TRACY HILLS SPECIFIC PLAN
RECIRCULATED
DRAFT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT
VOLUME III
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APPENDIX C-3

TRACY HILLS PROJECT – U.S. ARMY CORPS OF ENGINEERS JURISDICTION ASSESSMENT, OLBERDING ENVIRONMENTAL, INC., DATED NOVEMBER 2013

OLBERDING ENVIRONMENTAL, INC.
Wetland Regulation and Permitting

November 5, 2013

The Tracy Hills Project Owner, LLC
c/o John Palmer
672 W. 11th Street, Suite 102
Tracy, California 95376

Subject: Tracy Hills Project – U.S. Army Corps of Engineers Jurisdiction Assessment

Dear Mr. Palmer:

Olberding Environmental, Inc. (Olberding Environmental) has completed an investigation of the geographic extent of areas potentially subject to US Army Corps of Engineers (Corps) jurisdiction under Section 404 of the Clean Water Act (wetlands and other waters) within the identified boundaries of the Tracy Hills Property (Property), located in San Joaquin County, California.

The Property consists of the Phase 1 parcel (554 acres) located north of Interstate Highway 580 and the Phase 2 parcel (1,116 acres) located south of Interstate Highway 580, for a total of 1,670 acres of undeveloped land owned by The Tracy Hills Project Owner, LLC. The Property generally straddles an area along Interstate Highway 580 between the Union Pacific Rail Road crossing to the west and Corral Hollow Road to the east. Phase 1 is located between the California Aqueduct and the interstate. The Phase 2 parcel generally extends from the interstate up the lower hills of the Altamont Range.

On February 15- 17, March 2, May 15, and September 20, 2013, field surveys were conducted for the purpose of identifying the extent of Corps jurisdiction within predetermined boundaries identifying the Property. This area is also referred to as the "study area". The study area was investigated in order to make a technical evaluation as to the extent of Corps jurisdiction based on current and historic land use conditions and applicable regulatory guidance. Visual observations as to the presence or absence of indicators of wetland soil, vegetation and hydrological conditions were made during the investigation and recorded on a topographical map of the Property. The boundaries of all potential wetland/water features observed were further defined in accordance with the Corps regulations and the required methodology described in the 1987 Corps Wetlands Delineation Manual (1987 Manual) and Arid West Supplement to the 1987 Manual.

Results of the jurisdictional delineation survey identified the presence of wetlands/waters within the survey boundaries of the Property. A total of approximately **2.33** acres of wetlands were identified within the survey boundaries. Observed wetland habitats included wetland swales, seasonal wetlands and vegetated drainage channels. Approximately **2.68** acres (14,117 linear feet) of drainage channels (waters) were also identified during the field survey. This figure includes numerous ephemeral drainage features which flow down the Altamont Range hills in a south to north direction, under Interstate Highway 580, before disappearing into an alluvial fan consisting of porous sand and gravel substrate. In total, Olberding Environmental identified 5.01 acres of wetlands/waters within the defined boundaries of the study area.

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Observations made during the field surveys identified a consistent theme across the site. Moderately steep slopes located within the Phase 2 parcel contained narrow incised drainage channel features in the upper portion of the hilly landscape. These ephemeral channels have developed to drain stormwater off of the Property during and immediately after storm events before drying out several days later. Due to the steepness of the topography there is little opportunity for water to remain in the channel.

After descending down the steep slopes, the topography begins to flatten prior to intersecting Interstate Highway 580 to the north. At this point all but a single drainage has transformed from a channel feature with a defined bed and bank, to a shallow "U" shaped vegetated swale. The swale features eventually disappear into a wide alluvial fan dispersing runoff over a sandy/gravel substrate and allowing infiltration of the water. As is represented in the attached map set, only a single drainage channel actually flows from the Phase 2 site onto the Phase 1 site located across the Interstate. However, by the time the flows reach the Phase 1 parcel they too have been minimized by infiltration into the substrate resulting in little or no flow reaching the northern parcel. In fact, there are currently no drainage channel features which extend across the Phase 1 parcel.

