

# ATTACHMENT C: ACOE Mitigation Complete Letter



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

January 31, 2024

Regulatory Division

Subject: Mitigation Complete Approved Jurisdictional Determination  
File Number SPN-2005-293680

Ms. Rebecca Darr  
City of Oakland, Oakland Public Works Department  
250 Frank H. Ogawa Plaza, Suite 4314  
Oakland, California 94612  
rdarr@oaklandca.gov

Dear Ms. Darr:

This correspondence is in reference to your submittal of October 20, 2022, requesting concurrence on the completion of mitigation and an approved jurisdictional determination of the extent of navigable waters of the United States and waters of the United States occurring on a tidal marsh at Peralta Park along the Lake Merritt Channel in the City of Oakland, Alameda County, California; Latitude 37.797128°, Longitude -122.260077°.

As stated in the permit, to mitigate for the impacts to jurisdictional waters, the City of Oakland was required to create at least 0.7 acre of tidal wetlands. The required on-site mitigation was a result of the 12<sup>th</sup> Street Bridge Reconstruction Project where street culverts were replaced with a clear span bridge over the Lake Merritt Channel. The mitigation site was designed to establish 0.7 acre of tidal wetland habitat adjacent to the channel with a transitional upland area composed of native plant species and was created in accordance with the "*Lake Merritt Channel Improvement Project at 12<sup>th</sup> and 10<sup>th</sup> Street, Wetlands Mitigation and Monitoring Plan*", dated 2012 and written by Monk & Associates.

We have determined that you have created/restored 0.708 acre of tidal marsh and included 0.14 acre of upland buffer as stated in your mitigation plan. This is accepted as fulfilling your mitigation requirements for the initial five years of your mitigation plan, as required under Special Condition #3 of the September 4, 2012, permit. This determination is based on five years of monitoring reports and visits to the mitigation site, most recently on December 13, 2022, by personnel from this office. No further work or reporting is required of you at the Peralta Park mitigation site pursuant to Nationwide Permit Authorization No. SPN-2005-293680.

All proposed discharges of dredged or fill material occurring below the plane of ordinary high water in non-tidal waters of the United States; or below the high tide line in tidal waters of the United States; or within the lateral extent of wetlands adjacent to these waters, typically require Department of the Army authorization and the issuance of a permit under Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. §

1344 *et seq.*). Waters of the United States generally include: the territorial seas; waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide; interstate waters; tributaries of jurisdictional waters; lakes and ponds; impoundments of jurisdictional waters; and adjacent wetlands.

All proposed 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, typically require Department of the Army authorization and the issuance of a permit under Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*). 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.

The enclosed delineation map titled, "Mitigation Complete Approved Jurisdictional Determination, pursuant to Section 404 Clean Water Act and Section 10 of the Rivers and Harbors Act, 12<sup>th</sup> Street Bridge Reconstruction, Peralta Park, City of Oakland, Alameda County, California," in one sheet and date certified January 23, 2024, accurately depicts the extent and location of wetlands, other waters of the United States, and navigable waters of the United States within the study boundary of the site that are subject to U.S. Army Corps of Engineers' regulatory authority under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. As detailed in the enclosed memorandum for record, this approved jurisdictional determination is based on the current conditions of the site, as verified during a field investigation of December 13, 2022, a review of available digital photographic imagery, and a review of other data included in your submittal and is in accordance with 40 C.F.R. § 120.2. This approved jurisdictional determination will expire in five years from the date of this letter unless new information or a change in field conditions warrants a revision to the delineation map prior to the expiration date.

The delineation included herein has been conducted to identify the location and extent of the aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of an NRCS Certified Wetland Determination with the local USDA service center, prior to starting work.

You are advised that the approved jurisdictional determination may be appealed through the U.S. Army Corps of Engineers' *Administrative Appeal Process*, as described in 33 C.F.R. § 331 and outlined in the enclosed flowchart and *Notification of Administrative Appeal Options, Process, and Request for Appeal* (NAO-RFA) Form. If you do not intend to accept the approved jurisdictional determination, you may elect to provide new information to this office for reconsideration of this decision. If you do not provide new information to this office, you may elect to submit a completed NAO-RFA Form to the Division Engineer to initiate the appeal process; the completed NAO-RFA Form must be submitted directly to the Appeal Review Officer at the address specified on the NAO-RFA Form. You will relinquish all rights to a review or an appeal unless this office or the Division Engineer receives new information or a completed NAO-RFA Form within 60 days of the date on the NAO-RFA Form. If you intend to accept the approved jurisdictional determination, you do not need to take any further action associated with the Administrative Appeal Process.


You may refer any questions on this matter to me by telephone at 415-503-6808 or by e-mail at Jenna.S.Rais@usace.army.mil. All correspondence should be addressed to the Regulatory Division, South 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:  
<https://www.spn.usace.army.mil/Missions/Regulatory/>.

Sincerely,



Katerina Galacatos  
South Branch Chief

 Digitally signed by Katerina Galacatos  
Date: 2024.01.31 13:04:47 -08'00'

Enclosures

cc:

ESA, San Francisco, CA (Attn. Rachel Haines, [rhaines@esassoc.com](mailto:rhaines@esassoc.com), and Nicole Ibanez, [nibanez@esassoc.com](mailto:nibanez@esassoc.com))

U.S. EPA, San Francisco, CA (Attn. Joe Morgan, [Morgan.Joseph@epa.gov](mailto:Morgan.Joseph@epa.gov))

cc (w/ encl 1 only):

CA RWQCB, Oakland CA (Attn. Brian Wines, [brian.wines@waterboards.ca.gov](mailto:brian.wines@waterboards.ca.gov))