



# United States Department of the Interior



## US FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office  
2800 Cottage Way W-2605  
Sacramento, California 95825

In Reply Refer To:  
1-1-96-F-163-2

February 2, 2009

Mr. Mark D'Avignon  
Regulatory Branch  
U. S. Army Corps of Engineers  
1455 Market Street, 16<sup>th</sup> Floor  
San Francisco, CA 94103

Mr. Dave Gromm  
Director of Wastewater Collection and Plant Operations  
City of Pacifica  
700 Coast Highway  
Pacifica, California 94044

Subject: Proposed Waste Vegetable Oil Recycling Facility and the Calera Creek  
Water Recycling Plant in the City of Pacifica, San Mateo County, California

Dear Messrs. D'Avignon and Gromm:

This letter is in response to the proposed Waste Vegetable Oil Recycling Facility and the Calera Creek Water Recycling Plant in the City of Pacifica. At issue are the potential adverse effects of this project on the endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and the threatened California red-legged frog (*Rana aurora draytonii*). Our comments and recommendations are provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)(Act).

This letter is based on: (1) letter from the City of Pacifica to the Service dated January 9, 2008, and *City of Pacifica Wastewater Facilities Plan Final Environmental Impact Report Addendum 3* dated January 2008, that was prepared by TRA Environmental Sciences, Inc.; (2) *California Coastal Commission Staff Report F5a* (Coastal Commission report) that received

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by the Service on June 30, 2008; (3) July 14, 2008, California Coastal Commission's Notice of Intent to Issue Permit for this project; (4) April 2008, site visit attended by the Service and California Department of Fish and Game; (5) *Spill Containment at Calera Creek Biodiesel Production Plant* that was received by the Service in April 2008; (6) *Formal Consultation on the Calera Creek Water Recycling Plant and Wetland Restoration on the Lower Calera Creek, San Mateo County, Pacifica, California* dated October 31, 1996 (Service file 1-1-96-F-163) (biological opinion); (7) *Memorandum of Understanding Between the United States Fish and Wildlife Service and City of Pacifica* dated January 12, 1996; (8) field meeting about the ponds for the two listed species attended by the U.S. Army Corps of Engineers, Service, California Coastal Commission, City of Pacifica, and others on January 16, 2009; (9) telephone discussion between Dave Gromm, Chris Nagano, and Michelle Havens on February 2, 2009; (10) various electronic and telephonic correspondence between the Service, Whole Energy, California Coastal Commission, California Department of Fish and Game, and Thomas Reid Associates in 2008; and (11) other information available to the Service.

On October 31, 1996, the Service issued the biological opinion to the U.S. Army Corps of Engineers for the construction of the Calera Creek Water Recycling Plant. It is our understanding that the City of Pacifica has currently proposed to construct, operate, and maintain a waste vegetable oil recycling facility at this site. According to the Coastal Commission Report, the facility would be integrated into the Water Recycling Plant operations, including the electrical system, wastewater system, bio-solids removal system, and heat transference system. Excess energy produced by the facility would be used to power the Waste Vegetable Oil Recycling Facility. A building would be constructed on an existing 100-foot by 40-foot structural concrete pad. A new underground exhaust duct would discharge all emissions into the existing soil scrubber at the new facility. Any additional biodiesel produced would be available for sale at an offsite location. The City of Pacifica reportedly has entered into a contract with the builder, Whole Energy, to construct the facility within the Calera Creek Water Recycling Plant, and Whole Energy will be providing partial funding for the project.

The California red-legged frog and the San Francisco garter snake have been observed within the Calera Creek Water Recycling Plant and within the adjacent Calera Creek. Adults, juveniles, and tadpoles of the threatened amphibian were observed within Calera Creek in 2002, and in 2006, 65 adults and 2 juveniles were observed within ponds on the property (California Department of Fish and Game 2009). Adults are often associated with permanent bodies of water. Some remain at breeding sites all year while others disperse. Dispersal distances are typically less than 0.5 mile, with a few individuals moving up to 1-2 miles (Fellers 2005a, 20065b). Movements are typically along riparian corridors, but some individual frogs, especially on rainy nights, move directly from one site to another through normally inhospitable habitats, such as heavily grazed pastures or oak-grassland savannas (Fellers 2005a, 2005b). During other parts of the year, habitat includes nearly any area within 1-2 miles of a breeding site that stays moist and cool through the summer (Feller 2005a, 2005b). An individual of the San Francisco garter snake was observed in April 2008 utilizing the adjacent paved bike path and upland areas owned and maintained by Calera Creek Water Recycling Plant (California Department of Fish and Game 2009). Radio tracking studies of this endangered serpent at Ano Nuevo State Reserve and Pearson Ranch indicate that

