

SUBJECT: Freedom of Information Act Request

TO:

Freedom of Information Officer  
Office of Counsel (CESPK-OC)  
US Army Engineer District, Sacramento  
1325 J Street, Room 1440  
Sacramento, California 95814-2922  
Phone: (916) 557-7596  
Fax: (916) 557-5118  
e-mail: FOIA-SPK@usace.army.mil

FROM: California Open Lands

Name: William N. Carlon

Mailing address: 245 Kentucky Street, Petaluma, CA 94559

Phone number: (707) 782-4060

E-mail address: wncarlon@packardlawoffices.com

Company: Law Offices of Andrew L. Packard

Date: 3/17/2022

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA) 5 U.S.C. 552, I would like to request the following federal government records which are under your agency's control:

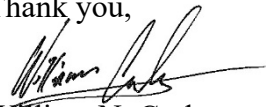
Any and all records related to SPK 200300113. This request includes any associated requests, determinations, and applications; and all correspondence, including email and notes of phone conversations. This request is limited in time to all records dated on or after January 1, 2022.

California Open Lands respectfully requests that the Corps waive any fees associated with this request. The narrow scope of this request coupled with the fact that this request is in the public interest because it is likely to contribute significantly to public understanding of government operations or activities warrants such a fee waiver. Furthermore, the subject of the requested document relates to a conservation easement made pursuant to California Civil Code Section 815, wherein the State Legislature explicitly declares such easements to be in the public interest.

Disclosure of the requested document will provide information and insight into the Corps' evaluation of whether a modification to the letter of permission is appropriate. The requested document will provide a clearer understanding of what the Corps is considering, and the scope of the request made by the County, when the Corps makes its determination regarding whether to modify the relevant letter of permission.

I look forward to receiving the requested documents within twenty (20) working days as required by statute.

Thank you,



William N. Carlon



**DEPARTMENT OF THE ARMY**  
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT  
1325 J STREET  
SACRAMENTO, CALIFORNIA 95814-2922

April 7, 2022

Office of Counsel

SUBJECT: Freedom of Information Act Request No. FA-22-0086; Any and All Records Related to SPK-200300113 On or After January 1, 2022

Mr. William N. Carlon, Esquire  
Law Office of Andrew L. Packard  
245 Kentucky Street  
Petaluma, California 94559

Dear Mr. Carlon,

On March 17, 2022, our office received your Freedom of Information Act (FOIA) request for a copy of any and all records related to SPK-200300113 on or after January 1, 2022.

For the purpose of assessing fees, I have classified you as a category 3 other requester under 32 C.F.R. § 518.85(b)(2)(iii). Category 3 requesters are entitled to two hours of search time and 100 pages of records free of charge. There are no charges for this request.

As requested, a redacted copy of any and all records related to SPK-200300113 on or after January 1, 2022 is enclosed.

Although all of the requested documents are provided, names of Department of Defense (DoD) employees contained in the headers of e-mails and other similar lists of names within the records have been redacted pursuant to 5 U.S.C. § 552 (b)(6) of the Freedom of Information Act. In response to the terrorist attacks on the United States in the fall of 2001, DoD revised its policies which implement the Freedom of Information Act. At that time, the decision was made to withhold lists of names of all DoD employees. The court upheld this policy decision stating, "The privacy interest protected by exemption six of the Freedom of Information Act encompasses not only the addresses, but also the names of federal employees." See Judicial Watch, Inc. v. United States, 84 Fed. Appx. 335 (4th Cir. (2004)).

Additionally, because your request has been denied, you are advised of your right to appeal this determination through this office to the Secretary of the Army (ATTN: General Counsel). Your appeal must be postmarked or electronically transmitted within 90 days of the date of this letter. The envelope containing the appeal should bear the notation "Freedom of Information Act Appeal" and should be sent to U. S. Army

These conditions are a requisite of your DA permit. In order to bring your project into compliance, your immediate action is requested. In the March 10, 2021, email and letter, sent to the Corps from Madrone Ecological Consulting, the permittee proposed to purchase credits from a Corps approved mitigation bank to address the non-performance of the approved compensatory mitigation required in special conditions 3,4, and 7 of the December 9, 2003, DA permit. In conversations on December 6, 2021, Ginger Fodge indicated the permittee intends to propose revised permittee responsible mitigation. Within 30 days of the date of this letter, please submit an updated mitigation plan, including all information required in 33 CFR 332.4(c), as well as any relevant information you have relating to this matter, including evidence that you are actively seeking to comply with the aforementioned special conditions. The information in the mitigation plan should be consistent with the requirements of the *Final 2015 Regional Compensatory Mitigation and Monitoring Guidelines for South Pacific Division USACE*, which can be found at <https://www.spd.usace.army.mil/Portals/13/docs/regulatory/mitigation/MitMon.pdf> as well as the 2008 Compensatory Mitigation for Losses of Aquatic Resources which is located at 40 CFR Part 230 Subpart J.

