

Exhibit I

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Planning for Success.

March 29, 2019

Eric Cherniss
Vistra Energy Corporation
6555 Sierra Drive
Irving TX 75039

**Re: Revised Response to CDFW Letter, February 21, 2019
Duke Energy Moss Landing (Project) Mitigated Negative Declaration (MND)
SCH No.: 2019011067**

Dear Eric,

At the request of Jacqueline Nickerson and Anna Quenga with Monterey County Resource Management Agency, this letter has been updated to 1) clarify that the August 13, 2018 site investigation by Andrea Edwards, EMC Planning Group senior biologist, assessed the potential presence of suitable aquatic or upland habitat for Santa Cruz long-toed salamander (SCLTS) (*Ambystoma macrodactylum croceum*), as well as California tiger salamander (CTS) (*Ambystoma californiense*); and 2) to include two figures: one showing the locations of the nearest known breeding ponds for CTS and SCLTS, and the second showing the locations of any small mammal burrows and occupied breeding pools within 50 feet. We have also included an aerial photograph showing the physical constraints between CTS habitat and the project site, as well as photos showing the physical constraints or development.

The Monterey County Resource Management Agency received the above-referenced comment letter regarding the Duke Energy Moss Landing LLC (Vistra Energy Corporation) MND from the CDFW expressing concerns regarding the potential presence of three listed species within the proposed project boundary: CTS, SCLTS, and peregrine falcon (*Falco peregrinus anatum*). As part of the preliminary research and preparation process for the application package, Ms. Edwards, conducted a preliminary

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biological resources analysis and a site survey, concluding that installation of the proposed project would not increase potential impacts to biological resources when compared to existing conditions. Additionally, County staff conducted a site visit on September 18, 2018 and concluded there were no biological resource issues and determined that a biological resources analysis was not necessary for the project. Analysis to support this conclusion is included in the paragraphs below.

Qualifications and Knowledge of Local Biological Resources

EMC Planning Group has over 40 years of experience in land use and environmental planning issues and is recognized as one of the leading providers of planning services on the central coast of California. Three biologists support the EMC team with biological impact analysis, and EMC Planning Group is included on the Monterey County lists of approved consultants for biological resources and environmental planning issues. Three senior biologists, Andrea Edwards, Janet Walther, and Gail Bellenger, are part of the project team for this project. Their resumes are attached.

Ms. Edwards and Ms. Walther have years of experience working with listed species and their habitats in California, particularly on the central coast. Ms. Bellenger's experience covers a broader range, including the central coast, as well as southern California and Nevada. Most recently, EMC Planning Group and Dana Bland and Associates completed a protocol-level survey for CTS and SCLTS for the DeepWater Desal site located along the north side of Dolan Road, east of the existing power plant, one mile east of the battery storage project site. Following the survey protocol and in consultation with CDFW and the U.S. Fish and Wildlife Service (USFWS), spring larval surveys at six ponds were completed in 2016, one winter of pitfall trapping was completed over the winter of 2016-2017, and a second year of spring larval surveys was completed in 2017. The only observation of CTS or SCLTS was the capture of one adult CTS in January 2017. No SCLTS (larval or adult) were observed (Bland 2018). The survey reports were submitted to the CDFW and USFWS and are typically valid for five years.

Site Investigations

On August 13, 2018, Ms. Edwards surveyed the project site and assessed the potential for special-status species to occur within the project boundary. This effort was undertaken to inform the project applicant of any potential biological resource issues.

Because seven months have passed since the August 2018 survey, and the power plant is an actively maintained industrial site that frequently includes disturbance, Ms. Bellenger conducted an additional survey of the project site and within 50 feet of the project site on March 28, 2019, to document and map small mammal burrows and to document potential barriers to CTS movement from the wetlands east of the project site.

California Tiger Salamander

The proposed project would not result in a change to the unlikely potential for impacts to CTS.

CTS is a species with specific habitat requirements, including freshwater ponds or pools inundated for a sufficient period to allow for egg and larval development and adjacent or nearby burrow habitat to provide cover during the months requiring aestivation.

