



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

January 26, 2022

Regulatory Division

Subject: File Number 2010-00274N

Mr. Mark Jasper
Monk & Associates, Inc.
1136 Saranap Ave. Suite Q
Walnut Creek, California 94595

Dear Mr. Jasper:

This correspondence is in reference to your submittal of December 1, 2021, on behalf of Mangal Dhillon, concerning Department of the Army (DA) authorization to build a commercial development, consisting of a fueling station and market, located on a 0.98-acre site at 874 North Wright Road, in the City of Santa Rosa, Sonoma County, California (APN: 035-063-001).

Work within U.S. Army Corps of Engineers' (Corps) jurisdiction will include development of a gasoline and electric charge fueling station, a neighborhood market, and a small, 432-square-foot retail building, with park amenities, including a patio/trellis area, benches, picnic area and a bike path. Work will require placement of approximately 300 cubic yards of fill within 0.22 acre of seasonal wetland. All work shall be completed in accordance with the plans and drawings titled "USACE File #2010-00274N, Elm Tree Station, August 27, 2020, Figure 1 to 1" (Enclosure 1).

Section 404 of the Clean Water Act (CWA) generally regulates the discharge of dredged or fill material below the plane of ordinary high water in non-tidal waters of the United States, below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters. Section 10 of the Rivers and Harbors Act (RHA) generally regulates construction of structures and work, including excavation, dredging, and discharges of dredged or fill material occurring below the plane of mean high water in tidal waters of the United States; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in non-tidal waters designated as navigable waters of the United States. Navigable waters of the United States generally include all waters subject to the ebb and flow of the tide; and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce.

Based on a review of the information in your submittal, the project qualifies for authorization under Department of the Army Nationwide Permit (NWP) 39 for Commercial and Institutional

Development (82 Fed. Reg. 1860, January 6, 2017), pursuant to Section 404 of the CWA of 1972, as amended (33 U.S.C. § 1344 *et seq.*). The project must be in compliance with the terms of the NWP cited on our website (www.spn.usace.army.mil/Portals/68/docs/regulatory/NWP/NWP17_39.pdf), the general conditions of the Nationwide Permit Program (www.spn.usace.army.mil/Portals/68/docs/regulatory/NWP/NWP17_GC.pdf), and the San Francisco District regional conditions (www.spn.usace.army.mil/Portals/68/docs/regulatory/NWP/NWP17_RC.pdf). You must also be in compliance with any special conditions specified in this letter for the NWP authorization to remain valid. Non-compliance with any term or condition could result in the revocation of the NWP authorization for your project, thereby requiring you to obtain an Individual Permit from the Corps. This NWP authorization does not obviate the need to obtain other State or local approvals required by law.

This verification will remain valid until March 15, 2026, unless the NWP authorization is modified, suspended, or revoked. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon a NWP will remain authorized provided the activity is completed within 12 months of the date of a NWP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 C.F.R. § 330.4(e) and 33 C.F.R. § 330.5(c) or (d). This verification will remain valid if, during the time period between now and March 18, 2022, the activity complies with any subsequent modification of the NWP authorization. The Chief of Engineers will periodically review NWPs and their conditions and will decide to modify, reissue, or revoke the permits. If a NWP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. It is incumbent upon you to remain informed of any changes to the NWPs. Changes to the NWPs would be announced by Public Notice posted on our website (www.spn.usace.army.mil/Missions/Regulatory/Public-Notices.aspx). Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification of Compliance, enclosure 2, verifying that you have complied with the terms and conditions of the permit.

This authorization will not be effective until you have obtained a Section 401 water quality certification from the North Coast Regional Water Quality Control Board (RWQCB). If the RWQCB fails to act on a valid request for certification within 60 days after receipt of a complete application, the Corps will presume a waiver of water quality certification has been obtained. You shall submit a copy of the certification to the Corps prior to the commencement of work.

General Condition 18 stipulates that project authorization under a NWP does not allow for the incidental take of any federally-listed species in the absence of a biological opinion (BO) with incidental take provisions. As the principal federal lead agency for this project, the Corps

initiated consultation with the United States Fish and Wildlife Service (USFWS) to address project related impacts to listed species, pursuant to Section 7(a) of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 *et seq.* By email of September 16, 2019, USFWS confirmed the project qualifies for coverage under the existing programmatic BO (08ESMF00-2013-F-0091-2), dated February 21, 2014, cited in enclosure 3, with an incidental take statement for California tiger salamander (*Ambystoma californiense*).

In order to ensure compliance with this NWP authorization, the following special conditions shall be implemented:

1. To remain exempt from the prohibitions of Section 9 of the Endangered Species Act, the non-discretionary Terms and Conditions for incidental take of federally-listed Species shall be fully implemented as stipulated in the Biological Opinion titled, “*Programmatic Biological Opinion for U.S. Army Corps of Engineers Permitted Project that May Affect California Tiger Salamander and Three Endangered Plant Species on the Santa Rosa Plain, California* (Corps File No. 223420N),” (USFWS File: 08ESMF00-2013-F-0091-2) provided as Enclosure 3. Project authorization under the NWP is conditional upon compliance with the mandatory terms and conditions associated with incidental take. Failure to comply with the terms and conditions for incidental take, where a take of a federally-listed species occurs, would constitute an unauthorized take and non-compliance with the NWP authorization for your project. The USFWS is, however, the authoritative federal agency for determining compliance with the incidental take statement and for initiating appropriate enforcement actions or penalties under the Endangered Species Act.
2. Should any buried archaeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archaeological indicators include: obsidian and chert flakes, and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars, and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic, and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps, and old trails. The Corps shall be notified of the discovery and a professional archaeologist shall be retained by the permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Corps for approval. The Corps will consult with the Most Likely Descendent regarding appropriate mitigation measures. The Corps will have final approval authority for all mitigation measures and project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Corps.

3. If human remains are encountered, the permittee shall comply with all state laws. All project-related ground disturbance within 100 feet of the find shall be halted until the county coroner and the Most Likely Descendent have been notified. If the coroner determines that the remains are Native American, the coroner would notify the Native American Heritage Commission within 24 hours. The Native American Heritage Commission will identify the person or persons believed to be the most likely descendants from the deceased Native American. The most likely descendent may make recommendations regarding the means of treating or disposing of the remains with appropriate dignity. Project-related ground disturbance, in the vicinity of the find, shall not resume until all statutory requirements have been met and evidence of completion has been submitted to the Corps.

You may refer any questions on this matter to Kendra Spicher by telephone at 415-503-6832 or by e-mail at Kendra.A.Spicher@usace.army.mil. All correspondence should be addressed to the Regulatory Division, North Branch, referencing the file number at the head of this letter.

The San Francisco District is committed to improving service to our customers. The Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website: <http://www.spn.usace.army.mil/Missions/Regulatory.aspx>

Sincerely,



L. Kasey Sirkin
Lead Biologist, Eureka Field Office

Enclosures

Copy Furnished (w/ encls):

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Kaete King, CA RWQCB, Santa Rosa, CA