Please submit this information to:

(b) (6)

U.S. Army Corps of Engineers, Sacramento Regulatory Division  
1325 J Street, RM 1350  
Sacramento, CA 95814

(b) (6) @usace.army.mil  
(312) 579-5605

Please refer to identification number SPK-2003-00113 in any correspondence concerning this project. For more information regarding our program, please visit our website at [www.spk.usace.army.mil/Missions/Regulatory.aspx](http://www.spk.usace.army.mil/Missions/Regulatory.aspx). Your prompt attention and cooperation in resolving this permit non-compliance is appreciated.

Sincerely,

(b) (6)

Senior Project Manager  
CA North Section

cc:

Diane Kinderman, Abbott & Kindermann, Inc., [DKindermann@aklandlaw.com](mailto:DKindermann@aklandlaw.com)  
Ginger Fodge, Madrone Ecological Consulting Inc, [gfodge@madroneeco.com](mailto:gfodge@madroneeco.com)



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT  
1325 J STREET  
SACRAMENTO CA 95814-2922

March 31, 2022

Regulatory Division (SPK-2003-00113)

Butte County Public Works – Waste Management Division  
Attn: Mr. Craig Cissell  
7 County Center Drive  
Oroville, California 95965

Dear Mr. Cissell:

We are writing in reference to your Department of the Army (DA) permit, dated December 9, 2003, which authorized the discharge of fill material into 5-acres of waters of the U.S. associated with the Neal Road Landfill project. The approximately 75-acre project site is located at the Neal Road Landfill, Latitude 39.67625°, Longitude -121.73042°, Hamlin Canyon, Butte County, California. Our files indicate that you have not complied with one or more of the terms and condition of your permit.

Specifically, the following Special Conditions have not been met:

Special Condition No. 3: “To mitigate for a portion of the loss of 4.94 acres of waters of the United States and indirect effects to 0.07 acres of waters of the United States, you shall establish and maintain a preserve containing 3.00 acres of created, avoided, and preserved waters of the United States, as depicted on the exhibit entitled *On-site Wetland Mitigation and Monitoring Plan Neal Road Landfill, Butte County, California*, dated August 2003, in perpetuity. The purpose of this preserve is to ensure that functions and values of the aquatic environment are protected.”

Special Condition No. 4: “To minimize external disturbance to preserved waters of the United States, you shall establish a buffer, consisting of native upland vegetation of at least 25 feet in width from the outer limit of jurisdiction of the entire perimeter of all created, preserved, and avoided waters of the United States, including wetlands within the proposed preserve.”

Special Condition No. 7: “To assure success of the preserved and created waters of the United States, you shall monitor compensatory mitigation, avoidance, and preservation areas for five years or until the success criteria described in the approved mitigation plan are met, whichever is greater. This period shall commence upon completion of the construction of the mitigation wetlands. Additionally, continued success of the mitigation wetlands, without human intervention, must be demonstrated for three consecutive years, once the success criteria have been met. The mitigation plan will not be deemed successful until this criterion has been met.”

Corps of Engineers, Sacramento District, ATTN: CESPCK-OC, 1325 J Street, Room 1440, Sacramento, California 95814.

For any further assistance or to discuss any aspect of your request, you have the right to contact the U.S. Army Corps of Engineers FOIA Public Liaison. Additionally, you have the right to contact the Office of Government Information Services (OGIS) to inquire about FOIA mediation services they offer. Contact Information:

U.S. Army Corps of Engineers  
FOIA Public Liaison  
441 G. Street, NW  
ATTN: CECC-L (Emily Green)  
Washington, DC 20314-1000  
Email: [foia-liaison@usace.army.mil](mailto:foia-liaison@usace.army.mil)  
Phone: 202-761-4791

Office of Government Information Services  
National Archives and records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740-6001  
E-Mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Phone: 202-741-5770 or  
Toll Free: 877-684-6448

If you have any questions regarding the provided information, please contact Andrea Vaiasicca, FOIA Specialist, by email at [Andrea.L.Vaiasicca@usace.army.mil](mailto:Andrea.L.Vaiasicca@usace.army.mil) or by calling (916) 550-9104.

Sincerely,



A. L. Faustino  
Initial Denial Authority  
District Counsel

Enclosure