individuals generally remain within three to six hundred feet of aquatic foraging habitats and upland sites (Service 2006). Larsen (1994) reported similar findings at the West of Bayshore site though she did record a travel distance of 2200 feet for one female snake and 2070 feet for one male. Additionally, individuals of both of these listed species have been documented to utilize the surrounding areas including Mori Point located within the Golden Gate National Recreation Area, and Sharp Park Golf Course which is owned and managed by the City and County of San Francisco.

Section 9 of the Act prohibits the take of any federally listed animal species by any person subject to the jurisdiction of the United States. As defined in the Act, take is defined as "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Harm has been further defined to include habitat destruction when it injures or kills a listed species by interfering with essential behavioral patterns, such as breeding, foraging, or resting. Thus, not only are the California red-legged frog and the San Francisco garter snake protected from such activities as collecting and hunting, but also from actions that cause their death or injury through damage or destruction of their habitat. The term "person" is defined as "...an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States."

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project and a listed species is going to be adversely affected, then initiation of formal consultation between that agency and the Service pursuant to section 7 of the Act is required. Such consultation would result in a biological opinion addressing the anticipated effects of the project to the listed species and may authorize a limited level of incidental take. If a Federal agency is not involved in the project, and federally listed species may be taken as part of the project, then an incidental take permit pursuant to section 10(a)(1)(B) of the Act should be obtained. The Service may issue such a permit upon completion of a satisfactory conservation plan for the listed species that would be taken by the project.

We are concerned that the proposed Waste Vegetable Oil Recycling Facility may result in take of the California red-legged frog and/or the San Francisco garter snake through direct construction-related effects and also through operation of the project. If appropriate, authorization for incidental take should be obtained by the appropriate parties for this project. The proposed Waste Vegetable Oil Recycling Facility would be located on the Calera Creek Water Recycling Plant for which the biological opinion authorized incidental take of the San Francisco garter snake and the California red-legged frog. It appears that the City of Pacifica has not implemented a number of the conservation measures and *Reasonable and Prudent Measures* described in the biological opinion. Because some of these activities, which were intended to minimize and avoid adverse effects to the San Francisco garter snake and the California red-legged frog, may not have been implemented and/or completed, the Service is concerned that the *Incidental Take Statement* in that document which authorized incidental take of the two listed species may not have been valid. Therefore, as agreed upon in this morning's telephone call, Dave Gromm and my staff, the City of Pacifica, Service, and,

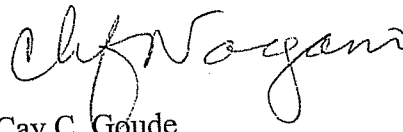
Mr. Mark D'Avignon and Mr. Dave Gromm

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potentially, the U.S. Army Corps of Engineers, will be meeting at the project site this month to discuss which portions of the *Description of the Proposed Action and Terms and Conditions* have been completed as described in the biological opinion.

We are interested in working with the Corps and the City of Pacifica in the resolution of these issues regarding listed species in an alacritous manner. If you have any questions regarding this letter on the proposed Waste Vegetable Oil Recycling Facility and the Calera Creek Water Recycling Plant in Pacifica, San Mateo County, California, please contact Michelle Havens or Chris Nagano at the letterhead address, telephone at 916/ 414-6625 or by email at [Michelle\\_Havens@fws.gov](mailto:Michelle_Havens@fws.gov) or [Chris\\_Nagano@fws.gov](mailto:Chris_Nagano@fws.gov).

Sincerely, .

  
En Cay C. Goude  
Assistant Field Supervisor  
Endangered Species Program

cc:

Scott Wilson, Liam Davis, Dave Johnston, Suzanne DeLeon, California Department of Fish and Game, Yountville, California  
Jo Ginsberg, Nancy Cave, Ruby Pap, California Coastal Commission, San Francisco, California  
Martin Wahl, Whole Energy, Richmond, California  
Christina Lau, TRA Environmental Sciences, Inc., Menlo Park, California

Literature Cited

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