



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

November 28, 2023

Regulatory Division (SPK-2023-00288)

Longroad Energy Management, LLC  
Attn: Mr. Ilja Nieuwenhuizen  
330 Congress Street, Suite 100  
Boston, MA 02210-1216  
[ilja.nieuwenhuizen@longroadenergy.com](mailto:ilja.nieuwenhuizen@longroadenergy.com)

Dear Mr. Nieuwenhuizen:

We are responding to your April 17, 2023, request for an approved jurisdictional determination for the Zeta Solar and Battery Energy Storage System site. The approximately 679.8-acre project site is located in the city of Los Banos, Latitude 36.91365°, Longitude -120.80854°, within Merced County, California.

Based on available information, we concur with your aquatic resources delineation for the site, as depicted on the enclosed *Zeta Solar Aquatic Resources* drawing prepared by Stantec (enclosure 1). Approximately 44 ditches, totaling 29,026 linear feet are present within the survey area. This letter verifies that the location and boundaries of wetlands were delineated consistent with the wetland definition at 33 CFR §328.3(c)(16), the 1987 *Corps of Engineers Wetlands Delineation Manual* (Wetlands Research Program Technical Report Y-87-1) and the applicable regional supplements; the location and boundaries of tidal waters conform with the high tide line defined at 33 CFR §328.3(c)(4); and the location and boundaries of non-tidal waters conform with the ordinary high water mark definition at 33 CFR §328.3(c)(7), Regulatory Guidance Letter 05-05, and any applicable regional guide.

Of these aquatic resources, we have determined that those features totaling 29,026 linear feet are not waters of the U.S. regulated under Section 404 of the Clean Water Act or under Section 10 of the Rivers and Harbors Act.

We are enclosing a copy of the *Approved Jurisdictional Determination Memorandum for Record* for your site (enclosure 2).

This approved jurisdictional determination is valid for five years from the date of this letter unless new information warrants revision of the determination before the expiration date. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 Code of Federal Regulations (CFR) Part 331. A *Notification of Appeal Process (NAP) and Request for Appeal (RFA) Form* is enclosed (enclosure 3). If you request to appeal this determination, you must submit a completed

RFA form to the South Pacific Division Office at the following address: Administrative Appeal Review Officer, Army Corps of Engineers, South Pacific Division, CESPD-PDO, 1455 Market Street, 2052B, San Francisco, CA 94103-1399, Telephone: 415-503-6574, FAX: 415-503-6646.

In order for an RFA to be accepted by the Corps, we must determine that the form is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that the form was received by the Division Office within 60 days of the date of the NAP. It is not necessary to submit an RFA form to the Division Office unless you object to the determination in this letter.

We recommend that you provide a copy of this letter and notice to all other affected parties, including any individual who has an identifiable and substantial legal interest in the property.

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination 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 a certified wetland determination with the local USDA service center, prior to starting work.

We appreciate feedback, especially about interaction with our staff and our processes.

Please refer to identification number SPK-2023-00288 in any correspondence concerning this project. If you have any questions, please contact Ms. Cecelia Working at 1325 J Street, Room 1827, Sacramento, CA 95814-29, by email at [Cecelia.L.Working@usace.army.mil](mailto:Cecelia.L.Working@usace.army.mil), or telephone at 916-557-7617. For program information or to complete our Customer Survey, visit our website at [www.spk.usace.army.mil/Missions/Regulatory.aspx](http://www.spk.usace.army.mil/Missions/Regulatory.aspx).

Sincerely,



MICHAEL S. JEWELL  
Chief, Regulatory Division

Enclosures

cc: Jared Elia, Stantec Inc., [Jared.Elia@stantec.com](mailto:Jared.Elia@stantec.com)

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Longroad Energy Management, LLC Attn: Mr. Ilja Nieuwenhuizen	File No.: SPK-2023-00288	Date: November 28, 2023
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
→	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I** - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at [http://www.usace.army.mil/cecw/pages/reg\\_materials.aspx](http://www.usace.army.mil/cecw/pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Cecelia Working  
Project Manager  
California South Section  
U.S. Army Corps of Engineers  
1325 J Street, Room 1827, Sacramento, California 95814-2922  
Phone: 916-557-7617, FAX 916-557-7803  
Email: Cecelia.L.Working@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Travis Morse  
Administrative Appeal Review Officer  
U.S. Army Corps of Engineers  
South Pacific Division  
Phillip Burton Federal Building, Post Office Box 36023  
450 Golden Gate Avenue  
San Francisco, California 94102  
Phone: 970-243-1199x1014, FAX: 971-241-2358  
Email: W.Travis.Morse@usace.army.mil

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation and will have the opportunity to participate in all site investigations.

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Signature of appellant or agent.

Date:

Telephone number: