the establishment of the Bank. The as-built drawings will describe in detail any deviation from that described in the Plans. The final number of Credits available for sale will be based on the as-built drawings. The Bank Owner agrees that the amount of Creation Credits awarded based on as-built drawings will equal the actual acres of habitat actually constructed, but will never exceed the amount described in this BEI (**Exhibit D**) and its Plans.

Section V: Operation of the Bank

A. Service Area: The Bank is established to provide mitigation to compensate for unavoidable impacts to jurisdictional wetland habitat within the Service Area of the Bank, as described and shown at **Exhibit I**. Decisions authorizing use of credits from the Bank will be made by the appropriate authority on a case-by-case basis in accordance with applicable requirements. In general, it is agreed that use of credits from the Bank will be authorized whenever the appropriate authority determines: (1.) that the particular project requiring mitigation may mitigate through bank Credits; and (2.) the Bank has available for sale, mitigation Credits of the type required for the particular project.

B. Access to the Bank by the MBRT: The Bank Owner will allow, or otherwise provide for, access to the site by all signatory parties, as necessary, for the purpose of inspection and compliance monitoring and implementation of management plans if needed, consistent with the terms and conditions of this BEI. Inspecting parties shall provide reasonable notice to the Bank Owner, during normal business hours and of not less than 24 hours in advance, prior to inspection of the Bank.

C. Projects Eligible to Use the Bank: Appropriate to its jurisdictional authority each regulatory and/or resource agency will determine the eligibility of projects to use the Bank on a case-by-case basis. In general, it is agreed that activities falling within a permit under any one or more of the following authorities will typically be eligible to use the Bank, provided that the wetland, habitats are comparable to those for which the Bank has been established (wetlands at the Bank are intended to provide "in-kind" mitigation):

1. Sections 401 and 404 of the United States Clean Water Act;

2. Sections 7 and/or 10(a) of the United States Endangered Species Act;

3. Section 1602 of the California Fish and Came Code;

4. Section 2081 of the California Endangered Species Act;

5. Mitigation identified in local agency plans, rules, regulations and/or ordinances; and

6. Mitigation under the provisions of an approved plan which is consistent with the Natural Community Conservation Program (California Fish & Game Code §2800 *et seq.*).

D. Assessment Methodology:

1. Credits and debits will be measured as described in **Exhibit E-4.** .

E. Performance Standards: The Performance standards described at Table 2, Section 5.1.2 of the M&M Plan, **(Exhibit C)**, will be used to assess project success.

F. Schedule of Credit Availability: Upon submittal of a recorded Conservation Easement in the form of Exhibit F, it is agreed that Credits will become available for use by the Bank Owner in accordance with **Exhibit D**, as follows.

1. 15% of the total created wetland credits shall be available upon approval (signing) of this BEI and the submission of a recorded Conservation Easement to the MBRT.

2. 35% of the total created wetland credits shall be available upon the submission of as-built drawings to the MBRT and submission of a recorded Conservation Easement to the MBRT.

3. 20% of the total created wetland credits shall be available upon demonstrating successful hydrology and submission of a recorded Conservation Easement to the MBRT.

4. The remaining created wetland credits shall be available after attainment of the "Year 10" Performance Standard. Attainment of the "Year 10" Performance Standard shall be documented in a monitoring report submitted to the MBRT members and through the verification by the USACE of a wetland delineation indicating jurisdictional acreage. The remaining number

of created wetland credits shown in **Exhibit D** may be revised based on the verification of the wetland delineation by USACE. The availability of the remaining created wetland credits is based upon attainment of the 'Year 10" standard, not the timing of such attainment. However, the remaining created wetland credits shall not be made available prior to year 3 monitoring.

5. 100% of preservation credits for preserved vernal pool and California tiger salamander habitats will be available upon execution of this agreement and recordation of the Conservation Easement.

G. Provisions for Uses of the Mitigation Bank Area: Bank Owner agrees and covenants that, Bank Owner shall not:

1. Use or authorize the use of the Bank Lands for any purpose that unreasonably interferes with its use as a mitigation bank, or unreasonably interferes with or compromises the ecological functions of the Bank.

2. Erect any permanent structures within or upon the Bank Lands unless required or permitted by the approved Management Plans.

3. Construct any structures or engage in any development activities on the Bank Lands other than those specified in the Plans. Development activities shall mean only those actions that may change the, biological, hydrological or physical characteristics of the land, but specifically do not include entry upon the land for other purposes, such as investigation, measurement, surveying, or as may be required by law or lawful order.

4. The Bank Owner shall insure that the Property is maintained to ensure its suitability as a Bank consistent and in accordance with this BEI, any Conservation Easement, and the Management Plan, and will be funded through perpetual administration of the Management Endowment Fund.

Section VI: Maintenance and Monitoring of the Bank

A. Maintenance Provisions: The Bank Owner agrees to perform all work necessary to maintain the Bank consistent with the maintenance criteria established in the Plans (**Exhibit C**). Upon completion of the Habitat Establishment Period, the Bank Owner shall implement the management actions described in the Long Term Management section of the Plans. The Plans have been designed to ensure that the Bank Lands are managed and maintained, in perpetuity, consistent with the conservation purposes of the Bank. Deviation from the approved Plans is subject to review and written approval by the MBRT.

B. Monitoring-Provisions: The Bank Owner agrees to perform all work necessary to monitor

the Bank in accordance with the monitoring procedures set forth in the Plans in order to demonstrate compliance with the Performance standards established in the Plans.

C. Reports: The Bank Owner shall submit to the members of the MBRT, annual monitoring reports describing the conditions of the Bank and relating those conditions to the performance standards and/or species objectives according to the monitoring schedules outlined in the Mitigation and Monitoring Plan, Operations and Management plan and Special-status Species Management Plan. Reports will be submitted by, December 31 of each calendar year commencing after the first full year following habitat construction, and shall contain information as described in the Table 2, Section 5 of the Mitigation and Monitoring Plan, Section 9.5 of the Operations and Management plan and Section 3.0 of the Special-status Species Management Plan.

D. Accounting Procedure: The Bank Owner shall submit a Credit Ledger annually to the MBRT showing all transactions at the Bank and the balance of the remaining credits. The Bank Owner shall submit within 30 days of Credit sales a Credit Purchase Agreement, an Acknowledgment of Sale of Credits, and an updated Credit Ledger showing to whom the Credits were sold, date of the transaction and the associated USACE, USFWS or CDFG action identification numbers to the signatories to this agreement each time Credits are debited.

E. Remediation Plans: In the event the Bank fails to achieve the Performance standards:

1. Bank Owner shall have the opportunity to correct. The Bank Owner shall notify the Parties of the condition and shall develop remediation plans and submit them within 60 days of the notice to the Parties. The remediation plans will include proposed remedial actions and a schedule within which the actions will be implemented. The Bank Owner shall then implement the necessary and appropriate remedial actions for the Bank in coordination with, and under the schedule approved by, the Parties.

2. If the Parties determine at the time notice is provided that the Bank has sold more credits than are available in the deficient Bank, the Bank Owner shall be notified, whereupon debiting of credits will immediately cease.

3. In the event the Bank Owner fails to implement such remedial actions within the schedule approved by the Parties, the MBRT will notify the Bank Owner and identify remedial actions the Parties believe to be necessary in order to achieve the performance objectives set forth in the Plan. The Bank Owner shall implement the identified remedial actions within the schedule prescribed, or be in default of this BEI.

4. If conditions do not change or continue to deteriorate, within two years from the date that the specific remediation actions were first identified in writing to the

Bank Owner by the MBRT, the MBRT may terminate this BEI pursuant to conditions set forth in Section VIII, C, 3 of this agreement, and may use the Construction Security, the Performance Security or the Interim Management Security, held by CDFG, or an approved designee, as appropriate, to undertake corrective measures.

F. Release of the Performance Security: At the request of the Bank Owner, after a determination by the MBRT that the final Performance standards have been satisfied as evidenced by the submittal of a monitoring report to the MBRT and the verification by the USACE of a jurisdictional wetland delineation, the MBRT, at their sole discretion, may perform a final compliance visit and the CDFG will release the Performance Security. In the instance where remedial action has been required to meet Performance Standards, the Performance Security shall not be released prior to the third anniversary of any such remedial action or prior to attainment of the performance standards, whichever is later.

G. Transfer

1. Once the Bank has been established the Bank Owner shall, at any time, have the right to convey or transfer the property in accordance with this BEI and subject to written concurrence by the MBRT, which concurrence shall be subject to the requirement that the successor or assign assume all of the Bank Owner's obligations pursuant to this BEI. If such transfer is made without the prior written concurrence of the MBRT, such transfer may, at the MBRT's discretion, result in termination of this BEI.

2. If any of the required financial obligations under this BEI are not completely funded at the time of transfer, either the current Bank Owner, or the replacement Bank Owner, successors or assigns, shall deposit or provide security in a form approved by the MBRT for any funds necessary to completely fund these accounts prior to the transfer of the Bank. Prior to transfer, the Bank Owner shall provide to each member of the MBRT a signed commitment from the replacement Bank Owner stating that the replacement Bank Owner accepts all of the responsibilities of the BEI. Transfer or assignment of this BEI to a party approved in writing by the MBRT shall also be subject to the requirement that any funds in a Contingency Fund or Management Endowment Fund shall continue to be expended in a manner consistent and in accordance with this BEI, the Conservation Easement, and the Management Plan.

H. Long-Term Management: Once the Performance standards in the Plans have been met, the long-term maintenance and care of the Bank shall be assured pursuant to the Long-Term Management component of the Plans.

1. The Bank shall be maintained in perpetuity in accordance with the terms and

provisions of the Long-Term Management component, provided in the Plans.

2. The Bank Owner shall be responsible for seeing that the Bank is maintained in accordance with the, Long-Term management component of the Plans, unless and until this responsibility is assigned to another entity acceptable to both the Bank Owner and the MBRT.

3. Interest from the non-wasting Management Endowment Fund to be held as a trust account by CDFG shall be available to implement the Long-Term Management component of the Plans upon Attainment of the Final Target Amount in the Management Endowment Fund. Prior to full funding of the Management Endowment Account in the Final Target Amount, Owner shall be responsible for all costs and any management obligations that the Parties agree are to be performed during this Interim Management Period in accordance with this BEI, the Conservation Easement, and the Plans.

4. Amendments to the O&M Plan will be made with the approval of the MBRT.

I. Bank Closure The Bank shall be deemed open on the date that the BEI is fully executed, including a recorded Conservation Easement. The Bank shall be deemed closed upon the following:

1. Either:

   a) The last authorized Bank credit has been transferred; or

   b) The Bank Owner requests bank closure by written notice to the MBRT and MBRT provides written approval of the closure.

2. And:

   All performance standards and financial responsibilities have been met, including full funding of the long-term endowment.

Upon bank closure, the Bank Owner shall implement the additional management actions described and established in the Operations and Management Plan. The Operations and Management Plan has been designed to ensure that the Bank property is managed and maintained, in perpetuity, according to the Conservation Easement and the Operations and Management Plan as funded by the Endowment Fund and consistent with the conservation purposes of the Bank. Deviation from the approved Operations and Management Plan is subject to review and written approval by the MBRT.

At this point, the project shall be deemed complete.

J. Termination of Agreement Prior to Credit Sales: The Bank Owner may terminate this BEI at any time provided that:

1. No Credits developed in the Bank have been transferred in order to compensate for the loss of habitat, or endangered species impacts; and

2. The wetland acreage and habitat values of any wetland habitat existing on the Bank site prior to the initiation of efforts to restore and enhance the site shall be preserved in a condition at least equal to that prior to initiation of Bank establishment efforts.

Section VII: Responsibilities of the MBRT

A. MBRT Review: The agencies represented on the MBRT agree to provide appropriate oversight in carrying out provisions of this BEI.

B. MBRT Review: The agencies represented on the MBRT agree to review and provide comments on all project plans, monitoring reports, remediation plans, and necessary permits for the Bank, as identified or incorporated by reference into the BEI, in a timely manner.

C. Evaluation of Bank Progress: The agencies represented on the MBRT agree to review and confirm reports on evaluation of performance standards prior to certifying Credits in the Bank in a timely manner.

D. Compliance Inspections: The agencies represented on the MBRT shall conduct compliance inspections, as necessary, as determined in coordination with the Bank Owner

1. To verify the Credits then currently available in the Bank; and/or

2. Recommend remedial actions as needed.

These inspections shall continue until the effort to restore and enhance the Bank, as described in the Plans, has been determined to be completely successful, pursuant to the Performance standards provided in **Exhibit C**, Table 2 Section 5 of the Mitigation and Monitoring Plan, and as necessary thereafter, as determined by the MBRT in coordination with the Bank Owner.

Section VIII: Other Provisions

A. Events beyond Bank Owner's Control:

1. The Bank Owner shall be responsible to maintain and remediate the Bank (any portion of credits sold) except upon Catastrophic Events, events of Force Majeure or Unlawful Acts as defined below.

2. Definitions.

a) Catastrophic Event shall mean an event, such as a spill of hazardous or toxic substance, the impact of a vehicle or falling aircraft, or a fire, which has a material and detrimental impact on the quality of native vegetation, soils, or wildlife of the mitigation bank and over which the Property Owner and Bank Owner have no control.

b) Force Majeure shall mean war, insurrection, riot or other civil disorders, flood, earthquake, fire, governmental restriction, or the failure by authority, or any injunction, which has a material and detrimental impact on the Bank; provided, however, that (i) a riot or other civil disorder shall constitute an event of Force Majeure only if the event has broad regional impacts and is not endemic to the Bank and its immediate locale; (ii) a flood shall be considered an event of Force Majeure only if it is greater than a presently projected 100-year flood, where "flood." refers to a runoff event; (iii) an earthquake shall constitute an event of Force Majeure only if the ground motion it generates at the Bank is greater than that presently projected from an earthquake with a return period of 475 years; (iv) disease shall constitute an event. of Force Majeure only if such event has broad regional impact and is not endemic to the Bank and its immediate locale; and (v) governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction shall not constitute an event of Force Majeure unless there is no other feasible means of remediation.

c) Unlawful Act shall mean the unlawful act of another and shall include an event or series of events, such as the intentional dumping within the Bank or tributaries of the creek of a hazardous toxic substance, or the discharge of such a substance by any person or entity other than Property Owner or the Bank Owner in violation of a statute, ordinance, regulation or permit, which event or series of events has a material and detrimental impact on the water quality, native vegetation, soils or wildlife of the Bank.

3. Not withstanding the foregoing, subject to availability of funds as specified in Section VI: .H.3., Bank Owner shall not be relieved from the obligation to maintain and remediate the Bank by reason of any such discharge which occurs as a result of normal non-catastrophic activities. In case of occurrence of a Catastrophic Event, events of Force Majeure, or Unlawful Acts, Bank Owner, and the MBRT shall meet to discuss the future course of action and management of the Bank (areas where credits have been withdrawn) and shall continue their

obligation to the extent practicable using the available annual interest funds in the Management Endowment Fund or the Contingency Security if the Management Endowment Fund has not been fully funded.

4. The Bank Owner shall bear the burden of demonstrating

   a) That the noncompliance was caused by circumstances beyond the control of the Bank Owner and/or any entity controlled by the Bank Owner, including its contractors and consultants;

   b) That neither the Bank Owner nor any entity controlled by the Bank Owner, including its contractors and consultants, could have reasonably foreseen and prevented such noncompliance; and

   c) The period of noncompliance was caused by such circumstances.

5. Reasonably foreseeable technical problems, or unanticipated or increased costs or expenses associated with the implementation of actions called for by this BEI, or changed financial or business circumstances in and of themselves shall not serve as the basis for modifications of this BEI or extensions for the performance of the requirements of this BEI.

6. Compliance with any requirement of this BEI by itself shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident shall not necessarily result in the extension of a subsequent compliance date or dates. The Bank Owner must make an individual showing of proof regarding the cause of each delayed step or requirement for which an extension is sought.

B. Dispute Resolution:

1. Between Members of the MBRT: Resolution of disputes about application of this BEI as between the members of the MBRT shall be in accordance with those stated in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 FR 58605 *et seq.*).

2. Between the MBRT and Bank Owner: In the event of any disagreement or dispute between one or more members of the MBRT, and the Bank Owner regarding the interpretation and application of the provisions of this BEI, the appropriate MBRT member and the Bank Owner shall meet within 30 days of a written request therefore made by a party, and shall attempt to resolve such disagreement or dispute. In the event that the MBRT member and Bank Owner have not resolved the disagreement or dispute within 60 days of the date of the

notice first requesting a meeting, then either party may elect to resolve the dispute or disagreement by the appropriate remedies then available under federal law.

C. Execution, Modification, and Termination of the BEI:

1. Execution

The Conservation Easement shall be recorded, and a copy of the recorded easement shall be submitted to the MBRT for inclusion in the BEI. The Bank Owner must sign the BEI, prior to the signature and execution of the BEI by the members of the MBRT. Subsequently, the BEI shall be executed by each signatory agency to said document. The BEI will become valid and enforceable as between each signatory agency and the Bank Owner after the conservation easement has been recorded, and all members of the MBRT have signed this BEI (Bank Establishment Date).

2. Modification

This banking instrument may be amended or modified with the written approval of each member of the MBRT and the Bank Owner.

3. Termination of this BEI

a) Termination of BEI Prior to Credit Sales

Prior to any Credit sales, the Bank Owner may withdraw the entire Bank Site and terminate this BEI at any time provided that:

i) No Credits developed in the Bank have been sold or conveyed in order to compensate for the loss of wetlands and special status species habitats; and

ii) The wetland acreage and habitat values of any habitat existing on the Bank site prior to the initiation of efforts to restore and enhance the site shall be preserved in a condition at least equal to that prior to initiation of Bank establishment efforts.

iii) Bank Owner shall have the right to convey or transfer the Property prior to establishment of the Bank in accordance with this BEI and subject to written concurrence by the MBRT. If such transfer is made without the prior written concurrence of the MBRT, such transfer shall result in termination of this BEI.

b) Termination of BEI after Credit Sales Begin

As regards individual signatories to the BEI, termination of the BEI may only happen consistent with the following terms:

i) Any of the MBRT members, with the exception of the USACE, USFWS, and CDFG may terminate their participation upon 30 calendar days' written notification to all signatory Parties.

ii) The CDFG and USFWS may terminate their participation in this BEI on the condition that each of the following has occurred:

1) Bank Owner has breached one or more Owner Covenants or terms and conditions set forth herein;

2) Bank Owner has received written notice of such breach and order to cease Credit sales from the CDFG and USFWS; and

3) Bank Owner has failed to cure such breach within thirty (30) days after such notice; provided that in the event such breach is curable in the judgment of the CDFG and USFWS, but cannot reasonably be cured within such thirty (30) day period, the CDFG and USFWS shall not terminate this BEI so long as Bank Owner has commenced the cure of such breach and is diligently pursuing such cure to completion. Nothing in this paragraph is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) at law available to the CDFG and USFWS in the event of a threatened or actual breach of this BEI.

4) Bank Owner is in default under this BEI as described above, and fails to cure such breach, and Bank Owner fails to designate a replacement Bank Owner in accordance with Section VI, F above within 180 days of Bank Owner's receipt of written notice from any member of the MBRT that the Bank Owner is in default of its obligations under the BEI. If Bank Owner fails to designate a replacement Bank Owner, then such public or private land or resource management organization acceptable to and as directed by the MBRT may enter onto the Bank property in order to fulfill the purposes of the Bank as described in the BEI.

5) Bank Owner provides the remainder of any Endowment Fund deposits necessary to fully fund the Endowment to carry out the long-term management of the Bank property.

iii) Upon written concurrence of the MBRT, this BEI may be terminated following the sale or conveyance of all available Credits and satisfaction of all substantive terms and conditions of this BEI other than ongoing management obligations such as maintenance

and monitoring, as set forth in the Management Plan, provided that the Endowment Fund shall continue to be expended in a manner consistent and in accordance with the conservation purposes for which it was established pursuant to this BEI and California Civil Code Section 815, any Conservation Easement, and the Management Plan, and any Conservation Easement shall continue in perpetuity as a covenant running with the land.

iv) If requested, the member(s) of the MBRT proposing to terminate participation in the MBRT agree to meet with the other MBRT members to discuss the reason(s) for such termination, prior to the termination taking effect. Notice of a request for such meeting shall be made by the requesting MBRT member(s) not later than 15 calendar days from receipt of the notice of termination.

c) Termination by one member of the MBRT of its involvement in this BEI shall not terminate or affect the relationship between the remaining members of the MBRT, toward each other or the Bank Owner, under this BEI.

d) As regards the termination of the BEI in its entirety, the terms and provisions of this BEI will be valid:

i) For two years from the last date of execution of the BEI by the MBRT members in the event that no credits are sold from the bank; or

ii) Until the Bank Closure Plan has been implemented to the satisfaction of the MBRT and the USACE provides notice, in writing, to the Bank Owner that this instrument may be terminated.

D. Specific Language of Bank Enabling Instrument shall be Controlling: To the extent that specific language in this document changes, modifies or deletes terms and conditions contained in those documents that are incorporated into the BEI by reference, the specific language within the BEI shall be controlling.

E. Entire Agreement: This BEI, and all exhibits, addenda, schedules and agreements referred to in this BEI, in addition to any other elements of a BEI required under the Federal Guidelines not heretofore provided by the Bank Owner, constitute the final, complete and exclusive statement of the terms of the agreement between and among the MBRT and the Bank Owner pertaining to the Bank and supersedes all prior and contemporaneous understandings or agreements of the parties. Each party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other party or anyone acting on behalf of any party unless the same has been embodied herein.

F. Reasonableness. And Good Faith: Except as specifically limited elsewhere in this BEI, whenever this BEI requires Bank Owner or the MBRT to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If either the Bank Owner or the MBRT disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining party shall furnish its reason in writing and in reasonable detail within 15 business days following the request.

G. Partial Invalidity: If a court of competent jurisdiction holds any clause of this BEI to be invalid or unenforceable, in whole or in part, for any reason, the validity and enforceability of the remaining clauses, or portions of them, shall not be affected unless an essential purpose of this BEI would be defeated by loss of the invalid or unenforceable provision.

H. Notices: All notices (including requests, demands, approvals or other communications) under this BEI shall be in writing. Notices by the Bank Owner to the MBRT shall be made to all of the members of the MBRT. Such notice shall not be effective until deemed received by all members of the MBRT.

Addresses for purposes of giving notice are set forth below. Either party may change its address or telex or fax number by giving the other party notice of the change in any manner permitted by this section.

MBRT Chair:

U.S. Army Corps of Engineer
San Francisco District
Attn: Chief, Regulatory Branch
333 Market Street, 8th Floor
San Francisco, CA 94105-2197
Telephone: (415) 977-8436
Fax: (415) 977-8343

MBRT Members:

U.S. Army Corps of Engineer
Sacramento/San Joaquin Delta Office
Attn: Chief, Regulatory Branch
1325 J St. Room 1480
Sacramento, CA 95814-2922
Telephone: (916) 557-5250
Fax: (916) 557-6877

U.S. Fish and Wildlife Service
2800 Cottage Way
Suite W-2605
Sacramento, CA 95825-1846
United States of America
Telephone: (916) 414-6600
Fax: (916) 414-6710

U.S. Environmental Protection Agency
Region 9
Attn: EPA Director, Water Division
75 Hawthorne Street
San Francisco, CA 94105
Telephone: (415) 947-8707
Fax: (415) 947-3549

Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612
Telephone: (510) 622-2330
Fax: (510) 622-2460

California Department of Fish and Game
Habitat Conservation Planning Branch, Banking Coordinator
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Telephone: 916-653-4875
Fax: (916) 653-2588

California Department of Fish & Game
Central Coast Region
P.O. Box 47
Yountville, CA 94599
Telephone: (707) 944-5517
Fax: (707) 944-5563

Bank Owner: Wildlands, Inc.
3855 Atherton Road
Rocklin, CA 95765-3715
Telephone: (916) 435-3555
Fax: (916) 435-3556

I. Restriction on Benefit. No member of or delegate to the United States Congress or Federal Resident Commissioner shall be entitled to any share or part of this BEI, or to any benefit that may arise from it.

J. Counterparts. This BEI may be executed in any number of duplicate and counterpart originals. A complete original of this BEI containing original signatures of each of the parties shall be circulated to each of the parties by Bank Owner and a complete original of this BEI shall be maintained in the official records of each of the parties hereto.

K. No Third Party Beneficiaries. This BEI shall not create any third party beneficiary hereto, nor shall it authorize anyone not a party hereto to maintain a suit for personal injuries, property damages or enforcement pursuant to the provisions of this Agreement. The duties, obligations and responsibilities of the parties to this BEI with respect to third parties shall remain as otherwise provided by law in the event this BEI had never been executed. This BEI shall become effective with the signature by the last agency to sign this BEI, and upon the date of receipt of a recorded Conservation Easement, and shall be binding only upon Bank Owner and the agencies so signing.

L. Modification. This BEI may be modified and/or amended from time to time in order to comply with specific permits or authorizations needed to establish the Bank. Such amendments or modifications shall be in the form of an addendum to this BEI and the Bank Owner shall submit a written request for approval of such amendment or modification to the MBRT. The Bank Owner shall then implement all modifications or amendments approved by the MBRT.

****

Steven K. Morgan
CEO/CFO
Wildlands, Inc.
Bank Owner

1/2/07
Date

Craig W. Kiley
Lt. Colonel, U.S. Army
District Commander, San Francisco District
U.S. Army Corps of Engineers
Chair, MBRT

1/30/07
Date

Ronald N. Light
Colonel, U.S. Army
District Engineer, Sacramento District
U.S. Army Corps of Engineers
Member, MBRT

Date

Robert Floerke, Regional Manager
Central Coast Region
California Department of Fish and Game
Member, MBRT

Date

Susan Moore
Field Supervisor
U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office
Member, MBRT

Date

Alexis Strauss
Director, Water Division
U.S. Environmental Protection Agency, Region 9
Member, MBRT

Date

1/2/07

Steven K. Morgan
CEO/CFO
Wildlands, Inc.
Bank Owner

Date

Craig W. Kiley
Lt. Colonel, U.S. Army
District Commander, San Francisco District
U.S. Army Corps of Engineers
Chair, MBRT

Date

1-23-07

For Ronald N. Light
Colonel, U.S. Army
District Engineer, Sacramento District
U.S. Army Corps of Engineers
Member, MBRT

Date

Robert Floerke, Regional Manager
Central Coast Region
California Department of Fish and Game
Member, MBRT

Date

Susan Moore
Field Supervisor
U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office
Member, MBRT

Date

Alexis Strauss
Director, Water Division
U.S. Environmental Protection Agency, Region 9
Member, MBRT

1/2/07

Steven K. Morgan
CEO/CFO
Wildlands, Inc.
Bank Owner

Date

Craig W. Kiley
Lt. Colonel, U.S. Army
District Commander, San Francisco District
U.S. Army Corps of Engineers
Chair, MBRT

Date

Ronald N. Light
Colonel, U.S. Army
District Engineer, Sacramento District
U.S. Army Corps of Engineers
Member, MBRT

Date

Scott Wilson FOR

1/5/07

Robert Floerke, Regional Manager
Central Coast Region
California Department of Fish and Game
Member, MBRT

Date

Susan Moore
Field Supervisor
U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office
Member, MBRT

Date

Alexis Strauss
Director, Water Division
U.S. Environmental Protection Agency, Region 9
Member, MBRT

Steven K. Morgan
CEO/CFO
Wildlands, Inc.
Bank Owner

1/2/07
Date

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California Department of Fish and Game
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Date

for Susan Moore
Field Supervisor
U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office
Member, MBRT

12/27/06
Date

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5 January 2007
Date