Several wetland swale features occur on the western end of the Phase 1 parcel converging at the large bend in the California Aqueduct. These low gradient swales are extensions of several larger drainages which occur on the south side of the Interstate but outside the Property boundary. Stormwater runoff is collected and transported in these swales across the Phase 1 parcel and collects in a shallow seasonal wetland prior to entering a constructed overcrossing (viaduct) over the aqueduct. After flowing through the viaduct the runoff enters agricultural field located between the California Aqueduct and the Delta Mendota Canal were they diffuse across the landscape infiltrating into the sandy/gravel substrate. Numerous small seasonal wetland features were also observed within shallow topographical depressions on the Phase 1 parcel.

An extensive review of available photography, inspection of adjacent properties and assessment of regional rivers, creeks, streams, and ditch features indicates that all wetland and drainage features on the Property have no physical connectivity to any downstream water course. All runoff on the Property is in a south to north direction.

Flows must cross under Interstate Highway 580 through designated crossing locations and then flow across the porous substrate of the Phase 1 parcel. After flowing across the Phase 1 parcel any remaining runoff on the western portion of the site encounters an elevated railroad grade while runoff on the eastern portion of the site is redirect by the aqueduct levee. Both the California Aqueduct and Delta Mendota Canal are designed so as to not allow runoff from the adjacent properties into the constructed channels. Any remaining stormwater runoff crosses the California Aqueduct in the constructed viaducts and is discharged onto agricultural fields containing the same porous soils as is found on the Property. The Delta Mendota Canal located downslope of the California Aqueduct creates the final barrier to any downstream flow.

ISOLATED WATERS

The U.S. Supreme Court has ruled that isolated, non-navigable wetlands and other waters are not subject to federal regulation even if they provide habitat for migratory birds and endangered species. Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (hereinafter SWANCC) (No. 99-1178). The Corps has attempted to define isolated as "not having hydrological connectivity to other jurisdictional features." Based on this determination, the Court has eliminated the need to secure fill permits from the Corps under Section 404 of the Clean Water Act when isolated wetlands are encountered. Nevertheless, the decision is by no means a blanket repeal of Section 404. Every landowner's on-the-ground situation is unique, and must be analyzed individually. In the aftermath of this decision, each landowner must still carefully assess its situation to determine whether its survey area contains features which qualify as "waters of the U.S."

The RWQCB has indicated that they intend to continue regulation of isolated wetlands under the Porter-Cologne Act (Water Code Section 13260). Their interpretation of the Court ruling indicates that the SWANCC decision has no bearing on the RWQCB's regulation of "waters of the state" and as such they will continue to issue waste discharge requirements (WDRs) in lieu of a Section 401 Certification which is required when the Corps issues a Section 404 permit.

SIGNIFICANT NEXUS

The geographic extent of jurisdiction under the Clean Water Act was further refined based on the U.S. Supreme Court's interpretation of the Act in Rapanos v. United States, 126 S. Ct. 2208 (2006) (Rapanos Case). In the EPA and Corps joint guidance of the Rapanos Case, issued in June of 2007, it was determined that the Corps generally will not assert jurisdiction over (1) swales or erosional features (e.g. gullies, small washes characterized by low volume, infrequent, or short duration flow) and (2) ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water. Non-navigable tributaries that are not relatively permanent and wetlands adjacent to such tributaries will be assessed on a case-by-case basis to determine whether they have a "significant nexus" to traditional navigable water. A "significant-nexus" will be determined through assessment of the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of downstream traditional navigable waters.

Based on information obtained during the field reconnaissance surveys performed in 2013, Olberding Environmental concluded that all wetland and water features occurring within the study area are considered "isolated" and as such, would not be regulated by the Corps. Additionally, none of the wetland/water features have a "significant nexus" to a traditional navigable water due to their isolated nature and therefore their federal non-jurisdictional status is substantiated. However, these wetlands would continue to be regulated by the Regional Water Quality Control Board (RWQCB) as "waters of the State".

I appreciate this opportunity to provide my services. If you have any questions, please feel free to contact me at (916) 985-1188.

Sincerely,

Jeff Olberding
Wetland Regulatory Scientist

Enclosures: Exhibit A/Scope of Work