During the project site survey in August 2018, the project site and vicinity was assessed for the potential presence of suitable aquatic or upland CTS habitat. Two disturbed, undeveloped patches of ruderal grasses and invasive ice plant supporting scattered small mammal burrows were observed within 100 feet of the project site boundary. One of these sites is an unpaved parking lot and the other is a fenced part of the power plant's on-site wastewater system. During the March 28, 2019, survey, Ms. Bellenger observed small mammal burrows within approximately 50 feet of the proposed substation. The general area is identified in Figure 1, General Location of Small Mammal Burrows.

Documented breeding and upland habitat for CTS is located approximately $\frac{3}{4}$ of a mile east of the project site. Between the habitat and the project site are parking lots, roads, 10-foot high asphalt berms, and an operating power plant. Figure 2, Development Between Project Site and CTS Habitat, presents an aerial photograph identifying the potential barriers between CTS habitat and the project site. Figure 3, Photographs of Potential Constraints to CTS Movement, presents pictures of existing development and possible constraints.

Individual CTS attempting to migrate from the nearest known occupied breeding habitat to these ruderal patches would encounter a number of constraints, including buildings, industrial development and operations, fencing, and asphalt berms. The proposed project would not disturb any burrows and is proposed completely within a

developed industrial area. Traffic trips occurring during installation of the proposed project would be consistent with current traffic at the site occurring during maintenance and operational activities. Installation of the proposed project would not increase the potential of encountering or taking a CTS when compared to existing conditions. No additional surveys or mitigation measures were recommended.

Santa Cruz Long-Toed Salamander

The proposed project would not result in a change to the unlikely potential for impacts to SCLTS.

SCLTS requires shallow ephemeral freshwater pools for breeding near suitable upland habitat including riparian woodland, oak woodland, chaparral, or dense coastal scrub. Upland habitat sites used by SCLTS include moist refugia such as small mammal burrows, leaf litter, fallen logs, rocks, and soil crevices. During the project site survey in August 2018, the project site and vicinity was assessed for the potential presence of suitable aquatic or upland SCLTS habitat. In addition, during the March 28, 2019, survey, Ms. Bellenger observed small mammal burrows within approximately 50 feet of the proposed substation. The ruderal patches of scattered small mammal burrows observed represent very low quality potential upland habitat. The general area is identified in Figure 1, General Location of Small Mammal Burrows.

The California Natural Diversity Database (CNDDB) contains three occurrence records for SCLTS in the project vicinity, the nearest of which is a historic record (1977) approximately 1.2 miles north and across Elkhorn Slough from the installation site in wetlands associated with Struve Slough. As described above, the protocol survey conducted east of the project site for the Deep Water Desal project found no SCLTS. Similar to the conclusions drawn for CTS, individual SCLTS attempting to migrate from the nearest known occupied breeding habitat to the ruderal patches would encounter significant barriers, including buildings, industrial development, fencing, and asphalt berms. The proposed project would not disturb any burrows and is proposed completely within a developed industrial area. Traffic trips occurring during installation of the proposed project would be consistent with current traffic at the site occurring during maintenance and operational activities. Installation of the proposed project would not increase the potential of encountering or taking a SCLTS when compared to existing conditions. No additional surveys or mitigation measures were recommended.

Peregrine Falcon

The proposed project would not result in a change to the unlikely potential for impacts to peregrine falcon.

This species forages widely over a wide variety of open landscapes, including urban areas, agricultural lands, harbors, salt marshes, and grasslands. A 2015 observation of a nesting pair on one of the power plant smokestacks was recorded in the CNDDDB. This nesting activity occurred despite maintenance and operational activities and noise generated by workers and industrial equipment, as well as traffic on State Route 1 adjacent to the nesting site. Project installation noise and activity would be similar to that generated by maintenance and operation of the power plant. The proposed project would not increase the potential of encountering or taking a peregrine falcon when compared to existing conditions. No additional surveys or mitigation measures were recommended.

Conclusion

In conclusion, EMC Planning Group biologists evaluated the site for potential impacts to CTS, SCLTS, and peregrine falcon. After a thorough investigation of the relevant literature and recent survey data, EMC Planning Group surveyed the project site twice, reviewed the project with the Vistra Team, and met with County staff on site. Based upon the documentation presented in this report, EMC Planning Group biologists concluded the following:

1. Under existing operational conditions at the power plant, it would be unlikely for CTS or SCLTS to occur at the Battery Energy Storage System project site;
2. Under future operational conditions at the power plant, including installation and operation of the Battery Energy Storage System project, it would remain unlikely for CTS or SCLTS to occur at the Battery Energy Storage System project site; and
3. Under existing operational conditions at the power plant, peregrine falcon was observed in 2015 nesting on the power plant smokestacks. Installation and operation of the Battery Energy Storage Project is not anticipated to affect the falcon's ability to nest again at this location.

Voluntary Protective Measure – Condition of Project Approval

In a telephone conversation with County staff and CDFW staff on March 21, 2019, out of an abundance of caution Vistra offered to implement a CTS education program on site. In consultation with Vistra, and to address CDFW's concerns regarding potential impacts to CTS, the following condition of project approval is recommended to avoid impacts to CTS:

1. Vistra Energy Corporation will conduct an education program for all persons employed or otherwise working in the project area before performing any work. The program will be developed by a qualified biologist, and will consist of a presentation that includes a discussion of the biology and general behavior of CTS, SCLTS, and peregrine falcon in all life stages, information about the distribution and habitat needs of the species, sensitivity of the species to human activities, their status pursuant to CESA and FESA including legal protection, recovery efforts, and penalties for violations. Vistra Energy Corporation will provide interpretation for non-English speaking workers, and the same instruction will be provided to any new workers before they are authorized to conduct work in the project area. Vistra Energy Corporation will prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the project area. Each card or handout will also include contact information for the qualified biologist in the event an animal is observed. Upon completion of the program, employees shall sign a form stating they attended the program. The training will be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the project area.

Although not strictly required by CEQA, we believe including this information in the orientation process would assist workers in the unlikely event that an animal is encountered.

We hope this response provides additional information regarding the points raised in the February 21, 2019 letter and the March 23, 2019, telephone conversation and clarifies why additional biological surveys or mitigation measures are not recommended.

If you have any questions, please don't hesitate to contact us.

Sincerely,

Janet Walther, MS
Senior Biologist

Gail Bellenger, MA
Senior Biologist

Attachments

Figure 1. General Location of Small Mammal Burrows

Figure 2. Development Between Project Site and CTS Habitat

Figure 3. Physical Constraints Photographs

Sources

Bland 2018. *Results of Winter Pitfall Trapping Study for Salamanders at Monterey Regional Water Project, Deepwater Desal, LLC, Proposed Main Facility, Moss Landing, CA.* July 2018.

California Department of Fish and Wildlife. *California Natural Diversity Database.* Accessed online, March 29, 2019.

Monterey County Resource Management Agency 2019. *Duke Energy Moss Landing LLC (Vistra Energy Corporation) Mitigated Negative Declaration.* January 25, 2019.

enc: Resumes



0 175 feet



Project Site

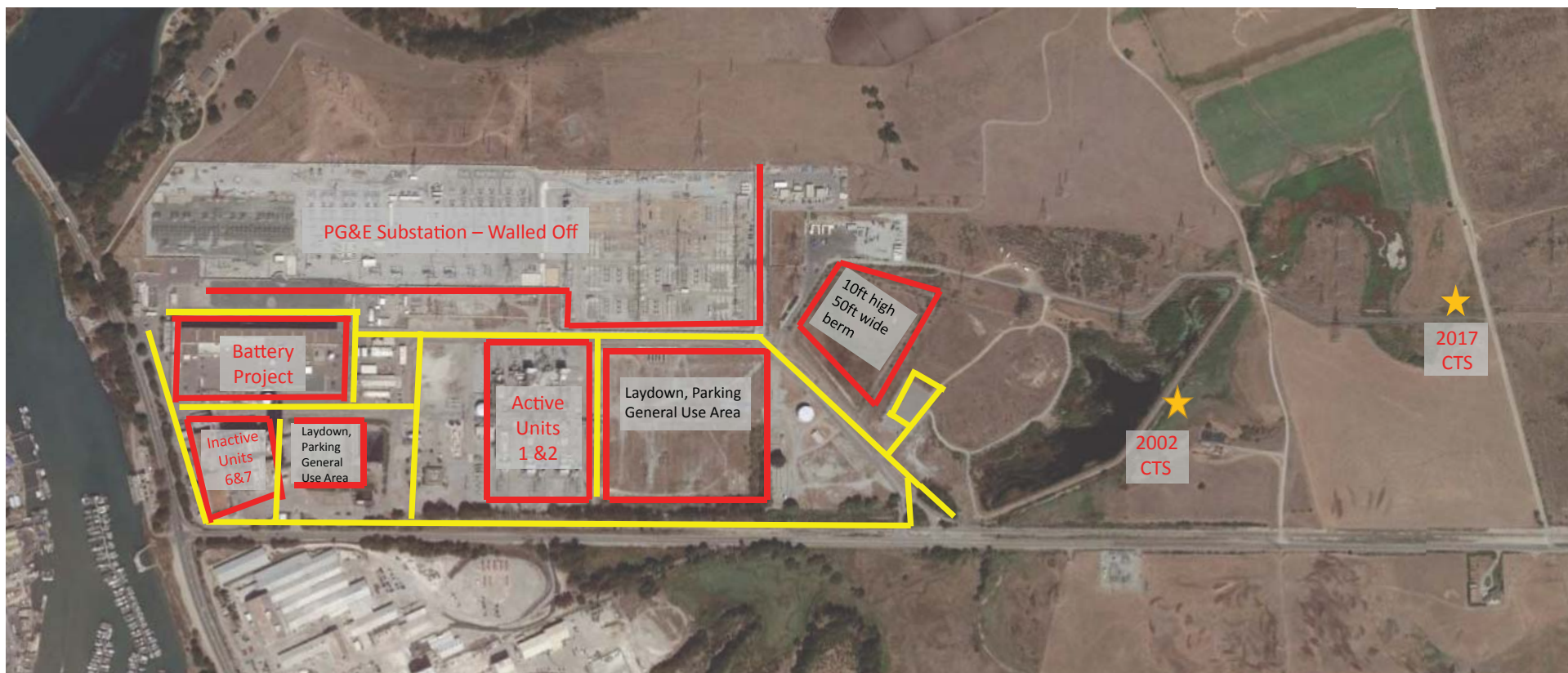


Low Quality Scattered Burrows

Source: ESRI 2018, Monterey County GIS 2016, EMC Planning Group 2019



Figure 1
General Location of Small Mammal Burrows
 Vistra Energy Moss Landing Power Plant Battery Energy Storage System



Source: Google Earth 2019, Vistra Energy Corporation 2019, EMC Planning Group 2017, 2019, California Department of Fish and Wildlife CNDDDB 2019

Project Site distance to 2002 CTS sighting: $\frac{3}{4}$ mile

Project Site distance to 2017 CTS sighting: 1 mile

— Access Roads and Circulation



Figure 2
Development Between Project Site and CTS Habitat

Vistra Energy Moss Landing Power Plant Battery Energy Storage System



① View east of CTS habitat from the easterly parking lot



② Example of 10-foot high asphalt berm



 Project Site

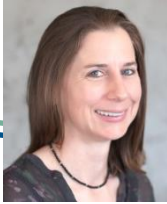
Source: ESRI 2019
Photographs: EMC Planning Group 2019



③ Top of asphalt berm



④ Operational power plant (Units 1 and 2) east of the project site



Andrea Edwards

SENIOR BIOLOGIST / CERTIFIED ARBORIST

PROFESSIONAL EXPERIENCE

Ms. Edwards joined the firm in 2011 and has been working in the field of biology since 1999. Her experience includes knowledge of California plant biology, biological resource evaluation, natural resource planning, and habitat restoration. She specializes in biological field surveys, focused special-status species surveys, plant identification, plant community mapping, mitigation monitoring, and restoration project planning.

Ms. Edwards's responsibilities include conducting jurisdictional delineations to provide baseline data concerning the type and extent of resources under U.S. Army Corps of Engineers, California Department of Fish and Wildlife, and Regional Water Quality Control Board jurisdiction.

Ms. Edwards is also responsible for performing reconnaissance surveys to document existing biological resources; assessing potential biological impacts per California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA); preparing tree evaluation reports; regulatory agency permitting and reporting; and compiling plant inventory lists for project sites.

Prior to joining EMC Planning Group, Ms. Edwards was employed as a biologist/botanist and project manager for another consulting firm. Her responsibilities included field reconnaissance surveys, biological technical reports and resource impact analyses, focused plant surveys for various special-status species, tree surveys, collecting and analyzing vegetation data to monitor habitat restoration projects, and jurisdictional delineations for wetland and waterway resources. She was also responsible for managing biological resource and regulatory permit compliance projects for public and private sector clients.

EDUCATION

B.S. Trinity University at San Antonio, TX; summa cum laude, Biology and Anthropology, 1999

CERTIFICATES AND TRAINING

California Department of Fish and Wildlife – *Plant Voucher Collecting Permit* (No. 2081(a)-17-090-V). Exp. 12/31/20

International Society of Arboriculture *Certified Arborist* (No. WE-9727A). Exp. 06/30/21

Climate-Smart Riparian Restoration Workshop for California's Central Coast, Elkhorn Slough Coastal Training Program and Point Blue Conservation Science, Watsonville, CA, 2016

Wetland Delineation Field Practicum, Wetland Training Institute, Sacramento, CA, 2015

California Natural Diversity Database (CNDDB) and Biological Information and Observation System (BIOS) Training Course, California Department of Fish and Wildlife, Monterey, CA, 2015

Conservation Conference, California Native Plant Society, Sacramento/San Jose, CA, 2009 & 2015

Annual Tree Pest & Disease Symposium, International Society of Arboriculture - Western Chapter, Milpitas/Saratoga, CA, 2013-2016

Fifty Plant Families in the Field: Introduction to Keying, University of California, Berkeley - Jepson Herbarium, Carmel Valley, CA, 2013

Rare Pond Species Survey Techniques Workshop (for California tiger salamander, California red-legged frog, and western pond turtle), Laguna de Santa Rosa Foundation and The Wildlife Project, Santa Rosa, CA, 2012

PROFESSIONAL ACHIEVEMENTS AND AWARDS

- Author, editor, and photographer, *Living Lightly in Our Watersheds* (a comprehensive guide to natural resources distributed throughout the Santa Monica Mountains) June 2002.
- Award, Camp Pico Blanco Boy Scout Reservation Conservation Plan, 2013.
 - Outstanding Environmental Resource Document Award- Association of Environmental Professionals, 2015.
 - Innovation in Green Community Planning Award of Excellence- American Planning Association, California Chapter, Northern Section, 2014.

PROFESSIONAL AND ACADEMIC ASSOCIATIONS

- International Society of Arboriculture – Western Chapter, 2012 to Present
- California Native Plant Society – Monterey Bay Chapter, 2005 to Present

Janet Walther, MS

SENIOR BIOLOGIST

PROFESSIONAL EXPERIENCE

Ms. Walther joined the firm in 2003 and has been working in the field of biology since 2000. She is responsible for performing botanical and wildlife surveys; wetland and waters of the U.S. determinations; data analysis; and reports in support of management agreements, permits, and mitigation monitoring. She assists clients in complying with the Federal Endangered Species Act, California Endangered Species Act, Section 404 of the Clean Water Act, California Fish and Game Code, and local (county and/or city) regulations. Ms. Walther is also responsible for permit processing and preparation of environmental documents in compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). She produces a variety of graphics for use in environmental and natural resources documents. Ms. Walther primarily utilizes the following software: Pathfinder (for collection of GPS data), ArcGIS, AutoCAD, and Adobe Illustrator/Photoshop.

Prior to joining EMC Planning Group, Ms. Walther was employed at the Bureau of Land Management as a Biological Science Technician at Fort Ord, California, where she was responsible for special-status species identification; collection of Global Positioning System data for the purpose of monitoring both native and non-native species using Geographical Information Software; reporting; and exotic species identification and abatement.

Additionally, Ms. Walther worked for a private environmental consulting firm as a biologist/environmental scientist where she performed biological surveys, coordinated biological resource permits, developed CEQA/NEPA documents, and assisted in preparing California Energy Commission Applications for Certification for four major power plant projects in California.

EDUCATION

- M.S. California State University Monterey Bay, Coastal Watershed Science and Policy, 2014
- B.S. California Polytechnic State University at San Luis Obispo, Ecology and Systematic Biology, 2000 - Concentration: Environmental Management

CERTIFICATES AND TRAINING

- California Pesticide Application Certification, 2003/2004
- OSHA 40-hr HAZWOPER Certificate, 2001 and 8-hr Refresher Training, 2002-2007
- Army Corps of Engineers Wetland Delineation Training, 2002

PROFESSIONAL ACHIEVEMENT

- Contributor, *Environmental Mitigation Handbook*, California's Coalition for Adequate School Housing, February 2009

PROFESSIONAL ASSOCIATION

- Member, California Native Plant Society, Monterey Chapter
- Member, Society of Wetland Scientists
- Member, Western Section of The Wildlife Society



Gail Bellenger, MA, RPA

SENIOR BIOLOGIST
REGISTERED PROFESSIONAL ARCHAEOLOGIST

PROFESSIONAL EXPERIENCE

Ms. Bellenger joined the firm in 2018 and has been working in the fields of environmental resource management, archaeology and biology since 2001. She is responsible for conducting wetland delineations, biological resource surveys, archaeological surveys, and preparation of environmental documentation in compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).

Prior to joining EMC Planning Group, Ms. Bellenger was employed by private consulting firms in Utah, Nevada and California managing a variety of projects that required biological surveys, environmental analysis and acquisition of permits from the US Army Corp of Engineers, the California Department of Fish and Wildlife, and the Regional Water Quality Control Board. Ms. Bellenger was also previously employed as an Environmental Scientist III (Wildlife Biology) with the Nevada Department of Transportation.

As archaeological Principal Investigator, she has conducted several intensive-level archaeological surveys in Utah, Nevada and California, and has previously worked as a curatorial assistant in the Anthropology Department of the Nevada State Museum.

Ms. Bellenger has experience with both small- and large-scale projects in energy, oil, and transportation including pipeline and bridge retrofits, fencing projects, roadway expansion, wildlife crossings, and land development.

EDUCATION

- M.A. California State University, Northridge, Public Archaeology
- B.A. University of Nevada, Reno, Anthropology/Paleo-Archaeology
- B.S. University of Nevada, Reno, Environmental Resource Management/Conservation and Wildlife Biology

CERTIFICATES AND TRAINING

- Endangered Species Act Refresher Course, Utah Department of Transportation, 2017
- Construction Management/BMPs, Utah Department of Transportation, 2016
- Plant Taxonomy, Nevada Department of Transportation, 2002
- Wetland Delineation Training/Soils, Wetland Training Institute, Kalispell, Montana, 2001
- 20 Hour NEPA/Section 4(f) Practical Project Development and Environmental Documentation Course, Salem, Oregon, 2001

REGISTRATIONS

- The Register of Professional Archaeologists (RPA)

PUBLICATIONS

- Master's Thesis: *Analysis and Interpretation of The Van Norman Archaeological Complex Orphan Collection*. 2016. California State University, Northridge, Department of Anthropology
- FHWA and Nevada DOT Create a Wetland in Nevada*. Public Roads. January/February 2002, US Department of Transportation, Federal Highway Administration, Washington DC

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